Question 1 – Change in Directive – Communication with Departments

Senator Moncion: I have a question. The directive changed in 2015. Do you know what precipitated the change?

Ms. Sultan: Thank you for your question. It’s my understanding that the change in the directive was precipitated — I have here on my timeline that there was a letter sent in 2011, from the Commissioner of Official Languages related to a disposal of a property, specific to a building in Yellowknife, Northwest Territories. In his letter, the Commissioner of Official Languages had requested that the needs of the official languages minority communities would be addressed more directly within the directive on the transfer or sale of surplus federal real property. It was in 2015 that the amendment that we note was made in response to that.

I have the exact wording of what was added: The change was made to provide consideration for minority language communities in the disposal process and the change was as follows: Custodians shall develop a balanced disposal strategy for strategic surplus properties that is supported by a comprehensive assessment of federal and other stakeholder interests.

The Chair: Not too fast please.

Ms. Sultan: I will repeat: That is supported by a comprehensive assessment of federal and other stakeholder interests, including those of official language minority communities, the legal risk analysis and policy and financial considerations.

Senator Moncion: How was it circulated to other departments?

Ms. Sultan: Allow, if I may clarify, how was this change in the directive circulated to the other departments so they were aware — that is the question?

Senator Moncion: Yes.

Ms. Sultan: To be able to factually provide a response, I have to go back and determine exactly what was undertaken but if it followed what would be a generic or general way that this is done, we have a number of ways of communicating changes such as this to the departments. They would include formal notification by email directly to the contact point for each of the custodians or owners of the property. We also post on internal websites such as GCpedia where practitioners in the real property community are aware to check for updates. We can also release policy notices that go to users of the policy that provide them with information on updates of that sort as well as communication at various fora within the real property community. For example, there are Treasury Board of Canada Secretariat committees that bring together real property practitioners. Such a change would also be communicated there.
Senator Moncion: What happens when these directives are not followed? Because, in the case of École Rose-des-vents, if I am not mistaken, that was exactly what happened. The directive was in place and it wasn’t followed. What happens when someone has a directive, does not know about the directive, the situation occurs and what is the fallout for whoever made the mistake or what are the corrective measures being provided so that somebody is accountable for not knowing these things and having gone forward with the situation we have in the case of École Rose-des-vents?

Ms. Sultan: Treasury Board of Canada Secretariat monitors compliance with various policy and policy instruments such as directives related to all number of subjects.

As noted, it is the accountability of the deputy head of the specific organization that is required to follow the provisions within the directive or policy. It can be held accountable for not administering those policy pieces.

In terms of this transaction particularly, I would like to commit to getting back to you specifically on what may have occurred.

Response

Communication of changes to policy requirements

The Treasury Board (TB) Directive on the Sale or Transfer of Surplus Real Property was amended in July 2015. The TB website, which highlights updates to policy instruments and related guidance, was updated in December 2015. Treasury Board Secretariat engaged stakeholders to communicate the change via a public presentation titled ‘Navigating the Disposal Process’ delivered at the Real Property Institute of Canada’s National Workshop in November 2015.

Policy compliance – École Rose-des-vents

The Directive requires that custodian departments develop a balanced disposal strategy for strategic surplus properties that is supported by a comprehensive assessment of federal and other stakeholder interests, including those of official language minority communities.

As noted in our testimony, the Deputy Head of a department is accountable for ensuring compliance with policy requirements and for taking corrective actions where non-compliance is identified. In cases of significant non-compliance, the Deputy Head is responsible for advising the Secretary of the Treasury Board.

For the case of École Rose-des-vents, we are not aware of any evidence that demonstrates requirements in the Directive were not followed. Details about a specific disposal transactions should be directed to the department that undertook the transaction.
Question 2 – Compliance

Senator Gagné: With respect to the recommendation, if you haven’t already, I would encourage you to read our report, Horizon 2018, about the challenges associated with access to French-language schools and French immersion programs in British Columbia. This report could apply to many other provinces. I encourage you to read the recommendations, because the issue of disposal of real property was a central topic of discussion, and the situation could be the same in other provinces.

I think that requiring the federal government to hold parallel consultations would provide greater assurance that the needs of official language minority communities are being considered.

I also want to follow up on Senator Moncion’s questions. If the federal government’s directive isn’t being complied with, as happened in British Columbia, isn’t it the federal government’s job to fix that? What is the federal government’s role in that situation?

Ms. Sultan: As noted, the Treasury Board of Canada Secretariat monitors compliance. It is ultimately up to the deputy head of the specific organization that is accountable for the requirements within the policy, and to adhere to those.

With regard to specifics about a situation or different ways of monitoring or evaluating that we could potentially move forward with, I would not be able to speak to anything aspirational or not formalized at this moment. However, your point is well noted. I will take this question away. If there is more I can provide to you, I will do so.

Response

The Directive on the Sale or Transfer of Surplus Real Property is an administrative policy of the Government of Canada.

As indicated in the response to the first question, deputy heads are ultimately accountable for ensuring compliance with the policy requirements, but must inform the Secretary of the Treasury Board when serious cases of non-compliance arise. Section 7 of the Policy on Management of Real Property describes potential consequences of not complying with policy requirements as follows:

7.1 Based on the assessment of departmental management performance, the Secretary of the Treasury Board will make appropriate recommendations to the deputy head of a department and to Treasury Board. Recommendations to Treasury Board ministers could include such measures as an increase in transactional approval limits to acknowledge improved performance or capacity, or conversely, a decrease in authorities or a withholding of proceeds of sale or transfer in the event of performance falling short of the requirements of this policy and its associated policy instruments.