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INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

Motion to Authorize Committee to Study
the Powers and Responsibilities of the Officers of Parliament
and Their Reporting Relationships to the Two Houses—
Debate Continued

Speech by:

The Honourable Claudette Tardif

Thursday, October 4, 2012

THE SENATE

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INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

MOTION TO AUTHORIZE COMMITTEE TO STUDY THE POWERS AND RESPONSIBILITIES OF THE OFFICERS OF PARLIAMENT AND THEIR REPORTING RELATIONSHIPS TO THE TWO HOUSES— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Comeau, seconded by the Honourable Senator Di Nino:

That the Standing Committee on Internal Economy, Budgets and Administration be authorized to examine and report on the powers and responsibilities of the officers of parliament, and their reporting relationships to the two houses; and

That the committee present is final report no later than March 31, 2013.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I rise today to speak to Senator Comeau's motion of May 3, 2012, calling on the Standing Committee on Internal Economy, Budgets and Administration to study the powers and responsibilities of the officers of Parliament and their reporting relationships to the House of Commons and Senate.

I listened with great interest to Senator Comeau when he moved his motion last spring. He began his remarks by seeking and obtaining leave to table a 2011 letter signed by the seven officers of Parliament. It was addressed to the Speaker of the House of Commons, several committee chairs in the other place and the chair of the Advisory Panel on the Funding and Oversight of Officers of Parliament. The Speaker of the Senate was copied on this letter, but not directly addressed. The letter contained an extensive report on the accountability of these officers of Parliament.

Senator Comeau argued that the exclusion of the Senate and its committees from this letter was evidence of a larger problem that requires our attention. My colleague took great exception to the fact that officers of Parliament appear to focus on their responsibilities to the other place but not to this chamber.

I think it is important to take a few moments to explore the meaning of the term "officer of Parliament" since, as Senator Comeau has noted, there is some confusion and ambiguity surrounding the term.

The fact of the matter is that this designation has been used inconsistently throughout our history. This is due, in part, to the fact that there is no statutory definition of an "officer of Parliament." At various times, the term has been used to describe not only those seven independent officers who signed the letter and who report to Parliament, but also senators and

members of Parliament who are appointed to particular parliamentary offices, as well as procedural officers and officials within the Senate, the House of Commons and the Library of Parliament, that is, the administrative apparatus.

For example, the Privy Council Office refers to the clerks of both chambers of Parliament, the sergeant-at-arms, the law clerk and parliamentary counsel, and the parliamentary librarian as officers of Parliament.

In the strictest or narrowest sense, the officers of Parliament are the individuals occupying the seven following positions: the Auditor General, the Chief Electoral Officer, the Commissioner of Official Languages, the Privacy Commissioner, the Information Commissioner, the Public Sector Integrity Commissioner and the Commissioner of Lobbying. These are the seven individuals who signed the letter that Senator Comeau tabled with us.

To distinguish these officers from other positions that might also be called officers of Parliament, they are sometimes referred to as "agents of Parliament," which Senator Comeau also noted in his speech. This provisional distinction is important because of the incertitude of the terminology.

Senator Comeau spoke at length about his concern with the term "agent." He stated several times that these individuals are calling themselves agents. He noted that the normal definition of "agent" is someone authorized to act for or in the place of another. They would act on our behalf, and their actions would bind us.

I would also like to point out that this term was not adopted as a self-designation by these individuals, but rather used by the Privy Council Office and in its glossary of terms. A footnote to this glossary indicates that the term "agent of Parliament" comes from the Treasury Board Secretariat, which uses the term in all of its official documentation.

If there is a legal issue with the use of the term "agent," it has never before come to bear as far as I can tell from the research that I have conducted. However, Senator Comeau has raised a very interesting point about what exactly we parliamentarians mean when we agree that these individuals are our agents.

The criteria that have been traditionally used to identify these seven officers or agents are consistent. They are appointed by the Governor-in-Council by commission under the Great Seal. Their appointment is approved by one or both houses of Parliament through a resolution. Their term of appointment is laid out in a statute. They can be removed from office by resolution of one or both houses. Their reports are submitted to the speakers of one or both chambers.

This brings us to question of whether agents of Parliament have an equal degree of responsibility to both chambers. All signs indicate that they should, since Canada's Parliament is composed of the House of Commons, the Senate and the Governor General. All of these agents are appointed by resolution of both chambers, with the exception of the Chief Electoral Officer, who is appointed by resolution of the other place only.

Looking at these facts, I can appreciate Senator Comeau's troubled reaction to the letter and report in question. Indeed, as he stated, unlike in the Commons, no Senate committee chair or clerk received a copy of the letter. Given that the Senate is one of the two houses of Parliament and that the senders call themselves agents of Parliament, why did they exclude the chairs of Senate committees?

I have looked at other joint work undertaken by agents and have found that this is not the first case where the Senate appears to have been sidelined in the relationship between Parliament and its agents. A significant report by the House of Commons Standing Committee on Ethics and Access to Information in 2005 studied the funding provided to agents by the Treasury Board. Senator Comeau also spoke of this report.

The committee found that the agents' need to secure funding each year from Treasury Board was incompatible with their government scrutiny mandate. As a result, as a two-year pilot project, an all-party advisory panel was established in the fall of 2005. It is known as the House of Commons Advisory Panel on the Funding and Oversight of Officers of Parliament. It is composed of members of the other place, including their Speaker. All political parties are represented. Its purpose is to make funding recommendations to the Treasury Board. This restructuring of the agents' funding process was implemented without consultation from the Senate and, to the best of my knowledge, the advisory panel continues to operate today, although on an ad hoc basis.

On the face of it, I am inclined to share Senator Comeau's concerns about the exclusion of the Senate from the relationship between Parliament and its agents. However, I also wonder whether this chamber has not been as active as it could be in fostering that relationship. There was an ad hoc committee struck in the other place, as I mentioned earlier. Did the Senate endeavour, at any point, to undertake similar work? It is also worth noting that the Standing Orders of the House of Commons provide that the mandated reports of certain agents of Parliament are automatically referred to specific standing committees for consideration and examination. Here in the Senate there is no direct linkage through our rules, as there is in the other place, between our committees and the officers of Parliament.

• (1440)

Perhaps if the motion proposed by Senator Comeau is adopted, the committee could recommend what steps the Senate might take

to be a more active partner in its relationship with the agents of Parliament.

In a 2010 article in the *Canadian Parliamentary Review* Jack Stillborn raised, for example, the possibility of adding senators to the Advisory Panel on the Funding and Oversight of Officers of Parliament or of the creation of a complementary Senate panel. This is one idea among others that could be considered and studied in committee.

Honourable senators, I believe Senator Comeau has raised some very interesting issues that are certainly worthy of closer study. It is a part of our duty as members of this chamber to monitor and scrutinize all aspects of the institutions we serve to ensure it fulfills the role it was designed to play in Parliament and that it does so to serve Canadians in the most effective way possible.

I thank Senator Comeau for having brought this matter to the attention of the chamber. However, I do not believe that the Standing Committee on Internal Economy, Budgets and Administration is the best committee to study this issue. Senator Comeau's remarks make it clear that we need to be looking at how the Senate can be a more active participant in its relationship with the agents of Parliament; for example, by creating more direct linkages in our rules. It follows then that the Standing Committee on Rules, Procedures and the Rights of Parliament would be the more appropriate committee to which this order of reference should be directed. This committee is actually mandated to propose changes to our rules and to consider the orders and customs of the Senate and privileges of Parliament.

MOTION IN AMENDMENT

Hon. Claudette Tardif (Deputy Leader of the Opposition):
Honourable senators, I move, therefore:

That the motion be not now adopted, but that it be amended by replacing the words "Internal Economy, Budgets and Administration" with the words "Rules, Procedures and the Rights of Parliament".

(On motion of Senator Cools, debate adjourned.)