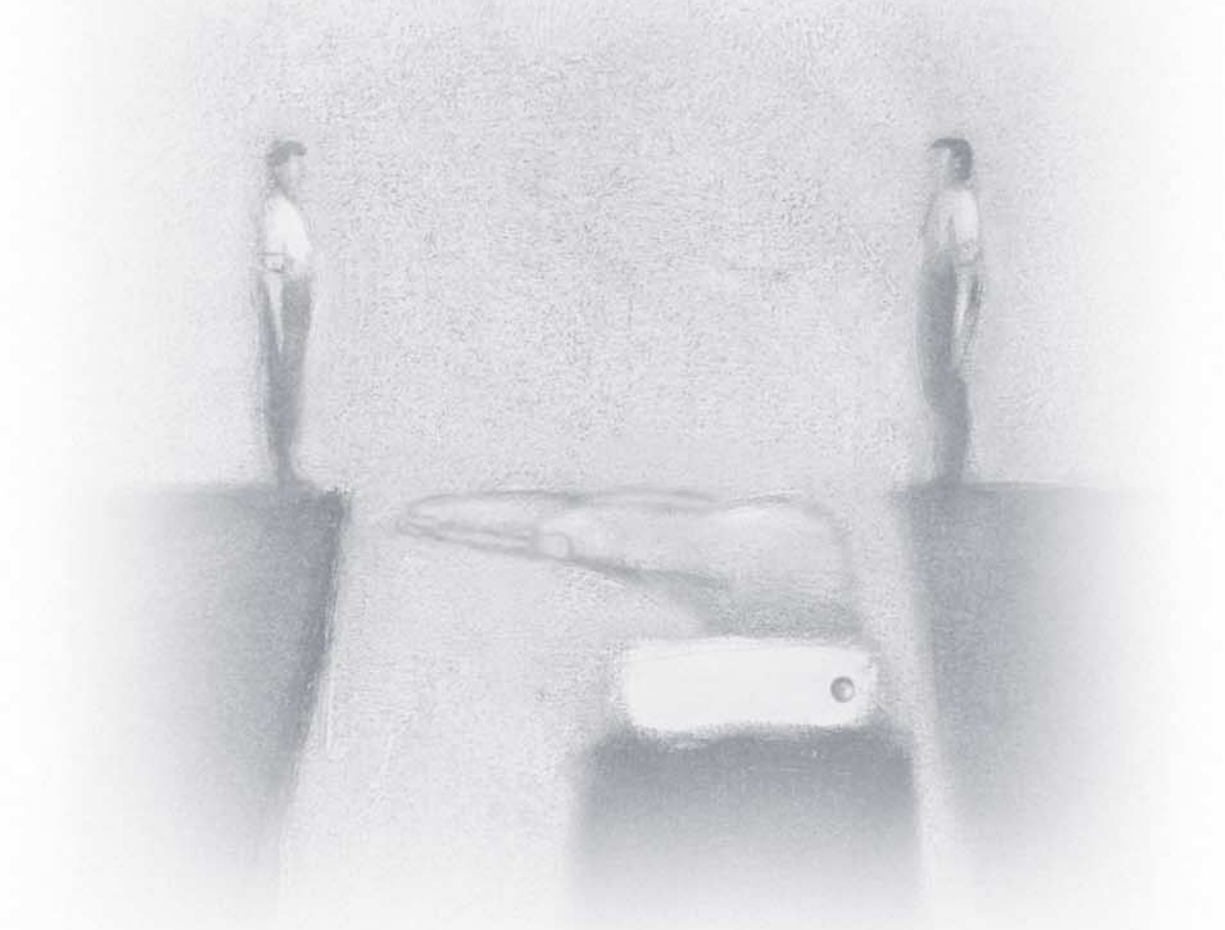




Relations Between Parliamentary Agencies and the Public Service: **New Perspectives**

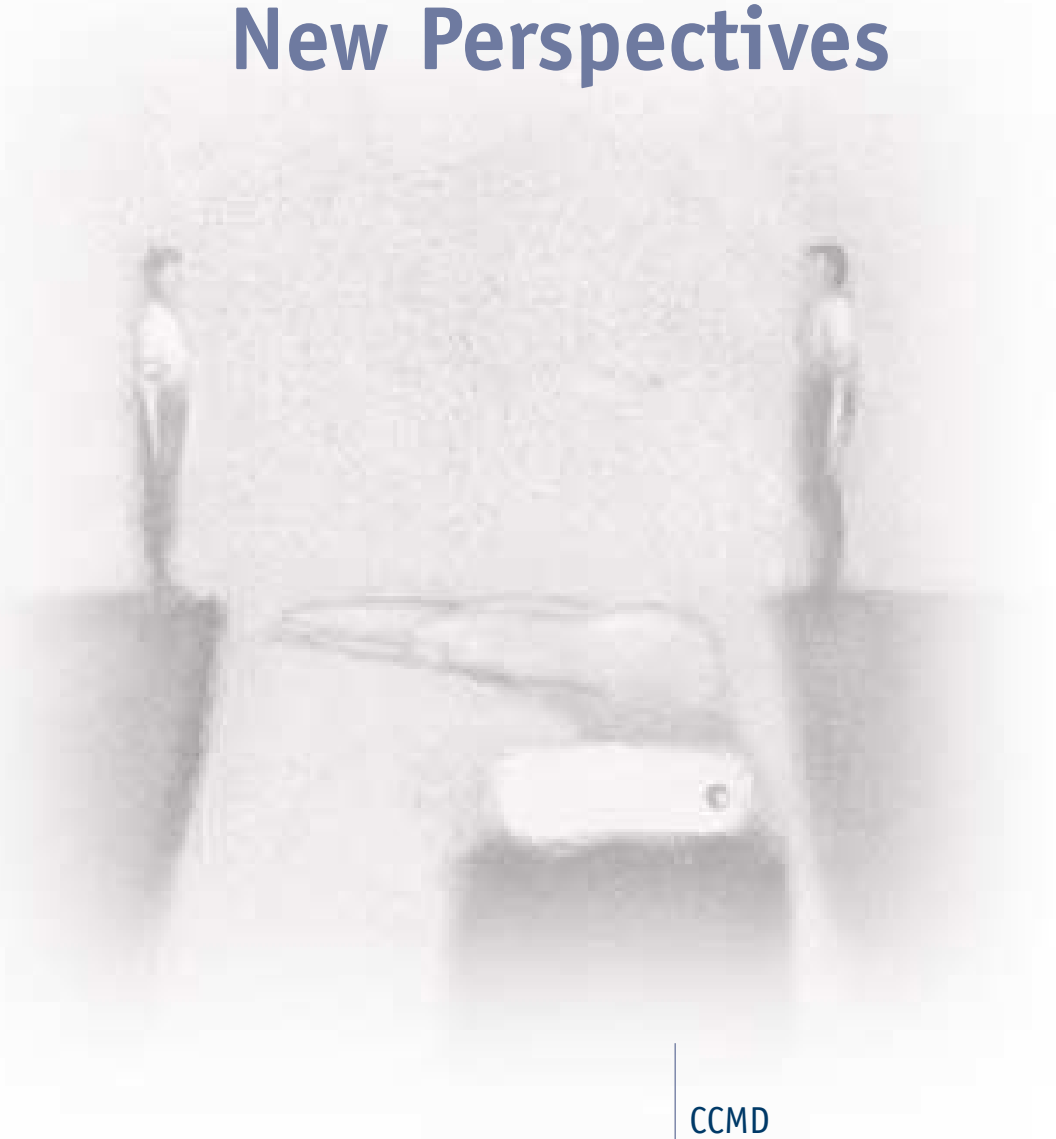


CCMD
Action-research project
designed and developed by
GEORGES TSAÏ
with the collaboration of
NADIA PONCE

C C M D
C C G



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A Message from the President of the Canadian Centre for Management Development

Canadian Parliamentary Agencies are champions of fundamental values in our democratic system: financial probity, human rights and employment equity, official languages, access to information, and privacy. They support Parliament in its scrutiny of the Executive. As important instruments of modern governance, they play, through their dealings with Federal institutions, an inescapable role in the life of public servants at all levels.

Georges Tsai, senior visiting fellow at CCMD, has designed and developed an action-research project on the relations between Parliamentary Agencies and the Public Service, and this report constitutes its outcome. The project covered a thematic series of three learning events and a roundtable that brought together some of the heads of the Parliamentary Agencies, academics, Parliamentarians and Deputy Ministers.

This publication, which is part of CCMD's efforts to encourage Parliamentary participation in CCMD activities, is the product of a collective effort. Written in French in its original version and in a reader-friendly style, this report aims to be both a learning tool and a practical guide for those interested in making relations between Parliamentary Agencies and public administration as productive as possible.

During the entire project, we have benefited from a remarkable collaboration from Parliamentary Agencies, as well as academics, Members of Parliament and Senators, and public servants. I would like to thank them for the quality of their contribution in our deliberations.

Finally, I would like to congratulate Georges Tsai and his team who worked to carry this project through to its successful completion.



Jocelyne Bourgon

Foreword

It is my pleasure to present the report that concludes the Canadian Centre for Management Development's action-research project on the relations between Parliamentary Agencies and the Public Service.

During my 33 years as a Federal public servant, I have had the occasion to work on both sides of the equation: for an Officer of Parliament and for various departments and public institutions. The nature and the quality of these relations has always been an intriguing, if not fascinating, subject for me, but I had never before had the time to give it more than superficial attention. It was, therefore, with a high degree of enthusiasm that I proposed this subject when I was offered the possibility of coming to the Canadian Centre for Management Development (CCMD) as a senior visiting fellow. I am grateful to Jocelyne Bourgon, CCMD President, for having accepted my proposition with at least the same degree of enthusiasm, and to Michel Dorais, Deputy Minister, Citizenship and Immigration Canada, for making my secondment to CCMD possible.

The project required the efforts of numerous people. The reader will find the list of those who helped us in the pages of this report. Their contribution has been invaluable. Without them, neither the project, nor the present document would have materialized. Once more, I was struck by the will of public office holders, either elected or appointed, working for a Parliamentary Agency or for a department, to always try to better serve the general interest, as well as their attachment to the exemplary values of the Canadian Public Service. But even if the report owes a lot to their contribution, the responsibility for any mistake, omission, incongruence, anachronism, ineptitude, tautology, ambiguity, oxymoron, barbarism, solecism or sophism that you could find rests entirely with me.

My special thanks to my two closest collaborators, Nadia Ponce, Research Assistant, and Hélène Godreau, Administrative Assistant, without whom I would still be wondering where to begin. I would also like to thank Raymond D'Aoust, Director General, Strategic Research and Planning at CCMD, for his moral, intellectual and financial support, as well as the teams at CCMD that helped us to successfully organize the various activities related to the project, and that gave us their assistance and advice whenever we needed them.



Georges Tsai
Senior Visiting Fellow

Acknowledgments

The Canadian Centre for Management Development wants to acknowledge the contribution of the numerous persons and institutions that participated in the thematic series or in the roundtable or in both events that constituted this project^a.

Dyane Adam
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Office of the Commissioner of Official Languages

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Maria Barrados
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Office of the Auditor General of Canada

Rémy Beauregard
Former Executive Director of the Ontario Human Rights
Commission

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Comptroller General of Canada
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^a The titles of the participants correspond to the positions they held at the time they contributed to the above-mentioned events.

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John Williams
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Chair of the Public Accounts Committee

Lois Wilson
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Member of the Senate Standing Committee on Human Rights

We would also like to highlight the excellent work of Marie-Ève Marchand (Exploration Creativity Openness Dialogue Attention, ECODA) and Steve Gildersleeve (CFC Consulting Group) who enabled us to conduct a dialogic roundtable.

We would also like to acknowledge the participation of the staff representing the following institutions in our thematic series:

Agriculture and Agri-Food Canada
Canadian Broadcasting Corporation
Canadian Centre for Management Development
Canadian Food Inspection Agency
Canadian Heritage
Canadian International Development Agency
Citizenship and Immigration Canada
Department of Foreign Affairs and International Trade
Federal Court of Canada
Fisheries and Oceans Canada
Health Canada
House of Commons
Human Resources Development Canada
Immigration and Refugee Board of Canada
Indian and Northern Affairs Canada
Industry Canada
Justice Canada
Law Commission of Canada
Military Police Complaints Commission
National Archives of Canada
National Capital Commission
National Defence
National Parole Board
Natural Resources Canada
Office of the Auditor General of Canada
Office of the Commissioner of Official Languages
Privy Council Office, Government of Canada
Public Service Commission of Canada
Public Works and Government Services Canada
Royal Canadian Mounted Police
Security Intelligence Review Committee
Solicitor General of Canada
Telefilm Canada
Transport Canada
Treasury Board of Canada Secretariat

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I. Introduction

Alternately ferocious watchdogs, touchy and uncompromising ombudsmen, agents of change and vital instruments of democratic governance, the five Parliamentary Agencies examined in this project play a critical role in the lives of public servants at all levels. Whether it be the Auditor General, the Commissioner of Official Languages, the Information Commissioner, the Privacy Commissioner, or the Chief Commissioner of the Human Rights Commission¹, our Officers of Parliament, in addition to their other duties, play a key role through their interaction with Parliamentarians and Parliamentary bodies, by enabling them to exercise enlightened control over certain aspects of the public administration's activities.

With the exception of the Office of the Auditor General, which was established in 1878 and whose duties are clearly different from those of the other four agencies, all these institutions are relatively recent, having been created over the last thirty years or so in response to the growing complexity of government operations, and to ensure compliance with the legislator's intention in areas deemed sufficiently important to justify setting up this kind of administrative infrastructure. Between them, the five agencies employ more than 1,000 people and have budgets exceeding 120 million dollars.

Yet, despite the importance of the role played by these agencies, their relationship with the federal Public Service is one topic that, according to interested observers, has been neglected by research, conducted either by academic or other institutions. This gap is now being partially closed through a variety of different research institutes and initiatives. Evidence of that can be seen in the so-called "purple zone"² projects launched by the Institute of Public Administration of Canada, as well as a conference entitled *Independence and Responsibility – A Conference on the Officers of Parliament*, organized in November 2001 by the University of Saskatchewan, in partnership with the Canadian Study of Parliament Group and the Saskatchewan Institute of Public Policy.

Also worth mentioning is the work in which the Parliamentary Centre is currently engaged, including a series of occasional papers on Parliamentary government. The May 2002 issue, which examined the relationship between Parliamentary committees and federal departments, is of particular relevance to our project³. The authors of the paper note that relations between Members of Parliament and senior departmental officials are far from being positive, but they do detect a desire on the part of both communities to improve their interaction and dialogue. After conducting a significant number of interviews, the authors conclude that even though the two communities have very different cultures, measures aimed at building mutual trust and understanding could benefit the relationship and, therefore, the effectiveness of each one of the players.

A second document worthy of note is a report tabled by the Access to Information Review Task Force chaired by Andrée Delagrave⁴. The Task Force presented recommendations to the government on how to "modernize the access to information regime in ways that promote open, effective and accountable government, an informed citizenry, and the public interest"⁵. Two aspects of that report tie in with the thrust of our project: administrative practices and the culture of the Public Service. More specific references in that regard are presented in the body of our report.

¹ The selection was made from Parliamentary Agencies that have an ongoing relationship with the federal bureaucracy – that is why the Chief Electoral Officer was not selected for the purposes of this project. Also, the Public Service Commission is a hybrid organization whose mandate was under review at the time this project was launched.

² *The Purple Zone*: the inner circles of the Public Service, generally austere and with little poetic inclination, use this charming expression to refer to the relationship between politicians and public administrators.

³ Peter Dobell and Martin Ulrich, Parliamentary Centre, *Building Better Relations*, Occasional Papers on Parliamentary Government, No. 13, May 2002.

⁴ Andrée Delagrave, Access to Information Review Task Force, *Access to Information: Making it Work for Canadians*, Ottawa, June 12, 2002, p. 12.

⁵ Web page of the Access to Information Review Task Force, <URL: <http://www.atirtf-geai.gc.ca/home-e.html>>

In taking on this project, our goal was an eminently practical one. Certainly, a first objective was to help expand the body of knowledge and understanding of these agencies. But we wanted, above all, to identify practices, approaches and strategies to make relations between Parliamentary Agencies and the Public Service as productive as possible.

In particular, we wanted to acquire a clear understanding of the nature of those relations, starting from the principle that their quality had an impact on the degree of compliance of institutions subject to the various laws concerned, and on the introduction, in the mid- and long-term, of the reforms sought by our democratic authorities.

We selected three means to attain our goal. First, we organized a thematic series of three learning events in February and March 2002 at which some 150 participants representing 37 federal institutions benefited from the knowledge, views and experience of senior public servants, representatives of four of the five agencies, academics and Parliamentarians⁶. This was an opportunity for participants to examine the relationship between the two communities from different perspectives, and to identify both dysfunctional areas of the relationship and promising avenues to explore for the introduction of best practices with the potential to make that relationship more meaningful and productive.

Second, in April 2002, we invited three Members of Parliament, five Deputy Ministers, five Heads – current or past – of Parliamentary Agencies, and three academics to take part in a “dialogic” roundtable⁷ which expanded on the process of reflection that was initiated during the thematic series.

Finally, by presenting a synthesis of the thematic series and roundtable discussions and incorporating the results of consultations held subsequently with a number of participants, this report aims to serve as:

- 1 ■ a learning tool to anyone interested in gaining a better understanding of how Parliamentary Agencies operate and the strategies they use in their relations with the Public Service and Parliamentarians, and
- 2 ■ a practical tool which, were it to be used by all concerned, might contribute – if only modestly – to strengthening the dialogue between the actors involved in this – not always infernal – triangle of which Parliamentarians, Officers of Parliament and public administrators form part.

How to read this report

Readers interested primarily in finding out more about Parliamentary Agencies and the nature of their relations with the Public Service will want to concentrate on Chapter II and Appendix B.

Those seeking inspiration in the ideas presented by the participants at our events, with a view to implementing them in their own working environment, may want to pay particular attention to Chapters III, IV and V.

Readers especially pressed for time will need nothing more than the pocket guide prepared especially for their use that is distributed with the report.

Happy reading!

⁶ Our project benefited from the participation of representatives of the Parliamentary Agencies that are the subject of this study, with the exception of the Privacy Commissioner of Canada. Mr. George Radwanski chose not to participate in the project. However, Mr. John Grace was willing to share his experience and knowledge as a former Privacy Commissioner and former Information Commissioner.

⁷ See Appendix A for a description of the dialogic method used for the roundtable.

II. Dynamics of the Relations Between Parliamentary Agencies and the Public Service



The Triangular Relationship (ménage à trois?) and Its Twists and Turns

The starting point for our analysis is a triangular relationship which, while seemingly complex, and thus, turbulent, is constructed with a definite purpose in mind. First, we have Parliament, at the top of the triangle. Then, the Parliamentary Agencies, which are creatures of Parliament. Finally, the Public Service, where Officers of Parliament cast their panoptic, inquisitive gaze, through various lenses depending upon their own vantage point, is the third actor in this play for which the scenes seem to have been written sometimes by Kafka, sometimes by Courteline⁸.

Another triangle can be added to this initial one, composed of the Parliamentary Agencies, the Public Service and the general public, often through a process whereby a complainant deals first with a public official before contacting an Officer of Parliament.

And, to further complicate things, the actors who occasionally become involved, most often at the invitation of Parliamentary Agencies or the public: the media, the courts, non-government organizations, etc., can be superimposed upon the dual triangle.

Figure 1 identifies the relationship between the different parties. The specific focus of our project was the relationship between Parliamentary Agencies and the Public Service on the one hand, and between Parliament and Parliamentary Agencies on the other.

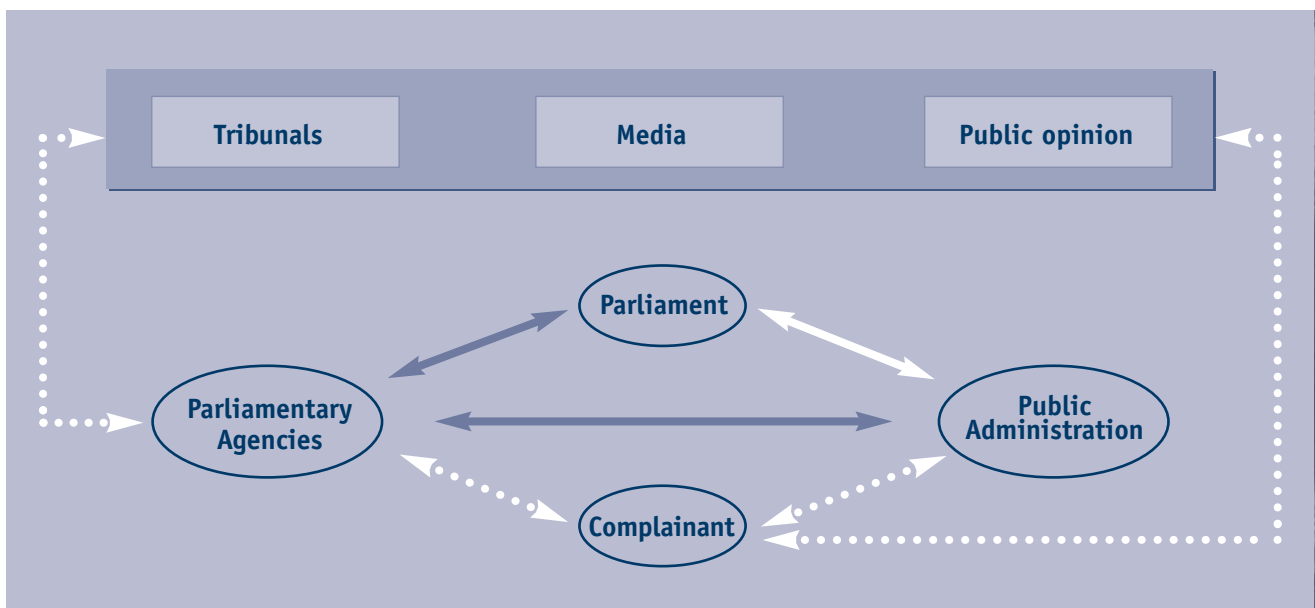


Figure 1 ■ The Players in the Relations Between Parliamentary Agencies and the Public Service

⁸ Georges Courteline (1858 – 1929), French writer, author of *The Bureaucrats (Messieurs les ronds-de-cuir)*.

The soft purr of a cat could be considered an apt metaphor to describe the first relationship, as long as it does not go beyond some well-rehearsed exchanges between public officials and representatives of a Parliamentary Agency: receipt and delivery of a complaint, a discreet inquiry, an apology from the Department, a promise to correct the situation, the announcement of a special study or audit, interviews, informal consultations, information or awareness sessions... Even an appearance before a Parliamentary Committee may only entail the loss of a few hours of sleep for officials responsible for preparing briefing books for their Minister or Deputy Minister. But all it takes is for an issue to become controversial (questions in the House of Commons, a special report, curious reporters, referral to the courts...), thereby putting the Minister on the defensive, for the relationship to sometimes turn sour and the friendliness to turn into accusations, recriminations, evasiveness and hostile words. A lot of time and energy is then required to restore a healthy, productive relationship, the only kind that can really serve the public interest.

As for the second one, the relationship between Parliamentary Agencies and Parliament, more often than not, plays out through Parliamentary Committees. According to participants in the thematic series, this relationship varies greatly from one case to the next. Sometimes words such as “transparent cooperation” or “interdependency” are used to describe the relationship. At the other extreme, there is criticism of the non-existence or, at the very least, the episodic nature of the relationship. Yet, as we will see later on, the effectiveness of this second relationship in our triangle seems to have a significant effect on the quality of the relationship that exists between Parliamentary Agencies and the bureaucracy.

Parliamentary Agencies: Dr. Jekyll or Mr. Hyde?

Participants in the thematic series clearly identified the varied and sometimes contradictory roles played by the agencies under review. If we consider for example the case of the Human Rights Commission, the legislator’s intent was to create Officers of Parliament that would support the case of complainants rather than acting as referees, and try to persuade departments and other executive bodies to behave in accordance with the applicable legislation, before turning to the courts. Similarly, to cite the words of the Honourable Francis Fox, the then Minister of Communications, the Information Commissioner, by acting at arm’s length from the Executive, “would be free to lobby, criticize, make recommendations to Parliament and even take the government to court”⁹. A mandate such as this carries within it the seeds of potentially turbulent relations between the Executive and Parliamentary Agencies.

As creatures of Parliament, they all have in common a dual role: a watchdog role and a promotion role. In the first instance, they control and monitor the machinery of government in very specific areas identified by lawmakers as critical functions that serve the public interest (public finance, human rights, official languages, access to information, protection of privacy, etc.).

The purpose of this first role is to ensure that the federal bureaucracy complies with the provisions of the laws passed by Parliament. Realizing that it would be impossible for them to fulfill this function, lawmakers created these agencies to act in the field as their expert “eyes” and “ears”, and thus help to ensure that their intent would be respected. To enable them to ensure compliance, Parliamentary Agencies enjoy broad powers and have access to tools that are potentially very effective¹⁰. They use an approach that differentiates them from a court of law. Their specific mission is to alleviate tensions in an informal manner and at nominal cost¹¹.

⁹ Bill C-43, *House of Commons Debates*, July 17, 1980.

¹⁰ This section is based on the original acts creating the institutions examined in our report: the *Auditor General Act*; the *Canadian Human Rights Act*; the *Employment Equity Act*; the *Official Languages Act*; the *Access to Information Act*; and the *Privacy Act*. Also, see Appendix B for more detailed information about the mandate of each of these agencies.

¹¹ Mary A. Marshall and Linda C. Reif, “The Ombudsman: Maladministration and Alternative Dispute Resolution” (1995), 34 *Alta. L. Rev.* 215 cited in *Lavigne v. Canada* (Office of the Commissioner of Official Languages) 2002 SCC 53.

To begin with, they are required to present one or more reports to Parliament on an annual basis, but also have the option of tabling reports on any matter of such importance or urgency that it could not wait to be addressed in a regular report. Also, they may – and sometimes must – carry out audits or studies on their own initiative, conduct investigations following complaints by the public or at the request of the government, or refer matters to the courts.

The law also confers very extensive powers of investigation on the Heads of Parliamentary Agencies. They can enter the premises of a federal institution, access their files, and even require that federal officials provide them with any information, reports and explanations they require; they may subpoena witnesses, and compel them to testify under oath; they can report to the institutions that are the subject of their investigations or studies, as well as to the Treasury Board, the Governor in Council or Parliament, if deemed necessary. At first glance, this would seem a very impressive arsenal, except that its strike force is severely reduced by two factors that vary in importance, depending on the context of the relationship.

On one hand, Officers of Parliament do not really have the power to directly compel government institutions to act on their recommendations: say what they will, the fact is the bureaucracy may not pay much attention. Furthermore, if they abuse the powers vested in them as regards this aspect of their mandate, they could end up compromising the success of their second role, which is, explicitly or implicitly, to promote the reforms described in the legislation that directly concerns them, to educate the public and public officials and, as expressed in the vision statement of the Office of the Auditor General, “to make a difference for the Canadian people”.

This ambivalence surrounding the mandates of Officers of Parliament has an impact on the nature of their relationship with the bureaucracy. If played too rigorously, the role of watchdog (compliance mandate) can prejudicially affect the quality of that relationship and the success of their mandate of long-term reform. Conversely, if Officers of Parliament are too lax in performing that role, they run the risk of losing their credibility as ombudsmen and of undermining the very foundations of legislative intent. Faced with that dilemma, Parliamentary Agencies learn – with varying degrees of success – the art of interacting at two different levels. Participants in our project expressed two positions in that regard. Some believed that compliance must prevail, regardless of the quality of the relationship, and that it is only by forcing the public administration

to comply with the law that the long-term reforms sought by the legislator will ultimately be realized. Others are of the view that a good relationship founded on trust, respect and a desire to work together towards a common goal not only increases the chances of introducing reforms into the Public Service more quickly, but also has a positive effect on compliance. This is something we will take a closer look at in the subsequent sections of the report.



The Quality of the Relationship, as Seen by the Main Players (Hell Is Other People)

Perceptions of the quality of the relationship that exists between Parliamentary Agencies and the Public Service appear to vary depending on the agency and the observer. For example, during the thematic series, project participants agreed that overall, the relationship was characterized by a “healthy tension” and that specific initiatives had been taken by Parliamentary Agencies to make that relationship as productive as possible. As we will see in the next chapter, that is especially true for the Office of the Auditor General and the Office of the Commissioner of Official Languages. As mentioned by a participant, tensions arising during an audit or an

investigation may lead to positive change if mutual respect and a sense of cooperation are constant throughout the process. Tensions often pave the way for further discussion and better understanding of the mandates of the parliamentary agencies. In some other cases, tensions may result in a dysfunctional relationship. Box 2 presents a sample of the views expressed during the thematic series.

- | | |
|--|---|
| <ul style="list-style-type: none"> ▪ Good audits are made openly, and genuine objectives are expressed. They are about a strategy of good faith questioning. ▪ Good communications with departmental officials are at the heart of a successful value-for-money (VFM) audit. The credibility that the Office of the Auditor General has in the departments is the result of long hours spent in gaining an understanding of the issues and consulting with departmental officials at all stages of the VFM audit process. ▪ A competency profile has been established at the Human Rights Commission, which ensures that new recruits demonstrate abilities to carry out rigorous and objective investigations and do not view their role as being an advocate for the complainant. By sensitizing their staff to this and recruiting according to their competency profile, change has occurred in this area. ▪ Public administration perceives investigations as an opportunity for “quality control”, an opportunity to review its practices, to question its routines – not always nice, but this should be perceived as healthy. ▪ Media intervention is one of the important tools an ombudsman has to highlight deficiencies, but it should not be used exclusively to highlight faults. There is great value also in praising someone publicly. | <ul style="list-style-type: none"> ▪ “The Commission is out to get you!” ▪ The Commission must function independently from the Public Service. However, such independence is neither understood nor respected by citizens or the media. ▪ Within a “paperwork” approach, procedure prevails over results. Therefore, there is recidivism. We do not deal with the underlying causes of the identified problems, even the simplest ones. We remain limited to the symptoms. The same complaints are made year after year, and that irritates both the complainants who file them and the departments that have to deal with. ▪ “I don’t know how we can have a dialogue between public servants and politicians to increase the knowledge of both sides to solve the problems if we can’t speak openly to each other, and actually hear about the failures”. ▪ In the first place, we can speak in a very rhetorical way of a “culture of secrecy”. What I observed in the field, and what I observed in the program coordinators and agents is a culture of prudence, of extreme prudence. |
|--|---|

Box 2 ■ The Quality of the Relations Between the Parliamentary Agencies and the Public Service as Seen by the Main Players

Without aiming to generalize, it can be said, probably somewhat predictably, that the institutions about which Officers of Parliament express concern sometimes feel that the latter are difficult to satisfy, if not uncompromising. Parliamentary Agencies may be perceived as making little effort to understand the particular circumstances of a department. Public servants are not always sure they really understand the ground rules (constantly moving targets, investigation processes that are not entirely transparent, a lack of consistency in decision-making...). Sometimes, they also have the impression that the agencies are lying in wait just to penalize them for mistakes. In some cases, they feel utterly defenceless in the face of criticisms levelled by a Parliamentary Committee or reported on in the media.

Conversely, and still avoiding generalizations, the reaction of Parliamentary Agencies to the performance of departments is not always particularly nuanced either: some departments may be perceived as demonstrating negligence or a culture that does not espouse all of the values set out in this act of Parliament or the other, or as being too slow to introduce the needed reforms.

In some cases, it is clear that the gulf between the two is extremely deep and that the relationship has reached a stage when dialogue becomes difficult to sustain. One has only to mention the name of a particular department to the representative of a particular Parliamentary Agency to elicit a grimace that speaks volumes about the person's esteem for the department in question. Similarly, citing the name of a Parliamentary Agency can, depending on whom one is addressing, provoke a visible stiffening that is more meaningful than any words. When a relationship is reduced to this kind of knee-jerk rejection of the other party, it is high time to start looking at how it can be mended.

Some participants evoked the role of the actors' personality on the relationship¹². According to some of them, the personality of the Officers of Parliament and senior public servants, their sense of negotiation, their style of communication, and other characteristics are factors that could have an influence on the quality of the relationship and on the opportunities for cooperation in order to introduce changes in departments. Conflictual inter-personal relationships would then make the Parliamentary Officers' interventions with the Public Service more difficult, although it is not certain that this factor is determinant in the quality of the compliance with the laws.

Some participants in our project seemed to accept the theory according to which tense, and even conflictual, relations find their origins in the nature of the Parliamentary Agents' mandates. But this view is far from being unanimous and those who participated in this discussion actually expressed optimism: there are means within the reach of all concerned parties for ensuring that productive relations can be developed and maintained between Parliamentary Agencies and the Public Service. That is what we will attempt to demonstrate in the next two chapters.

¹² The influence of personality in the relations between public office holders is a subject that has been little studied. We can mention, however, a research conducted with Australian senior public servants. Its author has highlighted the importance of the personalities of senior public servants for the success of their organizational objectives. See James S. Lawson, "Success and Failure among Senior Public Administrators. The Key Role of Personality" in *International Journal of Career Management*, Vol. 6, No. 4 (1994), p. 10-13. In Canada, it is possible to mention some interesting studies. For example, James Kendrick suggests in his Ph.D. Dissertation that both demographic and personality/character diversity play a role in the decision process and that their effects are moderated by the distribution of power in a team. James Kendrick, *Exploring the Diversity Paradox in the Public Sector: Top Management Team Diversity and Comprehensiveness in the Strategic Decision-Making Process*, Ph.D. Dissertation, Montreal: École des Hautes Études Commerciales, 2002 (Unpublished). Professor Sandford F. Borins has also analyzed personality in his book *The Language of the Skies*, which studies the bilingual air traffic control conflict in Canada. S. F. Borins, *The Language of Skies. The Bilingual Air Traffic Control Conflict in Canada*, The Institute of Public Administration of Canada, Kingston and Montreal: McGill-Queen's University Press, 1983.

III. The *sine qua nons* of a Productive Relationship



There is clearly no magic formula for ensuring that, in every case, positive and productive relations can be developed and maintained between Parliamentary Agencies and the Public Service. Our project allowed us, however, to identify three important prerequisites to a healthy relationship: mutual knowledge and understanding; a values-driven relationship; and a favourable institutional environment. These prerequisites can be considered to be critical success factors, although not necessarily sufficient on their own.

Mutual Knowledge and Understanding

Most project participants agreed that a productive collaboration between Parliamentary Agencies and the bureaucracy required that there be greater mutual knowledge and understanding on both sides. Effective communication and ongoing dialogue are seen as critical in that respect. Participants also emphasized the importance of developing regular communication outside the formal and official framework of relations as defined by the law: complaints, investigations, audits, preparation of annual or special reports... As a former Officer of Parliament so appropriately expressed it, “getting to know the officials you have to deal with before problems arise is a good investment; arriving at a level of mutual understanding is much better than ending up before the courts”.

This communication can take the form, for instance, of regular meetings between the agency’s and the department’s management teams, including an agenda and presentations, for the purpose of reviewing respective priorities and major issues or initiatives, while at the same time avoiding discussions of ongoing investigations or audits¹³. According to Peter Dobell and Martin Ulrich of the Parliamentary Centre, consultations between Parliamentary Committees and departments regarding departmental priorities would afford both sides an opportunity to gain a better understanding of their respective points of view and interests. At a personal level, regular communication would contribute to a better understanding of the “values and aspirations of the interlocutors”¹⁴.

Some departments and Parliamentary Agencies have taken initiatives either separately or jointly with others that also seem quite promising. Participants cited such examples as the protocol signed by the Department of Public Works and Government Services and the Office of the Auditor General governing relations between the two institutions (see Box 3.1) and the adoption, by both a former and a current Officer of Parliament, of a “corporate philosophy” of action intended to foster the relations based on respect and trust (see Box 3.2).

¹³ As an example, one can mention the series of meetings with departmental management teams launched by the Commissioner of Official Languages.

¹⁴ The Parliamentary Centre, *op.cit.* p. 9.

The relationship between the department of Public Works and Government Canada (PWGSC) and the Office of the Auditor General and the Commissioner of the Environment and Sustainable Development (OAG) is one of openness and cooperation. The Director General, Audit and Ethics Branch of PWGSC has the mandate to coordinate the activities of the OAG within PWGSC to ensure that:

- the meaning of, and basis for, each observation and recommendation made by the OAG are clearly understood by all parties;
- areas of agreement and disagreement are clearly delineated;
- the parties understand the basis for any points upon which there is disagreement;
- an exchange of information and views occurs; and
- the report, audit note or other is a true, fair and balanced assessment of the issues audited.

May 1994

Revised February 1999

Box 3.1 | Protocol Governing Cooperation Between the Office of the Auditor General and Public Works and Government Services Canada (excerpt)

Case 1

- 1 ■ “No surprises”. No precipitous unexpected action in the course of an investigation would be taken without prior warning. Before making an adverse finding against a department and before any Minister received notice of court action, senior public servants would be consulted and advised.
- 2 ■ The necessary vigor that the office will proceed with any investigation will be tempered with a courteous respect for opposing points of view.
- 3 ■ Honorable disagreements should be expected when important competing values are contending, e.g., privacy rights and national security.
- 4 ■ Presume that both sides act in good faith.

Case 2

- 1 ■ Avoid using the powerful provisions in our legislation, preferring to cooperate with, rather than dictate to, departments.
- 2 ■ Engender trust through this cooperation and a level of credibility with departments and officials.
- 3 ■ Encourage departmental “ownership”, or at least, acceptance of the final product.
- 4 ■ Convey positive and constructive approaches and solutions wherever possible, rather than emphasizing the negative.
- 5 ■ Encourage innovation while respecting the rules.

Box 3.2 | A Corporate Philosophy for Managing Relations Between Parliamentary Agencies and the Public Service: Two Case Studies

Just as interesting is the development of multilateral communication that some Parliamentary Agencies have attempted to establish with all federal institutions through contacts with the appropriate functional communities. An example would be the contacts the current Commissioner of Official Languages maintains with the network of official languages champions (designated by the departments at the Assistant Deputy Minister or Director General level) created by the Treasury Board Secretariat. The comments of some participants highlighted the positive spin-offs of the meetings of champions that the Commissioner or her representatives are systematically invited to attend.

These practices, and others we will examine later on, are not necessarily costly, but they do require investments of time, energy and resources that Parliamentary Agencies, especially, must be prepared to make. However, the potential benefits flowing from such an investment could be considerable. The Parliamentary Agency is in a better position to understand why a department may be having trouble achieving progress and can adjust its actions on that basis. And the department not only develops greater understanding of the pressures that Officers of Parliament face, but gains access to valuable information (best practices, errors to be avoided, etc.). By expanding their mutual understanding of the other’s issues and challenges, the two partners have a better chance of addressing contentious or difficult issues in a spirit of cooperation and respect, and thus of working together to introduce the reforms intended by the legislator.

Of course, the beneficial effects of the dialogic approach to reciprocal knowledge could be expanded further through solid learning programs provided by large departments and the Canadian Centre for Management Development, particularly to future managers or more experienced public servants willing to rediscover the meaning and purpose of the mission of Parliamentary Agencies. Consideration could be given to the idea of presenting these courses or course modules as part of a general learning program dealing with relations between the Public Service and Parliament. This will be discussed in more detail in Chapter IV of this study.

A Values-Driven Relationship

Some participants in this project have identified three levels of compliance. The first, and foremost one, is based on the public administration’s legal obligations, which is a model of compliance no public servant could ignore. The second level of compliance is based on the notion that it is important for different public institutions to “do well” and to “look good” to the eyes of the public, the media or a Parliamentary committee. It is a utilitarian approach that often has the virtue of reinforcing the legalist approach. Finally, the third level is a compliance model based on the values that echo the laws that regulate the activities of the diverse Parliamentary Agencies. According to several of our participants, this is the model that should produce the best results both in terms of short-term compliance and long-term reforms. (See Figure 3.3)

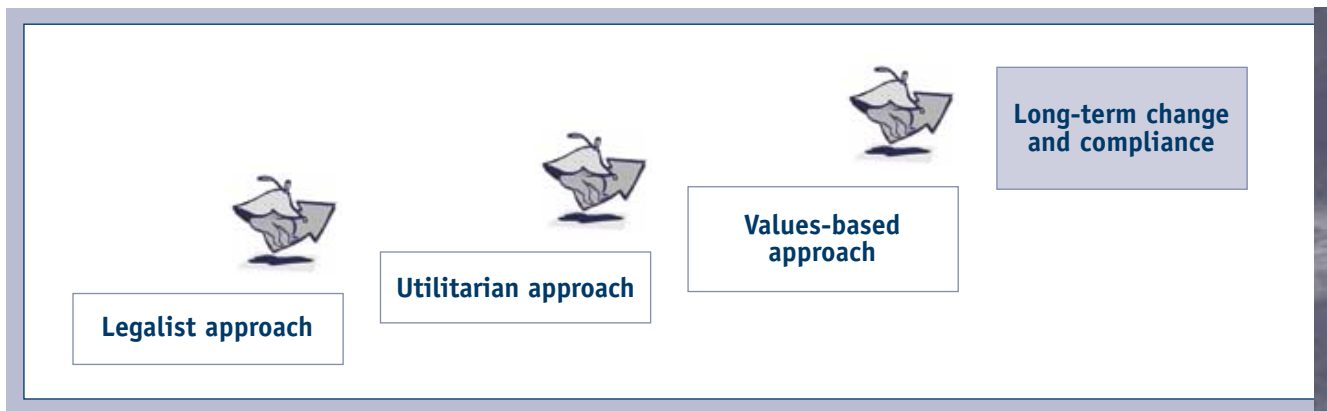


Figure 3.3 ■ Three Compliance Models

A values-driven compliance model would likely yield especially positive results where a Parliamentary Agency's mandate involves behavioural change within the Public Service. As one of the academics who took part in our project pointed out, with the exception of the Office of the Auditor General, the Parliamentary Agencies studied were created to defend and promote new rights that reflect changes in this country's collective values, but do not necessarily have the unanimous backing of Canadians or even the Public Service.

On the other hand, there seems to be a much broader consensus around the values promoted by the Office of the Auditor General: it would be difficult to find many Canadians who are not in favour of prudence and probity regarding the use of public funds – differences of opinion would have more to do with the way the Office carries out or interprets its mandate. The significance of well-assimilated values in introducing Public Service-wide reforms has been highlighted recently in the report of the Access to Information Task Force¹⁵.

More generally, there is an ever-increasing number of studies underscoring the importance of the role values play in ensuring that organizations operate effectively. Indeed, the public sector is showing renewed interest in values and ethics. One demonstration of that interest that attracted some attention was the publication of the 1996 report entitled *A Strong Foundation*¹⁶ prepared under the direction of the late John Tait. A number of initiatives have followed as a result of the report, some of which are still in progress: dialogue within departments, armchair discussions organized by the Canadian Centre for Management Development, drafting of a Statement of Principles for the Canadian Public Service...

A Strong Foundation reasserts the primacy of law and the public interest as the essential pillars of public administration. It proposes the development of "ethics regimes" that federal public agencies would have to adopt, both collectively and individually. While the Tait Report does not specifically address the question of relations between the Public Service and Parliamentary Agencies, it takes a close look at the importance of "democratic values" in Canada's system of government.

As the report states, "Canada's form of democracy is responsible parliamentary government, based on the collective and individual responsibility of ministers to the elected House of Commons, which along with principles of federalism and the Charter of Rights and Freedoms, provides a crucial framework for Public Service roles, responsibilities and values"¹⁷. In this vein, Parliamentary Agencies play a role in strengthening the deepest values of public service: respect for the authority of elected office holders, respect for the Constitution, the rule of law, and the institutions of Parliament and the courts.

The report also points out the practical benefits of developing fundamental values within the Public Service, warning that one should not confuse them with policies or mechanisms put in place to protect such values. Without going to the extreme of saying that a values-driven approach constitutes a cure-all when it comes to developing a structure for building a positive relationship between Parliamentary Agencies and the Public Service, it is clear that a values-driven culture builds greater support for long-term reforms and promotes compliance with the intention of the legislator.

¹⁵ Andrée Delagrave, Access to Information Review Task Force, *op. cit.*, p. 168-169.

¹⁶ John Charles Tait, Task Force on Public Service Values and Ethics, *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics*, Ottawa: Canadian Centre for Management Development, 1996.

¹⁷ *Ibid.* p.17.

D.B. Dewar, a former Deputy Minister, captured in a few words the importance of values in the Public Service; values make it possible to “navigate in rough waters”¹⁸. Values can be equally useful to officials and Officers of Parliament by helping them to visualize ideal results and to set goals; they can be the basis for a collective motivation to work towards common goals; they can operate much like standards to help us measure collective progress, end a deadlock and choose among different courses of action. As a result, values can help both parties define how to establish a mutual relationship, as well as ensure consistent, stable action within the Public Service in the face of the change it is consistently undergoing.

Values are the cornerstone of an approach that focuses on mutual trust and respect, in an ongoing commitment to the public interest and in a shared sense of decision-making responsibility. A values-driven approach has tremendous potential for developing and strengthening a climate of mutual trust.

Some authors have identified several steps in the process of introducing values into an organization: awareness, reasoning, action and leadership¹⁹. The first step is to raise awareness of the values involved, either individually or collectively. It is up to the Public Service to take whatever action is necessary to facilitate that awareness-raising, but Parliamentary Agencies can play a decisive role in that regard by creating multiple opportunities to engage in dialogue with the departments. As was pointed out by a number of public servants who took part in our thematic series, contact between departments and Parliamentary Agencies is often initiated as part of an audit or investigation undertaken following a complaint. Thus the awareness occurs in a crisis environment.



Of course, a succession of crises may ultimately bring about a transformation in the values and culture of the Public Service, but one must admit that a purely reactive approach cannot yield results if it is not followed by the development of a collective awareness of the values involved.

Once there is that awareness, the partners can contemplate reflecting – preferably together – on the principles that will guide their respective decisions and actions. Within this kind of “virtuous” process, Parliamentary Agencies would be better able to identify and suggest new approaches to target departments with a view to fostering long-term changes. For their part, by having a better understanding of the values and objectives of Parliamentary Agencies, departments might feel more inclined to take the initiative of identifying solutions that reflect both their circumstances and the Officer of Parliament’s expectations.

Our roundtable participants recognized at once that Parliamentarians, Officers of Parliament and public servants are all working to further the public interest and the common good. Based on that premise, it should be possible for the players to find mechanisms and incentives to foster the kind of cultural change that would see the main protagonists go beyond a strictly administrative culture (in other words, legalist or utilitarian) to embrace a public-interest driven culture anchored in common values.

¹⁸ D.B. Dewar, “Values in the Public Service: How to Navigate in Rough Waters”, in *Values in the Public Service*, The Dewar Series: Perspectives in Public Management, Ottawa: Canadian Centre for Management Development, 1994, p. 1.

¹⁹ Michael Hoffman and Dawn-Marie Driscoll, *Ethics Matters. How to implement Values-Driven Management*, Waltham, Massachusetts: Center for Business Ethics, 2000, Chapter 12.

A Favourable Institutional Environment

Deep mutual knowledge and understanding and a compliance model that focuses on shared values are probably good ways of ensuring that a productive relationship can develop between a Parliamentary Agency and a department. But, as a number of our project participants pointed out, cultural and attitudinal changes cannot occur in a vacuum. A number of very concrete factors considerably influence the efforts of the players involved in that relationship. Two of these deserve a closer look: Parliament and the material conditions in which Parliamentary Agencies and the Public Service operate.

The Role of Parliament

As we saw in Chapter II, Parliamentarians play an extremely important role in the relationship between Officers of Parliament and the Public Service. As a general rule, they do so through the Parliamentary committees responsible for reviewing the activities of the five agencies covered in this project. What clearly emerges from our thematic series and roundtable discussions is that the attention paid to these five agencies or the treatment they receive from Parliament is not consistent, and that as a general rule, the latter is not sufficiently involved in the activities of the agencies that it created.

Participants agreed that the Public Accounts Committee plays a very active role in the triangular relationship, by systematically inviting the Auditor General to be present when a Minister appears. This interaction between the Committee and the Officer of Parliament appears to be effective in terms of results, because it seems to act as an incentive for the Public Service to perform well. According to this view, short-term compliance and long-term changes are facilitated as a result. Some participants raised the point that such a close relationship between the Committee and the Parliamentary Agency can sometimes be a double-edged sword, since it puts public officials appearing before the Committee on behalf of their Minister in an uncomfortable position, caught as they are between the Committee and the Officer of Parliament. Moreover, their awareness of the role they play as agents for change means that Officers of Parliament must sometimes proceed with great caution to avoid alienating the Public Service and undermining its goodwill through forceful comments that might please some members of the Committee but displease a department that is put on the spot.

Similarly, the Commissioner of Official Languages has access to a joint Parliamentary committee whose function is to look into matters involving official languages. According to participants, the committee's impact has been uneven in the past and the committee-Officer of Parliament-Public Service triangular relationship has not always yielded convincing results. However, a strengthening of that relationship has been noted that could, in this case as well, lead to the development of a fruitful rapport between the committee and the Commissioner.

The situation of the other three Parliamentary Agencies was quite different at the time of our discussions, but there seem to have been some positive changes. Until recently, the reports issued by the Information Commissioner and the Privacy Commissioner were referred to a Parliamentary committee of the House of Commons which has a wide variety of responsibilities – the Standing Committee on Justice and Human Rights – and has never devoted much time to these agencies. In fact, the current Information Commissioner has appeared no more than a half-dozen times before the Committee. It is perhaps this lack of attention on the part of Parliamentarians that has prompted the various incumbents of these two positions to regularly make use of the media and open letters to present their views.

All of that could change with the creation – announced recently – of a new House of Commons committee, the Committee on Government Operations and Estimates – whose responsibilities would include receiving and reviewing the reports issued by a number of Officers of Parliament, including the Information Commissioner and the Privacy Commissioner. That seems to be a promising avenue, but time will tell to what extent the Committee’s Herculean task – it will be responsible for reviewing the estimates of all the departments – will leave it enough time and energy to establish an ongoing relationship with Officers of Parliament.

Finally, the Human Rights Commission has also access to the Standing Committee on Justice and Human Rights. That access remains extremely limited as a general rule. The establishment – again only recently – of a Senate Committee on Human Rights seems likely to breathe new life into the relationship between Parliament and the Commission, but for now, such a development remains latent, the Committee having thus far focused primarily on the international dimension of human rights.

A number of participants in our project, and particularly Professor Paul G. Thomas, advocated the creation of a joint Parliamentary committee with a mandate to review the activities of the Public Service in general, and Officers of Parliament in particular. By establishing the Committee on Government Operations and Estimates, the government has in fact given concrete expression to this idea, albeit in a form that, while useful, is more limited. The time has come for Parliament to play a prominent role in promoting the values set out in the legislation creating Parliamentary Agencies.

A Member of Parliament who participated in our roundtable favoured a forceful approach to correct the increasingly widespread perception that Parliamentary institutions present a deficit in the control of the activities of the Executive. In his view, institutions’ performance with respect to compliance depends on the strength of “motivators” that are “forces beyond our control”. These motivators or, if you prefer, incentives, can be either positive or negative. By bringing pressure on the Public Service, they would encourage it to implement measure that would foster compliance with legislation. This is an approach that would be particularly well suited to institutions that demonstrate chronic apathy when it comes to acting on the recommendations of Parliamentary Agencies. It is consistent with a two-dimensional accountability regime where government employees are required not only to be answerable for and justify their activities, but are also subject to negative sanctions, where appropriate²⁰. Active, forceful Parliamentary committees and Officers of Parliament would seem to be prime instruments for meeting those objectives.

Other project participants expressed a preference for the use of internal motivators – in other words, incentives operating from within the Public Service. This approach is based on the fact that the responsibility for enforcing these different laws falls first and foremost on the departments themselves. In the previous chapter, we discussed the importance of factors such as dialogue between the various players involved in a relationship. There is a variety of management tools that departments can use as internal levers (or motivators) to improve their performance in the five areas covered by our project. Those mentioned during our events included departmental plans and priorities, performance indicators, management contracts and, not without some reservations being expressed, codes of conduct and statements of principle. The key is to develop within departmental management teams, at an individual and collective level, the reflex of systematically reflecting on these issues as they exercise their managerial responsibilities.

²⁰ Andreas Schedler, “Conceptualizing Accountability” in Schedler, A., Larry Diamond and Marc F. Plattner, *The Self-Restraining State*, London: Lynne Rienner Publishers, 1999, p. 26.

The Sinews of War

The expression “the sinews of war” is probably not very appropriate for a project aimed at establishing harmonious and productive relations, but the fact remains that the objectives pursued by the laws governing the five Parliamentary Agencies addressed in our project require commensurate investments. Indeed, this is one element of the equation that was often mentioned during our discussions. The perception is that Parliamentary Agencies are generally underfunded in relation to their mandate, and that federal institutions do not devote adequate resources to the five areas in question to allow them to assume all their responsibilities. This would appear to be due in large part to the deep cuts made by government to the budgets of all federal institutions, including Parliamentary Agencies, as part of the Program Review exercise in the early and mid-1990s.

In particular, project participants mentioned that it is impossible for the Canadian Human Rights Commission to fulfil the educational and promotional mandate assigned to it by law. A number of speakers referred to the limited budgets allotted by some departments for the administration of official languages, for example. Others mentioned that the extra workload created as a result of successive or concurrent audits by the Auditor General imply, sometimes, considerable expenses for departments. These examples are provided only to illustrate the point and are not intended to draw special attention to some organizations or situations over others.

The Access to Information Review Task Force points out in the report it recently submitted to government that it costs less than one dollar per Canadian per year to cover all the costs associated with implementing the federal Access to Information Program and notes that “this is a modest cost, in light of the significant public policy objectives pursued by the [Access to Information] Act”²¹. There is no doubt that similar calculations for programs associated with other Parliamentary Agencies would lead to similar conclusions. In any event, the purpose of this report is not to supersede the Treasury Board or formulate specific recommendations on budgetary matters. The intention here is simply to draw attention to this issue and encourage the appropriate decision-makers to examine the extent to which the ends pursued by the legislator – by definition, ambitious – fit the means – by definition, limited – that the public administration has given itself to achieve them. In that connection, some also talked about the gap that has been created between the amount of resources available and the growing complexity of the tasks both the Public Service and Parliamentary Agencies are asked to perform.

This observation applies not only to Officers of Parliament, but also to federal institutions that perform an active role in promoting the laws concerned. According to one participant, to increase the budgets of Parliamentary Agencies without taking into account the required resources to allow the public administrations to follow pace and, above all, to introduce changes can create an unbalanced situation. It would probably be worthwhile to ensure that the different units within the Treasury Board Secretariat are appropriately funded to allow them to better support the Public Service in its efforts to meet the obligations and practical requirements imposed by those laws.

²¹ Report of the Access to Information Review Task Force, *op. cit.*, p. 5.

IV. Some Ideas Worth Exploring



Throughout this project, whether it was during the sessions of the thematic series, the roundtable or bilateral consultations, many ideas, often innovative, sprung out of the minds and hearts of participants. While some may be difficult to apply or present significant obstacles, all have the advantage of opening up avenues for reflection. We decided to include in the report those ideas that are consistent with the preconditions noted in the previous chapter. Rather than recommendations, however, these are simply suggestions that Public Service institutions and Parliamentary Agencies may want to explore further, if possible as part of a mutually beneficial educational exercise taking the form of a dialogue.

Self-Regulation in the Public Service

Our discussions on accountability in government institutions prompted a number of participants to reflect on possible types of internal control systems for compliance. The self-regulation concept is anything but revolutionary. An example well known to public servants is the delegation of authority by the Public Service Commission to some departments – which, in exchange, provide guarantees, particularly with respect to procedures and training of their specialized staff – for specific staffing or promotion activities. Applied to the areas covered by our project, a self-regulation regime would see departments develop their own audit plans (which would, of course, be approved by Parliamentary Agencies) for official languages, protection of privacy, access to information, human rights and employment equity (internal audit already seems to benefit from such an arrangement). Consideration could also be given to the possibility of having departments carry out their own investigations after receiving complaints and requiring them to share the results of those investigations with the Parliamentary Agency concerned. Parliamentary committees could also play a very useful role in monitoring these delegations of authority by scrutinizing the performance of delegates based on reports submitted by Officers of Parliament.

Of course, as appealing as they may be, such arrangements are easier to define on paper than they are to put into practice. In this regard, three issues in particular deserve examination. The first has to do with the resources that departments participating in a self-regulation regime would need to marshal. The second has to do with a bureaucratic culture that sometimes tends to take a casual approach to legislative intent in the areas covered by our project. Finally, the third issue pertains to the psychology of Parliamentary Agencies: how can you trust an organization you are supposed to be monitoring?

None of these issues should be considered an insurmountable obstacle. While it may be true – but remains to be proven – that self-regulation is a less plausible approach for small departments with only a “light” or bare-bones audit infrastructure, it would probably be in the best interest of large- or even medium-sized departments to seriously consider the pros and cons of a self-monitoring system.

The column of “pros” would probably include better performance as regards compliance with the various laws concerned, less public criticism from Parliamentary authorities, and streamlined departmental audit activity (in this area, activity is often spread across a wide number of branches or units: for example, official languages and human rights in one branch, financial audit in another, and access to information and protection of privacy in a third, resulting in weaknesses and reduced visibility for these functions, as well as a scattering of expertise in terms of internal control). In addition, a self-regulation regime would be entirely consistent with the spirit of the government’s initiative known as modern comptrollership²².

Under the “cons” column would be the cost of the initial investment required to put in place a credible infrastructure, the burden of having to go through a reorganization or, at least, to introduce changes (horizontal coordination) to the way work is done and the perception of having to accomplish the duties of someone else.

As we saw in previous chapters, attitudes towards Parliamentary Agencies are not always favourable. One prerequisite of any effective, credible self-regulation regime is a culture of openness, a desire to practise proactive compliance, and a relationship with Officers of Parliament that is driven by shared values. The observations of participants showed that we still have a long way to go in that regard, at all levels of the bureaucratic hierarchy. An approach combining learning (orientation programs for new entrants to the Public Service and select courses for experienced managers), internal and external dialogue (with Parliamentary Agencies), and strong leadership (reinforced by management contracts including references to the five areas covered by the project) should yield convincing results. Although it is probably preferable to wait until the appropriate culture is developed to introduce a self-regulation regime, it is quite possible that the adoption of such a regime would be the best way of bringing about a change in culture.



Finally, one should not underestimate potential resistance from Parliamentary Agencies themselves to this kind of approach. Some of their concerns are directly related to the nature of their status. Parliament has given these agencies a mandate and they are duty bound to ensure that such mandate is not watered down. There can be no compromising of their independence. The population has expectations with respect to their style of intervention. These are perfectly valid concerns that must be considered. The “guarantees” mentioned earlier that delegates would have to provide, reinforced by the implementation of modern comptrollership, might go some way towards meeting those kinds of concerns.

²² Modern Comptrollership is a management reform focused on the sound management of resources and effective decision-making. Modern Comptrollership is intended to provide managers with integrated financial and non-financial performance information, a sound approach to risk management, appropriate control systems and a shared set of values and ethics. Treasury Board of Canada Secretariat, Web site of the Comptrollership Modernization Directorate, <URL: http://www.tbs-sct.gc.ca/CMO_MFC/index_e.asp>

A Global Approach

A number of project participants put forward the idea of developing a global (or holistic, to use the latest jargon) approach to departmental performance assessment by Parliamentary Agencies. The principle behind the idea is simple, but applying it is complex. It attempts to provide a response to the problem of a lack of focus in terms of the individual actions of the five agencies under consideration. The latter deal with departments and other institutions that fall under their jurisdiction in a disorganized manner, on the basis of, at best, their own work plan or, more often than not, circumstances that neither they nor the departments have any control over.

From the departments' perspective, this often resembles a haphazard bombardment from five different directions and their response is to attend to the most urgent things first, which means focusing on closing any gaping holes (three or four investigations by the Office of the Commissioner of Official Languages, two audits by the Office of the Auditor General, a grade of "F" in the Information Commissioner's Annual Report...). Parliamentary Agencies are not better off: their dispersed firing abates the impact of their interventions and they usually end up having the impression of preaching in the desert.

With a view of finding a response to that problem, our roundtable participants developed solutions that ventured off the beaten track. One would involve establishing a coordinated schedule of proactive interventions by Parliamentary Agencies vis-à-vis a given department, the idea being that such a schedule would be designed collectively by all the concerned players, based on mutually agreed criteria, possibly with the assistance of the Treasury Board Secretariat. The idea is an appealing one, particularly if the very existence of a schedule might prompt departments to take action on a timely basis, and since the Treasury Board seems to want to play a more active role in audit and evaluation²³. However, it is important to realize that such a scheme would be difficult to apply, given the independence of Officers of Parliament and their sometimes divergent interests or priorities. A pilot project involving two or three large departments might be one way of determining the practical value of this idea.

A variation on that theme, suggested by a Member of Parliament, would involve developing an integrated report card for a department based on concentrated interventions by all Parliamentary Agencies over a short period of time. In terms of accountability, the interest Parliamentarians would have in having access to a comprehensive compliance profile for a department is undeniable. Departments, too, could also benefit from such an approach, in spite of the supplementary workload that it could impose on them. Certainly, a bulletin of global health that would be submitted, let's say, every three or four years, would allow departments to have a better assessment of their strengths and weaknesses and, therefore, to better target their interventions, and to be able to offer a nuanced picture of their overall performance. Such integrated reviews could be examined by a unique Parliamentary committee²⁴ – for example, the one suggested by Professor Thomas – which would be in an ideal position to evaluate the global performance of each department.

In any case, the general notion of a comprehensive approach to Public Service compliance deserves further examination by stakeholders. While there seems to be no integrated "hard-line" model that could be considered totally realistic, there is probably reason to believe that a toned-down (but not necessarily lame) model of integration might yield better results than the current dispersal of effort.

²³ Some examples of the determination of the Treasury Board to play a more active role in audit and evaluation are the establishment of the Comptrollership Modernization Office, as well as the creation of the Centre of Excellence for Internal Audit.

²⁴ See chapter 3, section on the role of Parliament, *supra*.

In that respect, the creation of functional communities (discussed in the previous chapter in relation to official languages) would at least facilitate more meaningful consultations and exchanges of views, and could probably contribute to a sharing of experiences regarding implementation of reforms within departments. Box 4 presents a case involving Health Canada, which clearly illustrates the potential benefits of developing such communities. The latter can usefully support efforts for learning inside the Public Service, a topic that will be addressed in the following section.

In March 1997, a Canadian Human Rights Tribunal handed down a ruling in response to a complaint filed by the National Capital Alliance on Race Relations (NCARR) alleging that Health Canada, known at the time as Health and Welfare Canada, was practising systemic discrimination against members of visible minorities. In its ruling, the Tribunal stated that this discrimination could be attributed to the fact that few members of visible minorities held senior management positions or belonged to the Administrative and Foreign Service category, and to the concentration of employees belonging to a visible minority at junior levels of the Scientific and Professional category²⁵.

Following the ruling, Health Canada undertook to take more than 20 corrective measures aimed at visible minorities with a view to “improving their representation, their access to training, development opportunities and promotions, as well as their general career advancement”²⁶. The process of reform was difficult, because the reasons for non-compliance with the Employment Equity Act were deeply rooted. A review of departmental practices and a major change in organizational culture followed a period of intensive learning.

In a relatively short span of time, Health Canada took affirmative action and achieved significant progress in relation to its employment equity goals. However, there was no mechanism that would have allowed Health Canada, once its efforts had been successful, to share the lessons it learned with other departments facing a similar situation.

Box 4 ■ Health Canada and the Importance of Sharing Experiences

Learning, Learning and More Learning

Learning was generally perceived as being a support, and sometimes a prerequisite, to other measures identified with a view to optimizing the relationship between Parliamentary Agencies and the Public Service. A number of speakers commented on the need for better learning tools and for the provision of learning at every level of the Public Service.

Some participants expressed the view that quality learning could strengthen the efforts of Parliamentary Agencies seeking to introduce a culture of prevention within the departments. A better understanding of legislative intent and of the basis for the reforms sought by Parliament; a more acute appreciation for the responsibilities that fall to public officials; familiarization with already developed best practices – these are some eminently practical objectives with the potential to improve the performance of departments and hence their relationship with Officers of Parliament.

²⁵ *National Capital Alliance on Race Relations v. Her Majesty the Queen et al.*, T.D. 3/97, Decision rendered March 19, 1997.

²⁶ *Ibid.* p. 38.

Several elements of an educational approach emerge from the suggestions made by participants. First of all, integrated development of training courses or modules on the role of Parliamentary Agencies, or, more comprehensively, on relations between Parliament and the Public Service would be helpful. One Officer of Parliament specifically suggested that the Canadian Centre for Management Development include these modules in the course it gives to managers on the Canadian political system. It was also recognized that it would be a good idea to give these courses to public servants starting their career by including them – or in some cases, by simply building on existing learning events – in training for individuals participating in specific programs (management trainees, newly hired foreign service officers...), even if that meant giving them an opportunity later on to upgrade their knowledge base through such programs as CAP or special training courses. The sense is that the participation of Parliamentary Agencies' representatives in courses such as these would be extremely desirable.



Other than training courses developed for the Public Service as a whole, in-house, custom-designed programs would be a way of meeting the specific needs of departments of a certain size.

These considerations and suggestions jibe with the findings of the Access to Information Review Task Force which, in its recently released report, suggested promoting positive change by including courses on access to information in training provided to all managers. This training would seek to familiarize managers not only with legal and administrative procedures, but also with best practices, the principles underlying access to information, and the individual role of public servants²⁷.

In the same vein, one participant underscored the importance of focusing on the values underlying the different laws, rather than limiting oneself to technical issues. Another participant even suggested internships or staff exchange programs between Parliamentary Agencies and departments to facilitate what we referred to earlier as mutual knowledge and understanding.

Such initiatives, and probably others, would be consistent with the *Policy for Continuous Learning in the Public Service of Canada* issued by the Treasury Board in May 2002. This policy includes commitments to ensure that public sector managers and employees “are knowledgeable, effective and creative in fulfilling their mission to serve Canadians”²⁸. A comprehensive strategy to raise awareness of, and promote, these laws, as well as specific training programs, developed with the assistance of the Canadian Centre for Management Development, could be included in the implementation plan for this policy.

²⁷ Access to Information Review Task Force, *op. cit.*, p. 168-169.

²⁸ Treasury Board of Canada Secretariat, *A Policy for Continuous Learning in the Public Service of Canada*, on-line document, <URL: http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_856/pclpsc-pacipc_e.html>

Alternative Medicine to Improve the Quality of Relations

A number of participants showed an interest in using informal mechanisms for conflict resolution. We have already discussed the creation of liaison teams or networks of functional communities to encourage less rigid approaches. One in particular deserves special mention – mediation²⁹. Some perceive mediation, which is in fact already being used by a few Parliamentary Agencies, as a way of quickly and effectively restoring normalcy to a work environment after a conflict. It also has the advantage of cutting back on the time needed to resolve complaints – something of great interest to both Parliamentary Agencies and, of course, complainants, but also to the Public Service, which is not always interested in dragging things out and seems to favour an “expeditious, almost user-friendly” process, where conflict resolution is concerned.

Although pleas for mediation were well-received, support for this option was not necessarily unanimous. It was noted, for example, that it wasn’t clear that mediation would have a positive impact on compliance. Some representatives of Parliamentary Agencies were even concerned that mediation could weaken legislative compliance in cases where this mechanism is not clearly separate from the official investigation process. For their part, departments are hesitant, as well: if they agree to mediation, to their way of thinking, they are implicitly acknowledging that they failed to comply with the law. Yet the Public Service has a kind of congenital inability to admit that it may be wrong. A mediation process carried out within the framework of a values-driven relationship should abate the concerns of both sides.

However, there is one point on which everyone seems to agree: the introduction of informal mechanisms must include a public awareness campaign to reassure Canadians with respect to the independence of Parliamentary Agencies (participants noted that complainants are often the first to refuse mediation). Indeed, it would serve no purpose to improve relations between Parliamentary Agencies and the Public Service while undermining the public’s confidence in legislative controls.

²⁹ The differences between the nature of the mandate of the Office of the Auditor General and the mandates of the four other agencies examined in this report can make difficult a universal application of certain ideas. For example, the Office of the Auditor General does not initiate investigations on the basis of complaints made by the public.

V. Conclusion: Leadership Across the Board

Our intention was to take a fresh look at relations between Parliamentary Agencies and the Public Service. We first wanted to try and develop a clear understanding of those relations. But we were also seeking to identify actions with the potential to ensure those relations would be as productive as possible.

We are indebted for the content of this report to all those who, in one way or another, took part in this project. The ideas examined are those of the participants. They reflect their collective wisdom. Our aim was simply to present them, without claiming either comprehensiveness or infallibility – in a coherent and, if possible, readable form. We hope readers found this useful.

By way of conclusion, we would like to say a few words about what emerged as the most important condition for success, above and beyond all other factors: there is a need for leadership – indeed, a great deal of leadership on the part of all the actors involved in the relationship between Officers of Parliament and the Public Service. Project participants identified several sources of leadership.

The first of these is **Parliament**, whose role was discussed in previous chapters and which we do not intend to go over again, except to say that most of the comments made during our events tended to support the idea that parliamentarians should show more interest in the activities of Officers of Parliament, and particularly in the activities of the Information Commissioner, the Privacy Commissioner and the Human Rights Commission. As we saw in Chapter III, the creation of the Committee on Government Operations and Estimates could improve that situation. Some would like to see Parliamentary committees carry out their monitoring function in relation not only to the Executive, but also to Parliamentary Agencies themselves. Others, while acknowledging that there are advantages to close collaboration between committees and Officers of Parliament, are concerned that this “closeness” may be detrimental to the departments and result in their being even more skittish about their relationship with Parliamentary Agencies. The general perception was that Parliament must play a prominent role in the implementation of its own laws, and that it should be more actively engaged in the relationship between its Officers and the Public Service.

The next source of leadership is the **Parliamentary Agencies** themselves which, by the very nature of their mission, seek to play as visible and effective a leadership role as possible, each in their own way, albeit with sometimes rather mixed results. While this view was not unanimous, most participants agreed that the quality of the relationship between Officers of Parliament and the Public Service significantly influences the quality of their leadership. Many of the comments made suggested that Parliamentary Agencies should encourage a more flexible relationship with the institutions placed under their control, although without compromising their independence or credibility as impartial ombudsmen or auditors. In this case, leadership would mean their taking the risk of setting aside the narrowly legalistic or historical straightjacket associated with their current practices to explore new ways of carrying out their mandate, in cooperation with departments.

As a third source of leadership, the **Public Service** has an opportunity to decisively influence the quality of its relations with Parliamentary Agencies at different levels. Participants perceived the **Clerk of the Privy Council** and the Deputy Minister community as playing a critical role in this regard. It is they that can provide the impetus to the Public Service as a whole to maintain and, in some cases, enrich the productive relationship that exists between the two sides. The Clerk has compelling tools with which to attain specific objectives: a statement of his priorities; the performance contracts signed with all Deputy Ministers; speeches made at the Assistant Deputy Ministers' Forum or events organized by APEX. These are some of the many opportunities available to the Clerk to send the necessary signals. This ability on the part of the Clerk to mobilize the troops and harness energy was clearly demonstrated in recent years in the diversity and employment equity file. In addition, the Corporate Priorities for the Public Service of Canada 2002-2003 include official languages, diversity, learning and modern comptrollership, which constitute a solid starting point for making progress towards compliance in these areas.

Without waiting to be spurred on by the Clerk, **Deputy Ministers** themselves have the ability to modify the conduct of their departments. Their own behaviour vis-à-vis Parliamentary Agencies will also greatly influence the quality of their department's relationship with these agencies. For the departments, one form of leadership could involve taking the initiative to engage in a frank and open dialogue with Officers of Parliament when the relationship becomes uncomfortable, rather than allowing the situation to deteriorate.

Just one comment about the **Treasury Board Secretariat**. Participants stressed the positive spin-offs of the creation by the Secretariat of a network of official languages champions, but expressed regret that the Secretariat had lost its ability to play an influential role in such areas as access to information and protection of privacy, as a result of successive budget cuts. The Secretariat is also seen as being well placed to facilitate the implementation of creative approaches such as the self-regulation option addressed in the previous chapter. Like the shoemaker's children who sometimes go barefoot, the Secretariat will have to convince the Board to provide it with the resources it needs to play its leadership role fully.

Finally, the **Canadian Centre for Management Development** could, in the view of many project participants, exert extensive and long-term influence over the quality of relations between Parliamentary Agencies and the Public Service by incorporating modules or courses on the general theme of relations between Parliament and public officials into some of its learning programs and events.

The challenge now is for all these players, if there is a will to do so, to act on – collectively, we hope – the generous and yet realistic ideas that formed in the minds of participants as they engaged in what was, for us, both a stimulating and fascinating project.

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Appendix A



The Method of Dialogue

The approach selected for one event of this project, i.e. the roundtable, adapted some key elements from the method of group dialogue developed by the physicist and thinker David Bohm³⁰ and applied by authors like Daniel Yankelovich and William Isaacs³¹. This method proposes a dialogue in which a group of people are able to explore the individual and collective presuppositions, ideas, beliefs, and feelings that subtly control their interactions. According to David Bohm, dialogue provides an opportunity to reveal the often puzzling patterns of incoherence that lead the group to avoid certain issues or, on the other hand, to insist, against all reason, on standing and defending opinions about particular issues. The group of persons involved in dialogue participate thus in a process that displays communication successes and failures, and that provides a space for collective learning.

David Bohm has emphasized the original meaning of the word “dialogue”. It derives from two Greek roots: “dia” which means “through” and “logos” which means “the word”, or more particularly, “the meaning of the word.” The image it gives is of a river of meaning flowing around and through the participants, which is a very special type of conversation. We become concerned about who says what, about whose view prevails, or who saves face. We start truly thinking together. In contrast, the word “discussion” comes from the same roots as “percussion” and “concussion”. It literally means to “break apart”. A discussion involves heaving one’s views at one other. Who wins and loses is often all that matters. Quite an interesting contrast in images: meaning moving through versus heaving one’s views at the other.

As William Isaacs puts it, a dialogue is a “shared inquiry, a way of thinking and reflecting together. It is not something you do to another person. It is something you do with people... Dialogue is a living experience of inquiry within and between people”³². A dialogue is not a formal process of negotiation or a discussion where people hold onto and defend their differences. It is a candid conversation involving the respectful exchange of ideas, the suspension of judgements and careful listening. In dialogue, the emphasis is given to insights rather than knowledge, to different perspectives rather than compromises, and to discernment rather than decisions. The essence of dialogue is an inquiry that tries to create an environment that can bring out people’s collective wisdom.

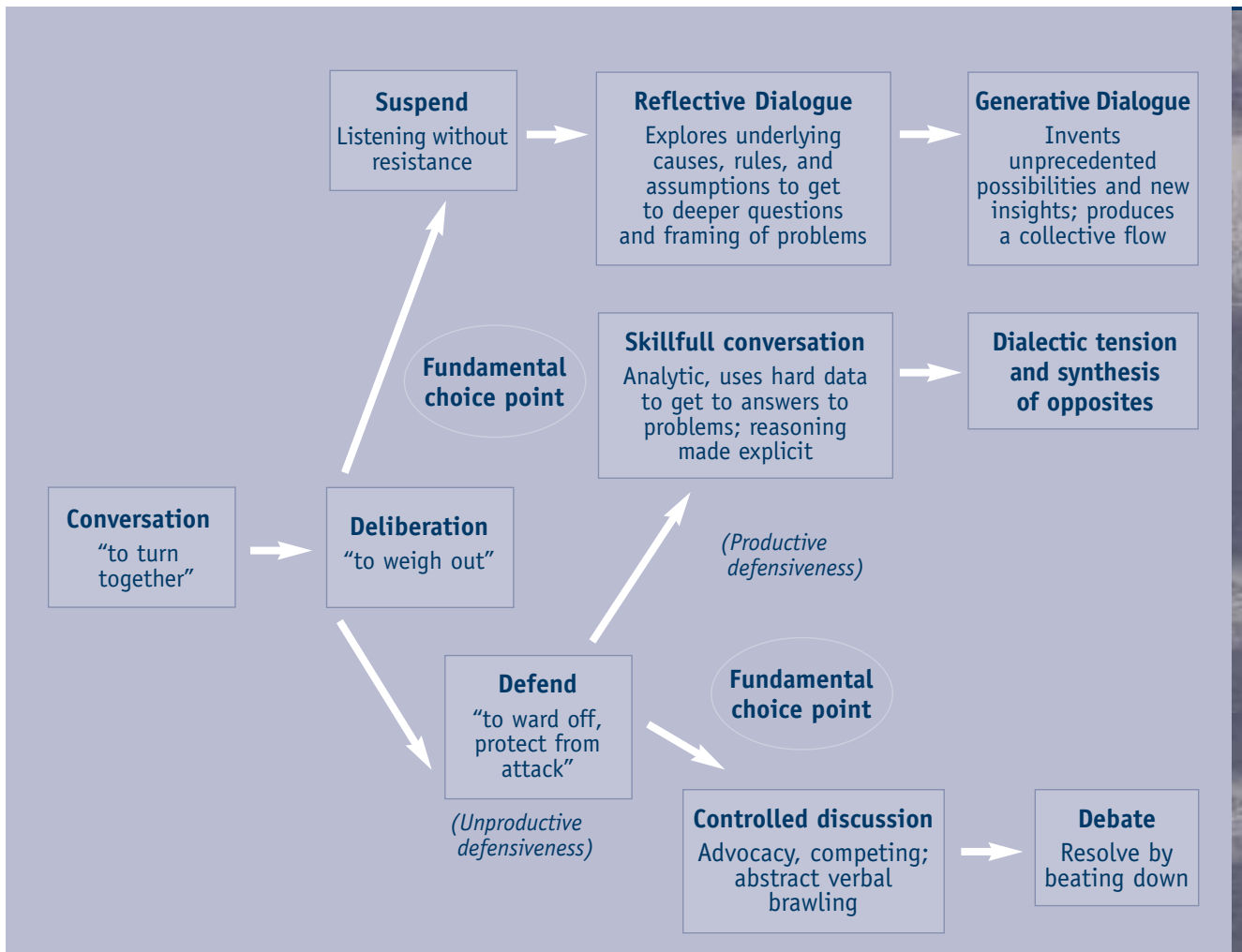
³⁰ David Bohm, *On dialogue* (edited by Lee Nichol), London, New York: Routledge, 1996.

³¹ William Isaacs, *Dialogue and the Art of Thinking Together*, New York: Currency and Doubleday, 1999; Daniel Yankelovich, *The Magic of Dialogue, Transforming Conflict into Cooperation*, New York: Simon & Schuster, 1999.

³² William Isaacs, *op.cit.*, p. 9.

According to Peter M. Senge, one reason the Greeks considered *dia-logos* so important was their view that it was vital to self-governance. If a society loses its capacity to dialogue, and discussion becomes the common practice, there is no capacity to find a deeper meaning that transcends individual views and self-interest. It seems reasonable to ask whether the loss of mutual respect and caring in government might not stem from this lost capacity to think together as part of a larger democratic community³³.

As William Isaacs mentions, there are two possible directions in a conversation, as soon as people let go their positions and views. The diagram below shows how the flow of conversation can lift participants to a new level of shared understanding:



Source: William Isaacs, *Dialogue and the Art of Thinking Together*, New York: Doubleday, 1999, p. 41.

³³ Peter M. Senge, "Robert Greenleaf's Legacy: A New Foundation for Twenty-First Century Institutions", in Larry Spears, *Reflections on Leadership: How Robert K. Greenleaf's Theory of Servant Leadership Influenced Today's Top Management Thinkers*, New York: John Wiley & Sons, 1995, p. 228.

This approach was applied specifically to our roundtable, which brought together current and former heads of Parliamentary Agencies with Deputy Ministers, Parliamentarians and academics. As proposed by the authors mentioned above, it was intended to favor a dialogical context where a group of people accepted to practice the discipline of suspending their judgements so that they could engage in true exploration of their assumptions and therefore create fresh thinking. Though brief, the session of two hours and a half allowed us to achieve the following results:

- 1 ■ to obtain a better understanding of the assumptions (values, convictions, perceptions) that lie behind the actions and positions of the participants;
- 2 ■ to reflect together on those suppositions, daring to get out of the institutional reflexes and the corporative mould that tend to shape and limit the interactions and therefore, the possibilities for discovering new grounds; and
- 3 ■ to experiment with a dialogical mode of group exchanges that favours insights that would not likely be available within a context of debate or discussion.

Length was not the only format decision that was made for the project. The services of two professional facilitators were required. Equality among participants was achieved. In addition, guaranteeing confidentiality or all participants enhanced trust. As a matter of fact, no explicit attribution was made in relation to the roundtable in the elaboration of this report.



Background Information on the Five Parliamentary Agencies

In the last few decades, the size and complexity of government have increased substantially. Government has become increasingly present in the citizens' lives. We have thus witnessed the creation of a series of Parliamentary Agencies with a mandate of overseeing the public administration in specialized fields. Their vocation, according to certain authors, is to support Parliament as an "accountability organ"³⁴. In order to achieve this role, the agencies that constitute the subject of this report, with the exception of the Office of the Auditor General, hold a mandate that in many significant respects, is in the nature of an ombudsman's role³⁵:

- they are independent of the government's administrative institutions;
- they examine complaints made by individuals against the government's administrative institutions, and conduct impartial investigations;
- they attempt to secure appropriate redress;
- they attempt to improve the level of compliance by government institutions with the [concerned] Acts.

This appendix intends to provide an overview of the five Parliamentary Agencies that were included in this project. These institutions vary significantly in terms of their history, mandates, and budgets. They face different challenges, they report to Parliament in different ways, and they have evolved differently. According to Paul G. Thomas³⁶, the exact provisions of the statutory framework used to define the relationships between the Executive, Parliament and the Parliamentary Agency will depend to a great extent on the mandate assigned to a particular agency. Nevertheless, Parliamentary Agencies share some characteristics, since they all report directly to Parliament and, with the exception of the Office of the Chief Electoral Office, they all have significant dealings with the Federal public administration.

³⁴ Some authors have defined accountability as the "fundamental prerequisite for preventing the abuse of power and for ensuring that power is directed towards the achievement of broadly accepted national goals with the greatest possible degrees of efficiency, effectiveness, probity and prudence." Robert Miller, Parliamentary Centre, and Rick Stapenhurst, WBI, "Parliaments: Tools and Tasks for Controlling Corruption", in *Controlling Corruption: A Parliamentarian's Handbook*, 1998-2000 Laurentian Seminars on the Role of Parliament in Controlling Corruption, Ottawa: Parliamentary Centre and World Bank Institute, 2000.

³⁵ M. A. Marshall and L. C. Reif, "The Ombudsman: Maladministration and Alternative Dispute Resolution" (1995), 34 *Alta. L. Rev.* 215, quoted in *Lavigne v. Canada* (Office of the Commissioner of Official Languages) 2002 SCC 53, paragraph 37.

³⁶ Paul G. Thomas, "The Past, Present and Future of Officers of Parliament", Paper prepared for the Conference *Independence and Responsibility: A Conference on Officers of Parliament*, University of Saskatchewan, November 2 and 3, 2001.

The Office of the Auditor General

History and role

The first of the agencies that was studied in our thematic series, the Office of the Auditor General, has been described as the overseer of executive spending and as both a servant of, and an entity independent from, Parliament³⁷. Created in 1878, this institution is the earliest Officer of Parliament. A new act adopted in 1977 introduced some important changes to the role of the Office. One of the most notable changes was the introduction of “value-for-money” audits. Such audits consist of an in-depth examination of the performance of government departments and agencies. According to Danielle Morin, “this authority gave the Auditor General unlimited power to assess the federal public service from the standpoints of economy and efficiency and, with some restrictions, from the standpoint of managerial effectiveness”³⁸. This officer of Parliament is thus responsible for auditing all government spending to ensure that it is efficient, consistent with the intent of Parliament and properly accounted for.

The *Auditor General Act* was further amended in 1995 to create within the Office, the position of Commissioner of the Environment and Sustainable Development. These amendments required ministers to prepare sustainable development strategies and action plans and update them at least every three years. They also created an environmental petitions process, which is a formal mechanism for the public to ask federal departments questions about environmental and sustainable development issues. The Commissioner reports annually to the House of Commons, on behalf of the Auditor General, on the progress of the objectives on sustainable development strategies pursued by the departments.

The Auditor General is appointed by the Governor in Council for a ten-year term, but can only be removed by a joint resolution of the Senate and the House of Commons. The Auditor General makes an annual report to Parliament that includes proposals to improve government spending and accounting practices. Furthermore, with the amendment of the *Auditor General Act* in June 1994, the Auditor General may produce up to three reports per year in addition to the Annual Report. These reports contain the results of comprehensive audits of federal departments and agencies, and of issues that cross departmental lines; government-wide audits; follow-up reports, which review the actions taken by departments in response to previous audits; and audit observations.

The Office uses a database of recommendations to follow up previous audits and to track the implementation status of their recommendations made in their value-for-money audits³⁹. For 2002-2003, the Auditor General expects that at least 60 percent of her recommendations will be acted upon over a period of five years⁴⁰.



³⁷ Maria Barrados, Presentation made at the first session of CCMD thematic series on the relations between Parliamentary Agencies and the Public Service entitled *The Office of the Auditor General: In God We Trust, All Others We Audit!*, Hull, February 27, 2002.

³⁸ Danielle Morin, “How Financial Scrutiny Can Influence Public Administrations? Some Thoughts on How Auditors General Can Influence Public Administrations Through Value-for-Money Auditing”, Presentation made at the first session of the CCMD thematic series on the relations between Parliamentary Agencies and the Public Service entitled *The Office of the Auditor General: In God We Trust, All Others We Audit!*, Hull, February 27, 2002.

³⁹ Office of the Auditor General, *2002-2003 Estimates. A Report on Plans and Priorities*, Ottawa, February 2002.

⁴⁰ Office of the Auditor General, *Performance Report for the period ending 31 March 2001*, Ottawa, October 2001.

The Auditor General is in charge of evaluating about 70 federal government departments, agencies, and departmental corporations ranging from small boards to large, complex organizations whose activities extend across Canada and overseas; about 40 Crown corporations; and the governments of the Yukon, Northwest Territories, and Nunavut and some 20 territorial agencies. In addition to these audit responsibilities, the Office audits the operations and financial statements of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Civil Aviation Organization (ICAO)⁴¹.

Budget and staff

Gross program spending for 2002-2003 is 65.6 million dollars, which represents an increase of about 0.7 million from 2001-2002. On March 31, 2001, the Office had 562 employees with diverse professional backgrounds⁴². Most of the audit staff is located at the head office in Ottawa, and there are regional offices in Vancouver, Edmonton, Winnipeg, Montreal and Halifax.

Relations with Parliament

The Office of the Auditor General maintains a close relation with the Standing Committee on Public Accounts and other Parliamentary committees. The committees hold hearings attended by the Auditor General, the audit team, and senior public servants of the audited departments to review the audit findings and question senior officials. After the hearings, the Committee may report and make recommendations to the House of Commons and the audited departments are generally expected to report back to the Committee on what they have done in response to these recommendations. At the same time, the Committee on Public Accounts bases much of its work on the auditor General's reports. In this way, the Public Accounts Committee ensures that the accountability loop is closed.

In addition to the Public Accounts Committee, many other Parliamentary committees hold hearings on report chapters. The Auditor General presents her findings and recommendations to Parliament for ultimate implementation by departments. Furthermore, according to a former Auditor General, the Office has evolved from an institution whose activities constituted a *post facto* examination of the government actions toward an institution that intends to contribute to the acceleration of the government's learning process. This should be achieved while respecting the traditional accountability to Parliament⁴³.

The Human Rights Commission

History and role

The Canadian Human Rights Commission (CHRC) finds its origins in a historical period during which there was a growing concern about civil liberties and when the federal field was lagging behind provincial human rights legislation. Canada supported the human rights declarations and covenants within the United Nations, and domestic Federal legislation was considered necessary to provide a comprehensive guarantee against infringement of basic egalitarian rights and the provision of measures to enforce such rights⁴⁴.

⁴¹ The costs of the international audits are recovered from the organizations and returned to the Consolidated Revenue Fund. *Ibid.*

⁴² Office of the Auditor General, *Performance Report for the period ending 31 March 2001*, p. 2-19.

⁴³ Denis Desautels, Interview with Gilles Paquet, "Leadership in Turbulent Times", in *Optimum Online*, Vol. 31, Issue 2, December 2001, <URL :<http://www.optimumonline.ca>>

⁴⁴ *House of Commons Debates*, February 17, 1977.

In consequence, as professor Errol Mendes mentions⁴⁵, the main duties of the Commission are to represent the public interest in the administration and implementation of the *Canadian Human Rights Act* (CHRA), enacted in 1977, and to guarantee citizens the protection of the anti-discrimination provisions of the law. The Commission has the vital function of public education on anti-discrimination laws and policies in Canada, which is accompanied by an advocacy function to promote and advance equality within the private and public sectors under federal jurisdiction.

The Commission may start an investigation of human rights complaints under the *Canadian Human Rights Act*. Federal jurisdiction includes all federal government departments, agencies and Crown corporations, as well as other federally regulated industries such as chartered banks, airlines, inter-provincial transportation and telecommunications.

The complaints process is only triggered if the matter is not resolved at the source. In 1998, the CHRC has implemented a mediation process, as a measure that could provide a quick solution and could also help avoid a lengthy investigation and the possibility of Tribunal hearings⁴⁶. According to the experience of some senior human rights officials in Canada, if provisions have clearly been breached, the most desirable outcome is a speedy settlement overseen by a human rights officer and endorsed by the parties involved and by the Commission⁴⁷. As a possible answer, some studies have recommended the establishment of a departmental internal responsibility system⁴⁸.

With respect to tribunals, the federal framework of rights enforcement has undergone significant reform since the inception of the Act. As originally constituted in 1977, the Commission had full authority to refer a complaint to a tribunal, as well as to select the members of the tribunal. This framework for federal rights tribunals was challenged in *MacBain v. Canada* (Canadian Human Rights Commission) on the ground that the tribunal could not be reasonably perceived as an independent adjudicative actor separate and distinct from the Commission. As a result of this ruling, the legislation was amended so that a permanent Human Rights Tribunal exists as a freestanding institution.

In 2001, the Commission received 1,485 complaints alleging discrimination based on a ground in the CHRA against a federally regulated employer or service provider. Of these, 574 resulted in signed complaints requiring investigation and/or efforts to help the parties resolve the matter. The remaining cases were discontinued when the complainant decided not to proceed with the matter or the situation was settled through other means. The number of signed complaints has remained relatively constant over the past five years: 562 in 2000, 566 in 1999, 622 in 1998, and 643 in 1997.

⁴⁵ Errol Mendes, "The Canadian Human Rights Commission (CHRC): The ombudsman of the Canadian soul or human rights assembly line?", Presentation made at the second session of CCMD thematic series on the relations between Parliamentary Agencies and the Public Service entitled *The Ombudsmen of the Canadian Soul?*, Hull, March 5, 2002.

⁴⁶ Murielle Brazeau, Deputy Secretary General, Operations, "The Canadian Human Rights Commission", Presentation made at the second session of CCMD thematic series on the relations between Parliamentary Agencies and the Public Service entitled *The Ombudsmen of the Canadian Soul?*, March 5, 2002.

⁴⁷ According to Brian Howe and David Johnson, even if speedy conciliation is nothing new, its increased use can be seen as a way to cope with the Commission's financial restraint. Brian Howe and David Johnson, *Restraining Equality: Human Rights Commissions in Canada*, Toronto: University of Toronto Press, 1999.

⁴⁸ Gérald V. La Forest, William W. Black, Renée Dupuis and Harish Jain, *Canadian Human Rights Act Review*, Ministry of Justice, The Canadian Human Rights Act Review Panel, Ottawa, June 2000.

The Commission has been accumulating a backlog of unresolved complaints since its inception in 1978. According to the Commission, this situation is attributable to insufficient resources to deal with complaints as they are received. It also reflects the increasing complexity of complaints filed with the Commission. In recent years, the Commission has managed to reduce the size of its caseload through a series of innovations and special initiatives. Nevertheless, the number of active cases remains substantial, and exceeds staff capacity to keep up⁴⁹.

Employment Equity Act

Under the *Employment Equity Act*, the Commission also has the authority to audit the performance of employers in order to ascertain whether they are complying with the legislation, and to require action when they fail to do so. The legislation applies to some 476 employers in the public sector as well as private sector organizations with more than 100 employees in banking, transportation, communication and various other federally regulated institutions.

The Act's purpose is to achieve equality in the workplace so that no qualified person is denied employment opportunities, and to correct the conditions of disadvantage in employment experienced by women, visible minorities, Aboriginal people and persons with disabilities.

The Commission, in fulfilling its compliance mandate, conducts audits of all employers. If auditors find areas of non-compliance, they negotiate signed undertakings with employers giving them a maximum of one year by which to conduct the necessary activities. At the end of that period, auditors return to do a follow-up audit and check that the undertakings have been implemented. At that stage, the Commission may issue a directive to employers who are in non-compliance, which can be challenged at an Employment Equity Review Tribunal.

Once employers are in compliance, the Commission continues to monitor their performance and may launch another audit if reasonable progress is not achieved.

The Commission also produces an annual report on its employment equity mandate, published at the same time as its annual report required under the *Canadian Human Rights Act*.

Budget and staff

The Commission is composed of a Chief Commissioner, a Deputy Chief Commissioner and not less than three or more than six other members, to be appointed by the Governor in Council. The Commission has a staff of more than 200 people working in the Ottawa headquarters and in regional offices in Halifax, Montreal, Toronto, Winnipeg, Edmonton and Vancouver. For 2002-2003, the Commission has a budget of more than 23 million dollars, from which 13.24 million is allocated to the management and resolution of human rights complaints; 2.6 million to the strategic outcomes of the employment equity program; 3.65 million to the promotion of human rights, and 3.7 million to the management of the Commission's resources.



⁴⁹ Canadian Human Rights Commission, *Annual Report 2001*, <URL: <http://www.chrc-ccdp.ca>>

Relations with Parliament

Previous to 1998, the CHRC reported to the Minister of Justice who tabled its reports in Parliament. After 1998, the CHRC began to submit its annual reports directly to Parliament. In addition, the CHRC was empowered to make special reports to Parliament on any urgent matter that could not wait until the release of the annual report⁵⁰.

Contacts between the Commission and Parliamentary committees have varied in terms of their frequency and intensity. According to one of the participants in our thematic series, the Standing Committee on Justice and Human Rights has shown a renewed interest in the subjects included in the Commission's annual report. In addition, the Chief Commissioner has been present at other committees' meetings, depending on the concerned law. On the other hand, the Senate Committee on Human Rights has been created with the mandate to review the Canadian internal legislation, and more specifically, the changes needed in Canada for an improvement of the protection of human rights.

The Office of the Commissioner of Official Languages

History and role

In 1969, the Trudeau government introduced a controversial language bill called the *Official Languages Act*, which followed the findings of the Royal Commission on Bilingualism and Biculturalism⁵¹, and was a direct response to the political situation of the 60s. The adoption of the Act led to the establishment of the position of Commissioner of Official Languages, as the guardian of the spirit and intent of the Act. A new Act came into force in 1988, which enhanced the Commissioner's powers. The new legislation included, *inter alia*, a section on court remedy procedures, as well as Part VII, in which the government commits itself to "enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and fostering the full recognition and use of both English and French in Canadian society"⁵².

The primary aim of the Act is thus, to ensure respect for English and French as the official languages of Canada and to ensure equality of status and equal rights and privileges as to their use in all federal institutions. The Commissioner's duty is to take all measures to ensure recognition of the status of the official languages and compliance with the Act.



⁵⁰ Errol Mendes, *op. cit.*

⁵¹ The Royal Commission recommended the adoption of an Official Languages Act with the main aims of ensuring that "Canadians citizens can deal with federal administrative and judicial bodies in the two official languages; to provide for the appointment of a high state official, independent of the government, with responsibility for inquiring into and reporting upon the implementation of the federal Official Languages Act;...". Royal Commission on Bilingualism and Biculturalism, *A Preliminary Report of the Royal Commission on Bilingualism and Biculturalism*, Ottawa: Queen's Printer and Controller of Stationary, 1976, p.138.

⁵² *Official Languages Act*, Art. 41.

Furthermore, the Commissioner may conduct investigations on her own initiative or pursuant to complaints and to report and make recommendations. A number of procedural requirements, such as due notice to federal institutions, are set out to ensure fair and impartial investigations, but the Commissioner is largely free to set her own procedure⁵³. Any unresolved complaint filed with the Commissioner concerning services to the public, language of work or section 91 of the *Official Languages Act* (setting objective language requirements in a staffing action) may be submitted to the Federal Court for a remedy, which has been called a last resort option⁵⁴. The Commissioner is to report annually to Parliament on the discharge of her duties and may at any time transmit a special report to Parliament on urgent matters. Professor C. Michael Macmillan characterizes the Official Languages Commissioner's duties as "linguistic ombudsman, linguistic auditor, policy advocate and public educator"⁵⁵.

According to Michael Macmillan, the independence of the office is guaranteed by the conditions of the Commissioner's appointment: the Commissioner is appointed for a period of seven years after approval by the House and Senate. She remains in office subject to good behaviour, and may be removed by the Governor in Council only on address of the Senate and House of Commons⁵⁶. These conditions of appointment protect the Commissioner from arbitrary action by any political body and minimize the risk of the Commissioner being removed from office for offending either the government or the legislative branches. By the same token, they serve to increase the legitimacy of the position, since both Chambers participate in the selection and removal of the incumbent.

In general, ombudsmen must rely on persuasion and the light of public scrutiny to stimulate a response to the problem, and the Official Languages Commissioner is not an exception. But according to MacMillan, she benefits from additional tools, which increase the visibility of the issue and the rapidity of the response: she files her reports with both the deputy head of the affected federal institution and the President of the Treasury Board⁵⁷.

Budget and staff

The Office has a staff of 145 employees at headquarters and five regional offices in Moncton, Montreal, Toronto, Winnipeg and Edmonton. For 2002-2003, the Office has a total budget of 14 million dollars, which is distributed among three sectors of activity: investigations, communication, research and analysis and corporate services⁵⁸. The 2000-2001 Annual Report indicates that 1,320 complaints were lodged, of which 80 percent were admissible, 17 percent were refused and 3 percent were withdrawn.

⁵³ Official Languages Commissioner's Office, *Official Languages Act, 1988 Synopsis*, Revised edition of March 2000, available on-line <URL: http://www.ocol-clo.gc.ca/7e_2.htm>

⁵⁴ Official Languages Commissioner's Office web site, <URL: <http://www.ocol-clo.gc.ca>>

⁵⁵ C. Michael Macmillan, "Ombudsman or Active Conscience?: The Commissioner of Official Languages as an Agent of Change", paper presented at the Conference *Independence and Responsibility: A Conference on Officers of Parliament*, Saskatoon, University of Saskatchewan, November 2 and 3, 2001, p. 3.

⁵⁶ *Ibid.* p. 2.

⁵⁷ C. Michael Macmillan, Presentation made at the second session of CCMD thematic series on the relations between Parliamentary Agencies and the Public Service entitled *The Ombudsmen of the Canadian Soul?*, March 5, 2002.

⁵⁸ Office of the Official Languages Commissioner, *2002-2003 Estimates. Report on Plans and Priorities*, Ottawa, 2002, p. 9.

Relations with Parliament

The Commissioner's office maintains a very close relation with the Standing Joint Committee on Official Languages. The Commissioner or a member of her staff attends all of the committee's meetings and sometimes she contributes to the elaboration of the agenda.

The Office of the Information Commissioner

History and role

Conceived in the late 1970s, and passed into law in 1982, the *Access to Information Act* established the Office of the Information Commissioner. According to Professor Paul-André Comeau, the establishment of this institution cannot be understood without considering the international trend towards the enacting of similar legislation. Within Canada, there are important differences on the way of empowering this Officer of Parliament to accomplish his duties. Whereas the federal legislature preferred an ombudsman-type function to head its information-access and privacy-protection systems, most provincial legislatures followed Quebec's lead in creating quasi-judicial bodies.

The Act created an enforceable right of access for Canadians to information recorded in any form and under the control of federal government departments, agencies and other government institutions. This requested information can be made available to the requester in whole, in part, or not at all depending on whether it is exempt from release under the Act, or excluded from its application. If the document is refused, the person who made the request has a right to make a complaint to the Information Commissioner; who then carries out an investigation, and recommends or not the release of the document. As last resort option, the Commissioner may apply to the Court for a review of any refusal to disclose a record requested under the Act⁵⁹.

According to Comeau, the Commissioner is given a very large mandate for investigations, but he must count on his moral authority and his power of persuasion to ensure his recommendations are implemented⁶⁰. The Act remains, to a great extent, the main instrument of Canadian information policy, and there is a clear necessity to update it to keep pace with new developments in the ways and in the amount of available information to citizens. As an answer to this situation, the Standing Committee of the House of Commons on Justice and Solicitor General undertook a parliamentary review of the legislation in 1986 and 1987. A government task force was put into place in 2000 and it issued its final report in June 2002.

During the year 2000–2001, 1,680 complaints were made to the Commissioner against government institutions, of which 1,337 were completed. The 2000-2001 report of the Information Commissioner also mentions that 99.9% of complaints were resolved without recourse to the courts (only two cases were taken to the Court).

⁵⁹ *Access to Information Act*, Art. 42(1)(a).

⁶⁰ Paul André Comeau, "Office of the Information Commissioner: Searching for its True Nature", Presentation made at the third session of the CCMD's thematic series on the relations between Parliamentary Agencies and the Public Service entitled *Two Sides of the Same Coin*, March 20, 2002.

Budget and staff

The Privacy and Information Commissioners share corporate services while operating independently under their separate statutory authorities. They share the services of finance, human resources, information technology and general administration, so their budget is never considered separately. The planned spending, with no adjustments, for the Access to Information Commissioner is 3.67 million dollars and 9.83 million for the Privacy Commissioner. They manage a common budget of more than 15 million dollars.⁶¹ The Privacy Commissioner has a staff of 93 employees, and the Information Commissioner employs 45 people. Neither the Information Commissioner nor the Privacy Commissioner has regional offices.

Relations with Parliament

Contacts between the Information Commissioner and the Parliament are not very frequent. It was only in November 1999 that the Commissioner was invited, for the first time, to present his Annual Report to the Standing Committee on Justice and Human Rights. Since then, the Commissioner has appeared before the Standing Committee on Human Resources Development and the Status of Persons with Disabilities in March 2002 and before the Special Committee on Bill C-36 (Anti-terrorist bill) in October and December 2001.

In his 2000-2001 Annual Report, the Commissioner observes that Parliament still plays a very timid role in terms of questions related to Access to Information, in spite of the numerous Parliamentary debates on this topic. He highlights the need for an active participation from a larger number of Parliamentarians “if the principle of accountable government is to remain effective in the rapidly changing economic, social and technological environment”⁶².

The Office of the Privacy Commissioner

History and role

The Office of the Privacy Commissioner has been described in the thematic series as the “other side of the coin” to the Office of the Information Commissioner, but this has been challenged by some of the participants in our project. The current 1982 *Privacy Act* in fact flows out of the parallel debates over the *Access to Information Act*, which raised immediate questions about the compatibility between such legislation and the privacy standards within Part IV of the Access to Information Act. In legal terms, neither Act is subordinate to the other; they were conceived to be complementary to each other and should be construed harmoniously. In reality, there is some underlying tension between the two acts. As held by the Supreme Court of Canada in *Dagg*⁶³, in terms of personal information as defined by section 3 of the *Privacy Act*, privacy is paramount over access⁶⁴.

⁶¹ Offices of the Information and Privacy Commissioner, *2002-2003 Estimates. Report on Plans and Priorities*, Ottawa, 2002, p. 27-29.

⁶² Office of the Information Commissioner, *Annual Report 2000-2001*, chapter 2, section on the Role of Parliament, on-line document, <URL: <http://www.infocom.gc.ca/reports/2000-2001t-e.asp>>

⁶³ *Dagg v. Canada*, 1997.

⁶⁴ In this respect, Mr. Justice La Forest stated: “... Section 19(1) of the Act prohibits the disclosure of a record that contains personal information ‘as defined in section 3 of the Privacy Act’. Section 8 of the Privacy Act contains a parallel prohibition, forbidding the non-consensual release of personal information except in certain specified circumstances. Personal information is thus specifically exempted from the general rule of disclosure. Both statutes recognize that, in so far as it is encompassed by the definition of “personal information” in s. 3 of the Privacy Act, privacy is paramount over access.”

The Privacy Commissioner has been given the mandate to investigate complaints from individuals with respect to the federal public sector and the private sector. Canadians may lodge complaints with the Commissioner about any matter specified in Section 29 of the *Privacy Act*. The Commissioner has the power to summon witnesses, administer oaths and compel the production of evidence if voluntary co-operation is not forthcoming. Under certain circumstances, the Commissioner may apply for review by a Federal Court, if his recommendations are not acted upon.

According to professor Colin J. Bennett, the complaints resolution process is inherently reactive⁶⁵. Even if the Commissioner is empowered by the legislation to start investigations in the absence of a complaint, such investigations are not carried out in a systematic way. The author asks the question of whether such investigations should take the form of “audits” of the personal information practices of an organization and go beyond particular cases.

Relations with Parliament

Under the *Privacy Act*, the Federal Privacy Commissioner is empowered to “make a special report to Parliament referring to and commenting on any matter within the scope of [his] powers, duties and functions.”⁶⁶ The Commissioner appears normally before the House Standing Committee on Justice and Human Rights, but he can also be invited to appear before several other House and Senate committees. The frequency of these appearances varies according to the number of bills that are related to Privacy matters.

The current Commissioner has appeared in October 2001 before the Standing Committee on Justice and Human Rights on Bill C-36 (the Anti-terrorist bill); he has appeared before the Senate Standing Committee on Social Affairs, Science and Technology on Bill S-21 (Privacy Charter) and he has appeared before the Standing Committee on Justice and Human Rights to present his Annual Report.

⁶⁵ Colin J. Bennett, *The Office of the Privacy Commissioner of Canada: Regulator, Educator, Consultant and Judge*, Paper presented at the third session of the CCMD's thematic series on the relations between parliamentary agencies and the public service entitled *Two Sides of the Same Coin*, Hull, March 20, 2002, p. 10.

⁶⁶ *Privacy Act*, Sec. 39 (1).



Summary of the Presentations Made by Academics⁶⁷

The Relationship Between Parliamentary Agencies and the Public Service

Jacques Bourgault
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Département de science politique
Université du Québec à Montréal

As employees, federal public servants must provide loyal service to the government within the limits imposed by the law. Parliament controls its agent, the government, through certain agencies that it has legislated into existence for a range of fields (public finances, the environment, information, official languages, human rights) where it considers that the public interest is particularly at stake. The quality and usefulness of the control exercised is profoundly affected by the quality and relevance of the actions that these agencies take. In the course of their duties, these agencies are often in contact with public servants and the relationships involved have a significant effect on the activities of federal departments. On the one hand, the agencies want to obtain from the departments all the information the agencies need in a timely manner, and they expect rapid, full cooperation; on the other hand, public servants want to cooperate with the agencies without betraying the trust of their superiors, including their Minister. And they count on the agencies to be open-minded, understanding and analytically competent vis-à-vis the operational requirements involved. It is not in either party's interest to ignore how the action taken by the one can impact the quality of the work performed by the other. Both parties need to be aware that this reciprocal relationship is unfortunately capable of perpetuating a kind of role-playing exercise in which both democracy and effective public management suffer.

The Past, Present and Future of Officers of Parliament

Paul G. Thomas
Duff Roblin Professor of Government
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The role of Officers of Parliament can only be fully understood and interpreted within the wider constitutional and institutional context. There is no official definition of the term and no official count of how many such entities exist. The various bodies that are usually identified as Officers of Parliament have developed over time in an *ad hoc*, improvised manner. How such entities fit within the existing constitutional framework of responsibility and accountability has not really been addressed. Little, if any, attention has been paid to ensuring a clear and consistent approach to the mandates, authority, structures, relationships to the political and the administrative executive, relationships with Parliament of these unique institutions.

Officers of Parliament exist to serve Parliament, but they also function to protect and serve the public. Their support to Parliament is mainly in relation to the Parliament's scrutiny/accountability function. Parliament has benefited greatly from the availability of Parliamentary Agencies as an alternative source of information about the performance of the Executive. The exercise of their informing and assessing functions on behalf of Parliament

⁶⁷ The full version of these presentations is available on-line at the Canadian Centre for Management Development's web site, <URL: <http://www.ccmd-ccg.gc.ca>>

represents another channel of accountability for public servants beyond their obligations to answer to their hierarchical superiors and to the Minister at the top of the department. Parliament's capacity to investigate and to criticize has been significantly enhanced by the investigative activities of Parliamentary Officers.

The future of Officers of Parliament will be shaped by forces of change coming from both inside and outside of the Parliament. Constitutional changes, different patterns of party representation in the House of Commons, turnover among MPs and the backgrounds they bring to the job, the types of issues which are before Parliament and the attitudes of government towards procedural reform in Parliament, are some of the factors that could potentially influence the future of the institution.

Currently too much emphasis is placed on Parliament's role of debating and passing bills and too little emphasis on the examination of what has happened with past legislation in terms of its implementation and impacts on society. By shifting more of its efforts into the scrutiny of executive performance and the transmission of public concerns to the cabinet and the bureaucracy, Parliament could develop a more meaningful role within the policy process. This involves an increased role for such Parliamentary Agencies in helping individual parliamentarians and committees of Parliament to hold governments accountable and in ensuring that bureaucratic processes are responsive, efficient, effective and fair.

To make effective use of the services of its accountability agencies, Parliament needs to clarify its relationships with these unique institutions. This will involve a number of actions: creating a list of Officers of Parliament; reconsidering the anomalous position of the Ethics Counsellor, who is serving at the same time the Prime Minister with respect to the conduct of various public holders and Parliament with respect to the implementation of the Lobbyists Registration Act; reviewing the mandates, appointments, budgets and accountability of the Officers of Parliament, and finally creating a Joint Standing Committee on the Public Service.

Public Administration Under Influence... About Auditors General 's Ability to Influence Public Administrations Through Value for Money Audits

Danielle Morin

Professeure adjointe

Service de l'enseignement des sciences comptables

École des Hautes Études Commerciales de Montréal

Value-for-money (VFM) auditing made its official appearance on the Canadian public-sector scene in 1977 when the Auditor General of Canada was given complete authority to set up a VFM auditing function. This authority gave the Auditor General unlimited power to assess the federal public service from the standpoints of economy and efficiency and, with some restrictions, from the standpoint of managerial effectiveness. Several Canadian provinces have followed suit for their respective public administrations, including Quebec in 1985.

Thus, for more than two decades, Canadian public-sector managers have had their turn at experiencing a VFM audit within their respective organizations and only a very few have subsequently witnessed their organization's being certified as managerially competent. Indeed, since the early days of VFM auditing up to the present, each successive Auditor-General report contains its customary stock of horror stories concerning public-sector mismanagement. Needless to say, it has always been the most horrific cases that have made the news and captured the general public's attention.

My study has taken the form of exploratory research on the relations that develop between VFM auditors and the organizations being audited. The particular focus has been on what effects VFM audits can have on the people being audited, as well as on the managerial performance of their organizations and the role played by the VFM auditors during these missions.

It is hoped that my presentation will “lift the veil” on a little-known aspect of VFM audits namely, the actual influence that they have on public administrations. For instance, in what other ways, apart from following up on the recommendations made during VFM audits, is public-sector management affected by such audits? Of course, I am not in a position to give you the “last word” on this question, but I do have certain ideas that I hope will contribute to and even stimulate a discussion on the ability of auditors general to influence public administrations.

The Canadian Human Rights Commission (CHRC): the Ombudsman of the Canadian Soul or Human Rights Assembly Line?

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There are more similarities than major differences between the CHRC and the other Officers of Parliament. In my view, the main function of the CHRC is to assist citizens to obtain the protection of the anti-discrimination provisions of the CHRA and represent the public interest in the administration and implementation of the *Canadian Human Rights Act*, enacted in 1977 by the Canadian Parliament. It is also supposed to have the vital function of public education on anti-discrimination laws and policies in Canada together with an advocacy role to promote and advance equality within the private and public sectors under federal jurisdiction. I suggest that it then becomes the duty of the Commission to report to Parliament on how the Commission has carried out such representation of the public interest.

The primary task of the CHRC under the CHRA is to process the huge number of complaints received in a timely, fair and effective manner. This is primarily a reactive task, which leaves little room for any substantial efforts at combating systemic discrimination or even fulfilling its public education mandate. Under the *Employment Equity Act*, the primary role of the CHRC is meant to be proactive and focussed on combating systemic barriers to the designated groups in workplaces covered by the Act.

The protection role, primarily implemented as reactions to individual complaints, has so dominated the work and scarce resources of the CHRC, that its educational, advocacy and promotion of equality roles have been significantly diminished. Some of the critics of the CHRC and their provincial counterparts (who have suffered similar challenges) have gone so far to suggest that human rights commissions in Canada have become human rights assembly lines for the management of anti-discrimination complaints.

Dealing effectively with the serious deficiencies found by both the Auditor General and the La Forest Report will be critical to improving the relationship between the CHRC and the federal bureaucracy and individual complainants. The CHRC should have the mandate and resources to act as Ombudsman of the Canadian soul in the eternal struggle for human rights and the combating of discrimination in Canada.

Ombudsman or Active Conscience? The Commissioner of Official Languages as an Agent of Change

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The role of the Office of the Commissioner of Official Languages is subtly different from that of other Officers of Parliament. While sharing the general ombudsman’s responsibilities for ensuring effective and equitable implementation of federal laws, it is distinctive in its responsibility to promote a political goal, i.e. the enhancement of linguistic equality throughout Canada, which engages the Commissioner in a proactive manner in matters of political controversy. In this paper, the author explores the statutory and legal foundation of this unique role and examines its development over time. He suggests that Commissioners have effectively pursued this difficult task, despite occasionally strong reactions to their interventions.

The Office of the Information Commissioner

Paul-André Comeau

Professeur invité (École nationale d'administration publique) et ancien président de la Commission québécoise d'accès à l'information.

Twenty years after the federal and the various provincial Access to Information acts were passed, the consequences of the original choices made and the actual way in which these systems of access have evolved has shed fresh light on the concept or model of the “watchdog” role of Parliamentary Agencies.

Whereas the federal legislature preferred an ombudsman-type function to head its information-access and privacy-protection systems, most provincial legislatures followed Quebec's lead in creating quasi-judicial bodies. So far as access to information is concerned, each of these initial choices has had far-reaching consequences. Specifically, the federal agency can adopt a more proactive approach and intervene in the public arena, while in the provinces the process has become more discreet with far greater recourse to legal action.

On the other hand, there have also been significant similarities in the actual way the operation of these Parliamentary Agencies has evolved. Thus, contrary to what some people feared, the access-to-information agencies were not inundated by a flood of requests. In fact, it was the source of most of these requests that created unexpected problems. As was quickly evident in the United States, private companies have taken huge advantage of the access legislation, and what was even more surprising, requests from opposition parties have raised a fundamental problem concerning the watchdog role that some people still believe access-to-information agencies play. How, in practice, can these agencies fulfill this type of function in a Parliamentary system based on confrontation between the party in power and the various opposition parties? This dilemma is at the heart of the complex issues being analyzed in this series.

The Office of the Privacy Commissioner of Canada

Colin J. Bennett

Professor

Department of Political Science

University of Victoria

Within a period of just twenty years, the privacy issue has become highly salient for the mass publics, and for business and political elites in every advanced industrial state. The importance of privacy protection has been growing steadily as many innovative and intrusive technologies have entered our public and private institutions.

This discourse has changed from the Orwellian symbolism of the “Big Brother” to the more subtle forms of information collection and personal control embraced by the Benthamite metaphor of “panopticism”. At the centre of these fascinating policy and intellectual debates are situated the independent oversight agencies that are given legislative authority in different countries to advance and protect privacy rights.

The Canadian federal Privacy Commissioner, and his counterparts in the provinces operate within a large and increasing network of international actors whose roles are defined by this shifting and nebulous issue. The ultimate aim of this paper is to analyze the powers and responsibilities of the Office of the Privacy Commissioner of Canada, and to highlight the various dilemmas inherent in the exercise of its powers. The paper concludes by discussing how current and previous incumbents have tried to reconcile the contradictions inherent within these offices. The properties of this particular issue entail some particular challenges that each has to face in deciding how best to advance privacy rights within Canada. Actually, incumbents are only given very partial guidance as to how to exercise these powers by the statutory frameworks themselves. At least at the federal level, the exercise of power and responsibility is as much dependent on the style, character, skill and personality of the Commissioner himself or herself, and how that person perceives and is perceived by the wider organizational environment.

