

**THE ACCOUNTABILITY OF DEPUTY MINISTERS
BEFORE PARLIAMENT**

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
MINISTERIAL ACCOUNTABILITY.....	2
DEPUTY MINISTERIAL ACCOUNTABILITY	2
RECOMMENDATIONS FOR CHANGE	3
ACCOUNTING OFFICERS IN THE UNITED KINGDOM	5
FOR AND AGAINST.....	6
FUTURE DEVELOPMENTS	7
SUGGESTED FURTHER READING.....	8



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INTRODUCTION

In normal circumstances, the traditional understanding of ministerial accountability, whereby ministers are accountable to Parliament and departmental officials appear before parliamentary committees on behalf of their minister, works well. When things do not go well, however, and when public controversy arises, some begin to question this understanding of ministerial accountability. Several recent controversies, such as occurred with the sponsorship program and the Human Resources and Development Canada grants and contributions program, have resulted in frustration over determining who was responsible and thus ultimately accountable. This has led some to ask whether there should be greater accountability of senior public servants, most notably deputy ministers, before parliamentary committees. Opinions on this issue are divided, and the government has consistently defended the traditional understanding of accountability.

This paper seeks to clarify the debate surrounding the accountability of deputy ministers before parliamentary committees. It begins by presenting the traditional understanding of ministerial and deputy ministerial accountability as presented by the Privy Council Office.⁽¹⁾ It then discusses various recommendations for change that have been made over the past 30 years, including the adoption of the accounting officer model employed in the United Kingdom. The possibility of making changes to the accountability of deputy ministers has generated a lot of debate, so a brief discussion of the arguments for and against is presented. The paper concludes with a look at possible future developments.

(1) See: Privy Council Office, *Responsibility in the Constitution*, 1977, reissued in 1993; *A Guide for Ministers and Secretaries of State*, 2002; *Guidance for Deputy Ministers*, 2003; and *Governing Responsibly: A Guide for Ministers and Ministers of State*, 2004.

MINISTERIAL ACCOUNTABILITY

At the core of Canada's parliamentary system is the constitutional convention and practice of ministerial accountability. Ministers of the Crown are responsible and accountable to Parliament collectively, as part of Cabinet, and individually, as minister in charge of a department. This convention arises out of the democratic principle that elected officials should be held accountable for the functioning of the government.

The Prime Minister appoints ministers and assigns specific duties to them. Parliament also confers statutory powers on ministers, who are thereby individually responsible to Parliament and the Prime Minister for the exercise of authority given to them. They are responsible for their own actions and those of their department. If errors or wrongdoings are committed by officials under their direction, ministers are responsible for promptly taking the necessary remedial steps and for providing assurances to Parliament that appropriate corrective action has been taken.

Accountability is the means of enforcing responsibility. Ministers must provide an account to Parliament of how their responsibilities have been carried out; depending on the circumstances, they must accept personal responsibility for problems that could have been avoided if appropriate action had been taken. Whether a minister has acted appropriately is a matter to be judged by Parliament. The Prime Minister may reaffirm support for a minister or ask for his or her resignation.

Answerability refers to the duty to inform and explain, but does not include the potential personal consequences that are part of accountability. For example, ministers are answerable for actions taken by non-departmental bodies and agencies within their portfolio, but they are not accountable for actions over which they do not have authority.

DEPUTY MINISTERIAL ACCOUNTABILITY

Deputy ministers support ministers by providing impartial policy advice, effective departmental management, and fulfilment of authorities delegated to them by ministers.⁽²⁾

(2) Deputy ministers are empowered to act on behalf of their minister by subsection 24(2) of the *Interpretation Act*.

Certain provisions of the *Financial Administration Act*,⁽³⁾ the *Public Service Employment Act*, and the *Official Languages Act* assign some powers directly to the deputy ministers.

Deputy ministers are accountable to their ministers, and to the Prime Minister through the Clerk of the Privy Council.⁽⁴⁾ Deputy ministers are also accountable to the Public Service Commission and the Treasury Board for authorities directly delegated or assigned to them relating to financial and human resource management.⁽⁵⁾

One of the deputy minister's fundamental responsibilities is to support the minister's accountability to Parliament. Deputy ministers and other departmental officials appear before parliamentary committees *on behalf of* their minister by answering questions and providing information, but they explain rather than defend or debate policies. Public servants do not have a public voice, or identity, distinct from their minister; they are anonymous.

In cases of unresolved disagreements between the deputy minister and his or her minister regarding the operations of the department, the deputy minister is advised to discuss the matter with the Clerk of the Privy Council.

RECOMMENDATIONS FOR CHANGE

This traditional understanding of the respective accountability of ministers and deputy ministers has not been universally accepted. In fact, there have been numerous recommendations for changes that would make deputy ministers more accountable before parliamentary committees.

In its 1979 report, the Royal Commission on Financial Management and Accountability (Lambert Commission) observed that the context in which the traditional convention of ministerial responsibility was formulated had changed. The heavy demands placed on ministers, and their numerous responsibilities, make it difficult for them to function as

(3) Sections 31(1), 11(3), 32(2), 34, and 62 of the *Financial Administration Act* assign specific responsibilities to deputy ministers: preparing a division of an appropriation included in the Estimates; ensuring an adequate system of control; establishing procedures and maintaining records respecting the control of financial commitments; providing the required certification to authorize any payment; and maintaining adequate records in relation to public property.

(4) Deputy ministers are appointed by the Governor in Council on the recommendation of the Prime Minister.

(5) The Treasury Board provides deputy ministers with a list of management expectations in its *Management Accountability Framework*.

the only link between Parliament and the bureaucracy. The growth and complexity of departmental business means that additional measures are needed to ensure that departmental officials are fulfilling their responsibilities and being held accountable for performance. However, the Commission observed that “deputy heads are not regularly held accountable in a systematic or coherent way for program management and departmental administration. It is essential that the authority of deputies with respect to administration be clearly prescribed, and that they be held accountable for that administration.”⁽⁶⁾ Consequently, the Commission recommended that “the deputy minister as chief administrative officer account for his performance of specific delegated or assigned duties before the parliamentary committee responsible for the scrutiny of government expenditures, the Public Accounts Committee.”⁽⁷⁾

In 1985, the Special Committee on Reform of the House of Commons (McGrath Committee) stated that: “The doctrine of ministerial accountability undermines the potential for genuine accountability on the part of the person that ought to be accountable – the senior officer of the department.”⁽⁸⁾ The Committee said it heard many arguments favouring the establishment of a new doctrine of deputy ministerial responsibility relating to administration. It called for deputy ministers to be accountable before parliamentary committees for the administration of their departments.

In May 2005, the House of Commons Standing Committee on Public Accounts recommended: “that deputy ministers be designated as accounting officers with responsibilities similar to those held by accounting officers in the United Kingdom”; as such, deputy ministers should be held to account before the Committee.⁽⁹⁾

The federal government has continually resisted making any changes to the accountability of deputy ministers before Parliament. In its 1977 submission to the Lambert Commission, the government concluded: “The attempt . . . to identify discrete areas of official accountability to Parliament would likely result in the further blurring of lines of accountability,

(6) Royal Commission on Financial Management and Accountability (Allen Thomas Lambert, Commissioner), *Final Report*, Ottawa, March 1979, p. 189.

(7) *Ibid.*, p. 374.

(8) Special Committee on Reform of the House of Commons (the Hon. James McGrath, Chairman), *Third Report*, Ottawa, 1985, p. 21.

(9) House of Commons Standing Committee on Public Accounts, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*, 10th Report, Ottawa, May 2005, http://www.parl.gc.ca/infocomdoc/38/1/parlbus/commbus/house/PACP/report/RP1812721/PACP_Rpt10/PACP_Rpt10-e.pdf.

weakening the ability of the House to hold the minister responsible when it chooses for matters falling under his or her authority.”⁽¹⁰⁾ In its response to the Public Accounts Committee, the government said that there is no ambiguity in the current system: ministers are responsible and accountable to Parliament for the management of their departments, and deputy ministers are accountable to their ministers and to the Prime Minister.⁽¹¹⁾ The government also argued that the fact that certain powers are given to deputy ministers by statute does not mean that Parliament should oversee compliance.

ACCOUNTING OFFICERS IN THE UNITED KINGDOM

Some see the adoption of the British practice of the accounting officer as a way of instituting greater accountability of deputy ministers before parliamentary committees.⁽¹²⁾ It is likely that the Lambert Commission and the McGrath Committee had the accounting officer model in mind when discussing the need for greater deputy ministerial accountability, and the Public Accounts Committee specifically mentioned the accounting officer model.

In the United Kingdom, a department’s accounting officer, usually the permanent secretary (the equivalent of the deputy minister), is personally accountable before the Public Accounts Committee for financial regularity, propriety and value for money within the department. The accounting officer has personal responsibility for the keeping of proper accounts, prudent and economical administration, the avoidance of waste and extravagance, and the efficient and effective use of all the available resources.⁽¹³⁾

In the case of disagreement between the minister and the accounting officer, the accounting officer should set out his or her objections in writing. The minister may nonetheless proceed, but the accounting officer may seek written instruction to take the action. The correspondence would then be sent to the Treasury and the Comptroller and Auditor General. If the accounting officer had obtained written direction from the minister, the Committee would recognize that the accounting officer bears no personal responsibility for a questionable action.

(10) Privy Council Office (1977), Chapter VII.

(11) Treasury Board Secretariat, *Government Response to the 10th Report of the Standing Committee on Public Accounts*, August 2005, http://www.tbs-sct.gc.ca/report/gr-rg/2005/0817_e.asp.

(12) C. E. S. Franks, “Responsibility, Accountability, and the Sponsorship Affair,” *Canadian Parliamentary Review*, Vol. 27, No. 3, Autumn 2004, pp. 16-18, <http://www.parl.gc.ca/infoparl/english/issue.htm?param=162&art=1105>.

(13) Information on the accounting officer came from the United Kingdom Treasury office’s Web site at: http://www.government-accounting.gov.uk/current/content/ga_04_1.htm.

FOR AND AGAINST

The possibility of making changes to the accountability of deputy ministers and their relationship to Parliament has generated strong debate, both for and against.

Those who support change sometimes argue that it would merely be a formalization of current practice and that it would clarify who is responsible for what, since parliamentary committees already try to hold deputy ministers to account.⁽¹⁴⁾ Also, since certain powers are specifically delegated to deputy ministers, such as through the *Financial Administration Act*, they should be accountable before parliamentary committees in their own right for those powers, rather than always appearing on behalf of their minister.⁽¹⁵⁾ Deputy ministers, like accounting officers in the United Kingdom, could be called *before* the Public Accounts Committee to account for their exercise of responsibilities, though the minister would still be accountable *to* Parliament. Lastly, it is argued that the consequences of maladministration, such as occurred with the sponsorship program, can undermine public trust and confidence in our system of parliamentary government. Adopting a system like the United Kingdom's accounting officer model would help to strengthen financial management and deter abuse.⁽¹⁶⁾

Those who argue against change say that the doctrine of ministerial accountability, whereby ministers are accountable to Parliament and departmental officials appear on behalf of their minister, must be maintained because our system is based on the accountability of elected officials.⁽¹⁷⁾ They claim that there is not much difference between the British and Canadian versions of accountability, since deputy ministers in Canada do appear before parliamentary committees to provide answers about the administration of their department. Any attempt to institute formal and direct accountability of officials to Parliament would divide the responsibilities of ministers and blur the lines of accountability. Some authors believe that altering the accountability of deputy ministers is based on an unrealistic assumption about the possibility of

(14) Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform*, Canada School for Public Service, Ottawa, 2005, http://www.myschool-monecole.gc.ca/Research/publications/pdfs/p131_e.pdf.

(15) C. E. S. Franks, "Ministerial and Deputy Ministerial Responsibility and Accountability in Canada," Submission to the House of Commons Standing Committee on Public Accounts, 11 January 2005.

(16) Franks (2004), pp. 16-18.

(17) James R. Mitchell and Sharon L. Sutherland, "Relations between Politicians and Public Servants," in Mohamed Charih and Arthur Daniels, eds., *New Public Management and Public Administration in Canada*, Institute of Public Administration of Canada, Toronto, 1997.

separating policy from administration.⁽¹⁸⁾ Another often repeated concern is that the accountability of public servants before parliamentary committees would remove the anonymity of senior officials by exposing them to potentially partisan attacks, and thereby politicize the public service.⁽¹⁹⁾ Lastly, it is argued that if deputy ministers were to regularly question decisions of their ministers by asking for directions in writing, it could undermine the trust that is essential to an effective relationship between ministers and deputy ministers.⁽²⁰⁾

FUTURE DEVELOPMENTS

In its October 2005 *Review of the Responsibilities and Accountabilities of Ministers*, the federal government, under the Liberal Party of Canada, reiterated its defence of the traditional understanding of accountability, while committing to make some changes. For example, the government was prepared to amend the *Financial Administration Act* to give more explicit statutory authority to the deputy minister for management responsibilities, under the minister, including authority to sign the accounts.⁽²¹⁾

The Conservative Party of Canada, however, promised in its election platform to make deputy ministers the accounting officer for their department and to require that ministers provide written instructions to deputy ministers in the case of disagreement; those instructions would be shared with the Auditor General and Comptroller General.⁽²²⁾ As a result of the Conservative electoral victory of 23 January, these changes are expected to be part of a proposed *Federal Accountability Act*.

The Commission of Inquiry into the Sponsorship Program and Advertising Activities (the Gomery Commission) has also recommended, in its second report, that the government should declare that deputy ministers are accountable in their own right for their statutory and delegated responsibilities before the Public Accounts Committee. The Commission has recommended that a formal process should be established whereby a minister could overrule

(18) Sharon L. Sutherland, "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem," *Canadian Journal of Political Science*, March 1991, pp. 91-120.

(19) Gordon Osbaldeston, *Keeping Deputy Ministers Accountable*, McGraw-Hill Ryerson, Toronto, 1989.

(20) Aucoin and Jarvis (2005).

(21) President of the Treasury Board, "Management in the Government of Canada – A Commitment to Continuous Improvement," Discussion Paper, October 2005, p. 9.

(22) Conservative Party of Canada, *Stand Up for Canada*, December 2005, p. 13, <http://www.conservative.ca/media/20060113-Platform.pdf>.

a deputy minister's objection to a proposed course of action, but the minister's decision should be recorded in correspondence and forwarded to the Comptroller General and made available to the Auditor General.⁽²³⁾ These recommendations may serve to enhance support for the approach anticipated from the new government.

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(23) Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability – Recommendations*, February 2006, p. 200,
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