



## Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees

Privy Council Office  
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The following notes have been prepared for the guidance of officials appearing before Parliamentary committees. They set out the constitutional principles that underlie relationships among Ministers, officials and Parliament.

### Responsible Government

In our system of government, the powers of the Crown are exercised by Ministers who are in turn answerable to Parliament. Ministers are individually and collectively responsible to the House of Commons for the policies, programs and activities of the Government. They are supported in the exercise of their responsibilities by the public service, whose duty it is to give loyal, professional and non-partisan support to the Government of the day. It is the responsibility of individual public servants to provide advice and information to Ministers, to carry out faithfully the directions given by Ministers, and in so doing to serve the people of Canada. Public servants are accountable to their superiors and ultimately to their Minister for the proper and competent execution of their duties.

Ours is a system of responsible government because the Government must retain the confidence of the House of Commons and because Ministers are responsible to the House for everything that is done under their authority. They are answerable to Parliament and its committees. It is Ministers who decide policy and Ministers who must defend it before the House and ultimately before the people of Canada.

Accordingly, responsibility for providing information to Parliament and its committees rests with Ministers. Officials have no constitutional responsibility to Parliament, nor do they share in that of Ministers. They do, however, support Ministers in their relationship with Parliament and to this extent they may be said to assist in the answerability of Ministers to Parliament.

### Powers of Committees

Under the Standing Orders, committees of the House and Senate are entitled to exercise all or any of the powers delegated to them. These include the right not only to invite witnesses to appear but to summon them to appear, if necessary. They include the right to examine witnesses on oath.

### Summoning of Public Servants

The House and Senate, and their committees, have the power to call (or summon) whomever they see fit and thus could in theory call officials even against the wishes of a Minister. (However, only the House and Senate themselves can *compel* witnesses to attend.) Committees, mindful of the principle of ministerial responsibility, usually solicit the testimony of officials by informal invitation rather than by formal summons and do not generally insist on the appearance of particular individuals, leaving it instead to Ministers to determine which officials will speak on their behalf at committee. In the same vein, it is for Ministers to decide which questions they will answer and which questions properly can be answered by officials.

### Answers to Questions put by Committee

Witnesses testifying before Parliamentary committees are expected to answer all questions put by the committee. However, additional considerations come to bear in the case of public servants, since they appear *on behalf of the Minister*.

Public servants have a general duty, as well as a specific legal responsibility, to hold in confidence the information that may come into their possession in the course of their duties. This duty and responsibility are exercised within the framework of the law, including in particular any obligations of the Government to disclose information to the public under the Access to Information Act or to protect it from disclosure under other statutes such as the Privacy Act.

In the most general terms, and against this legal background, public servants have an obligation to behave in a manner that allows Ministers to maintain full confidence in the loyalty and trustworthiness of those who serve them. The preservation of this relationship of trust and confidence is essential to the conduct of good government. If public servants violate the trust bestowed on them by Ministers they undermine effective (and democratic) government. If they violate that trust on the grounds that they have a higher obligation to Parliament, then they undermine *the fundamental principle of responsible government, namely that it is Ministers and not public servants who are accountable to the House of Commons for what is done by the Government*.

Public servants should (and do) of course appear before Parliamentary committees on behalf of their Ministers to answer questions or to provide other sorts of information that Ministers obviously could not be expected to provide personally. Unlike Ministers, however, public servants are not directly accountable to Parliament for their actions nor for the policies and programs of the Government.

Matters of policy and political controversy have been reserved more or less exclusively for Ministers, principally because political answerability on the part of officials would inevitably draw them into controversy, destroy their permanent utility to the system and, indeed, undermine the authority and responsibility of their Ministers.

### Swearing of Public Servants

Public servants have a fundamental duty to convey information truthfully to their Ministers and, on the Ministers behalf, to convey truthfully information which they may properly convey to Parliament. This is the case irrespective of whether they are sworn.

It is clear, however, that Parliamentary committees are empowered to examine their witnesses on oath. Pursuant to the *Parliament of Canada Act*, the Oath (or Affirmation where a witness conscientiously objects to the taking of the Oath) may be administered by the Speaker, the Chairman of the Committee or the Clerk of the Committee if so appointed by the Speaker.

While Parliamentary committees are empowered to examine witnesses on oath, it has not been customary for public servants to be sworn. This is not because public servants enjoy privileges which are denied to other citizens, but is rather a reflection of the fact that they are appearing *not* as individuals but as representatives of someone else - i.e., the Minister. As noted above, public servants have a duty and have taken an oath *not* to disclose without clear authority things that only the Minister (or the Government) has the authority to disclose.

In addition, public servants who are asked to be sworn may be placed in a position of *prima facie* conflict between an oath to testify and their duty of confidentiality to their Minister or, more generally, their oath of secrecy. In practice, officials would of course be expected to testify within the constitutionally fundamental context of ministerial responsibility to Parliament. In this context, officials (and deputy ministers in particular) have a fundamental duty to advise their Ministers frankly on any matters relevant to their departmental and policy responsibilities. Only Ministers can properly decide when and to what degree any matters that are confidential can and should be disclosed. Testimony under oath could force an official to assume a power of decision in these respects that he or she cannot properly exercise.

Finally, asking a public servant (who is the representative of a Minister) to take an oath may raise a question as to whether the Minister could also be asked to take an oath. If so, this would touch directly on Ministers privileges as Members, their oath as Privy Councillors *and* their fundamental relationship of (truthful) accountability to Parliament.

#### **Guidance to Officials**

The import of all this with respect to testimony by departmental officials before committees is the following.

##### ***A) In Relation to Answering Questions***

Officials may give explanations in response to questions having to do with complex policy matters, but they do not defend policy or engage in debate as to policy alternatives. In other matters, principally those having to do with the administration of the department and its programs, officials answer directly on behalf of their Ministers. Again the answers should be limited to explanations.

Officials must understand and respect their obligation as public servants not to disclose classified information or other confidences of the Government to those not authorized to receive them. For their part, committees generally recognize that the provision of information to committees beyond that normally accessible to the public must be a matter of ministerial decision and ministerial responsibility.

##### ***B) In Relation to Taking an Oath***

Officials who are asked to be sworn before a committee might wish to make the following observations:

1. They are appearing on behalf of their Minister to convey factual information which the Minister himself or herself could not be expected to provide personally; this is a longstanding obligation of public servants which supports the Ministers accountability to Parliament.
2. It might further be suggested that, if the committee is concerned about the truthfulness of the answers that are to be given on the Ministers behalf, it might prefer to question the Minister himself or herself.
3. Having set out these considerations for the committee, officials should be prepared to take the oath. They should not hesitate to address the chairman, seeking the understanding of the committee for the need to avoid questions to them that could put them in a position that would conflict with their duty to their Minister and their oath of office.

#### **Non-Departmental Officials**

The independence of non-departmental bodies does not extend beyond the objects and powers conferred upon them by Parliament. The range of such different objects and powers makes it difficult to specify precise guidelines that would govern all appearances before committees by officers and employees of these different bodies.

In general, and with some notable exceptions, non-departmental bodies are not established to make policy; they are created for commercial, administrative or regulatory purposes. The powers necessary to carry out such administrative or regulatory functions are vested in the individual or board that heads the agency rather than in the Minister who reports to Parliament for the agency. Parliament requires that each agency report to it through a Minister, and where an agency draws on the Consolidated Revenue Fund the appropriate Minister sponsors the necessary request for funds through Estimates and the Crown underwrites those requests in the Appropriation Bill.

Thus non-departmental officials, who generally enjoy a greater measure of independence than do departmental officials by virtue

of holding appointments pursuant to Acts of Parliament that confer upon individuals or agencies certain specific duties and powers, should speak before Parliamentary committees only in relation to the exercise of those duties and powers. Even here the principles of responsible government require that every care be taken to avoid conflict on matters of policy where conflict would give rise to a lack of confidence within the Ministry and within Parliament concerning the capacity of an agency's head or board to administer its *Act* impartially.

**Conclusion**

The relationship between the Government and Parliament expresses the fundamental principle of responsible government, namely that those who exercise constitutional authority must be part of and responsible to Parliament. It is Ministers, and not officials, who exercise the constitutional authority of the Crown; and it is Ministers, and not their officials, who are responsible to Parliament. Officials are accountable to Ministers. They may assist Ministers by answering directly before Parliamentary committees; but there should be no doubt that Ministers, and not officials, are constitutionally responsible for the exercise of the power of the state. Thus the cornerstone of responsible government, as manifested in ministerial responsibility, ensures the supremacy of Parliament.

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