
The Appearance of Accounting Officers before the Public Accounts Committee

by Hon. Shawn Murphy, MP

In March 2007 the Public Accounts Committee adopted a Protocol for the Appearance of Accounting Officers as witnesses before the Standing Committee on Public Accounts. This article looks at the proposed protocol and the subsequent debate about its implementation.



In a parliamentary democracy, as opposed to a presidential system, the political executive receives its power to govern from the legislature. “The government needs the approval of Parliament to legitimate its policies and activities, particularly for the expenditure of public funds. In return, the Prime Minister and Cabinet must hold themselves accountable to Parliament, and may continue to govern only as long as they retain

the ‘confidence’ of Parliament Thus, while Parliament gives the executive the authority to govern, it also serves as a check on the absolute or irresponsible use of government power.”¹

In the introduction to his second, and final, report based on his review of the Sponsorship Program, Justice John Gomery wrote that he had identified a “key failure” in management of the Program: the “failure of Parliament to fulfill its traditional and historic role as watchdog of spending by the executive branch of Government.” This failure had its origins in the paucity of information given to Parliament about the Program and in

“The imbalance that has developed between the power of the executive branch of the Government (in this case represented by the Prime Minister’s Office) and parliamentary institutions such as the Public Accounts Committee, which should be holding the executive to account for its administration of the public purse.”²

To remedy this imbalance, Justice Gomery, proposed several measures including two that would strengthen the capacity of committees of the House of Commons in general and the Standing Committee on Public Accounts in particular.³ Furthermore, he coupled these proposals with two others that would “explicitly acknowledge and declare that Deputy Ministers and senior public servants who have statutory authority and delegated responsibility are accountable in their own right for their statutory and delegated responsibilities before the Public Accounts Committee” (Recommendation 4) and would create a mechanism that would “resolve disputes between deputies and their ministers in areas in which deputies hold statutory authority,” – a measure having the additional benefit of confirming the ultimate responsibility of minister and preserving ministerial accountability (recommendation 5).

Measures very similar to Judge Gomery’s latter two recommendations had been called for by the Standing Committee on Public Accounts in its own report on the Sponsorship Program – a report that the Committee adopted unanimously during the minority 38th Parliament and tabled in the House of Commons almost one year earlier in June 2005.⁴

In February 2006, the Government tabled bill C-2, the *Federal Accountability Act* which (among other things),

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proposed to amend the *Financial Administration Act* so as to designate a senior official in each department and crown agency (most probably the deputy minister or the chief executive officer) as an accounting officer. This bill received Royal Assent in December that same year. The *Financial Administration Act* is thus now amended by the addition of a new section 16.4 that provides that accounting officers are accountable, within the doctrine of ministerial accountability before the appropriate committees of the Senate and House of Commons to answer questions related to the following management responsibilities:

- the measures taken to organize the resources of the department to deliver departmental programs in compliance with government policies and procedures;
- the measures taken to maintain effective systems of internal control in the department;
- the signing of the accounts that are required for preparation of the Public Accounts (pursuant to section 64 of the FAA); and
- the performance of other specific duties assigned to him or her by the FAA or any other act in relation to the administration of the department.

Furthermore, the *Financial Administration Act* also now includes a conflict-resolution mechanism for addressing situations where an accounting officer and his or her minister disagree on the interpretation or application of a Treasury Board policy, directive or standard:

- the accounting officer shall seek written guidance from the Secretary of the Treasury Board;
- if, after the Secretary of the Treasury Board has provided guidance in writing, the matter remains unresolved, the Minister shall seek a decision from the Treasury Board; and
- this decision would be shared with the Auditor General as a confidence of the Queen's Privy Council for Canada.

The June, 2005 report of the Public Accounts Committee report clearly demonstrated that Members of Parliament from all parties had found that the doctrine of ministerial accountability, as traditionally interpreted by the Privy Council Office, was no longer serving Parliament or Canadians well and that change was required.

The Committee was of the opinion that the roles and responsibilities of ministers and deputy ministers required clarification in a way that would ensure that both ministers and deputy ministers would know exactly where they stood – and who would be responsible, and thus accountable, for what. Seen from this perspective,

the doctrine of ministerial accountability needed – not to be rejected – but to be clarified and thus strengthened. This is what the adoption of an accounting officer regime would do.

In his Report, Justice Gomery wrote of a “chain of accountability” composed of deputy ministers, the Public Accounts Committee, the Treasury Board, and the Office of the Auditor General. Together, the “links” in this chain should “provide a coherent system for the control of public expenditures,” and in such a way that the “roles and actions of the participants complement and reinforce each other.”⁵ Justice Gomery observed, however, that this was not the case. Two of the links in the chain in particular – the Public Accounts Committee and Treasury Board – were weak when they ought to be “if not amicable, then at least collaborative partners to ensure that they achieve their common goal of probity in financial management.”⁶ “The Treasury Board and the Public Accounts Committee must,” he concluded “engage in dialogue, not confrontation.”⁷

As a Member and Chair of the Public Accounts Committee, I agree fully with these particular recommendations of the Gomery report, and although the subsequent amendments in the *Federal Accountability Act* were modified slightly from the Gomery recommendations, I do support those particular provisions of the *Federal Accountability Act*.

Once the *Federal Accountability Act* was proclaimed, the Public Accounts Committee determined that a protocol was required to support deputies and agency heads in their new role of accounting officers. In this regard the Committee sought and received the assistance of Dr. Ned Franks, Professor Emeritus at the Faculty of Political Science, Queens University. The Committee also attempted to engage the Treasury Board Secretariat in the preparation of this protocol.

Dr. Franks' words struck a chord among Committee Members, who realized that:

- Apart from guidance given by the Privy Council Office, there were no instructions from Parliament itself to deputy ministers and other public servants to assist them during appearances before committees of the House of Commons;
- Public service witnesses before the Public Accounts Committee were sometimes uncertain about what was expected of them and, on occasion, worried that they might be subject to unreasonable treatment;
- The accounting officer designation was new and untested before parliamentary committees in general and the PAC in particular; and
- If the Committee did not step forward and initiate the development of a protocol, or set of rules, to govern the

appearance of accounting officers before it, nothing was likely to happen.

After a number of hearings, an acceptable protocol was prepared which spoke to the concerns of Members of Parliament and to those held by senior public servants. It made clear that Committee hearings with accounting officers would stay firmly within the limits of accounting officer responsibilities as set forth in the amendments made to the *Financial Administration Act*. The Protocol instructs the Chair of the PAC to intervene if accounting officers are being subjected to areas of inquiry unrelated to their responsibilities and provides guidance to Committee Members on the role that they were expected to play. The Protocol also specifies, for the benefit of all, that the role of the Public Accounts Committee is not to critique policy but to concentrate on issues of financial management, control, and accountability. The Committee thus sought to allay, through the Protocol, any misgivings or fears that accounting officers might have in their appearances before it.

On the other hand, the Protocol was equally clear that accounting officers hold certain statutory and delegated authorities in their own right and that they – not their ministers – could expect the Committee to hold them – not their ministers – accountable before it for the use of these authorities (which are largely set forth in the *Financial Administration Act*, but are also found in the *Public Service Employment Act* and the *Official Languages Act*).⁸ Furthermore, the Protocol makes it plain that the Committee expects that even if an accounting officer is transferred to another department or agency of government, or retires, he or she can still be held for account before the Committee for decisions taken under his or her watch.

To sum up, the Protocol reflects a balance between the responsibility of the Committee and its Members to hold accounting officers to account before them for their financial management responsibilities and the assurances needed by accounting officers that they will not be subject to questions of policy, which of course is the sole responsibility of the minister.

Regrettably, however, the Committee's plea for a cooperative approach with Treasury Board Secretariat appears to have, at least for the moment, fallen on deaf ears. The Committee did not hear back from Treasury Board Secretariat. Instead, Privy Council Office posted its own version of a protocol in the form of guidance for accounting officers on its website. Despite the wording in the *Federal Accountability Act*, this document maintains the PCO traditional position that deputy ministers and accounting officers appear before parliamentary committees exclusively in support of their ministers' accountability,

period. If this interpretation is correct, then the question that begs a response is what was the purpose of enacting Section 16.1 of the *Federal Accountability Act*?

This leaves me wondering how a minister can be held accountable before a committee for responsibilities he or she does not have. The PCO document also reflects an odd and somewhat troubling belief that Privy Council Office – and not parliamentarians – determine the rules and procedures for parliamentary committee hearings. These decisions are for Parliament and Parliament alone.

On May 15th, the House of Commons laid the matter to rest. A motion concurring in the protocol of the committee was passed and hence the protocol has the same force and effect as a standing order of the House of Commons. Any accountability officer appearing before the Public Accounts Committee will be bound to follow the rules and protocol established by Parliament, not those established by Government.

Fortunately, despite the actions and protests of both the Privy Council and Treasury Board Secretariat, there are many areas in which both the Privy Council Office document and the Committee's Protocol are in agreement. This offers the prospect that the Committee and the Treasury Board Secretariat can, and hopefully will, continue a dialogue on this issue, one that I consider vitally important to the administration of the Government of Canada.

Notes

1. Robert J. Jackson and Doreen Jackson, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy*, fifth Edition, Prentice-Hall, Scarborough, Ontario, 2001, p. 290
2. Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Recommendations*, Ottawa, February 2005 p. 3.
3. *Ibid.*, recommendations 1 and 3.
4. House of Commons Standing Committee on Public Accounts, 10th report, 37th Parliament, 1st Session.
5. *Restoring Accountability*, p. 114.
6. *Ibid.*, p. 115.
7. *Ibid.*, p. 116.
8. For those who are concerned that this might detract from ministerial accountability, it is worth pointing out that the *Federal Accountability Act* provides a dispute-resolution mechanism that gives the Treasury Board (a Cabinet Committee) the final say in any potential disagreements with their accounting officers in areas of the latter's responsibilities.