



**Parliamentary Service and its Management:
Strengthening the Independence of Parliament**

Presented by

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to the 21st Conference of Speakers and Presiding Officers of the Commonwealth

Port of Spain, Trinidad and Tobago

January 9, 2012

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INTRODUCTION

The Latimer House Principles on the accountability and relationship between the Executive, Parliament and the Judiciary were developed in the late 1990's and adopted by the Heads of Government of the Commonwealth in 2003. One of the main objectives of the Latimer House Principles was to provide an effective framework for the implementation of the Commonwealth's fundamental democratic values.

These principles are not ends in themselves, rather they are intended to serve as a guide for parliamentarians and the parliamentary service in pursuing a higher goal: an effective legislature that is better able to scrutinize government, evaluate public policy and enact legislation. More specifically, on the three branches of Government, the Latimer House Principles state:

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

In addition to this statement on the three branches of government, the Latimer House principles cover the following themes:

- Parliament and the judiciary
- Independence of parliamentarians
- Independence of the judiciary
- Public office holders
- Ethical governance
- Accountability mechanisms
- The law making process
- Oversight of government
- Civil society

For countries whose democratic institutions are emerging and developing, these principles can serve as a guide in helping them in their endeavour of establishing democratic institutions which are transparent and accountable in their decisions and which have the full confidence of the public behind them. Naturally, as with all guidelines, these principles can and should be adapted and applied based on the local customs and practices of each country.

For countries with established democratic institutions that have withstood the test of time, these principles can serve as a beacon to ensure that they stay on track with the Commonwealth's values and can help in maintaining an appropriate balance between the three branches of government, preserve their independence and prevent the erosion of power of one branch of government by another which sometimes can occur in the natural evolution of such institutions. It is important not to lose sight of the

reality that each branch of government has a distinct role to play and each must also be a check and balance for the other branches.

The independence or sovereignty of Parliament, which is the focus of today's discussion, is a fundamental principle in a democracy since it is through the Parliament that the voice of the people is heard. If Parliament is not fully independent and free from the external constraints of the Executive or the Judiciary, then it cannot fulfill its mandate to legislate as it sees fit and be the voice of the nation on matters of public policy.

1) FUNCTIONAL AND FINANCIAL INDEPENDENCE OF PARLIAMENT

With regard to financial and functional management, a parliamentary institution's independence can only be protected if it follows and is seen to be following the best practices available. This includes a strong accountability framework, robust expenditure review and management practices and an openness to transparent reporting and public disclosure.

In particular, the notion that parliamentary institutions are too unique or independent to have basic standards of management and accountabilities apply to them is one that could actually lead to a less independent institution. If public office holders, and the parliamentary institutions, wish to continue enjoying public support, I believe they will have to give up this notion and voluntarily allow themselves to be subject to generally accepted financial and management controls and accountability.

While it is generally agreed that executive interference is inconsistent with the independence of a parliamentary institution, this does not entail that such independence means living in a bubble. Indeed, parliamentary institutions, their corporate bodies and the administrations that support them, cannot completely ignore the concerns of the executive. Rather, it is generally desirable that the policies and practices of Parliaments are, in large part, consistent with the government's broad policy initiatives in such areas as wage and budgetary planning, and resource allocation.

Management Accountability Framework

- At the administrative level, a framework of benchmarks should be established, shared and integrated into parliamentary management practices.
- Canada's Senate Administration has voluntarily accepted to use a set of benchmarks to assess its management processes for the past four years. These benchmarks are known as the Management Accountability Framework (MAF) and were developed by Canada's Treasury Board Secretariat, whose role it is to provide advice and support to the Treasury Board ministers in their role of ensuring value-for-money and oversight of the financial management functions in government departments and agencies.
- The commitments expressed in the framework describe a culture of accountability which include the kind of "public interest" values that serve as a driving force for an effective parliamentary service.
- Despite a natural tendency by parliamentary officials to avoid using the tools developed for and by the executive branch to improve Senate management processes, it was determined to be a useful exercise after some initial trials with the MAF. Nonetheless, senior Senate officials have noted that it should be adapted further and expanded to make it more suitable to the parliamentary context, so some thought has been given to the development of a more fitting framework of benchmarks or criteria.

Expenditure Review & Management in the Senate

- The decision-making responsibility for the control and expenditure of public money in the Senate rests with the Senators who make up the Senate. The Senate ensures that its

responsibilities to the Canadian public are discharged effectively and efficiently through the Senate Standing Committee on Internal Economy, Budgets and Administration. In addition, the Senate reports on actual spending by means of the Clerk's Statement on Receipts and Disbursements and the Public Accounts. The role of the Senate Administration is to implement the policies and directives set by the Committee through the authority of the Clerk of the Senate.

- Although Treasury Board is responsible for the review of annual and longer term expenditure plans and programs for various government departments, this responsibility does not extend to the Senate. In this way the Senate is not subject to the scrutiny afforded to government departments and the separation of the executive and legislative branches of government is secured.
- However, the Senate is keenly aware of its responsibility to the Canadian public and consequently voluntarily embraces government priorities. A case in point is government restraint measures where the Senate has matched and at times exceeded the targets set by Treasury Board. Currently, there is a strategic and operational review being undertaken by all departments of the Federal Government to find savings between 5% and 10%. The Senate and the House of Commons have voluntarily agreed to participate in this exercise even though they are not required to do so.

Reporting and Public Disclosure

There is a greater demand for reporting and public disclosure in the area of financial management and expenditure review. Proactive measures by parliamentary institutions can help strengthen them by increasing public confidence.

Quarterly Expenditures Reports:

- Senators' research and office expenses are published quarterly on the main parliamentary website. The first published quarter covered the period from September 1 to November 30, 2010.

Audited Financial Statements:

- The Senate of Canada has chosen to use Generally Accepted Accounting Principles ("GAAP") for the Public Sector as the basis for their financial statements. The reason for choosing GAAP was that it was felt that GAAP would be more accepted by the general population once the financial statements became public record, as they are accounting principles that have been prepared by an independent party.

Public Accounts:

- The Senate and the House of Commons provide a detailed breakdown of spending to the Receiver General. This is then consolidated with data from government departments and published in the Public Accounts thereby ensuring that the Senate is accountable to the

Canadian public. Details are provided for each Senator, including Sessional Allowances, Expense Allowances, Travel Expenses, and Research Staff and other Expenses.

Audit

- Although the Senate is under no obligation to do so, an invitation may be issued to the Office of the Auditor General to periodically audit the Senate's administration.
- On October 28, 2010, the Committee on Internal Economy, Budgets and Administration presented a report to the Senate recommending that:

The Senate agree with the request from the Auditor General to conduct a performance audit of the Senate Administration.

- The Senate adopted the committee's recommendation on November 2, 2010 and the performance audit was ongoing during 2011.
- The last time the Auditor General requested to conduct a performance audit of the Senate was about 20 years ago.

2) CAPACITY BUILDING (E.G., TRAINING AND RESEARCH FACILITIES AND PROGRAMS)

Parliamentarians come and go over the years, so the parliamentary service must provide the continuity and corporate memory required to successfully support legislators as they fulfill their legislative, executive oversight, representative, and corporate roles and responsibilities. In order to sustain and even increase the public trust in the parliamentary system, this must be carried out by non-partisan professionals who have no direct links with the executive. It is only with these resources that parliamentarians can carry out their work effectively. This capacity building, if successful in its goal of assisting the work done by parliamentarians, can serve to increase the independence of parliamentary institutions and thereby increase its public confidence.

Facilities such as adequately stocked libraries, offices and electronic equipment, and professional research and technical staff with the education, knowledge, information and independence to provide legislative and policy advice, are basic requirements for parliamentarians.

In addition to the rules, there should be procedural manuals, fact sheets, scripts and templates to assist politicians in their duties. The Table and the Journals Office must have the expertise to provide procedural advice to the Speaker, house officers and individual members, including the daily preparation of the Speaker's scroll and drafting of rulings under the Speaker's direction. The members need access to lawyers with legislative drafting skills to assist them with private members' bills and amendments, and to proceduralists to assist them with the drafting of motions and navigation through the rules and daily orders of business.

Supporting Parliamentarians

International and Interparliamentary Affairs

- The Parliament of Canada establishes and maintains relations with other parliaments, ranging from the simple exchange of information to formal visits. The International and Interparliamentary Affairs Directorate (IIA) is a joint directorate that provides services to both Houses of Parliament through its four main official programs: Parliamentary Associations, Parliamentary Exchanges, the Protocol Office and Conferences.
- IIA provides support to parliamentary associations and recognized interparliamentary groups and serves as secretariat to the Joint Interparliamentary Council. Parliamentary Exchanges plans and coordinates visits abroad by the Speakers of the Senate and the House of Commons, as well as visits to Canada by their foreign counterparts.

Library of Parliament

- The Library of Parliament offers information, reference and research services to parliamentarians and their staff, parliamentary committees, associations and delegations, and senior Senate and House of Commons officials.
- The Library of Parliament employs a wide array of subject-matter specialists and information management professionals who are able to offer to parliamentarians of all political parties

customized services that are able to synthesize complex information and research from credible sources and to deliver high-quality, confidential analysis and information on any issue.

- Legal experts at the Library produce summaries of draft legislation before Parliament, explaining the legislation's purpose and history, analyzing key clauses and referencing media reactions and comments from major interest groups.
- Library analysts are assigned to every parliamentary committee and assist all committee members with their work. Guided by the priorities of the committee, analysts deliver briefings, suggest possible topics for study or propose potential witnesses, and draft reports that synthesize committee deliberations and recommendations.

Parliamentary Budget Officer

- The mandate of the Parliamentary Budget Officer is to provide independent analysis to Parliament on the state of the nation's finances, the government's estimates and trends in the Canadian economy; and upon request from a committee or parliamentarian, to estimate the financial cost of any proposal for matters over which Parliament has jurisdiction.

Procedural Research Services

- In the Senate, procedural research is undertaken by Table Officers and the procedural clerks associated with the Chamber Operations and Procedure Office. In the House of Commons, this service is supported through a dedicated Table Research Branch. Both provide their respective Chambers and committees procedural expertise, research, advice, training, professional development, and outreach. They constitute the institutional memory of the Senate and the House of Commons. They are an invaluable resource for Senators and Members of Parliament seeking accurate procedural information and impartial advice.

Supporting the administration of parliamentary institutions

Parliamentary Officers' Study Program

- The Parliament of Canada has always made a concerted effort to share its parliamentary expertise and experience with representatives of other parliaments. In particular, it has maintained a focus on ensuring that this information is extended as much as possible to visiting parliamentary officials.
- The Parliamentary Officers' Study Program is designed as an opportunity for senior parliamentary staff from foreign legislatures and Canadian jurisdictions to learn about the functioning of the Parliament of Canada and, in turn, to reflect on their own practices.
- The Program involves the three partners of the Parliament of Canada: the Senate; the House of Commons; and the Library of Parliament. Together, they offer participants the opportunity to observe, discuss and exchange views with senior Canadian parliamentary officials on the various procedural, administrative and research services provided to parliamentarians.

Other Initiatives which can develop the capacity of both parliamentarians and support staff

- The Senate administration has prepared fact sheets for committee work, procedural notes for Chamber proceedings, procedural seminars for political and administrative staff, and is currently working on a manual entitled *Senate Procedure in Practice* as well as a manual for Table Officers detailing their duties and responsibilities at the table and in the Chamber.
- The Senate has undertaken to offer professional development conferences for its procedural staff such as committee clerks. As well, there are occasional national or regional conferences for proceduralists which allow for an exchange and dialogue between various federal and provincial legislatures.
- There are national and international publications such as:
 - The Table* which is the Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments and contains summaries of activities from Parliaments throughout the Commonwealth as well as articles of interest on a wide variety of issues related to Parliamentary process.
 - The *Canadian Parliamentary Review* whose role is to inform Canadian legislators about activities of federal, provincial and territorial legislatures and to promote the study of and interest in Canadian parliamentary institutions generally.
- There is an international e-mail list run by the Society of Clerks-at-the-Table (CATS), that allows senior procedural advisors to make inquiries into practices and customs at other legislatures and to share information, precedents and experience in procedural matters.

3) POWERS OF THE SPEAKER IN THE ADMINISTRATION AND MANAGEMENT OF PARLIAMENT

Speaker of the Senate

The Speaker of the Senate has no formal role in the administration of the Senate. These responsibilities are carried out by the Committee on Internal Economy, Budgets and Administration. In this regard, the Speaker of the Senate is a position which is unlike many of his counterparts in other legislatures of the Commonwealth.

Some of the reasons which explain this difference are:

- The incumbent is an appointee of the Government, and serves at the pleasure of the government. The appointment is made by the Governor General on the advice of the Prime Minister. (s. 34 of the *Constitution Act, 1867*)
- The incumbent is granted only a deliberative vote (as opposed to a casting vote) by virtue of s. 36 of the *Constitution Act, 1867*.
- By practice, the Speaker of the Senate is entitled to participate in debate in the Chamber. When this occurs, the Speaker leaves the chair and takes his seat at his desk in the Chamber to participate in debate.
- Rulings by the Speaker on questions of privilege and points of order are subject to an appeal and final decision by the full Senate.

Senate Internal Economy Committee

- There is no requirement for the Speaker of the Senate to be chair of the Internal Economy committee nor even be a member of that committee.
- There is nonetheless no prohibition for the Speaker to be chair or a member of the committee.
- In the past, at least one Speaker has been chair of this committee (Senator Charbonneau was chair of Internal in 1984-86 and 1986-88). Currently Speaker Kinsella is a member of the committee.
- The Senate has a committee on Internal Economy which is established by the *Parliament of Canada Act*.
- The membership of this committee is determined by the Senate as a whole at the start of each session. The committee in turn elects a chair from among its members.
- Although the committee has a statutory mandate, it remains a creature of the Senate. It reports to the Chamber and is always subject to the full authority of the Senate.

Control over Senate Precincts

- The *Senate Administrative Rules* confer to the Speaker jurisdiction over the Senate precincts, subject to the direction of the Senate.

Control over the Library of Parliament

- The *Parliament of Canada Act* gives direction and control of the Library of Parliament and its officers jointly to the Speaker of the Senate and the Speaker of the House of Commons assisted, during each session, by a joint committee to be appointed by the two Houses.
- In addition, the Speakers of the two Houses of Parliament, assisted by the joint committee, may, subject to the approval of the two Houses, make such orders and regulations for the government of the Library, and for the proper expenditure of moneys voted by Parliament for the purchase of books, maps or other articles to be deposited therein, as appear to them appropriate.

Selection of the Poet Laureate:

- The Parliamentary Poet Laureate an officer of the Library of Parliament.
- The Speaker of the Senate and the Speaker of the House of Commons, acting together, select the Parliamentary Poet Laureate from a list of three names submitted in confidence by a committee chaired by the Parliamentary Librarian and also composed of the Librarian and Archivist of Canada, the Commissioner of Official Languages for Canada and the Chair of the Canada Council.

Speaker's role in the Administration and Management of the House of Commons: *An alternative model*:

- The Speaker of the House of Commons is elected by members of the House, and holds a position of authority and represents the Commons in all its powers, proceedings and dignity.
- In addition to the role of presiding officer, the Speaker is the head of the administration of the House of Commons and is responsible for the overall direction and management of the administration in a similar way that a minister is responsible for a government department.
- The *Parliament of Canada Act* established a corporate body for the House of Commons called the Board of Internal Economy. Its members must be drawn from every officially recognized party in the House of Commons.
- The government makes the formal appointments to the committee, except for the Speaker and the Leader of the Opposition, whose membership is provided for in the Act.
- The Act stipulates that the Speaker is always the Chair of the board.

- Under the Act, the Board has the legal authority to “act on all financial and administrative matters respecting the House of Commons, its premises, its services and its staff; and the members of the House of Commons”.
- The board is totally independent of both the government (Executive) and the House of Commons.
- The decisions of the Board are not subject to the House of Commons. However, given the composition of the Board, it is difficult to see when the Board and the House could be at odds.

CONCLUSION

Functional and Financial Independence

The Latimer House Principles, whose objective is to provide an effective framework for the implementation of the Commonwealth's fundamental democratic values, are intended to serve as a guide to all Commonwealth countries as they develop and enhance their parliamentary institutions. This in turn will lead to an effective legislature that is better able to scrutinize government, evaluate public policy and enact legislation.

In terms of the functional and financial independence of a Parliament, the willingness and ability to adopt and apply a strong accountability framework and a robust expenditure review process with an openness to transparent reporting and public disclosure are key. Underlying all of this is the aim to achieve the highest standards of honesty, probity and accountability in order to gain the public confidence required for the continued legitimacy of a democratic institution.

Capacity Building

For public office holders to work effectively and carry out all of their various duties, they must be supported by a strong, non-partisan and professional parliamentary service comprised of legal scholars, subject-matter specialists, information professionals and proceduralists. Furthermore, a range of programs and services such as a library, a research office, a parliamentary budget review office, an interparliamentary affairs service and procedural and legislative services can advance the work and increase the capacity of parliamentarians by making available various specialized products and services.

Powers of the Speaker in the Administration and Management of Parliament

The Speaker of the Senate is a position which is somewhat different from similar positions in other legislatures due to the fact that the incumbent is appointed by and serves at the pleasure of the government. As a result, the Speaker's role has never included any significant administrative or management duties other than control over the Senate precincts, subject to the direction of the Senate, and joint control over the Library of Parliament along with the Speaker of the House of Commons.

An alternative model, used in Canada, is that of the role played by the Speaker of the House of Commons. The incumbent is elected by his peers in the Chamber, has full responsibility and control over the administration of the House of Commons and is the chair of the Board of Internal Economy Committee. This committee, composed of representatives of all officially recognized parties, has a mandate to act on all financial and administrative matters respecting the House of Commons, its premises, its services and its staff; and the members of the House of Commons.