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# A Parliamentary Budget Officer for Canada

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by Gary Levy

*On March 14, 2008 the Government House Leader announced the appointment of Kevin Page as Canada's first Parliamentary Budget Officer. The Office is intended to strengthen the capacity of Parliament to better hold government to account by increasing transparency in the Government's fiscal planning framework and improving scrutiny of the estimates. This article outlines the mandate of the Office and the appointment process. It concludes with some thoughts about the future of this new parliamentary office.*

The creation of a Parliamentary Budget Officer is arguably one of the most radical parliamentary reforms in Canadian history. A World Bank-OECD survey in 2003 identified only eleven countries with budget research organizations attached to their legislatures. Most have a congressional system of government where the legislative branch is able to propose its own expenditures or taxes.

The bench mark, of course, is the Congressional Budget Office in the United States, established in 1974, with an estimated staff of 230 professionals. Korea established a National Assembly Budget Office in 2003, with a staff of 92. The Philippines created the Congressional Planning and Budget Department in 1990, with a staff of approximately 50 people.<sup>1</sup>

Among Westminster model Parliaments the United Kingdom established a Scrutiny Unit in 2002, within the Committee Office of the House of Commons, to provide advice on expenditures and draft bills. This Unit has a staff of seven professionals, seconded from other organizations. To date the main focus of this unit appears to be improvements in the presentation of information from the Treasury to improve the ability of members to discuss the estimates.<sup>2</sup>

## Background

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For years Canadian parliamentarians have been concerned over the divergence between the fiscal forecasts of the Department of Finance contained in the budget and the actual numbers at the end of the fiscal year. A 1994 review of the Finance Department by Ernst and Young resulted in some improvements to the methodology, however, their recommendation to establish an independent forecasting agency to provide economic and fiscal policy forecasts was ignored.

In 2004 Dr. Tim O'Neill reviewed the processes employed to prepare federal fiscal forecasts. He concluded that:

- Budget balance projections have been too low in each of the last ten years by an average of over \$10 billion
- Total revenues were under-forecast in seven of the last eight years but their contribution to budget balance under-forecasts has been quite modest in recent years.
- Total program expenditure projections have more consistently contributed to the budget balance under-forecasts, having been on the high side in all but one of the last ten years.<sup>3</sup>

Among his recommendations Dr. O'Neill proposed the creation of an agency within government with a mandate to focus on the medium-to-long term fiscal implications of structural and demographic factors. He suggested the office be attached to either the Library of Parliament, the Office of the Auditor General or account-

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able to the House of Commons Standing Committee on Finance.

The 2006 Election Platform of the Conservative Party proposed creation of an independent Parliamentary Budget Authority to provide objective analysis directly to Parliament about the state of the nation's finances and trends in the national economy. This commitment led to inclusion of a Parliamentary Budget Officer in Bill C-2, the *Accountability Act*, the first item of business introduced by the new government in April 2006.

### **From Bill to Act**

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The *Accountability Act* underwent extensive amendments during hearings before a Legislative Committee of the House in May and June 2006 and the Senate Standing Committee on Legal and Constitutional Affairs from July to November 2006. The provisions relating to the Parliamentary Budget Office were only a small part of the Act and by no means the most controversial. Nevertheless a number of amendments were made.

When William Young, the Parliamentary Librarian, appeared before the Senate Committee on Legal and Constitutional Affairs he said he was satisfied that certain changes to the original bill had clarified the working relationship between the Parliamentary Librarian and the parliamentary budget officer.

However he was concerned that Bill C-2 contained no provision assuring the PBO of access to government data without charge.

To put it simply, if we have to pay the normal costs of, for example, Statistics Canada data sets, this could easily impose an unreasonable financial burden on the new office and, therefore, on the library as a whole. It is easy to argue that we could simply put forward a request for additional funds to the two Speakers, but this would always be after the fact and it would inevitably involve trade-offs against the other needs of the library and other services that you, as parliamentarians, are entitled to from the library. Again, the risk is that our service to members could be too easily impaired by this unpredictable need for funds. A better solution, surely, would be to have the bill offer the same clarity with respect to access that is provided for in respect to other officers of Parliament. In particular, I would like to cite as an example the *Auditor General Act*, which provides that access to government data should be given to the Auditor General at no charge.<sup>4</sup>

The Senate Committee added the words "free and timely" to section 79.3(1), to qualify the access to financial information which must be provided to the PBO by departments. This amendment was accepted by the House.

Another Senate amendment removed a subsection that would require the PBO to estimate the financial costs of private members' bills. Instead he will only cost "any matter that falls within the jurisdiction of Parliament" if requested by a member of a committee. This amendment was accepted by the House.

A Senate amendment not accepted by the House related to the appointment process. The Senate Committee wanted some Senate input into the selection process whereas the bill originally provided that the appointment be made by the Government House Leader from a list of three nominees from a committee chaired by the Parliamentary Librarian.

Some other relatively minor amendments such as increasing the term of the officer from three years to five years were made. But the most significant change was in regards to the estimates process.

On May 16, 2006 Robert Marleau, former Clerk of the House of Commons, appeared before the Legislative Committee. He outlined the problem parliamentarians have in trying to scrutinize the estimates and the various attempts that have been made to address this issue over the years. He recommended:

That you consider that as part of this bill, adding a second mandate of that office within the library, to capture the estimates process. The committees, I believe, as I've advocated publicly and privately, require substantive support by a financial analysis office in order to help the committees do a proper job on the study of estimates. This amendment to the bill has the potential to bring Parliament back into the accountability loop.<sup>5</sup>

Following the testimony by Marleau and other experts a new section, 79.2 of the *Parliament of Canada Act*, was added. It states that, in addition to providing budget-related analysis and estimates-related analysis to the Senate and the House of Commons, the PBO will provide such analysis, on request, to the following three committees or their equivalents: the Standing Senate Committee on National Finance, the House of Commons Standing Committee on Finance, and the House of Commons Standing Committee on Public Accounts. The PBO will also provide estimates-related research and analysis on request to any parliamentary committee mandated to consider estimates.

This constituted a major expansion of the mandate originally envisioned by the *Accountability Act*.

### **The Appointment Process and the Mandate**

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As adopted the *Accountability Act* provides that "the Governor in Council may select the Parliamentary Budget Officer from a list of three names submitted in confidence, through the Leader of the Government in the

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House of Commons, by a committee formed and chaired by the Parliamentary Librarian.”

It took some time to recruit a suitable candidate and in February 2008 the Senate Committee on National Finances called the Parliamentary Librarian to enquiry on the status of the process. He noted that a job description for the officer was forwarded for approval and classification to the Privy Council Office in December 2006. The Librarian convened a discussion group in January 2007, nominated by the Canadian Association of Former Parliamentarians, and representatives of all parties in both Houses. He also recruited Allan Darling, a retired official as a senior adviser to help define the skills and experience that candidates should possess.

In late July, 2007, I received notification that the position had been classified as a GCQ5. This classification is roughly equivalent to an EX3, normally a director general level in the public service. Following a competitive bidding process, the Library of Parliament contracted with the executive search firm, Ray and Berndtson, on August 28, 2007. They conducted an exhaustive national search process for qualified candidates. On November 30, I convened the selection committee required by the statute to review eight of the 24 candidates that had been identified through the search process. At that time, the committee identified an additional six candidates to be approached for the position. The committee held interviews on December 20 and, on its behalf, I forwarded the committee’s recommendations to the Government House Leader on December 21, 2007.<sup>6</sup>

There were a couple of problems involved in finding the right candidate. One was the few number of qualified individuals. Another was the classification level established by the Privy Council Office as GCQ5, which is equivalent to an EX3, normally a director general level in the public service. Some candidates felt that an appointment at that level would reduce their credibility in interacting with the senior levels of the bureaucracy whose working levels were at least at the EX4 level.

Senator Ringuette said:

I am puzzled about the classification of this position because this person will be an officer of Parliament. The Parliamentary Budget Officer essentially provides services to Parliament in the same way as the Auditor General. I understand that the scope of the mandate is not as big. However, for the Privy Council to classify this position as a director general position is an insult to the kind of service that parliamentarians are seeking from this officer. I voice my support, along with my colleagues, in regard to ensuring that we get the right person to do the job for us, and that the compensation package is commensurate with the skill set.<sup>7</sup>

The Parliamentary Librarian also appeared before the House of Commons Finance Committee in February

2008 and the questions went well beyond the appointment process.

In describing the role of the Parliamentary Budget Officer the Parliamentary Librarian said:

I do not think the PBO should provide an alternative fiscal forecast to the one produced by the Department of Finance. Several reputable Canadian forecasting firms already do this, and adding yet another forecast would not improve service to parliamentarians. I foresee the PBO taking a lead role with parliamentarians to provide a much more strategic approach that would enhance parliamentarian’s understanding of the underlying factors affecting fiscal forecasting and the reasons the executive is moving in a particular direction. I anticipate that the work of the PBO would focus on higher-level analysis that would improve parliamentarians’ understanding of alternative public policy options that might influence future government expenditures.<sup>8</sup>

This led to concerns over the independence of the Officer. John McKay of the Liberals noted that the Department of Finance gives fiscal forecasts. They are beholden to the Minister of Finance. The Bank of Canada gives monetary forecasts. It uses the same numbers, but it’s for monetary purposes. He added:

Parliamentarians were frustrated, both in the last parliament and in this parliament, that there was no independent entity that spoke, if you will, for parliamentarians. And now what we find out is that we’re not going to get an alternative voice; we’re simply going to get a rehash of the numbers that are already in the public domain – either from independent forecasters, from the Bank of Canada, or from the Department of Finance.<sup>9</sup>

The Committee then turned its attention to the question of classification and questioned officials of the Privy Council Office. Marc O’Sullivan, Assistant Secretary to the Cabinet for Senior Personnel and Special Appoints, explained that the appointment of the Parliamentary Budget Officer was particularly challenging because of two main issues.

On the one hand there was a desire to have this position classified at the most senior level possible. It’s an important position and function and you would want it to be as senior as possible. On the other hand it fits within an existing structure. Under the legislation the parliamentary budget officer is an officer of the Library of Parliament, so this person answers to the parliamentary librarian. That tells you something about where it’s placed in terms of classification. With classification you don’t look at one position independently; you look at it in relation to other positions within that organization. There was a bit of a ceiling that we were dealing with in terms of classification of the parliamentary librarian position.

We considered the possibility of completely disregarding the relativity with other positions and just

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classifying it at the level we thought was right. But there are nine other Governor in Council positions within Parliament, and if we did away with relativity for the purposes of this position, then we could imagine that the nine other positions would ask to be reclassified as well. People expect to be reclassified upwards, not downwards. We would have had an impact on nine positions, which may not be a good idea from the perspective of taxpayers.

In light of those two competing pressures, we came up with a classification of one level below the level of the Parliamentary Librarian. Because of the function of the Budget Officer, we thought it was important to give it an additional level of independence that is not subject to performance pay; that is, the Governor in Council won't be determining performance pay for that position. It was put in a range called the GCQ range— "Q", as in quasi-judicial function—in order to afford it that level of independence. It ended up being classified at the level of GCQ-5, which is just below the equivalent for the Parliamentary Librarian, who is a GC-6.<sup>10</sup>

Thomas Mulcair of the NDP suggested the PCO was frustrating the will of Parliament by delaying the appointment while it considered the classification issue and then subsequently recommending a level that was causing problems in recruiting an appropriate individual.

Mr. O'Sullivan rejected such a suggestion.

This is not a decision made by the government, but an inherent aspect of the parliamentary structure.<sup>11</sup>

## Analysis and Reaction

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Concerns expressed during the process leading up to the appointment of the first Parliamentary Budget Officer are of three types. They relate to independence, mandate and work load.

As far as the independence of the Parliamentary Budget Officer is concerned it would appear that despite the normal political suspicions particularly rampant in a minority parliament, the attachment of the Officer to the Library of Parliament will guarantee his independence. The Library, like the Chief Electoral Office and the Office of the Auditor General, is a bastion of non partisanship. Although the appointment process was rather unique it was, if anything, more transparent than the normal process for senior appointments. In the final analysis even independent officers such as the Auditor General are appointed by the Government. The issue of classification as a possible limit on independence appears to have been worked out to the satisfaction of all parties.

The question of mandate is more difficult. The ultimate scope of the job will depend on what parliamentarians want the Budget Officer to do. It is pretty clear that Opposition members will push for a fearless official who

will challenge projections and assumptions of the Department of Finance. Government members will be looking more for a facilitator who can help MPs interpret what Finance is doing.<sup>12</sup> The PBO risks being caught in the middle.

The task of predicting government surpluses or deficits is hardly an exact science. Ten highly competent economic forecasters may come up with ten different projections. Even more difficult is detecting, exposing and proving that a forecast may be politically motivated for short term electoral advantage. Ontario has some experience with pre-election forecasts that proved to wildly inaccurate and as a result the *Fiscal Transparency and Accountability Act* was passed in 2004. It gave the Ontario Auditor General the task of reviewing and reporting on the reasonableness of the government's pre-election report on the province's finances. The resulting document,<sup>13</sup> will probably become a model for the type of work that can be reasonably done by a Parliamentary Budget Officer. But forecasting is only one part of the mandate.

The costing of bills is another part of the mandate although it was changed from the original proposal relating to private members bills. It remains to be seen how the rather vague provision allowing him to cost any matter that falls within the jurisdiction of Parliament will be interpreted and if such requests will completely overwhelm the office. This is potentially a huge task for an office with a projected budget of \$2.7 million and a staff of 15.<sup>14</sup>

The Parliamentary Librarian referred to this issue when the Bill was being considered by the Senate Committee.

By opening the door for the PBO to be required to respond on virtually any matter of interest to any senator or member of the House in their various capacities, invites more work for this new PBO function than might be reasonable. It risks frustrating the intentions and expectations of Parliamentarians on all sides. Accordingly, I would recommend that requests for work by the parliamentary budget officer with respect to proposals be subject to such rules and procedures as may be established by each chamber, perhaps on the recommendation of the Standing Joint Committee of the Senate and the House of Commons on the Library of Parliament. Alternatively, requests could be channelled through a relevant committee of each House. Either alternative would leave decisions on priorities to parliamentarians and not to those in the library, whose job is to serve them.<sup>15</sup>

In a minority Parliament the opposition parties, when united, control the agenda and if so inclined they can fill the order paper with bills the government might not like. Recent examples of such Bills, C-253 (*To provide that con-*

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*tributions to a Registered Education Savings Plan are deductible from a taxpayer's taxable income*) and C-377 (*An Act to ensure Canada assumes its responsibilities in preventing dangerous climate change*) are examples. Both had serious issues relating to costing yet one wonders if the real problems were more a reflection of political differences. Would a cost estimate accompanying either bill have led to different results?

The task of scrutinizing the estimates is an even more intimidating part of the mandate. Parliament exercises the "power of the purse" by reviewing the annual Main Estimates for government spending (normally tabled in the spring of each year). Before 1968 these were considered by Committee of the Whole and put to a vote. The debate was often an opportunity for obstruction and during minority parliaments sometimes it appeared as though the government's authority to pay bills would be delayed. This led to a complete reform and since 1968 estimates have been sent to standing committees which have the authority to do one of the following:

- Remain silent, in which case the estimates are deemed adopted by May 31;
- Report the estimates without amendment, in which case the House proceeds as above;
- Adopt reductions to estimates, or reject them, in which case the House considers these changes and either adopts changed estimates or restores the initial amounts.

Although these reforms were intended to improve the substantive review of government spending in committee and streamline debate on the estimates, in fact successive committee reports have expressed continuing dissatisfaction with the estimates process.

- The Standing Committee on Procedure and House Affairs concluded in 1998 that "... the vast sums of money spent by government are subjected to only perfunctory parliamentary scrutiny," and made 52 recommendations for wide-ranging change (Catterall-Williams Report).
- A follow-up report in 2000 by the same Committee continued to call for changes, notably improvements to information and enhanced staff support (Szabo Report).
- In 2001, the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons proposed the consideration of two sets of estimates by Committee of the Whole as a partial remedy for what it saw as long-standing deficiencies in the handling of estimates (Kilger Report).
- A 2003 report of the Standing Committee on Government Operations and Estimates concluded that, despite progress in recent years, most parliamentary committees continued to give departmental estimates relatively cursory attention, and that strengthened scrutiny was urgently needed (Valeri Report).<sup>16</sup>

More recently, the Phase II Report of the Gomery Commission recommended a substantial increase in funding for parliamentary committees, as a response to long-standing concerns about the effectiveness of committees in examining government programs and spending estimates. Justice Gomery argued that strengthened staff support for committees is a key ingredient for improved effectiveness.

In 2004, responding to these reports, the Library of Parliament sought and received supplementary funding to hire 3 analysts with skill sets that could contribute to strengthened support for committees doing estimates-related program studies. The three analysts hired brought experience at Finance Canada, Treasury Board Secretariat and the Office of the Auditor General to the Library. They became members of an internal working group known as the estimates cluster created for the purpose of broadly enhancing the capacity to support estimates work of the teams of analysts assigned to committees of the Senate and House of Commons. Thus the PBO will have some immediate help available to fulfill this part of his mandate.

Related to the estimates issue is the question of access to information. Paul Crête of the Bloc, wanted to know what restrictions will the Parliamentary Budget Officer face in obtaining information from the government?

Will he have authority to obtain any information he asks department officials for? Will confidentiality measures be applied? What legislative or regulatory framework will govern that issue? If arbitration becomes necessary, who will be responsible for it? If the Parliamentary Budget Officer wants some item of information but the department does not want to give it to him, who decides the issue? Will the Parliamentary Budget Officer have the right or the opportunity to file an appeal in such cases?<sup>17</sup>

According to Joe Wild of the PCO there are certain limits on what the Parliamentary Budget Officer can request. First, he can only ask for what would actually relate to the discharge of the mandate. "The second limit is that it must be for financial or economic data in the possession of the department. But that data cannot include personal information as defined under the *Access to Information Act*, or confidences of the Queen's Privy Council. That information is out altogether."<sup>18</sup>

Also excluded is information the government has obtained in confidence from a foreign government or a provincial government; information that would be injurious to federal-provincial affairs; information relating to trade secrets that would harm the economic position of the Government of Canada; or information that is commercial, confidential, or received from third parties.

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The Act does not set out an appeal mechanism or anything like that. It prescribes a limit on the authorities of the Parliamentary Budget Officer to obtain information. It is ultimately a question between the department that has been asked to give the information and the parliamentary budget officer as to whether or not the information being requested falls under the information that is not to be provided from the two categories I mentioned: personal information and cabinet confidences. On the other body of information I was talking about, the Parliamentary Budget Officer can receive it but simply isn't in a position to disclose it unless the disclosure is necessary for the discharge of the mandate. He is just meant to treat it in a confidential manner. Ultimately, it's going to be a discussion between those two parties. If there's disagreement, if the Parliamentary Budget Officer wanted to insist on receiving the information, because it is a law it could go through lawyers or to the Federal Court, to get the interpretation of a judge.<sup>19</sup>

## Conclusion

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It will take some time to evaluate the impact of the Parliamentary Budget Officer on the operation of Parliament. Sharon Sutherland of the University of Ottawa has expressed concern about the impact of the Office on existing parliamentary bodies including the Library of Parliament. She worries it will divert the Library's attention and could tarnish its "gold standard" reputation "as the single-most respected, non-partisan source of information we have."<sup>20</sup> At the very least it will force a rethinking of how the Library distributes limited resources among PBO projects and other traditional Library tasks.

If this experiment succeeds we may see PBO officers (or their equivalent) in many provincial legislative assemblies. Certainly students of parliamentary government in Canada and abroad will be watching to see how this Office evolves over the next few years.

## Notes

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1. Allan Darling, Role of the Parliamentary Budget Officer, Speech to the Financial Management Institute, November 28, 2006.
2. *Ibid.*

3. Tim O'Neill, *Review of Canadian Federal Fiscal Forecasting: Processes and Systems*, Document tabled in the House of Commons, June 20, 2005
4. Senate, Standing Committee on Legal and Constitutional Affairs, *Minutes of Evidence and Proceedings*, September 19, 2006.
5. See House of Commons, Legislative Committee on Bill C-22, *Minutes of Proceedings and Evidence*, May 16, 2006.
6. Senate, Standing Committee on National Finance, *Minutes of Proceedings and Evidence*, February 12, 2008. The selection board considered of Maria Barrados, the President of the Public Service Commission, Don Drummond, the Senior Vice-president and Chief Economist of TD Bank, Bill Knight, the former commissioner of Consumer Financial Institutions, Allan Darling, Senior Special Advisor the Parliamentary Librarian and William Young.
7. Senate, Standing Committee on National Finance, *Minutes of Proceedings and Evidence*, February 12, 2008.
8. House of Commons, Standing Committee on Finance, *Minutes and Proceedings*, February 13, 2008.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. See comments by David Smith, Sharon Sutherland and other experts in *Ottawa Citizen*, March 31, 2008.
13. See Office of the Auditor General of Ontario, *The Auditor General's Review of the 2007 Pre-Election Report on Ontario Finances*, Toronto, 2007.
14. *Ottawa Citizen*, March 31, 2008.
15. Senate, Standing Committee on Legal and Constitutional Affairs, *Minutes of Evidence and Proceedings*, September 19, 2006.
16. See Jack Stilborn, "Parliamentary Review of Estimates: Initiatives and Prospects" *Canadian Parliamentary Review*, Vol. 29, No. 4 (winter 2006).
17. House of Commons, Standing Committee on Finance, *Minutes and Proceedings*, February 13, 2008.
18. *Ibid.*
19. *Ibid.*
20. *Ottawa Citizen*, March 13, 2008.