



# 5-Year legislative review of the PBO provisions in the Parliament of Canada Act



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

The Parliamentary Budget Officer (PBO) supports Parliament by providing economic and financial analysis for the purposes of raising the quality of parliamentary debate and promoting greater budget transparency and accountability.

This report provides a brief history of the Office of the Parliamentary Budget Officer and highlights certain issues that may assist parliamentarians during their five-year review of the provisions creating the office pursuant to section 79.501 of the Parliament of Canada Act.

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# Executive Summary

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This report provides a brief history of the Office of the Parliamentary Budget Officer (OPBO) and highlights certain issues that may assist parliamentarians during their five-year review of the provisions creating the office in the *Parliament of Canada Act* pursuant to section 79.501 of that Act.

# Introduction

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The Parliamentary Budget Officer (PBO) is an independent and non-partisan officer of Parliament that supports Parliament by providing analysis of macroeconomic and fiscal policy for the purposes of raising the quality of parliamentary debate and promoting greater budget transparency and accountability. The PBO is committed to promoting transparency and accountability. The PBO publishes all its reports on the PBO's website at [www.pbo-dpb.ca](http://www.pbo-dpb.ca).

This report provides a brief legislative history of the OPBO and highlights certain issues that may assist parliamentarians during their five-year review of the provisions creating the office in the *Parliament of Canada Act* pursuant to section 79.501 of that Act.

## 1. History of the PBO, 2006-2017

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The PBO was created in 2006 as an officer within the Library of Parliament through amendments in the *Parliament of Canada Act*<sup>1</sup> made by the *Federal Accountability Act*.<sup>2</sup> Due to concerns about the accuracy of fiscal forecasting by the federal government, the mandate of the PBO was to provide analysis of the government's budgets and estimates, as well as the cost implications of proposals within Parliament's jurisdiction.<sup>3</sup>

Three committees were provided with the ability to request the PBO to conduct research into the nation's finances and economy, the Standing Committee on National Finance of the Senate, the Standing Committee on Finance of the House of Commons, and the Standing Committee on Public Accounts of the House of Commons. All committees in the Senate and the House of Commons could request research and analysis into the estimates referred to the committee and the cost of proposals within Parliament's jurisdiction.

To assist the PBO in his analysis, the officer is entitled to free and timely access to any financial or economic data in the possession of a federal government department, branch of the federal public administration or a departmental corporation, that are required for the performance of his mandate. Certain information is restricted from disclosure to the PBO if such disclosure is restricted by another Act of Parliament, the *Access to Information Act* and Schedule of that Act, or if the information is contained in a confidence of the Queen's Privy Council and is not found elsewhere.

Oversight of the PBO was through the Parliamentary Librarian and the Standing Joint Committee on the Library of Parliament and was a concern since the first PBO was appointed in 2008. For example, the relationship between the PBO and the Parliamentary Librarian and Parliament in general

was not ideal since the PBO was not truly independent and the officer did not have the ability to implement processes and policies to effectively support parliamentarians. Nevertheless, various reports were published by the PBO both proactively and based on requests received from parliamentarians and parliamentary committees requesting analysis.

## 2. History of the PBO, 2017-present

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To address some of the concerns regarding independence and oversight, the independence of the PBO and its office were enhanced through amendments to the *Parliament of Canada Act*<sup>4</sup> in 2017 that were made by the *Budget Implementation Act, 2017, No. 1*.<sup>5</sup> The amendments were proclaimed into force on September 21, 2017.<sup>6</sup> These changes made the PBO a true Officer or Agent of Parliament with oversight by the Speakers of the Senate and the House of Commons like the other agents of Parliament that are governed by the *Parliament of Canada Act*.<sup>7</sup> Some of these changes that were made in 2017 will be highlighted below.

### 2.1. Election Proposal Costing Mandate

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One of the major changes made during the creation of the OPBO in 2017 was a new mandate for the PBO to estimate, when requested by a political party or independent Member of Parliament, the financial cost of election proposals made for the purpose of a general election. For elections fixed by the *Canada Election Act*, this new mandate begins on the 120<sup>th</sup> day before the date of that election and for other elections the mandate begins when Parliament is dissolved.<sup>8</sup> Under this mandate, the OPBO estimated the financial cost of proposals made for the 2019 fixed-date general election and for the 2021 general election.

To assist the OPBO in estimating the financial cost of an election proposal, the PBO can request assistance from government departments if an arrangement has been made between the deputy minister and the PBO. To obtain this arrangement, the PBO must first request this assistance from the relevant minister.<sup>9</sup>

The remaining provisions that are related to this mandate cover the process of receiving requests and the publication of the subsequent cost estimate report. For example, the request must be made by the authorized representative of the party and must be in writing with a description of the relevant details and objectives of the proposal.<sup>10</sup> Publication of the cost estimate only takes place after the authorized representative has informed the PBO that the proposal has been made public.

## 2.2. Workplan

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The annual work plan is a new document prepared by the PBO that must include the criteria for the allocation of the resources to the various functions within the PBO's mandates, a list of matters of particular significance relating to the nation's finances or economy after consultation with the Speakers of the Senate and the House of Commons, and the manner in which the PBO will prioritize requests made by parliamentary committees and members of the Senate and the House of Commons. The annual work plan for the fiscal year must be submitted to the Speakers of the Senate and the House of Commons before the start of that fiscal year and is tabled in each House by the respective Speaker. Updates to the workplan can also be made during the fiscal year and are tabled by the Speakers in their respective House.

## 2.3. General Mandate

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One of the changes made to the general mandate of the PBO (i.e. the original mandate of the PBO) was a provision describing in detail the types of reports that could be prepared by the PBO on a discretionary basis. These included reports analyzing three documents table or issued by the Minister of Finance, the federal budget, an economic and fiscal update, and a fiscal sustainability report. Other discretionary reports include reports analyzing the estimates of the government and reports on matters of particular significance relating to the nation's finances or economy that are listed in an annual work plan.<sup>11</sup>

The 2006 legislation did not list any specific discretionary reports and instead the PBO had a wide mandate to provide, "independent analysis to the Senate and to the House of Commons about the state of the nation's finances, the estimates of the government and trends in the national economy".

Regarding committees that could make requests to the PBO for research into and analysis of matters relating to the nation's finances or economy, in addition to the three named committees in the original 2006 legislation, the Standing Committee on Government Operations and Estimates of the House of Commons was added.

Like the 2006 legislation, the PBO can also be requested by a parliamentarian or a committee of the Senate or the House of Commons to estimate the financial cost of any proposal that relates to a matter over which Parliament has jurisdiction and a parliamentary committee can request analysis of the estimates referred to the committee.

The changes made in 2017 does not grant the PBO the discretion to refuse requests made by a parliamentarian or committee since the *Parliament of Canada Act* states that the PBO, "shall" undertake the research or estimate the financial cost.<sup>12</sup> In practice, the PBO has used the priority outlined in the



annual work plan when receiving multiple requests and has in certain cases published reports on a discretionary basis to address parliamentary requests on the same subject matter.

For requests received from a parliamentarian or a committee before a general election, and if Parliament is dissolved before a report is provided to the parliamentarian or the chair of the committee, the PBO must discontinue work on the request.<sup>13</sup> This provision clarifies the work of the OPBO during the period of a general election and is similar to the practice at the Library of Parliament during the same period.

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## 2.4. Access to Information

Another change made in 2017 was an expansion to the access to information powers of the Office to include any information from a federal government department, branch of the federal public administration, departmental corporation, or Crown corporation.<sup>14</sup> Previously, the Office could only request financial or economic data and the list of relevant entities did not include Crown corporations. These requests for information are made to the responsible minister of the department, branch of the federal public administration, departmental corporation or to the head of the Crown corporation.

As well, the list of exceptions for which the PBO was restricted to access was expanded to include information protected by solicitor-client privilege or professional secrecy of advocates and notaries or by litigation privilege.<sup>15</sup>

For entities that do not provide information to the PBO, the PBO can notify the Speaker of the Senate and the Speaker of the House of Commons or any appropriate committee of the Senate, House of Commons or of both Houses of Parliament. Action may then be taken by the Speakers or the appropriate committee. Before the 2017 amendment, the PBO could notify the chairs of the Standing Committee on National Finance of the Senate, the Standing Committee on Finance of the House of Commons and the Standing Committee on Public Accounts of the House of Commons to have those committees request the relevant document or records from the previously requested entity.<sup>16</sup>

The current power of the PBO to notify the Speakers of the Senate and the House of Commons when an entity refuses to provide information has never been used, however, the PBO expects that the Speakers would assist him in obtaining access to the information the PBO requires to provide relevant analysis in support of the Senate and the House of Commons.

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## 2.5. Cooperation with the Library of Parliament

The Parliamentary Librarian and the PBO provide similar, but complementary, services to parliamentarians and parliamentary committees regarding research and analysis. In 2017 a new provision was added to avoid any



unnecessary duplication of resources and services. For example, either entity may receive requests to analyze the fiscal cost of proposals within parliament's jurisdiction and policies in the Library and the OPBO have been implemented to ensure that the Librarian analyses proposals that are being considered for tabling and introduction while the PBO will only analyze bills tabled in Parliament which is consistent with the spirit of the First Reading of the *Federal Accountability Act* in the House of Commons.<sup>17</sup>

Regarding resources, the Parliamentary Librarian and PBO share back-end information technology, compensation services, and security while maintaining confidentiality of requests made by parliamentarians and committees.

# Issues for Parliamentarians

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The following sections details specific issues that have manifested during the PBO's dual mandates.

## 3. Access to Information

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One of the critical powers of the PBO, is the ability to compel, with limited exceptions, the disclosure of information from government departments, branches of the federal public administration, departmental corporations, or Crown corporations. However, access to taxpayer information is prohibited due to the restrictions imposed in the *Income Tax Act* on disclosure by the Canada Revenue Agency (CRA).<sup>18</sup> As a potential solution, the PBO has made arrangements with Statistics Canada for access to various taxpayer information datasets within their Data Access Division through the Federal Research Data Centre. In other cases, data can also be transferred from the CRA to Statistics Canada for access by the PBO. To ensure the security and confidentiality of the information, PBO employees that access such data must be deemed employees of Statistics Canada.

The PBO has been able to use this access at Statistics Canada to analyze taxpayer information for the PBO's general mandate and for the costing of election proposals during the 2019 and 2021 elections. However, other entities are able to access taxpayer information directly, for example, the federal and all provincial (and territorial) Departments of Finance can access such information for the purposes of the formulation and evaluation of fiscal policy.<sup>19</sup>

To ensure transparency, all requests for information made to, and responses received from, entities have been made available on the OPBO's website since the PBO's inception. However, such transparency conflicts with the confidentiality that must be maintained during the election proposal costing period to prevent the disclosure of the contents of election proposals made by authorized representatives. Moreover, such requests for information are normally made to the minister and the PBO is prohibited from disclosing to the minister any information related to a campaign proposal.<sup>20</sup> For these reasons we have submitted all information request during the 2019 and 2021 election proposal costing period to the relevant deputy minister and we have not published such requests on our website. However, the contents of such requests could be disclosed through an access to information request under the *Access to Information Act* to the relevant government entity that received the request.

## 4. Assistance during the costing of election proposals

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The PBO made arrangements with various government departments during both the 2019 and the 2021 elections for the provision of assistance during the costing of election proposals. Assistance included the sharing of information, review of models and methodologies, and the provision of a cost estimate by the department. Such agreements were made in advance of the election and were effective in completing numerous costing requests made by the authorized representatives. One gap in the legislation is that the PBO can only conclude agreements with government departments since the legislation does not include branches of the federal public administration. For this reason, we were unable to conclude an agreement with the CRA in 2019 and 2021.

In addition, the legislation stipulates that the Minister must authorize his or her department to enter into such an agreement. Since Ministers are themselves usually candidates in elections, it seems more appropriate to leave this decision in the hands of Deputy Ministers to avoid placing Ministers in a real or perceived conflict of interest.

## 5. Assistance for the purposes of the general mandate

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After the success of the agreements between the PBO and various government department during election proposal costing mandate, it may be useful for additional agreements for assistance for the periods outside of election. Although it is possible for the PBO to conclude agreements under the PBO's general power to contract it has been difficult to conclude such agreements for assistance which may be due to the lack of a specific provision in the *Parliament of Canada Act*.

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# Notes

- <sup>1</sup> *Parliament of Canada Act*, R.S.C., 1985, c. P-1.
- <sup>2</sup> S.C. 2006, c. 9.
- <sup>3</sup> Tim O'Neil, *Review of Canadian Federal Forecasting*, June 2005.
- <sup>4</sup> Sections 79.01 to 79.501.
- <sup>5</sup> Bill C-44: An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament. Retrieved July 14, 2022 from LEGISinfo:  
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- <sup>6</sup> SI/2017-53. Retrieved July 14, 2022 from the Canada Gazette:  
<https://canadagazette.gc.ca/rp-pr/p2/2017/2017-10-04/html/si-tr53-eng.html>
- <sup>7</sup> Andre Barnes, *Appointment of Officers of Parliament*, Library of Parliament, 19 August 2021. Retrieved July 14, 2022 from Library of Parliament:  
[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/200921E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/200921E)
- <sup>8</sup> *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 79.21.
- <sup>9</sup> *Ibid.*, ss. 79.21(5) and (7).
- <sup>10</sup> *Ibid.*, ss. 79.21 (1)-(16).
- <sup>11</sup> *Ibid.*, s. 79.2.
- <sup>12</sup> *Ibid.*, ss. 79.2(1)(c)-(f).
- <sup>13</sup> *Ibid.*, s. 79.2(5).
- <sup>14</sup> *Ibid.*, s. 79.4.
- <sup>15</sup> *Ibid.*, s. 79.4(2)(b). The professional secrecy of advocates and notaries is a concept in Quebec civil law equivalent to solicitor-client privilege. In accordance with the Interpretation Act, RSC 1985, c. I-21, s 8.2, the "professional secrecy" aspect of the exception applies in Quebec, and the "solicitor-client privilege" aspect applies in the other provinces and in the territories.
- <sup>16</sup> Standing Joint Committee on the Library of Parliament, *Minutes of Proceedings*, 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 26 March 2015. Retrieved July 14, 2022 from the House of Commons:  
<https://parl.ca/DocumentViewer/en/41-2/BILL/meeting-4/minutes>
- <sup>17</sup> Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability, c. 119 (first reading version, 11 April 2006). Retrieved July 14, 2022 from LEGISinfo:  
<https://www.parl.ca/DocumentViewer/en/39-1/bill/C-2/first-reading/page-164>
- <sup>18</sup> *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), s. 241.

<sup>19</sup> Ibid, s. 241(4)(d)(i).

<sup>20</sup> *Parliament of Canada Act*, R.S.C., 1985, c. P-1, s. 79.21(6).