



HOUSE OF COMMONS
CANADA

**CHAPTER 1, MANAGEMENT OF FEES IN
SELECTED DEPARTMENTS AND AGENCIES OF
THE MAY 2008 REPORT OF THE AUDITOR
GENERAL OF CANADA**

**Report of the Standing Committee on
Public Accounts**

**Hon. Shawn Murphy, MP
Chair**

MAY 2009

40th PARLIAMENT, 2nd SESSION



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THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

has the honour to present its

TENTH REPORT

Pursuant to its mandate under Standing Order 108(3)(g), the Committee has studied Chapter 1, Management of Fees in Selected Departments and Agencies of the May 2008 Report of the Auditor General of Canada and has agreed to report the following:

INTRODUCTION

The Canadian federal government charges the public and industry diverse fees, covering such things as licences for the manufacture of pharmaceuticals and permits for newcomers to study or work in Canada. Fees differ from taxes, as the charge is supposed to be linked to what the individual or organization paying the fee receives. There are two categories of fees. The first category includes fees for goods, services, or the use of a facility, such as a park or campsite. For these fees, the amount charged is normally intended to recover all or part of the cost to the government of providing that good, service, or use of a facility. The second category of fees includes those for rights or privileges, which mainly include authorization to use publicly owned or managed resources, such as a commercial fishing licence. The objective for these fees is to earn a fair return for Canadians from the rights or privileges granted by the government.

During the 2006–07 fiscal year, federal departments and agencies publicly reported on some 220 fees in their departmental performance reports, generating about \$1.9 billion in revenues. As fee payers are increasingly challenging the validity of fees through the courts, it is vital that the federal government has the appropriate systems in place to effectively manage its many fees.

In May 2008, the Office of the Auditor General (OAG) tabled an audit on the management of fees. As the Committee wants to ensure that the government's 220 fees are well managed, it met with a number of departmental officials on May 27, 2008 with respect to this audit.¹ From the Office of the Auditor General, the Committee met with Clyde MacLellan, Assistant Auditor General; Douglas Timmins, Assistant Auditor General; and Rona Shaffran, Director. Appearing on behalf of Treasury Board Secretariat were: Rodney Monette, Comptroller General of Canada; and John M. Morgan, Assistant Comptroller General. The Department of Foreign Affairs and International Trade was represented by: Stephen Rigby, Associate Deputy Minister; William R. Crosbie, Assistant Deputy Minister; and Francine Côté, Director General.

¹ House of Commons Standing Committee on Public Accounts, 39th Parliament, 2nd Session, Meeting 34.

BACKGROUND

The authority and control framework for fees includes departmental legislation and regulations, the *Financial Administration Act*, the *User Fees Act*, and the Treasury Board *Policy on Service Standards for External Fees*. The latter two are particularly relevant because they require the setting of and reporting on performance standards.

In 2004, Parliament passed the *User Fees Act*. In order to introduce new fees or increase current fees, the Act requires departments and agencies to:

- consult with stakeholders;
- present a proposal to Parliament for review;
- respond to complaints;
- publicly report on fee cost, performance standards, and performance information; and
- reduce fees if service standards are not achieved.

At the time of the hearing in May 2008, only four fee proposals had been presented to Parliament under the Act. The above sections of the Act do not apply to the vast majority of the 220 fees publicly reported in departmental performance reports, which were in place before the Act was passed. In these cases, departments and agencies are required to submit a listing of fees to Parliament.

The Treasury Board's *Policy on Service Standards for External Fees* requires departments and agencies to set measurable and relevant service standards for fees in consultation with stakeholders. These service standards and a summary of the stakeholder feedback are to be reported in the departmental performance reports.

In order to determine the extent to which federal government departments and agencies are adequately managing fees and respecting the established control framework, the OAG conducted an audit of whether departments had appropriate systems and practices to establish costs for fees and to determine the amount to be charged for the selected fees. The audit also examined the role of the Treasury Board Secretariat with respect to these fees—whether the Secretariat provided departments and agencies with appropriate policy direction and guidance relevant to fees.

The audit did not examine all 220 fees but examined thirteen selected fees from the following five departments and one agency:

- Citizenship and Immigration Canada,
- Fisheries and Oceans Canada,
- Foreign Affairs and International Trade Canada,
- Health Canada,
- Industry Canada, and
- Parks Canada Agency.²

The audit makes 8 recommendations, and the Committee supports all of these recommendations. Nonetheless, there are several issues that the Committee would like to comment upon.

ROLE OF THE TREASURY BOARD SECRETARIAT

In order to determine at what level to set a fee, departments and agencies should have a comprehensive understanding of the full costs related to the goods, services, or use of a facility associated with the fee. In its audit, the OAG expected departments and agencies to have put in place appropriate systems and practices to determine either the full cost of providing goods, services, or the use of a facility; or the value of a right or privilege. The OAG also expected them to have done a comprehensive analysis of the amount charged, and of other factors that could affect the fee, and to periodically review that analysis. Such an analysis could be important to demonstrate a fee's validity if it is ever challenged before the courts.

The audit found that the ability of departments and agencies to determine the full costs of goods or services varied. Some departments had a financial system to match the full costs to the fees received, while others did not know the full costs or miscalculated the full costs. Additionally, the audit found that the amount charged was based on a complete and up-to-date comprehensive analysis for only six of the twelve fees examined. The amount charged for the six other fees were based on other factors and not on cost or value.

The substantial inconsistency amongst departments and agencies in their management of fees suggests that the current guidance, direction and oversight are insufficient. Indeed, the Comptroller General said to the Committee, "I think we need

² Office of the Auditor General of Canada, May 2008 Report, "Chapter 1—Management of Fees in Selected Departments and Agencies."

some stronger oversight, review and coordination with these departments.”³ The OAG concluded that the Treasury Board Secretariat needs to update and improve its guidance. The Comptroller General outlined the actions that the Secretariat has taken and will be taking to address the OAG’s recommendations:

Firstly, in March 2008 we effectively fulfilled one recommendation by releasing a revised guide to costing. Our plan for the next period is to promote its use across government. Secondly, by November 2008 we will provide the President of the Treasury Board with an analysis of challenges in implementing the *User Fees Act*. Thirdly, by March 2009 we will update our guidance to departments in setting fees. And fourthly, over the course of the upcoming months we will work with the six audited departments regarding the Auditor General’s recommendations directed their way. We will also engage other departments.⁴

While these actions of the Secretariat will likely help, they will not be as effective as a policy. The failure to have a policy means that the approach to the management of fees is piecemeal, ad hoc, and at times inconsistent. Guidance is not mandatory and the recently released *Guide to Costing* is very general and not clearly directed to the management of fees. The Comptroller General told the committee that his first instinct is to use guides in order to limit the number of policies. However, the hands-off approach of the Secretariat has clearly not worked. It was only after the OAG conducted an audit that the Secretariat became aware that there was a problem and sought to meet with the departments concerned.

The Secretariat did have a policy, which was first implemented in 1989, and updated in 1997 and 2003. This policy addressed all aspects of fees, from establishing costs to determining the charge for a fee, as well as service standards and performance information. However, after the *User Fees Act* became law, the policy was rescinded because the Secretariat believed that certain provisions in the Act were in conflict with the policy. It would seem, though, that the appropriate response would be to amend the policy, not rescind it entirely, especially as the *User Fees Act* pertains primarily to new fees or fees that are increased.

While John Morgan, Assistant Comptroller General, noted that the Secretariat will be developing a policy on resource management, it is not clear how this policy will

³ Meeting 34, 11:35 AM.

⁴ Meeting 34, 11:10 AM.

incorporate issues specific to the management of fees. Working groups and guides for fees are certainly useful, but they cannot be a substitute for a mandatory policy with accountability provisions for failing to adhere to the requirements of the policy. If departments do not have full knowledge of costs related to fees, do not base fees on comprehensive analyses, or miscalculate the costs associated with fees, then there is a real risk that Canadians will be overcharged for the services they receive from government. Yet, under the current regime, the only consequence for failing to manage fees adequately is the possibility of court action. The Committee believes that a coherent, comprehensive policy for the management of fees by federal departments and agencies is necessary. Hence, the Committee recommends that:

RECOMMENDATION 1

The Treasury Board Secretariat develop and present to the Treasury Board a comprehensive policy on the management of fees; and that the Secretariat report progress on this initiative to the Public Accounts Committee by 30 September 2009.

PERFORMANCE REPORTING

The Treasury Board *Policy on Service Standards for External Fees* requires departments and agencies to set and report measurable service standards for all external fees. The 2004 *User Fees Act* requires reporting to Parliament on costing, service standards, and performance for new fees or for fees that are increased.

The audit found that service standards were established for ten of the fees examined.⁵ However, some organizations were confused about how to establish service standards for rights or privileges. The audit also found that public performance reporting on eight fees was not complete, in part because some departments were not able to report on the costs related to fees.

For two of the fees examined, the audit found that departments did not report complete or sufficient financial and non-financial performance information, including information about service standards.⁶ Specifically, Fisheries and Oceans Canada does not report on the performance of its commercial fish licensing fees, and while Foreign

⁵ Chapter 1, paragraph 1.64.

⁶ Chapter 1, paragraph 1.70.

Affairs and International Trade Canada has approved standards for the consular services fee and tracks performance against some of these standards, it does not report performance against any of these standards.

The Comptroller General told the Committee that:

Since 2003-2004, TBS has conducted an annual review of the user fee information departments reported in their Departmental Performance Report. This past year we have included the results of our reviews in the Management Accountability Framework exercise, as part of the department's rating in relation to financial management and control.⁷

However, the audit findings noted above indicate that this action is not very effective as departments are not publicly reporting sufficient information. The Comptroller General also said, "Our job is to make sure that we're pointing out who isn't [following the reporting requirements] and giving some visibility to that. I'll very much commit to do that and try to give it that visibility."⁸ Yet, the 2006-2007 Management Accountability Framework assessments for Fisheries and Oceans Canada and Foreign Affairs and International Trade Canada do not make reference to the adequacy of user fee information. Instead, both departments received a rating of "opportunity for improvement" for the extent to which their public performance reports integrate credible performance information.

More importantly, there is no requirement for departments to publicly report the full costs and performance information related to fees. The *User Fees Act* only applies to new fees or fees that are increased, and the *Policy on Service Standards for External Fees* only requires reporting on service standards, not performance against those standards. While the Treasury Board Secretariat recommended in its 2006-2007 *Guide to the Preparation of Departmental Performance Reports* that departments report on the full costs, service standards and performance results related to fees, the audit results make it clear that departments are not consistently following that recommendation.

The *Policy on Service Standards for External Fees* states, "those who pay fees for government services are entitled to fundamental information on the services being provided and any associated service standards." The Committee agrees, but it also

⁷ Meeting 34, 11:10 AM.

⁸ Meeting 34, 12:10 AM.

strongly believes that public reporting should include performance results against the service standards. Indeed, the Committee fails to understand why this is not part of the current Policy. Parliament and the public should be provided with sufficient information to monitor the government's performance in the delivery of services for which a fee is charged. While the OAG recommended improvements in information reported by the departments examined, the Committee believes that all federal departments and agencies should provide more complete public reporting of financial and non-financial performance. Consequently, the Committee recommends that:

RECOMMENDATION 2

The Treasury Board amend the *Policy on Service Standards for External Fees* to require departments and agencies to publicly report annually on the full costs, revenues, service standards, and performance results for all external fees; and that departments and agencies be required to regularly carry out and report on public consultations with those affected by fees.

CONSULAR SERVICES FEE

In 1995, Foreign Affairs and International Trade Canada began charging a consular services fee for all adult passports. The activities associated with this fee provide core services for Canadians abroad who find themselves in need of consular assistance as a result of accident, illness, natural disaster, civil unrest, etc. The consular services fee was approved on the condition that the Department fully disclose the costs and associated revenues in its performance report, and adjust the fee to ensure that revenues did not exceed costs.

Stephen Rigby, Associate Deputy Minister, described the Department's approach to the fee:

The original approval for the consular services fee required that the cost of the program to the department and the revenues from the fee would be reviewed annually. If there was a significant difference between the costs and the revenues, we would seek Treasury Board's approval to adjust the fee. ... Based on our original assumptions at that time and as reported in

the departmental performance reports, we believed the costs exceeded the revenues generated by the fee.⁹

However, the audit found that the methodology employed by Foreign Affairs and International Trade Canada to calculate the costs associated with the fee incorrectly presented a deficit position for the fee. Based on the OAG's recalculation, the Department overstated the costs and instead should have reported a trend of annual surpluses from the fee. While the Department presented a different calculation, it did concur that there was a trend of surpluses from the fee. Though, the Department also maintains that the fee shows a cumulative deficit over the past five years, due to the costs associated with the emergency evacuation of citizens from Lebanon.

If the costs from the evacuations are set aside, then it is clear that Foreign Affairs and International Trade Canada has been overcharging Canadians for the consular services fee. Indeed, Mr. Rigby estimated that Canadians were overcharged between \$2 to \$8, depending on the year. This represents a significant proportion of a fee that is \$25. As a result the Department may not have been acting within its legislative mandate to collect fees with a view to cost recovery, since a fee that exceeds the associated costs could be declared an unlawful tax.

While the Committee realizes that the overpayments were due to unintentional miscalculations by Foreign Affairs and International Trade Canada, the Committee is concerned that this example demonstrates how departments and agencies may be exposing the government to the possibility of litigation. Indeed, there are currently several class action lawsuits against the government for overpayments for user fees. It is clear that departments and agencies must be very careful when setting user fees and ensure that costs are accurately forecasted and calculated.

However, one of the difficulties facing departments is that it is not clear over what time frame fee revenues should be compared to costs, and how exceptional circumstances should be handled. Foreign Affairs and International Trade Canada suggests that the fee shows an accumulated deficit over five years. However, the fee was approved on the basis that it would be reviewed annually, and the five year period

⁹ Meeting 34, 11:15 AM.

includes the exceptional evacuations from Lebanon, for which the Department received an additional \$65 million.

The Treasury Board Secretariat has committed to update its guidance on the factors to consider in determining the amount of a fee by March 2009. The Committee believes that departments need clarity on how the revenues from a fee should be compared to its costs. As both revenues and costs can fluctuate from year to year, it may not be reasonable to expect departments to adjust fees on an annual basis. The Committee recommends that:

RECOMMENDATION 3

The Treasury Board Secretariat clarify the method of comparing fee revenues to associated costs when updating its guidance on factors to consider in determining the amount of a fee; and that the Secretariat report progress on this initiative to the Public Accounts Committee by 30 September 2009.

The Committee is also concerned that other departments may be using inappropriate calculations that overstate their costs in a similar manner that Foreign Affairs and International Trade Canada did with the consular services fee. As the Comptroller General is currently working with departments with respect to their management of fees, the Committee believes that he should remind departments of the need to review their methods of calculating costs. The Committee recommends that:

RECOMMENDATION 4

The Comptroller General work with departments and agencies to ensure that they are accurately calculating their costs associated with fees; and that the Comptroller General report progress on this initiative to the Public Accounts Committee by 30 September 2009 .

FEES BY CONTRACT

In 2003, Health Canada established a program to grow and sell medical marijuana. The goal was to encourage seriously ill patients to purchase Health

Canada's marijuana or marijuana seeds for medical use, because the product would be safe and free from contaminants. As the Department needed to set up the program and establish the fee quickly in order to respond to the demand for a safe source of marijuana, Health Canada established the medical marijuana fee by entering into contracts with recipients.

The OAG expressed concern with the use of contracts to establish fees because such fees do not have to follow the normal regulatory process and are not subject to the *User Fees Act* or the Treasury Board *Policy on Service Standards for External Fees*.¹⁰ Consequently, Health Canada did not have to consult with stakeholders when setting the fee, did not have to gather complete information on the costs associated with the fee, did not have to present a proposal to Parliament outlining the rationale for the fee, and does not have to set or report on service standards or performance.

The Committee is concerned that fees set by contract are not subject to the same accountability and review processes, which can be complex and cumbersome. Though, it is not clear how many such fees there are, nor is it clear what review processes, if any, exist for fees set by contract. Consequently, the Committee recommends that:

RECOMMENDATION 5

The Treasury Board Secretariat provide a list to the Public Accounts Committee by 30 September 2009 of all the fees that are set by contract.

RECOMMENDATION 6

The Treasury Board Secretariat clarify the review and reporting requirements for fees set by contract by 30 September 2009.

CONCLUSION

The federal government annually collects from Canadians over \$1.9 billion from 220 fees. As a fee is supposed to be linked to what the individual or organization paying the fee receives, departments and agencies should have appropriate systems in place

¹⁰ Chapter 1, paragraph 1.79.

to determine the costs associated with the fee and conduct comprehensive analyses on the amount to charge. Additionally, departments and agencies should publicly report on the costs, revenues, service standards, and performance associated with these fees. However, the audit by the Office of the Auditor General showed that while some departments and agencies were adequately managing their fees, most were not. Many did not know the full costs associated with fees, and one department miscalculated the costs, which led to Canadians being overcharged. They were also not reporting sufficient information to allow Canadians to monitor their performance.

The findings from this audit clearly demonstrate the need for a more consistent approach to the management of fees in the federal government and for better guidance, direction, and oversight. As the Treasury Board Secretariat is responsible for providing this central direction, the Committee hopes that it will meet the challenge and ensure that federal departments and agencies put in place the necessary systems and practices to manage their fees appropriately.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Department of Foreign Affairs and International Trade Francine Côté, Director General, Corporate Finance, Planning and Systems Bureau</p> <p>William R. Crosbie, Assistant Deputy Minister, Consular Services and Emergency Management Branch</p> <p>Stephen Rigby, Associate Deputy Minister</p>	2008/05/27	34
<p>Office of the Auditor General of Canada Clyde MacLellan, Assistant Auditor General</p> <p>Rona Shaffran, Director, Audit Operations</p> <p>Douglas Timmins, Assistant Auditor General</p>		
<p>Treasury Board Secretariat Rod Monette, Comptroller General of Canada</p> <p>John M. Morgan, Assistant Comptroller General, Financial Management and Analysis Sector</p>		

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 ([Meeting No. 34](#) of the Second Session of the Thirty-ninth Parliament and [Meetings Nos. 13 and 17](#) of the Second Session of the Fortieth Parliament) is tabled.

Respectfully submitted,

Hon. Shawn Murphy, MP

Chair