

The Relationships Between Parliament and the Agents of Parliament

Working relationships can be quite challenging at the best of times. But when there is debate or disagreement over the nature of work roles and who answers to whom, this relationship has the potential to be especially tense. A recent seminar (March 31, 2017) organized by the Canadian Study of Parliament Group explored this dynamic by asking stakeholders and observers to come together to discuss the roles played by agents of parliament and the parliamentarians they may variously serve, guide, guard, investigate and answer to.

Will Stos

Session 1: Servants? Masters? Guardians?: How Agents of Parliament View Their Role

In a first session moderated by **Michael Ricco**, the parliamentary relations advisor at the Office of the Information Commissioner of Canada, three agents of parliament were asked how they view their role and responsibilities.

Conflict of Interest and Ethics Commissioner **Mary Dawson** noted that “agents of parliament” are not a homogeneous group. There are eight federal commissioners and some are considered officers of parliament. She explained that she views her role as one where she scrutinizes parliament in order to hold the executive to account. Dawson said she is focused on the idea of independence in her role, but is also cognizant that she must also be “seen to be independent.” It is essential for MPs to know she is fair and independent. She wondered if her position’s seven-year term should be non-renewable, explaining that if she or another office holder were to be re-appointed to additional terms it could create the impression of favouritism to the current government. She concluded her presentation by stressing the key feature of her office is that it is “accountable to parliament,” not the executive or government. Unlike other agent offices, hers is considered an entity of parliament, is part of the parliamentary precinct, and is covered under parliamentary privilege.

Michael Ferguson, the Auditor General of Canada, introduced his office by highlighting its 530 employees. Because some crown corporations have headquarters in different provinces and the office also acts as the Auditor General Office for the three territories these employees are spread across five separate locations in Canada. The office audits financial statements of departments and crown corporations and conducts special audits to examine whether government programs are achieving their objectives. Ferguson says he views his office as a source of objective, non-partisan information that he hopes will be used to improve services for Canadians. Like Dawson, he viewed his independence as key. “One of the best parts of this job is that I have no boss,” he told the audience, noting that while he reports to parliament and the territories, no one can tell him what to do. Legislation also gives his office access to any information it requires. Unlike Dawson, Ferguson’s 10-year term is non-renewable. He supports a prohibition of reappointment because it underscores an office’s independence. Moreover, there is no worry about perceptions that auditors are being easy on a government to secure a reappointment. Ferguson noted there are some threats to this independence, however. His office has a budget envelope for all types of audits but only has discretion to spend on performance audits. Therefore, there is a potential threat for government to reduce total funding to limit these audits. Also, if information requested is denied, the office can only report this to parliament, and it has no tools to demand it. He also cites interim appointments of auditors as a potential threat to their independence. Ferguson concluded by noting that with independence comes responsibility, as a lack of oversight requires proper structures to be in place in the office.

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Moderator Michael Ricco (left) with three agents of parliament: Mary Dawson, Michael Ferguson, and Suzanne Legault.

Information Commissioner **Suzanne Legault** suggested that she is always surprised when asked if her role is to be a servant, master, or guardian because it's defined by law. The objective of the office is to provide access to information that gives citizens the necessary information to participate in democracy. The Commissioner has the same power as a higher court judge to ask for witnesses and conduct secret investigations required by law. Legault noted that the Information Commissioner has done performance updates – but these are controversial because some say they are not a part of the office's mandate (and financing for these has always been denied by the Treasury Board). Also, when the office makes recommendations (for example, the concept of open government) they can be controversial. On her office's relationship with parliament(arians), she remarked that the Commissioner is appointed by government in council after consultation with all recognized party leaders in Commons and Senate (and she wondered if the legislation may need updating with the new Independent Senate group. With the immediacy of social media and the digital environment, Legault said a famous quote attributed to Jonathan Swift and Winston Churchill is now truer than ever: lies can travel half way around the world before the truth gets its pants on. This reality can make it difficult for access to information requests to correct the record. She also expressed frustration that government ministers use the Access to Information Act as a shield to prevent them from answering questions. However, when the office has been asked to comment on whether private member's bills conforms to the legislation, Legault explains she and parliamentarians have found the review to be valuable to flag parts that do not. Legault joined Dawson in recommending that agent

of parliament accountability frameworks should be reviewed and uniformly built on the best models.

During a question and answer period one audience member noted that Dawson and Legault have no power to reprimand anyone and it's up to parliament to follow their reports. They were asked if their offices should be extended the power to reprimand. Dawson suggested that reprimands like fines aren't important, but the report and the publicity around it are. Legault said all current files under review are private until they are complete, and in her annual report she can't mention all of these (currently there are 2,000 cases under review). She contended that allegations that are made publicly are not fact and agreed with the idea of disciplinary measures and fines (but only in specific contexts).

Second Panel: Relationship Status? It's Complicated: Past Challenges and Future Perspectives on Parliament and its Agents

A second panel, chaired by **Anna L. Esselment**, assistant professor of political science at the University of Waterloo, brought several academics and other parliamentary observers together to offer a view with some critical distance.

Élise Hurtubise-Loranger, the section chief of constitutional and parliamentary affairs at the Library of Parliament, explained that officers or agents of parliament (there is no statutory difference, but 'officer' is a term inherited from the United Kingdom dating to the 1860s while 'agent' is more frequently used in Canada) should not be confused with officials that assist with parliamentary operations. Their role is to provide



Left to right: Moderator Anna L. Esselment, Élise Hurtubise-Loranger, Jack Stilborn and Genevieve Tellier.

oversight, act as watchdogs, report and be accountable to parliament. Hurtubise-Loranger outlined the key criteria for officers/agents of parliament including the appointment process, term, removal and reports. When listing the office holders, she did not include the Senate Ethics Officer as the concept of independence from parliament is not followed. Hurtubise-Loranger suggested there is no coherence in the legislation to suggest uniformity in these positions. For instance, according to the *Language Skills Act*, some officers have to be bilingual while there is no requirement for others. There is also a general lack of legal framework for these positions.

Jack Stilborn, who retired after previously working at the Library of Parliament, highlighted the Westminster model these office holders are working within. He noted that policing your boss is a delicate process, but took issue with the statement several agents made when they said they don't have bosses. Stilborn stressed that parliament is ultimately your boss because they established these officers. Part of the job is paying attention to what parliament wants while maintaining independence. But, he explained, in a Westminster model there is government/opposition. How do you know what parliament wants when there is internal disagreement? Stilborn suggested that public support was both dangerous and necessary for these agents. Officers need public support to succeed in their roles, but they must be diplomatic about how they generate this because they may alienate people sitting in parliament. He concluded by examining the legislative, funding and parliamentary protections available to these agents.

Genevieve Tellier, a professor at the University of Ottawa's School of Politics, added her voice to others

on the panel who were surprised to hear some agents of parliament say they did not have a boss. She challenged that, yes, they do, and it's ultimately parliament. Tellier cited research by Paul Thomas which referred to officers of parliament as being in a "constitutional twilight zone" – they must be independent but also accountable. Thomas also famously called these officers "watchdogs that bark but don't bite." Tellier, whose own research explores the Parliamentary Budget Officer, suggested that when considering changes and improvements to these offices we should be careful not to imitate disappointing models elsewhere.

In a discussion period which followed the panel, an audience member asked if parties should take proposed changes to these offices out of their platforms to make them more managerial and less open to partisan squabbles. Tellier suggested multi-party models, unanimity in parliament, or a secret ballot which might be used as methods to lessen partisanship, while Stilborn cautioned that cross-party support is key for the legitimacy of these offices and we need to be careful about this when thinking of changing models. From the floor, Legault noted that while we are operating under the Westminster model, it should not shackle us from modernization.

Third Panel: Agents' Feet on MPs' Toes? Working with Agents of Parliament

A final panel, moderated by Stilborn, brought together three current and former parliamentarians to share their experience in working with these agents. Liberal Senator **Percy E. Downe** echoed the suggestions from the first panel about ending the renewable nature of some of these appointments. This automatically calls into question their independence even if they are



Moderator Jack Stilborn (left) with Senator Percy E. Downe, former MP John G. Williams, and Senator Elaine McCoy.

people of the highest quality, he said, favouring instead changes to either extend the length of appointments or just make the terms non-renewable. Downe spoke about recruitment of these officers being left up to the Prime Minister's Office as another weakness. If the PMO and the Prime Minister is not very engaged in the selection process, the best candidates may not be brought forward. He noted that a 2010 advertisement for the Auditor General said (s)he must be bilingual. The successful applicant was ultimately not bilingual at the time, but is now. He asked rhetorically how many Canadians who saw the advertisement did not apply. Downe suggests this shows the latitude the government has.

Former Conservative MP **John G. Williams** suggested that it's ultimately democracy that keeps government accountable. Officers of parliament bring attention to matters so that pressure can be brought to the government to keep them accountable by civil society, political parties and the independent media. This is not something that happens in countries that don't have this kind of robust democracy. Williams lauded the agents as being a great benefit to parliament and our democracy.

Finally, Independent Senator **Elaine McCoy** suggested the model we have is very flexible and adaptable, and said she would have titled the panel: "Keeping Parliamentarians on our toes." McCoy said agents of parliament are partners in parliamentary democracy. While there is a fundamental tension between power and truth, the essential task is speaking truth to power – whether as an officer of parliament, a parliamentarian, etc. She praised agents of parliament for acting as a counterweight from time to time, and commends them for showing courage when faced

with political pressure. As leader of the Independent Senators Group (ISG), McCoy explained that some members of the ISG have a view that the Senate should be non-adversarial. She said she believes Canadians would support that shift and if that were to occur, they could become partners with the agents of parliament.

During a question and answer period, one audience member asked if there should be any new officers of parliament. Williams suggested, and Downe concurred, that the PBO should be elevated to an officer of parliament because parliament needs independent budget information that may not conform to what the government is saying. McCoy said she dreams about a Library of Parliament Research function that becomes independent. She argued that budgetary cutbacks have hindered the research capacity at the library and the public has not been aware of how this decline of information, knowledge and analysis has hindered parliament.

Stilborn asked the panel, who will watch the watchdogs? If the answer is parliament, doesn't this put parliamentarians in a difficult position? Williams noted the independent media has a significant role to play in this equation and warned about rhetoric which diminishes its credibility among the public. From the floor, Dawson offered that appearances at estimates and reports provide an opportunity for accountability. She recounted how parliamentarians have done some poking and prodding of these appearances and publications. Legault noted the Auditor General audits all other officers of parliament and there are also performance indicators in certain reports. However, she concluded by stating that there should be a standardization of that reporting process.