



OFFICE OF THE
PARLIAMENTARY
BUDGET OFFICER
BUREAU DU DIRECTEUR
PARLEMENTAIRE DU
BUDGET

2015-16 Report on the Activities of the Office of the Parliamentary Budget Officer

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Message from the Parliamentary Budget Officer

I am pleased to present the third report on the activities of the Office of the Parliamentary Budget Officer, which covers the 2015-16 fiscal year.

Nearly a decade since the legislation creating the Office was enacted on December 12, 2006, the mandate of the Parliamentary Budget Officer (PBO) could be reviewed. The government that was formed for Canada's 42nd Parliament had promised during the fall 2015 election campaign to make certain adjustments to the role of the PBO. In its very earliest days, the new government set out and crystallized its promises in the mandate letter to the Leader of the Government in the House of Commons.

This report is a departure from those of prior years because, in addition to covering the Office of the Parliamentary Budget Officer's activities during the past year, it presents a detailed history of the events (legislative or otherwise) that have shaped its operations since its inception.

This makes it a compendium that could serve as an institutional memory for those less familiar with the PBO's legislative mandate in the event that the *Parliament of Canada Act* is ever amended to reflect the government's vision.

Jean-Denis Fréchette
Parliamentary Budget Officer

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1. History and attributes of the Office of the Parliamentary Budget Officer

The position of Parliamentary Budget Officer (PBO) was created in 2006 under the *Federal Accountability Act*. Its creation was part of a response to criticism surrounding the accuracy and credibility of the federal government's fiscal projections and forecasting process. At the time, some economists and politicians were concerned that governments in the mid-to-late 1990s through the mid-2000s had tailored fiscal projections, overstating deficits and understating surpluses, for political gain.¹

In September 2004, the Minister of Finance commissioned a review of the federal government's fiscal forecasting accuracy. Among the review's recommendations was the creation of "an agency *within government* with a mandate to focus on the medium- to long-term fiscal implications of structural economic and demographic factors".²

The Conservative Party of Canada's 2006 election platform adopted the recommendation. But it went beyond what was proposed in the review, both in terms of the scope of the mandate for the new organization and the degree of independence needed to fulfill that mandate. The Conservative Party committed to creating "an *independent* Parliamentary Budget Authority to provide *objective* analysis directly to Parliament about the state of the nation's finances and trends in the national economy" and to "ensure truth in budgeting".³

The proposed authority, renamed the PBO, was included in Bill C-2, the *Federal Accountability Act*.⁴ Its mandate went beyond that outlined in the Conservative platform. It extended to the costing of proposals falling within Parliament's jurisdiction upon request of Senators, MPs and parliamentary committees.⁵ The costing aspect of the PBO's mandate likely reflected concerns about cost overruns in major government programs in the 1990s and early 2000s, which some believed could have been reduced through challenging the government's forecasted costs for the programs.⁶

At committee stage in the House of Commons, Bill C-2 was amended to expand the mandate of the PBO to include analysis of the Estimates.⁷ In doing so, the House of Commons was likely responding to longstanding concerns about the process by which the House of Commons examines and

approves the Estimates, which were thought to be at least partly the result of the Commons having insufficient expert support.⁸

Although the Governor General assented to the *Federal Accountability Act* on 12 December 2006, the first PBO was not appointed until March 2008.

1.1. Independent, relevant and non-partisan

To perform its role, the Office of the PBO must be independent, relevant and non-partisan.

The PBO is independent of the government. The post was created to help the Senate and House of Commons hold the government to account and in doing so, increase the credibility of the government's budget and estimates. The *Parliament of Canada Act* requires that the PBO provide the Senate and House of Commons with "independent analysis".⁹ If the PBO were subject to direction by the Prime Minister and Cabinet, the PBO's ability to fulfill his mandate would be compromised.

The PBO has implemented several policies and procedures that aim to ensure that his work will be perceived to be relevant and timely by Senators and Members of Parliament.

The PBO publishes full reports, including details about how the office arrived at the findings, which means that the work is subject to public scrutiny. University and think tank-based experts have occasionally identified room for improvement in the PBO's methodologies. As a result, the PBO's staff has revised reports and taken steps to refine the methodology used in future reports. Where appropriate, the PBO also has a peer review process for complex and novel projects.

The PBO hires staff with the education and experience necessary to produce high-quality analysis. Most staff members have advanced degrees in economics or finance and years of experience in the federal public service. The PBO encourages his staff to pursue opportunities for secondment in the public service to expand their knowledge and analytical skills; conversely, secondments at the PBO with the public service are also welcome.

The PBO hires staff on the basis of merit alone. As a condition of their employment, they must comply with the Library of Parliament's *Values and Ethics Code*, which emphasizes the importance of impartiality and the need to maintain the trust that Senators and Members of Parliament have for the Office.

The PBO's staff conduct their analysis in a manner intended to ensure that it has not been influenced by partisan points of view. Where possible, the PBO's reports use established methodologies to reduce the number of subjective assumptions. The PBO seeks to provide as much detail as possible

about the methodology used to arrive at the findings presented in his reports, especially where the PBO's staff have developed a new methodology.

The analysis in the PBO's reports is subject to internal peer review, and review by the PBO's managers. As mentioned above, the PBO also uses external review where appropriate. Both management and peer reviews provide several opportunities to challenge unconscious bias.

2. Mandate and activities

The Parliamentary Budget Officer's role is to provide the Senate and House of Commons with independent economic and fiscal analysis. By doing so, the PBO supports the members of both Houses in performing their constitutional responsibilities when it comes to public money.

The PBO performs his role by fulfilling his four-part mandate set out in section 79.2 of the *Parliament of Canada Act*:

1. Providing independent analysis to the Senate and House of Commons on the state of the nation's finances, the government's Estimates and trends in the national economy;
2. Undertaking research into the nation's finances and economy at the request of the Standing Committee on National Finance of the Senate, and the Standing Committees on Finance and on Public Accounts of the House of Commons;
3. Undertaking research into the Estimates at the request of a Senate, House of Commons or joint committee mandated to study them; and
4. Estimating the financial cost of any proposal that relates to a matter over which Parliament has jurisdiction at the request of a Senator, Member of Parliament, or a committee of the Senate or of the House of Commons, or a joint committee.

During the 2015–16 fiscal year, the PBO published several regular reports. They provided the PBO's economic and financial outlook and commented on the government's releases of financial information. In addition, there were several one-off reports.

The PBO does not publish reports or accept requests from Senators, Members of Parliament (MPs) and committees while Parliament is dissolved for a general election. The 2015 election campaign was nearly twice as long as a usual campaign. Thus, the PBO published fewer than the usual number of reports, 21 compared to an annual average of 30. The PBO plans to resume his Office's normal publication schedule for 2016-17.

Among the reports published by the PBO were several that provided newly-elected MPs and newly-appointed Senators with economic and financial context, as well as several designed to help them scrutinize the new government's policy decisions.

In November 2015, shortly after the general election, the PBO provided its economic and fiscal outlook for the coming year. The following month, the PBO published an updated outlook that highlighted differences with the government's projections. In January 2016, the PBO published an analysis of

the fiscal and distributional impact of the government's proposed changes to personal income tax rates.¹⁰

2.1. Regular reports

The PBO produces regular reports relating to the first three parts of the PBO's mandate, including:

- a semi-annual economic and fiscal outlook and occasional updates;
- an annual fiscal sustainability report;
- quarterly reviews of federal program spending;
- analyses of main and supplementary estimates; and
- a labour market assessment.

The PBO produces the economic and fiscal outlook in response to an ongoing request made by the House of Commons Standing Committee on Finance. The other regular products fulfill essential elements of the PBO's mandate. They reflect requests and feedback the PBO received from Senators and MPs in the Office's first few years of operation.

2.2. One-off reports

In 2015-16, the PBO also produced five one-off reports on topics relating to the first three parts of the PBO's mandate:

- Performance budgeting during recent fiscal consolidation;
- Nature and significance of lapsed spending;
- Tax-free savings accounts;
- Fiscal and distributional impact of changes to the federal personal income tax regime;
- Household indebtedness and the consequences for financial vulnerability.

Finally, the PBO also produced two reports relating to the financial costs of several programs:

- Financial support provided to disabled veterans by virtue of the New Veterans Charter;
- Disaster financial assistance due to weather events.

2.3. Requests

Senators, MPs and committees can request that the PBO “estimate the financial cost of any proposal that relates to a matter over which Parliament has jurisdiction”.¹¹ In 2015-16, the PBO received 14 research requests from Senators and Members of Parliament.

The PBO does not reveal the identity of the Senator, MP or standing committee who makes a request without their express permission. The PBO’s practice is to publish reports produced in response to research requests, which are made available to both Houses of Parliament at the same time; the individual who made the request does not receive early access to the findings.

The PBO may also expand or narrow the scope of a question posed in a request, according to his professional judgment, after discussing it with the requester. This ensures that the issue will be properly analyzed, thus helping Parliament to better perform its constitutional functions.

The PBO welcomes requests from all Senators, MPs and committees. Since the Office has limited resources, however, the PBO must prioritize requests to ensure he can balance that part of his mandate with the other three parts. The PBO prioritizes requests according to two criteria: financial materiality of the question, and potential impact of the research findings.

The PBO considers a question to be financially material if it can reasonably be expected to have a substantial impact on the nation’s finances, the government’s Estimates and/or the national economy.

The PBO considers an answer to have a sufficient impact if it has the potential to either increase budget transparency or promote informed parliamentary and public discussion on budgetary policy and financial management. This could be by strengthening fiscal discipline; by better allocating the government’s resources to meet its priorities; and/or by increasing operational efficiency.

3. Access to information

Although the situation has improved over the past few years, one of the challenges the PBO has faced since 2008 is access to information from some government departments. Some of the information the PBO and his staff require to produce analysis is publicly available; however, the majority of it is not.

Accordingly, the PBO has the power “by request made to the deputy head of a department...to free and timely access to any financial or economic data in the possession of the department that is necessary for the performance of his mandate”.¹²

In the past year, certain federal departments have refused to provide the PBO with information he needs to perform his mandate. This puts them in breach of their statutory obligations under the *Parliament of Canada Act* and the *Access to Information Act*.

- Certain departments have refused outright; they either do not provide justification grounded in the *Parliament of Canada Act* or they simply fail to respond to the PBO’s information requests.
- Other departments have relied on an excessively narrow interpretation of the scope of the PBO’s access to information. For instance, some have questioned whether the PBO’s request concerned “financial or economic data”, while others have challenged the PBO on whether the requested information is “required for the performance of his or her mandate”.
- Still other departments have relied on broad interpretations of the exceptions to the PBO’s access to information, which prevent him from accessing personal information and Cabinet confidences.¹³ Exceptions to the PBO’s access to information are defined through references to the *Access to Information Act*, including provisions of that Act that refer to numerous other statutes. This makes the scope of the exceptions difficult to interpret and leads to disagreements between the PBO and federal departments.

The refusal of certain federal departments to provide the PBO with information has, in some cases, impeded the PBO’s ability to provide the economic and financial analysis that Senators and MPs need to perform their constitutional functions.

3.1. Remedies for refusal to provide access to information

Federal departments have been able to refuse the PBO access to information without providing adequate justification in part because the *Parliament of Canada Act* does not provide the PBO with an explicit judicial or parliamentary remedy for wrongful refusals. As a result, departments can make legal arguments for refusing the PBO access to information that may not hold up to judicial or parliamentary scrutiny.

In November 2012, the PBO referred questions to the Federal Court concerning the scope of the PBO's jurisdiction and access to information. In its April 2013 decision, the Court considered and rejected arguments that parliamentary privilege and administrative law principles would prevent the PBO from seeking judicial review of a department's refusal to provide access to information. However, the Court found that the PBO had not demonstrated that a department had in fact refused the information.¹⁴

As a result of the Federal Court decision, the PBO likely has access to a judicial remedy where a department has refused access to information without justification.¹⁵ To establish a record for any eventual applications for judicial review, the PBO has formalized his information requests and tracking of responses from departments.¹⁶

However, seeking judicial review is a costly and time-consuming process, especially if it were necessary to pursue appeals from Federal Court decisions. It would be highly impractical to enforce access to information through judicial review on a regular basis. Doing so would impede the PBO's ability to provide timely economic and financial analysis to Senators and MPs.

Accordingly, after April 2013, the PBO continued to seek other remedies for ongoing disputes concerning access to information. In late March 2015, the Joint Standing Committee on the Library of Parliament resolved that if a department refuses the PBO access to information, the PBO should refer the matter to the Standing Senate Committee on National Finance, and the House of Commons Standing Committees on Finance and Public Accounts. The PBO should also request that the committees exercise their considerable powers, respectively, to order the production of papers and records.¹⁷

Unlike the PBO's entitlement to economic and financial data, which is subject to statutory limits, the powers of the Senate and House of Commons to order the production of papers and records are "absolute".¹⁸

The PBO has included language reflecting the instructions of the Joint Committee on the Library of Parliament in all information requests made since April 2015. Over the course of the 2015-16 fiscal year, the PBO has seen a significant increase in the number of information requests that have been complied with compared to other years.

Although it is not possible to attribute this increase solely to the development of a parliamentary remedy, it is likely that the prospect of refusals being formally brought to parliamentarians' attention played a role in improving compliance.

3.2. Information requests in 2015-16

During 2015-16, the PBO made 14 information requests of government departments. The PBO posts all information requests and responses received from departments on its website. In all but two cases, federal departments provided the information requested by the PBO.

In one case, the PBO requested that the Department of National Defence provide several documents concerning the Canadian Surface Combatant procurement program. It is to replace both the Iroquois- and Halifax-class ships currently in service with the Royal Canadian Navy.

National Defence refused to provide certain requested documents on grounds that they are classified and only available in draft form. It also refused to provide another document on grounds that it was subject to the United States' *International Traffic in Arms Regulations*, an export control regime into which Canada is integrated.¹⁹

In the other case, the PBO asked Environment Canada to provide certain reports in relation to its implementation of deficit reduction measures announced in past budgets. Environment Canada has so far refused to provide the requested information.²⁰

4. Resources

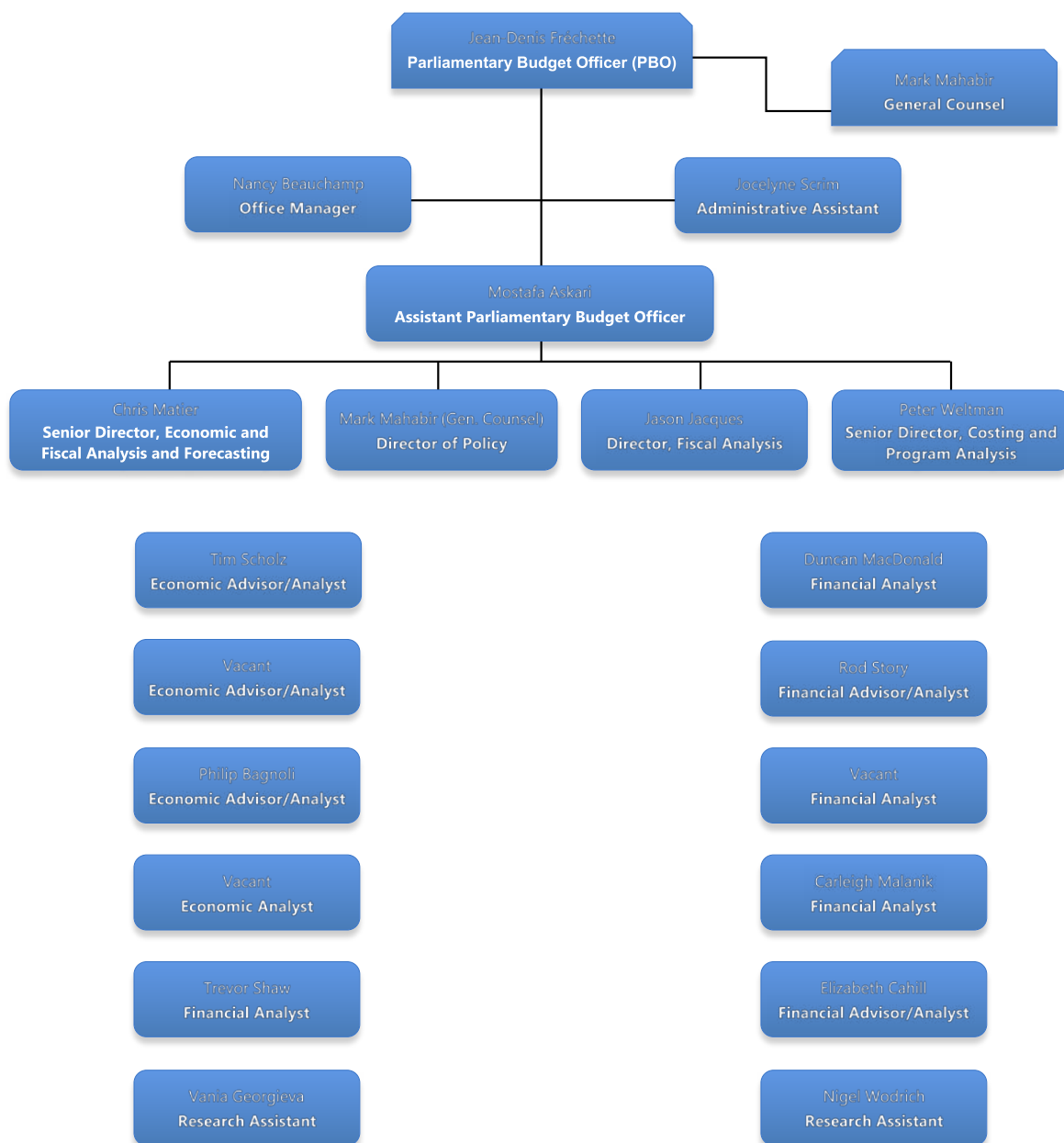
The PBO's operating budget for 2015-16 fiscal year was \$2.8 million. This amount has not increased since the Office's first year in operation in 2008-09.

Because the PBO is an officer of the Library of Parliament, the Parliamentary Librarian approves the PBO's budget, which is part of the Library's budget. The PBO's budget sets administrative procedures and regulations for the Office in relation to human resources, information technology management and other corporate services.²¹

Excluding the PBO himself who is a GIC appointee, the Office is composed of 17 full-time equivalent (FTE) staff, who are employees of the Library of Parliament. The Library also provides the PBO with significant internal services, particularly concerning human resources, information technology, contracting and procurement.

PBO Organization Chart

November 2016



5. Performance

The PBO has been able to inform Senators and MPs and assist them in performing their constitutional responsibilities in raising and spending public money by providing them with analysis on a number of economic and financial issues. Senators and MPs regularly cite or use the PBO's analyses in debates and committee proceedings.

The PBO appeared twice before the House of Commons Standing Committee on Finance in 2015-16. The first appearance was in April 2015. The PBO, along with the Assistant Parliamentary Budget Officer and other staff, testified on their *Economic and Fiscal Outlook*, which the PBO produces at the committee's ongoing request.²²

The second occurred in May 2015, while the Finance Committee was examining the budget implementation bill. The PBO testified about the financial impact of the increase in contribution limit for Tax-Free Savings Accounts from \$5,500 to \$10,000 per year starting in 2015.²³ The new government has introduced legislation that will reduce the contribution limit to \$5,500, effective in the 2016 taxation year.²⁴

The PBO was not called to testify before any other House of Commons or Senate committees in 2015-16. This was due in part to the dissolution of Parliament for the general election and the change of government.

The PBO's influence has also been felt in the way in which the government presents financial information to Senators and MPs. For instance, in the 2016 budget, the Department of Finance adopted the PBO's approach to reporting administrative expenses in the Employment Insurance operating account. This clarified an area that MPs and Senators had found confusing.

During the 2015-16 fiscal year, the PBO also took steps to make his work more accessible and useful to Senators and MPs preparing for the 42nd Parliament. For instance, in October 2015, the PBO launched a new website, which reflected input from Senators and MPs. Among the website's features is the "blog portal", which summarizes the findings of new reports and includes tables and infographics that illustrate the reports' conclusions. The PBO has also made available research tools, which allow Senators, MPs and the Canadian public to examine the financial and distributional impacts on the tax system.

6. Reform

The government formed after the 2015 election made a number of commitments to reform the parliamentary financial cycle.

Through the Prime Minister's mandate letters, notably those addressed to the Government House Leader, the Minister of Finance and the President of the Treasury Board, the government set out its plans to reform several aspects of the parliamentary financial cycle. This includes the assistance that the PBO provides to Senators and MPs over the course of that cycle.²⁵ In particular, the government plans to:

- strengthen the PBO's independence;
- amend the PBO's mandate to focus on the costing of bills and other policy proposals, including election commitments made by political parties in future general election campaigns; and
- provide the PBO with the staff and budget and presumably, the access to information, necessary to fulfill the expanded mandate.

These commitments are in line with the principles for independent fiscal institutions, such as the PBO, set out by international organizations, including the Organisation for Economic Cooperation and Development and International Monetary Fund.²⁶ This is especially the case when it comes to securing an appropriate level of independence and sufficient staffing, financial resources and access to information.

The government's commitments in relation to the PBO's independence, mandate and resources reflect changes to the PBO's enabling legislation proposed in three private member's bills since 2008.²⁷ They are also, broadly speaking, consistent with the independence and mandate enjoyed by Ontario's Financial Accountability Officer (FAO). This position is modelled on the PBO, but was designed to avoid some of the challenges faced by the PBO.²⁸

The PBO looks forward to working with all Senators and MPs as they consider how best to implement the government's reform commitments, while meeting or exceeding international and Canadian standards for independent fiscal institutions. This will be a major step toward ensuring that the PBO can provide them with the economic and financial analysis they need to hold the government to account.

For an example of PBO reform legislation, see the model legislative language published by the PBO in July 2016.²⁹

6.1. Enhancing the PBO's independence

The government has committed to ensuring the PBO is “truly independent of the government” and “answerable only – and directly to Parliament, not the government of the day”.³⁰

In his testimony before the Commons Standing Committee on Procedure and House Affairs in January 2016, Dominic LeBlanc, the former Leader of the Government in the House of Commons indicated that the government plans to “propos[e] amendments to the *Parliament of Canada Act* in order to make the [PBO] an independent officer of Parliament”.³¹

In his testimony before the Senate Standing Committee on Rules, Procedures and the Rights of Parliament in February 2016, he further clarified the government’s position. He said the government intends to give the PBO “the same status as the other officers of Parliament and not to have him or her buried in the Library of Parliament”.³²

As previously noted, the PBO is independent of the government. However, as many commentators have pointed out, the PBO does not enjoy the same degree of independence as officers of Parliament.³³ Although there is no official definition of the term “officers of Parliament”, the term is generally used to refer to a number of positions that have similar characteristics, the most prominent of whom are the Auditor General, Information Commissioner and the Privacy Commissioner.³⁴ These officers enjoy several guarantees of their independence:

- **Appointment:** Officers are appointed by the Cabinet after consultation with the leader of every recognized party in the Senate and House of Commons and approval by resolution of the Senate and House of Commons.³⁵ The PBO is appointed by the Cabinet, which chooses from a list of three names submitted in confidence through the Leader of the Government in the House of Commons by a committee formed and chaired by the Parliamentary Librarian.³⁶
- **Term:** Officers generally serve for terms of seven to 10 years.³⁷ The PBO serves for a five-year renewable term.³⁸ Longer terms make it more likely that an officer’s tenure will span a change in government. This would increase the perception of independence by giving officers the opportunity to be seen scrutinizing policies of different political parties.
- **Security of tenure:** Officers enjoy security of tenure, similar to that enjoyed by federally-appointed judges, and can only be removed for cause on address of the Senate and House of Commons.³⁹ The PBO serves during pleasure and can be removed from office at any time and for any reason.⁴⁰
- **Administrative independence:** Officers enjoy a degree of administrative independence from both the executive and Parliament.⁴¹ Because the PBO is an officer of the Library of Parliament, the PBO is subject to direction on administrative matters by the Parliamentary Librarian, who is

in turn responsible to the Speakers of the Senate and House of Commons and the Joint Standing Committee on the Library of Parliament.⁴²

- **Reporting to Parliament:** Officers report directly to one or both Houses of Parliament through the Speakers.⁴³ Although the PBO addresses his reports to all Senators and Members of Parliament, he currently lacks the explicit power to report directly to Parliament.

6.2. Mandate

Election commitment costing

The government has committed to “add[ing] the costing of political party platforms to the PBO’s mandate, as is the case in Australia and the Netherlands, so that starting in the next federal election, Canadians can review the fiscal plans of political parties from a credible and comparable baseline”.⁴⁴

The PBO does not currently cost commitments made during general election campaigns. Indeed, the Office does not publish any reports or accept research requests while Parliament is dissolved.

In Australia and the Netherlands, independent fiscal institutions cost election commitments and release them during and in some cases, after election campaigns. Although there are differences between the Australian and Dutch models for election commitment costing, particularly since the Dutch model lacks explicit statutory footing, they share several similar features:⁴⁵

- **Establishment of a common economic and financial baseline**, which serves as the basis for costing election commitments;
- **Early access to information from political parties concerning planned election commitments**, sometimes weeks or months before the election date;
- **Prompt access to government information, and staff and financial resources necessary to produce costings of policies;**
- **Engagement with political parties throughout the costing process** to clarify commitments and refine costing.

With these foreign models in mind, one may wish to consider how best to adapt these features to the Canadian context. There are a number of specific issues that could be considered:

- Is the purpose of costing platforms to inform the electorate during the election, or Parliament after the election, or both?
- Should the focus be on platforms broadly understood or individual election commitments?

- In any case, according to what kind of economic, fiscal and other indicators should platforms be evaluated? Should commitments that involve cooperation with other levels of government, especially provinces and municipalities, be evaluated?
- Should the costings of party platforms be mandatory, that is, occurring automatically when election commitments are announced, or voluntary, that is, only when the PBO receives a request to do so, or both? If voluntary, should a party be able to choose which of its commitments are costed and which are not? Likewise, should there be a financial or other penalty for failing to participate in the costing of platforms?
- Should all registered political parties be involved in the costing of platforms, or should the scheme be limited to those with official party status in the House of Commons?
- Should the costing of platforms work off common assumptions? If so, should the federal government be required to produce a pre-election update on its economic and financial outlook to serve as the basis for such costings? Alternatively, should the PBO be required to produce a pre-election economic and fiscal forecast?
- How will costing platforms work in the event of an unexpected election?
- Who should be able to make requests during an election campaign? Should the persons entitled to do so be able to make requests about their party alone or about the commitments made by other parties?
- How much information about a policy commitment should political parties be required to submit to the PBO for costing?
- What role should the PBO play in coalition negotiations, particularly if an eventual reformed electoral system results in more frequent hung Parliaments?
- When should the PBO publish the costings that it produces? If the PBO is producing a general report on the aggregate impact of a party's election commitments, should it be published before or after the election?
- How will the PBO be able to access information in the short timelines of an election campaign when parliamentary remedies for refusals of access are unavailable and any judicial remedies are unlikely to be effective?

Clarifying existing mandate

In his mandate letter, the Prime Minister also instructed the Leader of the Government in the House of Commons that the "PBO's mandate should focus on accuracy and transparency in costing".⁴⁶ Beyond the addition of costing election commitments to the PBO's mandate, it is not clear whether the government intends to propose additional reforms that would see the PBO "focus on accuracy and transparency in costing".

Several officers of Parliament have direct relationships with particular parliamentary committees, notably the Auditor General and the House of Commons Standing Committee on Public Accounts.⁴⁷ In Ontario, the FAO has

a statutory responsibility to provide assistance to the Standing Committee on Finance and Economic Affairs, roughly equivalent to the House of Commons Standing Committee on Finance and the Senate Standing Committee on National Finance.⁴⁸

If committees were to intensify their scrutiny, as the government has proposed, then the PBO could be called upon to provide more detailed and frequent assistance to their efforts.⁴⁹ For instance, if the Main Estimates and Supplementary Estimates were to be reformed, the PBO could be called upon to provide assistance to the Standing Committee on Government Operations and Estimates and to particular standing committees as they consider the estimates of the departments assigned to them.⁵⁰ Such an assistance role would have to be formalized as part of the PBO's mandate.

6.3. Access to information

As mentioned above, one of the recurrent challenges faced by the PBO is the access to some departmental information. The government has made some commitments that may indirectly improve the PBO's access.

For instance, since the PBO's power to access is defined by reference to the *Access to Information Act*, changes to the *Act*, such as narrowing the scope of confidences of the Queen's Privy Council for Canada, may increase the PBO's access to information.⁵¹ Likewise, the government's commitment to publish costing analysis for government bills may make it easier for the PBO to assess the reasonableness of those costings, which the PBO currently cannot access.⁵²

One might wish to consider whether the existing exceptions to that access might be narrowed, and whether the informal judicial and parliamentary remedies at the PBO's disposal should be formalized. The creation of a formal parliamentary remedy would preclude the PBO from seeking judicial review, unless a judicial remedy is also available.⁵³

It is worth noting that Ontario's FAO has, at least on the face of it, a stronger power to access information than the PBO, as it extends to "economic, financial [and] other information...that the [FAO] believes to be necessary to perform his or her duties".⁵⁴ However, the FAO has experienced significant challenges resulting from the broad interpretation given by the Ontario government to the Cabinet confidentiality exception to the FAO's power to access to information.⁵⁵

Both the PBO's experiences and those of Ontario's FAO suggest that the exceptions to the PBO's power to access information should be as limited as possible. In addition, the PBO should have access to an effective remedy if he believes he has been wrongfully denied access to information. As mentioned earlier in this report, the PBO has access to both judicial and parliamentary

remedies, albeit neither is provided for in the PBO's enabling legislation. The FAO has access to a formal parliamentary remedy.⁵⁶

The Auditor General, for instance, has a significantly broader right to access information than the PBO.⁵⁷ The Auditor General's access to information also extends, by virtue of two orders-in-council, to certain confidences of the Queen's Privy Council for Canada.⁵⁸ The PBO may need access to some confidential Cabinet information, particularly for the purposes of costing election commitments. This would require the PBO to have access to the models used by departments to provide cost estimates to Cabinet and its committees.

6.4. Resources

The government has committed to "mak[ing] sure [the PBO] is properly funded".⁵⁹ The government has made similar commitments in terms of funding other officers of Parliament.⁶⁰

As stated earlier in this report, the PBO's budget has not been increased since 2008-09. Currently, both the PBO's budget and staffing fall short of international standards for independent fiscal institutions. These standards suggest a minimum of 20 staffers for economic and financial analysis and 20 for costing legislation and other policies.⁶¹

The Australian and Dutch experiences suggest that additional resources and staff would be needed in an election year to conduct election commitment costing. Moreover, if the government follows through on its plans to make the PBO an officer of Parliament, the PBO will no longer benefit from the internal services currently provided by the Library of Parliament. The PBO would need staff of his own to provide such services and accordingly, would require additional resources.

For more information about the resources that may be required for the PBO to fulfill an expanded mandate, please consult the business case for a new PBO structure and mandate published in July 2016.⁶²

7. Conclusion

Parliament created the PBO in 2006 to provide the Senate and House of Commons with the economic and financial analysis they need to perform their constitutional functions related to public funds. The PBO provides analysis both on its own initiative and at the request of Senators, MPs and parliamentary committees. In 2015-16, the PBO published 21 reports, which informed Senators and MPs and which they put to frequent use in debate and committee proceedings.

The PBO's ability to perform his role depends on the independence, relevance and non-partisanship of his Office. Since 2008, the most significant barriers to the PBO's ability to perform his roles have been the refusal of certain government departments to provide access to information, and the PBO's limited budget compared to equivalent Canadian and foreign institutions.

The government formed after last October's election has committed to strengthening the PBO's independence by making him a full-fledged officer of Parliament; focusing his mandate on costing bills and other policy proposals, including election commitments of political parties; and ensuring that he has the necessary budget to fulfill both his existing and added responsibilities.

The PBO looks forward to working with Senators and MPs as they consider how best to implement the government's plans for reforming the Office, especially when it comes to ensuring that the PBO has access to all the information he needs to fulfill his responsibilities.

The Parliamentary Budget Officer hopes that, ultimately, such reforms will help his Office better serve the needs of Senators and MPs and assist them in performing their constitutional functions.

Notes

1. Guy A Beaumier, "The *Accountability Act* and the Parliamentary Budget Officer" (Ottawa: Library of Parliament, 2006) at 4–5; Brooke Jeffrey, "The Parliamentary Budget Officer Two Years Later: A Progress Report" (2010) 33 *Canadian Parliamentary Review* 37 at 37.
2. Tim O'Neill, *Review of Canadian Federal Fiscal Forecasting: Processes and Systems* (Ottawa: Department of Finance, 2005) at 114 (emphasis added).
3. Conservative Party of Canada, *Stand Up for Canada: Conservative Party of Canada Federal Election Platform* (Ottawa: Conservative Party of Canada, 2006) at 11 (emphasis added).
4. Federal Accountability Act, SC 2006, c 9.
5. Guy A Beaumier, "The *Accountability Act* and the Parliamentary Budget Officer" (Ottawa: Library of Parliament, 2006) at 3–4.
6. Kevin Page & Tolga R Yalkin, "Canada: Oversight with Qualified Independence" in George Kopits, ed, *Restoring Public Debt Sustainability: The Role of Independent Fiscal Institutions* (Oxford: Oxford University Press, 2013) 166 at 168–171.
7. Gary Levy, "A Parliamentary Budget Officer for Canada" (2008) 31 *Canadian Parliamentary Review* 39 at 40.
8. John A. Chenier, Michael Dewing & Jack A Stilborn, "Does Parliament Care? Parliamentary Committees and the Estimates" in G. Bruce Doern, ed, *How Ottawa Spends, 2005–2006: Managing the Minority* (Kingston and Montreal: McGill–Queen's University Press, 2005) 200 at 205, 209; Jack A Stilborn, *Parliamentary Reform and the House of Commons*, PRB 07-43E (Ottawa: Library of Parliament, 2007) at 4.
9. *Parliament of Canada Act*, RSC 1985, c P-1, s 79.2(a).
10. Bill C-2, *An Act to amend the Income Tax Act*, 1st Sess, 41st Parl, 2015 (second reading in the Senate 7 October 2016).
11. *Parliament of Canada Act*, s 79.2(d).
12. *Parliament of Canada Act*, s 79.3(1).
13. *Parliament of Canada Act*, s 79.2(2). See also *Access to Information Act*, ss 19, 69(1), Schedule II.
14. *Page v Mulcair*, 2013 FC 402.
15. See Gregory Tardi, "The Network of Legal Development in the Legislative Branch" (2015) 9 *Journal of Parliamentary and Political Law* 449 at 454 (noting that "the ability of the PBO to litigate was not disputed by the Court").

16. Office of the Parliamentary Budget Officer, *2013-14 Report on Activities of the Parliamentary Budget Office* (Ottawa: Office of the Parliamentary Budget Officer, 2014) at 17.
17. Parliament of Canada, Standing Joint Committee on the Library of Parliament, "Minutes of Proceedings," No 4 (26 March 2015). See also *Rules of the Senate*, 12-9(2); *Standing Orders of the House of Commons*, 108(1)(a).
18. Audrey O'Brien & Marc Bosc, *House of Commons Procedure and Practice*, 2nd ed (Ottawa: House of Commons of Canada, 2009) at 136-138, 979; Senate of Canada, *Senate Procedure in Practice* (Ottawa: Senate of Canada, 2015) at 227.
19. Information Request 215 (correspondence to and from the Department of National Defence is available on the PBO's website).
20. Information Request 205 (correspondence to and from the Department of the Environment available on the PBO's website).
21. *Parliament of Canada Act*, s 77.
22. House of Commons, Standing Committee on Finance, "Evidence" in *House of Commons Debates*, No 77 (28 April 2015) at 14-15 (Jean-Denis Fréchette).
23. House of Commons, Standing Committee on Finance, "Bill C-59, An act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures" in *House of Commons Debates*, No 82 (26 May 2015) at 5-6 (Jean-Denis Fréchette).
24. Bill C-2, *An Act to amend the Income Tax Act*, 1st Sess, 42nd Parl, 2015, cl 9 (second reading in the Senate 7 October 2016).
25. Letters from Justin Trudeau, Prime Minister of Canada, to Bill Morneau, Minister of Finance, Scott Brison, President of the Treasury Board, and Dominic LeBlanc, Leader of the Government in the House of Commons (all available on the Prime Minister's Office website).
26. Lisa von Trapp, Ian Lienert & Joachim Wehner, "Principles for Independent Fiscal Institutions and Case Studies" (2016) OECD Journal on Budgeting 9 at 25-30; International Monetary Fund, *The Functions and Impact of Fiscal Councils* (Washington, DC: International Monetary Fund, 2013).
27. The most comprehensive among them was Bill C-476, *An Act to amend the Parliament of Canada Act (Parliamentary Budget Officer)*, 41st Parl, 1st Sess, 2013 (first reading 27 February 2013), which would have made the PBO an independent officer of Parliament, clarified the PBO's mandate and access to information and given the PBO access to a direct judicial remedy for disputes over access to information.
28. *Financial Accountability Officer Act, 2013*, SO 2013, c 4. See also Tolga R Yalkin & Patrick F Baud, "Ontario's Financial Accountability Officer: An Evaluation" (2014) 8 Journal of Parliamentary and Political Law 529 at 555 (concluding that the "FAO's enabling legislation is a considerable improvement over the PBO's, providing the FAO with a clearer mandate, greater independence, and stronger powers").

29. Parliamentary Budget Officer, *Draft legislation to establish the position of Parliamentary Budget Officer* (Ottawa: Parliamentary Budget Officer, 2016): http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2016/Mandate_Draft/PBO%20Draft%20Act-%20May%202016-rtg-final_EN.pdf.
30. Liberal Party of Canada, *Real Change: A New Plan for a Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015) at 31; Letter from Justin Trudeau, Prime Minister of Canada, to Dominic LeBlanc, Leader of the Government in the House of Commons.
31. House of Commons, Standing Committee on Procedure and House Affairs, "Evidence" in *House of Commons Debates*, 42nd Parl, 1st Sess, No 4 (28 January 2016) at 2 (Hon Dominic LeBlanc).
32. Senate, Standing Committee on Rules, Procedures and the Rights of Parliament, "Evidence" in *Debates of the Senate*, 42nd Parl, 1st Sess, No 1 (24 February 2016) at 46 (Hon Dominic LeBlanc).
33. See e.g. David A Good, *The Politics of Public Money*, 2nd ed (Toronto: University of Toronto Press, 2014) at 332; Jack A Stilborn, "The Officers of Parliament: More Watchdogs, More Teeth, Better Governance"? in G Bruce Doern & Christopher Stoney, eds, *How Ottawa Spends, 2010–2011: Recession, Realignment, and the New Deficit Era* (Kingston and Montreal: McGill–Queen's University Press) 243 at 244.
34. See e.g. Ann Chaplin, "The Constitutional Legitimacy of Officers of Parliament" (2011) 29(1) *National Journal of Constitutional Law* 71; Paul Thomas, "The Past, Present and Future of Officers of Parliament" (2003) 46(3) *Canadian Public Administration* 287.
35. *Access to Information Act*, RSC 1985, c A-1, s 54(1); *Auditor General Act*, RSC 1985, c A-17, s 3(1); *Privacy Act*, RSC 1985, c P-21, s 53(1).
36. *Parliament of Canada Act*, s 79.1(3).
37. *Access to Information Act*, s 54(2)(3); *Auditor General Act*, s 3(1.1)(2); *Privacy Act*, s 53(2)(3).
38. *Parliament of Canada Act*, s 79.1(2).
39. *Access to Information Act*, s 54(2); *Auditor General Act*, s 3(1.1); *Privacy Act*, s 53(2). See also *Constitution Act, 1867*, s 99(1); *Federal Court Act*, RSC 1985, c F-7, s 8(1); *National Defence Act*, RSC 1985, c N-5, s 165.21(3); *Tax Court of Canada Act*, RSC 1985, c T-2, s 7(1); *Supreme Court Act*, RSC 1985, c S-26, s 9(1) (providing that the various federally-appointed judges serve "during good behaviour").
40. *Parliament of Canada Act*, s 79.1(2).
41. *Access to Information Act*, s 55(1); *Auditor General Act*, ss 15(2), 16; *Privacy Act*, s 54(1).
42. *Parliament of Canada Act*, ss 74, 75(2), 78, 79.1(1), 79.5(4).
43. *Access to Information Act*, ss 38–40; *Auditor General Act*, ss 7, 8; *Privacy Act*, ss 38–40.

44. Liberal Party of Canada, *Real Change: A New Plan for a Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015) at 75.
45. Frits Bos & Coen Teulings, "Netherlands: Fostering Consensus on Fiscal Policy" in George Kopits, ed, *Restoring Public Debt Sustainability: The Role of Independent Fiscal Institutions* (Oxford: Oxford University Press, 2013) 121 at 126–127; *Parliamentary Service Act 1999* (Cth), Division 2, Subdivision A. See also *Parliamentary Budget Officer Act 2010* (NSW).
46. Letter from Justin Trudeau, Prime Minister of Canada, to Dominic LeBlanc, Leader of the Government in the House of Commons.
47. CES Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987) at 239.
48. *Financial Accountability Officer Act, 2013*, s 11.
49. Letter from Justin Trudeau, Prime Minister of Canada, to Dominic LeBlanc, Leader of the Government in the House of Commons.
50. See e.g. David A Good, *The Politics of Public Money*, 2nd ed (Toronto: University of Toronto Press, 2014) at 262. See also John A Chenier, Michael Dewing & Jack Stilborn, "Does Parliament Care? Parliamentary Committees and the Estimates" in G Bruce Doern, ed, *How Ottawa Spends, 2005–2006: Managing the Minority* (Kingston and Montreal: McGill–Queen's University Press, 2005) at 209 (noting the lack of staff support available to conduct detailed scrutiny of the estimates).
51. Liberal Party of Canada, *New Plan for a Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015) at 24. See also Information Commissioner report.
52. Letter from Justin Trudeau, Prime Minister of Canada, to Bill Morneau, Minister of Finance.
53. *Canada (Auditor General) v Canada (Minister of Energy, Mines and Resources)*, [1989] 2 SCR 49. See also Tolga R Yalkin & Michelle Bloodworth, "Before the Ink is Dry: The Canadian Parliamentary Budget Officer" (2012) 6 *Journal of Parliamentary and Political Law* 539 at 555.
54. *Financial Accountability Officer Act, 2013*, s 12(1).
55. *Ibid*, s 12(2). See also Ontario, Financial Accountability Officer, *Annual Report, 2015–2016* (Toronto: Queen's Printer for Ontario, 2016) at 10–17.
56. *Financial Accountability Officer Act, 2013*, s 12(5).
57. *Auditor General Act*, s 13.
58. PC 1985-3783; PC 2006-1289 (both providing the Auditor General access to Cabinet confidences that relate to public expenditures and fall into certain categories, including Cabinet and Treasury Board submissions).
59. Liberal Party of Canada, *New Plan for a Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015) at 31.
60. *Ibid* at 30.
61. See e.g. *Auditor General Act*, s 19(1). See also International Monetary Fund, *The Functions and Impact of Fiscal Councils* (Washington, DC: International Monetary Fund, 2013) at 35–36.

62. Parliamentary Budget Officer, [Business Case for a New PBO Structure and Mandate](http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2016/Mandate_Draft/2016-July_business%20case-final-En.pdf) (Ottawa: Parliamentary Budget Officer, 2016): http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2016/Mandate_Draft/2016-July_business%20case-final-En.pdf.