



Report of the President of the Treasury Board on the Provisions and Operation of the User Fees Act

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1. Purpose of Report

This report outlines the state of the government-wide implementation of user fees pursuant to section 8 of the *User Fees Act*:

A review of the provisions and operation of this Act shall be completed by the President of the Treasury Board during the third year after this Act is assented to. The Minister shall cause a report of the results of the review to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is completed.

The Act began as a private member's bill (Bill C-212), gained all-party support in both the House of Commons and Senate, and was passed with government support. The Act was assented to on March 31, 2004, and came into force on the same day. A link to the Act is appended to this report.

It put in place, through law, the approach that parliamentarians had sought from the government, emphasizing three major themes:

1. an enhanced role for parliamentarians through committee review;
2. a stronger voice for paying users; and
3. consequences for departments in the event of failure to meet service commitments for programs with user fees.

To achieve these ends, the Act's provisions set out a number of program management practices that must be undertaken prior to introducing or amending a user fee.

These include:

- consultation, including advance notification, and the opportunity for users to suggest service improvements;
- cost and revenue elements of the user fee, and impact assessment;
- the establishment of service standards and performance measurement, in the context of international comparisons; and
- annual reporting of user fee information before Parliament.

The Act then added the following provisions:

- Independent advisory panels: During consultation, if a department receives a complaint that it cannot resolve to the complainant's satisfaction, an independent advisory panel must be convened if the complainant requests it.
- Parliamentary tabling: Following consultation, but before proceeding with the user fee, the Minister must table a detailed proposal in each House of Parliament so as to potentially receive committee review.
- Mandatory fee reductions: If a department fails to meet a service standard, the corresponding user fee must be reduced within parameters set out in the Act.

Following the passage of the Act, the Treasury Board rescinded its *External Charging Policy* in order to avoid the impact of differences and inconsistencies between the two requirement-setting documents.

2. Scope of Application of User Fees Act

The provisions of the *User Fees Act* establish requirements for the departmental implementation of new or amended user fees. The Act further requires departments to annually submit to Parliament a list of all user fees, irrespective of when the fees were established. The Department of Justice Canada concluded that the present inventory of fees would come under the consultation and fee-reduction ambit of the Act only when they are modified, after being tabled in Parliament in a user fee proposal.

Only fees that have gone through the Act's procedures are consequently subject to all the Act's provisions, such as:

- fee reductions if service standards are not met;
- performance standards in those instances where no standards have ever been put in place; and
- user fee reporting against all the information elements, including performance standards and results, costs, and revenues.

When advising departments on user fees, the Treasury Board of Canada Secretariat (the Secretariat) emphasizes the need to manage legal risk and confer with departmental legal counsel in order to appropriately manage potential obligations stemming from the *User Fees Act* (and, indeed, the other laws that touch on user fees, most notably the *Financial Administration Act*).

To provide departmental legal counsel with basic information on the *User Fees Act*, Department of Justice Canada legal counsel drafted a legal guide to the Act. The guide's discussion of the Act and the appropriate implementation of newly introduced or amended fees is in harmony with opinion given on the law's scope of application.

3. User Fees Proposals Tabled in Parliament

Since the passage of the Act, the following three proposals have been tabled in Parliament.

Parks Canada Entrance and Recreation Fees

The Minister of the Environment tabled a proposal before the House of Commons on April 4, 2005, and before the Senate on April 12, 2005. The proposal centred on a large schedule containing a diverse range of fees for each national park. Fee increases were to be phased in over a period of three years.

The House Standing Committee on Environment and Sustainable Development reviewed the proposal on May 17, 2005.

In the Senate, the review period of twenty sitting days elapsed with no committee choosing to review the proposal. The proposal was thus deemed approved pursuant to the provisions in the Act.

The Journals of the House of Commons of May 10, 2005, stated that “a report recommending that the Parks Canada User Fees Proposal (Sessional Paper No. 8560-381-880-01) be approved is deemed presented by the Standing Committee on Environment and Sustainable Development.”

Parks Canada proceeded with the phase-in of the multi-year fee increases outlined in the proposal as tabled.

Industry Canada Telecommunications and Radio Equipment Licence Fees

The Minister of Industry tabled a proposal before the House of Commons on September 18, 2006, and before the Senate on September 26, 2006,^[1] respecting two new fees for services offered by the Certification and Engineering Bureau of Industry Canada. The existing fees had not changed in more than 10 years and had become inappropriate for today's telecommunications market. The proposed fees were part of Industry Canada's Smart Regulation implementation and represented a potential reduction in costs for the industry.

In the House of Commons, the review period of twenty sitting days elapsed on October 27, 2006, with no committee choosing to review the proposal. The proposal was thus deemed approved pursuant to the provisions in the Act.

The Senate Standing Committee on Transport and Communications reviewed the proposal on October 3, 2006. The Journals of the Senate of October 26, 2006, stated that the Committee “to which was referred the document entitled ‘New Fees for Services Provided by Industry Canada Relating to Telecommunications and Radio Apparatus’..., in accordance with section 5 of the *User Fees Act*, recommends that they be approved.”

Industry Canada is proceeding with the remainder of the regulatory process so that the proposed fee changes can be implemented.

Natural Resources Canada Explosives Regulations Fees

The Minister of Natural Resources tabled a proposal on November 3, 2005. The proposal sought increases to fees for licenses, permits, and certificates provided by Natural Resources Canada through its oversight of the manufacture, importation, storage, and sale of commercial explosives, fireworks, ammunition, and other pyrotechnic devices.

Committee review had not occurred by the time the 38th Parliament was dissolved on November 29, 2005. The proposal therefore “died on the Order Paper.” It has not as yet been re-tabled.

4. *User Fees Act*—Treasury Board and Treasury Board of Canada Secretariat Support and Oversight

The Secretariat acknowledges that the legal framework introduced by the Act requires departments to know and observe their obligations under the law.

In that light, the Secretariat has framed its continued role in providing guidance and direction so as to be consistent with the approach inherent in the Act.

The provisions of the *User Fees Act* focus on the appropriate conduct of departments when user fees are charged. The direction inherent in these legal requirements is consistent with long-standing, Treasury Board direction on sound management practices, for which a corresponding portfolio of guidance documentation has been in broad application for many years. The guidance remains useable and appropriate not only in managing user fees, but also for all government programs.

This means that the Secretariat continues to provide departments with the existing suite of “how-to” documentation developed and maintained by central agencies over the last few decades. This includes the Secretariat's Guide to Costing and guidance on service standards, as well as material developed to assist departments on the regulatory process (the latter documentation is particularly relevant in terms of impact assessment and consultation methods, which are also of significance under the *User Fees Act*).

Beyond that, the Secretariat has facilitated departmental implementation through procedural documentation. Working with other central agencies, it has provided departments with a guide to the Act's impact on the regulatory process and guidance on coordinating compliance with the provisions of the two approval processes. The Secretariat has also provided a template for the parliamentary tabling of a proposal when a fee is introduced or amended. Guidelines on how to undertake the dispute management process introduced by the Act, including the requirements for independent advisory panels, were also developed for departmental implementers. This material has been circulated to departments and made available to all stakeholders via the Secretariat's website.

Commensurate with the spirit of the Act, the Secretariat has aimed, in particular, to improve government-wide use of service standards in programs that charge fees to individuals and businesses.

First, in November 2004, the Treasury Board approved the *Policy on Service Standards for External Fees*, which sets the requirements for departments to establish service standards for all programs that charge fees. The policy is not formally linked to the Act, but it does strongly reinforce the Act's message that service standards are important and that it is reasonable for stakeholders to expect that, if a program charges fees to its users, it will have clear goals for service achievement and will openly consult and report on those goals.

Second, the Secretariat concurs with the Act's objective of strengthening the reporting of user fee information, with an emphasis on performance standards and results. The Act's provisions for annual reporting led the Secretariat to request fuller annual reporting to Parliament, through reports on plans and priorities and departmental performance reports. The Secretariat's reporting instructions are based on a review of the information requested in the Act itself, which provides direction from parliamentarians on their information needs.

4.1 Reported User Fee Information—Departmental Performance Reports

In keeping with its broad responsibilities for government-wide monitoring and its responsibilities specific to the subject of user fees, the Secretariat has focussed on the state of reporting on user fee information. This effort is an important “follow-up” on departmental capacity to meet the Secretariat's reporting instructions, as discussed above. It also has formed the basis for annual bilateral meetings with departments to share concerns, as well as continued dialogue with external stakeholders, particularly the Business Coalition on Cost Recovery.

As part of this effort, the Secretariat has prepared, for each of the last three fiscal years, an annual monitoring report on the completeness of the user fee information tabled in departmental performance reports.

The monitoring report for 2005–06 has not yet been finalized, but some summary information can be provided. Fifty-one departmental performance reports included user fee information in 2005–06, accounting for roughly \$1.9 billion in actual revenue.

The principal finding is that this most recent set of departmental performance reports shows ongoing progress in reporting a more complete picture of user fee information. Cost and performance elements continue to be the most frequently omitted areas. Even so, about eighty per cent of all user fee entries included these two elements in this year's reporting. A number of departments indicated that initiatives are under way to improve user fee reporting.

<http://laws.justice.gc.ca/>

[1] The Minister of Industry had first tabled this proposal before Parliament on August 17, 2005, but the proposal had not received committee review in either House by the time Parliament was dissolved on November 29, 2005. Moreover, since twenty sitting days had not elapsed since the date of its tabling, the fee proposal could not be considered approved under subsection 6(2) of the Act. The proposal as first tabled therefore “died on the Order Paper.”