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# Public Accountability in a Minority Government

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by Henry E. McCandless

*Minority governments provide parliamentarians with a better opportunity than majority governments to hold the executive effectively to account. This article argues that the government will no longer be able to rely on its majority in parliament to avoid adequate answering for its actions. Nor will it be able to argue that that accountability is too complex for Members of Parliament or that citizens do not expect anything beyond the existing ritualized processes in the House of Commons.*

In their study on accountability Patricia Day and Rudolph Klein defined it as “a tradition of political thought which sees the defining characteristic of democracy as stemming not merely from the election of those who are given delegated power to run society’s affairs ... but from their continuing obligation to explain and justify their conduct in public.”<sup>1</sup>

Explaining fully and fairly is implicit. In a minority government, “accountable government” can now mean something — but only if parliamentarians wish to understand what public accountability means and does not mean, and they see that holding to account is fully possible. If the combined opposition members require adequate public accountings from the executive government they must be given — unless the Prime Minister feels comfortable going back to the polls, saying, in effect, “I wish to dissolve Parliament and cause another election because I do not see the need for ministers of the Crown

to meet a standard of public answering that Canadians have the right to see met.”

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## The Duty to Hold to Account

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Accountability, as the obligation to answer, flows automatically from responsibility, the obligation to act. Public accountability is the obligation to explain fully, fairly and publicly, before and after the fact, how responsibilities that affect the public in important ways are being carried out.<sup>2</sup> This means explaining before the fact intentions and the reasoning for them, and the performance standards intended for the discharge of the responsibilities. After the fact it means explaining results, as the accountable see them, and the learning gained and how it was applied.

Holding to account means exacting and validating the answering that is needed. It is critical for two reasons. First, it gives elected representatives and citizens information they would not otherwise have that helps them to make sensible decisions. George Washington put it succinctly two centuries ago: “I am sure the mass of Citizens in these United States mean well, and I firmly believe they will always act well, whenever they can obtain a right understanding of matters....” Holding to account is not an attempt to straightjacket the cut and thrust of politics or ignore the legitimacy of competing political aims. It is simply a nonpartisan discipline that requires those with important responsibilities to explain publicly and

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Henry E. McCandless, MBA, CA is the author of *A Citizen’s Guide to Public Accountability: Changing the Relationship Between Citizens and Authorities* (Trafford, 2002), and is the General Convenor of the Citizens’ Circle for Accountability ([www.accountabilitycircle.org](http://www.accountabilitycircle.org)). From 1978 to 1996 he was a Principal in the Office of the Auditor General of Canada, serving for part of that time as Parliamentary Liaison Officer for Auditors General James Macdonell and Kenneth Dye. He has written extensively on public accountability and on holding to account.

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honestly their intentions and actions. Access to information requests are no substitute.

The second reason for holding to account is equally important. It imposes a self-regulating influence on those legitimately asked to account. People required to report publicly and adequately on their responsibilities will want to say something praiseworthy. Since what they say about their intentions and results will be subject to scrutiny and public validation by elected representatives and knowledgeable stakeholder organizations, exposed lying brings high personal cost. In the parliamentary context, as elsewhere, lying can fairly be defined as any intentionally deceptive message that is stated<sup>3</sup>. Holding effectively to account causes intentions leading to harm or unfairness to be exposed. Thus exposed, they tend to self-destruct.

Since accountability is nonpartisan, it cannot be labelled a political policy initiative to be defeated. Members of Parliament have always had the duty to hold the executive government fairly to account, but in today's world they must recognize that they are also publicly accountable themselves for their diligence in their scrutiny and control roles, and for their intentions in interventions affecting fairness in society. Moreover, once citizens understand the importance to them of adequate public answering from authorities, they will give no quarter to governments that do not account to a reasonable standard of public answering.

As things stand, we see statutory annual financial reporting from governments that is not the basis for legislators to make decisions from among alternatives, and broad statements of government program intentions through the Estimates processes. But we cannot expect the intentions statements, reasoning and implications to be diligently assessed when the government has a majority in the legislature and controls the decision-making of all review committees.

The task for legislators is to hold to account effectively. An opposition party with only a single member can publicly ask responsible ministers for adequate accountings, and pursue those questions until the media take notice and some kind of response is forced. The moment that happens, the answering can be publicly validated for fairness and adequacy by knowledgeable organizations related to the issue or issues, and the self-regulating influence kicks in. But the right accountability questions have to be asked. With a majority government, a vote of confidence on the government's refusal to answer adequately for its responsibilities would obviously fail.

To the extent that the legislature allows the executive government to avoid accounting adequately, auditors general are forced to do government's reporting job for it.

They do this by assessing government's performance direct, and reporting to the legislature failures and weaknesses. But, like access to information requests, direct audit covers only small parts of a government's responsibilities. And without reasonable answering standards for government, the benefit of the self-regulating influence is not achieved.

Elected representatives cannot pass the accountability buck to their legislative auditors. Auditors general serve the accountability relationship between government and the legislature, but stand outside it. Their fundamental task is to act for the legislature in professionally validating (attesting to) government's reporting on intended and actual use of public money. But since public accountability is politically neutral, their task is also to propose to the legislature the standards for government's reporting for its responsibilities before and after the fact that citizens are entitled to see met. It is then up to the legislature to install in the law reasonable standards for full and fair government answering, and to act to ensure that they are met.

While procedural reforms to give backbenchers more power have been proposed and some have been implemented, accountability and holding to account have not progressed. In a minority government situation, the focus shifts from MPs asking rhetorical questions and shouting at each other across the floor of the House to identifying and empowering those MPs who will work effectively with members of other parties. But collaboration needed to make government work does not replace the need for formal and adequate public answering and the task of exacting it.

### **Accountability Issues in Parliament**

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Accountability standards are needed in three key areas of parliamentary scrutiny: management control within the executive government, proposed government policy and regulations, and the passage of legislation. There are of course other accountability areas, for example the management of both houses of Parliament, and all can be encompassed by a federal Government Accountability Act.

*Accountability for management control in government.* In its simplest terms, management control means ensuring that what should happen does happen, and that what should not happen, does not. However, team members of an early 1990s Auditor General study in management control in the federal government were told by a seasoned MP that so long as backbench MPs felt impotent, they could not be expected to attach importance to the issue of management control in government. But much has happened since then that should cause MPs to

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understand what constitutes reasonable standards of management control at the minister and deputy minister levels. In recent years federal and provincial executive government failures in management control have produced national disgraces.

Tens of thousands of Canadians had their lives ended, truncated or wrecked by hepatitis C and HIV Aids in the early 1980s because the federal government failed to regulate (that is, control for safety) the Canadian Red Cross Society that was distributing lethally-contaminated blood and blood products. The federal executive government had both the duty and legal power to regulate the Red Cross for safety. Despite the fact that it was clear by late 1983 that there were feasible tests for detecting hepatitis C in transfused blood, in 1998 every government member in attendance in the House of Commons voted against compensation for hepatitis C victims harmed before 1986 — even though Justice Horace Krever had recommended it in his inquiry report. Government attention to creating a credible replacement national blood agency did not include standards for its public answering for blood safety.

In 1992, twenty-six Nova Scotia miners were killed in the Westray coal mine, described by a UK mining consultant in the inquiry as an “absolutely unbelievable disgrace.” The responsible ministers of the Crown had failed to do their statutory control duty for workplace safety. Then came Walkerton in Ontario.

In the federal \$1 billion jobs-creation spending by Human Resources Development Canada, labelled in 1999-2000 as a “scandal,” the responsible ministers and deputy ministers failed to install the degree of management control that ensured that the money would be properly spent and represent value for money. Lack of federal ministerial public accountability for control also allowed the federal sponsorship spending disgrace that became a major issue in the 2004 federal election campaign, triggered by the Auditor General’s February 2004 report on the spending.

A common denominator in all these cases was the failure of the responsible ministers to report to the legislatures their management control standards and why they thought their diligence standards were adequate. The needed public accountings would have included the extent to which they had informed themselves for their control duties. Thus the public did not learn the risks to lives and public money in time to act, and the failure of the legislatures to require the responsible ministers to account meant that the self-regulating influence of public answering was lost. The legislators then allowed the ministers after-the-fact “plausible denial” (“I didn’t know.”)

Deputy ministers have the same obligation to answer for departmental control responsibilities at their level, but they too were not asked to explain what they thought their control responsibilities were and whether they thought they were discharging them. If ministers do not know what their management control responsibilities are, it is the job of their deputies to tell them.

If the deputies do not know, or do not know their own commonsense control responsibilities, it is their job to find out. Management control responsibility and accountability in government has been ignored in recent years in part because civil servants have been defining control as “command control,” and therefore something out-dated. Preaching “best practices” does not ask anyone to meet a specific standard.

A Public Accounts Committee meeting twenty years ago offered a good example of holding to account. Louis Desmarais, the Committee’s Vice-Chairman, had been the head of a major Canadian corporation. He asked the newly-appointed deputy minister for the Canadian International Development Agency, “What would you say are your most important management problems, and what are you doing about them?” The question is equally applicable to the responsible minister because it deals with self-informing diligence (to prevent plausible denial), ability to identify and rank problems, and diligence in management control. The value of the Desmarais question is not just that it was a nifty question. An official’s response can be audited for its fairness and completeness by those who know the organization, including the Auditor General.

If citizens do not trust their institutions, society cannot work properly. In view of the recent control failures in the federal government, it is reasonable to expect opposition parties in Parliament to exact from the executive government what the Prime Minister thinks are the appropriate control and answering standards at the minister and deputy levels, and assess them. The control and reporting standards that result should then be included in a government accountability Bill. The legislative review process would include the Auditor General’s view of the adequacy of the standards proposed to Parliament, and legislating them would allow the Auditor General to audit compliance with Parliament’s standards.

**Accountability for policy intentions.** It is a matter of common fairness that those whose intentions would affect the public in important ways should publicly explain their intentions and their reasoning before the fact.

Citizens can then act to commend, alter or halt the intentions. Thus for intended government policies, the responsible ministers should adequately explain to



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Parliament whose needs or wants they intend to honour, and whose they do not. This can be done through a standard-form “equity statement” that sets out for debate the intended fairness trade-offs. Ministers’ accountings would include:

- who would benefit from what they intend, how, and why they should benefit, and who would bear what costs and risks, and why, immediately and in the longer term
- whether their intended action complies with their mandate, the intent of the law and, whenever applicable, the precautionary principle
- the extent to which they have informed themselves for their responsibilities and decisions
- their planned achievement and intended performance standards
- who would answer publicly, for what responsibilities, if their action or authorization intentions were to go ahead

After the fact, it is reasonable that the responsible ministers explain to Parliament:

- the results and impacts from their effort, as they see them, and why they were different from those intended, if that is the case
- the learning they gained and how they applied it

Again, it is not difficult in minority governments for legislators to collectively exact this public accounting to produce both the needed public information and the self-regulating benefit. If MPs must collaborate on acceptable policy, they can certainly collaborate on nonpartisan accountability obligations. Public interest organizations related to the policy issues can then go beyond their usual forms of alerts to citizens and publicly validate government’s assertions made before and after the fact.

Because accountability is nonpartisan, the Auditor General does not express an opinion on the merits of political policy. But she or he can validate important government assertions to the extent that commonsense interpretation of the AG’s statutory mandate suggests.

As with control responsibilities, the duty of ministers to meet a reasonable standard of answering in their public accounting of intended policy should be legislated in an accountability Act.

**Accountability provisions in legislation.** Existing legislation usually lays out powers, responsibilities and restrictions for specific people and types of people. These all have to do with the obligation to act. The requirement

to answer publicly for responsibilities, and to a standard, has been missing in the law. The answering requirements that do exist in legislation are usually confined to after-the-fact financial statements or other types of reports on activity (which doesn’t mean accomplishment) that say nothing about fairness intentions and results.

An umbrella Government Accountability Act can require that each Bill introduced into Parliament, whether for safety regulation, policy, justice, environmental stewardship or administrative tasks that affect the public in important ways will contain a standard accountability reporting section.

The heading can be as simple as “Public Accountabilities.” The section would set out who is to answer publicly, how, and when, for the discharge of the responsibilities explicit or implicit in the Bill. The same public accountability section would also be standard in regulations under the Acts.

For example, those given important statutory responsibilities should regularly report whether, in their view, they have met reasonable performance standards. These would include informing themselves for their decision-making, to a reasonable standard of self-informing. They should also report the performance standards for those they oversee, and report whether these are being met.

Whistleblower protection legislation will be ineffective if it does not require the responsible ministers and deputies to publicly assert whether their processes for protection and prevention of retribution actually work and why, and if the legislation does not require independent validation of these assertions.

A duty that can be reasonably expected of the Senate of Canada is to specifically assess the adequacy of the accountability sections in Bills coming before it. The happy fact of public accountability as a society imperative is that it is politically neutral and does not tell people how to do their jobs. Thus, in my view, a Governor General could withhold consent of a Bill that clearly affects the public in important ways but lacks the accountability provision stating who will answer to the public, and to what standard, for the discharge of the powers and duties the Act would confer.

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## Summary

MPs in the new parliament can work together on the important issue of accountability, and legislate during the parliament a comprehensive federal Government Accountability Act to buttress the public accountability standards they agree on. The issue of the public account-

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ability of legislators themselves is beyond the scope of this article, but is an issue that must also be addressed.

Having adequate and audited public answering from authorities is a basic human right. It belongs in our constitution and in the UN Declaration of Human Rights. But as a current practical first step, our own elected representatives in all jurisdictions can install in law the public answering obligation of authorities and the basic standards for their accountability reporting. There is no reason why Canada cannot be a model of effective public accountability for the world. Moreover, Canada could show how the UN could take on the important role of developing reporting standards for nations to publicly account to each other for their intentions and reasoning. The UN could also take on the role of validating the reporting, to the extent possible. This would help install a

self-regulating influence for greater fairness across the planet.

#### Notes

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1. Patricia Day and Rudolf Klein, *Accountabilities: Five Public Services*, London, Tavistock, 1987, pp.6-7.
2. The 1975 Report of the Independent Review Committee on the Mandate of the Auditor General of Canada defined accountability as the obligation to answer for a responsibility conferred. It therefore means reporting on the discharge of responsibilities, and to be useful in a parliamentary context it requires explaining both intentions and results.
3. Sissella Bok, *Lying: Moral Choice in Public and Private Life*, Vintage Books 1989 (Pantheon 1978).