

**THE ACCOUNTABILITY OF ACCOUNTING OFFICERS  
BEFORE PARLIAMENTARY COMMITTEES**

Alex Smith  
Political and Social Affairs Division

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## THE ACCOUNTABILITY OF ACCOUNTING OFFICERS BEFORE PARLIAMENTARY COMMITTEES

### INTRODUCTION

The accountability relationship between senior public servants and Parliament has been the focus of considerable debate within Canada over the past 30 years. There have been numerous recommendations to increase the accountability of deputy ministers<sup>(1)</sup> before parliamentary committees by adopting some form of the accounting officer system, whereby deputy ministers would be responsible for providing an account to parliamentarians of how their department has dealt with administrative matters. This change was long resisted on the grounds that only ministers can be accountable to Parliament. Regardless, the 2006 *Federal Accountability Act* makes deputy ministers the accounting officers of their department and enshrines in law certain responsibilities for accounting officers. As this development could potentially have a significant impact on the accountability relationship between Parliament and deputy ministers, it is worthwhile to explore in greater detail the implications of this change.

This paper seeks to provide greater understanding of the accountability of accounting officers before parliamentary committees by, firstly, setting out the traditional model of ministerial and public service accountability and some of the arguments for and against changing it. The paper then sets out the accounting officer system recently put in place with the adoption of the *Federal Accountability Act*. As the United Kingdom has had accounting officers for over 100 years, the UK system is described and compared to the Canadian system. Lastly, the paper examines different interpretations of the requirements of the Act.

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(1) For the sake of consistency the term “deputy minister” will be used in this paper, but the more appropriate term is “deputy head” because it encompasses the heads of departments and agencies.

## ACCOUNTABILITY

According to the traditional understanding of Canada's system of parliamentary government, ministers of the Crown are responsible and accountable to Parliament collectively, as part of Cabinet, and individually, as minister in charge of a department.<sup>(2)</sup> Ministers are responsible to Parliament 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.<sup>(3)</sup>

Public servants, for their part, are expected to loyally serve the government of the day by providing impartial, professional, and confidential advice. They carry out the decisions of the government, and manage and deliver the services for which the government is responsible. Public servants do not have a public voice, or identity, distinct from that of their minister; in other words, they are anonymous. Individual public servants are accountable to their superior in the bureaucratic hierarchy.

Deputy ministers, the senior departmental public servants, are responsible for the effective management of their department. They have multiple accountabilities, including to their minister, the Prime Minister, the Treasury Board, and the Public Service Commission. They support their minister's responsibility by appearing before parliamentary committees on behalf of their minister to answer questions or to provide information on departmental performance that ministers could not be expected to provide personally, but they do not defend the policy decisions made by the government.<sup>(4)</sup>

This traditional model of accountability has come under criticism. It is argued that ministers cannot be expected to know, much less control, all that takes place in large bureaucracies. Additionally, when administrative errors are uncovered and controversy ensues, ministers rarely accept personal responsibility or resign. As public servants are to remain anonymous, it is often not clear who is responsible for the error and should be held to account.<sup>(5)</sup>

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(2) The Privy Council Office outlines this traditional understanding of accountability in *Responsibility in the Constitution*, 1993.

(3) The responsibilities of ministers are outlined in Privy Council Office, *Accountable Government: A Guide for Ministers and Secretaries of State*, 2007.

(4) Information about the accountability of deputy ministers can be found in Privy Council Office, *Guidance for Deputy Ministers*, 2003.

(5) An extended critique of the traditional model of accountability can be found in Donald Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom*, University of Toronto Press, Toronto, 2008.

In response, some have argued that it is necessary to increase both the independence and the accountability of the public service. More specifically, numerous commissions and parliamentary committees have recommended making deputy ministers directly accountable for administrative matters before parliamentary committees.<sup>(6)</sup>

Those who favoured making changes argued that it would clarify who is responsible for what, and would merely formalize current practice, as parliamentary committees already try to hold deputy ministers to account for administration.<sup>(7)</sup> Also, since certain powers are specifically delegated to deputy ministers, for example, through the *Financial Administration Act*,<sup>(8)</sup> deputy ministers should be accountable before parliamentary committees in their own right for those powers, rather than appearing only on behalf of their minister.<sup>(9)</sup>

On the other side, some have argued that altering the accountability of deputy ministers in this way reflects an unrealistic assumption about the possibility of separating policy from administration.<sup>(10)</sup> Another often-repeated concern was that making public servants accountable before parliamentary committees would remove the anonymity of senior officials by exposing them to potentially partisan attacks, and thereby politicize the public service.<sup>(11)</sup>

Notwithstanding these concerns, the passage of the *Federal Accountability Act* has changed the accountability relationship between deputy ministers and Parliament by instituting a form of the accounting officer system.

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(6) These include the Royal Commission on Financial Management and Accountability (Allen Thomas Lambert, Commissioner), *Final Report*, Ottawa, March 1979, p. 374; the Special Committee on Reform of the House of Commons (the Honourable James McGrath, Chairman), *Third Report*, Ottawa, 1985, p. 21; the House of Commons Standing Committee on Public Accounts, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*, 10<sup>th</sup> Report, Ottawa, May 2005; and the Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability – Recommendations*, February 2006, p. 200.

(7) Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform*, Canada School of Public Service, Ottawa, 2005.

(8) For example, sections 31(1), 31(3), 32(2), 34, and 62 of the *Financial Administration Act* assign specific responsibilities to deputy heads: preparing a division of an appropriation included in the Estimates; ensuring an adequate system of internal 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.

(9) C. E. S. Franks, “Responsibility, Accountability, and the Sponsorship Affair,” *Canadian Parliamentary Review*, Vol. 27, No. 3, Autumn 2004, pp. 16-18.

(10) Sharon L. Sutherland, “Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem,” *Canadian Journal of Political Science*, Vol. 24, No. 1, March 1991, pp. 91-120.

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

## **THE FEDERAL ACCOUNTABILITY ACT**

Under the *Federal Accountability Act*, which was proclaimed on 12 December 2006, a department's or agency's deputy head (the senior public servant) is also the accounting officer for the organization and, as such, has certain responsibilities.<sup>(12)</sup> Within the framework of ministerial responsibility and accountability to Parliament and subject to the appropriate minister's management and direction, the accounting officer is accountable before the appropriate committees of the Senate and the House of Commons for:

- measures taken to organize the resources of the department to deliver programs in compliance with government policies and procedures;
- measures taken to maintain effective systems of internal control in the department;
- signing the accounts prepared as part of the Public Accounts; and
- the performance of other specific duties assigned to him or her by this or any other Act in relation to the administration of the department.<sup>(13)</sup>

The accounting officer is obligated to appear before the appropriate committees to answer questions with respect to carrying out these responsibilities.

In the case of a disagreement with the appropriate minister over the interpretation or application of a policy, directive or standard issued by the Treasury Board (a Cabinet committee that provides overall policy direction on management and administration), the accounting officer shall seek written guidance from the Secretary to the Treasury Board. If the matter remains unresolved, the minister shall refer the issue to the Treasury Board for a decision, which will be provided to the Auditor General. It should be noted that this decision will be regarded as a confidence of the Queen's Privy Council and thus not be publicly available.

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(12) Clause 259 of the *Federal Accountability Act* (formally known as *An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability*) added sections 16.3 to 16.5 to the *Financial Administration Act*.

(13) The wording in these points has been simplified from the original text in the legislation.

## ACCOUNTING OFFICERS IN THE UNITED KINGDOM

The United Kingdom has had an accounting officer system in place since 1866. The UK Treasury appoints accounting officers, usually the senior public servant in a department, and sets out their roles and responsibilities.<sup>(14)</sup> The accounting officer personally signs the resource accounts, the annual report, and the statement of internal control. The accounting officer also has personal responsibility for regularity and propriety, selection and appraisal of programs and projects, value for money, management of opportunity and risk, learning from experience, and accounting accurately for the organization's financial position and transactions.<sup>(15)</sup>

If a minister decides to pursue a course of action that the accounting officer has advised against on the basis of regularity, propriety, or value for money, the accounting officer should ask for formal, written direction to proceed. The accounting officer would proceed to follow the minister's direction, and the relevant papers would then be sent to the Comptroller and Auditor General.<sup>(16)</sup>

The United Kingdom Public Accounts Committee normally invites the accounting officer of the relevant institution to attend as a witness. When answering questions, the accounting officer is expected to take responsibility for the organization's business. If an accounting officer had received written direction from a minister, the committee would attach no blame to the accounting officer for any resulting problems.<sup>(17)</sup>

According to Brian Glicksman, a former Treasury Officer of Accounts, there is little debate in the United Kingdom over the roles and responsibilities of accounting officers, possibly because the system has been in place for so long that everyone has become used to it.<sup>(18)</sup> The system does not dilute the minister's responsibility, but rather assures the minister that the accounting officer is ensuring that the department complies with the requirements of regularity, propriety, and value for money. Accounting officers accept their responsibilities because they

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(14) The general responsibilities of accounting officers are set out in HM Treasury, *Managing Public Money*, October 2007, Chapter 3. This can be found at [http://documents.treasury.gov.uk/mpm/mpm\\_ch3.pdf](http://documents.treasury.gov.uk/mpm/mpm_ch3.pdf). HM Treasury also regularly issues "dear accounting officer" letters to outline updated expectations for accounting officers. These letters can be found at <http://www.hm-treasury.gov.uk/6431.htm>.

(15) *Ibid.*, section 3.3.3.

(16) *Ibid.*, section 3.4.

(17) *Ibid.*, sections 3.5 and 3.4.4.

(18) Brian Glicksman, "The Role of Accounting Officers: A Perspective from the United Kingdom," *Canadian Parliamentary Review*, Vol. 30, No. 3, Autumn 2007, pp. 22-26.



“feel that the existence of this memorandum from the Treasury, spelling out their responsibilities, strengthens their position in the department and thus supports the maintenance of good financial management.”<sup>(19)</sup>

## **COMPARING THE UNITED KINGDOM AND CANADIAN SYSTEMS**

The accounting officer system recently adopted in Canada differs from the system in place in the United Kingdom in several crucial respects. Firstly, the duties of Canadian accounting officers are spelled out in legislation, rather than in a memorandum from the Treasury. Secondly, accounting officers in the United Kingdom have a responsibility to ensure value for money, and the Canadian legislation is silent on this issue. Thirdly, the scope of issues for written direction regarding disagreements between an accounting officer and a minister is much narrower in Canada. The Act refers to policies, directives, and standards of the Treasury Board rather than the general principles of regularity, propriety, and value for money used in the United Kingdom. Fourthly, the Canadian system refers disagreements between ministers and accounting officers to a Cabinet committee for a decision, whereas in the United Kingdom, the minister in question decides the matter and then sends relevant papers to the Comptroller and Auditor General. This is an important difference because a decision by a Cabinet committee is a confidence of the Queen’s Privy Council and thus is not publicly available. Lastly, the United Kingdom Treasury’s guidance makes it quite clear that the responsibilities of the accounting officer are held personally; this is much less clear in Canada and is the subject of disagreement between the government and a parliamentary committee, which is discussed in the following section.

## **INTERPRETING THE ACT**

Shortly after the *Federal Accountability Act* became law, the Privy Council Office, which is the public service arm of Cabinet and the Prime Minister, and the House of Commons Standing Committee on Public Accounts released their own documents setting out how they believe the accounting officer model should work in Canada. Their interpretations of the requirements of the Act agree in many respects, but there are some fundamental differences.

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(19) Ibid., p. 24.

The Privy Council Office's guidance document for accounting officers outlines the general principles that apply to appearances of public servants before committees, such as not disclosing confidential information or engaging in policy discussions.<sup>(20)</sup> The House of Commons Standing Committee on Public Accounts, which had earlier recommended the adoption of the accounting officer system, released its own expectations for the appearance of accounting officers before the Committee in a "Protocol," with which the House of Commons subsequently concurred.<sup>(21)</sup>

The Privy Council Office and the Public Accounts Committee agree that no new statutory or other powers have been given to deputies through the Act; the fundamental accountability of ministers remains undiminished; accounting officers have a duty to appear and should be properly briefed and prepared; accounting officers are accountable *before* and not *to* parliamentary committees, as committees cannot formally reward, punish, or instruct accounting officers; and accounting officers should not be asked to present their views on matters of policy.

However, the Privy Council Office asserts that accounting officers appear in support of their minister's accountability. This means that:

[T]he accounting officer is not accounting to the committee for his or her personal performance and is not subject to personal consequences that parliamentarians might mete out – i.e., it is not appropriate for committee members to censure the accounting officer, seek to diminish his or her reputation or use the appearance of the accounting officer to advance partisan interests.<sup>(22)</sup>

Additionally, the accounting officer is the incumbent deputy minister, as "The responsibilities of an accounting officer belong to the office and not the individual."<sup>(23)</sup> This means that it is appropriate for the current accounting officer to answer questions about what took place prior to his or her tenure.

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(20) Privy Council Office, *Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees*, 2007.

(21) House of Commons, Standing Committee on Public Accounts, Report 13, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, *Protocol for the Appearance of Accounting Officers as Witnesses Before the Standing Committee on Public Accounts*, March 2007. The House of Commons concurred with the Public Accounts Committee's report on 15 May 2007.

(22) Privy Council Office (2007), *Accounting Officers*, p. 11.

(23) *Ibid.*, p. 15.

On the other hand, the Public Accounts Committee believes that the accounting officer does not appear only in support of the minister's accountability. As accounting officers have some statutory authorities delegated directly to them, certain responsibilities and accountabilities lie with accounting officers. This means that "[t]he responsibilities of Deputy Ministers and heads of agencies as accounting officers are personal and belong to them in their own right."<sup>(24)</sup> The Committee believes that accounting officers have a special responsibility and leadership role in ensuring that the principles of compliance, prudence, and probity are observed in administration. The Committee may call former accounting officers to appear as witnesses. While they appear as individuals, the Committee believes that "the personal responsibility of accounting officers represented by their signing of the accounts does not end when they leave office."<sup>(25)</sup>

This difference in interpretation could have significant implications for how, and for what, accounting officers will be accountable before parliamentary committees. If the duties are not held personally, then the accounting officer will simply describe how the department has addressed administrative issues, rather than taking responsibility for any possible shortcomings. While it is not possible to settle this debate here, it is worth noting that because Parliament sets its own procedures and practices, it could be hard for accounting officers appearing before parliamentary committees to deny those committees, such as the Public Accounts Committee, their interpretation of the Act.

## CONCLUSION

The accounting officer system was put into place in Canada after considerable debate about whether the traditional model of ministerial and public service accountability was satisfactory. The adoption of the accounting officer system could clarify accountability and improve the dialogue between Parliament and the professional public service by specifying that deputy ministers are indeed accountable for a few select areas, such as ensuring that an effective system of internal control is in place and signing the accounts of their organization. It may make deputy ministers devote more attention to their management responsibilities, and may provide

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(24) House of Commons, Standing Committee on Public Accounts (2007), p. 7.

(25) *Ibid.*, p. 12.

deputy ministers with an incentive to say no to inappropriate political interference in departmental administration. It could do this by making them aware that their actions could potentially be the subject of parliamentary inquiry.

Nonetheless, it should be kept in mind that the Canadian accounting officer system differs substantially from the system that has been in place in the United Kingdom for over 100 years, and there remain significant disagreements over how to interpret the requirements of the *Federal Accountability Act*. Ultimately, the implications of the accounting officer system for accountability will become clearer with time, and perhaps with the arrival of the next major controversy.