

ACCOUNTABILITY and OFFICERS of PARLIAMENT

The Case of the Parliamentary Budget Officer

**Brooke Jeffrey**

Department of Political Science  
Concordia University  
1455 de Maisonneuve Blvd. West  
Montreal, Quebec H3G1M8  
Tel: +1 (514) 848-2424 ext. 2131  
Fax: +1 (514) 848-4072

Paper prepared for the annual meeting of the  
Canadian Political Science Association  
Concordia University, Montreal, Quebec  
June 1-3, 2010

**Work in progress. Please do not cite without permission.**

## **Accountability and Officers of Parliament: The Case of the Parliamentary Budget Officer**

### **Abstract:**

This paper examines the ongoing controversy over the Parliamentary Budget Officer (PBO), an unprecedented controversy that has led to pitched internal battles and highly public disputes among politicians, bureaucrats, academics and the media. As a key element of the Conservatives' 2006 election platform which initially received all-party support, the PBO's well-publicized difficulties are all the more surprising. The conflict has been variously ascribed to a clash of wills, intransigence and empire-building on the part of the principal actors, and to the Harper government's waning enthusiasm for the post now that it is in power. While there is some evidence to support these claims this analysis, based on numerous interviews, internal documents and public statements by those involved, concludes that a profound difference of opinion on more fundamental issues of authority and accountability lies at the heart of the controversy. Moreover this research suggests the unique nature of the post, and its implementation during a period of minority government, have heightened the debate over the launch of Canada's most recent parliamentary watchdog.

The proposal for a Parliamentary Budget Officer was first put forward by the Harper Conservatives in their 2006 election platform, but the motivation to create such a post can be traced to the fiscal legacy of the Mulroney Conservatives more than a decade earlier. The Mulroney government made deficit reduction a focal point of their policy agenda and then presided over a period of exponential growth in the federal debt and deficit. During that time a series of fiscal forecasts by the Finance Department consistently underestimated the extent of the problem and served to heighten the concerns of economists and opposition politicians. As a result, with the election of the Chretien Liberals in 1993 a new approach to these forecasts was introduced almost immediately by Finance Minister Paul Martin, who stressed the need for credibility at all costs.

Martin urged forecasters to err on the side of caution. In addition he introduced major innovations to the budget planning process, including embedded provisions for unexpected costs and fiscal prudence. Ironically, as the government's deficit reduction measures took effect and the fiscal situation improved, these cautionary measures themselves became the source of criticism. True, the so-called "surprise surplus" phenomenon was defended by many economists as the normal consequence of prudent fiscal management. But it was also criticized by others as an indication that Finance Department projections once again could not be trusted.<sup>1</sup>

When he became prime minister in 2004 Paul Martin commissioned economist and former Bank of Montreal VP Tim O'Neill to review the federal government's fiscal forecasting practices. O'Neill's report, tabled in June 2005, identified Martin's own 1998 introduction of a no-deficit

---

<sup>1</sup> See for example Michael Mendelson, "Ottawa's Annual Fiscal Follies", Caledon Institute of Social Policy, March 2004.

rule as “the major cause of the persistent upside surplus surprises at the end of each fiscal year.”<sup>2</sup> However the report stressed there were no real technical problems with the Finance Department’s forecasting procedures, and reiterated that the surplus phenomenon was a predictable result of prudence. At the same time, the report acknowledged the existence of a growing concern with “a public interest issue that goes beyond any technical weaknesses,” namely, that the unexpected surpluses “could distort the decision-making process.”<sup>3</sup>

This concern was reinforced by more partisan criticism that the surprise surplus was a back door way of allocating funds for political purposes, and/or avoiding debate on policy priorities. As Beaumier notes, a small but vocal group argued the surpluses were “deliberate manipulation by the government...designed to limit public pressure for higher spending and/or lower taxes. This view raised serious credibility issues with the Department of Finance projections.”<sup>4</sup>

It was in this context, and with the backdrop of the Sponsorship Scandal adding to their enthusiasm, that the Harper Conservatives promised “truth in budgeting” as a key component of their 2006 election platform. They called for the creation of “an independent Parliamentary Budget Authority to provide objective analysis directly to Parliament about the state of the nation’s finances and trends in the national economy.”<sup>5</sup> As with other campaign pledges, the post was meant to underline the party’s commitment to accountability and transparency.

Once elected, the Conservatives wasted no time in implementing this commitment. Bill C-2, the *Federal Accountability Act*, (FAA) was tabled in April 2006 as their first act of business. It was accompanied by an Action Plan that announced the government:

would ensure truth in budgeting by creating the position of Parliamentary Budget Officer to provide objective analysis to Members of Parliament and parliamentary committees concerning the state of the nation’s finances, trends in the national economy and the financial cost of proposals under consideration by either House.<sup>6</sup>

It is noteworthy that the Plan actually *added* “the financial cost of proposals under consideration by both Houses” to the PBO’s mandate. This is particularly significant because, as demonstrated by the various difficulties that have emerged regarding other sections of the FAA since its

---

<sup>2</sup> Tim O’Neill. *Review of Canadian Federal Fiscal Processes and Systems*. June 2005. section 2.1

<sup>3</sup> *Ibid.*

<sup>4</sup> Guy Beaumier. “The Accountability Act and the Parliamentary Budget Officer”, Library of Parliament, PRB 06-03E, June 29, 2006. p.6

<sup>5</sup> “Stand Up for Canada”, June 2006. p.11

<sup>6</sup> A text of the Action Plan and related documents is available on the website of the Treasury Board Secretariat

implementation, it is likely the Harper government would have taken a more restrained rather than expanded approach to the mandate of the PBO if they had waited to become more familiar with the machinery of government. Nevertheless the government's rather predictable problems with the PBO mandate, particularly in a minority situation, have been eclipsed by an unexpected series of far more vocal and well-publicized disputes among other stakeholders.

It soon became apparent during hearings on the proposed enabling legislation, ( amendments to the *Parliament of Canada Act*), that a combination of poor drafting and a host of unanticipated problems with the unusual operating arrangement that was envisaged -- in which the PBO was to be an Order in Council appointment, but located within another organization ( the Library of Parliament) rather than being a "stand alone" operation -- would be the source of much controversy over the intended degree of autonomy and source of authority of the new watchdog post. This paper is therefore organized into three main sections dealing with the three broad categories of problems that have surfaced since the PBO was appointed, namely: problems with the appointments process itself; problems with the legislative mandate; and problems associated with the operational structure. A concluding section will outline the lessons to be drawn from the process and possible options for resolution of the problems.

### **Problems with the PBO Appointment Process**

The first signs of the conflict emerged almost immediately, during the extraordinarily lengthy hiring process. It was nearly two years after the tabling of Bill C-2 before Kevin Page was formally appointed to the position. Indeed, the process dragged on for so long that Parliamentary Librarian Bill Young, who was formally in charge of the hiring committee, was called upon by the Senate Committee on National Finance to explain the delay.

Like the enabling legislation itself, the method used to select the PBO was unusual. The post was a Governor in Council appointment but this in itself was not a problem, since the more independent 'officer of parliament' posts are also government appointments. However the use of a complicated recruitment and interview process, (albeit one somewhat more transparent than the normal procedure, as Levy has noted), was far from typical.<sup>7</sup> Particularly unusual was the direction in the FAA that "the Governor in Council *may* select the Parliamentary Budget Officer from a list of three names submitted in confidence to the Leader of the Government in the House of Commons, by a committee formed and chaired by the Parliamentary Librarian." (emphasis added)

As Bill Young outlined for the Senate's Finance Committee, the selection process involved many actors and several discrete stages. First the Library (rather than the government or the Speakers) prepared a job description for the PBO position. This description was forwarded to the Privy Council Office, (December 2006), which was responsible for determining the classification level. Once this was finally decided, (July 2007) a nation-wide executive search was conducted by a

---

<sup>7</sup>Gary Levy. "A Parliamentary Budget Officer for Canada" *Canadian Parliamentary Review*, Volume 31, No.2. Summer 2008. p.42

private sector firm the Library had commissioned. The 3-month search ( Sept.-Nov 2007) resulted in 24 potential candidates identified out of more than 300 applicants. A short list of 8 was examined on November 30, 2007 at a meeting of the selection committee appointed by the Parliamentary Librarian.<sup>8</sup> In a somewhat surprising move, “at that time the committee identified an additional 6 candidates to be approached for the position.”<sup>9</sup> Interviews were scheduled to be held on December 20 and the committee forwarded its recommendations to the House Leader on December 21, 2007.

One problematic aspect of the appointments process which no one disputed was the lack of qualified candidates. In fact, the committee was sufficiently unhappy with the list provided by the executive search that, as Young later revealed, an additional six names were added independently. The reasons for the lack of interest were clear. First, the position had been classified at such a low level that most qualified candidates were discouraged from applying. Second, within the federal public service, from which most of the applications could reasonably be expected to emerge, the position was widely seen as a career-ending move. Not only had several incumbents in other watchdog posts already encountered difficulties with the new Harper government, but, as Kevin Page said later, “I was not convinced there was a lot of genuine interest on the part of the government and parliamentarians in the work of a true budget officer...”<sup>10</sup>

Interestingly, Young emphasized that he “did not want a bureaucrat” to fill the position. Instead, he argued an individual from the private sector would be more appropriate. Somewhat paradoxically Young also stressed that he believed the most important qualification would be an excellent knowledge of how parliament and government work, and the ability to work in a non-partisan environment with parliamentarians.<sup>11</sup> Meanwhile Allan Darling, a consultant and retired public servant retained by Young to assist in this process, had advocated recruiting from among academic experts, but later admitted that most of those approached also found the classification level – and the modest accompanying salary -- to be an insurmountable hurdle.

The classification issue soon became the first publicly debated controversy. As Senator Pierrette Ringuette declared before the Senate Finance Committee,

I am puzzled about the classification of this position because this person will be an officer of Parliament. The PBO essentially provides services to

---

<sup>8</sup>. In addition to Mr. Young the committee members included: Maria Barrados, President of the Public Service Commission; Don Drummond, Senior Vice President and Chief Economist of the TD Bank and former Deputy Minister of Finance; Bill Knight, former NDP MP and Commissioner of Consumer Financial Institutions; and Allan Darling, Special Adviser to the Parliamentary Librarian and former Deputy Secretary of the Treasury Board.

<sup>9</sup>Standing Senate Committee on National Finance. *Minutes of Proceedings* .Feb.12,2008

<sup>10</sup>Kevin Page. Email to author. May 8, 2010.

<sup>11</sup> Young interview.

Parliament in the same way as the Auditor General. ..For the Privy Council to classify this position as a Director General level is an insult to the kind of service that parliamentarians are seeking from this officer. I voice my support...in ensuring that we get the right person to do the job for us, and that the compensation package is commensurate with the skill set.<sup>12</sup>

The response of Marc O’Sullivan, who was representing the Privy Council at the Finance Committee hearings, was revealing. O’Sullivan attributed the lower-than-expected classification level to the fact the PBO would be “an officer of the Library of Parliament.” As a result, “there was a bit of a ceiling that we were dealing with in terms of the classification of the parliamentary librarian position.”<sup>13</sup> Short of raising the classification of the Librarian, O’Sullivan argued, it was impossible to provide the PBO post with a higher level, and this was something the PCO was not prepared to do. Although both the Parliamentary Librarian and Allan Darling argued that there need not be such a hierarchical linkage between the PBO and the Library management, PCO remained unconvinced before the selection process began. ( A compromise was later achieved in which the post received both a modified classification and an increase in salary.)

Meanwhile the successful candidate, Kevin Page, had initially told the executive headhunters that he was not interested in the post, partly because the classification level was too low. But Page was approached by a member of the hiring committee who was familiar with his career, urging him to apply. As a senior bureaucrat with experience in Treasury Board, Finance and the Privy Council, Page was well-versed in virtually all aspects of the policy and budget planning processes. When he finally submitted his application, his impressive list of references included the current and past Clerks of the Privy Council, Wayne Wouters and Kevin Lynch..

Page stressed that he ultimately agreed to be interviewed for the post having predicated his candidacy on three conditions, namely: that he be remunerated at no less than the ADM level he already held; that he be able to hire his own qualified staff; and that he be provided with assistance to upgrade his French language skills, which he recognized to be insufficient for the post.<sup>14</sup> It was on the understanding that these conditions would be met that he accepted the post. (While the first and third conditions were implemented almost immediately, the second has remained a bone of contention discussed in more detail below.)

All of the participants interviewed for this paper described Page as unquestionably the best qualified of the applicants. Despite these credentials it was only after considerable deliberation that the hiring committee finally submitted its recommendation to the Government House Leader. In the end they had only interviewed one candidate, although two had originally agreed to appear. Moreover the issue of bilingualism, which had ruled out a number of otherwise

---

<sup>12</sup>Senate. Standing Committee on National Finance. *Minutes of Proceedings*. Feb 12,2008

<sup>13</sup>*Ibid.* Feb. 13, 2008

<sup>14</sup> Kevin Page. Interview with author. October 22, 2009. and *email to author*, May 8, 2010.

qualified candidates, continued to be a source of concern. Most importantly, during their deliberations it became clear that committee members held two diametrically opposed views of the role and mandate of the PBO, one far more activist and independent than the other.

Bill Young's views on the role of the PBO were made public during his appearance before the Senate Finance committee, while the appointments process was still in train:

I do not think the PBO should provide an alternative fiscal forecast to the one provided by the Department of Finance... I foresee the PBO taking a lead role with parliamentarians to provide a more strategic approach that would enhance their understanding of the underlying factors affecting fiscal forecasting...<sup>15</sup>

In Young's view, since the Department of Finance analysts and a number of private sector forecasting firms already provided such forecasts, no purpose would be served by having another source of forecasting figures. Instead he foresaw the PBO working closely with existing special units of the Library's Parliamentary Research Service to enhance the quality of advice provided to parliamentarians and, ultimately, the reputation of the Library itself. This latter point was particularly relevant. Young himself had only been appointed to his post in 2005, and he had recently launched an ambitious program to restructure and "revitalize" the Library's image, in which the PBO figured prominently.<sup>16</sup>

Several parliamentarians were unhappy with this interpretation of the PBO's role at the time. Liberal MP John Mackay stressed that it was precisely because parliamentarians were frustrated by the lack of "independent" figures that they had supported the creation of the PBO position across party lines. "And now we find out that we're not going to get an alternative voice, we're simply going to get a rehash of the numbers that are already in the public domain"!? <sup>17</sup>

For one participant in the appointments process, putting the Parliamentary Librarian in charge of the committee was "like putting the fox in charge of the henhouse", since the PBO would be located within the Library.<sup>18</sup> Another participant suggested the government was able to use the mechanisms available to it through this complex process, ( such as PCO's determination of the classification level), to delay the appointment and minimize the potential impact of the PBO without appearing to be involved. However both charges were rejected by Allan Darling, the

---

<sup>15</sup> Senate Finance Committee. Feb. 13

<sup>16</sup>Kathryn May. "Budget Officer Answers to Me: Librarian", *Ottawa Citizen*, January 15,2009

<sup>17</sup> Ibid.

<sup>18</sup>Almost all of the major players involved in this process were interviewed as part of this research project, but many did so on condition of anonymity while others agreed to have only some of their comments attributed.

consultant who had prepared the job description for the Library. According to Darling, there was no evidence of government interference in the “dysfunctional” classification process, which he believed was simply the result of inflexible PCO officials acting on precedent. “They just could not get past the Library structure, even though this was a new position and they could have easily chosen to do so on that basis alone...”<sup>19</sup> Meanwhile Darling believed putting the Librarian in charge would mean the PBO would be truly independent, since the government would have no role in the selection process until names were submitted to the Government House Leader.

For his part, Young argued that those aspects of the process under his control were scrupulously non-partisan (something no one disputed), and “designed to ensure the highest possible level of legitimacy for the first incumbent”. He noted that the process he put in place was almost identical to the one used for the recruitment of an Assistant Parliamentary Librarian, a process which occurred in tandem with the PBO recruitment and which, in Young’s view, involved a similar post in terms of seniority. Moreover Young noted that the process was both transparent and arms’-length due to the use of the outside recruiting firm He also stressed it was the Privy Council, and not the Library, which had determined the classification level of the PBO post.<sup>20</sup>

In the end, and despite the FAA requirement that the hiring committee submit three names, only one name – that of Kevin Page – was put forward to the Government House Leader. Given the difference of opinion within the hiring committee about the role and mandate of the PBO it is perhaps not surprising that future difficulties would ensue. The more activist view of the committee member who urged Page to apply had prevailed, not the view of the Parliamentary Librarian. In this context the government’s decision to locate the PBO within the Library of Parliament may have ensured that such conflict would be inevitable.

### **Problems With the PBO Mandate**

Confusion reigned over the mandate of the PBO from its inception. First and foremost, there was debate about the nature of his “independence”. From whom, and to what degree, was he independent? It was clear that the PBO was intended to work for parliamentarians, but it was also clear that he was not an “officer of Parliament” and therefore did not report directly to Parliament in the same way as the Commissioner of Official Languages, the Ethics Commissioner or the Auditor General. Yet several other prominent watchdog posts – such as the Commissioner of Human Rights -- were not established as officers of parliament either, yet their “independence” did not become a source of contention. Why was the PBO different ?

At least three major differences between the PBO’s situation as “an independent officer of the Library of Parliament” and the unambiguous status of officers such as the Human Rights Commissioner can be identified. First and foremost, there was no specific enabling legislation, such as an *Access to Information Act* or *Official Languages Act*. Instead, the post was created through amendments to the *Parliament of Canada Act*, itself an arcane piece of legislation with

---

<sup>19</sup>Allan Darling. Interview with author. May 11, 2010.

<sup>20</sup> Bill Young. Interview with author. April 14, 2010.



little relevance to modern practices, procedures or institutions, and one in which the Library of Parliament and the role of the Librarian is only briefly discussed.

Second, there was a lack of clarity in the legislation concerning the PBO's reporting relationship. Did the PBO report to the Speakers or the Parliamentary Librarian? This was an intensely debated issue because it was inextricably linked to the nature of his independence. Interestingly, this debate took place despite the fact that Bill Young had intervened with drafters in an attempt to clarify the issue in the legislation. It also occurred despite House Leader Peter van Loan's press release announcing the appointment of Kevin Page as Canada's first PBO, which stated "the PBO is an independent officer of the Library of Parliament who reports to both Speakers."<sup>21</sup> Van Loan's view was reinforced by the statement of Conservative Senator Donald Oliver, a lawyer and member of the Senate's Committee on the Rules and Rights of Parliament, only a few days later. Referring to the appointment of Kevin Page as "the most important one flowing from Bill C-2", Oliver stated that the FAA "can almost be called the empowerment of parliamentary committees act" and noted "Mr. Page will be an independent officer of the Library of Parliament who reports to both Speakers..."<sup>22</sup>

Their interpretation was also reinforced by no less an individual than the Prime Minister, who responded to Global anchor Kevin Newman's question about whether he supported the release of a PBO report on the costs of the Afghan mission by saying "the budget officer is an independent officer. He can make his own decisions."<sup>23</sup> Mr. Harper repeated this view in response to a question in the House of Commons two months later, but this time his response also revealed the complexity of the problem.. "Mr. Speaker, we created an independent position. But this position was approved by Parliament, which is responsible for managing it."<sup>24</sup>

Not surprisingly, Kevin Page utilized these statements to support his position that, as an "officer of the Library," he reported to the Speakers, not the Parliamentary Librarian. He also argued he was independent not only in his ability to accept requests from parliamentarians and to initiate his own studies, but in his ability to hire staff and operate at arms' length from the day-to-day operation of the Library of Parliament. In fact, based on section 79.2 of the enabling legislation, (amendments to the *Parliament of Canada Act*) he argued that it was the responsibility of the Parliamentary Librarian to provide him with the appropriate resources to fulfil his mandate.

Perhaps most importantly, he disputed the position of the Parliamentary Librarian on the appropriate role of the PBO. In a letter to opposition party leaders of January 17, 2009, Page stated:

---

<sup>21</sup>"Government House Leader Announces Appointment of Canada's First Parliamentary Budget Officer". Press Release. March 14, 2008. Ottawa.

<sup>22</sup>Senate of Canada. Debates. 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, Volume 144, Issue 44. April 1, 2008.

<sup>23</sup>Global TV. *Global National*. Sept. 16, 2008. 5:30pm

<sup>24</sup>House of Commons. Debates. November 20, 2008.

In discussions with the PL, it has been communicated to me that the role of the PBO is not to provide analysis and opinion to parliamentarians such that it could be seen to challenge the government of the day. This view may be consistent with the operating model of the Library of Parliament but, to me and other observers, it is in stark contrast to the legislated mandate and the wishes of consulted parliamentarians. Such an approach would also contrast sharply with the government's 2006 campaign pledge for an independent parliamentary budget authority...

As subsequent testimony by both Bill Young and Allan Darling before the Joint Committee on the Library of Parliament made clear, they disagreed. Their interpretation of the legislation found the PBO to be "independent" in the sense that he was working for Parliament and not the government of the day, but certainly not "independent" of the Parliamentary Librarian, to whom they felt he clearly reported.

Their interpretation also focussed on the third major difference between the PBO and other oversight officers such as the Human Rights Commissioner, namely that the legislation creating the PBO was not accompanied by any provision for a separate office. Since the PBO was to be physically housed within the Library of Parliament, both Young and Darling were of the view that many of the PBO's actions required the approval of the Librarian and/or needed to be in compliance with Library procedures. They also noted the PBO's budget, personnel and other facilities would be drawn from the Library's budget. Rejecting Page's interpretation of section 79.2, they argued instead that the level of support for the PBO was the Librarian's decision and therefore the PBO would be in direct competition with other aspects of the Library's operation for scarce funds. As Darling put it, "Is there a potential for conflict in the allocation of staff? There could be. But at the moment, Mr. Page has not asked for any staff from the library. He has insisted on hiring only staff who report directly to him."<sup>25</sup> (This issue would prove to be of critical importance, as outlined below.)

Although Young initially argued that the conflict with the PBO was a natural process of "growing pains" with a new office, where "you can't expect everything to happen without a glitch here or there"<sup>26</sup>, this conflict obviously would not have occurred if the "new office" had not been placed within another organization. Yet both Young and Darling admitted that they had not anticipated the nature of the debate over the PBO's mandate; they also insisted the constraints on the new post had been clearly outlined during the recruitment and hiring process. According to Darling:

The office has not evolved as I expected it would, in the sense that I anticipated that it would follow much more closely the perspective of the role outlined in the document he ( Page) received....If I could just

---

<sup>25</sup> Joint Committee on the Library of Parliament. *Minutes of Proceedings*. March 26, 2009.

<sup>26</sup>May. Ibid.

make a comment, the officer has to be in a partnership with the Librarian with respect to resources, because the Librarian has the legal accountability. The officer seems to believe he is not part of the library, but separate from the library. That is not my reading of the construct of the act... I don't think anybody has challenged the officer's responsibility for the execution of the mandate, but the Librarian has responsibility for the accountability of resources. Those two responsibilities have to be bridged in some way, and it will take a dialogue between the two participants to bridge it. I'll be blunt and say that until the Parliamentary Budget Officer recognizes that he must work with the library and the Librarian, this tension will continue. Like a bad marriage, if the two parties don't talk, something is going to fail.<sup>27</sup>

This debate over the mandate of the PBO quickly escalated. In September 2008, after a federal election was called, the Parliamentary Librarian declared that he feared some of the actions of the PBO, such as his proposed release of a document costing the Afghan mission, would give the appearance of partisanship and bring the reputation of the Library into disrepute. Kevin Page argued that he had received the approval of all parties to release the material and that, in any event, his mandate required him to make documents public, unlike the mandate of the Library's Research Service which was based on confidentiality. If he were to provide research findings to individual parliamentarians on a confidential basis, he argued, what would prevent that material from being released selectively and/or for partisan purposes? And would this not be a clear violation of his mandate to provide parliamentarians with fully transparent and impartial advice?

In short this aspect of the issue, which was framed by the parliamentary librarian as one of "control over and ownership of the content of research materials"<sup>28</sup> was seen by the PBO as one of "independence, authority and transparency", as well as impinging on his obligation to provide parliamentarians with access to materials "in a relevant and timely manner."<sup>29</sup> He backed up his assertion by pointing to an in depth "stakeholder consultation" which his office had conducted with Mps and Senators over the summer, in which "parliamentarians were nearly unanimous in their support for an open, transparent office that publicly publishes all its research and reports."<sup>30</sup>

Further claims by Page that he reported directly to the Speakers, including references on the PBO website and in the "stakeholder consultation" summary which he submitted to them in mid-August 2008, led the Parliamentary Librarian to follow up his concerns with a sternly worded briefing note to the Speakers. In it, he "expressed concern about the role and mandate (of the PBO) which Mr. Page is promoting..." and sought "...clarification from the Speakers with respect

---

<sup>27</sup>Ibid.

<sup>28</sup>Parliamentary Librarian. "PBO Chronology of Key Events", Background Document provided to the Joint Committee on the Library, April 2010.

<sup>29</sup>PBO. Memo to Opposition Party Leaders. January 17, 2009.

<sup>30</sup>May. "Speaker Moves to Handcuff Budget Officer". *Ottawa Citizen*. November 4, 2008

to the authority of the Officer and his relationship to the Library.”<sup>31</sup>

As a result of Young’s intervention, the Speakers responded with a formal letter to the Parliamentary Librarian outlining their views on the PBO’s relationship to the Library and to the Speakers. Their position reflected almost word for word the views of the Parliamentary Librarian and directly contradicted the statements of both House Leaders about the PBO. In summary, the Speakers concluded that the PBO had exceeded his mandate, and insisted:

The Library exists to serve Parliament and parliamentarians, and the role and function of the PBO is an extension and evolution of the services that the Library already offers. Therefore, in our consideration of the relevant statutory provisions, it is the will of Parliament that the Officer shall not report directly to the Speakers, but rather shall report to the Parliamentary Librarian, in a manner consistent with the reporting relationships of other senior executive officers within the Library, such as the Assistant Parliamentary Librarian...<sup>32</sup>

The Speakers’ letter was made public by the PBO and almost immediately became a new source of controversy. Conservative Senator Hugh Segal, for example, denounced their position as “defying understanding. I disagree 100 per cent ... and I couldn't be angrier," he said."Any effort to limit the freedom and operation of the parliamentary budget office dilutes the principle of his appointment and purpose of the office.” Highlighting the fundamental conflict between accountability and authority, Segal continued, “Both speakers are getting caught up in the bureaucracy of Parliament rather than defending the principles, like they should, of the Magna Carta, which says parliamentarians deserve information on how the Crown spends people's money. I am offended that Mr. Kinsella and Mr. Milliken are taking this perspective. Mr. Page was not hired as a servant of the librarian of Parliament,” Segal said. “He was hired as the servant of Parliament. To reduce (Mr. Page) to that of just another researcher in the Library of Parliament is a travesty of the idea behind the office and the government’s intent.”<sup>33</sup>

This led to a battle of duelling legal opinions, with both sides calling on private sector law firms to buttress their claims. Perhaps not surprisingly, those opinions generally supported the views of the principal antagonists. An opinion prepared by the firm of Gowling, Lafleur, Henderson for the Library supported the view that the PBO’s independence was from the executive, and declared that the Librarian “has the responsibility for the control and management of the Library, and has the authority...to adopt policies, rules or orders for the parliamentary library and its staff that bind” the PBO.<sup>34</sup> However the opinion also demonstrated the complexity of the problem

---

<sup>31</sup> Chronology of Events.

<sup>32</sup> Speakers of the House of Commons and the Senate. Letter to the Parliamentary Librarian. October 28, 2008.p.2

<sup>33</sup>Kathryn May. “Speakers move to handcuff budget officer.”

<sup>34</sup>Roger Tasse,QC. Letter to William Young. November 11, 2008.

when it argued:

The provisions of the Act conferring authority to the PBO in certain matters do not change the status of the PBO as a member and officer of the Library of Parliament. As such, he comes under the management authority of the Parliamentary Librarian and, ultimately, the direction and control of the two Speakers.<sup>35</sup>

For his part Kevin Page maintained that he did not dispute the managerial role of the Parliamentary Librarian in providing funding and services for the PBO, and his need to be accountable for those activities. He did, however, insist that the Librarian's "management control" did not extend to determining the nature of his research, his methods of handling requests or of making them publicly available, all of which he argued were part of his clearly spelled out mandate to serve parliamentarians in as open, transparent and timely a fashion as possible. The legal opinion prepared at his request by the firm of McCarthy Tetrault agreed wholeheartedly. This opinion concluded that "there is nothing to be found in the legislative provisions of the Parliament of Canada Act that would prevent you from exercising your mandate in the manner that you propose."<sup>36</sup>

Moreover the McCarthy opinion disagreed with the letter from the Speakers on several points of law, notably by declaring that their direction to the PBO to report to the Parliamentary Librarian in the same manner as other senior executives of the Library "may not be consistent with the (PBO) legislation. The PBO is not just another senior executive officer within the Library." Likewise the opinion challenged several of the assertions in the Parliamentary Librarian's letter. Pointing out that no other executive position in the Library was appointed by order in council, the letter concluded "To the extent that the Librarian is suggesting that the PBO is equivalent to the Library's service heads, he is failing to recognize the unique statutory obligations of the PBO or the unique statutory rights of the PBO,"<sup>37</sup>

Perhaps the legal opinion's most significant conclusion was that the disputed PBO mandate was not surprising, given that "the provisions of the *Parliament of Canada Act* are not at all clear *as to the mandate of the Library or the Librarian.*" (*emphasis added*)<sup>38</sup> This view was actually echoed in the Gowlings opinion, which concluded "the *Parliament of Canada Act* does not spell out in any detail how the authority of the Parliamentary Librarian and the authority of the PBO are to be reconciled and harmonized" although the author suggested "In my view this could be done by the adoption of policies, orders or regulations of the Parliamentary Librarian in consultation...with the PBO."<sup>39</sup>

---

<sup>35</sup>Ibid.

<sup>36</sup>Barbara McIsaac, QC. Letter to Kevin Page. November 18, 2008.

<sup>37</sup>Ibid

<sup>38</sup>Ibid

<sup>39</sup>Tasse. Ibid.

As several observers noted, the Parliamentary Librarian's problems with the PBO were more than a little ironic, given that he had actively campaigned to locate the proposed new watchdog position within the Library. Young "made his views known to the coordinator of the task forces working on Bill C-2 (a senior official at Treasury Board Secretariat), and subsequently made the case for domiciling the PBO function in the Library of Parliament to senior officials working on the task force developing the PBO-related legislative provisions."<sup>40</sup> After the *Federal Accountability Act* was tabled in the House, Young contacted PCO senior officials (Legislation and House Planning Secretariat) concerning what he perceived to be technical flaws in the legislation, some of which -- such as the need for the PBO to have access to material from government departments at no charge, and the inadvisability of burdening the PBO with an additional mandate to respond to individual requests -- he made public at committee hearings.

In a very real sense, the PBO had become a sort of Trojan Horse for the Library of Parliament. As the Speakers noted, it had put the PBO, and by extension the Library, at the centre of a very public debate over accountability and authority which no previous watchdog position had engendered. Nevertheless, it could be argued that this debate was predictable, not only because of the legal issues related to the PBO's mandate, *but because of the unrealistic expectation that such a watchdog position, ( and a Governor in Council position) could be housed within another organization which itself was led by an individual appointed by Governor in Council.* Simply put, while Bill Young assumed he was in charge of the PBO, he was in no position to discipline or dismiss the incumbent when events took an unexpected turn. In fact, the tools at his disposal to attempt to rectify the perceived problems with Page's approach to the job were few and far between, and would prove to cause more problems than they resolved.

### **Problems with the PBO Structure and Operation**

In many respects the unfolding drama of the PBO can be seen to mirror the problems that arose with the appointment of a Commissioner of the Environment housed within the Office of the Auditor General. In that case as well it was clear, almost from the beginning, that Sheila Fraser and Johanne Gelinis did not share the same views on the role and mandate of the Commissioner. Unlike the PBO, however, the Environment Commissioner was vulnerable and in the end was dismissed by the Auditor General, something neither the Parliamentary Librarian nor the Speakers can duplicate.<sup>41</sup> (Also of note is the fact that Gelinis was 'replaced' in her watchdog post by the existing Assistant Auditor General.)

Faced with this dilemma, the Parliamentary Librarian evidently concluded that his administrative role in "managing and controlling" the PBO's resources would have to be brought to bear. In a letter following closely on the heels of the Speakers' letter to Kevin Page, Bill Young set the tone for future discourse. Stating "I wish to make it clear that your position reports to me", the

---

<sup>40</sup> John Stillborn. (Former senior research officer, Parliamentary Research Service) Letter to author providing information by the authority of the Parliamentary Librarian. May 12, 2008.

<sup>41</sup> CBC News. "Canada's Environment Commissioner: Firing a 'Complete Surprise'" January 30, 2007. 9:48pm ET

letter outlined a number of requirements which the PBO was expected to meet, including the following:

I expect your full participation as a member of the Library's Executive Committee and a colleague of the other Service Heads. We will establish an appropriate bilateral meeting schedule...to ensure regular, open discussions on workplans, progress, initiatives and management issues....<sup>42</sup>

The conflict soon took on a highly personal tone as two specific issues of considerable importance were raised by the librarian, namely the PBO's hiring authority and overall budget. As mentioned above, when he accepted the post Page believed he had the authority to hire his own staff. When it became evident that the Librarian was not in agreement, Page relied on sections of the *Parliament of Canada Act* which he believed gave him authority to temporarily hire personnel and issue contracts, a procedure alluded to by Allan Darling in his testimony to the Finance Committee. He also relied on secondments from government departments such as Finance and Treasury Board.

But this situation was unacceptable to Young, who also believed Page should be making more use of Research Service personnel, and in particular of the special group of analysts recently hired by the Library in what became known as the "estimates cluster." In his November 3 memo to the PBO, the Librarian challenged Page's interpretation of the legislation, indicating that he believed the contracting authority of the PBO did not apply to personnel at all, that future hiring procedures would have to be approved by him and, more ominously, that "in light of the accountability and operating framework of the PBO outlined in the Speakers' letter, some PBO job descriptions may need to be reviewed."

A similar approach was taken with respect to the financing of PBO operations. Young's memo made it clear that "the budget accorded to PBO is a portion of the Library's appropriation and will be managed according to Library processes, reporting and control mechanisms." He also expressed concern over the cost of private sector contracts the PBO had issued for econometric models, communications and technology expertise, and made it clear that any such expenses would need to be authorized by him in future. To this end, Page was directed to "submit your budget proposal to (the) Director General of Corporate Services by the end of business on Monday November 12, 2008."

Predictably, given the behaviour of both sides to that point, what followed was an internecine battle of epic proportions, conducted largely in public. In a move that shocked many in the Library and federal bureaucracy and was seen as a violation of convention, Kevin Page wasted little time in taking his concerns about his autonomy directly to parliamentarians and the media, conducting a full-scale public relations campaign. In addition, rejecting the Librarian's view that he would need to 'vet' all PBO documents before their distribution, the PBO sent a letter to all

---

<sup>42</sup>Bill Young. "PBO Accountability Framework", Memo to Kevin Page. November 3, 2008

Mps and Senators on November 17, 2008, inviting them to attend a closed meeting on November 20 to discuss his first economic and fiscal assessment report, after which he would be holding an open briefing session for the media and posting the report on the PBO website.

Soon after, the PBO was informed by the Librarian that the budget allocation for his office for the coming fiscal year – the first full year of operation of the PBO --would not be the \$2.8 million that had been pledged at the time he took the job. Rather, allegedly due to cutbacks imposed on all government agencies, including the Library of Parliament, the PBO budget for 2009-10 would be only slightly higher (at \$1.9 million) than the start-up budget of \$1.8 million under which he had been operating to date. Page immediately went public with the charge that his office was facing a 33% cut, a virtual “freeze” which would “cripple the office and effectively shut it down.”<sup>43</sup> This provoked an almost immediate outcry from all three opposition parties in the House of Commons supporting the PBO and calling for the promised funds to be reinstated so that the PBO could do its work. With most observers in agreement that the PBO had won the public relations battle, the parliamentary librarian did not accept defeat.

Although Parliament was soon prorogued, the highly public dispute continued. The Parliamentary Librarian fired the next shots, giving an interview to the *Ottawa Citizen* on January 15, 2009 and publishing an opinion piece in the *Hill Times* in which he reiterated that his view that the PBO was obliged to report to the parliamentary librarian, and criticized Page for having made the details of the PBO budget allocation public. “In this time of economic uncertainty”, Young wrote, “the Library of Parliament’s entire management team, including Mr. Page, must demonstrate prudent fiscal restraint. Details on the Library’s budget will be provided when the Main Estimates are tabled in Parliament – until then they are confidential.”<sup>44</sup>

These initiatives prompted Page to write his January 17, 2009 memo to the leaders of the three opposition parties, in which he attached the PBO workplan, and the McCarthy Tetrault legal opinion. Arguing that he had been seeking “a measure of functional independence” from the Library, and not complete autonomy, the PBO insisted that the kind of limitations on his staffing and budgeting proposed by the Parliamentary Librarian did in fact constitute interference with his independent research mandate, since there would be no certainty or security of any kind. He stressed:

As a consequence of the continued turmoil, the core of my senior analytical staff is still on secondment from the executive branch...I have had to turn away assignments due to a lack of resources and am at serious risk of losing the employees that I have...

Several opposition Mps immediately took up the charge on the PBO’s behalf, but the impact of their statements was muted by the absence of a parliamentary forum. Meanwhile Conservative

---

<sup>43</sup>K. O’Malley. “Parliamentary Budget Offer Facing Funding Freeze”, *Maclean’s*, December 19, 2008.

<sup>44</sup>William Young. “Parliamentary Budget Officer Not An Autonomous Officer of Parliament”, *Hill Times*, January 12, 2009.



Mps for the most part stayed out of the debate, with the notable exception of Senate House Leader Marjorie LeBreton, who declared the issue “is a matter between Mr. Page, the chief parliamentary librarian(sic) and the two Speakers,” and Conservative Senator Terry Stratton, who stated that the PBO had “crossed the line” and “should respect the conditions under which he was hired.”<sup>45</sup> Page himself called for a resolution of the issue through an examination by a parliamentary committee. He suggested either of the Finance Committees might be the appropriate venue, but Senator Donald Oliver, who had introduced the PBO legislation with such enthusiasm less than a year earlier, indicated that he believed the matter should go before the Joint Committee of the Library of Parliament.<sup>46</sup>

With the return of Parliament in February, Liberal Finance critic John McCallum introduced a motion which clearly supported the PBO’s position, asking the House to declare that the PBO “is an independent officer of the Library of Parliament who reports to the Speakers of both Chambers”, and, referring to section 79.2, that “the Parliamentary Librarian must ensure that the overall control and management of the Library of Parliament facilitates the ability of the Parliamentary Budget Officer to fulfill his mandate and obligations...” This was quickly followed by a motion supporting the PBO’s independence tabled in the Public Accounts committee by NDP MP David Christopherson, who also agreed to drop his resolution if the entire matter was referred to the Joint Committee on the Library of Parliament.

The two Speakers wrote to the Joint Committee at the request of the Parliamentary Librarian, asking the committee to examine the issue. The committee, chaired by Liberal Senator Sharon Carstairs and Conservative MP Peter Goldring, held hearings throughout March and April 2009. It heard from witnesses from the Privy Council Office and Treasury Board, consultant Allan Darling and several former parliamentarians as well as the two principals, Kevin Page and Bill Young. Most of them, and especially the officials from Treasury Board and Privy Council, shared the views of Darling and the Librarian. Indeed, the Committee’s report, tabled in June 2009, was at first blush a major victory for the Parliamentary Librarian.

The Committee’s recommendations accepted almost all of Young’s arguments and instructed the PBO to undertake a number of activities to comply with various human resource and procedural directives. In addition, the committee expressed concern about the PBO’s publication of all research and reports, and concluded that a distinction needed to be made between those initiated by the PBO, and those prepared by the PBO at the request of a parliamentarian or parliamentary committee. In the latter case, the Joint Committee concluded that the PBO response should “remain confidential until the confidentiality is lifted by the parliamentarian or the parliamentary committee making the request.” The committee also concluded no PBO reports should be made

---

<sup>45</sup>“C. Munster. “Page Pushes Battle for Clear Independence”, *Hill Times*, January 26,2009

<sup>46</sup>Munster. Ibid.

public during an election period.<sup>47</sup>

More generally, the report's third recommendation requested the PBO to provide "an action plan describing how he (intends) to carry out the duties mandated under the Act" and to submit this plan to the Joint Committee. Although the committee did recommend that the scheduled PBO budget of \$2.8 million be approved, *it was on the condition that the PBO comply with all of their other recommendations*. This last recommendation appeared to be a compromise. On the one hand the committee recognized that the PBO had public opinion on his side and the government's image would suffer if his office were seen to be deliberately and blatantly restrained. On the other hand, since Bill Young had stated categorically in his testimony that he had not included the full \$2.8 million in his budget request to the Speakers because of the PBO's failure to recognize his authority,<sup>48</sup> the committee could hardly approve the full amount without attaching conditions.

Although Kevin Page told reporters he was "extremely disappointed" in the committee's report, and also expressed concern that none of the witnesses he had suggested to the committee were invited to appear, he wasted little time in preparing the Action Plan which had been requested. (Although Page did not raise the issue, many other critics of the committee's report noted that it had actually been drafted by two researchers from the Library of Parliament's Research Service who were assigned to it on a regular basis, arguing it was an apparent conflict of interest.)

The resulting comprehensive 23-page document, which described itself as implementing the committee's report, dealt in detail with each of the committee's recommendations by indicating how the PBO intended to meet the requirements of the recommendation, the proposed timeline for implementation and what action had been taken to date. First, however, the plan positioned virtually all of the committee's recommendations, and the PBO's responses, within a broader context which again highlighted the fundamental conflict between the PBO's legislative mandate and his organizational arrangements. Still, on the surface it appeared to be a model of compliance. However, a closer reading of the detailed text revealed a clever manipulation of the committee's concerns to reflect the concerns of the PBO and in many cases to reiterate points made in his earlier presentations to other committees.

Taking a page from President Bill Clinton's famous first State of the Nation address, in which he appeared to be responding to Republican concerns while standing each of their arguments on its head, so the embattled but evidently unbowed Kevin Page managed to diffuse almost all of the parliamentary librarian's temporary victory. Among other things, the extensive response to many of the recommendations demonstrated the *additional* financial requirement that would be needed from the Library in order to be implemented.

More importantly, the committee's recommendation to have the \$2.8 million budget reinstated –

---

<sup>47</sup>Standing Joint Committee on the Library of Parliament. Report on the Operations of the Parliamentary Budget Officer within the Library of Parliament. June 2009. p. 15

<sup>48</sup>William Young. *Evidence*. May 7, 2009. As quoted in the Committee's Report. p.20

and the PBO's inability to implement many committee recommendations without that extra \$1 million – was underscored on no fewer than four separate occasions, as was the need for the Librarian to resolve the staffing impasse. In addition, several responses highlighted the Library's lack of ability to assist the PBO, either structurally, ("the Library does not currently have an automated request tracking system...") or with personnel, ("given the different skill sets and experience in PBO [economic, fiscal and financial methodologies estimation and analysis] and the Parliamentary Information and Research Service (PIRS) [public policy analysis]...")<sup>49</sup>

Similarly, in response to the Committee's recommendation that the PBO collaborate with the Library's PIRS in the provision of assistance to parliamentary committees on the Estimates, the PBO response noted bluntly that its "resources are limited". Declaring that the expertise of his personnel was better devoted to major analyses of budgets and proposed legislation, and that the Librarian had already acquired new personnel for an "Estimates Cluster" within the PIRS, the PBO simply concluded "pending the re-instatement of the PBO planned budget and the confirmation of outstanding human resource issues, the PBO is not in a position to provide a direct contribution to the analysis of the estimates."<sup>50</sup>

Despite the submission of the plan, and various other documents requested by the Librarian, neither the additional funding nor the normalization of his staffing situation materialized over the remainder of 2009. Meanwhile a number of incidents occurred which cast doubt on the wisdom of some of the committee recommendations, and most notably on the confidentiality clause which the committee wanted to impose on almost all PBO materials. For example on July 12 a five-year economic forecast that had been requested by the Liberals – and which was to be embargoed for two days after they received it at their request, and then distributed to all parties – was promptly leaked to the media by the office of Opposition Leader Michael Ignatieff, to the chagrin of the other parties who blamed the PBO for having failed to provide them with the same information at the same time. <sup>51</sup>

The Joint Committee's report continued to be a source of controversy in itself. Former Ontario Deputy Minister and Canada Post CEO Michael Warren drafted a scathing opinion piece in June which noted that the PBO's "track record of economic forecasting has been outstanding – more accurate than the government, the opposition, the Bank of Canada and most private sector economists." Despite this, in Warren's view all parliamentarians appeared to feel threatened by the PBO. He concluded the Committee's report "is a thinly veiled attempt to force Mr. Page out and bury the PBO" because "he has done his job too well...We are not yet ready for transparency

---

<sup>49</sup>PBO. "Implementation of the Recommendations of the Joint Committee of the Library of Parliament on the Operations of the PBO within the Library of Parliament". Action Plan. p.9

<sup>50</sup>Ibid.p.14

<sup>51</sup>National Post. "Liberals Get in Some Early Practice on Government Hypocrisy" *Editorial*. July 13, 2009.

and openness in the financial workings of the federal government.”<sup>52</sup>

Responding to this and other criticisms of the committee’s recommendations, and notably the requirements for confidentiality of reports and reporting to the parliamentary librarian, Senator Sharon Carstairs wrote a letter to the editor of the *Hill Times* in which she defended those recommendations and declared “we believe ( Kevin Page) should respect the law and the job description under which he was hired.” Putting her finger on what by this point had become the real issue, she concluded “It may well be that in future the PBO should be an Officer of Parliament, but that is not the present mandate.”<sup>53</sup>

However Kevin Page argued that he was respecting his mandate as spelled out in the legislation. In addition, he stressed that he had met all of the conditions requested by the committee, had submitted his Action Plan, and was actively working with the Library of Parliament on a number of areas where the committee had advocated cooperation and collaboration. Yet by October 2009 he still had not received the additional funding the committee had recommended. Page told the media that the Library had also taken over the PBO's website, removed his phone number from public access and broken links between the website and various PBO products. "These are unilateral changes by the library," he said, accusing Bill Young of trying to “marginalize” him. “This is not about timelines or action plans”, he said. “Other forces are at play.”<sup>54</sup>

Meanwhile a spokesperson for the Library said the Library had "applauded" the committee recommendations because they "clarified the way forward for us," and then agreed that

There have been some administrative changes that were made [on the website] but there were also I think structural changes that were put in place in consultation with the PBO. They had some presentation changes that they've been working on since the spring and so they were implemented in concert with one another. Any of the inquiries from Parliamentarians go directly through our call centre and are triaged there so it would be referred back to the PBO if in fact it is a PBO inquiry. It's a client management tool so we can track Library services appropriately.<sup>55</sup>

The following day Liberal Leader Michael Ignatieff accused the Conservatives of creating the PBO and then promptly trying to bury him. In Question Period, he demanded the government

---

<sup>52</sup>Michael Warren. “Why is Kevin Page Left Twisting in the Wind?” *Globe and Mail*, June 29, 2009

<sup>53</sup>Hon. Sharon Carstairs. “PBO’s Page Should Respect Accountability Act”, *Hill Times*, July 20, 2009.

<sup>54</sup>Richard Brennan. “Unshackle Parliament Watchdog, Tories Told”, *Toronto Star*, October 6, 2009.

<sup>55</sup>C. Munster. “Parliamentary Budget Officer Still Waiting for \$2.8 Million”, *Hill Times*. October 5, 2009

“unshackle” the PBO and “provide him with the resources he needs.”<sup>56</sup> He did not, however, call for the PBO to become an independent Officer of Parliament.

By early November, when there still had been no sign of the extra funding, a frustrated Kevin Page appeared before the House of Commons Finance Committee. “We need a critical mass to do our work”, he declared. “If we don’t have that critical mass it’s my recommendation as Parliamentary Budget Officer that the Office be shut down.”<sup>57</sup> House of Commons Speaker Peter Milliken said he expected the funds to be provided by the Parliamentary Librarian as per the recommendations of the Joint Committee,<sup>58</sup> through a request for supplemental estimates. Several months later, Bill Young confirmed that he had submitted a request for \$2.8 million for the PBO for the next fiscal year, ( 2010-11) and that the PBO would receive an additional pro-rated amount of roughly \$425,000 for the current fiscal year.

The announcement brought to a conclusion more than 11 months of debate over the financing of the PBO, but did little to resolve other outstanding issues, including the independence of the PBO to hire staff and release reports. Nevertheless Kevin Page declared that he was pleased with the resolution of the financial dispute and would continue to pursue his legislative mandate aggressively. For many in the media who had predicted his demise, this outcome was somewhat surprising, and left them searching for an alternative source of information. In particular, Page himself has been conspicuously silent on the question of whether his position should become an independent Officer of Parliament. Yet the issues raised during the first two years of his mandate have led to a broader debate which has yet to be resolved.

### **Analysis: The PBO’s Unique Role and the Broader Debate**

A number of observations can be drawn from the experience to date with this new watchdog post:

(1) One of the most unique aspects of the PBO is its potential impact on a wide range of actors, quite apart from the Library of Parliament and Parliament itself, and this has been the cause of much of its difficulty. To begin with, the nature of the PBO mandate is very different from almost all other parliamentary watchdogs. Most reports by Officer of Parliament – such as those of human rights, official languages or privacy commissioners – traditionally involve the examination of technical or implementation issues related to the administration of government. The government of the day is not implicated in the findings or blamed. Rather the problems identified involve specific activities, programs or individuals in the bureaucracy. Nor is any one department predictably singled out or threatened, and indeed many departments receive glowing reports on their progress in implementing specific programs, or in having received few legitimate complaints. Even the reports of the Auditor General, which perhaps come closest to implicating

---

<sup>56</sup>Brennan. Ibid.

<sup>57</sup>Steven Chase. “Fund Office or Close It”. *Globe and Mail*, November 4, 2009.

<sup>58</sup>Steven Case. Ibid.

the executive, are generally considered to be a critique of public servants rather than politicians. It was precisely because of the exceptional involvement of politicians in the AG's report on the Sponsorship Scandal that it became such a focus for political debate.

*In this context, the negative impact of PBO reports for the government of the day are clearly unique, since they potentially can have significant political consequences, including derailing a government's policy agenda. Moreover these reports may well have negative consequences for specific departments and/or ministers, as evidenced by the impact on National Defence in the case of the Afghan mission report.*

(2) This in turn leads to the problem of political will. When Pierre Trudeau stressed his commitment to official bilingualism, the public service fell into line almost immediately. But Trudeau's less than enthusiastic commitment to Access to Information legislation produced a much less rigorous response on the part of the bureaucracy. Then too, there is the problem of whether a party is governing or in the opposition. Given these political realities it is perhaps not surprising that the minor opposition parties with no chance of forming a government – the NDP and the Bloc – have been the most vocal supporters of the PBO while the Liberals – who have a firm grasp on the machinery of government and expect to form a government again in future – have been ambivalent about the PBO and have only recently felt obliged to actively defend his role. *In particular, it is instructive to note that the Liberals on the Standing Joint Committee on the Library of Parliament were described as being “onside” with the Conservatives, and were only persuaded to reinstate the budget of the PBO in exchange for agreement from the NDP and Bloc to put aside their call for the PBO to be defined as an Officer of Parliament, outside the confines of the Library of Parliament.*<sup>59</sup>

(3) In addition, and again quite exceptionally, *the role of the PBO is one that has the potential to threaten some of the most important vested interests and departments of the federal government, namely Finance, Treasury Board and Privy Council.* Certainly this new watchdog can hardly be seen as anything other than a direct challenge to their hegemony, in a way that even the Auditor General is not. In fact, it is line departments that fear or resent the AG, not central agencies. Given the early determination of the Harper government to introduce this new post, which many senior bureaucrats opposed as both an unnecessary complication and expense, it should hardly be surprising that there was considerable support among them for the Parliamentary Librarian's proposal to locate the PBO within an institution outside of government, and with limited visibility. This support came through clearly in testimony before several parliamentary committees, and in their reluctance to assist the PBO in the provision of information.

(4) A number of academics have expressed their support for the PBO. In July, 2009 for example, some 129 economists including 15 past presidents of the Canadian Economics Association and 7 current Canada Research Chairs published an open letter calling on “parliamentarians of every party to pursue the following actions in support of the PBO”, namely: ensuring adequate funding

---

<sup>59</sup>Kady O'Malley. PBO Watch: There's a Lesson Here I'm Sure”, *Macleans*, July 20, 2009; *Hill Times*, July 20, 2009

to carry out the mandate, making the PBO a full officer of Parliament and permitting the public reporting of all analyses.<sup>60</sup> The group gave three reasons for their defence of the PBO: *the PBO is in a unique position to produce independent and credible reports; its material can contribute to “elevating democratic debate in Canada” and “the OPBO in its short existence has a commendable record of success.”*<sup>61</sup>

That “record of success” is another significant aspect of the PBO’s unique situation. The annual reports of the human rights and official languages commissioners are largely based on complaints, which again cast no blame on the government or departments as a whole; their coverage of broader issues are generally one-day wonders. In this context only the Auditor General’s role could be seen as coming close to that of the PBO, but the latter’s findings are more timely. Instead of locating problems after the fact as the AG does, the PBO’s reports provide information – often contradicting the government or individual ministers – before legislation is passed or budgets adopted. Moreover it is often possible to verify the credibility of PBO reports in a very short space of time, and the credibility of the office has increased with each verifiable prediction. *Hence the PBO’s strikingly accurate challenges to the figures used by the government in its budget forecasts and economic updates, or to predict the depth of the recession, have served to lend credence to subsequent PBO analyses of the cost of proposed EI reforms, changes to the pension system or the implementation of the government’s latest crime bills.*

(5) The “record of success” is also something which has given Kevin Page considerable shelter from the vicissitudes of the political debate. Virtually no one has disputed the fact that the PBO has produced a remarkably competent, professional and impressively large number of major studies and analyses. Indeed, many consider the accomplishments of the PBO and his team to be nothing short of astonishing, given the endless jurisdictional disputes, lack of resources and refusal to comply with his requests on the part of some key government departments *Put another way, the impressive products of the PBO to date have served to justify the existence of the post and its incumbent in a way that makes further downgrading of the post or the removal of Page himself very difficult politically.*

(6) Nevertheless there have been some experts who have been vocal in their opposition in principle to the role of the PBO. Donald Savoie, for example, has argued there are too many watchdog posts in existence already, all of whom take away from the supremacy of parliamentarians.<sup>62</sup> Tim O’Neill has argued that the PBO is likely incompatible with a Westminster model Parliament. Sharon Sutherland has specifically questioned the role of the PBO in the context of her broader criticism of the FAA, although her solution is to make him an

---

<sup>60</sup>Open Letter: “Economists Support Ottawa’s Budget Officer” July 17, 2009.  
[Http://supporthepbo.blogspot.com](http://supporthepbo.blogspot.com)

<sup>61</sup>Ibid

<sup>62</sup>Donald Savoie. “The Broken Chain of Answerability”, *Globe and Mail*, March 30,2009

Officer of Parliament.<sup>63</sup> Economist William Watson, meanwhile, has argued that the initial premise on which the creation of the PBO was based – that the Finance Department cannot be trusted – is simply wrong, and hence the post is unnecessary.<sup>64</sup>

However these critiques have been largely drowned out by a growing call for the PBO – now clearly embodied in the person of Kevin Page – to be given the tools needed to do the job he has in effect carved out for himself, regardless of the technicalities of the legislative mandate. Put another way, he has shown what the post could be, and many observers are in favour of the concept. That he has used a variety of unconventional techniques, including brilliant use of the media, to achieve these ends, is now almost beside the point, as is the ongoing debate among those most closely affected as to whether he is a renegade, an idealist or a man driven by a mission. Perhaps most importantly, Page’s role as an outspoken and persuasive advocate for the post has most likely ensured its continuing existence, in the same way as early trailblazers such as Maxwell Yalden and Keith Spicer for Official Languages and Gordon Fairweather for Human Rights, posts that were also controversial at their inception..

*(7) What has also become abundantly clear is the folly of placing the PBO within the Library of Parliament in the first place, rather than providing the post with its own office, resources and legislative mandate. Only as a separate entity will it be possible to effectively evaluate the worth of the post, and only as a separate entity can it be expected to fulfill the research mandate outlined in the legislation. The managerial conflict between the PBO and the Parliamentary Librarian could surely have been predicted regardless of the personalities involved, as the case of the Environment Commissioner demonstrated. Moreover the challenge of justifying the authority and accountability relationships between two Governor in Council positions within the same organization should have been self-evident. While the Librarian’s intentions of enhancing the Library’s status and providing improved service to parliamentarians may well have been admirable, the two were simply not a good fit on many levels.*

Interestingly, the Library’s counterpart Library of Congress does *not* house the Congressional Budget Officer, just as it has no control over the independent research teams provided to each congressional committee, a model which the Canadian Library’s research service has long been fighting to prevent being adopted here. It is perhaps not surprising that one of those expert witnesses who predicted problems with the enabling legislation and advocated making the PBO an independent Officer of Parliament was none other than a longstanding arch rival of the Library on the issue of committee research, former Parliamentary Centre Director Peter Dobell. Asked for his views on the subject, Dobell told the Senate Justice and Legal Affairs Committee examining the issue of the PBO’s legislative mandate, in *advance* of Page’s appointment, “The situation is certainly curious where an order-in-council appointment in a sense is made subordinate to another order-in-council appointment. I see it as a difficult, intense relationship.”<sup>65</sup>

---

<sup>63</sup>“Liberals Broke Embargo on PBO’s Forecast”, *Hill Times*, July 13, 2009.

<sup>64</sup>William Watson. “The Deification of Kevin Page”, *National Post*, July 90, 2009

<sup>65</sup>Senate Committee on Justice and Legal Affairs. *Proceedings*. October 19, 2006



(8) *Conversely, the effective operation of the PBO to date has arguably demonstrated that such an office can indeed function within a Westminster model parliament, despite the ongoing managerial contretemps and concerns of several insiders that Page has ‘inappropriately’ modelled his operation on the Congressional Budget Office. Indeed, a study prepared by the OECD on the experience with legislative budget offices elsewhere, which Page had distributed widely among parliamentarians in Ottawa, provides considerable evidence to suggest that the post can be adopted to a wide variety of legislative conditions.*<sup>66</sup>

(9) Although there can be little doubt that the Harper Conservatives have found Page to be a thorn in their side, it is also interesting to note that they have almost entirely refrained from criticizing him, his role or his products. No doubt this is partly due to the political downside of such a move. As the creators of the post they can hardly be seen to shut it down. But it may also reflect a more genuine commitment to this office than to most others. *As the experiences of the Access to Information and Privacy Commissioners have demonstrated – to say nothing of countless other order-in-council appointees at boards and tribunals who have been replaced, ignored or muzzled by the current government – the Harper Conservatives do not hesitate to intervene to prevent criticism of their agenda. Yet the PBO has remained relatively unscathed.*

### **Conclusion**

On balance, it would appear that the most appropriate solution to the current situation would be to sever the PBO’s connection with the Library of Parliament and provide it with both a proper legislative base and a stand alone office. Whether the PBO then should become a fully independent Officer of Parliament, or one whose status is similar to that of the Human Rights Commissioner, remains to be determined. However the recent platform-style commitment of Opposition Leader Michael Ignatieff to strengthen a variety of watchdog posts as part of a larger plan to limit the powers of the PMO suggests, at a minimum, that the mandate of the PBO should and likely will be clarified as a priority when the three-year review takes place next year.<sup>67</sup>

---

<sup>66</sup>Barry Anderson. “Experiences with Legislative Budget Offices”, OECD, Paris. Sept 5, 2007.

<sup>67</sup>Daniel LeBlanc. “Liberal Leader Pledges to Give Watchdogs More Bite”, *Globe and Mail*, January 27, 2010.