



**FIRST INTERIM REPORT ON THE
*MAIN ESTIMATES, 2011-12***

**Standing Senate Committee on
National Finance**

THIRD REPORT

Chair

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REPORT ON THE *MAIN ESTIMATES, 2011-12*

The *Main Estimates, 2011-12* were initially presented in Parliament on March 1, 2011, during the 3rd session of the 40th Parliament and were referred to the Standing Senate Committee on National Finance. In the 1st session of the 41st Parliament, the Main Estimates were again tabled in Parliament, and again referred to the Standing Senate Committee on National Finance, along with the papers and evidence received and taken and work accomplished by the committee on this subject during the 3rd session of the 40th Parliament. To date, the committee has held six meetings, and tabled a first interim report on March 22, 2011, on these Main Estimates after having heard the testimony of the Treasury Board of Canada Secretariat, the Department of Finance, PPP Canada Inc., Agriculture and Agri-Food Canada, and the Department of Canadian Heritage. The committee's examination of the *Main Estimates, 2011-12* continues in this report and will continue throughout the fiscal year.

On June 14, 2011, Mary McFadyen, General Counsel with the Office of the National Defence and Canadian Forces Ombudsman, represented the Office in an appearance before the committee.

On June 16, 2011, the committee met with representatives of the Office of the Procurement Ombudsman and of Public Works and Government Services Canada. Specifically, the Office of the Procurement Ombudsman was represented by Frank Brunetta, Procurement Ombudsman. Normand Masse, Director General, Services and Technology Acquisition Management Sector, and Alain Vauclair, Director General, Policy Risk, Integrity and Strategic Management Sector, represented Public Works and Government Services Canada.

Finally, also on June 16, the committee heard from Guy Parent, Veterans Ombudsman, who represented the Office of the Veterans Ombudsman.

Examination of the *Main Estimates, 2011-12*

1. Office of National Defence and Canadian Forces Ombudsman

The Office of the National Defence and Canadian Forces Ombudsman's general counsel gave the committee a detailed description of the role, responsibilities and financial status of the Office, which has about 60 employees. The committee learned that the Ombudsman reports directly to the Minister of National Defence on behalf of the Office, which receives its budget from the Department of National Defence (DND); consequently, it is not specifically mentioned in the Estimates. According to documents provided to the committee by the general counsel, the Office's budget for fiscal year 2010–2011 was \$6.27 million, although actual expenses were lower, at \$4.6 million. According to her, the Office's budget has remained stable over the past five years and this level of funding has generally been adequate to enable it to fulfil its mandate.

Complaints

Committee members asked several questions about the complaints received by the Office of the National Defence and Canadian Forces Ombudsman, including the process for resolving them. The committee learned that, in 2010–2011, the Office received 1,454 complaints from its 300,000 constituents; 1,302 new complaints and complaints from previous years were resolved. In particular, the new complaints concerned benefits (444), release from military service (137), medical care (102), recruitment (88), military postings (73), grievance resolution (73) and harassment (59).¹ The committee was also told that the Office has had to make changes in order to handle the growing number of complaints related to post-traumatic stress syndrome since the start of the Canadian mission in Afghanistan in 2002.

Overlap

Questions were also posed about whether the responsibilities of the Office of the National Defence and Canadian Forces Ombudsman and those of the Office of the Veterans Ombudsman overlap and, more specifically, why some former Canadian Forces members' complaints are handled

¹ This information is contained in a document provided to the Standing Senate Committee on National Finance on June 14, 2011. This information is not yet publicly available.

by the former rather than by the latter. The Office of the National Defence and Canadian Forces Ombudsman's general counsel told the committee that the two offices have different mandates. In particular, the Office of the National Defence and Canadian Forces Ombudsman is responsible for cases pertaining to DND, while the Office of the Veterans Ombudsman handles cases involving Veterans Affairs Canada. In response to questions, the general counsel added that, for certain matters, veterans must go to the Office of the National Defence and Canadian Forces Ombudsman; one example is pensions, for which DND has responsibility.²

Financial Compensation for Canadian Forces members

The committee learned that a major ongoing problem for Canadian Forces members is that complaints pertaining to financial compensation may not be resolved because of the inability of the Chief of the Defence Staff (CDS) to resolve complaints of this type due to a lack of authority. Former Chief Justice of Canada, the Rt. Honourable Antonio Lamer, in the first independent review of the provisions and operations of the 1998 amendments to the *National Defence Act*, made the recommendation that the "CDS ... be given the power to delegate to someone under his command and control decision-making in respect of all grievances, except those that may have significant implications for the Canadian Forces."³ The Office of the National Defence and Canadian Forces Ombudsman came to the same conclusion in its 2010 report in which it recommended that the "Chief of [the] Defence Staff be given the necessary financial authority to settle financial claims in grievances and that the Chief of [the] Defence Staff be entitled to delegate this authority."⁴

This recommendation was not implemented, and the CDS must still refer complaints regarding financial compensation to legal services personnel at DND, since they have authority over financial compensation. In analyzing these complaints, DND legal services must follow the Treasury Board of Canada Secretariat's *ex gratia* payments policy,⁵ which applies throughout the federal government.

² See: *Canadian Forces Superannuation Act*.

³ The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the provisions and operation of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, as required under section 96 of Statutes of Canada 1998, c.35, September 2003, p. 3, http://www.cfgb-cgfc.gc.ca/documents/LamerReport_e.pdf.

⁴ Office of the National Defence and Canadian Forces Ombudsman, *The Canadian Forces Grievance Process: Making It Right for Those Who Serve*, May 2010, p. 28, <http://www.ombudsman.forces.gc.ca/rep-rap/sr-rs/gp-prg/doc/gp-prg-eng.pdf>.

⁵ This policy is available at: <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15782§ion=text>.

The Office of the National Defence and Canadian Forces Ombudsman's general counsel informed the committee that, in her experience, DND's legal services may refuse to compensate Canadian Forces members because of their employment status. In particular, since Canadian Forces members serve at the pleasure of the Crown, there is no employer-employee relationship, a situation that is unlike that which exists between the Crown and DND's civilian employees. Therefore, DND has no legal obligation to compensate Canadian Forces members. **The committee believes that this situation should be modified immediately in order to ensure that Canadian Forces members are eligible to receive the same compensation as DND's civilian employees.**

2. Office of the Veterans Ombudsman

In the *Main Estimates, 2011-12*, the Office of the Veterans Ombudsman (OVO) had voted appropriation requests of approximately \$5.9 million. The OVO, which reports to the Minister of Veterans Affairs, was started in 2007. It has 37 employees in Ottawa and Charlottetown, where the department's headquarters is located.

The OVO's clients include members and veterans of the Canadian Forces and the Royal Canadian Mounted Police as well as their survivors, such as widows and spouses. The OVO has three principal functions. First, it informs its clients about, and refers its clients to, the programs for which they are eligible. Second, it helps people address complaints related to veterans affairs. Third, based on the information received in these complaints, the OVO identifies recurring issues; it then conducts a systemic review of these issues and makes recommendations to Veterans Affairs Canada about them. Currently, the OVO is conducting investigations of the Veterans Independence Program as well as the review process of the Veterans Review and Appeal Board. In terms of service standards, the OVO takes up to five days for an information referral, up to thirty business days to address minor complaints, and up to five months to address more complex complaints and complete systemic reviews.

Veterans Independence Program

Committee members continue to be concerned about the criteria used by Veterans Affairs Canada to determine eligibility for the Veterans Independence Program, which provides housekeeping and grounds keeping services to veterans and widows. There are two main groups of widows of veterans who are eligible for the Veterans Independence Program. First, widows of veterans are eligible to receive Veterans Independence Program services, including housekeeping and grounds keeping services, if they receive Guaranteed Income Supplement benefits or if they are approved for the Disability Tax Credit. Second, widows of veterans are eligible to continue to receive services in relation to housekeeping and/or grounds keeping that they received before the veteran passed away. Both of these groups of widows must meet additional criteria in order to be eligible for these services. Widows of veterans who do not meet eligibility criteria cannot receive the benefits that are available to other widows of veterans. According to the Veterans Ombudsman, “if [the OVO] can go to the department and explain the unfairness of one widow being eligible for something and another not, and if they agree, [the OVO] can work from the unfairness to the legislation. That is why [the OVO is] still engaged and [hopes] to come to a successful arrangement with the department on that issue.”

Overlap

As with the questioning of the Office of the National Defence and Canadian Forces Ombudsman’s general counsel, committee members were concerned about an overlap in the functions of the Office of the National Defence and Canadian Forces Ombudsman and the Office of the Veterans Ombudsman.

According to the Veterans Ombudsman, the functions of the two Offices are separate. He illustrated this point by providing an example: a member of the Canadian Forces may not declare an injury to the Canadian Forces, since such a declaration could jeopardize his or her career, but that person would still be eligible to receive a pension from Veterans Affairs Canada for that injury. Furthermore, he said that the differences between his Office and the Office of the National Defence and Canadian Forces Ombudsman are described on the OVO website in order to minimize potential confusion among the clients. Additionally, the OVO has an agreement with the Office of the National Defence and Canadian Forces Ombudsman pursuant to which the two Offices exchange

information, with the permission of the complainant, in the event that the complaint would be better addressed by the other Office.

Sharing of Information

Committee members had some concerns about the sharing of information by Veterans Affairs Canada with the OVO. The Veterans Ombudsman indicated that there were no issues with respect to the sharing of information for personal complaints. In the past, problems existed regarding the OVO's ability to access written documents from Veterans Affairs Canada, but that situation has improved. Furthermore, the OVO and the Minister of Veterans Affairs Canada are negotiating an information-sharing agreement in an effort to reduce the occurrence of information-sharing issues.

3. Public Works and Government Services Canada

In the *Main Estimates, 2011-12*, Public Works and Government Services Canada (PWGSC) had voted appropriation requests of about \$2,582 million. The role of PWGSC is to procure goods and services on behalf of the federal government. Each year, the federal government acquires approximately \$19 billion in goods and services, of which \$14 billion involves procurement through PWGSC.

In response to questions from committee members, PWGSC officials noted that federal departments are not required to procure goods and services through it; in particular, departments have some powers of delegation and can procure goods and services valued at as much as \$25,000 before they are required to use PWGSC. For goods and services valued at more than \$25,000, departments can either use PWGSC's pre-negotiated instruments or obtain goods and services through PWGSC's competitive bidding process.

Aboriginal Set-Asides

Committee members also had questions about PWGSC's Aboriginal set-asides. Destined for primarily Aboriginal suppliers, the Aboriginal set-aside involves procurement where the value exceeds \$5,000. PWGSC officials stated that there is no quota established for Aboriginal set-asides,

but some Aboriginal set-asides are available among PWGSC's pre-negotiated instruments for use by the departments. Following further questions, PWGSC officials responded that no set-asides exist for other groups, such as for women entrepreneurs or for other types of suppliers.

Opportunities for Improvement

PWGSC officials identified a number of areas where PWGSC can improve its operations. For example, they suggested that the government is too risk-averse in its procurement process. Committee members were not convinced that a lower aversion to risk is a realistic or concrete opportunity for improvement. PWGSC officials did, however, present another area where concrete improvements had occurred: the introduction of web-based tools that have generated efficiencies for suppliers.

Transparency

Committee members had questions about transparency, or a lack thereof, in government procurement. PWGSC officials stated that the name of the bid winner is revealed but that other bid information, including pricing or strategy, could be considered as confidential by the supplier; the information is, however, subject to access to information requests. As such, confidential information can only be released with the permission of the supplier.

Competitive Bids

According to PWGSC officials, about 75 percent of federal contracts are subject to the competitive bidding process. They told the committee that the competitive bidding process is not required in all cases; for example, it is not required: in emergency situations; where there is only one potential supplier, perhaps due to intellectual property considerations; when the value of the contract does not exceed \$25,000; or when it is not in the public interest to have a competitive bidding process. When a committee member asked about the relative frequency of each exemption from the competitive bidding process, PWGSC officials explained that many of the contracts have a value below \$25,000. Additionally, the existence of only one potential supplier as a result of intellectual property considerations is a factor in some cases.

Intellectual Property

Committee members also had questions about intellectual property and government contracts, and expressed a concern that, increasingly, suppliers are required to sell their intellectual property rights to the government in order to receive the procurement contract. PWGSC officials said that the federal government's "default position" is to allow suppliers to retain their intellectual property rights. In some cases, however, the government wants to purchase the intellectual property rights; in these cases, the government notifies the supplier of this desire at the beginning of contract negotiations.

4. Office of the Procurement Ombudsman

In the *Main Estimates, 2011-12*, the Office of the Procurement Ombudsman (OPO) had voted appropriation requests of about \$4.3 million. The OPO has the authority to review complaints in relation to the awarding of procurement contracts below a certain monetary value and to the administration of awarded procurement contracts of any monetary value; these authorities exist in relation to contracts with departments, agencies, boards and commissions found in Schedules I, I.1 and II of the Financial Administration Act. This authority does not include Crown corporations or intelligence-type procurement of the sort conducted by the Canadian Security Intelligence Service. The Office, which currently has approximately 25 full-time employees, reviews complaints from suppliers about the awarding and administering of government procurement contracts.

Mandate

According to the Procurement Ombudsman, the OPO's mandate has four components. First, the OPO reviews complaints in relation to the awarding of low-value contracts, which are valued below \$25,000 for goods and below \$100,000 for services. The Procurement Ombudsman told the committee that the OPO fills a particular void for low-value contractors, which have fewer avenues for recourse. Second, the Office reviews complaints about the administration of awarded contracts of any monetary value. Third, the OPO assures that procurement practices are fair, open and transparent. Finally, the Office conducts reviews of the procurement practices of departments, if requested to do so by the Minister of Public Works and Government Services.

To achieve its mandate, the OPO has three basic roles. First, it receives and responds to complaints, which may lead to an investigation. Second, it provides an alternative dispute resolution process to which government and suppliers may apply. Third, it writes procurement practice reviews based on the systemic issues it observes from complaints received about federal procurement processes.

Complaints

When the OPO receives a complaint, it has 10 working days to determine whether to review it. During that time, it will try to facilitate an informal resolution. After the 10 working days have passed, the OPO will initiate a formal investigation if it decides to review the complaint and if the complainant wants to continue to pursue the issue. When it concludes its investigation, the OPO writes a report and makes recommendations. According to the Procurement Ombudsman, the OPO has initiated nine investigations to date, and has been successful in its efforts, since most complaints have been resolved informally; informal resolution is considered to be relatively more efficient.

The Procurement Ombudsman told committee members that 75 percent of complaints made to the OPO are related to the manner in which the contract was awarded, with four main complaint categories in this regard. First, supplier complainants are concerned about how their bid was evaluated or how the evaluation criteria were applied. Second, there are criticisms about the evaluation plan and its criteria, which the supplier may consider to be excessively restrictive or lax. Third, supplier complainants are concerned about the procurement strategy, specifically about whether the procurement process is competitive or sole source. Fourth, when the statement of work requirements are vague or ambiguous, supplier complainants are concerned that it is difficult for them to demonstrate how requirements would be met. The remaining 25 percent of complaints relate to contract administration, with bid winners complaining about how the contract is managed by the department. For example, the bid winner may complain about late payments. The Procurement Ombudsman indicated that there have been significant improvements in that regard, with the OPO currently receiving relatively fewer complaints about late payments.

Alternative Dispute Resolution

The OPO also provides an alternative dispute resolution process, which can be accessed by the federal government or by suppliers. Since it began its operations, the OPO has received 21 requests in relation to this process. The Office has conducted three formal processes and reached seven agreements; in addition, seven requests were declined by the opposing party, one request was withdrawn and three requests were deemed to be outside the OPO's jurisdiction.

Procurement Practice Reviews

The OPO writes procurement practice reviews in response to systemic issues that it has identified on the basis of the complaints it has received. In these reviews, the OPO focuses on fairness, openness and transparency. Additionally, it makes recommendations for improvements in the procurement process. Thus far, the OPO has completed 12 procurement practice reviews; four additional practice reviews are expected in 2011. These reviews are similar to performance audits conducted by the Office of the Auditor General of Canada, but may have a relatively greater focus on best practices; the OPO believes that these practices should be disseminated to all federal departments, boards and agencies.

Evaluation

The Procurement Ombudsman told the committee that an external evaluation of the OPO's activities has been initiated. Following the evaluation, the OPO may make changes to its operations.