



**HOUSE OF COMMONS
CANADA**

PASSPORT CANADA: A MODEL TO BE REVIEWED

**Report of the Standing Committee on
Government Operations and Estimates**

Hon. Diane Marleau, MP

Chair

JUNE 2008

39th PARLIAMENT, 2nd SESSION



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THE STANDING COMMITTEE ON GOVERNMENT OPERATIONS AND ESTIMATES

has the honour to present its

FOURTH REPORT

Pursuant to its mandate under Standing Order 108(2) and the motion adopted by the Committee on May 6, 2008, the Committee has studied the improvement of Passport Canada's services in the regions of Canada and has agreed to report the following:

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PASSPORT CANADA: A MODEL TO BE REVIEWED

INTRODUCTION

For a number of years, Members of Parliament have played an important role in the issuance of passports in Canada. Their role is even greater in regions that do not have a Passport Canada office nearby. Despite the expertise that some MPs' offices have acquired over the years, they do not have the resources to fill the gaps in the network of Passport Canada offices. Moreover, the actual customer service network provided by Passport Canada imposes an undue burden on certain MPs and their constituents. Although citizens may be aided by various government services and MPs' offices, the Committee believes that security and the issuance of passports remain the fundamental responsibility of Passport Canada. As part of its study of the geographic distribution of federal jobs and services, the Standing Committee on Government Operations and Estimates wishes to make recommendations to enable Passport Canada to fully serve Canadians in all parts of the country.

STATUTORY FRAMEWORK OF PASSPORT CANADA

Background

On May 13, 1893, the British Privy Council Committee issued an order authorizing the Government of Canada to issue Canadian passports in the same way as British passports were issued.¹ When war broke out, in 1939, the US government announced that Canadians would need a passport and visa to cross their borders. At that time, about 500,000 Canadians traveled to the United States every year without any travel documents. Up until 1947, two kinds of travel documents were issued in Canada: one for British subjects and the other for naturalized citizens. As of July 1948, the Government of Canada issued passports to Canadian citizens only.²

At the recommendation of the Secretary of State for Foreign Affairs, the Governor in Council established, on January 9, 1973, the new rules for the issuance of passports in the *Canadian Passport Regulations*. On June 4, 1981, the Governor in Council amended this instrument, which became the *Canadian*

¹ *Kamel v. Canada* (Attorney General), 2008 FC 338, par. 26.

² Passport Canada, *History of Passports* - <http://www.ppt.gc.ca/pptc/hist.aspx?lang=eng>.

Passport Order.³ This order set out the administrative details of the issuance of passports.⁴ This order was amended on December 10, 2001, making it compulsory for an individual passport to be issued to children under the age of sixteen. On September 1, 2004, this order was amended again to include confirmation of the Minister's authority to refuse or revoke a passport in the interest of the national security of Canada or of other countries.⁵

Legal status of Passport Canada

Passport Canada is a federal agency falling under the Department of Foreign Affairs and International Trade, whose enabling legislation is an order in council. The *Canadian Passport Order* stipulates that Passport Canada is responsible for issuing, refusing to issue, revoking, withholding, recovering and the use of passports.⁶ The legal status of Passport Canada is special in that the executive order that created this government agency is not based on enabling legislation but rather on the royal prerogative, which extends to the executive branch.

The royal prerogative of the executive branch is the residue of Her Majesty's discretionary or arbitrary power. This residual power encompasses Parliament's areas of jurisdiction that are not covered by current laws.

The royal prerogative is comprised of the residue of miscellaneous powers, rights, privileges, immunities and duties accepted under our law as vested in Her Majesty and exercised by the Governor in Council acting on advice of Ministers. The prerogative power is subject to the doctrine of parliamentary supremacy and Parliament, by statute, may withdraw or regulate the exercise of that power.⁷

Treaties and declarations of war, the appointment of the prime minister and other ministers, Indian reserves and honorary titles are examples of the exercise of the royal prerogative.

³ SI/81-86.

⁴ *Kamel v. Canada* (Attorney General), 2008 FC 338, par. 27.

⁵ *Ibid*, par. 28 and 29.

⁶ *Canadian Passport Order*, SI/81-86, s.2.

⁷ *Vancouver Island Peace Society v. Canada* (Trial Division), 1993 CanLII 2977 (FC), [1994] 1 C.F. 102, par.4, cited in *Kamel v. Canada* (Attorney General), 2008 FC 338, par. 50.

***The Canadian Charter of Rights and Freedoms*⁸ and the royal prerogative**

The exercise of the royal prerogative by the executive branch in Canada is subject to restrictions set out in the *Canadian Charter of Rights and Freedoms* (hereafter the Charter).⁹ According to the Supreme Court of Canada, Cabinet decisions made pursuant to legislation or as an exercise of the royal prerogative are subject to Charter scrutiny.¹⁰ It should be noted in this regard that the Federal Court of Canada recently struck down section 10.1 of the *Canadian Passport Order*. This provision, which authorized the Minister to refuse to issue or to revoke a passport in circulation in the interest of the national security of Canada or of other countries, was deemed too vague in its terminology.¹¹ That being said, the same order clearly states that it does not in any way limit the royal prerogative of Her Majesty as regards passports.

PASSPORT CANADA AS A SPECIAL OPERATING AGENCY

In 1990, Passport Canada became a Special Operating Agency (SOA). It is one of the first five Special Operating Agencies set up by the Government of Canada to improve services to Canadians. Passport Canada funds its operations entirely from the fees charged for passports and other travel documents and must generate sufficient revenues to meet expenditures. As an SOA, Passport Canada has greater management flexibility to achieve results. In exchange for its increased autonomy, Passport Canada is accountable for meeting high performance standards.¹²

SOAs are not legal entities: it is not necessary to enact legislation to create an SOA. They are part of the department to which they belong. Unlike other departmental services though, SOAs operate under a written agreement concluded with the department and suited to their needs. This agreement (which includes a framework document and a business plan) addresses the results and service levels expected, the latitude given and the resources to be made available to the SOA to carry out its mandate.¹³ The framework document

⁸ *Constitution Act, 1982* (UK), which is Schedule B to the *Canada Act, 1982* (UK), 1982, c. 11.

⁹ *Operation Dismantle Inc. v. Canada*, 1985 CanLII 74 (S.C.C.), [1985] 1 SCR 441.

¹⁰ *Ibid*, par. 50.

¹¹ *Kamel v. Canada* (Attorney General), 2008 CF 338, par. 147 – The Attorney General of Canada was granted six (6) months by the Court to draft a new provision to replace section 10.1 of the Order.

¹² Passport Canada, *Our Agency* - <http://www.ppt.gc.ca/pptc/index.aspx?lang=eng>.

¹³ Treasury Board Secretariat of Canada, *Becoming a Special Operating Agency*, General Description - http://www.tbs-sct.gc.ca/pubs_pol/opepubs/TB_B4/bsoa-doss1_a.asp#3.

represents the SOA's "constitution" or "operating charter." Treasury Board must approve the framework document before the agency may be designated an SOA.¹⁴

The long-term objectives of SOAs such as Passport Canada include improving customer service, monitoring service quality, increasing client consultation and promoting cost-effective and more businesslike service delivery.¹⁵

PASSPORT CANADA AND FEES CHARGEABLE FOR PASSPORT SERVICES

Passport Canada does not receive an annual parliamentary appropriation, and the service is supported by applicants rather than taxpayers. Passport Canada operates under a revolving fund¹⁶ that allows it to accumulate an annual surplus or deficit of up to \$4 million. The revolving fund is intended to provide a funding mechanism which has a business orientation (functioning like a line of credit) for units providing goods or services on a commercial or quasi-commercial basis.¹⁷

The fee charged by Passport Canada for the issuance of a passport to a Canadian citizen residing in Canada is \$87, including a consular fee of \$25. Passport Canada thus receives \$62 for each passport issued while the actual production cost is \$58.41 for a 24-page passport. Moreover, Passport Canada anticipates that the cost of producing a passport will exceed its revenues from fees charged within the next fiscal year.¹⁸

The Chief Executive Officer of Passport Canada, Gérald Cossette, who appeared before the Committee on April 29, 2008, explained the legal framework for the fees charged as follows:

¹⁴ Treasury Board Secretariat of Canada, *Becoming a Special Operating Agency*, Annex B (typical content of a framework document) - http://www.tbs-sct.gc.ca/pubs_pol/oepubs/TB_B4/bsoa-doss1_e.asp#24.

¹⁵ Treasury Board Secretariat of Canada, *Becoming a Special Operating Agency*, Rationale - http://www.tbs-sct.gc.ca/pubs_pol/oepubs/TB_B4/bsoa-doss1_a.asp#3.

¹⁶ *Revolving Funds Act*, RSC 1985, c. R-8.

¹⁷ Treasury Board Secretariat of Canada, *Guide on Revolving Funds* - http://www.tbs-sct.gc.ca/fin/sigs/Revolving_Funds/rfpai1_a.asp#_Toc504883038.

¹⁸ Passport Canada, *Responding to Change: Annual Report 2006-2007*, Ottawa, 2007, p. 16.

The fee structure is regulated by various frameworks, including the User Fee Act.¹⁹ In accordance with that legislation, Passport Canada cannot increase fees without first holding public consultations. We cannot unfreeze the cap imposed on us. There are also various chapters of the Financial Administration Act²⁰ and the Canadian Passport Order. The fees imposed on Canadians are set according to a series of legislative provisions.

Thus, it appears that the legal framework surrounding the fees charged is relatively restrictive.²¹ The passport fee of \$62, which Passport Canada uses to fund its operations, barely covers its operating costs.

The Auditor General's May 2008 Report examines the issue of consular fees and notes the following.

Our recalculations and the Department's showed that more was collected in consular fees than the cost of providing the related services. This means that the Department is at risk of appearing to have not determined the charge for the fee in a way that was consistent with a view to cost recovery, as its legislation requires.²²

ORGANIZATION OF SERVICES AT PASSPORT CANADA

Network of Passport Canada offices

Passport Canada issues passports in person at 33 regional offices in Canada. Passport Canada also provides services through a central office that receives and processes applications submitted by mail in Canada and the United States. Non-Canadians must go through a head office in Gatineau, Quebec, for identity certificates and travel documents. In February 2008, Passport Canada

¹⁹ SC 2004, c.6.

²⁰ RSC 1985, c. F-11.

²¹ The Standing Committee on Public Accounts of the House of Commons expressed, in a recent report, the fear that Passport Canada could be forced to spend its limited financial resources on service issues, thereby causing it to neglect significant investments in measures to enhance security. House of Commons, Standing Committee on Public Accounts, Report 9, Chapter 5, Passports Services – Passport Canada of February 2007 Report of the Auditor General of Canada, March 2008, 39th Parliament, 2nd Session, p. 17.

²² Office of the Auditor General of Canada, 2008 May Report of the Auditor General of Canada, Chapter 1—Management of Fees in Selected Departments and Agencies.

announced the opening of a satellite passport office in Kelowna, British Columbia. Canadians will now have access to a passport office in all census metropolitan areas in Canada except for the agglomerations of Abbotsford, Kingston, Moncton, St. John,²³ Sherbrooke, Sudbury and Trois-Rivières. That being said, Passport Canada remains underrepresented in many regions of Canada, especially in northern and rural areas such as Northeastern Ontario.

Receiving agents

Appearing before the Committee on April 29, 2008, Passport Canada recalled that citizens may also receive a limited range of passport services through receiving agent outlets (Service Canada and Canada Post offices). The receiving agents program was created to facilitate the passport application process by improving access to passport services for all citizens. These service points allow residents in urban, rural and northern communities to receive a number of passport services.

In the past twelve months, Passport Canada, along with Service Canada, added 65 new service points in Canada. With the receiving agents, the number of passport service points in Canada increased from 30 to 190 within five years. There are now 101 Service Canada receiving agents and 56 Canada Post receiving agents.

The use of receiving agents is at the heart of Passport Canada's service model, which relies on the infrastructure of its business partners to improve access to its services while minimizing costs. Passport Canada maintains that this strategy allows it to keep the passport fee at \$62 per adult. In the coming years, Passport Canada expects to have more Service Canada offices that can provide passport services, including a broader range of services.

Criteria for opening new Passport Canada offices

Under Passport Canada's current business model, the decision to open a new office is based on volume and cost-effectiveness. Since close to 80% of Canadians still submit their passport applications in person, volume is essentially measured by outlet visits. Passport offices have accordingly been located where volume was the highest. There must also be a direct relationship between the

²³ Citizens in New Brunswick are served by the Fredericton office, which is 180 km from Moncton and 110 km from Saint John.

number of applications processed on site and the cost of operating a passport office. The evidence heard suggests that an averaged- sized office must be able to process from 45,000 to 50,000 passports per year to cover its operating costs. The decision to open a new office must of course also take into consideration the cost of the new infrastructure required.

Finally, before opening new offices, Passport Canada seeks to maximize the processing capacity of its current network. Some offices remain cost-effective by processing the excess volume from other offices.

Transition to electronic services

Passport Canada is gradually making the transition to a high-tech model in order to one day process passport applications over the Internet. This technological shift would considerably reduce the need for or usefulness of passport applications made in person and could bridge the gap between urban and rural service standards. An electronic passport pilot project will begin in 2009 and, as announced in the 2008 budget, an electronic passport to be valid for 10 years will be introduced internationally in 2011. Passport Canada hopes these initiatives will allow it to reduce processing times and operating costs.

As Passport Canada gradually shifts from physical service to electronic service delivery methods, the location of passport offices will no longer be so important, suggested Gérald Cossette.²⁴ The transition to electronic services will make it possible to completely dissociate the origin of the passport application from the location of the processing centre. Eventually, the network of Passport Canada offices could be quite different from what it is today. Some countries have already implemented a system enabling passport officers to receive applications over the Internet, regardless of where the application is submitted.

MPS' OFFICES AND THE PASSPORT CANADA MODEL

Essential contribution by MPs' offices

- **Processing of passport applications by MPs' offices**

²⁴ Standing Committee on Government Operations and Estimates, *Evidence*, Mr. Gérald Cossette, Chief Executive Officer, Executive Office, Passport Canada, Tuesday, April 29, 2008.

For over 30 years, Passport Canada has received passport applications submitted by MPs' offices on behalf of constituents. Yet this operating method is not covered by an official agreement. In 2003-2004, Passport Canada processed 65,700 applications submitted this way. These figures obviously reflect how things worked before the United States required all travellers to show a passport. The service standard for applications forwarded by an MP's office is the same as for those submitted by mail. MPs may use email or a special telephone line to enquire about the status of the applications they submit. Passports are delivered by courier to the MP's office or may be mailed to the applicant's home address. Passport Canada maintains that the cost per passport for this centralized service is lower than the cost for mail service, since applications submitted through an MP's office contain fewer errors.²⁵ The refusal rate for passport applications submitted by mail is between 20% and 24%, primarily because of the poor quality of photos and missing documents. By comparison, only 8% of applications forwarded by MPs' offices cannot be processed without obtaining additional information.²⁶

MPs whose constituencies do not have a passport office or are far away from one receive dozens of passport applications every week. Processing passport applications is one of the main activities of some MPs' offices. These MPs spend a significant part of their office resources on processing passports, performing Passport Canada's role and taking away from other activities. At some constituency offices, two or three people work regularly on processing passport applications. As a result, some MPs have to reduce what they pay their staff in order to have more workers in the office to process passport applications.

Last year we received, verified and safely returned 10,293 passports to Passport Canada.²⁷

Despite Passport Canada's assurances that the service standard for in-person service offices and applications mailed in are exactly the same and although Passport Canada has improved its handling of applications that are mailed in, the situation persists. For security reasons, many people are reluctant to send their identification documents through the mail and continue to go through their MP's office to submit their passport application.

²⁵ Report of the Auditor General of Canada, April 2005. Chapter 3: Passport Services – Passport Canada. Page 4.

²⁶ Standing Committee on Government Operations and Estimates, Evidence, Ms. Jody Thomas, Chief Operating Officer, Operations Bureau, Passport Canada, April 29, 2008.

²⁷ Serge Cardin, Member for Sherbrooke. The information provided to the Committee by Passport Canada shows that 37,820 passport applications were submitted by citizens residing within a 50-mile radius of the City of Sherbrooke in 2007-2008.

- **Urgent and express passports**

In regions without a passport office and especially those several hours from large urban centres, urgent and express passports are even more problematic. It is easy to imagine special circumstances when a person may need a passport at the last minute. In such cases a wait of 15, 20 or 30 days is unacceptable. That is when constituents sometimes call on their MP's office.

We always have situations where we need to get a passport turned around, and the only thing we can tell them is to take the 12-hour bus ride to Toronto to get their passport.²⁸

Appearing before the Committee on April 29, 2008, Ms. Jody Thomas²⁹ noted what important partners MPs are for Passport Canada in the case of urgent and express passport applications.

That being said, for security reasons, Passport Canada requires urgent and express passport applicants to submit their applications in person.

As for emergency services in regions without a passport office, Passport Canada is working with Service Canada to expand the services the latter can offer. Service Canada could be authorized to authenticate documents. The electronic transmission of documents authenticated by Service Canada would make it possible to process urgent and express passport applications much more quickly, without citizens having to travel great distances.

The Committee has learned that Passport Canada has also concluded an arrangement with the Canada Border Services Agency (CBSA) allowing persons arriving at an airport to board a flight to pick up their passport at the airport and have their identity confirmed by a CBSA officer so they can board the flight³⁰.

²⁸ Charlie Angus, Member for Timmins—James Bay.

²⁹ Ms. Jody Thomas, Chief Operating Officer, Operations Bureau, Passport Canada.

³⁰ Standing Committee on Government Operations and Estimates, Evidence, Mr. Gérald Cossette, Chief Executive Officer, Executive Office, Passport Canada, April 29, 2008.

Service agreements with receiving agents

As indicated, Passport Canada is focusing on strengthening its partnership with Service Canada to expand its network of service points and reach a greater number of clients without having to invest in costly infrastructure. In the past two years or so, its service agreement with Service Canada has operated as a pilot project. Service Canada has therefore covered all the costs of providing these services thus far. To make this service agreement official and to enhance it, Passport Canada has taken the necessary steps to have the *Canadian Passport Order* amended in order to confirm that Service Canada is authorized to provide services on its behalf. The Committee has learned that Passport Canada is negotiating with Service Canada regarding the details of the services to be provided, the costs involved and the funding that Service Canada will require. In addition to being the receiving agent, Service Canada will be able to authenticate documents accompanying passport applications. Passport Canada will fund the services to be provided. Moreover, Gérald Cossette told the Committee that Service Canada employees have already begun training so as to considerably increase the number of centres where documents can be validated.

This proposed partnership between Passport Canada and Service Canada has raised a number of questions among Committee members. Some questioned why Passport Canada should call upon Service Canada instead of using its own services to increase the number of service points, noting that Service Canada would be billing for the services it provides. While they recognized the economies of scale that could be achieved as regards infrastructure for the provision of federal services, some Committee members pointed out that Canadian passports will now be processed by employees of two different organizations.

Moreover, some MPs expressed concern regarding access to the services offered by Service Canada, noting that this organization has made a significant shift away from personalized service. At some Service Canada centres, services are obtained by making an appointment or by sending an email. Under these circumstances, Service Canada is not seen as a viable alternative for providing good service to members of the public, who then turn to their MPs to obtain the level of service expected.

The issue of services being provided by Canada Post receiving agents was even more puzzling to some MPs, since citizens have to pay an extra \$15 under this method. As a result of these additional fees, citizens would rather approach their MP, increasing the volume of requests going through constituency offices.

Wages and turnover rate at Passport Canada

During its work, the Committee learned that Passport Canada is facing significant human resources challenges. In particular, there is a high turnover rate because federal agencies such as the Canada Border Services Agency, Citizenship and Immigration Canada and the Canadian Firearms Centre pay their employees better. The positions are similar³¹ to those at Passport Canada, but the pay is better. According to Chief Executive Officer Gérald Cossette, Passport Canada is an incubator for larger federal security agencies. Many people take positions at Passport Canada, are trained and then recruited by the larger agencies.

CONCLUSION AND RECOMMENDATIONS

A couple of years ago a new passport office opened within my own region, the Durham region [...]. So that's appreciated, I know, within my constituency. Those new offices do make a difference; they're important.³²

For the majority of MPs, passport enquiries are part of their daily work at their constituency office. As a result, they are clearly in the best position to see the positive impact of having a passport office nearby. Having a passport office nearby reduces the number of complaints lodged with MPs' offices and the volume of work created by passport problems. In this era of globalization of trade and with the requirements imposed by the Western Hemisphere Travel Initiative (WHTI),³³ passports have become an essential document for Canadians and the process of obtaining one should be simplified. The responsibility should not fall to MPs' offices, which should only become involved under special circumstances.

³¹ These agencies have a number of positions with similar duties to those performed by Passport Canada employees in terms of verifying applicants' identity and issuing permits and documents.

³² Mark Holland, Member for Ajax-Pickering.

³³ The Western Hemisphere Travel Initiative (WHTI) is a US law that requires all travellers from the western hemisphere including American and Canadian citizens to present a valid passport or other approved secure document when travelling to, through or from the United States. The WHTI is being implemented in stages by mode of transportation. The new document requirements were implemented in January 2007 for air travel to or through the United States. The travel document requirements for persons entering the United States by land and water will be fully implemented on June 1, 2009. From that date on, Canadian citizens will be required to present one of the following documents set out in the WHTI to enter, transit through or return to the United States when travelling by land: a valid passport, a NEXUS card, a Free and Secure Trade card (FAST card); an enhanced driver's licence (EDL) (in provinces and territories where EDL programs have been implemented).

The Committee recognizes that the gradual transition to electronic services could ultimately change Passport Canada's client service infrastructure requirements. That being said, the Committee is of the opinion that all Canadians have the right to obtain equitable service from the federal government and that, as Canadians change their way of doing things, Passport Canada will have every opportunity to re-evaluate its service delivery methods, including its partnership with Service Canada. The Committee therefore recommends:

Recommendation 1

That Passport Canada address, as quickly as possible, the disparities between urban, rural and northern regions in counter service for urgent and express passports.

Recommendation 2

That in the framework of its partnership with Service Canada, Passport Canada formulate and make public an action plan on training Service Canada employees and provide them the authority to receive, track and follow-up on passport applications.

Recommendation 3

That Passport Canada develop and table to Parliament a detailed action plan in anticipation of the increased demand for passports when the WHTI comes into effect in June 2009.

Assistance to MPs' offices

The Committee recognizes the importance of security measures and strict standards for the issuance of passports. It is nevertheless convinced that the high refusal rate of passports has an impact on the cost of service delivery. The Committee encourages Passport Canada to continue its efforts to reduce its refusal rate. In particular, it commends its efforts to facilitate the use and

understanding of passport application forms, which resulted in a refusal rate of just 2% for passport renewal applications.

*I just got an update today that this is one of our greatest frustrations. I know in my office we get a hundred requests a week, and my staff said it was very, very helpful to have a live person. They said they can no longer get a live person on the MP helpline.*³⁴

The Committee is of the opinion that Passport Canada should make additional efforts to clarify instructions and better inform Canadians on how to prepare the relevant documents. Finally, MPs are of the opinion that the partnership between Passport Canada and their offices should be strengthened and regard this as a sound investment. Although there is assistance available to MPs' offices at the present time, the Committee considers that it needs to be improved. The Committee therefore recommends:

Recommendation 4

That Passport Canada improve the assistance provided to MPs by, among other things:

- a) developing clear service standards with MPs' offices, including transparent response times;**
- b) bolstering the services designed to support MPs' offices; and**
- c) establishing a mechanism for ongoing consultation and dialogue with MPs' offices.**

³⁴ Patrick Brown, Member for Barrie.

REQUEST FOR GOVERNMENT RESPONSE

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 ([Meetings Nos. 26, 32, 34 and 35](#)) is tabled.

Respectfully submitted,

Hon. Diane Marleau, MP
Chair