



SENATE | SÉNAT
CANADA

**STANDING COMMITTEE ON RULES, PROCEDURES AND
THE RIGHTS OF PARLIAMENT**

**REPORT ON THE CASE OF PRIVILEGE RELATING TO
LEAKS OF THE AUDITOR GENERAL'S REPORT ON THE
AUDIT OF SENATORS' EXPENSES**

April 2017

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RECOMMENDATIONS

PAGES 20-21:

The Committee recommends:

1. That the Senate administration prepare standardized training materials and programs for all senators, their staff, and Senate employees on the proper management, safeguarding and security of confidential documents and other information.
2. That training materials and programs emphasize the obligation or duty of confidentiality, and on the consequences for the breach of that duty.
3. That these training materials and programs also emphasize the long term damage done by deliberate leaks for political advantage, damage to the work, the reputation and the integrity of the Senate and individual senators.

PAGES 21-22:

The Committee recommends:

1. That the Committee on Internal Economy, Budgets and Administration review, in conjunction with Senate administration, all policies and procedures respecting the handling and management of information and to revise them to ensure there is clarity, consistency and awareness of what the policies and procedures require.
2. That the Committee on Internal Economy, Budgets and Administration, in the context of its review the *Information Security Policy*, ensure that the policy has sufficient coherence and clarity to serve the goals of protecting the confidentiality of sensitive documents and the handling and security of such documents, or other confidential information, particularly in light of changing technology.
3. That Appendix I to the *Rules of the Senate* be amended in the Definitions by adding in alphabetical order the following:

“In camera

In camera means in private. Committees can meet in camera in certain circumstances, and the public is excluded from those meetings. The deliberations and any proceedings related to in camera meetings are confidential. Any unauthorized disclosure of in camera deliberations and proceedings could be treated as a contempt – a breach of parliamentary privilege. Appendix IV of the Rules outlines procedures for dealing with the unauthorized disclosure of confidential committee reports and other documents or proceedings. (*Huis clos*)”.

PAGE 22:

The Committee recommends:

1. That the Committee on Internal Economy, Budgets and Administration explore how the role of Corporate Security might be modified to facilitate investigations.

PAGES 23-24:

The Committee recommends:

- 1. That the Committee on Internal Economy, Budgets and Administration direct the administration to review all personnel policies to ensure that they make express reference to breach of confidentiality as a disciplinary matter, subject to sanctions ranging from a reprimand to dismissal. The development of such policies is considered a legitimate exercise of management rights in the workplace, whether employees are subject to a collective agreement or a contract of employment.**
- 2. That individual senators communicate clearly to their staff that sanctions will be imposed for breaches of confidentiality. Resources should also be developed (if they are not currently available) to assist in this process.**
- 3. That, with respect to third parties, the administration review its policies and practices with respect to dealing with a third party that has access to confidential documents and ensure that third parties have a clear understanding of what is required in the handling of confidential information and that the Senate has the power to impose sanctions on third parties for breach of such confidentiality.**
- 4. That the Committee on Internal Economy, Budgets and Administration direct the administration to develop policies on when sanctions may be applied to third parties and the nature of those sanctions.**

PAGE 26:

The Committee recommends:

- 1. That the Senate develop procedures and policies that specify the proper scope of any audits conducted by the Auditor General in future.**
- 2. That the Senate develop clear guidelines for any confidentiality agreements between senators and the Auditor General and any third party contractor, which should specify the obligations on third party contractors as to the requirements of confidentiality.**
- 3. That the Senate ensure that the Auditor General and all other contractors be fully informed of the extent and scope of parliamentary privilege before they undertake the work for which they are contracted.**

THE CASE OF PRIVILEGE RELATING TO LEAKS OF THE AUDITOR GENERAL'S REPORT ON THE AUDIT OF SENATORS' EXPENSES

I. Introduction

This report deals with a serious matter: the leak, or unauthorized disclosure, of a highly sensitive document. This disclosure was a breach of parliamentary privilege. It damaged the reputations of individual senators and created a highly challenging situation for the Senate as a whole.

The document in question is the report of the Auditor General of Canada on senators' expenses (Auditor General's report).¹ The mandate of the Standing Committee on Rules, Procedures and the Rights of Parliament (the Committee) was to inquire into the various leaks of the report. The Committee reviewed the processes in place for dealing with confidential information, including reports and other documents. It heard from several witnesses to help the Committee understand the impact of the leak on the Senate and on senators. It was also assisted by representatives of the Senate's security service as well as the Auditor General himself. It also deliberated on the feasibility of investigating who might have likely been the source of the leaks.

The Committee regretfully concludes that it is now difficult to establish the sources of the unauthorized disclosure without engaging in a wide-ranging inquiry which it lacks the capability to undertake, and which would do little to serve the public interest. It wishes, nonetheless to use this opportunity to make a number of observations and recommendations and draw some lessons to assist the Senate in addressing what it considers to be significant gaps and deficiencies in the processes within the Senate for:

- Setting out the obligations on everyone who has confidential information, including third parties, to maintain confidentiality of that information;
- Ensuring that everyone is aware of those obligations;
- Safeguarding confidential documents;
- Investigating breaches of confidentiality; and
- Imposing sanctions for such breaches.

II. The Leak of the Auditor General's Report and the Senate's Response

A. The Auditor General's Audit of Senate Expenses

On 6 June 2013, the Honourable Senator Marjory LeBreton, then-Leader of the Government in the Senate, moved the following motion, seconded by the Honourable Senator Claude Carignan:

That the Senate invite the Auditor General of Canada to conduct a comprehensive audit of Senate expenses, including senators' expenses.

After debate, the motion was [adopted](#) on division.

¹ Auditor General of Canada, [Report of the Auditor General of Canada: Senators' Expenses](#), June 2015.

On Thursday 4 June 2015 the Auditor General of Canada, Michael Ferguson, transmitted the [*June 2015 Report of the Auditor General of Canada to the Senate of Canada – Senators' Expenses*](#) to the Speaker of the Senate. The report completed the comprehensive audit of Senate expenses, including senators' expenses. The Speaker [tabled](#) the report in the Senate on the next sitting day, being Tuesday 9 June 2015 at 2:05 p.m. (becoming Sessional Paper No. 2/41-1243S).

B. Leaks of the Auditor General's Report

What we know is that prior to the report being tabled and made public, the audit report, or portions of it, was leaked to the media. The leaks resulted in the dissemination by the media of damaging reports about individual senators, much of which was inaccurate or simply false. Some of the leaks occurred well before the report had been delivered to the Senate. As well, at least some senators knew some of the contents of the report prior to its arrival at the Senate.

The pace of the leaks had been building and intensified on the day of delivery. These leaks created a challenging situation for the Senate, and for individual senators, who were the subject of much speculation as to whether their cases would be referred to the authorities for investigation. Many of these senators were in no position to deny or rebut these serious allegations because they were bound by confidentiality agreements, which the Auditor General had asked all senators to sign.

Under the terms of the agreements, many senators consented to disclosing considerable personal information relating to their parliamentary expenses to the Auditor General, and how these expenses related to their parliamentary functions, and agreed not to make public any information relating to their expenses or to the audit of those expenses. In effect, senators waived a valuable privilege accorded to all parliamentarians under the Constitution of Canada, which enables parliamentarians to perform their parliamentary roles without undue interference. The terms of the agreement also imposed a reciprocal obligation on the Auditor General not to disclose any details of the audit until after his report was made public by the Senate.

Arguably, more important than waiving a constitutionally-entrenched privilege, individual senators were placed in the untenable situation of being unable to deny or rebut allegations circulating in the media about their cases because of their confidentiality undertaking.

During the Committee meeting held on 16 June 2015, Senator Hervieux-Payette presented numerous media reports to illustrate the extent of the leak. A substantial number of news outlets were aware of certain details of the Auditor General's report prior to its tabling in the Senate. Appendix I to this report provides a sampling of the news media reports on the contents of the Auditor General's report.

An important contextual element is that at the time of the leaks, the Senate was in the midst of reviewing and strengthening its financial management policies. Attempting to deal with media speculation, media inquiries, and public condemnation at the same time made the Senate's task much more challenging. It detracted from the Senate's work of reviewing and reforming its financial administrative practices.

With respect to individual senators whose names were prematurely leaked to the media, or whose situations were exaggerated, their credibility as legislators was compromised. As was noted during our hearings, legislators require credibility if they are to earn the trust and have the confidence of the public when they perform their parliamentary functions. In effect, the most significant professional asset that legislators have is their credibility. When that is questioned, their ability to connect with, to educate and to inform the public on important matters of public policy is undermined. This in turn undermines the democratic process.

C. Proceedings in Relation to the Case of Privilege (41st and 42nd Parliaments)

On 9 June 2015 the Speaker of the Senate [ruled](#) on a question of privilege raised by the Honourable Senator Céline Hervieux-Payette (now retired) regarding leaks of the Auditor General's report on the audit of senators' expenses before the report was tabled in the Senate on 9 June 2015. The Speaker held that a *prima facie* case of privilege had been established. The following motion was then [adopted](#) in the Senate:

That this case of privilege, relating to the leaks of the Auditor General's report on the audit of the Senate, be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for an independent inquiry to be ordered and a report publicly released without delay.

The Committee began consideration of the case of privilege at its meeting on 16 June 2015 by hearing from Senator Hervieux-Payette. At that meeting, there was discussion of the possibility of the Committee preparing an interim report in anticipation of the dissolution of Parliament. Ultimately, no interim report was prepared because Parliament was dissolved in advance of the general election.

The question of privilege was raised anew during the 42nd Parliament, with the Speaker on 26 January 2016 ruling that a *prima facie* case of privilege had been established. On 9 March 2016, a [motion](#) was adopted to refer the case of privilege to the Committee. The Committee resumed consideration of the question of privilege on 12 April 2016.

D. Correspondence Between the Committee and the Auditor General of Canada

In order to facilitate the inquiry into the leak of the Auditor General's report, the Committee instructed the Clerk of the Committee (now also the Clerk of the Senate, Mr. Charles Robert) to write to the Auditor General of Canada. Mr. Robert did so on 13 July 2015 requesting information on a number of points, including:

- How the Auditor General's office managed the information relating to the audit throughout the audit process;
- The controls and policies that govern the release of information, particularly of a private or confidential nature;
- The number of copies of the report on senators' expenses that were distributed on 4 June 2015 and to whom;

- The number of copies of the report on senators' expenses that were distributed before 9 June 2015 (in addition to the reports distributed on 4 June 2015) and to whom;
- The mechanisms in place to ensure respect for privacy and the confidentiality of both the research conducted for the audit and the draft reports prepared;
- How the Auditor General's office addressed the concerns raised in the 2007 report of the House of Commons Standing Committee on Public Accounts;
- The timelines of communications issued by Auditor General's Office in relation to the report on senators' expenses;
- How violations of the controls and policies that govern the release of information of a private or confidential nature are dealt with; and
- How these controls and policies relating to confidentiality, privacy and leaks are reflected in the terms and conditions of employment and the training provided to contract employees.

On 13 August 2015, the Auditor General responded to the Clerk's request, noting that his office was in the process of assembling the information requested by the Committee's Clerk when Parliament was dissolved.

On 23 March 2016, the Clerk of the Committee wrote a second letter in which he renewed the questions asked in the letter of 13 July 2015.

The Auditor General responded to the Clerk's letter with his own letter and additional documentation, on 6 April 2016. He provided a summary of his written responses in his appearance as a witness before this Committee on 17 May 2016. The written responses as well as his evidence before the Committee are summarized in the "Evidence" part of this report.

III. Summary of the Evidence

A. Senator Hervieux-Payette

Senator Hervieux-Payette emphasized in her second appearance before this Committee that the Committee should look forward. It should focus its efforts on recommendations that will lead to specific policies and sanctions for future breaches of parliamentary privilege involving disclosure of confidential documents, especially documents such as this one, containing sensitive and personal information. Looking back to try to find wrongdoers, or the source of the leak, would not likely prove fruitful, and might in fact be counter-productive to the objectives of the Committee.

Senator Hervieux-Payette considered the leaks to be damaging to the institution of the Senate as whole, in addition to causing damage to the reputations of individual senators. The incident has revealed deficiencies with the way in which confidential information is treated. It also showed weaknesses in the process of managing the information that was being made public as a result of the leak, with senators unable to respond to the damaging information which was frequently untrue or distorted. This passage from the transcript of Senator Hervieux-Payette's evidence expresses her concerns:

I just read the report in the media, like any one of you, except that after one report, there was another report and another report.

It was like a house of cards. Things just went on and on, and we were in the dark during all that time. If we had all received the report the next morning, that would have minimized the damage, but in this case, people saw their name being bandied about publicly even though they had seen no official document that concerned them. That is totally unacceptable. We supposedly had a flawless process, we had taken all kinds of precautions, and I am not talking about the period that preceded the production of the report, but about the moment when the report was produced. And I did not, in fact, agree that we should send the Prime Minister a copy. The Senate does not report to the Prime Minister, I am sorry. It was an error at the core of the process.

The other area she would like to see the Committee focus on is the appropriate sanctions for unauthorized disclosure of confidential information. She suggested something in the nature of a scale of sanctions depending upon the severity of the leak or the sensitivity of the information.

B. Auditor General

The Auditor General appeared before the Committee on 17 May 2016. His evidence touched on the key events commencing from the moment he was retained by the Senate to conduct his audit. One of his first acts was to ask senators to sign confidentiality agreements. The agreement was a standard form agreement. The terms of the agreement stipulated that senators were not to disclose any information related to their Senate expenses and relating to the audit generally. The Auditor General gave a reciprocal undertaking not to disclose any information with respect to his audit until an audit report had been made public by the Senate. A copy of the standard agreement is provided as Appendix II to this report. We will come back to the significance of the agreements and their impact on senators who honoured their undertaking of confidentiality to their detriment, while the Auditor General failed in his reciprocal undertaking.

The Auditor General provided the Committee with a summary of the measures his office implemented to manage the information throughout the audit process, including:

- **Additional training on security, privacy and confidentiality:** including sessions that emphasized the need to respect the particular circumstances and sensitivities of the Senate and senators;
- **Secure transfer of electronic files:** including a secure file transfer tool that limited access to senators' information to only the staff from the Office of the Auditor General (OAG) assigned to a specific senator's file. A numbered coding system for each Senator's file was used so as not to identify Senators by name;
- **Management of physical files:** hard-copy files received from senators were kept at the Chambers Building in offices occupied by the OAG. The physical location of files was documented in an Excel spreadsheet. The spreadsheet was kept in a secure electronic file with access limited to the designated client services officers of the OAG information management team;

- **Improvement of secured facilities:** the OAG invested money to upgrade the facilities assigned to it at the Chambers Building to ensure they complied with OAG security requirements. This included installing motion detectors and alarms;
- **Return of files to the Senate administration:** at the end of the audit, original Senate files were returned to the Senate administration in accordance with its requirements;
- **Restriction of access before publication:** additional access restrictions were put in place in the period leading up to publication. A reduced number of employees had access to electronic files of the report, and employees' access to the content of the reports was logged; and
- **Preparation for tabling:** hard copies of the final report were received from the printers on 3 June 2015 and stored in a secure place on the OAG premises. On that date advanced copies were distributed to 11 OAG staff who needed to prepare for tabling of the report. On 4 June 2015, 12 hard copies of the final report were hand-delivered to Mr. Jules Pleau of the Senate Speaker's Office at approximately 11:50 a.m. On 9 June 2015, the OAG hand-delivered 250 hard copies to Ms. Loren Cicchini of the Senate Speaker's Office at approximately 10:30 a.m.

The Auditor General set out the following timelines of communications by the Auditor General or the OAG respecting the report. The key dates and events that concern this Committee relate to the period following January 2015:

- Letters were sent to the Speaker of the Senate on 21 January, 10 April and 23 April 2015 (these are described as "response letters," but no indication is given as to what the letters were responding to);
- From February to March 2015, draft individual reports with preliminary audit findings were delivered to certain senators;
- In April 2015, the OAG delivered final audit findings to individual senators to be included in the final report;
- On 25 April, 3 May and 8 June, meetings were held with the Speaker and the two Senate leaders;
- Weekly meetings were also held with Senate administration throughout the audit process to gather information on specific files;

The Auditor General also reported in his appearance before the Committee that on 29 May 2015, he had engaged an outside investigator to conduct an investigation of breaches of confidentiality within the Office of the Auditor General, which would have happened approximately one week before his report was delivered to the Senate. In a brief report prepared 1 August 2015 the security consulting firm concluded that there was no proof to suggest that the source of the leaks was staff in the Office of the Auditor General (Appendix III).

With respect to his media interviews prior to the release of the report, the Auditor General provided a chronology. The important dates for purposes of this Committee's review are the following:

- **26 May 2015:** The Auditor General participated in several interviews relating to questions about the OAG's expenses. During these interviews, he was asked to provide details of the

audit of senators' expenses that had already been reported in the media. He responded by confirming the approximate number of individual cases that would be included in the report (30) and the number that would be referred for a criminal investigation (10). He told the Committee that he disclosed this information only to correct misleading information that had been circulating in the media. He indicated that the numbers that were reported had been inflated;

- **Between 27 May and 9 June 2015:** The Auditor General indicated that he gave no interviews during this period;
- **5 June 2015:** after the Senate indicated publicly that the report had been delivered to the Speaker on 4 June 2015 and that it would be tabled on 9 June 2015, the OAG issued a media advisory on its website containing the same information; and
- **9 June 2015:** The report was posted on the website along with a media statement and a video of the Auditor General's delivery of the statement, after the OAG had received confirmation that the Speaker had tabled the report.

Of relevance to the question of leaks of his report, the Auditor General was asked to comment on media reports of lost or missing USB keys (thumb drives). In particular, he was asked whether any of the 120 lost or missing thumb drives contained information from any senator's office or relating to the audit of senators' expenses. The Auditor General indicated that none of the 120 lost or missing thumb drives reported in the media would have been used in the Senate audit. He did, however, refer to another thumb drive that was unaccounted for and which had not been reported in any media. Subsequent to the media reports of the 120 missing or lost thumb drives, his office put in place procedures for controlling the thumb drives used in the Senate audit. It was during this process of controlling the Senate audit thumb drives that his office found "one fully encrypted USB drive that was used in the audit of senators' expenses that is unaccounted for."²

Another concern raised in the course of the Auditor General's evidence was the retention of documents relating to individual senators that had been provided to the OAG to support the audit. The Auditor General maintains that according to the OAG's records management system and the professional standards under which the OAG operates, the OAG is required to keep information that supported an audit opinion and conclusions reached in an audit for "a period of time that will last 15 years." The Auditor General did, however, state that any information not needed to support the audit conclusions and opinions had been returned. Any original documents that were no longer needed had been returned. Moreover, the Auditor General indicated that information and documentation that had been retained are subject to secure measures for their protection.

Subsequently, the Senate adopted a motion directing that these materials be returned intact and complete to each senator. The text of the motion is as follows:

That all documents, information, papers and reports provided to the Auditor General of Canada by each Senator who was subject to the comprehensive audit by the Auditor General pursuant to the motion adopted by the Senate of Canada on June 6, 2013, be

² Proceedings of the Standing Committee on Rules, Procedures and the Rights of Parliament, Issue 2, 17 May 2016.

returned intact and complete, including any copies thereof, to each Senator, respectively, within 30 days of the adoption of this motion.³

Following the Senate's decision directing the return of documents, the Auditor General wrote to the Clerk of the Senate on 24 October 2016 and undertook to return most senators' documents within 30 days.⁴

C. Senate Security

On 31 May 2016, Mr. Gilles Duguay, Director General, Parliamentary Precinct Services, at the time of his appearance before this Committee, and Mr. Mike McDonald, Director, Corporate Security, appeared before the Committee. Mr. Duguay provided an overview of an ideal process of distribution and handling of confidential documents, in this case, draft committee reports, sent to senators and staff. The key is to limit the number of copies that are distributed, to number the copies and to seal them in two envelopes. An acknowledgement would also be obtained from the person receiving the copy. If documents are sent electronically, ideally, access should be limited to senators, and if necessary, their staff. If staff are given access, the document should be encrypted and password-protected.

Mr. McDonald discussed the approach that the Senate itself has developed in dealing with confidential committee reports. This is set out in the report by the Privileges, Standing Rules and Orders Committee (the former name of the Rules Committee) of [13 April 2000](#), which was adopted by the Senate on 27 June 2000. This report is also discussed later in this report. Below is the relevant text of that document:

30. Your Committee believes that new measures and policies should be adopted by all Senate committees to preserve the confidentiality of draft reports and other confidential or *in camera* proceedings. In this regard, we suggest that serious consideration be given to the following measures:

- (a) that draft reports and other confidential documents be individually numbered, with the number shown on each page;
- (b) that each numbered report and other confidential document be assigned exclusively to an individual, and always given to that individual, and this should be carefully recorded;
- (c) that if Senators are to be given draft reports or other confidential documents in advance of a meeting, or are to take such documents away after a meeting, they be required to sign for them. Certain documents, such as *in camera* transcripts, should only be able to be consulted in the committee clerk's office, with the chair's approval;
- (d) that the names of all persons in the room at *in camera* meetings to discuss draft reports - including assistants, research staff, interpreters and stenographers - be recorded, preferably on the record; and

³ *Journals of the Senate*, [5 October 2016](#).

⁴ Copies of the various items of correspondence to and from the Auditor General are included in Appendix II to this report.

(e) that the chairs of committees ensure that all Senators and staff are cautioned and reminded of the nature of confidential and *in camera* proceedings and documents, the importance of protecting them, and the consequences of breaching such confidentiality.

Mr. Duguay emphasized that awareness of the procedures and education are key elements in any process that may be devised for safeguarding documents. With respect to documents produced or received by a committee, although it is within the purview of each committee to determine how to manage confidential documents, his department is available to provide recommendations and otherwise assist in the handling of such documents. Mr. Duguay and his staff can work with committee clerks or other staff to establish processes and procedures to better secure documents. Ultimately, however, it is incumbent upon committees to assess the level of security required and reach out to Corporate Security.

Mr. McDonald referred to a policy developed by his department (the Corporate Security Directorate), the *Information Security Policy*. This policy has been in place since 2005. The document provides general guidance on how to secure and safeguard documents. The document is currently being updated by the Information Services Directorate (ISD), the department that is responsible for all matters involving the management of information. Mr. Duguay and his staff have provided advice on updating the policy to ISD, including advice on security issues, particularly for marking, distributing and safeguarding information. The witnesses indicated that the revisions to the policy would soon be provided to the Standing Committee on Internal Economy, Budgets and Administration (CIBA) for its review.

Mr. Duguay further maintained that, in his view, there should be explicit rules applicable across the board to all committees, setting out the requirements for the proper management of documents, and not simply leave it to individual committees to establish requirements for document handling.

Another idea canvassed in the course of the evidence from Mr. Duguay and Mr. McDonald is to re-examine the handbook for committee chairs to ensure it provides chairs with proper instructions for the handling of documents, for assessing the level of security, for ensuring that these instructions are effectively communicated to committee members, to emphasize the serious consequences and potential harms of leaks of confidential documents, and to ensure committee members and their staff understand the sanctions that may result from leaking such documents. These requirements, ideally, should be communicated at the outset of *in camera* proceedings.

With respect to education, Mr. McDonald indicated that his group conducts general security awareness sessions, as well as orientation sessions for new employees, during which they are educated on the policies and proper practices in the safeguarding of information. On the broader question of educating staff on the importance of confidentiality, Mr. Duguay indicated that his group is not responsible for this. It is up to individual senators.

Another possible initiative is for the Corporate Security Directorate to develop various training materials to educate senators and staff. With the Parliamentary Protective Service now focusing on security, the Corporate Security Directorate can focus more of its efforts on prevention and education. Mr. Duguay indicated that Mr. McDonald will initiate such a project.

One area of concern for the Committee is with respect to enforcement of the procedures respecting confidentiality and generally the management of documents. Enforcement includes how the Senate investigates leaks. Mr. Duguay, for example, noted that in nine years, there has only been one investigation of leaks, despite several leaks of confidential or draft committee reports that have occurred during this period.

Neither office has the authority to initiate audits of compliance by senators or their staff or Senate administration staff to ensure compliance with policies respecting the management of documents. Mr. Duguay, in particular, strongly urged, given the degree of concern expressed by Committee members, that an audit be conducted of compliance by senators, their staff, and the administration, with the policies and practices in place to protect the confidentiality of information.

The Committee also considered sanctions for unauthorized disclosure of information within the Senate administration. Mr. Duguay indicated that the administration has never faced such a situation, so he is unsure what the sanctions would be. However, all employees are subject either to collective agreements or terms and conditions of employment (non-unionized staff). Disciplinary measures may be imposed on staff for breach of confidentiality as a breach of the employment contract. Discipline may include reprimands, suspensions and ultimately, depending upon the seriousness of the breach, dismissal.

Subsequent to his appearance before the Committee, Mr. Duguay addressed a letter to the Clerk of the Committee in which he provided responses to a number of questions from senators.

Information Security Policy

All information under the administrative jurisdiction of the CIBA, as well as information within the purview or the control of Senate administration, is subject to the Senate *Information Security Policy*. Senate employees, contractors and subcontractors are required under the policy to treat information as secure and privileged and to act with diligence in handling and retaining information.

All restricted access information is assigned a classification depending upon the nature and degree of damage to the interests of the Senate that could result from its disclosure: “secret,” when its compromise could cause serious injury to the interests of the Senate; “corporate confidential,” when its compromise could cause injury to the interests of the Senate; or “protected,” when its compromise could cause injury to the interests other than those of the Senate.⁵ . Although the policy does not apply to information under the authority of individual senators, they may elect to comply with the policy.

Audit on Senate Expenses

Documentation related to the audit of Senate expenses was kept in the Chambers Building, including hard copies of documents received from senators. The Senate took steps to control and

⁵ Senate, *Information Security Policy*, adopted by the CIBA on 4 April 2005, section 7.

authorize access to the premises, notwithstanding that the building is not patrolled by parliamentary security. Some of the techniques used for safeguarding the information included electronic encryption, guidelines for review of confidential documents, the use of numerical reference instead of naming senators, and secured cabinets with limited access. At the conclusion of the audit any original materials used by the Auditor General belonging to senators or the administration were returned to the Senate. Copies of documents belonging to the Auditor General were retained by the Auditor General in accordance with the policy of his office of keeping information supporting an audit for a period of 15 years.

Confidentiality Agreement and Security Clearance

All prospective Senate employees, whether administration employees or employees of individual senators, must sign confidentiality agreements as part of their contracts of employment. Third party contractors as well as volunteers must also sign confidentiality agreements. The agreements are similar in format. The agreement between senators and their staff expressly requires that all confidential information to which staff become privy must be treated with confidentiality during the term of employment and thereafter indefinitely. Notably, the agreement also notes the following:

- The integrity of the institution is paramount. For this reason, any breach of confidentiality will be considered a breach of privilege and may give rise to such proceedings as the Senate may determine.

Senate employees are asked to read and agree to the *Statement of Values and Ethics of the Senate Administration* and the *Code of Conduct of the Senate Administration*. The latter document establishes the principles and the rules of conduct to guide employees in discharging their duties and imposes various obligations including: the protection of privacy rights, the ethical exercise of discretion, confidentiality and loyalty to the institution.

Training

Employees – Senate Administration

Senate administration employees are required to take an information security awareness course, which familiarizes them with information technology and information management security issues. The level and breadth of training varies across directorates, with Committees Directorate staff, particularly committee clerks, having the greatest familiarity with protocols and procedures for protecting the confidentiality of reports and other documents, including how to prevent premature disclosure of such documents. Committee clerks closely follow the guidelines and procedures set out in the April 2000 Report of the Rules Committee. The importance of these procedures is stressed repeatedly, including by incorporating the procedures in exam questions for procedural clerk competitions.

Some of the procedures in the Rules report of April 2000 have become outdated due to changing technology. As a result, the Committees Directorate has developed additional procedures such as a process to protect confidential draft reports with passwords, and a process to provide advance

embargoed copies of draft reports, particularly to the Press Gallery. Other standards include confidential stamps and labels, and signing sheets.

Mr. Duguay in his testimony, however, commented on the lack of training on the importance and requirements of confidentiality for employees employed directly by Senate administration. This lack of training is a cause for concern.

Employees – Senators’ Offices

Senate administration periodically organizes orientation sessions for new employees working in senators’ offices and employees employed directly by Senate administration. However, the scope of these sessions is limited to the introduction of available resources to these employees. No specific training on confidentiality or the handling of sensitive information is provided.

Senators

Senate administration has not developed a standardized training program for senators on handling confidential information. For committee documents and other information, committee members themselves determine the method by which documents are protected and distributed, with committee clerks providing advice on the handling of sensitive documents, particularly draft reports.

Non-Compliance and Sanctions

With respect to employees, as already noted, the duty of confidentiality and duty of loyalty are part of their terms and conditions of employment. Unauthorized disclosure of information may result in disciplinary consequences up to dismissal. While there have been a number of leaks of confidential reports in the last ten years, no employees have been found to have acted improperly in any of these situations.

D. *Ethics and Conflict of Interest Code for Senators*

One of the challenges faced by the Committee is to find models from which to draw inspiration and develop recommendations. The Committee asked Senator Serge Joyal, P.C., Deputy Chair of the Intersessional Authority on Ethics and Conflict of Interest for Senators,⁶ to comment on whether some of the approaches used by the Standing Committee on Ethics and Conflict of Interest for Senators (Ethics Committee) in dealing with breaches of the *Ethics and Conflict of Interest Code for Senators* (Code) might be appropriate for dealing with breaches of confidentiality of information.

Senator Joyal noted that it would be highly unlikely that the Code could ever apply to questions of privilege arising from a leak of a confidential report. However, the Code can provide some guidance on establishing processes and sanctions for breach of confidentiality of Senate

⁶ Under section 38 of the *Ethics and Conflict of Interest Code for Senators* the Intersessional Authority on Ethics and Conflict of Interest for Senators is formed at the end of a session of Parliament. The Authority is composed of the members of the Standing Committee on Ethics and Conflict of Interest for Senators at the end of the session, and allows them to perform much of the Committee’s work until the members of a successor Committee are appointed by the Senate.

information. The process for dealing with breaches of the Code involves several steps. The first step is a preliminary investigation by the Senate Ethics Officer (SEO), upon receiving an allegation in writing, setting out specific facts to enable an investigation to go forward. The SEO may also initiate an investigation if she becomes aware of facts that may be sufficient to warrant a preliminary investigation.

If the SEO concludes that there is a need for an inquiry, she will inform the Ethics Committee that she will be conducting an inquiry. In conducting the inquiry, the SEO has considerable powers, including the power to compel the production of documents and persons to provide evidence. The senator who is the subject of the inquiry would be invited to appear to answer questions and provide information. The senator has a right to be represented by counsel. This process is conducted in camera, given that the SEO is dealing with allegations only and the principle of the presumption of innocence is respected.

Upon completion of the inquiry, a report is prepared by the SEO and tabled in the Senate and made public. It is immediately sent to the Ethics Committee. In the report, it is open to the SEO to recommend a sanction for breach of the Code. Ultimately, however, it is for the Ethics Committee to determine whether a sanction is appropriate for a given breach and the nature of that sanction.

Once the report is before the Ethics Committee, it will convene its own inquiry or deliberations. As with the SEO's inquiry, the senator who is the subject of the SEO report is given the opportunity to appear and make his own submissions and bring forward any additional elements or information that may shed light on the conduct that gave rise to the proceedings against him or her. The senator may also retain counsel to represent him or her. These proceedings are also held in camera.

At the conclusion of the Ethics Committee's proceedings, it will prepare a report setting out its conclusions and, more importantly, any sanctions that it recommends ought to be imposed on the senator in question. The Code provides for a broad range of sanctions, including but not limited to:

- (a) the return of any gift or other benefit;
- (b) any remedial measure;
- (c) the reduction or removal of access to Senate resources;
- (d) the removal of assignments, duties or powers conferred by the Senate;
- (e) a limitation on the right to speak or vote;
- (f) an invitation or order to apologize;
- (g) a censure, admonition or reprimand; or
- (h) a suspension.⁷

The final step in the process occurs after the Ethics Committee presents its report on the senator in question to the Senate. At this final stage, the senator has a further opportunity to rebut any of the findings of the report and state his or her own reasons why sanctions are not appropriate in

⁷ *Ethics and Conflict of Interest Code for Senators*, subsection 49(4).

his or her case. The Senate thus, is the final arbiter of whether the senator in fact has committed the breach alleged and if so, what the appropriate sanctions should be for that breach.

Senator Joyal urged the Rules Committee to recommend a process modeled on that set out in the Code. He suggested that such a process, with gradations of sanctions, should form part of the *Rules of the Senate*. He stressed that procedural safeguards (terms such as procedural fairness, due process or natural justice have been used to characterize these safeguards) must be incorporated in any process ultimately recommended by the Committee to protect the reputation of a senator, and indeed, the Senate as an institution. Because senators are public figures debating issues of interest to the public the reputation of a senator is what gives him or her credibility in any debates on these public matters.

The process described by Senator Joyal would only apply to senators. Senators' staff and administration employees are employees of the Senate. The CIBA represents the Senate as the employer.⁸ Through collective agreements or through terms and conditions of employment for non-unionized employees, a process is already in place for dealing with breaches of confidentiality. Such breaches would be dealt with procedurally through the disciplinary process. A range of sanctions may be imposed under this process and could include reprimands, demotions, suspensions and dismissal. Procedural protections are typically built in to such processes, particularly where the employee is subject to a collective agreement, which provides for a grievance arbitration process for disciplinary measures. Thus, any measures to address breaches of confidentiality by employees would be under the purview of the CIBA.

IV. Parliamentary Privilege and Parliament's Experience in Dealing with Unauthorized Disclosure of Confidential or Privileged Information

A. General Principles of Parliamentary Privilege

The unauthorized disclosure, or leak, of confidential information intended for a legislative chamber is considered a breach of parliamentary privilege. As was articulated by the Subcommittee on Parliamentary Privilege of this Committee in its comprehensive study of parliamentary privilege in the Canadian context, Parliament needs to regulate its internal affairs if it is to discharge its parliamentary functions effectively. Such regulation includes establishing procedures for the conduct of parliamentary business, particularly its work as a legislative body.⁹ The general rule in the Senate is that parliamentary business is conducted in public. Under the *Rules of the Senate* – which are themselves an exercise in parliamentary privilege, being a means by which the Senate structures how parliamentary business is conducted – a committee can choose to meet in camera in only a limited range of circumstances, most notably when considering a draft report.¹⁰ Any unauthorized disclosure of in camera deliberations and

⁸ C. Rootham, *Labour and Employment Law in the Federal Public Service*, p. pp. 486-488. Also see *Senate Administrative Rules*, Chapter 4:03, section 3.

⁹ Senate of Canada, Standing Committee on Rules, Procedures and the Rights of Parliament, [seventh report](#), *A Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century*, tabled in the Senate on 2 June 2015, p. 52 (*A Matter of Privilege*).

¹⁰ Rule 12-16(1), in particular paragraph (d).

proceedings – including a draft report considered in camera – could be treated as a contempt, a breach of privilege.¹¹

Most of the written sources that may serve to provide guidance on this issue deal with leaks of draft committee reports. While these are useful generally to frame the discussion of parliamentary privilege over confidential parliamentary documents, the Committee must emphasize that this is a special case, requiring a different approach to dealing with this issue.

A key difference lies in the fact that the Auditor General’s report had been requested by the Senate itself and had the potential to damage the reputations of individual senators. In this respect, the particular facts of this case make it exceptional. However, general principles of parliamentary privilege provide guidance.

The category of privilege that would apply in this situation would be the collective right of the Senate to regulate its internal affairs, also referred to in some sources as exclusive cognizance. As noted by the United Kingdom Joint Committee on Parliamentary Privilege in its 1999 report, Parliament needs to regulate various aspects of its own affairs in order to discharge its parliamentary functions effectively. It can determine its own procedures as a legislative body, establish whether there has been a breach of its procedures, and implement measures on how to deal with such breaches. This category of privilege also includes the right of a parliamentary chamber to discipline its own members for misconduct and to mete out punishment to members and non-members for interfering in a substantial way with the proper conduct of Parliament.¹²

Acts which interfere with Parliament’s operations are treated as contempts against Parliament. Disciplinary powers may be exercised by Parliament against members or non-members for contempts against Parliament.¹³

Contempts have been defined by the UK Joint Committee on Parliamentary Privilege as “any conduct, including words, which improperly interferes, or is intended or likely improperly to interfere, with the performance by either House of its functions, of the performance by a member or officer of the House of his duties as a member or officer.”¹⁴

As previously noted by this Committee, numerous kinds of conduct can constitute contempt, and there is no exhaustive listing of contemptuous acts in the literature on parliamentary privilege. The categories are, thus, open-ended. Contempts can include “disrupting the proceedings of a committee, assaulting or threatening a member or officer of a House, leaking or premature publication of a committee report, interfering with a witness or bribing or attempting to bribe a parliamentarian.”¹⁵

¹¹ See, for example, the [fourth report](#) of this Committee – then called the Standing Committee on Privileges, Standing Rules and Orders – of 13 April 2000, adopted by the Senate on 27 June 2000.

¹² United Kingdom, Joint Committee on Parliamentary Privilege (1999), at paras 13-14 (UK Joint Committee).

¹³ *A Matter of Privilege*, p. 56.

¹⁴ UK Joint Committee, para. 264.

¹⁵ *A Matter of Privilege*, p. 57.

Given the broad-ranging nature of contempt, and the gradations of severity of the acts that may constitute contempt, there is no particular scheme or listing of appropriate discipline or sanctions that may be imposed on individuals who are culpable of acts of contempt.

This lack of guidance from parliamentary sources on how to properly characterize the nature of this kind of breach, and contempt of the Senate, and the appropriate response, poses challenges for this Committee. In the section of this report dealing with observations and recommendations, the Committee notes that it will work to develop a range of sanctions to be incorporated in the *Rules of the Senate* – should the Senate agree with the Committee’s proposals – to deal with breaches involving the unauthorized disclosure of confidential information. This work will draw from the list of sanctions contained in the *Ethics and Conflict of Interest Code for Senators*.

B. Experience in Canada

To assist in its inquiry, the Committee reviewed how the Senate and the House of Commons have addressed leaks of confidential information. An overview of this review is provided here. It also reviewed the experience in other jurisdictions, namely, the United Kingdom, Australia and New Zealand. An overview of this review is provided in Appendix IV of this report.

1. The Senate

The Senate has had occasion to address the unauthorized disclosure of privileged or confidential information on several occasions, exclusively in the context of draft committee reports. In 1999, the contents of certain Senate Committee reports appeared in the media before they were tabled in the Senate. As a result, the Standing Committee on Privileges, Standing Rules and Orders was asked to study these questions of privilege. On 13 April 2000 this Committee presented a report dealing with unauthorized disclosure of confidential committee reports and other documents or proceedings. The report, adopted by the Senate on 27 June 2000, outlines the procedure for dealing with such disclosures. This process was appended to the Rules of Senate and is now found in Appendix IV of the Rules (“Procedure for Dealing with Unauthorized Disclosure of Confidential Committee Reports and Other Documents or Proceedings”). The procedure for dealing with leaks of confidential committee reports and other proceedings can be summarized as follows:

- The affected committee reports the alleged breach to the Senate, and advises the Chamber that the committee where the breach occurred is commencing an inquiry;
- The committee conducts an investigation of the circumstances of the leak;
- The committee reports the results of the investigation to the Senate; and
- The matter is possibly referred to the Standing Committee on Rules, Procedure, and the Rights of Parliament to determine further actions.

Since Appendix IV was added to the Rules, five reports have addressed the unauthorized disclosure of confidential committee reports.¹⁶ To date, no committee has identified the source of the leak.

2. The House of Commons

The confidential nature of committee reports and potential breaches of privilege caused by leaks of reports before they are tabled in the House of Commons are addressed in *House of Commons Procedure and Practice*, second edition (2009), which states:

Committee reports must be presented to the House before they can be released to the public. Even when a report is concurred in at a public meeting, the report itself is considered confidential until it has actually been presented to the House. In addition, any disclosure of the contents of a report prior to presentation, either by Members or non-Members, may be judged to be a breach of privilege.¹⁷

Speakers in the House of Commons have followed a different approach from that taken in the Senate. As noted in *House of Commons Procedure and Practice*, second edition:

Speakers have ruled that questions of privilege concerning leaked reports will not be considered unless a specific charge is made against an individual, organization or group, and that the charge must be levelled not only against those outside the House who have made the material public, but must also identify the source of the leak within the House itself.¹⁸

However, on [23 November 2010](#), Thomas Mulcair, M.P. (Outremont) rose on a question of privilege in the House of Commons to claim that the distribution of a confidential draft report of the House of Commons Standing Committee on Finance to three registered lobbyists, prior to its presentation to the House, constituted a *prima facie* case of privilege. On 29 November 2010 the Speaker of the House of Commons ruled that the question raised by Mr. Mulcair constituted a *prima facie* question of privilege. The matter was then referred to the House of Commons Standing Committee on Procedure and House Affairs, which [studied the issue](#) but was not able to table a report prior to the 40th Parliament's dissolution on 26 March 2011.

a. The May 2007 Report of the House of Commons Standing Committee on Public Accounts

In May 2007 the House of Commons Standing Committee on Public Accounts (Commons Committee) tabled its 14th report (39th Parliament, 1st Session) titled [The Premature Release or Leaking of Reports of the Auditor General to the Media Before Their Presentation in the House of Commons](#). The report begins by highlighting leaks of Auditor General reports that have occurred in recent years and concern about breaches of parliamentary privilege:

¹⁶ In additional case the Senate was informed of an apparent leak, but there was no report. For details on these cases, see p. 241n122 of [Senate Procedure in Practice](#) (June 2015).

¹⁷ Audrey O'Brien and Marc Bosc, eds, [House of Commons Procedure and Practice](#), second edition, House of Commons, Ottawa, 2009, p. 1073.

¹⁸ Ibid., pp. 1073–1074.

In accordance with the *Auditor General Act*, the Auditor General of Canada tables her reports in the House of Commons several times per year. In order to preserve the privilege of Parliamentarians to receive the information before it is made available to the general public, the Office of the Auditor General holds an *in camera* session with Parliamentarians and a media lockup on the tabling date. However, on numerous occasions information about select audits has been leaked to the media prior to these briefings and prior to the tabling of the reports in Parliament.

The Committee is extremely concerned about these repeated breaches of parliamentary privilege.

Over two meetings the Commons Committee heard from various witnesses, including then Auditor General Sheila Fraser and officials in her office, and officials from various federal departments implicated in the leaks.

In its observations, the Commons Committee noted that between 2001 and 2007 a number of leaks had occurred:

Leaks to the media about audits by the Office of the Auditor General are neither new, nor, unfortunately, rare. The Auditor General told the Committee that since 2001, information about 10 performance audits have been leaked to journalists before they were tabled in the House of Commons, which, in the opinion of the Committee, is 10 too many. This represents approximately seven percent of the 147 performance audits presented to the House in this period.

In testimony before the Commons Committee, the report notes, the Auditor General indicated that she believed that the leaks had not originated in her office.

Ultimately, the Commons Committee indicated that it “is extremely concerned about the constant repetition of leaks and is not satisfied with the response to date.” It recommended the following:

The Treasury Board of Canada, in consultation with the Auditor General of Canada, adopts a strong policy regarding security requirements for handling draft audit reports of the Auditor General, including, but not limited to, sanctions such as ethics training, suspension and or dismissal for failing to comply fully with the document controls.

Finally, the Commons Committee concluded by reaffirming the negative impact that leaked reports have on the work of parliamentarians:

The Committee views very seriously leaks of reports of the Auditor General to the media prior to their tabling in the House of Commons. Premature disclosure of information in reports of the Auditor General represents a disregard of the statutory right of the House of Commons to receive the Auditor General’s reports and is a breach of parliamentary privilege. As Speakers and the House of Commons have affirmed on numerous occasions, the Chamber

has the pre-eminent right to have reports and other documents tabled and made available first to its Members before they are released to the general public, especially when those reports come from an Officer of Parliament who reports to the House through the Speaker. Among other reasons, this reflects the pre-eminent role which the House plays and must play in the legislative affairs of the nation, and as the representative role of the people of Canada holding the government to account. The premature and unauthorized disclosure of Auditor General reports before they have been formally tabled in the House can interfere with and impede the work of the House of Commons, and constitutes a contempt of Parliament. If problems persist in this area, further action will have to be taken by the Committee and possibly the House of Commons to preserve the integrity of our parliamentary system.

V. Observations and Recommendations

A. A Distinct Kind of Unauthorized Disclosure

We reiterate that this particular leak of confidential and sensitive information is different from unauthorized disclosures of other kinds of information that the Senate must address from time to time. Generally, the preoccupation is with leaks of draft committee reports; this case deals with a report by an outside agent to the Senate.

What also distinguishes this leak from most others is the nature of the damage it has caused to the Senate as an institution and to individual senators' reputations. First, the unauthorized disclosure concerned the Senate's internal affairs, or the management of the Senate, at a time when the Senate was the subject of heightened public criticism, fed by intense media coverage and rumours concerning its financial administration.

The disclosure was a breach of parliamentary privilege. However, this does not fully convey, or adequately capture, the significance of what took place. Parliamentary privilege is a central component of Canada's constitutional framework, essential for the functioning of Canada's parliamentary democracy. It exists to enable Parliament to function effectively and efficiently without undue interference, and to enable parliamentarians to discharge their parliamentary functions.¹⁹ Unauthorized disclosures of this nature constitute interference in the Senate's business. They can prevent the Senate from adequately managing its internal affairs in order to perform its function as a legislative chamber.

The context of the disclosures is important to emphasize. At the time of the leak, the Senate was in the midst of reviewing its financial administrative practices and was taking steps to implement changes to its policies and practices.

It must also be emphasized that the leak was damaging to individual senators who were the subject of media reports, following the unauthorized disclosure, that were often inaccurate or false. These senators could not defend themselves because they were subject to a confidentiality agreement that prevented them from commenting on the report and the audit generally, until after the report had been made public. During this period, their reputations suffered considerably.

¹⁹ *A Matter of Privilege*, p. 1.

A further distinction between this leak and others with which the Senate is usually confronted is that different considerations apply to the different players involved. Different systems apply depending upon whether the individual is a senator, an employee of the Senate, including a member of a senator's staff, a third party contractor, or the Auditor General and his or her staff. These considerations add to the complexity of the task of understanding how the leak may have occurred and what kinds of recommendations might be developed to address such unauthorized disclosures, whether it is to prevent them, investigate them, or deal with their consequences.

B. Education and Training

Perhaps the most striking gap that became apparent in the Committee's study was with respect to knowledge and awareness of the importance of confidentiality, the meaning of confidentiality, the damage caused by unauthorized releases, and the proper procedures for safeguarding confidential information.

It is the individual committees that determine how to manage confidential documents and information generally, including discussions. It is also the responsibility of each senator. It is imperative to reinforce the need for confidentiality and methods to secure and manage such documents or information. It is unclear how well or how consistently committees do this. While the Senate's Corporate Security section is available to provide recommendations and assist in this process, it does so at the request of committees.

With respect to the management of information in the Senate more generally, we recall Mr. Duguay's evidence that the Information Services Directorate is responsible for all aspects of information management, including the security of information. As such, Senate administration will need to ensure that in developing its training and awareness programs, staff both within the administration and in senators' offices are properly trained and provided with clear policies and procedures.

The Committee wishes to comment that on occasion, leaks of confidential documents, particularly draft committee reports, have been used to further a purely political purpose. While politically appealing, and designed to gain short term advantage, these leaks can have a corrosive effect on the work of the Senate in the medium and long term. While it is impossible to fully guard against such politically-motivated leaks, it is possible to establish policies and procedures to discourage wilful leaks and to minimize the leaks that are the product of carelessness. It is in large part for these reasons that we have chosen to focus our efforts on education, training and clarity in the policies and procedures of the Senate for dealing with confidential information.

Recommendations

The Committee recommends:

- 1. That the Senate administration prepare standardized training materials and programs for all senators, their staff, and Senate employees on the proper management, safeguarding and security of confidential documents and other information.**

2. That training materials and programs emphasize the obligation or duty of confidentiality, and on the consequences for the breach of that duty.
3. That these training materials and programs also emphasize the long term damage done by deliberate leaks for political advantage, damage to the work, the reputation and the integrity of the Senate and individual senators.

In addition, the Committee notes for the Senate that it will, under its general mandate under rule 12-7(2)(a), review the processes set out in the Rules Committee's report of April 2000 to update them to reflect changing technology, and to develop proposals to incorporate these processes into the body of the *Rules of the Senate*. These proposed changes will be reported to the Senate separately for its consideration and eventual adoption.

C. Clarity with Respect to Process

Related to the area of awareness, education and training, is the issue of clarity with respect to policies and procedures. There is a lack of coherence in guidance documents currently available that set out policies and procedures. While the CIBA has adopted the *Information Security Policy*, which is in the process of revision, there continues to be a lack of clarity and awareness with respect to what the policies and procedures require for, among other things: designating documents and information as confidential; the level of security for a given document or information; communicating with all who come into possession of confidential information; the requirements for handling such information; and the procedures for securing such information. It should also be noted that, although the Rules refer to in camera meetings, the Definitions in Appendix I to the Rules do not define that key term.

Recommendations

The Committee recommends:

1. That the Committee on Internal Economy, Budgets and Administration review, in conjunction with Senate administration, all policies and procedures respecting the handling and management of information and to revise them to ensure there is clarity, consistency and awareness of what the policies and procedures require.
2. That the Committee on Internal Economy, Budgets and Administration, in the context of its review the *Information Security Policy*, ensure that the policy has sufficient coherence and clarity to serve the goals of protecting the confidentiality of sensitive documents and the handling and security of such documents, or other confidential information, particularly in light of changing technology.
3. That Appendix I to the *Rules of the Senate* be amended in the Definitions by adding in alphabetical order the following:

“In camera

In camera means in private. Committees can meet in camera in certain circumstances, and the public is excluded from those meetings. The deliberations and any proceedings related to in camera meetings are confidential. Any unauthorized disclosure of in camera deliberations and proceedings could be treated as a contempt – a breach of parliamentary privilege. Appendix IV of the Rules outlines procedures for dealing with the

unauthorized disclosure of confidential committee reports and other documents or proceedings. (*Huis clos*)”.

D. Investigations By Corporate Security

The Committee heard that over a period of nine years, during which there have been several leaks of documents, there has only been one investigation by Corporate Security. Part of the problem is the service lacks a mandate to initiate investigations without a direction from the Senate or CIBA.

Recommendation

The Committee recommends:

- 1. That the Committee on Internal Economy, Budgets and Administration explore how the role of Corporate Security might be modified to facilitate investigations.**

E. Investigations by Committees

Currently, committees are charged with responsibility under the *Rules of the Senate* to conduct an initial investigation of unauthorized disclosures of draft committee reports, confidential documents prepared for a committee, and the details of any in camera discussions.²⁰

It was made clear throughout this study that Senate committees are ill-suited to conduct investigations of unauthorized disclosures. Committees do not have the tools that, for example, police forces or other government investigative bodies (such as the Canada Revenue Agency) possess to investigate unlawful conduct. While it is true that committees have the power to call for documents and witnesses, there is a limit to what a committee can accomplish with any evidence it obtains. The function of committees is not to undertake such investigations. Committees cannot obtain search warrants or court orders to assist in an investigation. More importantly, even were the Committee capable of obtaining a search warrant, there would be considerable challenges for the Committee to compel journalists who received copies of the leaked report to disclose their sources. While not rising to the level of a constitutional immunity from disclosing the identity of a source, the media's interests under s. 2(b) (freedom of expression, including freedom of the press and other media of communication) and section 8 (freedom from unreasonable search and seizure) of the *Canadian Charter of Rights and Freedoms* are “clearly implicated” where attempts are made to compel the media to disclose a confidential source.²¹ Canadian courts have afforded considerable protections for journalist-

²⁰ *Rules of the Senate*, Appendix IV.

²¹ *R. v. National Post*, 2010 SCC 16, para. 78.

source relationships where that protection benefits the public interest and that interest outweighs other competing public interests, such as facilitating law enforcement.²²

The general inability of committees to conduct thorough investigations of this type is all the more reason why the Senate needs to be more proactive in the areas of awareness, education and training to ensure that all those who come to possess confidential information understand the importance of maintaining confidentiality, and the damage that results from breaches of that duty, as well as the sanctions that may be imposed.

F. Sanctions

There was general agreement that, within the Senate's rules and practices, sanctions are not sufficient (some on the Committee considered sanctions to be non-existent) to deter disclosures of confidential information. Indeed, it is unclear what the sanctions would be should the person responsible for a leak be identified. The result is that individuals who are privy to confidential information and disclose that information without authorization can act with impunity. In light of the information gathered during the study of this question of privilege, the Committee will review the *Rules of the Senate*, pursuant to its general mandate under rule 12-7(2)(a), to develop a list of proposed sanctions for incorporation in the *Rules of the Senate* modelled on the *Ethics and Conflict of Interest Code for Senators*, as found in section 49(4) of that Code. In this work your committee will take account of the views expressed by senators during debate on this report in the Senate.

Recommendations

The Committee recommends:

- 1. That the Committee on Internal Economy, Budgets and Administration direct the administration to review all personnel policies to ensure that they make express reference to breach of confidentiality as a disciplinary matter, subject to sanctions ranging from a reprimand to dismissal. The development of such policies is considered a legitimate exercise of management rights in the workplace, whether employees are subject to a collective agreement or a contract of employment.**
- 2. That individual senators communicate clearly to their staff that sanctions will be imposed for breaches of confidentiality. Resources should also be developed (if they are not currently available) to assist in this process.**
- 3. That, with respect to third parties, the administration review its policies and practices with respect to dealing with a third party that has access to confidential documents and ensure that third parties have a clear understanding of what is required in the handling**

²² *R. v. National Post*, 2010 SCC 16. In the context of a search warrant, the Supreme Court of Canada held that the privilege attaching to a journalist's source may be asserted against the issuance or execution of a search warrant, based on a consideration of various criteria (the "Wigmore criteria"), the most weighty criterion being the balance against any countervailing public interest such as the investigation of a particular crime, national security, public safety or some other public good (para. 58). The approach balances two public interests: "the public interest in the suppression of crime and the public interest in the free flow of accurate and pertinent information." (para. 28) The scope of the privilege would depend upon a case-by-case analysis and may be total or partial. (para. 52)

of confidential information and that the Senate has the power to impose sanctions on third parties for breach of such confidentiality.

4. That the Committee on Internal Economy, Budgets and Administration direct the administration to develop policies on when sanctions may be applied to third parties and the nature of those sanctions.

VI. Issues Related to the Auditor General's Disclosure of Confidential or Protected Information

A. The Mandate of the Auditor General of Canada in Relation to the Audit of Senate Expenses and the *Auditor General Act*

An examination of the Auditor General's mandate is provided in this report because the Committee has concerns about the Auditor General's handling of important details contained in his report after the report had been leaked to the media and before the report had been made public. He disclosed to the public a number of conclusions he had drawn in his report by confirming certain details that had been circulating in the media following the leak.

The Auditor General is appointed, and derives his mandate as auditor of the accounts of Canada, under the *Auditor General Act* (AGA). In particular, the AGA provides:

6. The Auditor General shall examine the several financial statements required by section 64 of the [*Financial Administration Act*](#) to be included in the Public Accounts, and any other statement that the President of the Treasury Board or the Minister of Finance may present for audit and shall express his opinion as to whether they present fairly information in accordance with stated accounting policies of the federal government and on a basis consistent with that of the preceding year together with any reservations he may have.

Section 6 of the AGA together with section 64 of the *Financial Administration Act* make clear that the Auditor General's mandate is limited to examining the financial statements of the Government of Canada, referred to as the Public Accounts, as well as other statements that may be made by the President of the Treasury Board and the Minister of Finance. His remit does not extend to reviewing the financial statements of other institutions of government at the federal level, particularly the Senate or the House of Commons.

The Auditor General's mandate to review Senate expenses was therefore derived not from an Act of Parliament, but from an invitation of the Senate itself. The Senate of Canada invited the Auditor General following the adoption of the motion by Senator LeBreton. The Auditor General was in effect contracted to provide audit services in much the same way the Senate might contract with a private auditing firm to conduct audits of its finances. This is routinely done, for example, by the CIBA.

Given the contractual nature of the relationship between the Senate and the Auditor General, it is reasonable to inquire into the proper scope of the Auditor General's mandate, particularly how he managed the reporting of the results of the review following the leaks to the media.

An important concern for this Committee, in particular, is the Auditor General's disclosure of key details of his report during an interview on a high profile political affairs program, before the report had been made public and before it had been presented to the Speaker of the Senate.²³ While he did not disclose the names of individual senators, he did confirm that his audit revealed evidence of improper expense claims, some of which, in his opinion, warranted investigation by the RCMP.

The Committee does not believe the contractual mandate given to the Auditor General authorized him to make any public statements concerning the contents of the report before the report was made public. Even if he were acting in accordance with his mandate under the AGA, that mandate would not extend to making public statements on reports before they are made public by the Senate. The Auditor General's conduct cannot, moreover, be defended as a permissible practice sanctioned by the appropriate professional accounting governing bodies.

We come back to the confidentiality agreements that the Auditor General requested of senators. Senators gave an undertaking that they would not disclose any details regarding their personal situations in relation to Senate expenses for parliamentary business, nor details regarding the audit itself. They waived their privilege as parliamentarians, a protection accorded by the Constitution of Canada that serves the purpose of enabling senators to perform their parliamentary functions free from outside interference. They did so in the spirit of cooperation with the goal of assisting the Auditor General in conducting the audit. It must also be recalled that under the agreement, the Auditor General gave the same undertaking to keep any information he received from senators confidential until the Senate had made his final report public. He failed to live up to his side of the bargain when he disclosed that 30 senators were named in his report and that approximately 10 cases would be referred for a criminal investigation.

We conclude, therefore that the Auditor General was not justified in disclosing important details contained in his audit report before the report had been made public by the Senate itself.

B. Comments in Relation to the Conduct of the Auditor General

The Committee respects the work of the Auditor General. It is incumbent upon us, however, to say a few words about the handling of some of the details of the report before it became public. In a television interview on 26 May 2015, the Auditor General indicated that his office had turned up 30 cases of "problematic spending" and that some of these cases should be referred to the RCMP. He stated that "about 10" of these problematic cases should be referred to the RCMP.

The Auditor General revealed confidential information without authorization from the Senate, which had ultimate authority to determine when information related to his audit could be made public. While the Auditor General did not name any particular senator during his interview, the fact of disclosing important details about the audit, namely, specifying the number of cases of problematic spending and the number of cases that revealed conduct significant enough to

²³ CBC, *An Interview with Auditor General Michael Ferguson*, 26 May 2015 (Power & Politics, hosted by Evan Solomon.)

warrant a referral to the RCMP is a serious violation of the privileges of the Senate and senators. His disclosure fed what was already a media feeding frenzy caused by earlier leaks, while individual senators were unable to respond due to their own confidentiality agreements they had been asked to sign by the Auditor General. For his part, the Auditor General did not abide by the confidentiality commitments he had made under the terms of the confidentiality agreements and his contract with the Senate. Senators were placed in a difficult situation, being challenged by reporters with allegations, yet not being permitted to deny or rebut those allegations.

We consider the Auditor General's conduct in revealing what he did to the general public in a national news program to demonstrate, at a minimum, bad judgement. We would go further and state that what he did amounted to an interference with the effective and efficient functioning of a parliamentary institution. It was a clear breach of parliamentary privilege.

Recommendations

The Committee recommends:

- 1. That the Senate develop procedures and policies that specify the proper scope of any audits conducted by the Auditor General in future.**
- 2. That the Senate develop clear guidelines for any confidentiality agreements between senators and the Auditor General and any third party contractor, which should specify the obligations on third party contractors as to the requirements of confidentiality.**
- 3. That the Senate ensure that the Auditor General and all other contractors be fully informed of the extent and scope of parliamentary privilege before they undertake the work for which they are contracted.**

APPENDIX I: MEDIA REPORTS ABOUT THE CONTENTS OF THE AUDITOR GENERAL'S REPORT PRIOR TO THE TABLING OF THE REPORT

Selected media reports of details of the Auditor General's report subsequent to 3 June 2015 are provided below:

- [CBC News: "Senate leaders caught up in AG expenses audit"](#) (4 June 2015, 2:33 p.m.);
- [The Globe and Mail: "Three top senators ordered to repay expenses by Auditor General"](#) (4 June 2015, 5:19 p.m.);
- [TVA Nouvelles: "Trois poids lourds du Sénat écorchés"](#) (4 June 2015, 7:45 p.m.);
- [La Presse Canadienne: "Le président et deux leaders visés par le VG"](#) (4 June 2015, 9:51 p.m.);
- [The Huffington Post Canada: "Senate Expense Audit: Tory Senators Wish They Knew Auditor Had Fingered Their Own Leader"](#) (4 June 2015, 9:59 p.m.);
- [National Post, "Senate in a renewed state of panic as details drop from still-secret report on expenses"](#) (5 June 2015);
- [Victoria News: "Senate starts to deal with damaging audit"](#) (5 June 2015, 5:47 a.m.);
- [The Canadian Press: "RCMP to get Senate referrals today; audit flags \\$977K in spending"](#) (5 June 2015, 2:49 p.m.);
- [Radio-Canada: "Le Sénat de nouveau dans la tourmente, la GRC enquêtera sur Boisvenu"](#) (5 June 2015, 10:12 p.m.);
- [La Presse: "Boisvenu a réclamé 61 076 \\$ en dépenses inadmissibles"](#) (6 June 2015, 5:00 a.m.);
- [Maclean's: "Senate leaders repay Senate expenses, deny wrongdoing"](#) (8 June 2015);
- [Toronto Sun: "Senate leaders pay back expenses on eve of audit release"](#) (8 June 2015, 2:55 p.m.); and
- [Le Devoir: "Dépenses au Sénat: Housakos et Cowan remboursent"](#) 8 June 2015, 6:29 p.m.).

Media reports on the Auditor General's audit between the dates of 1 May 2015 and 3 June 2015 suggest that some journalists were aware of the contents of the Auditor General's report. A selection of these news reports is reproduced here:

- [The Hill Times: "AG's confidential reports refer tens of thousands of misspending to Senate Internal Economy Committee: sources"](#) (4 May 2015, 12:00 a.m.); Reporter Abbas Rana noted the following regarding sources for his article:

Written on controlled and numbered documents with instructions not to make any copies, Auditor General Michael Ferguson sent out his final confidential audit findings to Senators two weeks ago, clearing some Senators while flagging the expenses of others and referring those cases, which in some instances run into tens of thousands of dollars, to the Senate's powerful Internal Economy, Budgets and Administration Committee, Senate sources told The Hill Times last week.

- [Ottawa Citizen: "Audit will show up to 10 senators have serious problems with expense claims"](#) (4 May 2015, 7:15 p.m.);

- [CBC News: “Auditor general’s Senate review finds ‘a few people with big issues’: sources”](#) (5 May 2015, 12:49 a.m.);
- [Ottawa Citizen: “Auditor will urge Senate to send 10 misspending cases to RCMP”](#) (23 May 2015, 4:48 p.m.); and Jordan Press, of the *Ottawa Citizen*, reported the following regarding sources for his article:

The details come from multiple Senate sources with knowledge of Ferguson’s final report and of the Senate’s planned response. None would speak publicly because no public statements have been authorized.

Ferguson’s office wouldn’t comment on the final report.

“Our work is ongoing, and it is our intention to have a report ready to deliver to the Speaker of the Senate in the first week of June,” Ferguson’s office said in an unsigned email. *“We don’t discuss the contents of our audit until it is made public.”* [emphasis added]

- [CBC News: “10 senators to be referred to RCMP, Auditor General Michael Ferguson says”](#) (26 May 2015, 5:37 p.m.). The article notes that in an interview on CBC News Network’s Power & Politics held on Tuesday 26 May 2015 Auditor General Michael Ferguson indicated that “his office has turned up 30 cases of problematic spending – and that some of those cases should be investigated by the RCMP.” It added that “Ferguson later clarified to CBC News that the number of senators facing possible investigation by the RCMP is about 10.” The article further stated:

“We’ll deliver the report later next week then the Senate will have to go through their process,” Ferguson told CBC News after his Power & Politics interview.

“It may be the week after before they actually get it tabled and before we can speak to it.”

Officials from Senate Speaker Leo Housakos’ office agreed it could take anywhere from hours to days before the report is ready to be made public. That can only be done after it has been tabled in the Senate.

Ghislain Desjardins, a spokesman for Ferguson, could not confirm whether or not names of specific senators would be presented in the report.

The contents of the interview were widely reported in a variety of media outlets.

- [ICI Radio-Canada.ca: “Les dépenses de dix sénateurs devraient être scrutées par la GRC, dit le vérificateur général”](#) (26 May 2015, 6:49 p.m.)

APPENDIX II: CORRESPONDENCE TO AND FROM THE AUDITOR GENERAL

A. Letter from the Auditor General Respecting Sample Confidentiality Agreement



Auditor General of Canada
Vérificateur général du Canada

12 November 2013

Senator

Ottawa, Ontario K1A 0A4

Dear Senator

As you are aware, the Office of the Auditor General is beginning a performance audit of the Senate of Canada including Senator expenses. We expect to complete the audit in December 2014. This letter describes how we intend to control audit information and documentation you provide us, and outlines certain of your responsibilities in the audit process.

Information Requirements

My office will be contacting your Office in the coming months to schedule a meeting with you to discuss your role and activities as a Senator as well as the nature and extent of expenses incurred. We will request information that we determine is relevant and necessary to enable us to carry out the audit. We will require documents and reports which may be provided in electronic and/or hard copy format, as we consider appropriate and applicable in the circumstances. We may also access information held by third parties, and auditors may visit the location of Senators' primary residence. In addition, we will be conducting interviews with you and your staff (either together or separately). Under certain circumstances, interviews may be conducted under oath, as authorized by the *Auditor General Act*.

All documents disclosed to the Office of the Auditor General for these purposes will be handled in accordance with the Senate's policies and guidelines. In order to facilitate the audit process, we would ask that you provide us with the requested information within a reasonable amount of time, which would normally be five working days. If it is anticipated that individual requests may require additional time, this should be discussed with the audit team at the time of the request.

During the audit, we may also request access to, among other things, documents that may be subject to solicitor-client and other privileges. When we request access to such documents, we do so pursuant to our powers under the *Auditor General Act*. Consequently, the disclosure of these documents to the Office of the Auditor General is in compliance with the statutory requirements contained in the *Auditor General Act* and would not amount to waiver of any privilege attached to the documents. In addition, all documents disclosed to the Office of the Auditor General for these purposes will be treated in strict confidence.

.../2

Confidentiality Agreement

All information discussed or shared during the audit with you and your staff is to be kept confidential until after the audit is completed. Similarly, all information, documents or records that are disclosed to us will not be made public except to the extent they are included in the public report on the results of our audit.

In accordance with our methodology, certain audit documents that will be provided to you will be numbered and identified as controlled documents. The contents of these documents are confidential and must not be disclosed under any circumstances. As a result, we request that you control the distribution and security of the documents. After our report is completed, we will ask you to return all numbered/controlled documents to the Office of the Auditor General.

Finally, section 16.1 (1) of the *Access to Information Act* requires the Auditor General of Canada to refuse to disclose any record requested under the Act that contains information obtained or created by the Office or on its behalf in the course of an investigation, examination, or audit conducted by the Office or under its authority. As a result, members of the public cannot use the *Access to Information Act* to obtain access to any audit records held by the Office of the Auditor General, including records that we obtain or create in the course of this audit.

Acknowledgment of Responsibilities and Audit Criteria

The objective and criteria for the audit are presented in the attached Audit Plan Summary. The standards for assurance engagements set by the Canadian Institute of Chartered Accountants require us to obtain your acknowledgement, in writing, of your responsibility for expenses as described in the *Responsibility* section of the Audit Plan Summary and that the criteria set out in the document are suitable as a basis for assessing whether the audit objective has been met.

Two copies of the Audit Plan Summary have been provided (one in English and one in French) numbered 01-2671 to 01-2672. These are labelled "NOT TO BE COPIED, Audit Document, Property of the Office of the Auditor General of Canada, Protected A." If you require additional copies, we will be pleased to provide them.

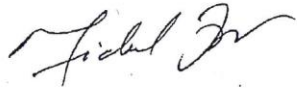
We request your agreement on the above-noted processes and conditions for requesting and handling audit information and documentation as well as on the contents of the audit plan summary. We would appreciate receiving your written response, on your letterhead, by **21 November 2013** confirming your understanding that disclosure of any records and legal opinions to the Office of the Auditor General does not result in the loss of any privilege, and acknowledging your responsibilities with respect to the confidentiality of all information, documents and records, as well as the suitability of the criteria described in the Audit Plan Summary. Any privilege should be identified to the Office of the Auditor General when the records are provided. A suggested letter of acknowledgement is attached for your convenience.

.../3

In addition to the above, based on the information session held with Senators and the information session held with Senators' staff, I have included numbered copies 01-2673 to 01-2676 of the slides used at the presentations. You may wish to provide the copy of the slides used during the information session held with Senators' staff to your staff. These are labelled "NOT TO BE COPIED, Audit Document, Property of the Office of the Auditor General of Canada, Protected A." If you require additional copies, we will be pleased to provide them.

Gordon Stock, Principal, will be our main contact person for this performance audit. Should you have any questions, please contact him at 613-995-3708.

Yours sincerely,



Michael Ferguson, CPA, CA
FCA (New Brunswick)

Enclosures:

Draft Response Letter
Audit Plan Summary (copies numbered from 01-2671 to 01-2672)
Presentation slides for Senators (copies numbered 01-2673 and 01-2674)
Presentation slides for Senators' staff (copies numbered 01-2675 and 01-2676)

c.c.: Jill Anne Joseph, Director, Internal Audit and Strategic Planning
Anne Marie Smith, Senior General Counsel, OAG
Clyde MacLellan, Assistant Auditor General, OAG
Gordon Stock, Principal, OAG

[Senator Letterhead]

21 November 2013

Mr. Michael Ferguson
Auditor General of Canada
Office of the Auditor General of Canada
240 Sparks Street
Ottawa, Ontario K1A 0G6

Dear Mr. Ferguson:

This is to acknowledge your letter dated 12 November 2013 regarding your performance audit of the Senate of Canada including Senator expenses, which you expect to complete in December 2014.

I, as a Senator for the Senate of Canada, will comply with any requests that you or your staff make for access to relevant documents that relate to my position as a Senator and to the audit objective of determining whether my expenses and other transactions were incurred for parliamentary business, with due regard for the use of public funds under my control, including documents to which solicitor-client privilege or any other privilege attaches. I will also provide any necessary authorization for you to obtain access to relevant information held by third parties. Access to requested documents will normally be provided within five working days. Disclosure of such documents will be made as recognized under the *Auditor General Act* and will not constitute waiver of any privilege attached to the disclosed documents.

I confirm that all information discussed or shared during the audit with me and my staff will be kept confidential until after the audit is completed. I understand that I am permitted to discuss matters related to the audit with the Standing Committee on Internal Economy, Budgets and Administration or its Audit Subcommittee. I also accept responsibility for maintaining the confidentiality of protected and controlled documents provided to me for review, and for returning them after the completion of the audit.

Finally, I have reviewed the Audit Plan Summary. I acknowledge responsibility as set out in the Audit Plan Summary under the section "Responsibility" and agree that the criteria set out in the document are suitable as a basis for assessing whether the audit objective has been met.

Yours sincerely,

Senator

c.c.: Jill Anne Joseph, Director, Internal Audit and Strategic Planning
Anne Marie Smith, Senior General Counsel, OAG
Clyde MacLellan, Assistant Auditor General, OAG
Gordon Stock, Principal, OAG

B. Letter from the Chair and Deputy Chair to the Auditor General of December 7, 2016



December 7, 2016

Mr. Michael Ferguson, CPA, CA
FCA (New Brunswick)
Auditor General of Canada
240 Sparks Street
Ottawa, Ontario
K1A 0G6

Dear Mr. Ferguson:

A number of Senators have recently received letters from you in which you respond to the motion adopted by the Senate on October 5, 2016 calling for the return of all documents in your possession, including copies, belonging to individual Senators.

It is our understanding that during the current return of documents, Senators received one of two versions of a letter. The first version indicates that your office does not have any documents that fall within the scope of the motion, and as a result these letters to Senators state that you have no documents to return. The second version indicates that the mailing contains the return of documents which fall within the scope of the motion.

The Committee has a number of concerns regarding the letters.

Shredding of Senators' Documents

Both versions of the letter state "[a]t the end of our audit, we reviewed our [audit] files and shredded information that was not needed to support our audit conclusions." It is unclear whether documents that were within the scope of the motion were destroyed. In the second version of the letter (the one which accompanies documents being returned to a Senator) you indicate that document shredding is "consistent with the approach that we have taken in all other performance audits, and with the Chartered Professional Accountants of Canada's audit standards for performance audits (Direct Engagements)."

The Committee would like to ascertain the following:

1. A list of the classes of documents belonging to individual Senators, if any, or copies of such documents, that your office shredded;
2. Whether any of these documents had been provided by Senators;
3. How you determined that the shredded documents were not needed to support an individual Senator's audit;
4. The specific accounting standards, including the text of the specific standards, that your office applied to determine that the shredded documents were not needed to support audit conclusions;
5. The specific accounting standards, including the text of the specific standards, that would support the destruction of documents belonging to individuals who are the subject of an audit;
6. The extent to which your office considered the value to individual Senators of any shredded documents belonging to those Senators;
7. Whether and to what extent you obtained individual Senators' consent to shred documents belonging to those Senators, if any; and,
8. Whether you returned or destroyed electronic documents.

Retention of Documents by Senators

The second version of the letter urges Senators "to retain [the returned] documents in a safe and secure place to ensure they are available if needed at any point in the future." The letter also states that documents labelled "NOT TO BE COPIED" remain the property of your office and are being entrusted to the care of the Senators to whom those documents have been returned. The Committee wishes to know the following:

9. The auditing standards, including the text of the specific standards, to support your position that certain documents returned to individual Senators remain the property of your office;
10. The auditing standards, including the text of the specific standards, that support your statement that Senators should retain the returned documents if they are needed in the future, and for how long the documents should be retained; and,
11. The auditing standards that support or require the return of those documents to your office.

Auditing Standards

Committee staff has consulted the OAG website and Auditing and Assurance Standards Board (AASB) website. A document on the OAG website entitled "Performance Audit Manual" contains OAG audit policies and guidance on how to apply the CPA Canada assurance standards and policies.

Document 1191 of the OAG Manual – *Retention Policies and Procedures* – states that "the auditor shall not dispose of audit documentation before the end of its retention period." The document, under the heading "Retention Requirements", also states that the "[o]ffice does not retain entity information or audit files and computer files that are not necessary to support the audit opinion, other than on a temporary basis as required."

It is noteworthy that none of these documents contains a reference to the destruction of documents provided by persons who are the subject of an audit, whether a performance audit, a comprehensive audit or a forensic audit. We recall that you assured the Committee that the accounting standard you applied for the retention of documents provided to you was 15 years from the completion of the audit. The latter suggests that there would be no destruction of documents.

12. How do you reconcile the different, and arguably contradictory, standards that have been applied to Senators who were the subject of your audit?
13. Please explain how the assurance standards of the Chartered Professional Accountants of Canada (CPA) have been incorporated in developing the standards posted on your website. In providing the explanation, we ask you to provide the text of any specific CPA assurance standards or provisions that were used in developing the standards that are available on your website.

Electronic retention of documents

OAG Manual refers to electronic storage of documents. The Committee wishes to know the following:

14. Were electronic records of the current documents returned to Senators retained by your office?
15. Were documents scanned into the OAG database for electronic retention prior to shredding?
16. If documents were scanned into the OAG database for electronic data retention, followed by the shredding of the paper documents: were printouts of those documents then made for return to Senators? Were the electronic records subsequently kept, or destroyed by your office?

Loss of Missing Thumb Drive Containing Senate Documents

In reviewing your testimony on May 17, 2016, we note that you informed the Committee that there was one encrypted thumb drive, or USB key, containing information relevant to the audit of Senators' expenses that was lost or missing.


17. What documents were contained on that lost or missing thumb drive?
18. Was the thumb drive located?

We would be most grateful for your timely response to the concerns raised by Committee members.

Sincerely,



Senator Joan Fraser
Chair,
Standing Committee on Rules,
Procedures and the Rights of Parliament



Senator Vernon White
Deputy Chair,
Standing Committee on Rules,
Procedures and the Rights of Parliament

C.C.: Mr. Charles Robert, Clerk,
Standing Committee on Rules, Procedures and the Rights of Parliament.

C. Letter From the Auditor to the Chair and Deputy Chair of February 2, 2017



Office of the
Auditor General
of Canada

Bureau du
vérificateur général
du Canada

2 February 2017

The Honourable Joan Fraser, Senator
Chair, Standing Senate Committee on Rules, Procedures
and the Rights of Parliament
The Senate of Canada
Centre Block, Room 571-S
Ottawa, Ontario K1A 0A4

The Honourable Vernon White, Senator
Deputy Chair, Standing Senate Committee on Rules, Procedures
and the Rights of Parliament
The Senate of Canada
East Block, Room 205
Ottawa, Ontario K1A 0A4

Dear Senator Fraser and Senator White:

We are responding to your letter of 7 December 2016, which included matters raised by the Standing Senate Committee on Rules, Procedures and the Rights of Parliament regarding the letters and documents sent to Senators by the Office of the Auditor General (OAG, or the Office). The letters and documents were sent in response to the motion adopted by the Senate on 5 October 2016.

We would like to start by emphasizing that we have not shredded documents that we received from Senators.

Your letter stated that "it is unclear whether documents that were within the scope of the motion were destroyed." When audit teams made working copies of documents received from Senators, these working copies were shredded when the audit team determined that the information was not needed to support audit conclusions contained in our report. It is important to note, however, that these decisions were made shortly after the audit work was completed and before the 5 October 2016 motion. Since the motion required the return of documents provided by Senators, including copies, these working copies would have been within the scope of the motion if they had not already been shredded. We did not shred any of these documents after the motion was passed on 5 October 2016.

Below you will find responses to the specific points in your letter. We have also provided references to standards applicable to our audit of Senators' expenses, as requested.

A. Shredding of Information

1. *A list of the classes of documents belonging to individual Senators, if any, or copies of such documents, that your office shredded.*

We are unable to provide a list of the classes of documents belonging to individual Senators, or copies of such documents, that were shredded. In this regard, it is not possible to categorize the documents provided by individual Senators, as Senators responded to auditors differently in light of their individual circumstances.

2. *Whether any of these documents had been provided by Senators.*

Original documents received from Senators were not shredded. Working copies of documents created by the audit teams were shredded when we identified that these copies were not needed to support our audit conclusions contained in our audit report. Again, no documents, including working copies, were shredded after 5 October 2016.

3. *How you determined that the shredded documents were not needed to support an individual Senator's audit?*

We only destroyed documents that were not important in providing evidence to support our audit conclusions. However, we kept original documents received from Senators, even if the documents were not relevant to the audit conclusions contained in our report. These documents have now been returned to Senators.

4. *The specific accounting standards, including the text of the specific standards, that your office applied to determine that the shredded documents were not needed to support audit conclusions.*

The professional auditing standards that the OAG applied are the assurance standards set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook—Assurance, including the Canadian Standard on Quality Control 1 (CSQC 1). These state the following:

- 58 The practitioner should document matters that in his or her professional judgment are important in providing evidence to support the conclusion expressed in his or her report.

Further, our auditors applied the experienced auditor principle in order to prepare audit documentation. This principle, outlined in section 1111 of the OAG's Performance Audit Manual, states the following:

Auditors shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:

- (a) The nature, timing and extent of the audit procedures performed to comply with GAAS [Generally Accepted Auditing Standards] and applicable legal and regulatory requirements;
- (b) The results of the audit procedures performed, and the audit evidence obtained; and
- (c) Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions.

Section 1112 of the OAG's Performance Audit Manual provides further guidance on the factors to be considered when determining whether to include copies (or electronic versions or scanned images) of entity information in the audit file:

- The risk that the entity records may be modified or not retained when auditors need copies of them later to demonstrate that there was sufficient appropriate evidence to support the report. The risk might be unintentional (i.e., poor record retention practices during the audit) or intentional (i.e., management's efforts at concealing the risk of fraud in the area might involve destruction of documents).
- The risk that a document or record (in electronic form or hard copy) may be subsequently amended.
- The risk that a document or record may be unavailable due to adverse entity circumstances (e.g., fraud, bankruptcy, a troubled relationship between the entity and the Office).
- The computerized system does not retain the details of transactions the Office examined or on which the Office performed comparisons. If the entity's system does not retain the details of the transactions examined (e.g., every receipt and issue of inventory), then the Office may need to retain in its audit file, preferably in electronic form, copies of the documents examined.

Section 1112 of the OAG's Performance Audit Manual also requires the following:

All material, regardless of format or location, **that does not form part of the audit record** and is no longer required shall be disposed of prior to the completion of the assembly of the final audit file.

Where documents obtained in the course of an audit engagement are not necessary to provide evidence to support the conclusion expressed in our report, the auditors dispose of documents in accordance with the Treasury Board's Policy on Government Security and the OAG's Security Policy. In this regard, the OAG destroys sensitive information consistent with RCMP requirements for shredding and other disposal or destruction. All shredders used by the OAG have been authorized by the RCMP for shredding information that is classified up to and including Secret.

5. *The specific accounting standards, including the text of the specific standards, that would support the destruction of documents belonging to individuals who are the subject of an audit.*

The answer to this question is provided in the response to question 4. In addition, section 1112 of the OAG's Performance Audit Manual states the following:

Only copies (or electronic versions or scanned images) of entity documents are included in an audit file, not original entity documents. . . . When team members obtain original versions of entity documents (for example, a contract, invoice or subject file), they will return them to the entity when they no longer require the documents; they will not discard them under any circumstances.

6. *The extent to which your office considered the value to individual Senators of any shredded documents belonging to those Senators.*

Original documents received from Senators were not shredded and were returned to Senators.

7. *Whether and to what extent you obtained individual Senators' consent to shred documents belonging to those Senators, if any.*

The shredded documents were copies of documents provided by Senators, or other documents obtained or created by the audit team in the conduct of its work that were not needed to support our conclusions. As previously mentioned, the OAG did not destroy original documents received from Senators.

8. *Whether you returned or destroyed electronic documents.*

Senators who provided documents to the OAG using USB keys or CDs had these USB keys or CDs returned to them in response to the motion.

B. Retention of Audit Documents by Senators

9. *The auditing standards, including the text of the specific standards that support your position that certain documents returned to individual Senators remain the property of your office.*

Some documents that were exchanged with Senators during the audit were created by the OAG and were marked "NOT TO BE COPIED—Property of the Office of the Auditor General of Canada." Examples include the Audit Plan Summary, the draft reports that were sent to Senators for comments and responses, and specific questions to Senators regarding expenses. Where Senators had made handwritten notes, or attached stickers with notes to these documents, we returned these documents in order to respond fully to the motion passed by the Senate. Nevertheless, it remains our position that these audit documents are the property of the OAG.

CSQC 1 addresses the ownership of audit documentation as follows:

- A63 Unless otherwise specified by law or regulation, engagement documentation is the property of the firm. The firm may, at its discretion, make portions of, or extracts from, engagement documentation available to clients, provided such disclosure does not undermine the validity of the work performed, or, in the case of assurance engagements, the independence of the firm or its personnel.
10. *The auditing standards, including the text of the specific standards that support your statement that Senators should retain the returned documents if they are needed in the future, and for how long the documents should be retained.*

The following CSQC 1 standards are relevant to this question:

Confidentiality, Safe Custody, Integrity, Accessibility, and Retrievability of Engagement Documentation

- 46 The firm shall establish policies and procedures designed to maintain the confidentiality, safe custody, integrity, accessibility and retrievability of engagement documentation.

Retention of Engagement Documentation

- 47 The firm shall establish policies and procedures for the retention of engagement documentation for a period sufficient to meet the needs of the firm or as required by law or regulation.

Retention of Engagement Documentation (Ref: Para. 47)

- A60 The needs of the firm for retention of engagement documentation, and the period of such retention, will vary with the nature of the engagement and the firm's circumstances, for example, whether the engagement documentation is needed to provide a record of matters of continuing significance to future engagements. The retention period may also depend on other factors, such as whether local law or regulation prescribes specific retention periods for

certain types of engagements, or whether there are generally accepted retention periods in the jurisdiction in the absence of specific legal or regulatory requirements.

- A61 In the specific case of audit engagements, the retention period would ordinarily be no shorter than five years from the date of the auditor's report, or, if later, the date of the group auditor's report.
- A62 Procedures that the firm adopts for retention of engagement documentation include those that enable the requirements of paragraph 47 to be met during the retention period, for example to:
- Enable the retrieval of, and access to, the engagement documentation during the retention period, particularly in the case of electronic documentation since the underlying technology may be upgraded or changed over time;
 - Provide, where necessary, a record of changes made to engagement documentation after the engagement files have been completed; and
 - Enable authorized external parties to access and review specific engagement documentation for quality control or other purposes.

The Institution Specific Disposition Authorities issued to the OAG by the Librarian and Archivist of Canada, under the authority of the *Library and Archives of Canada Act*, set the OAG's file retention period for performance audit documentation at 15 years.

11. *The auditing standards that support or require the return of those documents to your office.*

Section A62 of CSQC 1, quoted above, requires that the auditor be able to retrieve and access engagement documentation throughout the retention period.

C. Auditing Standards

The Committee's letter stated that Committee staff consulted documents on the OAG website and the Auditing and Assurance Standards Board website. The letter also noted that these documents do not refer to the destruction of documents provided by persons who are the subject of an audit. As previously mentioned, we have not shredded original documents that we received from Senators.

12. *How do you reconcile the different, and arguably contradictory standards that have been applied to Senators who were the subject of your audit?*

The OAG does not consider the auditing standards and OAG procedures to be contradictory. The audit teams adhered to the auditing standards and OAG procedures.

13. *Please explain how the assurance standards of the Chartered Professional Accountants of Canada (CPA) have been incorporated in developing the standards posted on your website. In providing the explanation, we ask you to provide the text of any specific CPA assurance standards or provisions that were used in developing the standards that are available on your website.*

With respect to the incorporation of auditing standards into the OAG's Performance Audit Manual, section 1011 of this document states the following:

In Canada, the standards for "assurance services other than audits of financial statements," such as the Office's performance audits and special examinations, are set by the Auditing and Assurance Standards Board (AASB), an independent institution established by the Canadian Institute of Chartered Accountants. The authority of the AASB is reflected in federal and provincial legislation and regulations. The AASB's scope covers audits in the public sector as well as the private and non-profit sectors.

As the legislative audit office of the federal government and of the three territories, the Office complies with CPA Canada standards for all its products. Audits that adhere to standards set by a recognized and independent professional body give the Office's work additional rigour and credibility.

D. Electronic Retention of Documents

The OAG usually retains electronic copies of audit information needed to support audit conclusions. We also retain some physical documents for the same purpose. In this case, the physical documents that were retained included original documents received from Senators. These original documents received from Senators have now been returned in response to the motion.

14. *Were electronic records of the current documents returned to Senators retained by your office?*

After the OAG was made aware of the motion passed by the Senate, we did not make electronic copies of the documents that have now been returned to Senators.

During the course of the original audit, audit teams scanned certain documents for electronic retention, and this digital information is still part of our electronic record.

15. *Were documents scanned into the OAG database for electronic retention prior to shredding?*

As previously mentioned, the OAG only stores electronic audit information that is needed to support audit conclusions.

We want to emphasize that we did not shred original documents received from Senators. During the audit, these documents may have been scanned into the OAG database for electronic retention if the audit team determined that they were needed to support our audit conclusions. The original documents have been returned to Senators.

16. *If documents were scanned into the OAG database for electronic retention, followed by the shredding of the paper documents, were printouts of those documents then made for return to Senators? Were the electronic records subsequently kept, or destroyed by your office?*

Since we did not destroy any original documents, we were able to return all the original documents to Senators. We did not print any documents to respond to the motion. We have retained our electronic records.

E. USB Key Referred to During 17 May 2016 Testimony

The missing encrypted USB key that was mentioned during our appearance before the Committee on 17 May 2016 had been issued to an OAG staff member who was assigned to the audit of Senators' expenses.

17. *What documents were contained on that lost or missing thumb drive?*

The OAG staff member was not able to confirm whether any Senate documents were on the USB key when it was lost. It is possible that the USB key contained some information relating to the audit of Senators' expenses. However, this information would not be accessible by others as the USB key was encrypted. It is also possible that the USB key contained no such audit information.

18. *Was the thumb drive located?*

That specific USB key has not been located.

Yours sincerely,



Michael Ferguson, CPA, CA
FCA (New Brunswick)

c.c.: Mr. Charles Robert, Clerk of the Committee

**APPENDIX III: ADMINISTRATIVE INVESTIGATION CONCERNING AN
INFORMATION BREACH PREPARED FOR THE
OFFICE OF THE AUDITOR GENERAL**



PROTECTED B

Presidia Security Consulting | Report

**Office of the Auditor General of Canada
Administrative Investigation**

August 1, 2015

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1. Purpose of the Investigation

The purpose of this investigation is to determine the facts surrounding an information breach relating to the cost of the Office of the Auditor General (OAG) audit of the Senate. In particular, this investigation will attempt to ascertain two (2) key things:

- Whether or not an employee of the OAG leaked the cost (dollar amount) of the Senate audit to a member of the media, or to any other individual(s); and
- Whether or not an employee of the OAG leaked information relating to audit findings on individual Senators to the media or to any other individuals.

2. Investigation Summary

During this course of this investigation there were over sixty (60) interviews completed, supplemented by other research and an IT analysis. As a result of this investigative activity the following summary is provided:

- On 15 April 2015, the Product Costing Systems shows that the overall cost of the Senate Audit had reached and surpassed \$21 million (\$21,121,005.27) for the first time. On 11 May 2015, the Product Costing Systems shows that the overall cost of the Senate Audit had reached and surpassed \$22 million (\$22,037,308.58).
- On 19 May 2015, Robert Fife from CTV news announces that the cost for the OAG to conduct the Senate Audit was approximately \$21 million. At this time Robert Fife also reported that “10 more Senators would be referred to the RCMP” and that these Senators had filed questionable expenses amounting to more than \$100,000.
- An audit of the Product Costing System revealed that, between the dates of 15 April 2015 and 19 May 2015, fifteen (15) unique “user names” were used to access the financial details of the Senate Audit. However, this number likely does not reflect the actual number of persons privy to this information since several of the individuals who accessed the system during this time frame stated that not only had they shown those details to other members of the OAG, but that discussions amongst staff members about the amount of the audit were rampant.
- Many of the individuals who accessed the Product Costing System to review the overall cost of the Senate Audit did so out of “curiosity” and not based upon a work requirement.
- The vast majority of the individuals interviewed were consistent in their belief that the leak to the media regarding the overall cost of the audit did not come from within the OAG organization. This belief was primarily related to the high level of risk that an individual would face if they leaked this information and the fact that everyone knew the cost of the audit would be made public by the Auditor General in due time.

- All of the individuals interviewed who had worked on the audit of Senator 105 were consistent in their belief that the reported leak came from someone within the Senate and not from a member of the audit team.
- There has been no information gathered during various IT audits which would suggest the leak of any information was conducted using OAG IT resources (such as email accounts).

3. Chronology of Events

The following chronology details the events pertinent to this investigation:

11 June 2013: The Auditor General of Canada accepts the Senate's request to conduct a comprehensive audit of Senate expenses, including Senator's expenses.

15 April 2015: Review of the Product Costing System shows that the overall cost of the Senate Audit had reached and surpassed \$21 million (\$21,121,005.27) for the first time.

11 May 2015: Review of the Product Costing Systems shows that the overall cost of the Senate Audit had reached and surpassed \$22 million (\$22,037,308.58).

19 May 2015: Robert Fife from CTV news announces that the cost for the OAG to conduct the Senate Audit was approximately \$21 million. At this time Robert Fife also reported that "10 more Senators would be referred to the RCMP" and that these Senators had filed questionable expenses amounting to more than \$100,000.

21 May 2015: Senator 105 sends an email to Chantel Thibodeau in which he alleges that he received a request for comment from a popular media outlet asking him to confirm and discuss some detailed information from his audit report. This request allegedly came via email from a female journalist.

9 June 2015: The OAG website reports the cost of the Senate Audit to be \$23.6 million.

4. Conclusion

During the course of this investigation a significant number of interviews have been conducted and all reasonable avenues of investigation have been followed. Despite these efforts, the investigation did not uncover any evidence or information that which would indicate that any OAG employee or other person knowingly leaked any information regarding the Senate Audit to the media or to any other person or person(s).

APPENDIX IV: INTERNATIONAL EXPERIENCES IN RELATION TO UNAUTHORIZED DISCLOSURES OF CONFIDENTIAL OR PRIVILEGED INFORMATION

A. United Kingdom

As in Canada, documents prepared for a committee of the United Kingdom (U.K.) House of Commons are the property of that committee and are protected by parliamentary privilege. Unauthorized disclosure of such documents may constitute a contempt of Parliament. An alleged contempt may be referred by the House to the Committee on Standards and Privileges for investigation. In the case of an alleged contempt involving unauthorised disclosure of a select committee paper, the matter may be raised by the committee itself, by making a special report to the House, stating that the unauthorised disclosure has constituted a substantial interference with its work.²⁴

In its June 2013 report, the U.K. Joint Committee on Parliamentary Privilege observed the following regarding leaks from select committees in its Annex 1: “Developments in Privilege since 1999”:

The House of Commons Standards and Privileges Committee investigated a number of leaks from select committees, on the basis that premature and unauthorised disclosure of Committee proceedings could constitute a contempt of the House. These breaches of confidence by Members and their staff in relation to Committee reports resulted in a range of sanctions, including suspension of a Member without pay for ten days and withdrawal from a Member’s assistant of network access and parliamentary pass for 28 days.²⁵

The leaks above took place before reports had been agreed, and there were suggestions that such leaks were motivated by a desire to influence a Committee’s work, or the reporting thereof. In considering the unauthorised disclosure of its own recommendation for a penalty in the case of Rt Hon. David Laws MP, the House of Commons Committee on Standards and Privileges decided that the leak was not a contempt as “the leak of the Committee’s recommendation took place after the Committee had agreed its report, and after the document had been reported to the House. It does not appear to have been motivated by a desire to interfere with the Committee’s work. The document had already been agreed. It could not have been altered.”²⁶

As for the House of Lords, no indications have been found that it has adopted any special rules or procedures to deal with questions of privilege arising out of them.

²⁴ United Kingdom, House of Commons Standing Committee on Standards and Privileges, *Unauthorised Disclosure of Heads of Report from the Culture, Media and Sport Committee*, Seventh Report of Session 2008–2009, 21 May 2009, p. 2; See also the 24th edition of *Erskine May’s Parliamentary Practice*, p. 838.

²⁵ Eighth Report from the House of Commons Committee of Standards and Privileges of Session 1998–1999, *Premature Disclosure of Reports of the Foreign Affairs Committee*, HC 607; Tenth and Eleventh Reports from the House of Commons Committee of Standards and Privileges of Session 1998–99, *Unauthorised Receipt of a Draft Report*, HC 747

²⁶ Seventeenth Report from the House of Commons Committee on Standards and Privileges, Session 2010–2012, *Leaks relating to the case of Mr David Laws*, HC 1433, paragraph 42.

B. Australia

1. The Senate

The Procedure Committee of the Senate of Australia tabled a report in 2005 that examined the unauthorized disclosure of committee proceedings. The report reaffirmed the resolution adopted by the Senate on 20 June 1996, relating to procedures to be followed by committees in cases of unauthorized disclosure of committee proceeding.²⁷ These are as follows:

A committee affected by any unauthorised disclosure of proceedings or documents of, or evidence before, shall seek to discover the source of the disclosure.

The committee concerned should come to a conclusion as to whether the disclosure had substantially interfered with the work of the committee or of the Senate, or actually caused substantial interference.

If the committee concluded that there had been potential or actual substantial interference, it shall report to the Senate and the matter may be raised with the President by the chair of the committee.

2. The House of Representatives

[Section 13 of the *Parliamentary Privileges Act, 1987*](#), pertains to the unauthorized disclosure of in camera evidence. This section prohibits the disclosure of any in camera evidence unless it has been authorized for publication by the House or a committee. In addition, this statute prescribes penalties of up to Australian \$5,000 in the case of a natural person and Australian \$25,000 in the case of a corporation. Breaches of the Act are dealt with by the courts.

Further, the House of Representatives Standing Order 346 provides that:

evidence taken by a committee or subcommittee and documents presented to it, and proceedings and reports of it, which have not been reported to the House, shall not, unless authorised by the House of the Committee or subcommittee, be disclosed or published to any person other than a member or officer of the committee.²⁸

House of Representatives Practice also states that “the publication or disclosure of evidence taken *in camera*, of private deliberations or of draft reports of a committee before their presentation to the House, have been pursued as matters of contempt.”²⁹

²⁷ Australia, Senate, Procedure Committee, *Storage of Senate documents and unauthorised disclosure of committee proceedings*, Parliament of the Commonwealth of Australia, Canberra, 2005, pp. 3–5.

²⁸ Australia, House of Representatives, Committee of Privileges, *Report Concerning the Unauthorised Disclosure of the Report by the House of Representatives Standing Committee on Economics, Finance and Public Administration*, Parliament of the Commonwealth of Australia, Canberra, 1999, p. 2.

²⁹ *Ibid.*, pp. 2–3.

C. New Zealand

The [Standing Orders of the New Zealand House of Representatives](#) contains a number of provisions related to the confidential nature of committee proceedings and the duty to not disclose the contents of such proceedings.

- Section 114 provides that a “member may not refer to confidential proceedings of a select committee until those proceedings are reported to the House.”
- Section 239 further specifies that “the proceedings of a select committee or a subcommittee other than during the hearing of evidence are not open to the public and remain strictly confidential to the committee until it reports to the House.”
- Section 240 provides that “a report or a draft of the report of a select committee or a subcommittee is strictly confidential to the committee until it reports to the House.”
- Section 410 sets out a list of actions that the House may treat as contempt. This list includes “divulging the proceedings or the report of a select committee or a subcommittee contrary to the Standing Orders.” Such issues are referred to the Privileges Committee for study and resolution.

