The Role of Parliamentary Officers: A Case Study of Two Officers

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Parliament, the ten provincial legislatures and the three territorial legislatures now host more than seventy-five independent or quasi independent parliamentary officers. Many political scientists have argued that the influence of parliamentary officers is a symptom of Parliament's decline. The popularity of these officers with the general public reflects the corrosive cynicism about party politics now pervading the Canadian political culture. This article explores the academic critique through a study of the federal Commissioner of the Environment and Sustainable Development (CESD) and the Environmental Commissioner of Ontario (ECO).

After the 1993 election the Standing Committee on Environment and Sustainable Development recommended the creation of an environmental policy advocate with a broad mandate to promote the greening of Canadian society. Instead the Liberal government accepted the advice of Auditor General Denis Desautels, that the new commissioner should be limited to the auditing of existing environmental programs, and not the advocacy of new policies. Policy advocacy was more appropriately left to MPs.

As an environmental auditor, this new parliamentary officer could logically be housed within the Office of the Auditor General (OAG). Under the Liberal government's amendments to the *Auditor General Act* (C-83), the Auditor General appoints the Commissioner of the Environment and Sustainable Development. The Commissioner monitors how government departments are implementing their sustainable development strategies. The first generation of these strategies had to be tabled in the House of Commons within two years, with regular updates every three years thereafter.

Liberal spokespersons at the time pointed out that lodging the CESD in the office of the Auditor General would enable the Commissioner to draw on the prestige of this senior parliamentary officer. Departments paid attention when they were selected for an audit by the OAG. They would now also have to answer to an external commissioner on whether they were meeting their environmental commitments. The Liberal Minister of the Environment, Sheila Copps, acknowledged that the CESD/OAG would be empowered to embarrass the government over its alleged lack of progress on the environmental file, just as the Auditor General routinely did in other areas of public administration. But this trade-off was more attractive to the government than the Standing Committee's proposal for a high profile parliamentary officer with a mandate to challenge ministers over their reluctance to embrace the sustainable development paradigm.

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The Auditor General on the Role of the CESD

Auditor General Desautels acknowledged that when Parliament first amended the *Auditor General Act* to permit non-financial legislative auditing, legitimate questions were raised about whether the broadened mandate "would draw the Auditor General into policy matters and even into politics and might lead to the Office's questioning of political judgement." Legislative auditing went beyond traditional financial auditing, and there were "no generally accepted standards for reporting non-financial performance." It followed that "there will always be some concern about the Auditor General's crossing the hard-to-define line between management and policy." The *Auditor General Act* left it up to the Auditor General to decide where

the line is, which was not a "fixed" one.[1]

This is the essential background to understanding the OAG's strategic response to its new responsibility for the CESD. Mr. Desautels explicitly defined the parameters of the new CESD's role in terms which protected the integrity of the OAG audit function. C-83 did not provide for the CESD to be a policy advocate, "because this role would require the commissioner to actively advance the principles of sustainable development, while auditors would generally limit themselves to pointing out instances of non-compliance with these principles."[2] Leadership in formulating departmental sustainable development plans, as well as the management systems for monitoring progress in achieving the plans, had to be the responsibility of government departments. The CESD could not get involved at these stages as this would compromise the independence of the subsequent audits.

For Liberal MPs unhappy with their government's retreat from the green agenda promised in the 1993 election campaign, it appeared that sustainable development was now hostage to the Auditor General's conception of the role the Commissioner could assume under responsible government. This was confirmed by the first Commissioner, Brian Emmett, who invoked ministerial responsibility in response to Liberal MPs who urged him to take an aggressive advocacy approach. In his first annual report he reminded MPs that C-83 "respected the traditional lines of ministerial accountability to Parliament."[3] Ministers were responsible for policy choices, while the Commissioner's role was to assist Members in their oversight of how ministers protected the environment and fostered sustainable development.

Crisis

After Johanne Gélinas became Commissioner in 2001 the obvious failure of the sustainable development program became a regular complaint in the CESD's annual reports. The 2002 report began with a reminder that Canada had committed itself to a broad sustainable development agenda at the 1992 Rio Summit and the follow-up 2002 Johannesburg Summit. The lack of progress on a variety of high-profile environmental issues in the years since Rio was pointedly linked to Canada's global reputation for delivering on it commitments. The 2003 report warned that the inability of the federal government to close the gap between its commitments and its actions would pass an increasing burden on to future generations. The 2005 report opened with a proclamation of global environmental decline and ecological collapse. Sustainable development, which promised to be the third great planetary transformation after the agricultural and industrial revolutions, could only be achieved if governments moved citizens and industries down the sustainability path.

The Commissioner's 2006 report on climate change policy was similarly framed in apocalyptic language. She began:

> "Climate change is a global problem with global consequences: The implications are profound...I am more troubled than ever by the federal government's long-standing failure to confront one of the greatest challenges of our time. Our future is at stake."[4]

All levels of government, industry, business, science, academia and civil society groups would have to collaborate to tackle this momentous crisis. The report directly criticized the effectiveness of the Martin government's plan to reduce emissions in the transportation and industrial sectors. It chastised the federal government for having no policy at all on adapting to climate change. And finally, in a clear reference to the Harper Conservatives' lack of enthusiasm for the whole issue, the Commissioner declared: "The current government has announced that Canada cannot realistically meet its Kyoto target. If so, then new targets should take its place."[5]

This report was released in the middle of the uproar over the Conservative government's disavowal of the Kyoto Protocol emissions targets negotiated by the Chrétien government. Climate change had become a paradigmatic example of a policy where lack of progress could not plausibly be blamed on defects in the machinery of policy delivery, but instead reflected fundamental problems of political economy and the distribution of power in Canadian society. Climate change failure reflected the broader unwillingness of the Canadian government to embrace the substance of the sustainable development discourse.

The Conservative government's repudiation of the schedule of emissions reductions it inherited from its predecessor questioned the validity of the Kyoto Protocol itself. It followed that when the Commissioner responded by asking for the adoption of new targets, she was issuing a direct challenge to cabinet.

Had the Commissioner crossed that line between policy and management Auditor General Desautels defined as the limit to the auditor's mandate? For Mr. Desautels, Parliament's reaction was the signal which determined whether an audit had crossed the line. But the CESD was not directly accountable to Parliament – instead she reported to the Auditor General.

In January 2007 Auditor General Fraser dismissed Commissioner Gélinas. Mr. Fraser framed this decision in terms of the 1995 debate over the creation of the CESD. Responsible government imposed limits on what the OAG/CESD could offer parliamentarians. The credibility of the audit function depended on the refusal of the auditor to engage in policy advocacy. There was always pressure from MPs and the environmental community to cross the line, but to do so would violate the 1995 agreement under which the OAG accepted responsibility for the CESD.[6]

The problem for the Auditor General was how to manage this crisis, since resolving it was beyond her jurisdiction. Ultimately this was Parliament's responsibility. It soon became evident that she could not count on the Committee's support for a reconstituted environmental audit function. Following the announcement of Gélinas' departure, the Standing Committee, now controlled by the opposition parties in a minority Parliament, passed a Liberal motion calling on the government to appoint an independent Commissioner with a mandate to be an advocate on environmental and sustainable development issues. As already noted, this had been the first choice of many of the backbenchers who served on the Committee in 1994-95.

In fact, the Standing Committee has never allowed the sustainable development program to drive its agenda. Between 1998 and 2009 the Committee held 503 meetings. Only 33 – less than 10% of the total – were spent discussing the CESD's reports, the role of the office, and sustainable development. Instead, Committee Members anxious to tackle the environmental problems besetting Canadian society have devoted more time to inquiries of their own choosing. For example, in 2003-05 the Committee allocated 44 meetings for inquiries into various aspects of the Kyoto Protocol. The Committee's high-profile pesticides study in 1999-00 covered 37 meetings.

MPs have little incentive to allocate significant amounts of their time to studying the CESD's audits because they do not advance sustainable development in Canadian society. Instead they are about how government departments are supposed to be introducing auditable management systems as the vehicle for their sustainable development strategies. To put it simply, sustainable development is not the governing paradigm in Ottawa because of the executive's failure to incorporate effective management systems into the decision-making process. Instead, the existing economic and ideological structures of Canadian society mean that sustainable development is not going to become the governing paradigm. MPs serving on the Standing Committee have no reason to spend the scarcest of resources at their disposal – time – on an oversight activity offering scant prospects of a meaningful political pay-off.

Renewal

The minority Conservative government now found itself in much the same position as its Liberal predecessor in 1994-95. The government had committed itself to a revival of the sustainable development initiative when the fourth round of departmental sustainable development strategies was tabled in December 2006. Yet at the same time the Conservatives had no intention of permitting this paradigm to drive their own agenda. So the government was receptive when Liberal MP John Godfrey offered a Private Members' Public Bill, C-474, which appeared to reconstitute the sustainable development initiative in terms acceptable to the opposition.

Bill C-474, the *Federal Sustainable Development Act*, was passed by Parliament in June 2008. The cabinet is now required to develop an over-arching sustainable development strategy setting out the terms and conditions for the departmental strategies. A new cabinet committee must oversee the development of this comprehensive strategy. Implementation is to be monitored by a Sustainable Development Office within the Ministry of the Environment. A draft of the strategy must be submitted for comments to an advisory council of stakeholders. Civil servants' performance-based contracts must contain provisions for meeting the targets set out in the federal strategy and departmental strategies.

The *Federal Sustainable Development Act* renews the 1995 settlement between the executive and the OAG/CESD. The Act affirms the symbolic commitment of the federal government to the sustainable development paradigm. For the first time the obligation to plan for sustainable development is formally fixed at the cabinet level. Nevertheless the new Act does not impede the PMO's control over the decision-making process. Direct responsibility for formulating the new federal strategy is assigned to the Minister of the Environment, not a central agency. The Act sets the table for the Ministry of the Environment to become an important central agency but that decision will still be up to the PMO.[7]

At the same time the OAG retains the tools it needs to protect the institutional autonomy of the audit. Its status as the guardian of the CESD's independence is confirmed. The Auditor General will continue

to appoint the Commissioner, not Parliament. The CESD will monitor how departments are meeting the targets set out in their own plans, and as well how the departments are contributing to the targets set out in the Federal Strategy. The new Act does not affect the CESD's existing authority to select departmental programs for auditing – affirming the legitimacy of this process and the role of the CESD as Parliament's environmental auditor.[8]

The Ontario Environmental Commissioner

The Environmental Bill of Rights (EBR) introduced by the NDP government in 1993 was drafted by an independent Task Force which opted for ministerial accountability as the appropriate mechanism for enforcing compliance, but supported by a parliamentary officer, the independent Environmental Commissioner (ECO). According to the Task Force the ECO's reports on the government's performance under the EBR would "provide the objective foundation of information from which accountability would flow."[9] Given the Task Force's conception of the ECO as providing "objective oversight"[10] of how the executive implemented the EBR, it was important that the ECO be selected by the Legislature, not the cabinet. Hence the ECO is appointed by the cabinet on an address of the Legislature for a fixed term of five years, and can be removed from office for cause only with the Legislature's consent. The ECO's budget is set by the Legislature's Board of the Internal Economy and not the cabinet.

The Task Force's report presented the NDP with a political problem. The government had showcased the Task Force, whose members included representatives from corporate business, the legal community, the environmental movement, and the provincial bureaucracy, as a model of corporatist co-operation. But this strategy severely constrained the extent to which the EBR as approved by cabinet could deviate from the Task Force's proposed text. However, the Task Force had avoided the tough question of how ministers would actually be called to account if they declined to comply with the EBR. This posed a credibility issue, as opposition MPPs had little difficulty in detecting the toothlessness of the Commissioner as an enforcement mechanism under the terms of the Act.

The solution was to invoke the "people," and not the Legislature, as the ultimate check on government. According to the NDP, the Commissioner was to be the "voice of the people," monitoring how ministers complied with the EBR.[11] The sanction for ministers flouting the EBR would be negative public opinion. However, the Commissioner would not be vested with any statutory powers for enforcing the people's verdict. Instead, the negative publicity resulting from critical reports should shame the executive into action.

Thus, apart from the prospect of negative censure in the Legislature, ministers face no real consequences for ignoring the EBR's procedures. This was the result of the NDP government's failure to depart from the text provided by the Task Force and consider how to institutionalize its novel conception of the Commissioner as a populist vehicle. Under this populist conception of accountability, the Commissioner displaced the Legislature as the institution immediately responsible for monitoring executive implementation of the EBR. But as a non-elected official the Commissioner has neither the institutional means nor the authority to actively engage popular sentiment in the operation of the executive. Only the Legislature has the democratic legitimacy to bring public opinion to bear on government.

The Role of the Environmental Commissioner

A careful reading of the EBR indicates that the Commissioner was granted discretion for the limited purposes envisioned in the Task Force's report of 1992.

The Commissioner monitors how those ministries covered by the EBR comply with its terms. It is important to note that the government itself decides which ministries and statutes are subject to the EBR. For example, only fourteen ministries (about half of the provincial cabinet) are currently required to post Statements of Environmental Values on the Registry website created under the EBR, and abide by the notice-and-comment rules for new policies. Only nine ministries are required to respond to citizens' Registry applications requesting reviews of existing policies and laws.

The Commissioner reviews how those ministries which are covered handle citizen applications for reviews or for investigations into alleged violations of existing environmental laws; how they respond to comments on proposed new laws and policies posted on the Registry; how ministries develop and apply their Statements of Environmental Values; and finally how ministries react to citizens' use of the legal rights available under the EBR.

Despite the NDP government's invocation of the Commissioner as the "voice of the people," the EBR in fact provides for a limited relationship between the Commissioner and the general public beyond Queen's Park. The Commissioner does connect with the public for the purposes of providing "educational programs about [the] Act to the public" and to assist individuals

who wish to comment on a proposal posted on the Registry website. This is the extent to which the EBR provides a statutory basis for populist campaigns by the Commissioner, an appointed official.

The Commissioner's annual reports to the Legislature must outline how ministries have complied with his requests for information, and as well as how ministries have fulfilled their EBR requirements. Under s. 57(g), the Commissioner may comment in the annual reports on the exercise of ministerial discretion under the EBR, but section 57 clearly indicates that the ECO cannot comment in the annual reports on how ministers exercise authority under statutes not prescribed under the EBR; or comment on the implementation of programs by ministers in charge of ministries not prescribed under the EBR. This follows from the monitoring role prescribed for by the Task Force.[12]

The main springs of government activity are exempted from the EBR. The government's annual budget and the formal economic statements delivered by the Minister of Finance in the Legislature are exempted from the notice-and-comment procedures requiring ministers to post environmentally significant initiatives on the Registry for public comment (s. 33). Further, all legislation, regulations and instruments giving effect to the budget or a financial statement are similarly exempted. Thus, the government is not required to consult with the public via the EBR about any budgetary decisions, which are effected by passage of the budget and budgetary legislation, or approval of ministry spending estimates by the Legislature. All regulations "predominantly financial or administrative in nature" are also excluded from the notice and comment procedures (s. 16(2)).

The above analysis leads to the conclusion that under the terms of the EBR the Commissioner's authority to comment in his annual reports on government spending on the environment, including the financial implications of cabinet priority-setting, is limited. These statutory restrictions reinforce the role for the Commissioner contemplated by the Task Force, as simply a monitor of the fairness and transparency with which ministries comply with the EBR.

Populism and Policy Entrepreneurship

Under Gord Miller the office has moved into open policy advocacy. The Commissioner has framed this activity in terms of a populism purportedly authorized by his status as monitor of the Registry. An example can be found in the controversy over the aggregate extraction industry.

The aggregate extraction industry physically transforms local landscapes, generates significant amounts of pollution, and often conflicts with other land-uses. For these reasons the industry has been a hot political issue in southern Ontario for years. There are thousands of licenced aggregate pits and quarries across the province, as well as many abandoned sites. The impact of the industry on the landscape has stimulated the formation of local citizen groups across Ontario. In 2003 and 2005 two prominent ENGOs filed well-researched applications under the EBR calling for complete overhauls of the existing regulatory framework. In response the Ministry of Natural Resources (MNR) conceded there were problems with the regulation of the industry and undertook to strike an inter-ministerial committee to draft a new policy. However, it declined to take immediate action.

The Commissioner's 2005-06 and 2006-07 annual reports heavily criticized the regulatory status quo. The inter-ministerial committee set up to review existing policy was proceeding too slowly. MNR was wrong to suggest that the land-use planning framework did not privilege the industry over competing land uses. But further, the existing regulatory regime was suffering from a legitimation crisis. The Commissioner reported that:

> "public concerns regarding aggregate operations have escalated over the years, and owners/operators are facing increasing pressure from neighbours to mitigate impacts on the environment and on the community."[13]

Evidence for the "growing public concern" was heightened activity on the Registry, as the public attempted to use the EBR "as a catalyst for reforms."[14] This activity included applications for review and as well "the level and broad scope of commentary" the Ministry had received about its new policy and procedures manual.[15] The ECO also noted that his office often received calls and letters of complaint about the operations of the aggregate extraction industry from the public as well as municipal officials. However, MNR had been slow to respond: this demonstrated "the unreadiness of the ministry to show leadership on this issue."[16] In the 2005-06 report the Commissioner declared that:

> "It is now well past time for MNR to engage the full range of stakeholders in an open discussion of the challenges and the options for policy reform...The ECO urges the Ministry of Natural Resources to give this area of its mandate a high priority in the coming year."[17]

The 2006-07 report called for a comprehensive aggregate resources strategy.

In the course of his narrative of Ministry shortcomings, the Commissioner commented,

> "Unfortunately, there is not much the ECO can do in these situations except to explain the opportunities for public comment and appeal under various laws, including the EBR."[18]

But in fact he did not confine himself to explaining how to use the EBR to the public. Instead the Commissioner launched a broader strategy. The *Toronto Star* published an article by him in January 2005 summarizing the negative impact of the aggregate extraction industry and calling for a comprehensive policy. A riposte from the Aggregate Producers' Association of Ontario subsequently appeared in the newspaper. The Commissioner attended a public meeting in Wellington County organized by opponents of the industry to publicize his views. He was quoted in the press as saying that "Queen's Park was out of touch with the conflict brewing over land use in rural Ontario."[19] In January 2006 he hosted a Round Table on Aggregates, a one-day seminar among stakeholders to discuss the parameters of a possible long-term strategy for aggregates in Ontario.

What is striking about this episode is the Commissioner's unabashed insertion of his office into civil society debates over environmental reform. He appeared to have cast off the institutional mooring of a parliamentary officer to engage directly in policy advocacy aimed squarely at the minister.

The questions which arise when bestowing the authority of popular tribune on any official must include: how is the people's will to be assessed? And further, for what purposes? The Registry may indeed offer an approximate index to the intensity of local feeling about controversial environmental problems. But ministers and MPPs receive public input from a variety of sources and in a number of institutionalized forums. The Registry is only one such source. Moreover, it suffers from a limitation which significantly limits its utility as a tool of governance. The Registry cannot help elected officials assess the public's willingness to accept the trade-offs among policy goals necessary for successful political management.

The ECO and the Ontario Legislature

MPPs regularly pay tribute to the important role the Commissioner plays in holding the executive accountable. But it is important to be clear about how the Commissioner's work is used. MPPs scour the Commissioner's reports for the low hanging fruit – facts and revelations about the shortcomings of government programs. For the most part, they are referenced in the House by opposition MPPs to support their attacks on ministers. Thus, the reports are received in the context of the established system of incentives shaping the behaviour of Canadian parliamentarians.

However, the ECO seeks recognition as a commentator on high policy and as a policy entrepreneur. How have the political actors in positions of power responded to this campaign for greater space and authority? The ECO is able to exert meaningful influence when there is an open policy window, created by broader political forces. The best example of this during the Gord Miller era is the Walkerton crisis of 2000, the worst regulatory disaster in modern Ontario history.

Commissioner Miller produced a special report on the problem of water pollution caused by intensive farming less than three months after the deaths in Walkerton, when the Legislature was in an uproar over the tragedy. In his prepared remarks on the release of the report, the Commissioner acknowledged that Walkerton had created a new audience for environmental reform proposals. His special report was designed to influence the Walkerton Inquiry proceedings. At his press conference Mr. Miller was reported as saying that the Conservative government had appeared to deliberately mislead the public on water policy, and was unprepared to prevent another major groundwater contamination incident. These comments did not appear in the report itself. They predictably garnered headlines.

The Walkerton Inquiry introduced an era of environmental concern in Ontario politics. The Commissioner's special report was followed by a brief to the Inquiry and ample coverage of the issue in succeeding annual reports. At the height of the controversy in 2000-01 Conservative ministers who had previously dismissed the critiques of Environmental Commissioner Eva Ligeti now promptly responded to opposition MPPs who rose in Question Period citing Mr. Miller's reports. The Inquiry hearings took place in the fall of 2000 and first half of 2001. Judge O'Connor's report was released in separate volumes in January and May 2002. The initial provincial response, the *Nutrient Management Act*, was introduced in June 2001, received extended consideration in a legislative committee that fall, and was finally passed into law in June 2002. The safety of Ontario's drinking water was an issue in the 2003 election campaign. The Liberal government's *Clean Water Act* was introduced in 2006. Throughout this period questions about the safety of drinking water and related issues were a staple of legislative debates and media coverage. References to the Commissioner's reports appeared regularly in Members' comments and speeches.

Years of advocacy by Mr. Miller's predecessor, Commissioner Ligeti, had failed to put the issue of clean water on the agenda. But once the Walkerton tragedy sharply focused public attention on this issue, Commissioner Miller was well positioned to contribute to the ongoing debate over solutions.

Where Commissioner Miller has signally failed is in his attempts to expand the spectrum of acceptable political discourse in Ontario. In his 2004-05 report he challenged the population growth projections underlying *Places to Grow*, the McGuinty government's masterplan for development in southern Ontario, suggesting that such population increases were environmentally unsustainable. This report attracted considerable criticism in the media, with some commentators linking Mr. Miller to anti-population groups in the US and implying he was anti-immigration. In his public remarks on the release of the report the Commissioner suggested the province should directly control population shifts in the province, somehow redirecting people away from the prosperous labour market in southern Ontario towards the shrinking economies of northern and eastern Ontario. When challenged by journalists to explain how this was to be accomplished he claimed he was simply trying to stimulate public debate. His views were expressly repudiated by the minister in charge of *Places to Grow*. In the 2006-07 annual report the Commissioner again suggested that continued population growth threatened southern Ontario's ecosystem limits. The report was largely ignored by the mainstream media.

The indifferent response to these efforts at big picture thinking illustrates a significant institutional divide between the ECO and other parliamentary officers such as the provincial Auditor General, the Ombudsman and the Freedom of Information Commissioner. These latter offices affirm the liberal values underpinning the Canadian regime. They are the guardians of the rule of law against expanding state power. They are popularly regarded as the spokespersons for a public deeply suspicious of bureaucracy. In Ontario and Canadian politics there is a ready-made audience for horror stories of government waste, revelations of official arrogance or incompetence, and campaigns by citizens to extract information from a secretive bureaucracy. While these parliamentary officers appear to provide an endless supply of ammunition for the opposition parties and the media, their reports do not extend to radical questioning of the elemental principles of liberal capitalism.

The EBR does speak the language of rights, the fundamental artefact of liberal society, but as Commissioner Ligeti once noted, it does so as a vehicle for government intervention in the economy.[20] Any political consensus in support of intervention directed at constraining economic growth is bound to be fragile and vulnerable to the issue-attention cycle. The boundaries within which the public is willing to contemplate significant changes to its lifestyles for the sake of the environment are narrow.

Conclusion

This study has illustrated the elemental lesson that parliamentarians respond to institutional changes in their workworld in terms of their own roles and priorities. It is impossible to grasp the contemporary operation of the two parliamentary officers discussed above except in this context.

Professors Smith and Sutherland have noted that debates about the formal status of parliamentary officers and their role in supporting the legislature do not move much beyond a focus on institutional attributes such as a statutory guarantee of legislative involvement in the appointment, a fixed term in office, and the obligation to release regular reports.[21] For parliamentarians these issues usually resolve themselves into a simple metric: the willingness of the parliamentary officer to attack the government. This is the surest indicator of independence. Members hold parliamentary officers accountable by protecting them from political interference by the executive.

When Auditor General Fraser appeared before the Standing Committee on Environment and Sustainable Development to discuss the Gélinas controversy the primary question opposition MPs wanted answered was whether Fraser had fired her because of pressure from the Conservative government. They responded to Fraser's efforts to initiate a dialogue over whether the CESD was having any real impact on the governance of environmental policy by voting to make the Commissioner formally independent of the OAG. This solution did not begin to address the question of what role an environmental parliamentary officer should play in Parliament and how that official should be held accountable.

Gord Miller's appointment as Environmental Commissioner in December 1999, following the recommendations of a legislative committee controlled by the Conservative majority government, caused an uproar in the Legislature when it was revealed he had twice been a Conservative candidate and had served as a Conservative riding president. His appointment was denounced on the floor of the Legislature by opposition MPPs. Up to a few weeks before the release

of his groundwater report in July 2000, Miller was under attack as a Conservative apologist by opposition Members. In a June 2000 debate on the Walkerton crisis, a senior New Democrat referred to Miller's Conservative background and effectively challenged him to issue a report on water pollution as critical as that released by his predecessor, Commissioner Ligeti. Once this report was released he was judged to be independent and the objections to his appointment were dropped.

Westminster style legislatures are poorly equipped to supervise their own bureaucracies. Members have a vested interest in playing the roles assigned to them under the conventions of responsible government which ensure that the political executive is held accountable. But they lack similar incentives in their working relationships with parliamentary officers. In order to hold a parliamentary officer to account Members on both sides of the House would have to tone down the partisanship and devote considerable time and effort to mastering problems of administration and management. This would require developing some level of expertise in the policy field relating to the mandate of the parliamentary officer under scrutiny. In particular, the opposition parties would have to recognize that in assessing how a parliamentary officer chooses to fulfill his or her statutory responsibilities, their own institutional needs are not the only factors to be taken into consideration.

This analysis suggests that parliamentary officers may be providing an alternate source of criticism of the executive; existing alongside the legislature and sometimes embraced by Members when this suits their own purposes; but for the most part functioning independently, in accord with their own institutional imperatives.

The fundamental research question which should be posed is this. Does a parliamentary officer, in the discharge of the mandate granted by the legislature, support the operation of responsible government? The evidence may indicate the opposite.

Notes

1. Denis Desautels, *Reflections on a Decade of Serving Parliament*, Office of the Auditor General, Ottawa, 2001, paras. 259, 264-265.
2. House of Commons, Standing Committee on Environment and Sustainable Development, *Debates,* 3 October 1995.
3. Commissioner of the Environment and Sustainable Development, *1997 Report of the Commissioner* Office of the Auditor General, Ottawa, March 1997, para. 44.
4. Commissioner of the Environment and Sustainable Development, *2006 Report of the Commissioner*, Office of the Auditor General, Ottawa, September 2006, pp. 5-6.
5. *Ibid*., p. 13.
6. See House of Commons, Standing Committee on Environment and Sustainable Development, *Debates*, January 31, 2007, pp. 3-7, 10-11.
7. The draft Federal Sustainable Development Strategy was released in March 2010.
8. The original version of C-474 required the CESD to evaluate the draft federal strategy itself. This was removed at Commissioner Ron Thompson's insistence, as he could not support a bill directly implicating his office in the making of a policy which would subsequently be audited. Instead the CESD's responsibility for the draft strategy will be limited to determining whether its targets and indicators are capable of being assessed by his office in the subsequent audit (s. 9(4) of the new Act).
9. Task Force on the Ontario Environmental Bill of Rights, *Report of the Task Force on the Ontario Environmental Bill of Rights,* Ministry of the Environment, Toronto, July 1992, p. 68.
10. *Ibid*., p. 66.
11. Minister of the Environment Bud Wildman, Ontario Legislative Assembly, *Debates*, August 3, 1993, pp. 3021-3022.
12. The Commissioner is also empowered to issue special reports on "any matter" related to the EBR (s. 58(4)). Commissioner Miller has taken full advantage of s. 58(4), issuing special reports on the science of climate change and the budgetary process in the provincial government, in addition to others more directly related to ministry activities. Yet it is important to note that this wide discretion is specifically granted for the purposes of issuing special reports, not the regular annual reports in which the ECO is required to report on the operation of the EBR (s. 58 (2)).
13. Environmental Commissioner of Ontario, *2005-6 Annual Report*, Office of the Environmental Commissioner, Toronto, October 2006, p. 145.
14. *Ibid*., pp. 42-43.
15. *Ibid*., p. 43.
16. *Ibid*.
17. *Ibid*., p. 44.
18. Environmental Commissioner of Ontario, *2006-7 Annual Report*, Office of the Environmental Commissioner, Toronto, November 2007, p. 44.
19. Greg Mercer, "Harmer picks up guitar for unsexy cause," *Guelph Mercury*, October 18, 2006.
20. See Eva Ligeti, "The Role of the Environmental Commissioner of Ontario and the Environmental Bill of Rights in Supporting Public Participation in Environmental Decision-making," in Gary Hawke, *Guardians for the Environment*, Institute of Policy Studies, New Zealand, 1997, p. 137.
21. See Professor Sutherland's comments in Senate of Canada, Standing Committee on Legal and Constitutional Affairs, *Debates*, September 21, 2006, p. 228.