



Submission to the Commission of Inquiry
into the
Sponsorship Program and
Advertising Activities

Association of Professional Executives
of the
Public Service of Canada (APEX)

October 28, 2005

ADVERTISING AND SPONSORSHIP

Should government advertising and sponsorship programs be insulated from political influence?

This question goes beyond advertising and sponsorship programs to the heart of the political system for all government expenditures. We stress that it is important to distinguish between *political influence* and *political direction*. The

democratic process requires that the political leadership of the government be able to provide direction to those who execute policy.

However, once such direction is given, it is equally important that *political influence* – which we interpret to mean the granting of preferential treatment within established spending programs – be deemed completely unacceptable. One cannot create a framework of rules, hire people to carry them out, insist on their neutrality and commitment to fairness and then – even for the most pressing of political reasons – ask them to break those rules.

There may be instances where the contracting process cannot be strictly followed. Crises such as natural disasters could demand that Cabinet direct the temporary suspension of government rules. However, any such exceptions MUST be made in an open manner. It is also essential that the Government make clear that normal procedures are being over-ridden and be prepared, *post facto*, to defend both the changes in procedures and those who carried out such instructions.

Our members are sometimes faced with attempts to exercise political influence. As you know, most government activity takes place outside Ottawa, where, regardless of their political affiliation, individual M.P.s often seek assistance from staff in local or regional offices to help ensure their projects are successful. This might take the form of encouraging staff to favour a certain supplier, use a certain office building or support a particular local project. The line between *political influence* and *legitimate efforts on behalf of constituents* must be as clearly defined as possible.

APEX recommends that public servants, parliamentarians and political staff engage in an open dialogue about what constitutes political influence. A code of conduct that would guide both parliamentarians and public servants in their various interactions would be helpful.

RESPONSIBILITY

1. ESTABLISHING A PARLIAMENTARY COMMITTEE ON THE PUBLIC SERVICE

What role should Parliament play in ensuring that public servants observe rules and laws?

APEX believes there should be a forum through which parliamentarians can gain a better understanding of how the public service works; this would help ensure a healthy and productive relationship between the political and bureaucratic arms of

government. The present Public Accounts Committee is not the right venue. Not only does it have a unique mandate to review expenditures and budgets, it also unfortunately typifies the current culture, one that is confrontational and partisan.

APEX therefore recommends the creation of a mixed committee of Parliament (Senate and House of Commons) to focus on the public service. It would be charged with examining many of the issues raised in the Inquiry's questions to date, e.g. the relationship of parliamentarians to the public service, issues of conduct, ethics, behavioural and legal expectations, the institutional framework of the public service and service to the public.

2. TRAINING FOR PARLIAMENTARIANS AND POLITICAL STAFF

Is there sufficient clarity in the separation of responsibilities among elected officials, exempt staff and public servants?

Political staff play a unique role in the ministerial relationship, but they are there to assist the Minister, not replace the Minister. The heart of the ministerial/administrative relationship is that the Deputy Minister is the

only public servant who is accountable directly to the Minister. All others are responsible to the Minister through the Deputy Minister.

The business conducted on a daily basis between political staff and public servants must be governed by this ministerial/administrative relationship. However, APEX members often mention the degree to which political staff interfere at lower levels in the organization with what are essentially administrative decisions.

Political staff sometimes forget they are outside the public service accountability chain, and therefore have no authority over public servants, whose responsibility is to the Minister, through their Deputy Minister.

APEX therefore recommends that all political staff receive mandatory training based on an agreed-upon curriculum which covers: public service ethics and values; how the government works; and the rules of procedure most relevant to their work (e.g. contracting, travel, etc). As exempt staff come and go frequently, this must be a continuing process.

ACCOUNTABILITY

With the growing trend to ‘horizontality’ in government, what new measures or mechanisms are required to ensure accountability? Who should be accountable to whom and for what? For how long?

Media and the general public often seem to be confused about the nature and scope of accountability in the public sector – *accountability* (answering for the responsibilities borne over the period for which they were bestowed) is often equated with *blame* (outcomes not as expected, things

either within or outside one’s control going wrong) and *punishment*. That is why APEX believes that the government needs to press on with its efforts to clarify for the public exactly what *accountability* means, and to distinguish for public servants and politicians the differences among *responsibility*, *answerability* and ultimate *accountability*.

The trend towards ‘horizontality’ and the emergence of shared systems reinforce the need for clear accountability. APEX was pleased to note Minister Alcock’s October 21st announcement that the Government would be reinforcing the integrity of audit and oversight, although we await clarification of the roles and responsibilities of each of the parties and a sign that appropriate resources will be forthcoming. (Link at http://www.tbs-sct.gc.ca/tbsimScripts/tbcan_e.asp?from=media/nr-cp/2005&year=2005).

In light of that announcement, **APEX recommends that no additional accountability mechanisms be launched, but that the government express a strong commitment to use those policies and procedures already in place.**

Governments have always functioned with diverse and dispersed ways of delivering services. “Doing things in a new way” does not in any way diminish the accountability vested in either a Minister or a public servant. APEX has identified some very positive efforts in this regard, e.g. Treasury Board’s work on developing an accountability framework on climate change. Further, APEX believes that the External Oversight Committee on the Implementation of Public Service Management Reform, proposed by the President of the Treasury Board, is a step in the right direction. This just goes to show that the challenge has been identified and efforts are being made to address it.

APEX accepts that notions of accountability do not end fully when a person leaves an office. However, this accountability must be tied only to the period that the person

Does accountability cease when a person leaves a position?

occupied the office and discharged her or his duties in that office. This accountability can only apply to decisions and actions for which the person was responsible and to acts that may have legal implications. It cannot possibly apply to any event or policy that has evolved subsequently.

STRONG SANCTIONS FOR MISUSE OF PUBLIC FUNDS

What sanctions, if any, should be imposed on public servants, elected officials, exempt staff and others who misappropriate public funds?

Whenever serious, clearly proven acts of fraud or misuse of public funds are uncovered, good government cannot countenance anything but strong and swift action, including dismissal and pursuit of

criminal charges. The frustrating reality is that too many cases are less than clear or involve conflicting rights.

The Inquiry must be very precise about what it means by *misappropriation*. Clearly, where funds are spent illegally and without authority, criminal sanctions can certainly apply. However, the current vote structure – which has generally served the public well – provides latitude to move funds from one line item to another within a vote, subject to restrictions set out in policy. These short-term measures enable managers to respond to surges in activity in one area of responsibility by transferring from another which has funds available. This flexibility is crucial to a manager's ability to manage funds effectively within a budget year. **APEX would strongly disagree with any move to restrict the present system.**

However, the use of funds for purposes not voted by Parliament is clearly misappropriation. Misappropriation in this context does not mean that anybody benefited personally, it means that Parliamentary authority did not exist. Clear guidance on this point must be provided to parliamentarians and public servants. Simply reducing flexibility or centralizing control will be ineffective and counter-productive.

APEX recommends that once clear guidance has been provided, sanctions must also be defined. In our view, these should comprise several degrees of severity, from personal sanctions within the government's disciplinary process to legal sanctions under criminal law.

ETHICS WITHIN THE PUBLIC SERVICE AND FOR ELECTED OFFICIALS AND POLITICAL STAFF

Should "values and ethics" guidelines for public servants be linked to specific responsibility and accountability processes to safeguard against wrongdoing: should they be enshrined in legislation?

1. **CODES OF ETHICS FOR THE PUBLIC SERVANTS, PARLIAMENTARIANS AND POLITICAL STAFF**

Values and ethics determine how people make decisions and carry them out. Organizational values must therefore be internalized by the

individual or they will be ineffective. While linking values to procedures will achieve some measure of behavioural compliance – the letter of the intent – it offers no guarantee that the people hired or elected will hold these values – the spirit of the intent.

Ethics and Values in the Public Service

Codes of ethics risk being nothing more than plaques on the wall unless they are put into practice (“operationalized”). But how does one actually measure the degree to which organizations operate ethically? An approach favoured by many organizations is a regular staff survey which probes ethical behaviour by its leaders, employees’ understanding of ethical boundaries and the link between policy and reality. The Government of Canada has already undertaken a limited number of such surveys, while some departments and provincial governments are pursuing this tool more aggressively. The key message from their experience is that such evaluations have to be carried out regularly and systematically and have a broader focus than simply identifying unethical practices.

APEX believes that in the end, the best assurance of having a public service that behaves ethically is in **recruiting, retaining, rewarding and promoting people who hold and act upon the core public service ethics and values**. Continuous reinforcement of these values – through training, for example – is essential.

For Parliamentarians and Political Staff

APEX believes that an equal focus must be placed on the ethical behaviour of parliamentarians and political staff, especially with regard to how they use the information they receive and the way they deal with public servants. It is unfortunate that most public servants regard appearances before House committees as unpredictable, high-risk situations. They generally have no confidence that the material to be discussed has been read and absorbed, nor can they count on being treated as the professionals that they are.

APEX recommends that there be a code of ethical behaviour for parliamentarians as part of the rules of Parliament and that political staff be governed by the same code.

2. WHISTLEBLOWING

What protections should be afforded to public servants who believe they have witnessed impropriety in the management of government programs (“whistle blowers”)?

APEX strongly supports the current initiative to pass legislation to safeguard those who witness genuine wrongdoing. However, as some Association members have already learned, public service executives who are simply doing their job by trying to manage performance problems are often subjected to

so-called “whistle blowing” from discontented employees. These executives – who have no union to represent them – are put in the untenable position of having to defend themselves against false accusations, while having no recourse. Even when innocent, their integrity is tainted by the accusations. The Association has argued this point before Parliament’s Committee on Government Operations.

APEX therefore recommends that whistle-blowing legislation enshrine protection for those accused as well as those making the accusations. Investigations must be completed quickly and yield the clearest possible results – it would be unjust to leave the individuals concerned in a procedural limbo with their reputations in question.

APEX also recommends that, just as in the case of Royal Commissions, where whistle-blowing accusations against executives are accepted for investigation, full legal indemnification be provided to these executives by the government.

TRANSPARENCY

What limits if any should there be to full transparency of government programs and management and expenditure decisions/actions? What mechanisms are acceptable to protect secret/confidential information and decisions that would still allow an acceptable level of transparency to the public?

In APEX's view, there should be only limited exceptions to complete transparency of government expenditures. These possible exceptions should be considerations such as:

- National security
- Intergovernmental negotiations – international and provincial/territorial
- Privacy legislation
- Potential for financial harm

APEX views transparency as a useful means of *control* – using the term in its managerial sense. We strongly support **full transparency**, not just on relatively minor matters such as senior executive travel, but on matters of much higher financial materiality – all contracts, for instance. APEX supports the initiative announced on October 21st by Ministers Alcock and Brison to strengthen the transparency of government operations.

Further, APEX believes that the Government's decision to insist on improved financial statements and their attestation by fully qualified staff, will provide another very effective way for Parliament and the public to obtain useful information and to have faith in it.

One of the current challenges faced by public service executives is that the circulation of working papers and draft reports can trigger attempts to influence findings and recommendations before the reports are finalized.

What are the implications of releasing internal audit reports to the public, as they are prepared?

APEX therefore recommends that only final audits be publicly available.

CULTURE CHANGE

Culture change may be one of the most important issues to be addressed during this phase of the Inquiry. APEX believes that no amount of systems adjustments will eliminate the malaise that is undermining the capacity of Parliament, the government and the public service to manage their financial responsibilities. The underlying challenge is not legal or technical, but cultural. All parties to the current paradigm – including the media – have to change in order to better serve Canadians.

The change must be brought about in the way people behave, treat each other and carry out their responsibilities. Until the culture of blame and one-upmanship that pervades much of parliamentary discourse can be overcome, neither the government nor the public service will adequately meet Parliament's legitimate and vital needs to have and use financial information. Similarly, until the government puts in place a clearer accountability regime and strengthens its transparency, until it ensures that isolated wrongdoing is discovered and dealt with adequately, it cannot build a foundation of trust and credibility. The recent announcements by the Government are a step in the right direction.

Senior public servants have to be better equipped to deal with mistakes and to manage risk, while still being able to exercise the financial management skills that are an essential facet of their duties. Public servants must have an opportunity to learn from error rather than being forced into a defensive mode.

How can government departments and officials learn from their mistakes and develop feedback loops for lessons learned that will not be impeded by political pressures?

APEX believes that this is a crucial question for the Inquiry. We know that most public servants try to learn from their mistakes and then make adjustments to programs and operations on a daily basis. This is a continuous process, absolutely necessary to the survival of any organization.

However, in the current environment, we rarely hear ready acknowledgement of mistakes or a resolution to repair damage and seek out and deal with those who should be held accountable. The language concerning errors is out of control. The objective of reporting on errors should be to develop the capacity to learn, to adjust and to move forward with improvements and appropriate retrospective actions.

Public Service executives are responsible for the systems and frameworks that provide effective oversight and control of delivery of service to Canadians. In that role, they often bear the brunt of accusations of mistakes or wrongdoing, and for that reason seek:

- restraint in the language of blame by all parties
- clarification of the role of audit vis-à-vis other review instruments, to ensure that we use the right tools to measure our successes and failures without politicizing the process

- much more robust effort on the part of government to introduce effective risk management, including public debate about risk tolerance and the capacity of government to deliver error-free procedures
- greater focus on results reporting rather than process details that often engage parliamentarians

How should politicians, public servants and the media respond to the inevitable administrative foul ups?

There has to be some restraint in official responses. We all remember one of the most publicized ‘scandals’ of recent years, the ‘billion dollar boondoggle’. On further examination, it became a relatively small number of errors, all amenable to correction.

However, public acknowledgment of these facts by media, some politicians and government critics was never forthcoming.

Many in government are frustrated by the media’s continued failure to check stories before going public. Government and, by implication, public servants, become consumed by ‘managing the media’. No legislation, rules or codes will change this environment. However, if all parties could agree to contribute to an overall culture change, much could be achieved.

CONCLUSION

As we said in our covering letter, APEX feels very strongly that the improper actions of a few people must not be allowed to taint the reputation of the Public Service’s professional, ethical management team. As a group, these public servants play a critical and special role in helping the Government give life to its policies and in ensuring that citizens receive the services to which they are entitled in an effective and efficient manner.

The responsibilities borne by public service executives are considerable and they are very conscious of the expectations that Ministers of the Crown and the public hold with regard to their performance. That is why we end this brief by stressing that **in order to deliver on expectations, executives must be properly equipped to do their jobs: with training, clear policies and priorities, good information, financial and human resources and the appropriate administrative and regulatory systems – and, of course, the support of parliamentarians.**