



HOUSE OF COMMONS
CANADA

Pursuant to Standing Order 108(3)(g), the Standing Committee on Public Accounts has the honour to present its

FOURTH REPORT

The Standing Committee on Public Accounts has considered the Report of the Auditor General of Canada on the Office of the Privacy Commissioner of Canada, and has agreed to report the following:

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.¹

I. INTRODUCTION

In March and May of 2003, the House of Commons Standing Committee on Government Operations and Estimates met to review the Estimates and Supplementary Estimates of the Office of the Privacy Commissioner of Canada.

As a consequence of this review and subsequent meetings on issues related to it, the Committee reported to the House of Commons that it had lost confidence in the then-Privacy Commissioner, Mr. George Radwanski, because the Committee was “no longer able to believe that information provided by [Mr. Radwanski] about his activities [could] be assumed to be accurate and complete.” Citing concerns about financial practices in the Office of the Privacy Commissioner, the Committee requested that the

¹ Canadian Centre for Management Development, *Relations Between Parliamentary Agencies and the Public Service: New Perspectives*, <http://www.ccmd-ccg.gc.ca/research/publications>.

Auditor General of Canada conduct a comprehensive audit of those practices.² The Auditor General agreed to this request, indicating in a letter to the Committee Chair that she would submit a special report to the House of Commons by the end of September 2003.³

During the summer of 2003, the Office of the Auditor General conducted an intense audit of the Office of the Privacy Commissioner with the full support and co-operation of the Interim Privacy Commissioner, Mr. Robert Marleau, and the staff of his Office. On 30 September 2003, the Auditor General fulfilled her commitment and tabled her *Report on the Office of the Privacy Commissioner of Canada* with the Speaker of the House of Commons.

Under Standing Order 108 (1)(g) of the House of Commons, all reports of the Auditor General are automatically referred to the House of Commons Standing Committee on Public Accounts. Consequently, the special report was sent immediately upon tabling to this committee.

There are areas in which the intersection between Canadian citizens, their government, and the bureaucracy that serves it are of such importance that Parliament has assigned independent agents to watch over them and report concerns directly to it. These agents are referred to as officers of Parliament and their work is crucial to the integrity of our democratic system. Thus, the Chief Electoral Officer ensures that our electoral system is fair and unbiased, the Commissioner of Official Languages safeguards the status of our two official languages, the Auditor General verifies the accuracy of our government's financial statements, and the Access to Information Commissioner guarantees that there is reasonable transparency surrounding information held by government agencies.

A fifth officer of Parliament, the Privacy Commissioner, is given the responsibility of making sure that confidential information regarding our personal lives is adequately protected from unwarranted public release and abuse. At a time when issues such as identity theft and a multiplying array of means of gaining access to personal information are of increasing concern, the integrity, autonomy, and ability of this Officer of Parliament are more important than ever before.

Because this officer of Parliament, as well as the others, is of such enormous significance, the Standing Committee on Public Accounts decided to review the special audit report produced by the Auditor General. To assist it with its review, the Committee met with Auditor General Sheila Fraser and Interim Privacy Commissioner Robert Marleau on 2 October 2003. Mr. Hugh McRoberts, Assistant Auditor General, and Ms. Kathryn Elliott, Principal, Audit Operations, accompanied Mrs. Fraser. On 9 October 2003, the Committee met with Mr. Scott Serson, the President of the Public Service Commission.

² House of Commons Standing Committee on Government Operations and Estimates, 4th Report, tabled 13 June 2003.

³ House of Commons Standing Committee on Government Operations and Estimates, 5th Report (Matters Relating to the Office of the Privacy Commissioner), June 2003, Appendix 10.

Ms. Andrée Dubois (Vice-President, Recourse Branch), Mr. Greg Gauld (Vice-President, Merit Policy and Accountability Branch) and Mr. Michael Corber (Director, Information Management and Review Directorate) of the Public Service Commission appeared with Mr. Serson. Mrs. Fraser and Ms. Elliott also attended the meeting. A third meeting was held on 23 October 2003. Mr. Jim Judd (Secretary of the Treasury Board Secretariat and Comptroller General of Canada) represented the Treasury Board Secretariat. Ms. Michelle Chartrand (Deputy Secretary to the Cabinet, Senior Personnel and Special Projects Secretariat) and Mr. Wayne McCutcheon (Director General, Senior Personnel and Special Projects Secretariat) appeared on behalf of the Privy Council Office. Mr. John M. Reid, Information Commissioner of Canada also appeared as a witness. Mrs. Fraser also attended, accompanied by Mr. Bruce Sloan (Principal, Audit Operations, Office of the Auditor General of Canada).

II. BACKGROUND

The Auditor General found that the former Privacy Commissioner “abdicated his responsibilities” and that under his stewardship, rules and even basic standards of decent behaviour were routinely and flagrantly ignored and broken. These facts are by now widely known and, with one notable exception, universally accepted.

In the wake of Mr. Radwanski’s departure, corrective measures are being taken. In particular, the Committee acknowledges and welcomes the positive reaction of the Interim Privacy Commissioner, Mr. Robert Marleau, to the Auditor General’s recommendations. The Committee fully endorses these recommendations which, it is confident, will help repair the damage done to the Office of the Privacy Commissioner, its reputation, and in particular, its employees.

There are, however, serious concerns that extend beyond the Office of the Privacy Commissioner itself, and involve the governance framework for officers of Parliament collectively and, indeed, the entire Public Service. It is those concerns in particular that the Committee wished to address.

In her report, Mrs. Fraser observed that the

Oversight mechanisms of central agencies — the Treasury Board Secretariat and the Public Service Commission — were insufficient or, ..., not used to either prevent abuse and wrongdoing or deal with them when they occurred. (Paragraph 5)

During its hearings with witnesses, the Committee sought to explore the reasons for the failure of the governance framework surrounding the Office of the Privacy Commissioner and to find ways to avert such a failure in the future.

III. OBSERVATIONS AND RECOMMENDATIONS

THE PUBLIC SERVICE COMMISSION OF CANADA

The Public Service Commission of Canada was established in 1908 (as the Civil Service Commission) to safeguard the “merit principle” in the federal public service — the principle that appointments to the public service must be free of political and bureaucratic patronage and that those employed in it should be hired on the basis of professional ability. In order to deliver this mandate, the Commission is authorized to “appoint or provide for the appointment of qualified persons to or from within the Public Service,” making it responsible for recruiting and hiring.

The importance of the Commission’s role is reflected in its status as an agency that is independent of government and accountable to the Parliament of Canada. This status and the mandate of the Commission are given statutory authority under the *Public Service Employment Act* (the Act). Its three commissioners are appointed by the Governor in Council for ten-year terms and can only be removed from office on address of the Senate and the House of Commons. These factors are intended to guarantee the autonomy of the Commission as it pursues its work.

To fulfill its mandate, the Commission planned to spend \$130.5 million during fiscal year 2003-2004 and employ 1,433 staff.⁴

In order to give departments and agencies the ability to recruit and hire employees most suited to their needs, the Public Service Commission is empowered by its legislation to delegate some of its powers. Under section 6(1) of the *Public Service Employment Act*, the Commission can “authorize a deputy head to exercise and perform, in such a manner and subject to such terms and conditions as the Commission directs, any of [its] powers, functions, and duties...”

The authority to delegate responsibilities is accompanied by additional powers that allow the Commission to maintain ultimate responsibility for staffing. The Commission is authorized to revoke appointments that it does not consider appropriate (Section 6(2)) and to withdraw a delegated authority under section 6(4) which reads “The Commission may, as it sees fit, revise, or rescind and reinstate the authority granted by it pursuant to this section.” To enable the Commission to use these powers fully, the Act requires deputy ministers and departmental employees to “provide the Commission with such facilities, assistance and information and with such access to their respective offices as the Commission may require for the performance of its duties.” (Section 7) Section 7.1 of the Act authorizes the Commission to “conduct investigations and audits on any matter within its jurisdiction.”

⁴ Public Service Commission of Canada, 2003-2004 Estimates, *Report on Plans and Priorities*, p. 21.

The Public Service Commission and the Office of the Privacy Commissioner

In October 2001, the Office of the Privacy Commissioner signed a Staffing Delegation and Accountability Agreement with the Public Service Commission, as per section 6(1) of the *Public Service Employment Act*. Prior to this, the President of the Public Service Commission had met with the then-Privacy Commissioner in August 2001 to begin discussions regarding delegation of staffing authority.

Before the August meeting took place, Mr. Serson was informed by his staff of some analytical work done by the Evaluation and Performance Studies Division of the Commission's Information Management and Review Directorate. According to a profile report prepared by a Commission study team, this analytical work

Was initiated following *numerous* complaints from the 'outgoing' Director of HR [Human Resources] at IPC [Offices of the Information and Privacy Commissioner (on a confidential basis) to various officers at the PSC.⁵

The report indicated that "most" of these complaints centred on the then-Privacy Commissioner's lack of understanding of the "importance of respecting the staffing values, particularly non-partisanship."⁶ The PSC's response to these complaints was to launch a thematic review of competency and fairness in hiring and recruitment at eight departments and agencies, including the Office of the Privacy Commissioner.⁷ Thematic reviews are not as rigorous or intense as audits and focus on trends and patterns rather than individual cases.

In October 2001, PSC conducted an on-site review at the OPC during which time

A number of issues surfaced which cast *considerable doubt* on the application of the merit principle and the appropriate exercise of sub-delegated staffing authority.⁸

⁵ Public Service Commission of Canada, Profile of Office of the Information Commissioner and Office of the Privacy Commissioner based on Thematic Review on Competency and Fairness, 21 February 2002, p. 1. Emphasis added.

⁶ Ibid, p. 1.

⁷ The other departments and agencies included in the review were Fisheries and Oceans Canada, Human Resources Development Canada, International Joint Commission (Canadian Section), National Library, National Archives, the Office of the Information Commissioner, and Veterans Affairs Canada. Sites visited were St. John's, Charlottetown, Montreal, the National Capital Region, Toronto, Kirkland Lake, Windsor and Vancouver.

⁸ Public Service Commission, 21 February 2002, p. 1. Emphasis added.

Following this assessment, the report prepared by the study team was released internally within the PSC on 21 February 2002. Among other things, the team found:

- A lack of training in values-based staffing to sensitize managers on the importance of the staffing values, particularly transparency (open communications with employees and applicants about resourcing decisions and practices) and fairness (decisions are made objectively, free from political or bureaucratic patronage, practices reflect the just treatment of employees and applicants);
- Perceptions that managers base their staffing decisions on patronage, expediency and corporate image, at all levels, especially in the communications function;
- Examples of the inappropriate use of delegated authorities;
- An example where a conditional offer was made to an employee who did not meet the language requirements prior to appointment to a senior level position; the language requirements were subsequently lowered to match the employee's capabilities; and
- Situations where it appeared that the requirements of a position seemed to be "tailored" to match those of the successful candidate, e.g. requiring a degree or not.

The team also reported that the offices of the Information and Privacy Commissioners "chose not to participate in the Employee Survey which was conducted in all other organizations that participated" in the thematic review.

The study team concluded that its findings, along with the complaints that had been made and the departure of two Human Resources directors "all point to risk factors that should be mitigated through some form of PSC intervention." "In this way," the team added, "the PSC can be seen as effectively playing its oversight role and aiding the organizations in facing current and future HR challenges."⁹

The PSC did not provide the Office of the Privacy Commissioner with a copy of the profile report. Instead, in March 2002, the President of the Public Service Commission sent a letter to Mr. Radwanski thanking him for his participation in the thematic review. The letter explained the nature of the review, and the role of the PSC in overseeing staffing in the Public Service. Mr. Serson then provided a list of "suggestions" — seven steps that the Office of the Privacy Commissioner "should" take — and concludes by indicating that Mr.

⁹ Ibid, p. 3.

Serson expected that the issues raised by the review would be addressed in the OPC's forthcoming departmental staffing report. The letter did not list the problems brought to light by the study team. Nor did it mention possible consequences of a failure to implement the seven "suggestions," including the possible revision or removal of the delegated staffing authority, or revocation of appointments, as permitted under the *Public Service Employment Act*.

In July 2002, a Public Service Commission follow-up team interviewed the OPC's executive director and its director of Human Resources — and no one else. The team found that the OPC had made significant progress.

In November 2002, the Office of the Privacy Commissioner submitted its departmental staffing report. The Public Service Commission found it unsatisfactory. On 16 June 2003 — approximately six months after receiving the report, the PSC responded in a letter outlining its concerns but not mentioning — again — the consequences if the OPC did not improve its staffing regime. In July 2003 — after the former Privacy Commissioner had resigned — the PSC revoked some of the Commissioner's authority to staff positions.

On 29 September 2003, in response to a recommendation made by the Standing Committee on Government Operations and Estimates, the Public Service Commission released the results of its audit of the Office of the Privacy Commissioner. The audit found that there were "serious deficiencies in the management and operations of staffing and recruitment in the OPC."¹⁰ The Office of the Privacy Commissioner responded positively to all of the PSC's 12 recommendations. Although the Public Service Commission conducted the audit at the request of the Standing Committee on Government Operations, it made public its audit report without having presented it to the Committee or its chair beforehand. The Auditor General submitted her report to the Speaker of the House the following day, in accordance with established procedures.

Observations and Recommendations

The Auditor General observed that the PSC "failed to respond decisively" and concluded that the "lack of visible action" when the Commission was first alerted to problems at the OPC

Sent a signal to managers, employees, and the union that the Public Service Commission would not actively support any attempts to clean up the staffing abuses at the Office of the Privacy Commissioner. (Paragraph 52)

In response to these findings, Mr. Serson asserted that he and the Commission did act, but admitted that in retrospect the Commission, and he personally, "did not act

¹⁰ Public Service Commission of Canada, Audit of the Office of the Privacy Commissioner of Canada, September 2003, p. 3.

decisively enough.” Based on its review of the evidence, the Committee supports this conclusion fully.

The Public Service Commission agreed to take the action that the Auditor General recommended and the President of the Commission did not contest her audit findings. Mr. Serson tabled an action plan listing the steps that the PSC will take in response to the findings of its audit. This is the proper approach, but the plan needs to be improved. The Committee therefore recommends:

RECOMMENDATION 1

That the Public Service Commission revise its action plan to respond to the findings of the staffing audit of the Office of the Privacy Commissioner by adding target implementation and completion dates for all of the measures that it proposes and submit the revised plan to the Standing Committee on Public Accounts no later than 31 July 2004.

Commenting on the role of her office vis-à-vis small departments and agencies, Mrs. Fraser acknowledged that insufficient audit attention had been paid them, in part because of the low level of risk associated with these entities. Following the experience with the Office of the Privacy Commission, however, the Auditor General has decided to set up an audit team that will focus specific attention on smaller departments and agencies. This commendable action should be replicated at the Public Service Commission. The Committee therefore recommends:

RECOMMENDATION 2

That the Public Service Commission revise its action plan by indicating how it intends to address the need to focus more attention on staffing activities in smaller departments and agencies.

The problems revealed by the Auditor General and the PSC’s own audit are of such gravity that progress in resolving them must be regularly monitored and reported to Parliament. The Committee accordingly recommends:

RECOMMENDATION 3

That the Public Service Commission monitor progress made in the implementation of all measures in its action plan, assess the outcomes achieved, record any adjustments, and include all findings in its annual performance report beginning with the report for the period ending 31 March 2004.

The second part of the action plan, which addresses the broader measures that the PSC will take, is insufficient in that it proposes to

Review its intelligence-gathering and intervention policies and systems, including the capacity to conduct audits and investigations, and to withdraw delegation.

The Commission already has policies and systems, and the capacity to conduct audits and investigations. It already has the authority to withdraw delegation, as clearly stated in the Act. The problem, as the Auditor General has stated is that the Commission did not act decisively and did not use the authorities available to it “to either prevent abuse and wrongdoings or deal with them when they occurred.” (Paragraph 5) No more review and analysis should be necessary. The Committee recommends:

RECOMMENDATION 4

That the Public Service Commission make those with whom it has signed Staffing Delegation and Accountability Agreements aware, in writing, that failure to satisfy the terms and conditions included in the Agreements may lead to revision or withdrawal of staffing authority.

RECOMMENDATION 5

That henceforth, all Staffing Delegation and Accountability Agreements include references to the steps that will be taken should terms and conditions contained in them be breached.

RECOMMENDATION 6

That when the Public Service Commission is made aware of possible contravention of delegated staffing authority or abuse of staffing procedures, it immediately suspend such authority until such time as an audit has been conducted and the results assessed.

Mr. Serson's admission that the Commission had not acted sooner and more decisively was appropriate. His explanation for this lack of decisive action was not. He testified:

- The Commission was following the principles of modern comptrollership, which emphasize learning instead of what Mr. Serson, called "shame and blame."
- The Commission has an unsatisfactory relationship with Parliament. Parliament has shown no interest in the work of the Commission.

These may be valid observations, but their relevance to this case is opaque. Modern comptrollership involves making the connection between financial and non-financial information and impressing upon all those who work in the Public Service that each individual has a stewardship responsibility for the prudent use of resources. Contrary to what Mr. Serson was implying, it is not about using soft measures to cope with unpleasant and difficult situations.

It is without doubt that the Commission could have, and ought to have a better relationship with Parliament. The Commission is not alone in this; parliamentarians and non-elected office holders alike desire strengthened relations between Parliament and all government bodies. But, the quality of the Commission's relationship with Parliament provides no explanation whatsoever for the Commission's failure to use all of the powers at its disposal decisively — powers given the Commission by Parliament in the form of legislation.

Mr. Serson complained that during his four years as President, Parliament had never scrutinized the Commission's Estimates. Members of the House of Commons have been concerned that Estimates were not receiving sufficient attention and said so quite clearly in a report tabled in the House of Commons in 1998.¹¹ Recommendations contained in that report led to the creation of the House of Commons Standing Committee on Government Operations and Estimates approximately one year ago. Under Standing Order 108(3)(c)(vi), that Committee is authorized to undertake

The review of and report on reports of the Privacy Commissioner, the Information Commissioner, the **Public Service Commission** and the Ethics Counsellor with respect to his or her responsibilities under the *Lobbyists Registration Act*, which shall be severally deemed permanently referred to the Committee immediately after they are laid upon the Table. (Emphasis added.)

¹¹ House of Commons Standing Committee on Procedure and House Affairs, 51st Report, 1st Session, 36th Parliament. (*The Business of Supply: Completing the Circle of Control*).

It was as a result of the use of this authority that the Government Operations and Estimates Committee began the process that led to the exposure of the situation that existed at the Office of the Privacy Commissioner. The Public Service Commission has the forum in Parliament that Mr. Serson complained it lacks.

Mr. Serson's third explanation — that Parliament did not give the Commission enough money — is entirely without merit. Faced with reported abuse of staffing authority at the OPC, the Commission elected — not to conduct an audit as its legislation allows — but to conduct a thematic review instead. And rather than concentrating resources and attention on the Office of the Privacy Commissioner, it spread the review over eight departments and agencies and dispatched its review teams to locations across the country. This was a questionable use of resources in light of the circumstances, and points not to insufficient resources but a lack of proper judgement.

In the end, the Commission was obliged to conduct a full audit at the request of the Government Operations and Estimates Committee. Considerable resources might have been saved — both at the Commission and at the OPC, where unwarranted expenditures could have been brought to a halt sooner — and abuses endured by OPC staff ended had an audit been done earlier. It is regrettable that, under Mr. Serson's leadership, this did not occur.

It is notable, that in fiscal year 2001-2002, 56 out of the 56 executives working at the Public Service Commission received performance bonuses totalling \$428,795. Mr. Serson defended this decision by pointing to the uncertainty surrounding the future of the Commission in light of proposed legislative changes. Staff at the Commission, he indicated, was unsure as to whether or not they would still have jobs in a year's time; performance bonuses were being used to cope with the problem of retaining them.

The Committee makes the following observations in response. The first is that those most likely to be affected by changes to the Commission are employees below the rank of executive and thus not eligible to receive performance bonuses. Secondly, executive-level employees generally enjoy greater job mobility and thus have less to be concerned about in terms of finding new positions than those at a lower level of classification. The final observation is the most pertinent one. Performance bonuses are intended to reward exceptional performance and should only be given to those who have satisfied a number of specific criteria. Use of these bonuses for other purposes and without reference to stated criteria constitutes an unacceptable abuse. This is doubly so in light of an assertion that the organization dispensing bonuses lacks the resources it needs to fulfill crucial elements of its mandate.

Lastly, Mr. Serson indicated that "The Commission believed, [he] believed, [he] was dealing with a normal, that is a responsible deputy head who would act when problems were identified to him." Proper oversight and audit mechanisms are neutral

when it comes to dealing with variable personalities. These mechanisms — which were available to the Public Service Commission — would have worked regardless of who was Privacy Commissioner, if only they had been used.

TREASURY BOARD SECRETARIAT

Treasury Board Secretariat has two basic roles. The first involves provision of support for Treasury Board. The Secretariat's other major function is as the central agency responsible for the general management of the Public Service of Canada.

In its support role for Treasury Board, the Secretariat recommends and provides advice on policies, directives, regulations, and program expenditure proposals with respect to the management of the government's financial, human, and material resources. Its responsibilities for initiatives, issues and activities cut across all policy sectors managed by 22 operating departments and some 100 other organizational entities (as reported in the Main Estimates). The Secretariat is also responsible for the comptroller function of government.

Under the broad authority of sections 5 to 13 of the *Financial Administration Act*, the Secretariat supports the Treasury Board in its role as the general manager and employer of the Public Service. The main areas of activity in the central administration of the Public Service cover the following:

- Expenditure management: providing leadership, direction and advice to departments and agencies on expenditure management, regulatory affairs, and property and material management through the development of appropriate policies to support efficient and effective program delivery;
- Personnel management: developing, communicating and evaluating human resources, official languages and employment equity policies and instruments that help departments manage human resources and that promote effective employer-employee relations in the Public Service; and
- Financial and information management: providing leadership to departments through policies, frameworks of accountability, standards and the promotion of best management practices in the use of technology and information management, business process renewal, effective review, and sound financial and contracting management so that departments may provide innovative and affordable services to their clients.

Treasury Board Secretariat and the Office of the Privacy Commissioner

Treasury Board policies apply to all officers of Parliament in much the same way that they apply to entities listed under schedule I.1 of the *Financial Administration Act*. These entities, which also include the Public Service Commission and the Privy Council Office, must operate in accordance with applicable Treasury Board policies and guidelines.

There is, however, some suggestion that Treasury Board Secretariat monitors the officers' adherence to its policies less rigorously than other departments out of a desire to give them the maximum autonomy possible. As the Auditor General reports,

Central agencies have taken a lesser role in overseeing servants of Parliament, who are accorded more independence from the executive branch of government as they carry out their work for Parliament.

However, Mrs. Fraser adds that:

Nevertheless, if central agencies become aware of wrongdoing by parliamentary officers, they are obliged to take corrective action.

The Auditor General reports that the Treasury Board Secretariat (along with the Public Service Commission) did not make use of available oversight mechanisms to prevent the financial and human resources abuses that took place at the Office of the Privacy Commissioner, or deal with them when they occurred. (Paragraph 5) The Audit found “an environment of fear and arbitrariness” at the OPC that led to “a major breakdown” in controls over financial management, human resources management, contracting, and travel and hospitality (Paragraph 2), all areas in which Treasury Board Secretariat has significant, government-wide responsibilities.

Human Resources Management

In 1997, Treasury Board and the Treasury Board Secretariat were designated as the management board of government, and thus acting as the “Employer” of the Public Service and ensuring that Canadians “are served by an effective, talented, and professional Public Service.”¹²

While the Public Service Commission is responsible for recruitment in the Public Service, Treasury Board Secretariat had central agency responsibility for overall terms of employment within the service. In its plans and priorities report for 2003-2004, the Secretariat indicated that it was focusing its efforts on two areas: building and maintaining an effective workforce and “creating a healthy and enabling workplace that will allow the

¹² Treasury Board of Canada Secretariat, and 2003-2004 Estimates, Part III — *Report on Plans and Priorities*, p. 4.

Government to attract, support, and retain a quality workforce.”¹³ The Secretariat’s total planned expenditure on human resources management for 2003-2004 was \$1.5 billion. In that fiscal year, TBS planned to assign 448 of its employees to this aspect of its work.

The audit found that at the OPC, under the former Commissioner:

- Rules intended to promote fairness and transparency in the treatment of employees, including rules governing promotion, job classification, labour relations, and performance awards, were broken. (Paragraphs 21, 22);
- Reclassification practices contributed to higher salary costs and a resulting overspending of the OPC’s appropriated funding. (Paragraph 45);
- Contrary to Treasury Board policies, executives received annual salary increases and performance awards without documented justification (paragraphs 60, 61) and performance awards exceeded guidelines (paragraph 62);
- There were no performance appraisals for any staff below the executive level (paragraph 63); and
- Failure to follow established policies resulted in “unjustified” increases in executive remuneration, amounting to “over a quarter of a million dollars.” (Paragraph 64)

Financial Management and Control

Treasury Board Secretariat is “committed to seeing that Canadians receive good value and positive results from public expenditures”¹⁴ and has identified “stewardship” or “sound management of federal resources” as one of the strategic outcomes around which it organizes its work. Accordingly, the Secretariat supports the Treasury Board’s role in the allocation of resources and the “monitoring and analysis of the management of resources on a program, departmental, and sectoral basis,” and the “establishment of policies and standards to improve management practices” in departments and agencies.¹⁵ Total planned spending by the Secretariat on stewardship for 2003-2004 amounts to \$816 million.

¹³ Ibid, p. 17.

¹⁴ Ibid, p. 7.

¹⁵ Ibid, p. 7.

The Secretariat also has responsibility for traditional comptrollership functions such as financial and contract management, accounting, review, and internal audit. It is expected to provide leadership in financial management and contract management.

The audit found that under the former Commissioner there was a breakdown of basic financial management and control at the OPC. According to the Auditor General:

In short, it did not have the financial controls that would have enabled it to meet even the basic requirements for financial management as stipulated in the *Financial Administration Act*, Treasury Board guidelines, and Receiver General directives. (Paragraph 76)

In the absence of proper financial management and control at the OPC, Treasury Board policies regarding expenditures on travel and hospitality were “consistently ignored.” Spending limits were exceeded, claims were not documented properly and unnecessary travel advances were given to the former Commissioner. Absent or weak financial controls meant that travel and hospitality expenditures were not reviewed properly.

Treasury Board policy on contracting is clear; contracts valued over \$25,000 must be open to competitive tender. Exceptions can only occur under narrowly defined circumstances and must be documented. Departments and agencies submit reports on annual contracting activities to Treasury Board Secretariat, which has, in practice, made them public.

The audit found that contract management at the Office of the Privacy Commissioner was “weak and that the controls over contracting activities were either ineffective or non-existent.” (Paragraph 171)

Treasury Board Secretariat has agreed to the three recommendations made by the Auditor General following her audit. The Secretariat has also announced that it will undertake a number of additional steps, including:

- The identification of all positions not classified in accordance with Treasury Board classification policies, provision of classification advice to OPC and ensuring that the OPC takes timely corrective action for positions found to be misclassified.
- The review of improper hospitality expenditures, improper cash-outs of vacation leave, and ineligible travel expenditures with the interim Privacy Commissioner and ensure that all corrective actions are taken.

The Secretariat has completed a management review of the OPC and provided a report to the Interim Commissioner as the basis for comprehensive change of management practices for the future. It has frozen an amount in the office's budget for the current fiscal year equivalent to the \$234,000 over-expenditure for 2002-2003. The Secretariat is working with the Interim Commissioner to establish the current and prospective financial requirements for the office. It is also working with the OPC to select a new senior financial officer and ensure the appropriate training and development are given to this individual. The Secretariat has indicated that as per the Auditor General's recommendation, it would produce a joint report with the interim Privacy Commissioner on the outcome of these efforts that would be tabled in Parliament by the end of October 2003.

These actions are appropriate but they are specific to the Office of the Privacy Commissioner thus do not address how the Secretariat intends to prevent similar breakdowns in other departments and agencies in the future.

Mr. Judd explained that the Secretariat had failed to take timely corrective actions in the case of the Office of the Privacy Commissioner because it is "one of dozens of small agencies," and because

Agents of Parliament are treated somewhat differently than the rest of the public sector by central agencies of government for reasons having to do with, principally, not wishing to give the appearance that the government is, in some fashion or other impeding their independence.

The Committee is not convinced by this explanation. There is no provision in the *Financial Administration Act* that exempts officers of Parliament and most of small agencies from Treasury Board policies. It is therefore the will of Parliament that these policies apply and it is consequently the responsibility of Treasury Board Secretariat to ensure that they do apply. Furthermore, the Committee is not persuaded that adherence to these policies — and therefore their enforcement — would in any way constitute an infringement upon the ability of officers of Parliament or other small agencies to perform their responsibilities. If this were the case, then it is incumbent upon Treasury Board Secretariat to say so and arrange for formal exemption. The Committee therefore recommends:

RECOMMENDATION 7

That Treasury Board Secretariat monitor compliance, by all entities listed in Schedule I.1 (sections 2 and 3) of the *Financial Administration Act*, with all applicable Treasury Board policies.

RECOMMENDATION 8

That Parliament be informed of any exemption from Treasury Board policies extended to entities listed in Schedule I.1 (sections 2 and 3) of the *Financial Administration Act*, and the reasons for such exemption.

RECOMMENDATION 9

That Treasury Board Secretariat intervene in a timely manner when instances of non-compliance with Treasury Board policies by all those to whom they apply come to its attention and take all necessary corrective action.

RECOMMENDATION 10

That Treasury Board Secretariat report all instances in which it has had to intervene to ensure compliance with Treasury Board policies, naming the entity involved, the nature of the non-compliance, and the corrective measures taken, in its departmental performance report, beginning with the report for the period ending 31 March 2004.

The Committee recognizes that small agencies such as the Office of the Privacy Commissioner pose a relatively smaller risk than departments with numerous programs, many employees, and massive budgets. However, a central lesson learned as a result of this audit is that even small agencies consume significant public resources and that when aggregated the amounts involved are substantial. The Auditor General has recognized this and has created a unit dedicated to these agencies. The Committee has recommended that the Public Service Commission take similar steps and wishes to see Treasury Board Secretariat do the same. The Committee therefore recommends:

RECOMMENDATION 11

That the Treasury Board Secretariat develop a detailed action plan to focus more attention on compliance with Treasury Board policies in smaller departments and agencies, and table that plan with the Committee no later than 31 July 2004.

The Committee is profoundly concerned with the manner in which performance bonuses for senior public servants have been administered. The available information shows that the overwhelming majority of senior executives receive these bonuses, even in agencies such as the Office of the Privacy Commissioner or the Public Service

Commission where there is clear evidence of poor performance. In the case of the Public Service Commission, as noted above, these bonuses were paid out for purposes unrelated to actual performance. These examples represent an abuse of the system.

The Committee was informed that Treasury Board Secretariat is reviewing the performance bonus regime and intended to issue new directives in November 2003. The Committee recommends:

RECOMMENDATION 12

That Treasury Board Secretariat submit a copy of the new performance bonus directives to the Public Accounts Committee upon their completion.

The Committee is also concerned about the absence of transparency surrounding the award of performance bonuses and consequently recommends:

RECOMMENDATION 13

That all departments and agencies be required to include in their departmental performance reports the criteria used to determine the eligibility of executive-level employees for receipt of performance pay, the total number of executives employed, the total number and percentage of those in receipt of performance pay, and the total amount of the bonuses awarded, beginning with the reports for the period ending 31 March 2004.

For several years the Committee has expressed strong reservations about Treasury Board Secretariat's tendency to release policies and then leave the task of monitoring and enforcing them to others. In particular, this is a responsibility that has been left to deputy heads of departments and agencies. This would have meant, with regard to the Office of the Privacy Commissioner, that the former Commissioner was in charge of making sure that Treasury Board policies were obeyed. The flaw in that approach and the undesirable consequences it can produce have now been starkly illustrated.

A case in point is the Treasury Board Secretariat's handling of the government contracting policy. On several occasions, the Auditor General has brought instances of non-compliance with, and abuse of, this policy to the attention of Parliament.¹⁶ The Committee has examined these audits, and found that the contracting policy is good but

¹⁶ See, for example, Report of the Auditor General of Canada, December 1998, Chapter 26, *Contracting for Professional Services — Selected Sole-source Contracts*; Report of the Auditor General of Canada, September and November 1999, Chapter 30, *Sole-source Contracting for Professional Services — Using Advance Contract Award Notices*.

poorly monitored and enforced. In particular, the Committee has noted that Section 5.1 of the Policy defining the role of Treasury Board Secretariat is not fully applied. That Section states that:

Two mechanisms will be used to monitor government contracting activity: departmental audits and an annual report on contracting. Departments will be evaluated on their compliance with contracting policies and the level of competitive contracting.

All departments and agencies awarding contracts and/or amendments, are required to submit an annual report to the Treasury Board Secretariat on all contracting activities.

The Treasury Board Secretariat also conducts periodic reviews of contracts for the services of individuals, including those for less than \$5,000. In addition, departmental auditors need information about contract situations. Contracting authorities are to ensure that contract files include substantiation of the appropriateness of the fees paid and of the need to contract instead of using the staffing process.

In its reports back to the House, the Committee has repeatedly recommended that Treasury Board Secretariat perform the full role that the Policy requires.¹⁷ The Committee made this recommendation again in its Tenth Report to the House of Commons.¹⁸ The Secretariat responded that there is now a “more robust and broad-based system” of monitoring in place composed, in part, of “ongoing dialogue with departments,” monitoring of departmental audit plans, training for contracting specialists, and review of cases at the Canadian International Trade Tribunal. This “more robust” approach appears not to have worked at the Office of the Privacy Commissioner.

At the Office of the Privacy Commissioner, the Auditor General discovered that contract management was “weak and that the controls over contracting activities were either ineffective or non-existent.” (Paragraph 171) The OPC could not provide the Auditor General with a list of all contracts it had awarded over the last three years. Among the files that Mrs. Fraser was able to examine, she found contracts with a total value of about \$2 million that had been awarded without competition. Many of these were subsequently amended for amounts well over \$25,000 — the maximum amount allowed for a sole-source contract — particularly contracts for personal services. (Paragraph 168)

The audit also found several instances of sole-source contracting and splitting of contracts that resulted in the avoidance of competition. Specifically, the audit team found that the OPC had awarded virtually all professional services contracts on a sole-source basis, with 50% issued for \$25,000. At the OPC:

¹⁷ House of Commons Standing Committee on Public Accounts, 28th Report, 1st Session, 36th Parliament, tabled 5 May 1999; 12th Report, 2nd Session, 36th Parliament, tabled 8 June 2000.

¹⁸ House of Commons Standing Committee on Public Accounts, 10th Report, 1st Session, 37th Parliament, Recommendation 5, tabled 20 March 2003.

The contracting officer, who also had other administrative responsibilities, did not receive copies of all contracts and amendments. This made it impossible for the OPC to provide the Treasury Board Secretariat with the accurate number, type, and value of contracts and amendments issued — yearly reporting required of all departments and agencies for accountability purposes. (Paragraph 176)

In conformity with the Contracting Policy, Treasury Board Secretariat compiled annual purchasing activity reports that included data from the Office of the Privacy Commissioner. It is clear that the Secretariat did not challenge the information provided to it by the OPC — information that has now been shown to be unreliable — or conduct any audits of its own, otherwise the shortcomings found by the Auditor General would have been detected sooner. With these matters in mind, the Committee recommends:

RECOMMENDATION 14

That the Treasury Board Secretariat fulfil all of its responsibilities in the area of contracting as set forth under Section 5.1 of the Contracting Policy, heeding in particular to communicate the results to Parliament in its annual contracting activity report.

The Contracting Policy states that the Treasury Board Secretariat will rely on departmental audits as a means of ensuring that the Policy is being complied with. But the Secretariat was aware that a large number of small departments and agencies — including the Office of the Privacy Commissioner — have no internal audit capacity.¹⁹ A study conducted for the Secretariat's Centre for Excellence for Internal Audit by Deloitte and Touche recommended that small departments and agencies have access to central internal audit resources.²⁰ The Committee believes that had there been an internal audit function at the Office of the Privacy Commissioner, many of the problems revealed by the Auditor General — not just in the area of contracting — would have been identified and corrected much earlier. The Committee therefore recommends:

RECOMMENDATION 15

That Treasury Board Secretariat create a pool of resources to make central internal audit services available to small departments and agencies, including the Office of the Privacy Commissioner of Canada.

If there is a weakness in the current internal audit regime, it is that internal audit is placed under the aegis of deputy heads and its initial reporting stages occur within departments and agencies. While final audit results are made public, this happens only after internal departmental review has taken place. This process may work well in the vast

¹⁹ Treasury Board Secretariat, *Assessment of Internal Audit Resource Needs for Small Departments and Agencies*, (http://www.tbs-sct.gc.ca/ia-vi/policies-politiques/needs-besoins/needs-besoins01_e.asp).

²⁰ Ibid.

majority of government entities; it is questionable whether or not it would have under the former Privacy Commissioner. It is therefore incumbent upon Treasury Board Secretariat to not only collect annual contracting activity data from departments and agencies, but to monitor this activity and challenge it when appropriate. The Committee therefore recommends:

RECOMMENDATION 16

That in its action plan to focus more attention on compliance with Treasury Board policies in smaller departments and agencies, Treasury Board Secretariat include measures to improve the monitoring of contracting activities.

Perhaps the most disturbing finding arising from the Auditor General's audit has to do with the abuses that OPC employees were subjected to and the resulting impact on their morale. Public Service employees are provided with the means to raise their concerns about workplace irregularities. Problems with recruiting and hiring practices can be brought to the Public Service Commission. This was done regarding the OPC; nothing of substance resulted.

Concerns involving other forms of wrongdoing are accommodated by the Treasury Board's Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace. Under this policy, a public servant may report problems to either a senior officer designated by a deputy head to receive disclosures, or to the Public Service Integrity Officer.

It is reasonable to ask why these mechanisms were not used. To answer this question, Treasury Board Secretariat commissioned a study in July 2003. The study surveyed employees at the OPC and found that over half of the respondents (56%) were unaware of the existence of the policy. Of those that were, lack of confidence in OPC senior management and fear of reprisal were major factors in dissuading them from reporting wrongdoing. Similar concerns were identified by the Auditor General in her report. (Paragraph 187)

Lastly, the Committee notes that Treasury Board Secretariat had advance warning that OPC employees harboured concerns regarding their ability to report workplace wrongdoing. As part of 2002 the annual public service employee survey conducted by the Secretariat, OPC staff was asked whether they agree that they could "initiate a formal redress process (grievance, right of appeal, health and safety, etc.) without fear of reprisal."²¹ Sixty-nine percent of respondents disagreed, 40% of them strongly. It is to be hoped that the Secretariat act quickly to investigate such warning signals in the future.

²¹ Treasury Board Secretariat, 2002 Public Service Employee Survey, Organizational Report for: Offices of the Information and Privacy Commissioners, Privacy Commissioner, question 83.

PRIVY COUNCIL OFFICE

The Privy Council Office assists the Clerk of the Privy Council Office in providing professional, support to the Prime Minister in his or her role as head of government on all policy and operational issues. This includes advice and support on appointments to certain positions in the government, such as deputy ministers and heads of agencies, and the structure and functioning of government. Under section 53 (1) of the *Privacy Act*, the Privacy Commissioner is appointed by the Governor in Council (Prime Minister) following approval of the appointment by the House of Commons and the Senate.

The audit found that the former Privacy Commissioner had been given “little or no orientation” to public service organizational culture beyond the provision of two information booklets. It also found no evidence that the former Commissioner had been sworn into office. (Paragraphs 189, 190).

In its initial response to the audit, the Privy Council Office indicated that since the autumn of 2002, it has been arranging customized orientation sessions for new heads of agencies and Crown corporations. PCO witnesses added that the Office is working with the Canadian Centre for Management Development to develop a new formal training program designed for Governor-in-Council appointments aimed at increasing their knowledge and understanding of Public Service principles and rules. The Committee believes that this is an appropriate step to take, but notes that in the Privy Council Office’s initial orientation sessions begun in autumn 2002, a number of sessions dealing with subjects directly related to problem areas highlighted by the audit were made optional. The Committee is therefore concerned that these subjects be included in the new training program as required elements, and recommends:

RECOMMENDATION 17

That the Privy Council Office, working with the Canadian Centre for Management Development, include the following subjects as required elements in the new training program for Governor-in-Council appointees: How Government Operates; Business Planning and Expenditure Management; Performance Measurement and Reporting to Parliament; Human Resources Management; and *Access to Information Act* and *Privacy Act* (for organizations subject to these Acts).

Parliament must be informed about the progress of implementing this new formal training program and then receive annual information on its performance. Accordingly, the Committee recommends:

RECOMMENDATION 18

That Privy Council Office inform the House of Commons of the commencement date and content of the formal training program for Governor-in-Council appointees and then, in subsequent performance reports, provide information on the number of appointees trained and any subsequent changes made to course content.

Members of Parliament have shown a great deal of interest in the necessity for Order-in-Council appointees to possess sufficient familiarity with both the culture and internal policies of the Public Service of Canada. The Committee therefore strongly suggests that the Privy Council Office and the Canadian Centre for Management Development extend an invitation to all parliamentarians to attend a briefing and question-and-answer session on the new training program.

While the Committee approves the decision to offer training to Order-in-Council appointees, it has a number of concerns that involve the work of the Privy Council Office itself in the appointment process. The Committee was very surprised to learn that despite the fact that the departure date for the previous Privacy Commissioner was known well in advance, the Privy Council Office did not conduct a search for possible replacements with the consequence that Mr. Radwanski was appointed on an interim basis and there were no alternative candidates for the position to choose from. While the Committee believes that it should not really be necessary to do so, it nonetheless recommends:

RECOMMENDATION 19

That Privy Council Office conduct thorough candidate searches for all officers of Parliament in sufficient advance of vacancy to ensure that there are several candidates to choose from and that each candidate possess the experience and integrity required to qualify for the position.

Parliamentarians have a vital interest in those who become officers of Parliament and must have a meaningful say in their appointment. This role is currently codified in Standing Order 111.1 of the House:

111.1 (1) Where the Government intends to appoint an Officer of Parliament, the Clerk of the House or the Parliamentary Librarian, the name of the proposed appointee shall be deemed referred to the appropriate standing committee which may consider the appointment during a period of not more than thirty days following the tabling of a document concerning the proposed appointment.

The Committee believes that some consideration ought to be given to strengthening this Standing Order and therefore recommends:

RECOMMENDATION 20

That the House of Commons consider amending Standing Order 111.1(1) by deleting the word “may” and replacing it with the word “shall”.

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this report.

A copy of the relevant Minutes of Proceedings ([Meeting No. 24](#)) is tabled.

Respectfully submitted,

John Williams, M.P.
Chair