



INDEPENDENT AND ACCOUNTABLE

MODERNIZING THE ROLE OF
AGENTS OF PARLIAMENT AND LEGISLATURES

APRIL, 2018



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TABLE OF CONTENTS

- Executive Summary.....1
- Introduction.....3
- Our Approach6
- What We Heard8
 - 1. Powers and Legislative Framework.....8
 - 2. Accountability13
 - 3. Relationships18
 - 4. Appointment Process.....21
- Principles.....27
- Conclusions & Recommendations.....28
 - APPENDIX: Agents of Parliament and Officers of the Legislature31
 - APPENDIX: Advisory Group and Participant List.....33

EXECUTIVE SUMMARY

Agents of Parliament are almost as old as Confederation. Today, there are 88 agents across the country at the federal, provincial and territorial levels of government. They have wide independence to critique the work of government, from elections to finances and ethics to privacy, but have few powers of enforcement if they see wrongdoing. Agents are both praised and criticized for the role they play in improving the quality of government. And while they have grown in number and importance since the 1980s, the impact of their work remains largely unstudied.

In this report, the Public Policy Forum (PPF) analyzes the current and evolving role of agents at the federal and provincial levels to provide recommendations on how oversight and guidance in the administration of policies can be improved while maintaining their autonomy within Canada's Westminster system.

Supported by an advisory group of former agents, senior public servants and other experts, PPF conducted 20 interviews and organized three roundtable discussions between October and December 2017. PPF used the results of the interviews, the roundtables and the work of the advisory group to craft this report, which includes nine recommendations that, if implemented, would strengthen Canada's democracy.

The nine recommendations call for the following:

1. The creation of new agents is the purview of Parliament and legislatures, not the executive. A majority of elected officials in at least two official parties should agree to the establishment of a new agent.
2. Fewer, stronger agents would better serve elected representatives and strengthen accountability. Legislators should set a high bar for creating more agents. Consideration should be given to consolidating the work of agents with similar mandates.
3. Legislators must be responsible for the appointment of agents, with the aim of having all-party support for the final selection. The Privy Council Office and the Prime Minister's Office should withdraw entirely from the appointments process. A special parliamentary committee should consider the kinds of selection processes operating in provinces such as Alberta and Saskatchewan.
4. The Office of the Speaker should establish a properly resourced secretariat for agents. It would oversee recruitment of agents with the assistance of the Public Service Commission; manage relations with search firms; provide transition training to new agents; and organize pooled services for smaller agents, such as IT and human resources.
5. Agents should serve a single mandate and reappointments of no more than one year should occur only when elections are imminent or other extraordinary circumstances prevail. Terms should be a minimum of five years and a maximum of 10 years. An automatic trigger should be introduced that would launch a selection process for new agents at a predetermined period before the existing officeholder's term ends.
6. Agents work for elected representatives. They are not free agents. As such, all agents should report to home committees, as is the case with the auditor general and the public accounts committee.

7. An agent's budget should be authorized by a parliamentary or legislative committee. A balance must be struck between the responsibility of the government to manage spending and the need for agents to be free from the possibility of politically motivated financial pressure. In Ottawa, MPs should revive the Parliamentary Advisory Panel on the Funding and Oversight of Officers of Parliament.
8. To ensure that agents adequately perform their role, regular peer reviews (e.g. minimum every five years) should be undertaken. The performance of agents' offices, where it does not already occur, should be reviewed mid-mandate by outside experts reporting to the parliamentary committee overseeing each agent.
9. Agents and deputy ministers should hold regular meetings to facilitate an understanding of each other's roles and work plans and to encourage staff interchange assignments between various agents and ministries, where appropriate. In the federal government, the Treasury Board Secretariat should be responsible for these coordination roles. Provinces should designate a similar responsible authority.

This project was made possible through the sponsorship of the Government of Canada, through the Treasury Board of Canada Secretariat, and the governments of Ontario, Alberta and Nova Scotia.

INTRODUCTION

They audit the financial statements of government. They run our elections. They investigate ethical breaches by cabinet ministers. They study citizen complaints about threats to privacy, bureaucratic runarounds or failure to provide adequate services in French or English. They advocate for children, the environment and the elderly. Some are as well known as high-profile elected officials while others toil in quasi-anonymity.

They have wide independence to critique the work of government but few powers of enforcement if they see wrongdoing. They are praised by some as the best defence against the excesses of politicians and a powerful bureaucracy, but criticized by others as publicity seekers motivated more by the limelight than improving the quality of government.

They are agents of Parliament and legislatures.

Agents of Parliament are almost as old as Confederation. The first auditor general of Canada was appointed in 1878 with responsibility to report on past financial transactions and “approve or reject the issuance of government cheques.” Ontario’s auditor general dates back to 1886. Canada’s chief electoral officer was created in 1920, in the same law that gave women the right to vote.

Yet in the last few decades, the number and scope of agents of Parliament have rapidly expanded, both federally and provincially. Federally, there are now nine agents (including the recently enacted change in the status of the parliamentary budget officer). In Ontario, there are nine; in Alberta, seven; in Quebec, five; in Nova Scotia, four. Across the country, there are a total of 88 agents at the federal, provincial and territorial levels of government.¹

Why has the number of agents exploded since the 1980s? The nature of modern society has resulted in new challenges and demands for government to better respond to citizens’ concerns. Privacy is a case in point. The proliferation of vast stores of personal information in the hands of public and private players has raised concerns about the need to protect personal data from manipulation and unwanted disclosure. Elected officials find it increasingly difficult to cope with such public policy demands without assistance. At the same time, citizens have more doubts about the ability and willingness of legislators and officials to respond to their needs and complaints.

Despite their growing number, the impact of agents’ work remains largely unstudied. “While official reports and academic studies of individual agencies have been done, there is no comprehensive study that

¹ Throughout this report, the Public Policy Forum (PPF) uses the term agent of Parliament or agent of the legislature. Others use the title Officer of Parliament, but that expression can be confusing because it normally includes the sergeant-at-arms, the parliamentary librarian and other officers who also serve Parliament or a legislature.

examines the political, legal, policy and administrative dimensions of the agency world,” writes Paul Thomas in his study, *Understanding and Debating the Role of Agents of Parliament*, commissioned by the Public Policy Forum (PPF) for this report. “It is time for both more research and more discussion of the roles, impacts and future directions of agencies.”

Faced with growing demands for independent oversight over a variety of issues and concerns, legislators have reacted by turning to the creation of agents of Parliament or the legislature for a solution. Agents are viewed by the public as providing independent, impartial and objective scrutiny of government actions and advice that is untainted by political partisanship or bureaucratic self-interest.

Thomas argues that almost all the new agents have been created in direct reaction to a scandal involving public officials. “Each new scandal has brought demands for higher legal and ethical standards, greater transparency and access to information and more meaningful accountability mechanisms that involve consequences for those institutions and individuals responsible for abuses, misdeeds and mistakes,” he writes.

Instead of a one-off response, such as establishing a commission of inquiry or special task force, legislators have reacted by setting up a new institution that is supposed to make less likely any such crises in future. Because these agents have sometimes been set up in a reactive and ad hoc fashion, the emphasis has been on creating an agent fit for purpose rather than developing a system of agents with a common governance framework and inter-operability.

“Separate legislation makes sense given the unique tasks performed by each agency. However, the ad hoc, gradual establishment process for agencies can lead to significant differences in the breadth of their mandates, the legal powers they possess, the procedures for appointing heads of agencies, the length of terms, how agencies obtain their funding and staffing and to whom they report with what frequency,” says Thomas.

Agents have their roles and responsibilities set out in their enabling legislation but their relationships to the legislative body that put them there in the first place are highly variable. Some, like auditors general in Ottawa and the provinces have strong ties to a legislative committee, which meets frequently throughout the year and takes an in-depth look at regular and special reports issued by the auditor general. Many other agents are basically on their own, tabling reports with the Speaker that seldom get the attention of a legislative committee.

Inspired by Thomas’s study, PPF looked at the powers and legislative framework underpinning the work of agents, the system of accountability overseeing their work, their relationships with other arms of government and the appointment process that leads to the designation of agents. PPF consulted those who

know the world of agents from first-hand experience, including current and former agents; top public servants who have worked closely with agents; and legislators who crafted recent enabling legislation and sat on legislative committees that supervise agents' work. PPF also spoke to academics and leaders of civil society with a keen interest in the role of agents.

From the project discussions it is clear that agents of Parliament have emerged as a valued part of our democracy. It's hard to think of Parliament functioning well without their wise counsel and active presence. They provide independent, non-partisan oversight of government for legislators and are essential allies for citizens as they interact with an increasingly complex and sometimes remote government.

Yet there is room to improve the legislative frameworks that govern their offices; to establish better mechanisms for accountability; to strengthen relationships between agents, public servants and elected representatives; and to improve the appointments process. PPF aims to kick-start a long-overdue conversation on the impact of agents' growing importance and make recommendations on the best way forward.

OUR APPROACH

PPF explored the current and evolving role of agents of Parliament to provide recommendations on how oversight and guidance in the administration of policies can be improved while maintaining the autonomy and independence of agents within Canada's Westminster system, at both the federal and provincial levels of government.

The project was sponsored by the Government of Canada, through the Treasury Board of Canada Secretariat, the Government of Ontario, the Government of Alberta and the Government of Nova Scotia. The design of the study and editorial control rests solely with PPF.

The project team was led by David Zussman, a retired dean at the University of Ottawa, a former PPF president and an experienced public servant. PPF President & CEO Edward Greenspon was deeply involved in the project. Alan Freeman, a long-time Ottawa journalist and onetime senior public servant, conducted the interviews and wrote the final report. PPF Policy Lead Tanya Gracie also provided extensive support.

To provide context for the project's work, Paul Thomas, professor emeritus at the University of Manitoba and one of Canada's most respected political scientists, authored a background study, *Understanding and Debating the Role of Agents of Parliament*, which provides a comprehensive look at the evolution of the roles, responsibilities and relationships of agents of Parliament and legislatures.

Zussman chaired an advisory group of former agents, senior public servants and other experts, which met during key points in the process. They provided their feedback and views on the progress of the project and commented on the draft version of the report. The advisory group was comprised of: Steve MacDonald, Joy MacPhail, Robert Marleau, Paul Thomas and Jodi White.

Using an interview guide developed with the aid of Thomas's background paper, Freeman conducted a series of interviews with 20 people from October to December 2017. They included current and former agents, former legislators and cabinet ministers, current and former senior public servants as well as academics and civil society representatives from the federal level and several provinces.

The interviews, conducted in person or by telephone, lasted between 45 and 90 minutes. Interviewees were asked a series of questions but were invited to expound on areas of their particular interest and to provide examples from their own experience. To encourage participants to be candid, it was agreed that interviewees would not be quoted by name in the report.

Drawing on themes arising from the interviews, PPF organized a series of three roundtable discussions in Edmonton, Toronto and Ottawa in November and December 2017. Invitees to the roundtables included interviewees as well as leading government, political and civil society leaders.

Using Thomas's study and a report on the interviews conducted by Freeman, Zussman led vigorous discussions on the role of agents. The sessions in Edmonton and Toronto gave PPF greater insight to experiences at the provincial level, which proved helpful in identifying best practices. PPF used the results of the interviews, the roundtables and the work of the advisory group to craft this report.

The names of those who were interviewed and participated in the roundtables are appended to this report.

PPF appreciates the time and effort provided by all those who collaborated in this project.

WHAT WE HEARD

In the 20 interviews and three roundtables organized for this project, participants shared their thoughts on four themes: Powers and Legislative Framework, Accountability, Relationships and the Appointments Process.

This framework is inspired by Thomas's study, *Understanding and Debating The Role of Agents of Parliament*. The first section concerns the role of agents in the constitutional and political order, how and why agents are created, the role of their enabling legislation and the growing scope of their work and influence. Next, PPF looked at the accountability of agents, including the role of legislators in the creation, appointment and oversight of agents. The third section examines the crucial and sometimes complex relationships between agents, legislators, the executive, public servants and citizens, and how these relationships are managed. Finally, the fourth section deals with how agents of Parliament are appointed and the differing approaches of the federal and provincial governments.

1. POWERS AND LEGISLATIVE FRAMEWORK

Agents are created by Parliament through special enabling legislation and they report directly to Parliament, rather than through cabinet ministers the way deputy ministers and heads of agencies do. The goal is to preserve their independence from the executive and allow them to act in a dispassionate, non-partisan fashion.

Although agents of Parliament have been part of government as far back as the 19th century, recent growth in their number and scope has created significant tensions within the government system, as evident in discussions with participants.

While acknowledging their importance, senior public servants frequently believe agents distract them from their work, create unnecessary diversions and threaten the traditional division of responsibilities in the Westminster system. Senior public servants see themselves as responsible to ministers, who in turn are responsible to Parliament, and these public servants regard a new level of oversight within the system with scepticism and occasional resentment. Some legislators are similarly sceptical, particularly when they are in government. Opposition members tend to be much more favourable, hoping that public criticism from an agent will reflect badly on their adversaries who are in power.

As one former agent said, “an MP on the opposition benches will view the information commissioner as Joan of Arc but that same MP will regard the information commissioner as a Salem Witch when he or she becomes part of government.”

“Why are they created?” one former senior public servant asked cynically. “Are they in aid of anything?” This interviewee sees the agents not so much as assisting parliamentarians as attempting to do their jobs for them. According to this view, elected officials have effectively surrendered the role of probing and digging into the workings of government and dumped it into the laps of agents. Benefitting from virtually unfettered independence, agents are happy to seek public and media attention through what critics call “gotcha” moments, which are designed to make unsuspecting members of the executive and public service look foolish.

Agents argue they are simply fulfilling the roles set out in their enabling legislation. They see themselves as promoting probity in government and defending individual citizens in dealing with a sometimes-unresponsive public service, as in the case of a provincial ombudsman. Or they see themselves as providing essential expert advice to parliamentarians, as in the case of financial accountability agents.

Often starved of information by the executive, legislators are not properly equipped to oversee the appropriations process and to question budgetary items, agents say. “The system was rigged and getting more rigged,” said one former agent, referring to the control of financial information by central government agencies in Ottawa before the creation of the Parliamentary Budget Office. “The less [information] you provide to these people [legislators], the less accountability.”

Some senior officials recognize that agents provide important oversight. “At the end of the day, it’s important for public policy to have these offices,” said one senior provincial public servant. “It keeps us on our toes and ensures that we operate at the highest level of accountability.”

Though these offices have been established to provide independent oversight, governments are reluctant to give them too much leeway for fear of the political impact. As one former legislator admitted in an interview, “What’s in it for you but grief?” Convinced that they have no choice politically other than to appoint a new agent in the wake of a scandal, but worried about the consequences, members of the governing party will attempt to constrain the action of an agent from the start. “So when an Office is created, you want to give them the least amount of power possible,” said the same former legislator.

A former cabinet minister said, “Oppositions like legislative officers because it can embarrass the government.” But he adds that governments are naturally “loathe” to set up independent agents, afraid of losing institutional control.

One provincial agent agreed that a government’s motive in creating an agent can be less than pure. “A cynic might say that sometimes when an issue arises, a government responds by saying, ‘we’re going to show that we’re really serious about this so we’ll name a new legislative officer.’”

A senior public servant in a smaller province said agents were named in that province because other provinces were doing it. Once an agent is established, he continued, “the legislature doesn’t know how to accommodate the suggestions that come out of these agents. They seem to be wanting to change public policy, which would be outside the purview of these officers.”

A former senior public servant who oversaw the establishment of two federal agents agreed that these offices were frequently established on an ad hoc basis and that the decision to set them up should be taken more seriously from the start because of their long-term impact. “Once you establish an agent of Parliament, there’s no mechanism to get rid of an agent.”

As Thomas notes in his study, “no jurisdiction in Canada has adopted a common statutory framework setting forth the governance arrangements for agents.” Instead, each agent has its own mandate and powers set out in enabling legislation, which he says is logical because of the unique nature of its agency. “However, the ad hoc, gradual establishment process for agents can lead to significant differences in the breadth of their mandates, how agencies obtain their funding and staffing and to whom they report with what frequency.”

Governing agents

Most participants did not see an absence of a common governance framework for agents as a significant issue and thought it best to design each agent’s role as fit for purpose. “A common governance structure is only useful if you’re looking for neat boxes and lines,” said one former agent.

Some questioned whether a new oversight body necessarily had to be an agent of Parliament or legislature. Quasi-independent agents who do similar work but report through ministers rather than through Parliament have also grown exponentially in recent years. Federal examples include the Civilian Review and Complaints Commission for the RCMP, which reports through the Public Safety minister, and the Office of the Taxpayers’ Ombudsman, which reports through the minister of National Revenue. Ontario’s Patient Ombudsman reports through the minister of Health.

Though these organizations don’t have the same independence as agents of Parliament, there’s often pressure to give them that independence, including from some agents themselves. In Ontario, the French language services commissioner was created in 2007 to hear complaints on the adequacy of French services in the province. It initially reported to the minister of Francophone Affairs but after political pressure was applied, members of provincial parliament (MPPs) agreed to make the position an independent agent of the legislature in 2014. The commissioner called the move “a historic step in recognizing and safeguarding the rights of Ontario’s Francophone citizens.”

When the patient ombudsman was created in 2015 to handle complaints concerning Ontario hospitals and long-term care facilities, the legislation dictated that it would report to the minister of Health. But the first

appointee to hold the ombudsman's position lobbied to turn the job into a full agent of the legislature, arguing that the public would have more trust in the office if the ombudsman were independent and reported to the legislature.

Likewise, the federal parliamentary budget officer was initially an officer employed by the Library of Parliament. But the first parliamentary budget officer and his successor lobbied tirelessly to transform the office into a full-fledged agent of Parliament, succeeding in 2017 with the passage of changes to the Parliament of Canada Act included in budget implementation legislation.

One alternative to establishing an agent of Parliament, particularly if the agent has rule-making responsibilities, is to make the agent head of a governmental tribunal like a human rights commission. One former Information Commissioner said he effectively operated as head of an administrative tribunal, so nothing required him to be an agent of the legislature. His office could have been a tribunal.

The auditor general was seen by many as the model for successful agents, for many reasons. Public servants and legislators recognize an audit function is essential; auditors have well-recognized professional credentials; and there are longstanding practices and procedures for bureaucracies to respond to audits. These factors make auditors general more accepted than more recently-established agents. "I had lots of debates with auditor general staff but I always trusted them," said one retired deputy minister.

There's another essential element that contributes to the broad acceptance of auditors general: both federally and provincially, they have a dedicated legislative committee, the public accounts committee, which works closely with them.

"That connection is very important," says one provincial auditor. "It's clear where the work of the officer will finish up and because of that clarity, that is an important part of the framework. That's not the case [clarity of accountability] for the other officers [agents]."

Similarly, the official languages commissioner in Ottawa reports to two official languages committees, one in the House of Commons and the other in the Senate. The members of Parliament (MPs) and senators named to these committees have a particular interest in the issue and provide a sounding board for the commissioner as well as oversight over his or her work.

Yet for many agents, there is no "home" committee dedicated to their work. Their annual reports are tabled in Parliament or the legislature and the response can be a hit or miss affair, according to participants. "I was never entirely sure who I should be dealing with," one provincial agent said. While a legislative committee looked at the agent's budget, it wasn't clear whether the agent should go to the Speaker or the House Leader when tabling a report.

In Ottawa, some agents fall between the parliamentary cracks. “There are agents whose reports are not reviewed at all by Parliament,” said one former agent. “What is the value of the work if Parliament never deals with it?”

And what to do if there’s a crisis, such as when an agent feels the executive is unfairly assaulting their independence? “What if something horrendous happened; could I go directly to Parliament, to the Speaker and raise a point of parliamentary privilege?” wondered a provincial agent.

In some provinces, there are committees dedicated to the work of all legislative agents. But these committees are usually tasked with a broad range of issues from children’s advocacy to privacy, without necessarily having any specialized expertise in these areas. And unlike the prestigious public accounts committees, which deal with matters raised by auditors general, the other legislative committees tend to have little political clout and be populated with legislators who are often junior.

Although nobody suggested an ideal number of agents, participants said the growth in the number of agents has caused problems. “If there are more than 10, it becomes difficult for MPs to track what they’re doing,” said one academic interviewee. Adds a former agent, “The multitude of agents confuses the public.” Another former provincial agent admits that if too many agents are created for “special interests” like the environment, youth or the elderly, there is a risk of eroding the power of the legislature.

Constrained by size

The offices of many agents are very small. While Canada’s Auditor General has an annual budget of \$45 million and 560 employees, the Lobbying Commissioner has a budget of \$4.4 million and just 28 employees, and many provincial agents have only a handful of employees. An agent’s office with a tiny staff can struggle from the shortage of resources, constraining its ability to handle more complex files and to recruit skilled personnel.

Because agents have small budgets and few people to manage, taking a position in the office of an agent can be perceived as a career-limiting move. One former senior federal public servant said, “It is not a question of compensation but rather career. These are very small shops; there are limited advancement opportunities. The quality of staff creates huge risks since the various offices are not accountable in a meaningful way to anyone. Given the non-transparent processes that are followed, it is impossible to ever make a judgment on competency.”

Some participants discussed merging agents with complementary mandates, like lobbying with ethics or privacy with access to information, as is the case in some jurisdictions. Merging the functions of two agents and creating a bigger office would make it easier to recruit top talent to fill the agent’s role and positions within their office. And an agent with wider responsibilities would also command more attention from

legislators and the public. Others suggested allowing agents, particularly those with small staffs and limited budgets to share services like IT or human resources, enabling agents to benefit from the larger scale permitted by a pooling of such services.

2. ACCOUNTABILITY

Agent accountability is bound up in the philosophy underlying their very existence. Are agents responsible to the legislatures that create them? Are they responsible to the executive that in some jurisdictions appoints them? Or do they have a judicial-like independence that frees them from traditional accountability and performance measures except in cases of wrongdoing or egregious behaviour?

Accountability is an elusive and often contentious concept. It can be set out in legislation through a formal set of procedures. It can also be financial, with strict oversight by organizations like the Treasury Board or the Auditor General. Neither can political and public accountability be ignored, even if they are not codified.

Accountability for agents can be confusing. Reporting requirements for agents differ from jurisdiction to jurisdiction as well as among agents in the same jurisdiction. In many provinces, there is a committee of the legislature, Board of Internal Economy or committee of legislative officers that oversees agents and determines their budgets. At the federal level, by contrast, budgeting and staffing are decided by the Treasury Board in a process similar to that of government departments and agencies, with some exceptions.

Meanwhile, legislators sometimes show scant interest in the activities and performance of agents, in some cases not even bothering to hold hearings on their annual reports. Too often, the result is confusion about agents' roles and whether they are accountable for their actions and, if so, to whom? Without that clarity, agents occasionally act as if they are free agents, responsible only to their own conscience.

Federally, a parliamentary advisory panel on the Funding and Oversight of Officers of Parliament used to oversee the work of agents. This panel was formed in 2005 as an advisory body of 13 MPs from all parties under the chairmanship of the Speaker of the House of Commons. The panel was established in response to the concerns of agents of Parliament and three parliamentary committees that agents' independence could be compromised because Treasury Board was determining the level of funding available to them.

The panel was intended to recommend funding levels to Treasury Board after hearing from agents and to serve as a place where stakeholders could discuss administrative issues including application of Treasury Board policies, rules and directives.

The panel considered agent requests for funding and provided advice to the Treasury Board on funding levels. It was not intended to replace the accountability mechanism linking each agent with their respective standing committees, nor to impact the annual review of estimates by Parliament. With one exception,

Treasury Board approved the level of spending recommended by the all-party committee. In 2008, William Corbett, former Clerk of the House, was asked to conduct a third-party evaluation of the panel's work. He termed the experiment a success and called for it to be made permanent.

"It has achieved the key objective of reducing the perception of conflict of interest that was inherent in the pre-existing process," Corbett wrote. "It has also managed to reinforce the independence of Officers (agents) of Parliament and strengthened Parliament's role while in no way diminishing the government's responsibility for sound stewardship and proper management of public funds."

Although the experiment worked well, the Harper government stopped seeking the panel's advice in 2011 after forming a majority government and asserting greater control over the work of parliamentary committees. As one former agent who went through the panel experience noted, it was successful when the Harper government was in a minority position but once the Conservatives won a majority, the idea that a parliamentary committee could act independently from the party in power "went out the door" and the panel died. According to another former agent, the advantage of the Panel was that it forced accountability on all sides. Treasury Board had to justify its proposals and agents had to be responsible for their budgets and justify their requests. But the problem with the panel was a lack of capacity and the fact there was "nothing in it" politically for the MPs who participated in it, so interest waned. One participant suggested reviving the panel as an external advisory committee made up of former parliamentarians who could be called upon for their advice in a pre-estimate study phase.

As Thomas details, British Columbia has taken the most systematic approach to reviewing the budgets, staffing and performance of its legislative agents. The Select Standing Committee on Finance and Government Services reviews annual reports, three-year service plans and budgets of six of the eight agents. After reviewing agent requests and getting an update from the finance minister on the province's spending plans, the committee makes its recommendations to the government. The minister and the Treasury Board generally accept the proposals.

Thomas notes that in smaller provinces the tendency is to treat agencies as simply another part of government when it comes to spending and staffing.

Budgetary oversight is particularly sensitive during periods of fiscal restraint. Should agents be treated like other government departments or should they receive special consideration? One provincial agent noted that while some of her colleagues object to across-the-board cuts, she doesn't believe agents should get special treatment. "I don't think the legislative offices should be allowed to run rampant. There has to be some restraint on how much they spend." While most agents said they had no problem with austerity measures if applied fairly, they thought it important to be able to make their case to legislators if circumstances required.

What to do when the opportunity to make one's case to legislators is not available or doesn't work? Should agents go public? One former federal agent felt he had no choice but to go public to defend his organization when his budget was cut by 30 percent by the government shortly after the inception of his office. This controversial move succeeded in restoring the funding, thus reinforcing the view that agents are legitimate advocates for their own interests.

Agents are required to submit annual reports on their activities and occasionally produce special reports to Parliament or the legislature, depending on their mandate. Yet with some notable exceptions, there is no guarantee these reports will be the subject of a specific parliamentary review or hearing. This lack of scrutiny can lead to agent frustration and a lack of accountability on their performance to MPs or legislative members.

The auditor general provides the best example of oversight working well. In both federal and provincial jurisdictions, a public accounts committee meets frequently and reviews auditor general reports. Chaired by an opposition member, these committees work diligently.

In Ontario, the legislature's public accounts committee meets weekly and conducts its first hour of deliberations in camera. This encourages openness among committee members and reduces partisanship. Yet a former Ontario auditor general notes it would be impossible for MPPs to dedicate as much time and effort to the work of each of the nine Ontario legislative agents as they do to the work of the auditor general.

Who audits the auditors?

"Who audits the auditors [agents]?" was frequently asked by former senior public servants and elected officials. Some believe that agents of Parliament escape the kind of scrutiny and performance evaluation to which senior public servants are subjected, as demonstrated by the fact that it is only in exceptional circumstances that an agent has been forced out of office.

In 2003, the federal Privacy Commissioner resigned after a report into his excessive spending habits by the House of Commons Standing Committee on Government Operations and Estimates. The committee later found the Commissioner to be in contempt of Parliament for having falsified expense statements with the intent of misleading the committee—the first person to be found in contempt of Parliament in 90 years. In 2010, the federal Public Sector Integrity Commissioner resigned. She was later found to have bullied her staff and failed to properly investigate wrongdoing, the very kind of behaviour her office was designed to combat.

Apart from these extraordinary situations, agents do not receive consistent scrutiny or performance reviews. One former legislator said a stronger assessment process is needed for agents, similar to that which is

imposed on deputy ministers. “Why should agents be any different [than deputies]?” asked a former senior federal public servant.

But agents believe that traditional oversight and performance reviews threaten their independence. One agent insisted that agents of Parliament “must be free to set their own objectives and be responsive to the issues raised by the public through complaints.” Another agent stated, “I’m accountable to the staff in my office. I’m accountable to the public. I’m accountable to all members of the assembly. . . I’m a CPA [Chartered Public Accountant]. I’m accountable to my profession.”

Yet there are few mechanisms to hold agents to account. The public does not have the means to review or complain about the performance of an agent. The standing committee to which an agent reports, such as the public accounts committee, only reviews the agent’s reports and not their performance. A professional body can hold an agent to account only on the basis of their professional obligations and responsibilities, not as an agent of a legislature or Parliament.

In the end, an agent is accountable to the legislature, and it is up to the legislature to determine the manner of evaluation and the circumstances under which an agent could be removed for cause. Yet the partisan nature of legislative committees affects their ability to review an agent’s work, said one agent. Members’ disinterest and lack of expertise is another shortcoming of legislative committee oversight, said one former provincial agent. The situation is exacerbated by a lack of research capacity within the committee system.

Legislation creating agent offices sometimes includes a periodic review of the legislation, usually after five years. That prompts committee hearings and at times legislation to modify the law establishing the agent, although at times little emerges from the process. This legal review is distinct from a periodic review of the operations of an office. And if reviews are to be done, who would conduct them?

One former senior public servant asserted that the idea of a performance review of an individual agent is a “red herring,” pointing out that judges and quasi-judicial positions are not subject to similar reviews. There should, however, be provisions to remove an agent for the rare occasions where there are grounds to do so, and the same public servant believes there should be periodic reviews of an agent’s office, at least in terms of budget and personnel management.

Improving accountability

In 2011, after the federal Auditor General’s special report on the Public Sector Integrity Commissioner noted serious concerns about the Commissioner’s behaviour, MPs raised questions about whether agents were subject to sufficient oversight. In a joint letter to the MPs responsible for the dossier, the seven agents of Parliament at the time clarified their views and suggested changes to the accountability regime. They concluded that the accountability system for agents was “sound,” and insisted they were subject to other

oversight mechanisms including their own departmental audit committees, internal audits, annual financial audits by the Auditor General, staffing audits by the Public Service Commission and other possible investigations by fellow agents.

Yet they made a number of recommendations: that parliamentary committees use the budgetary supply process to hold “accountability sessions” with agents; that a more rigorous appointments process be adopted; and that the Advisory Panel on Agents of Parliament be continued. They also suggested that the Auditor General could conduct special performance reviews.

Their recommendations were generally ignored. Seven years later, questions about agent accountability remain unanswered and the parliamentary panel on agents of Parliament remains defunct.

Peer reviews are one method of strengthening accountability. For federal and provincial auditors general, peer reviews are conducted by teams from cooperating jurisdictions. Measures for the performance of such agents are also being developed internationally. In 2014, the Organisation for Economic Cooperation and Development (OECD) published a series of Principles for Independent Fiscal Institutions (IFIs), reflecting the rapid growth of agents like Canada’s Parliamentary Budget Officer in OECD countries.

The OECD report calls on these institutions to “develop a mechanism for external evaluation of their work to be conducted by local or international experts. This may take several forms: review of selected pieces of work; annual evaluation of the quality of analysis, a permanent advisory panel or board, or peer review of an IFI in another country.” In the UK, the Office for Budget Responsibility, an organization like the Parliamentary Budget Office in Canada, is required by law to submit to an external review every five years, examining the content and quality of the Office’s reports. A similar process could be instituted for agents operating in Canada.

“Everyone needs a boss and needs to be accountable to someone,” said one former senior public servant. One former agent said he had no objection to a review mechanism. If the office does not live up to its mandate, he said, “then get rid of it.”

As it stands now, it is difficult to deal with serious complaints about agents, short of removing an agent for incompetence or misbehaviour. A rigorous process involving the legislature should be considered for dealing with serious complaints.

Addressing and resolving conflict

Conflicts between agents of Parliament, the executive and legislators are perhaps inevitable. Access to information has been a sore spot, with agents tussling with government departments in search of documents and data to which they believe they are entitled, while governments insist the information is protected by cabinet confidentiality or other exemptions to Access to Information rules. At times, the courts

become involved; enabling legislation for both the federal information and privacy commissioners allows for judicial review of determinations if the affected parties contest them.

On occasion, sharp differences arise over accounting practices and audits. The Ontario Auditor General qualified the Government of Ontario's financial statements in 2015-16 and 2016-17 because of the province's accounting for pension fund assets, which the Auditor General has called a "departure from Canadian public sector accounting standards." Accepting the Auditor General's view would result in a significant increase in the province's deficit numbers. In 2016, the government appointed its own expert panel to study the issue. The panel accepted the government's interpretation but the Auditor General has remained firm in her view, backing it with competing expert advice. The financial statements remain qualified at this time.

Without commenting on any specific situation, one interviewee noted that agents should work for "some kind of reasonable accommodation" with government over disagreements. "Your purpose is to serve Parliament and make the system better. I'm not sure it's better to turn it into thermonuclear war." Adds a senior public servant, "I think a longstanding dispute erodes public confidence."

To encourage conflict resolution, one interviewee suggested a strategy used in trade disputes, where a three-person committee is created, with each side naming a representative who jointly select a chair. (It is unclear this would work in the case of accounting disagreements). Others seem to think the courts or public opinion are the proper arbiters. Still others believe that disagreements should not cause too much concern and should be allowed to take their course. "It's not a bad thing if there are disputes if in the end, it makes for better government." Another agent says it's "very healthy" to have tension and that these disagreements will ultimately be resolved over time.

"You have to choose your battles," said one former auditor general. When a dispute breaks out with the government over an audit, "if it's very technical, the population will not understand and the government can do what it wants." It's essential for agents to explain their position forthrightly to the public accounts committee but understand that they serve parliamentarians. "You are there to help them do their job," said the former auditor general. "If you try to be a star, members will not be happy."

While disagreements are not inherently unhealthy, they are damaging if they fester for too long. The issue can be exacerbated when agents, senior public servants and elected officials become personally invested in the outcome of the dispute. In these instances, winning the argument becomes too important and participants forget that defending the public interest should be the primary goal.

3. RELATIONSHIPS

Trust levels between agents and their interlocutors vary with the nature of the issue, the context of the discussion and even the personalities involved.

Senior public servants are more likely to speak positively of their relationship with the auditor general than other agents. In part, that's because the auditor general has been part of the system since the 19th century and its work is accepted as an integral part of government. The same cannot be said of other agents. Senior officials often feel that the demands of these agents, whether in regard to access to information or other issues, add to their reporting burdens and distract them from their goals and responsibilities.

Senior public servants said the work of agents complicates their lives and muddies their traditional responsibilities to their minister under the Westminster system. In particular, they expressed frustration that another authority could hold them to account, and they can feel “ambushed” when a negative report from an agent is issued without prior notice. A critical report can do serious damage to the reputation of senior public servants, who find it difficult to counter the initial negative publicity from such reports. As anonymous public servants, they cannot defend themselves publicly, and depend on their ministers to do so. They prefer the process followed by auditors general, who traditionally provide draft reports to affected departments and allow these departments to meet and discuss or craft responses before a final report is published.

Yet public servants need to be open to the critical and alternative approaches that agents can provide. One agent who has worked in federal and provincial jurisdictions noted that the Ottawa bureaucracy zealously protects its self-interest. “Legislative or policy initiatives that the federal public service considers to be contrary to its interests are contested and stifled, especially those that promote transparency and accountability. In Ottawa, it was clear to me that the tail wags the dog.”

This was not the only harsh assessment of the relationship between agents and senior public servants. The tension of this relationship was a theme of interviews and roundtables. Agents believe they are doing essential work in defending the rights and interests of citizens to a powerful public service that resists change, while senior public officials see agents as meddlers whose investigations and reports hinder efficient, effective government.

One senior public servant noted that agents' work can make public servants risk averse. If public servants attempt to be nimbler by making decisions “without ticking all the boxes,” they fear a slap on the wrist for not following all the rules. “That’s what drives bureaucracies crazy.”

Building trust with public servants

A more constructive approach is needed. That can be as simple as organizing regular meetings between Agents and senior officials, a practice that has long been common with the federal auditor general and deputy ministers. Frequently cited was the practice adopted by former federal auditor general, Sheila Fraser, to meet regularly with deputy ministers for a general discussion about the auditor-general's work plan and overall approach to auditing, and not just to discuss a problematic audit. Other agents could adopt this approach to build trust with senior public servants. Otherwise, it is easy for the public service to quickly

“close down” and render the work of an agent difficult. Agents must be prepared to build trust with public servants as part of the transition process when they take office.

An agent’s style of leadership can be crucial to their success in the role. A combative style may attract public and executive attention to the agent’s role, yet it risks alienating both minister and senior public servants, resulting in active and passive forms of resistance to the agent’s work. It’s a delicate balance.

Public servants fear “gotcha” moments, when a critical report is published without warning. This concern subsides when report drafts are provided to public servants, as in the case of auditor general reports. This allows the affected department to comment and to respond quickly when the report is published. One former agent noted that he could share his findings with departments when dealing with systemic issues but not when dealing with complaints from individuals. In those cases, the agent’s first responsibility was to respond to the complainant and advise government only after the findings were made public.

Senior public servants say it is sometimes difficult to get agents of Parliament to collaborate on policies and legislation while they are in the design stage. Agent collaboration could proactively deal with potential concerns over issues like financial transparency and access to information. One former senior official said he’d like to see agents perform not just a “challenge function” for the executive and officials but a “help function” with a more cooperative approach at an earlier stage.

Agents counter that it can be tricky or even unethical to provide advice on the design of programs that they will be later obliged to evaluate. “You have to be careful if you’re adjudicating an issue” not to provide an advance ruling, said one former agent. To avoid this potential conflict, agents do at times offer informal advice to departments. Privacy commissioners frequently consult with governments to ensure privacy concerns are adequately addressed in new policy or legislation. Another agent adds this caveat: “You have to be independent enough to be collaborative.” The lack of trust between agents and the public service contributes to a culture of “us” and “them.” Adding to this gulf, staff movement between the core public service and agents is sometimes discouraged, as ambitious public servants can view transferring to the office of an agent as a career-limiting move. The result is less interchange between agents and government than is desirable to build trust and appreciation of each other’s roles. This problem is exacerbated by the fact that in some jurisdictions, employees of agents like the auditor general work formally for a separate employer, making transitions to and from the core public service more complicated. This is an issue that merits empirical research by the Public Service Commission.

Participants expressed concern over the lack of collaboration among agents, causing duplication of work. The lack of clear accountability, coupled with wide legislative mandates, can lead to overlap and a sense that agents march to their own drum, not fully appreciating the impact on the system as a whole. As one notable example, in November 2016, Ontario’s Auditor General, Financial Accountability Office and

Environment Commissioner issued three separate reports on the same subject—the province’s cap and trade system for carbon credits to combat climate change. The reports were released at virtually the same time and came up with their own conclusions.

By issuing three separate reports, the agents diluted their impact and made a coordinated government response more difficult, if not impossible. They also gave the impression of triplicate effort at additional cost to taxpayers. If agents are interested in presenting a coherent critique of an important policy area, why not join forces for a combined study rather than issue separate reports that are more likely to be ignored?

Agents say they do occasionally work with each other although it wasn’t clear how often they met or shared work plans. PPF found no evidence of a regular schedule of collaboration or consultation, although there are one-off cases. For example, the Ontario patient ombudsman (not a true agent of the legislature but an official who reports through the minister of health) cooperates with the province’s French languages services commissioner when handling complaints about French-language services at Ontario hospitals.

Yet there may be limits on the extent to which agents can legally cooperate with fellow agents or share information. Some argued that their enabling legislation forbade them from working with another agent on a study or report.

4. APPOINTMENT PROCESS

Participants were virtually unanimous throughout our interviews and roundtables that the appointment process for agents of Parliament at the federal level is broken and desperately in need of repair. Appointment delays have resulted in repeated extensions of mandates for some agents and long periods where the office is held by an interim agent, a recipe for administrative paralysis. As well, there was considerable discussion around the peculiar fact that in some jurisdictions the executive branch plays the largest role in selecting agents of Parliament or legislatures. “The whole process is a mess,” said one agent. “The system is flawed,” said another.

At one point in 2017, there were selection processes underway for five of the eight federal agents of Parliament, with several still in process months after the departure of the incumbent agent. As participants in our roundtables noted, Agents are appointed for a fixed term and unless there are extraordinary circumstances, it is clear to everyone when that term will end. It’s simply a question of starting the process early enough to make sure a successor is appointed in advance of the incumbent agent’s departure.

Canada’s chief electoral officer is an extreme case in point. In June 2016, Marc Mayrand advised the prime minister and the Speaker of the House of Commons that he intended to leave the post at the end of 2016, just two months shy of his 10th anniversary in the position. It was no surprise but Mayrand made his intention

public to give sufficient time to the government to find a successor. Yet more than 18 months after Mayrand's announcement, a successor has still not been chosen. The position is currently occupied by an acting head.

Mayrand has publicly expressed his disappointment at the failure of the government to nominate a replacement, particularly in light of the extensive planning required by Elections Canada for the organization of the next federal general election in the autumn of 2019. Election preparations take at least two years and it would be better for a permanent chief electoral officer to oversee the work, he said.

These kinds of delays have also plagued the appointment processes for several other agent positions. "How do you create a process where it doesn't take two years to make an appointment?" wondered one exasperated participant.

The shambolic nature of the appointments process has done nothing to elevate the standing of agents in the mind of legislators, public servants and the public. Indeed, concern was expressed that these repeated appointment delays make it more difficult to attract the best candidates to fill these positions. One interviewee was selected to fill a key agent's position in Ottawa after a selection process but then heard nothing back from the Privy Council Office. Only after a six-month delay was he told the appointment was confirmed and an announcement was about to be made. He had to turn the appointment down because in the long period of uncertainty, he had taken another position, unwilling to put his life on hold as the government stalled and prevaricated.

Who would wish to submit their name to fill an agent's position, only to find the process delayed by months and the ultimate selection immediately subject to public scrutiny and criticism? This is of concern if one is interested in attracting candidates from outside government to fill these positions.

Improving the appointment process

A more structural concern is that the executive in Ottawa largely controls the appointment process through the Privy Council Office and the Prime Minister's Office. These offices approach agent appointments in essentially the same way as they do any governor-in-council nomination to a government department, agency or Crown corporation.

Two issues arise. First, one of the main functions of agents is to keep tabs on the executive, but that same executive drives their appointments. Second, the influence of the executive can leave the impression that political calculation and partisanship are part and parcel of an agent's appointment. As participants noted, the government may be required to consult members of the opposition about the nomination of a new agent, but the consultation usually consists of a phone call to the opposition advising them of the nominee on the eve of the appointment. As one roundtable participant said, one only has to look at the botched

effort to appoint former Ontario Liberal cabinet minister Madeleine Meilleur as official languages commissioner in 2017 to see how not to handle the appointment of an agent of Parliament.

While the current government has exacerbated the delays, the shortcomings of the appointment process have been apparent for some time. In 2011, Prime Minister Harper's appointment of Michael Ferguson as federal auditor general was controversial because of Ferguson's unilingualism. The government had failed to follow its own search criteria when it selected Ferguson, leading to calls for a completely new process. The Liberals, then in opposition, boycotted the House of Commons vote affirming the appointment and the NDP made a formal complaint to the commissioner of official languages.

As agents and others remarked in both interviews and the roundtables, an agent needs all-party support from the start of their mandate to legitimize their work and avoid the partisan debates that have broken out over agent findings and decisions. One former agent said that when he was approached to fill an agent's position, he made it clear that he would only serve if there was unanimous support of all parties to his appointment, including the opposition. Provincial agents expressed the same view.

Participants said the executive needs to be distanced from the appointments of agents when the agent is tasked with oversight of executive performance and behaviour, as in the case of ethics and integrity commissioners. What could create more of a conflict than having the federal ethics commissioner investigate the behaviour of a prime minister who at the same time is to decide on whether to appoint or extend the mandate of the same ethics commissioner?

"Parliament should decide who is ethics commissioner," said one former MP. "It would be beneficial if it was a multi-party process... It should be someone who's seen to be above reproach and beyond partisan politics."

There was a strongly held view that federal MPs and provincial members of the legislature should appoint agents of Parliament and the legislature. However, some participants worried that legislators may not have the time, expertise or inclination to make these selections.

At least one senior provincial official said it would be impossible for legislators in his province to appoint agents of the legislature in a non-partisan fashion because of the province's political culture. In Manitoba, it took the legislature two and a half years to appoint a chief executive for Elections Manitoba because of a partisan deadlock between the two main parties on an all-party committee. One former senior federal public servant doubted that appointment delays would be shortened if MPs were involved. "It's very difficult to get politicians to pay attention to anything when it's 18 months away."

Even if partisanship can be overcome, do elected officials have the expertise to make hiring decisions involving professionals with specialized qualifications, like an auditor general or an environment

commissioner? Several participants suggested that legislators seek the assistance of the appropriate public service commission or an outside recruitment firm to set the hiring criteria, place advertisements and conduct the initial stages of the search. Former agents or outside professional experts could also be brought in to the decision-making.

And while there is support for a process where positions are advertised in a conventional fashion, both in newspapers and online, some interviewees insisted this kind of search would not be sufficient to attract the best candidates for an agent's role. That's particularly the case if one is looking for a candidate who is working in the private sector and possibly earning a considerably higher salary than the agent's position would pay, according to a former agent. In that case, it's necessary to do active outreach, using a headhunting firm, to identify the best possible candidates and persuade them to apply for the position.

In Saskatchewan and Ontario, there is a two-part process for selecting the auditor general. The Clerk of the legislature and an outside academic, plus one representative from each political party, make an initial selection of candidates. An all-party legislative committee considers these candidates and the successful candidate, usually chosen by unanimity, is submitted for a vote of the full legislature.

Some participants supported reviving an arm's length appointments commission, perhaps based on the successful British model. An effort to establish such a commission occurred under Prime Minister Harper, but his selection for head of the commission was seen to have partisan ties, which ultimately torpedoed the proposal.

While an appointments commission could eliminate some of the perceived failings of the current system, it could also interfere with the accountability of agents to legislators.

Length of mandate

The lengths of agent mandates are inconsistent. At the federal level, mandates vary between seven years to a maximum of 10 years, with the 10-year terms held by the auditor general and the chief electoral officer. At the provincial level, mandates tend to be five or seven years, although the terms of provincial auditors general sometimes extend to 10 years.

There was consensus that mandates should be longer than the average electoral term so as to keep agents on a different cycle than electoral calendars. Longer terms were also seen as essential to allow agents to acclimatize themselves to their new roles; some agents noted it took as long as two years to be fully up to speed in the running of their offices. In general, longer terms were considered by interviewees and roundtable participants as preferable but they hesitated to see any agent serve more than 10 years in the same position.

But what of re-appointments? Although a few participants saw no problem with reappointing a high-performing agent for a second full term, most believed a single mandate was sufficient, particularly if it were at least seven or eight years long. Multiple terms may discourage agent independence and objectivity. One former agent said he knew of a colleague who was anticipating a second term and wondered about whether to “go easy” on the government to ensure reappointment. “A fixed term will focus the mind,” said another former agent, who believed that a serving agent should not be re-appointed.

In recent years, mandate extensions have become commonplace in Ottawa, largely because of government’s inability to make timely appointments of successors for agents. But there was concern about repeated short-term term extensions, which result in what amounts to a virtual second mandate. Ottawa’s other fix is to name acting agents to serve in an interim capacity while it selects a new agent, but participants worried that acting agents are simply caretakers without the authority to make significant changes.

Agent orientation

Agents also noted that it was challenging for newly-appointed agents to learn about their roles, including their powers and responsibilities, particularly if they come from outside government. A lack of transition planning at both levels of government makes agent handovers more difficult than they should be. However, it should be noted that agents’ staff have a role in providing expertise on the internal functioning of the offices.

According to some, it would be useful for each jurisdiction to create materials that set out the roles and responsibilities for incoming agents, as ministers are provided with briefing books when they are appointed to cabinet. These orientation materials could be prepared and updated periodically by the Speaker’s Office in collaboration with agents.

A Case Study: Alberta

As participants in the Edmonton roundtable noted, the Alberta legislature provides a useful model of legislators taking ownership of the appointment process in a competent, non-partisan manner. When it’s time to appoint a new legislative agent, the Alberta Legislative Assembly appoints a special committee whose sole task is to conduct a search for a new agent. When a suitable candidate has been found, he or she is referred to the legislature as a whole for final approval.

The Select Special Auditor General Search Committee, appointed in June 2017, included six government members and three members of the opposition, each members of the legislature’s Standing Committee on Legislative Offices. The committee set the criteria for the

search and engaged an external human resources firm to help vet candidates. The committee decided which candidates should be interviewed by telephone, and following these interviews, it created a shortlist of candidates for in-person interviews. After a total of six meetings, the committee issued its final report in December 2017, when it unanimously recommended to the legislature the appointment of W. Doug Wylie as auditor general of Alberta for an eight-year term.

“All discussions are in camera. It takes away any need to posture and allows for straightforward discussion,” said one committee member. He said the goal throughout was to come up with a unanimous recommendation.

A similar process was used to select a new Alberta ombudsman and public interest commissioner and is now being used to choose the province’s first-ever elections commissioner. In the case of the ombudsman, the committee held two full days of interviews with candidates. “Our process works well,” said a former Alberta legislator and minister.

While Alberta interviewees and roundtable participants were enthusiastic about the way the selection process works, there were some suggestions for improvement. One agent believed that the legislative selection committees could use more assistance from an outside professional or a former agent. “They [committee members] would benefit from another set of eyes,” he said. A former legislator said he wouldn’t be opposed to having a “pre-competency screening” with outside assistance to come up with a shortlist, as occurs in judicial selections processes. The final screening would then be turned over to the legislative committee.

PRINCIPLES

Agents of Parliament have become a valued part of our democratic system in Canada, providing independent, non-partisan oversight of government actions for the benefit of legislators and acting as an important advocate for citizens in their interactions with government. Their independence is important and deserves to be valued.

Yet the rapid expansion of the scope and sheer number of agents, often on an ad-hoc basis, has led to tensions and misunderstandings within our Westminster system of government. A lack of legislative oversight of the work of certain agents both frustrates agents, who feel their work is not given adequate attention, and critics, who complain agents are responsible to nobody but themselves, certainly not to the legislators whom they supposedly serve.

During the course of the project several important principles emerged and these principles have inspired PPF's recommendations.

Principle 1

Agents promote integrity and honesty in government by providing independent, non-partisan advice to legislators that helps them hold the executive to account for its actions.

Principle 2

Agents are responsible to the Parliament or legislature that created them.

Principle 3

Legislators should primarily be responsible for the appointment and oversight of agents.

Principle 4

Agents should scrutinize the actions of the executive but the executive is not accountable to them.

Principle 5

Agents should report regularly to the legislature, preferably through a “home” [legislative] committee, which follows the work of the agent and establishes a place of support and accountability.

Principle 6

Public servants' primary duty is to serve the executive, but they should also establish respectful working relationships with agents and their staff.

CONCLUSIONS & RECOMMENDATIONS

Over the past 30 years, the growth in the number and scope of parliamentary and legislative agents has added a new dimension to Canada's system of government. Not surprisingly, these changes have required adaptation and caused strains as agents carved out their place in the system and government players adjusted to their new presence. Some poor practices have emerged. Our nine recommendations would strengthen agent offices, clarify lines of accountability, and enable agents, public servants and elected representatives to work together better. Ultimately, implementing these recommendations would improve Canada's democracy.

1. Legislators must be responsible for establishing agents, as they tailor the enabling legislation creating the offices and pass it into law. As their title states, they are agents of Parliament or of the legislature and not agents of the executive.

Recommendation: The creation of new agents is the purview of Parliament and legislatures, not the executive. A majority of elected officials in at least two official parties should agree to the establishment of a new agent.

2. New offices are sometimes created as a response to short-term political pressures on governments, even though the resulting agents will remain in place long after a given crisis passes. Therefore, careful consideration must be given to creating new agents. The growth in the number of agents has strained the capacity of legislators to adequately respond to their reports and oversee their work. These stresses will only worsen if legislators add new agents while still trying to manage the increased workload from existing agents.

Recommendation: Fewer, stronger agents would better serve elected representatives and strengthen accountability. Legislators should set a high bar for creating more agents. Consideration should be given to consolidating the work of agents with similar mandates.

3. The federal appointments system for agents is broken. The current system of superficial 'consulting' of the opposition prior to appointments does not amount to what a reasonable person would consider adequate multi-party consultation. It leads to partisan division over appointments, rather than the all-party support essential to agents successfully fulfilling their mandates.

Recommendation: Legislators must be responsible for the appointment of agents, with the aim of having all-party support for the final selection. The Privy Council Office and the Prime Minister's Office should withdraw entirely from the appointments process. A special parliamentary committee should consider the kinds of selection processes operating in provinces such as Alberta and Saskatchewan.

4. Legislators have limited experience in recruiting and hiring, particularly for high-profile positions. Additionally, the offices of smaller agents in both federal and provincial jurisdictions often suffer from a shortage of resources and expertise associated with a lack of scale.

Recommendation: The Office of the Speaker should establish a properly resourced secretariat for agents. It would oversee recruitment of agents with the assistance of the Public Service Commission; manage relations with search firms; provide transition training to new agents; and organize pooled services for smaller agents, such as IT and human resources.

5. Agents require relatively lengthy terms in order to learn their often unique jobs, set aside other professional opportunities and have the security of tenure needed to operate independently. At the same time, they should not be placed in a position where their performance is influenced by anticipation of a possible re-appointment to a second term.

Recommendation: Agents should serve a single mandate and reappointments of no more than one year should occur only when elections are imminent or other extraordinary circumstances prevail. Terms should be a minimum of five years and a maximum of 10 years. An automatic trigger should be introduced that would launch a selection process for new agents at a predetermined period before the existing officeholder's term ends.

6. Some agents lack specific oversight by Parliament or legislatures, which undermines accountability. If legislators lack the inclination to assign responsibility for an agent to a specific committee, they should consider whether the office merits being an Agent of Parliament or Legislature.

Recommendation: Agents work for elected representatives. They are not free agents. As such, all agents should report to home committees, as is the case with the auditor general and the public accounts committee.

7. While agents need to adhere to government-wide budgetary rules, there should be a separate budgetary process run by legislators to assure the independence of agents is preserved, particularly during periods of austerity.

Recommendation: An agent's budget should be authorized by a parliamentary or legislative committee. A balance must be struck between the responsibility of the government to manage spending and the need for agents to be free from the possibility of politically motivated financial pressure. In Ottawa, MPs should revive the Parliamentary Advisory Panel on the Funding and Oversight of Officers of Parliament.

8. Agent independence allows them to act in a non-partisan and effective manner in fulfilling the roles set out in their enabling legislation. Yet they need to be accountable for the performance of their offices, including staff and budgets.

Recommendation: To ensure that agents adequately perform their role, regular peer reviews (e.g. minimum every five years) should be undertaken. The performance of agents' offices, where it does not already occur, should be reviewed mid-mandate by outside experts reporting to the parliamentary committee overseeing each agent.

9. Agents and senior public servants should strive for a more cooperative approach in their relationship. Agents should also work more cooperatively with other agents to allow for better coordination of their work and sharing of best practices.

Recommendation: Agents and deputy ministers should hold regular meetings to facilitate an understanding of each other's roles and work plans and to encourage staff interchange assignments between various agents and ministries, where appropriate. In the federal government, the Treasury Board Secretariat should be responsible for these coordination roles. Provinces should designate a similar responsible authority.

APPENDIX: AGENTS OF PARLIAMENT AND OFFICERS OF THE LEGISLATURE

Agent	CA	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NL	YK	NT	NU
Total	9	8	7	7	6	9	5	8	4	5	7	3	5	5
Auditor General	X	X	X	X	X	X	X	X	X	X	X	X		X
Chief Electoral Officer	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Commissioner of Languages	X					X		X					X	X
Commissioner of Lobbying	X			X*			X							
Conflict of Interest Commissioner		X		X*	X				X	X	X		X	
Consumer Advocate for Insurance								X						
Environmental Commissioner						X								
Equal Pay Commissioner													X	
Ethics Commissioner			X				X	X						X
Indemnities & Allowances Commission										X				

Agent	CA	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NL	YK	NT	NU
Ombudsman		X	X	X	X	X	X	X	X		X	X		
Parliamentary Budget Officer	X					X								
Police Complaint Commissioner		X												
Privacy Commissioner	X	X	X	X	X	X				X	X		X	X
Public Sector Integrity Commissioner	X	X				X								
Public Interest Commissioner			X	X										
Representative or Advocate for Children and Youth		X	X	X	X	X		X			X			
Seniors' Advocate								X			X			

Some similar positions have been combined for ease of comparison. For example, at the federal level, it is the Commissioner of Official Languages, elsewhere, the title is Commissioner of Languages. In Ontario, it is for French language services.

* The Conflict of Interest Commissioner in SK is also responsible for lobbying

APPENDIX: ADVISORY GROUP AND PARTICIPANT LIST

ADVISORY GROUP

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