

Chair
CABINET

PARLIAMENTARY SERVICE: VALIDATION OF PAST EXPENDITURE AND INTERIM MEANING OF “FUNDING ENTITLEMENTS FOR PARLIAMENTARY PURPOSES”

Introduction

1. The Controller and Auditor-General has reviewed advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election. Although this review was limited to a three month period, it has implications for expenditure since 1 July 1989.

2. In order to ascertain whether expenses were within the scope of the relevant appropriations, the Controller and Auditor-General has formed a view on what are ‘parliamentary purposes’, on which parliamentary funding can be spent. This view is based on a legal opinion from the Solicitor-General. The definition the Controller and Auditor-General has applied is narrower than what has generally been understood, by parliamentary parties and members of parliament, to be within the rules relating to current and past appropriations. For example, an ‘in or out’ test has been applied. That is, if any portion of the expense-incurring activity is for non-parliamentary purposes, then the entire activity is deemed to be outside the scope of the appropriation. In the view of the Controller and Auditor-General, expenses have been incurred that are outside the scope of Vote Parliamentary Service appropriations.

3. The Treasury has advised me that expenses incurred without, or outside the scope of, appropriation are in breach of section 4 of the Public Finance Act 1989. Such a breach occurs notwithstanding any repayment of any money spent illegally or otherwise under the Parliamentary Service Act 2000. In this case, the only legal remedy for such a breach of section 4 of the Public Finance Act 1989 is for these expenses to be validated by an Act of Parliament.

4. The Speaker in her response to the Controller and Auditor-General's direction to her, has proposed that:

- In accordance with section 26C of the Public Finance Act 1989, the unlawful breaches of the seven party appropriations be validated by legislation to be introduced as soon as practicable. Validation should not await the normal annual validation process;
- The Controller and Auditor-General's report, and the Speaker's report, be referred to the Appropriations Review Committee for consideration as part of its

current review. On the question of a review of all the statutory arrangements governing the Parliamentary Service, the Parliamentary Service Commission, and the Speaker, the Speaker intends to seek the agreement of the Parliamentary Service Commission at its next meeting on 18 October 2006 for an external review of all the institutions referred to above; and

- In the interest of certainty and ensuring the activities of the Parliamentary Service can be administered within the appropriation in the short term, legislation be introduced to give clarity to the phrase “parliamentary purposes” in the interim.
5. The Speaker made a fourth proposal related to repayment, which is not relevant to this paper.

Proposal

6. There are three elements to my proposed solution:
- Legislation to remedy potential past breaches, including:
 - validating past expenses that may have been outside the scope of appropriations; and
 - validating any breach of relevant Acts;
 - An interim solution for the period through until 31 December 2007, by legislating for an interim meaning of the term “funding entitlements for parliamentary purposes” in the Parliamentary Service Act 2000, in order that parties and members of Parliament may continue to use Parliamentary funding for activities that they have previously understood to be within the rules; and
 - A review of relevant rules and legislation, to ensure a consistent long-term solution.
7. This paper seeks Cabinet’s approval for the introduction of the *Appropriation (Parliamentary Expenditure Validation) Bill* on 17 October 2006.

Comment

Validation of past expenses

Requirement for Legislation

8. Section 4 of the Public Finance Act 1989 states that the Crown (or an Office of Parliament) may not incur expenses without an appropriation, or other authority by or under an Act. Expenses incurred outside the scope of an appropriation fall into this category. Where expenses have been incurred without an appropriation, these require validation.

Period of Validation

9. The Controller and Auditor-General's investigation focused on the three months prior to the 2005 election. However, there is a risk that spending outside this period may also be outside of the scope or purpose of the relevant appropriation.

10. The current framework for Parliamentary Service funding was established in 1989. In order to ensure that all expenditure that has been incurred in relation to party and member activity in Vote Parliamentary Service was within the scope or purpose of the relevant appropriation, I propose that legislation validate that portion of expenditure incurred, from 1 July 1989 to the present time, that may have been outside the purpose or scope of the appropriations.

Breadth of Validation

11. The structure of appropriations in Vote Parliamentary Service has changed over the period (in 1993, and again in 1996), including movement of functions between appropriations. Due to these movements, there may have been expenses requiring validation in any appropriation in Vote Parliamentary Service. In addition, there is the difficulty of how the Controller and Auditor-General's view would be applied to other non-communications expenses such as travel. This may mean that there are other instances of out-of-scope expenses. For these reasons, I propose validating any out-of-scope expenses in Vote Parliamentary Service from 1 July 1989 to the present time.

Parliamentary Service Act and the Civil List Act

12. The Parliamentary Service Act 2000 sets out the roles of the Parliamentary Service. Section 7(b) states that the Parliamentary Service is to administer, in accordance with directions given by the Speaker, the payment of funding entitlements for parliamentary purposes.

13. As the Controller and Auditor-General has indicated that certain expenditure is outside 'parliamentary purposes', a breach of the Parliamentary Service Act has also occurred. The proposed bill will validate that breach.

14. As the Speaker's determinations are made under the Civil List Act, any breach of that Act, including determinations, will also be validated.

Criminal Liability

15. The bill includes a clause stating "nothing in this Act affects the criminal liability of any person". This is to ensure the bill does not absolve individuals from criminal proceedings.

Interim Solution

16. As an interim solution, I propose providing an interim definition of the term "funding entitlements for parliamentary purposes" in the Parliamentary Service Act 2000. This interim definition would align with the general understanding of parliamentary parties and members of parliament of the activities that may be met from Vote Parliamentary Service appropriations.

17. In particular, while funding may be used for a member of parliament performing their role and function as a member of parliament and for a parliamentary party performing its role and function as a parliamentary party, funding may not be used for:

- i. explicitly seeking support for the election of any person or for the casting of a party vote for any political party;
- ii. encouraging any person to become a member of a political party; or
- iii. soliciting subscriptions or other financial support.

18. This interim definition would apply until 31 December 2007, by which time a broader, long-term solution will need to be in place.

19. It must be noted, however, that irrespective of the definition of "funding entitlements for parliamentary purposes", the Parliamentary Service is required by the Controller and Auditor-General to immediately institute controls and processes to pre-approve expenditure. This will be a significant change from current practice.

Broader Solution

20. The Speaker has stated that she intends to act on the suggestions of the Auditor-General and refer the report to the Appropriations Review Committee for a review of administrative practices. On the question of a review of all the statutory arrangements governing the Parliamentary Service, the Parliamentary Service Commission, and the Speaker, the Speaker intends to seek the agreement of the Parliamentary Service Commission at its next meeting on 18 October 2006 for an external review of all the institutions referred to above.

21. Clearly there will be a need for some corresponding work by the government as part of these reviews. I propose to lead government work on a broader solution, in consultation with the Speaker. I propose to report back to Cabinet as soon as is practicable with details of the nature and timetable for this work.

Electoral Act Review

22. I note that a targeted review of the Electoral Act is already underway. Specifically, Cabinet agreed to a review of the electoral finance regime in April of this year (CAB Min (06) 11/2 refers). The scope of the review includes "a review of what an election expense is" for the purposes of the Electoral Act and specifically excludes reviewing the current allocation of funds by Parliamentary Service. For the purposes of the electoral finance regime, the source of funding for "election expenses", whether from parliamentary or private sources, is irrelevant. The focus is on whether the expenditure is an "election expense" as defined under the Electoral Act, including whether the expenditure is authorised by the party or candidate and the advertising occurs within the 3 months before Election Day. Given the fact that the source of funding is irrelevant for the purposes of the electoral finance regime in the Electoral Act, it is unlikely that amendments will be needed to the Electoral Act as a result of the further work proposed in this paper. However, if any amendments to the Electoral Act do appear to be required as a result of further work in relation to Parliamentary Services, they will be incorporated into that review.

Financial Implications

23. There is no fiscal impact associated with this paper, as all expenses remain at the levels set in the original appropriations.

Legislative Implications and Compliance

Validation

24. Legislation is required to validate any expenditure outside of scope from 1 July 1989 to the present.

25. The attached *Appropriation (Parliamentary Expenditure Validation) Bill* has no implications for the Treaty of Waitangi, Bill of Rights, Human Rights, Privacy Act or international standards and obligations. It is also consistent with the LAC guidelines.

26. A Regulatory Impact Statement is not required as this paper, and the proposed validation bill, deals with administrative procedures within Parliamentary Service, and does not impact on business, consumers, or the public.

Broader Solution

27. This paper proposes further work in relation to a broader solution which may have significant legislative implications. A broader solution may incorporate amendments to the Parliamentary Service Act and the Electoral Act. These (and any other) amendments will be considered prior to 1 January 2008, including potential constitutional implications and associated rule changes.

Consultation

28. The following departments have been consulted: Parliamentary Service, Ministry of Justice, Crown Law Office, Office of the Clerk and Parliamentary Counsel Office.

Legislation Timeline

29. I propose introducing the *Appropriation (Parliamentary Expenditure Validation) Bill* on 17 October 2006. As it is an appropriation bill, the legislation can be progressed through the House under Standing Order 281 – *An Appropriation Bill...may be introduced and proceeded with at any time, but not so as to interrupt a debate.*

30. The *Appropriation (Parliamentary Expenditure Validation) Bill* will come into force the day after the date on which it receives royal assent. The Bill will validate expenditure from 1 July 1989 to the day before the Bill comes into force.

31. Further work will be completed, assessing the broader rules governing parliamentary service spending, which is likely to require further legislation to be introduced and passed prior to 1 January 2008.

Recommendations

32. I recommend that Cabinet:

1. note that the Controller and Auditor-General has reviewed advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election;
2. note that he considers that a portion of party and members' spending falls outside the scope of the relevant appropriations and is therefore unlawful, and that this view is based on a legal opinion from the Solicitor-General on what may be regarded as being for "parliamentary purposes", as per the Parliamentary Service Act 2000;
3. note that while the review focussed on the three months prior to the 2005 general election, the Controller and Auditor-General's view has implications for expenditure in Vote Parliamentary Service since 1 July 1989;
4. note that the Controller and Auditor-General's view on what constitutes parliamentary purposes differs from what parliamentary parties and members of parliament have generally understood to be within the rules;
5. note that the Speaker has proposed that:
 - 5.1. The unlawful breaches of appropriations be validated by legislation to be introduced as soon as practicable. Validation should not await the normal annual validation process;
 - 5.2. The Controller and Auditor-General's report, and the Speaker's report, be referred to the Appropriations Review Committee for consideration as part of its current review. On the question of a review of all the statutory arrangements governing the Parliamentary Service, the Parliamentary Service Commission, and the Speaker, the Speaker intends to seek the agreement of the Parliamentary Service Commission at its next meeting on 18 October 2006 for an external review of all the institutions referred to above; and
 - 5.3. Legislation be introduced to give clarity to the phrase "parliamentary purposes" in the interim.

Validation of past expenses

6. agree that potential past breaches be validated by legislation in order to:
 - 6.1. validate out of scope expenditure in Vote Parliamentary Service from 1 July 1989 until the day on which the bill comes into force;
 - 6.2. validate any breach of the Public Finance Act 1989, Parliamentary Service Acts of 1985 and 2000, and the Civil List Act 1979, or any instruments made under those Acts;

7. agree that the bill should also validate expenses incurred that may have been outside the scope of any appropriations in Vote Parliamentary Service;
8. agree that the bill provide for an interim meaning of the term “funding entitlements for parliamentary purposes” in the Parliamentary Service Act 2000, in order that parties and members of Parliament may continue to use parliamentary funding for activities that they have previously understood to be within the rules;
9. agree that, for the avoidance of doubt, the bill includes a clause preserving criminal liability;
10. approve for introduction the *Appropriation (Parliamentary Expenditure Validation) Bill*;
11. agree that the bill be introduced on 17 October, and passed through all stages as soon as possible;
12. delegate authority to the Leader of the House of Representatives to make any minor drafting changes to the bill that may be necessary prior to its introduction;

Broader Solution

13. invite the Leader of the House of Representatives to lead government work on a broader solution, to consult the Speaker on the work that she is intending on a broader solution, and to report back to Cabinet as soon as practicable with details of the nature and timetable for this work.

Hon Dr Michael Cullen
Leader of the House of Representatives