



September 16, 2013

The Honourable Thomas J. Mulcair, M.P.
Leader of the Official Opposition
New Democratic Party of Canada
House of Commons
Centre Block, Room 409-S
Ottawa, Ontario K1A 0A6

Dear Mr. Mulcair:

Thank you for your letter dated September 6, 2013.

I completely understand your concerns. It is Parliament alone that has the power under our Constitution to raise taxes and authorize the use of public monies. Naturally, parliamentarians take an interest in whether the amounts authorized by Parliament will be sufficient for the purposes they specify. Thus, when a series of cuts were announced in Budget 2012, parliamentarians were legitimately interested in whether the reduced amounts allocated to government departments would be sufficient for them to carry out their work.

In November 2012, you asked the then Parliamentary Budget Officer (PBO), Kevin Page, to assess whether the authorizations sought under the financial initiative of the Crown, detailed in Budget 2012, would be sufficient.

In order to do this, he needed financial and economic data indicating how departments planned to operate under their constrained budgets. Economic data, such as changes in service levels, and financial data, such as the savings attributable to efficiency measures, could be evaluated to determine the likelihood of a department achieving a reduction in spending. As I explained in my last letter, this data was requested. Some departments provided it, but many did not.

As you will be aware, Mr. Page then referred the matter to the Federal Court for a determination. In his decision, Mr. Justice Harrington said:

*"[The PBO] has a number of remedies, such as complaining to the Chief Librarian, perhaps complaining to the two Speakers and the Joint Committee, and perhaps to Parliament as a whole. What I am saying is that in addition to such remedies, ultimately he would have had recourse to this Court. There may or may not be a sequence to these alternative remedies, and the Court, in its discretion, may refuse to hear an application if other adequate alternative remedies have not been exhausted."*¹

Keeping with this advice, the Parliamentary Librarian and then interim PBO, Sonia L'Heureux, informed the Speaker of the Senate and Speaker of the House of Commons, who instructed her to send additional letters to the non-compliant departments.

¹ *Page v Mulcair*, 2013 FC 402, 2013 CarswellNat 2219 at para 62.

The upshot of these efforts saw some successes: several additional departments provided some data. To the extent that analysis is possible on the basis of this partial data, it has been undertaken and published.

I intend to follow through with the remainder of Mr. Justice Harrington's advice when Parliament resumes by ensuring that the Speakers are informed and exploring alternative remedies.

While pursuing this matter in court always remains an option, it involves significant risks beyond those articulated by Mr. Justice Harrington above.

If the PBO were to seek judicial review of a Deputy Head's decision not to provide the data, the Attorney General would likely argue that the matter is not justiciable. If his argument is sustained, the application would be dismissed without a decision on entitlement to the data. Even if the application were not dismissed, it is not clear that the court's interpretation would confirm that the PBO is entitled to the data. And, even if it does, the Attorney General may appeal the decision to the Federal Court of Appeal, at the very least, on the justiciability point. And, if the PBO succeeds in the Federal Court of Appeal, the likelihood remains that the Attorney General will seek leave to appeal to the Supreme Court.

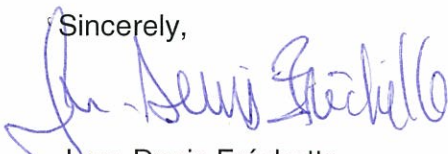
Given the foregoing, I prefer to exhaust parliamentary remedies.

As I mentioned above, I am fully committed to providing parliamentarians with the decision-making support to which they are entitled to carry out their important work on behalf of Canadians. In living up to this responsibility, I will continue to work closely with parliamentary stakeholders to identify new, more cost-effective and sustainable ways to obtain data.

We are always at your disposal and look forward to working with all parliamentarians, producing helpful and constructive analysis.

Many thanks.

Sincerely,



Jean-Denis Fréchette
Parliamentary Budget Officer