

SENATE



SÉNAT

THIRD INTERIM REPORT ON THE *MAIN ESTIMATES 2005-2006*

OFFICERS OF PARLIAMENT

**Standing Senate Committee on
National Finance**

TWELFTH REPORT

Chair

The Honourable Donald H. Oliver

Deputy Chair

The Honourable Joseph A. Day

May 2005

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND – THE OFFICERS OF PARLIAMENT	1
OFFICE OF THE AUDITOR GENERAL OF CANADA	4
OFFICE OF THE PRIVACY COMMISSIONER.....	5
OFFICE OF THE INFORMATION COMMISSIONER	7
OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES.....	7
OFFICE OF THE CHIEF ELECTORAL OFFICER	9
A COMMON CONCERN: BUDGET DETERMINATION.....	11
POSSIBLE FUNDING MECHANISMS	15
OBSERVATIONS AND RECOMMENDATIONS.....	17
CONCLUDING REMARKS.....	19

INTRODUCTION

During its examination of the *2004-2005 Estimates* the Standing Senate Committee on National Finance reviewed the planned expenditures of five Officers of Parliament. Over several meetings held between November 2004 and February 2005, the Committee discussed the expenditure plans of the Office of the Auditor General,⁽¹⁾ the Office of the Chief Electoral Officer,⁽²⁾ Office of the Privacy Commissioner,⁽³⁾ the Office of the Information Commissioner⁽⁴⁾ and the Office of the Commissioner of Official Languages.⁽⁵⁾ The Officer reviewed their mandates, spending plans and challenges that they face at this time. While each experience different specific problems, there were similarities in their budget determination process that the Committee wishes to highlight in this report.

BACKGROUND – THE OFFICERS OF PARLIAMENT

The title of “Officer of Parliament” is not defined in any statute or parliamentary publication. Different parliamentary committees and academic commentators have at one time or another associated the position with that of the Speakers of the two Houses of Parliament, the Clerks, the Parliamentary Librarian, and other organizations that serve Parliament. There is another group of positions or organizations that report to Parliament but do not function specifically within the halls of Parliament. This group comprises a set of six to eight organizations that while enjoying some freedom from the government they both serve Parliament and protect the public.

This uncertainty regarding the definition of the term Officers of Parliament can be seen by comparing the work of two House of Commons committee reports on procedure. In 1985 the Report of the Special Committee on Reform of the House of Commons (the McGrath report) referred to the Clerk and the Sergeant-at-Arms as “House of Commons Officers.” It described as “other Officials” the positions of the Office of the Auditor General, the Office of

(1) Proceedings of the Standing Senate Committee on National Finance, Issue number 4, 1 December 2004.

(2) Proceedings of the Standing Senate Committee on National Finance, Issue number 7, 8 February 2005.

(3) Proceedings of the Standing Senate Committee on National Finance, Issue number 9, 16 February 2005.

(4) Proceedings of the Standing Senate Committee on National Finance, Issue number 8, 15 February 2005.

(5) Proceedings of the Standing Senate Committee on National Finance, Issue number 7, 8 February 2005.

the Chief Electoral Officer, the Office of the Commissioner of Official Languages, the Office of the Information Commissioner, and the Canadian Human rights Commission (CHRC).⁽⁶⁾

In 2000-2001 the House of Commons re-examined the role of Officers of Parliament through a Special Committee on the Modernization and Improvement of the Procedures of the House of Commons. In its March 2001 Report, the Committee mentioned the existence of “several” Officers of Parliament, with the principal ones being the Office of the Auditor General, the Office of the Chief Electoral Officer, the Office of the Commissioner of Official Languages, the Office of the Information Commissioner, and the Office of the Privacy Commissioner. It also identified as Officers of Parliament the Clerk of the House of Commons, the Parliamentary Librarian, and the Ethics Counsellor with respect to the *Lobbyist Registration Act*.⁽⁷⁾

In a paper on Officers of Parliament, Paul Thomas reviewed the work of the House of Commons Committees and developed a “List of Leading Examples of Officers of Parliament.”⁽⁸⁾ According to Mr. Thomas these would include:

- Office of the Auditor General;
- Public Service Commission;
- Office of the Chief Electoral Officer;
- Office of the Commissioner of Official Languages;
- Canadian Human Rights Commission;
- Office of the Information Commissioner;
- Office of the Privacy Commissioner;
- the Office of the Ethics Counsellor.

According to Mr. Thomas, most of these offices were created by Parliament in the last thirty years for several reasons.⁽⁹⁾ First, there was concern about holding the government to

(6) House of Commons, Report of the Special Committee on Reform of the House of Commons, Ottawa, June 1985, 33.

(7) House of Commons, Report of the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons, Ottawa, 21 March 2001.

(8) P.G. Thomas, Fall 2003, The Past, Present and Future of Officers of Parliament, Canadian Public Administration, Vol. 46, No. 3, p. 294.

(9) *Ibid.*, p. 293.

account in a wide range of activities. Secondly, there was fear that ministers and senior public servants might abuse the powers granted to them. Thirdly, there was a desire to reduce the partisanship and publicity associated with certain types of citizen complaints.

He also identified several concerns that were evident when Parliament created these offices. For instance, there was an interest in preserving the independence of Officers from the government of the day. As well, they were supposed to enjoy a degree of operational freedom from Parliament and its members. Mr. Thomas identified five structural features which determine the independence/accountability relationships of the parliamentary agencies:⁽¹⁰⁾

- the nature of the mandate of the agency, including how it is defined initially and how it is updated periodically;
- the provisions respecting the appointment, tenure and removal of the leadership of the agency;
- the process for deciding budgets and staffing for the agency;
- whether the agency is free to identify issues for study and whether it can compel the production of information; and
- the reporting requirements for the agency and whether its performance is monitored.

While the Standing Senate Committee on National Finance is interested in many aspects of the organizations whose Estimates are under its purview, its focus often remains the planned spending of organizations. With respect to the Officers of Parliament, the Committee was interested in the process that determines the annual level of funding available in the Estimates of the five Officers examined. For the purposes of this report, the Committee considers the Officers of Parliament to include: The Auditor General, the Chief Electoral Officer, the Commissioner of Official Languages, the Information Commissioner and the Privacy Commissioner.

(10) *Ibid.*, p. 297.

OFFICE OF THE AUDITOR GENERAL OF CANADA

Ms. Sheila Fraser is the current Auditor General of Canada. The Office of the Auditor General (OAG) audits federal government operations and provides Parliament with independent information, advice and assurance to help hold the government to account for its stewardship of public funds. The OAG is responsible for performance or value-for-money audits and studies of federal departments and agencies. It also conducts financial audits of the government's financial statements (public accounts) and performs special examinations and annual financial audits of Crown Corporations.

Objectivity is vital to the effectiveness and credibility of the Office. To help achieve this objectivity, Parliament has taken steps to keep the Auditor General independent of the government.

The Auditor General is an Officer of Parliament appointed for a 10-year term by the Governor in Council. The Auditor General may be removed by the Governor in Council on address of the Senate and House of Commons. The Auditor General, who reports to the Speaker of the House of Commons, has the freedom to recruit staff and set the terms and conditions of their employment, as well as the right to ask the government for any information required to meet the responsibilities of the position.

The Office of the Auditor General audits most areas of the Canadian government. In total, audit coverage includes:

- about 70 federal government departments and agencies ranging from small boards to large, complex organizations whose activities extend across Canada and overseas;
- about 40 Crown corporations, for example, the Canadian Broadcasting Corporation and the Royal Canadian Mint. Under the Financial Administration Act, most Crown corporations must undergo a value-for-money audit (called a special examination) every five years. In addition, their financial statements are audited annually;
- about 10 departmental corporations;
- about 60 other entities and special audits;
- areas of responsibility shared by more than one department, such as immigration;
- issues that affect the entire government, for example, personnel matters or the use of computers;

- the governments of Nunavut, the Yukon and Northwest Territories and some 15 territorial agencies; and
- some United Nations agencies, such as the United Nations Educational, Scientific and Cultural Organization, and the International Civil Aviation Organization.

With the creation of the position of Commissioner of the Environment and Sustainable Development in December 1995, the Auditor General's responsibilities related to environmental matters increased considerably. The Commissioner, on behalf of the Auditor General, reports annually to the House of Commons on all matters related to the environment and sustainable development that she considers should be brought to its attention. In addition, government departments must publish annual sustainable development strategies and action plans that are audited by the Commissioner.

The Auditor General expected to carry out its work in 2004-2005 with a budget of \$75.7 million and a staff equivalent to 580 full-time employees. This amount is comparable with the 2003-2004 parliamentary appropriations and in the view of the Auditor General "sufficient to enable us to fulfil our mandate to serve Parliament."⁽¹¹⁾

OFFICE OF THE PRIVACY COMMISSIONER

The Privacy Commissioner of Canada is appointed by the Governor-in-Council for a maximum term of seven years, after approval of the appointment by resolutions of the Senate and the House of Commons. The Commissioner may be removed by the Governor in Council at any time on address of the Senate and House of Commons. The current Commissioner, Ms. Jenifer Stoddart, was appointed on 1 December 2003, replacing an interim Commissioner who had been appointed after the previous Commissioner resigned. The Privacy Commissioner of Canada is an Officer of Parliament who reports directly to the House of Commons and the Senate.

The Commissioner is an advocate for the privacy rights of Canadians. Her powers include:

- investigating complaints and conducting audits under two federal laws (the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act*);

(11) 1 December 2004 (4:38).

- publishing information about personal information-handling practices in the public and private sector;
- conducting research into privacy issues; and
- promoting awareness and understanding of privacy issues by the Canadian public.

The Office of the Privacy Commissioner (OPC) works independently from any other part of the government to investigate complaints from individuals with respect to the federal public sector and the private sector. Individuals may inquire to the Commissioner about any matter specified in Section 29 of the *Privacy Act*. This Act applies to personal information held by the Government of Canada. For matters relating to personal information in the private sector, the Commissioner may investigate complaints under Section 11 of the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. As an ombudsman, the Commissioner prefers to resolve complaints through negotiation and persuasion, using mediation and conciliation if appropriate. The Commissioner has the power to summon witnesses, administer oaths and compel the production of evidence if voluntary co-operation is not forthcoming.

The planned spending of the Office of the Privacy Commissioner was expected to decline from \$11.3 million in 2004-2005 to \$4.7 million in 2005-2006. This decrease of 58.7% reflects the government's plan to review the Protection of personal information – private sector business line of the Commissioner's operations. Funding for this business line was originally provided in 2000-2001 with the introduction of *PIPEDA*. At that time, the true resource requirements could not be satisfactorily determined considering the uncertainty of the impact of *PIPEDA* on the Office's activities. This review of funding requirements exercise was originally intended to be completed in 2003-2004 but was postponed due to the organizational renewal which was required following problems highlighted in the Auditor General's September 2003 report regarding the OPC. In the meantime, funding for *PIPEDA* has been approved, at its original amount, for 2004-2005 only.

OFFICE OF THE INFORMATION COMMISSIONER

The Honourable John Reid is the Information Commissioner. He investigates complaints from people who believe they have been denied rights under the *Access to Information Act* – Canada’s freedom of information legislation. The Governor in Council appoints the Information Commissioner to a seven year term after approval of the appointment by resolution of the Senate and House of Commons. The Information Commissioner may be removed by the Governor in Council at any time on address of the Senate and House of Commons. He mediates between dissatisfied applicants and government institutions.

Since he is an ombudsman, the commissioner may not order a complaint resolved in a particular way. Thus he relies on persuasion to solve disputes, asking for a Federal Court review only if he believes an individual has been improperly denied access and a negotiated solution has proved impossible.

The Commissioner is not involved in the fact-gathering process of the investigation. He does however review the evidence and representations and may recommend remedial action. The Commissioner has the authority, with the consent of the complainant, to ask the Federal Court to order disclosure of government-held records. This authority is seldom used.

Total planned spending for the Office of the Information Commissioner is expected to remain stable at about \$4.2 million over the next two fiscal years. Most of the money is earmarked for the Access to Government Information business line. Employment levels are also expected to remain unchanged at 56 full-time equivalents.

OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES

Ms. Dyane Adam is the current Commissioner of Official Languages. She was appointed by commission under the Great Seal after approval of the appointment by resolution of the Senate and House of Commons for a seven-year term. She may be removed by the Governor in Council at any time on address of the Senate and House of Commons. The Commissioner of Official Languages reports directly to Parliament.

The mandate of the Commissioner of Official Languages is set out in section 56 of *the Official Languages Act*, as follows:

It is the duty of the Commissioner to take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this *Act* in the administration of the affairs of federal institutions, including any of their activities relating to the advancement of English and French in Canadian society.

The Commissioner of Official Languages has a mandate to take all measures within the authority of the Commissioner intended to ensure that the three main objectives of the *Official Languages Act* are met, namely:

1. the equality of English and French in Parliament, within the federal government, the federal administration, and the institutions subject to the *Act*;
2. the preservation and development of official language communities in Canada; and
3. the equality of English and French in Canadian society.

The Commissioner of Official Languages plays the following six roles:

- **Ombudsman role:** The Commissioner receives and reviews complaints and, if required, investigates and makes necessary recommendations. In this role, the Commissioner also conducts investigations on her own initiative as deemed advisable.
- **Auditing role:** The Commissioner plays a proactive role by conducting audits to measure compliance with the requirements of the *Act* and proposes recommendations relating to the existing management framework within organizations.
- **Liaison role:** The Commissioner works with federal institutions and other organizations, various levels of government and official language minority communities throughout the country to ensure full implementation of the *Official Languages Act*. Through this interchange, the Commissioner gains a better understanding of the needs and concerns of linguistic communities, makes relevant recommendations and intervenes judiciously in major official language issues.
- **Monitoring role:** The Commissioner acts preventively by intervening at the stage where laws, regulations and policies are developed so as to ensure that language rights remain a primary concern of leaders.
- **Promotion and education role:** This role consists of conducting research, studies and public awareness activities. The Commissioner makes speeches and participates in symposia and workshops to inform all Canadians of the status and importance of the official languages. This heightens Canadians' awareness of the benefits of linguistic duality and contributes toward the development and enhancement of the vitality of official language minority communities.

- **Court intervention role:** The Commissioner may seek leave to intervene, when appropriate, in adjudicative proceedings relating to the status or use of English or French to ensure that linguistic rights are respected.

The Office of the Commissioner of Official Languages is made up of three directorates: Investigations; Communications, Research and Analysis; and, Corporate Services. In its *2004-2005 Estimates – Report on Plans and Priorities*, the Office of the Commissioner of Official Languages indicated that its total planned spending for 2004-2005 was \$18,528,000, an increase of 1.4% over the previous fiscal year, and was expected to decrease only slightly in 2005-2006 and 2006-2007.

OFFICE OF THE CHIEF ELECTORAL OFFICER

The Chief Electoral Officer, Mr. Jean-Pierre Kingsley is the head of Elections Canada, also called the Office of the Chief Electoral Officer. Elections Canada is the independent body set up by Parliament that is responsible for exercising general direction and supervision over the preparation, administration and reporting aspects of federal elections and the election expense provisions of the *Canada Elections Act*, as well as similar activities under the *Referendum Act*. In addition to administering federal general elections, by-elections and referendums, Elections Canada also provides general administrative assistance to the electoral boundaries commissions under the *Electoral Boundaries Readjustment Act*, and provides electoral assistance internationally.

The Chief Electoral Officer is appointed by a resolution of the House of Commons. Reporting directly to Parliament, the Chief Electoral Officer is independent of the federal government and political parties. The CEO serves until retirement (at age 65) or resignation; he or she can be removed only for cause, by the Governor General following a joint address of the House of Commons and Senate.

The role and mandate of the Chief Electoral Officer include:

- administering electoral legislation;
- registration of political parties and third parties engaged in election advertising and of electoral district associations, leadership contestants and nomination contestants of registered parties;
- maintenance of the National Register of Electors;
- disclosing contributions to candidates, political parties and third parties, and to electoral district associations, leadership contestants and nomination contestants of registered parties;

examination and disclosure of their financial returns; and reimbursement of expenses to candidates and parties according to formulas laid down in legislation;

- ensuring access to the system for all eligible citizens, through both physical facilities and public education and information programs;
- providing legal, technical, financial and administrative support to the independent commissions responsible for the periodic process of readjustment of federal electoral boundaries, to ensure that representation conforms to legislation.

The Chief Electoral Officer is assisted in carrying out this mandate by a Commissioner of Canada Elections and a Broadcasting Arbitrator. Both the Commissioner of Canada Elections and the Broadcasting Arbitrator are selected and appointed by the Chief Electoral Officer. The Commissioner of Canada Elections ensures that the provisions of the *Canada Elections Act* and the *Referendum Act* are complied with and enforced. He may receive complaints, decide when an investigation is warranted, and prosecute offenders through Canada's court system. The Broadcasting Arbitrator allocates broadcasting time to political parties, issues guidelines concerning the obligations of broadcasters during a general election, and arbitrates disputes between political parties and broadcasters concerning the application of the legislation.

In addition, the Chief Electoral Officer is seconded by the Deputy Chief Electoral Officer and Chief Legal Counsel, who is responsible for Elections Canada's three of its eight directorates.

Elections Canada's responsibilities include the following:

- making sure that all voters have access to the electoral system;
- informing citizens about the electoral system;
- maintaining the National Register of Electors;
- enforcing electoral legislation;
- training election officers;
- producing maps of electoral districts;
- registering political parties, electoral district associations, and third parties that engage in election advertising;
- administering the allowances paid to registered political parties;

- monitoring election spending by candidates, political parties and third parties;
- publishing financial information on political parties, electoral district associations, candidates, nomination contestants, leadership contestants and third parties;
- supporting the independent commissions responsible for adjusting the boundaries of federal electoral districts every 10 years, and
- reporting to Parliament on the administration of elections and referendums.

To carry out these functions, Elections Canada has formed a structure of eight directorates: Legal Services; Corporate Planning and Executive Services; National and International Research and Policy Development; Operations; Election Financing and Corporate Services; Communications; Register and Geography; and, Information Technology.

In its *2004-2005 Estimates – Report on Plans and Priorities*, Elections Canada notes that it operates under two funding authorities: an annual appropriation (which essentially provides for the salaries of permanent full-time staff or “administration costs”) and the statutory authority (which provides for all other expenditures, including the costs of elections and referendums, delivery and evaluation costs, and continuing public education programs). Elections Canada’s total planned spending for 2004-2005 was \$50,175,000, which consisted of \$33,937,000 for elections and referendums and \$16,238,000 for administration costs. The planned spending for 2005-2006 is expected to decrease by 67.8% from the previous fiscal year. For the fiscal year 2003-2004 adjustments in the amount of \$57,895,000 were required to accommodate election expenses.

A COMMON CONCERN: BUDGET DETERMINATION

All government departments and agencies, as well as parliamentary organizations must negotiate their budget and staffing matters with representatives of the Treasury Board Secretariat. In turn they must submit the final document to the Treasury Board for approval. The inherent risk in the current process as it pertains to Officers of Parliament is that the government may be perceived as undermining the independence of these Officers through its control of their funding. This sentiment was expressed very clearly by the Auditor General:

I believe that an appropriate funding level must be determined in an objective manner that is not influenced by those whom we audit. The existing process for determining our funding level is not

sufficiently independent and impartial to ensure that our budget is appropriate for meeting Parliament's expectations.⁽¹²⁾

She added further that: "As a matter of principle, I believe that this situation should be corrected so that there is no possibility of influence, real or perceived."⁽¹³⁾

In her experience, negotiations with the officials of the Treasury Board Secretariat over the planned spending for the Office of the Auditor General are less than satisfactory. For example she described recent negotiations in the determination of the Auditor General's 2005-2006 *Estimates*. Her current budget of \$72 million includes an appropriation of \$11.5 million that is temporary funding linked to a Treasury Board decision in 2001 that the Office of the Auditor General receive temporary funding of \$8 million while it worked with the Treasury Board Secretariat to develop a new funding mechanism for the Auditor General. In subsequent years, that funding has been extended on a temporary basis, year after year until an independent funding mechanism is found. Although the \$11.5 million is available for the current fiscal year, the Treasury Board Secretariat has not processed the Auditor General's application to have that funding extended.

Effectively, the planned expenditures of the Office of the Auditor General will drop from \$72 million to \$61 million for the next fiscal year. It is her view that "If our funding is cut by \$11 million, I cannot fulfil my mandate."⁽¹⁴⁾ While she indicated that assurances have been given that temporary funding will be made available in the next fiscal year it still leaves her with uncertainty with respect to the planning of operations in her Office. She emphasized that the Office of the Auditor General needs to have stability in its level of funding so that it can plan its work.

We like to plan our work 3 years out. It takes us 18 months to do an audit. I cannot have a variation of 15 per cent in my budget, quite frankly. We would like to get this funding mechanism in place and thus have our funding resolved so that we can cease being subjected to this temporary renewal process, year after year.⁽¹⁵⁾

The Auditor General is not the only Officer of Parliament to experience difficulty in establishing long-term stability in its planned spending. The Privacy Commission related how the budget for the fiscal year 2001-2002 was \$4.4 million. The enactment of the *Personal Information Protection and Electronic Documents Act* justified additional funding in

(12) 1 December 2004 (4:38).

(13) *Ibid.*

(14) 1 December 2004 (4:48).

(15) *Ibid.*

the amount of \$6.6 million per annum for three years. The temporary nature of the funding recognized the fact that it was not possible to reliably forecast the workloads and resource requirements necessary after the full promulgation of PIPEDA.

While the original intent was that Office of the Privacy Commission would have submitted to Treasury Board by October 2004 a solid business case for securing stable long term funding, organizational issues in the recent past did not allowed the Commissioner to meet that target.⁽¹⁶⁾ From an operational perspective, there was also a high degree of uncertainty surrounding the forecasting of future workloads and related resource requirements resulting from full implementation of PIPEDA. In the absence of long term funding and a cogent business plan that would clearly articulate where investments were needed, the Treasury Board decided to continue to fund PIPEDA on a year-to-year basis from 2004 to 2006.

When asked if her office could carry out audits on the privacy of government information technology system, she responded that:

This would require resources under the Privacy Act, and the level of funding for the Privacy Act has not changed for years. Therefore, we would not have been able to carry out such an investigation to the extent that the Auditor General's office did. We are going back to Treasury Board this summer to request more funding because the Privacy Commissioner of Canada should be carrying out such privacy audits.⁽¹⁷⁾

Ms. Stoddart indicated that both the Treasury Board Secretariat and the Office of the Privacy Commissioner have agreed that now is the time to stabilize the funding of this institution. However, the Committee is not certain whether the Office of the Privacy Commissioner will receive the appropriate level of financial and human resources required to carry out its mandate to protect the personal information rights of Canadians in accordance with the two pieces of federal legislation.

Mr. Reid, the Information Commissioner expressed strong dissatisfaction with the current process that determines the funding levels not only for his organization but also for the other Officers of Parliament: "I want to add that this is a problem that is not necessarily unique to the Information Commissioner. I think there is a real problem with the way in which

(16) For further information see the June 2003 Report of the Standing Committee on Government Operations and Estimates, Matters Relating to the Office of the Privacy Commissioner; the September 2003 Report on the Office of the Privacy Commissioner of Canada by the Office of the Auditor General of Canada; and the October 2004 Report of the Public Service Commission, One Year Later: Report of the Public Service Commission of Canada on the Office of the Privacy Commissioner of Canada.

(17) 16 February 2005 (9:15).

parliamentary officers are funded.”⁽¹⁸⁾ In his view the government cannot help but be conflicted by the obligation to fund the activities of an agency that is designed to investigate the government’s operational shortcomings.

It is a difficult proposition, I believe, for the government itself to deal with this sort of hybrid organization that is, in a sense, part of the civil service and yet has no reporting responsibilities to the civil service. There has to be a considerable amount of thinking about how these offices are to be financed in the future. No one likes to be investigated. It is difficult for the institution being investigated to provide additional funds for those investigations to go forward. I think that is a very human response.⁽¹⁹⁾

He explained that his attempts to obtain more funding from the Treasury Board have been so unsuccessful as to leave the Office of the Information Officer “in a financial crisis.” He added that “Unless my office is properly resourced I cannot ensure, on behalf of Parliament and the public, that the government will live up to its openness obligations.”⁽²⁰⁾

This condition exists, according to the Information Commissioner, because over the last decade, resources at the Commission have not kept pace with the workload. All aspects of the organization have suffered some downsizing in order to deal with the mounting backlog of incomplete investigation of complaints. The Commission simply cannot afford under the current budget to hire enough investigators to do the work. This is in spite of significant streamlining of all other operations at the Office of the Information Commissioner. According to the Commissioner, resources are increasingly dedicated to meeting the basic requirements of his mandate:

... on the management side, we have slimmed down dramatically over the last 10 years. All resources saved have been pumped into building up the investigatory body. As well, we have had to entirely give up our public affairs, research, education and internal training capacity in order to put resources toward an increasing workload of investigations.⁽²¹⁾

Efforts to correct the growing deficiency in resources have not been successful:

(18) 15 February 2005 (8:6).

(19) *Ibid.*

(20) (8:5).

(21) (8:6).

Despite repeated efforts to convince Treasury Board to properly fund the full range of the commissioner's mandate, including several exhaustive reviews by independent consultants jointly with the Treasury Board Secretariat, only emergency and partial funding has been forthcoming.⁽²²⁾

POSSIBLE FUNDING MECHANISMS

While it was not the mandate of the Committee to solve the problem of developing a new funding mechanism for the Officers of Parliament, it did hear a number of proposals.

The Auditor General stressed that the issue is how to establish a balance between the independence of her office and remaining accountable for the expenditure of public funds by the Office of the Auditor General. She informed the Committee that following a period of discussions with the Treasury Board Secretariat in 2001 and 2002, she proposed three alternative mechanisms to determine independently of the government the funding levels of her Office while maintaining her accountability for the spending of public funds.

First, she offered the United Kingdom model that involves an all-party commission examining the audit offices Estimates and making a recommendation to the House of Commons.

A second model is that used for the Senate's Ethics Officer and the House of Commons Ethics Commissioner whereby the Speakers of the Senate and of the House of Commons respectively examine the Estimates. They then transmit their recommendations to the President of the Treasury Board who presents these Estimates to the House of Commons as part of the overall Estimates.

A third model she called "the blue ribbon panel," would involve a group of experts appointed by the Speakers of the House of Commons and of the Senate and by the President of Treasury Board to examine the estimates and to recommend a budget to the Treasury Board.

The Information Commissioner suggested that Parliament might wish to adopt the same approach it developed for the House of Commons Ethics Commissioner. In that instance, the Ethics Commissioner justifies his budget to the Speaker of the House of Commons, who after a possible review by the Board of Internal Economy, forwards the budget to the Treasury Board for inclusion in the government spending estimates. He also found it interesting that the

(22) *Ibid.*

Information Commissioner does not have anybody on the Treasury Board to speak on behalf of the organization.

Almost everybody else but parliamentary agents have somebody on the Treasury Board who has a responsibility to stand up for that estimate going through. The parliamentary officers have nobody.⁽²³⁾

Under Mr. Reid's proposal, the Speaker would have the responsibility to speak up to Treasury Board for the Ethics Commissioner.

If we continue to go through the Treasury Board process, we need to ensure that there is somebody to speak up for us and do the necessary negotiations. As it is, we have no ability to penetrate the inside once we have spoken to our analysts at the lower levels of the Treasury Board hierarchy.⁽²⁴⁾

As part of its spring hearings on the *2005-2006 Estimates*, the Committee had the opportunity to raise this funding issue with the Honourable Reg Alcock, President of the Treasury Board.⁽²⁵⁾ Mr. Alcock acknowledged that this is an issue that he also has had some interest in resolving. He reminded the Committee that when he chaired the House of Commons Standing Committee on Government Operations and Estimates, it recommended that the House of Commons undertake a study of this matter in order to come up with a new mechanism of budget setting that dealt with some of the obvious conflicts. He also acknowledged that the Treasury Board Secretariat has been working with the Office of the Auditor General to examine a range of options. As a result of these discussions, the Treasury Board has made a decision to proceed towards a solution. He announced that the government is going to use this year to test out some alternative processes.

OBSERVATIONS AND RECOMMENDATIONS

As Mr. Thomas noted "Budgets and staffing are the lifeblood of organizations."⁽²⁶⁾ While the risk that a government will deliberately underfund the Officers of Parliament so as to stifle their criticism can be exaggerated, the appearance of such a situation should be avoided. Under its 1977 act, the Office of the Auditor General is given some

(23) 15 February 2005 (8:77).

(24) (8:7).

(25) 9 March 2005 (14:34).

(26) P.G. Thomas, Fall 2003, p. 301.

protection in this regard because it is allowed to present separate Estimates to Parliament each year and to indicate whether the amounts eventually approved by the Treasury Board are sufficient to carry out the responsibilities of the Office.⁽²⁷⁾ Other Officers of Parliament are not afforded such an option yet they face the same risk.

The Committee was concerned by the claim of the Information Commissioner that as a result of budget constraints imposed by the Treasury Board, his investigation staff did not have time for such things as research and training. In the view of the Committee, this is extremely worrisome. To restrict the work of the Information Commissioner means that his staff may not have time to reflect carefully on the impact of their investigations. This implies that if a particularly important case were to appear before them and there was not enough time to reflect on the results of their investigation, they might decide to post or make public matters that could have serious consequences for the government and for the country. This condition could manifest itself in the work of all of the Officers of Parliament. In the view of the Committee, it is imperative that decisions of Parliamentary organizations be carried out at a high level of competence to ensure these decisions are not detrimental to Canada.

On the other hand, Parliament and Canadians have a right to know that their government is behaving correctly. Government cannot operate in a cloud of secrecy. This is the basic function of the Officers of Parliament. This task takes on an even greater importance, as those Officers of Parliament try to protect people's privacy, their language and electoral rights, and ensure accountability in the spending of public funds. If Parliament does not have proper funding for parliamentary officers, the country might find itself in a situation where decisions are contrary to its self-interest. Therefore, it is important that the Officers of Parliament be adequately funded not only in the interest of its citizens, but that of its government.

The difficulty with allowing Parliamentary committees to determine the budgets of public agencies is that constitutional principles require that all spending must originate with the Crown (i.e., the Cabinet). The tradition in Canada is that a government should insist on strict control over the budget process. This principle has led governments to oppose proposals calling for parliamentary committees to propose budgets for Officers of Parliament.⁽²⁸⁾ It has further been suggested that such an arrangement would contravene the principles of ministerial responsibility, and that it would weaken a government's control over total spending for which it is politically accountable to Parliament and the public.

(27) *Ibid.*

(28) *Ibid.*

However, Mr. Thomas contends that such arguments against a parliamentary committee determining resource levels for Officers of Parliament can be contested on several grounds.⁽²⁹⁾ First, while it is true that ministerial responsibility concentrates authority over the formulation of a budget in Cabinet, ultimately all spending must be approved by Parliament. Second, the argument that governments must control total spending and set priorities within it is valid for regular departments. He found it is less persuasive for parliamentary agencies which are established to review executive performance.

Given that the Officers of Parliament have indicated that there are serious difficulties with the way that their budgets are set and given that Officers of Parliament serve and report to Parliament, it would be appropriate for Parliamentarians to be more actively involved in the preparation of the budget proposals that the Officers will submit to Treasury Board. The Committee therefore recommends that:

RECOMMENDATION 1

The processes of determining the budgets of the Officers of Parliament actively involve Parliamentarians through the Speakers of each House and an administrative committee before the budgets are submitted to the Treasury Board for inclusion in the Estimates.

The Committee observed that there are considerable differences in the ways that Officers of Parliament are appointed or removed from office. For instance, the Auditor General is appointed by the Governor in Council, however this appointment does not require the approval of the appointment by resolution of the Senate and House of Commons. In contrast, the Privacy Commissioner is appointed by the Governor in Council after the approval by resolution of the Senate and House of Commons. The Committee believes that the inconsistencies in the appointment and removal process for Officers of Parliament should be reconciled. It is also our view that Parliamentarians should be involved in the process of recruiting, approving and removing of Officers of Parliament. Therefore, the Committee recommends that:

RECOMMENDATION 2

The appointment process for all Officers of Parliament be reviewed and streamlined and that Parliament be more engaged in their recruitment, approval and removal.

(29) *Ibid.*, p. 301.

The Officers of Parliament expressed their gratitude for the opportunity to share with Senators their views and concerns regarding the many aspects of their work. The Committee believes that the Officers of Parliament should be able to discuss their work with Senators on a more regular basis. Therefore, the Committee recommends that:

RECOMMENDATION 3

The Senate consider revising its Rules in order to refer all reports of the Officers of Parliament to an appropriate standing committee.

CONCLUDING REMARKS

The Committee's interest in the Officers of Parliament is ongoing. We intend to monitor the progress of the federal government in this area and to comment further as we deem required.