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**Auditor General
of Canada**
to the House of Commons

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Chapter 2
Accountability and Ethics in Government

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The November 2003 Report of the Auditor General of Canada comprises ten chapters, Matters of Special Importance—2003, a Foreword, Main Points, and Appendices. The main table of contents is found at the end of this publication.

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Chapter

2

Accountability and Ethics in
Government

All of the study work in this chapter was conducted in accordance with the policies of the Office of the Auditor General for studies. The policies draw on the standards and practices of various disciplines. The Office used various methodologies and techniques in the development and presentation of the studies' findings.

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Accountability and Ethics in Government

Main Points

2.1 Maintaining the trust of the public is a continuing challenge for government. In a large organization like the federal government, there are bound to be problems and failures, despite best efforts. Public trust in government erodes when there are actual or perceived significant problems in major government programs that could have been prevented or corrected. Over time, the cumulative impact of such events may lead Canadians to call into question the integrity of government as a whole.

2.2 The government has issued *Guide for Ministers and Secretaries of State, Guidance for Deputy Ministers*, a management accountability framework for deputy ministers, and a values and ethics code for the public service. According to the government, the publication of the documents is to help reaffirm the government's commitment to meet Canadians' expectations of the highest standards from their elected and non-elected officials. The documents deal with questions that are central to maintaining trust in government: What are the duties of ministers and deputy ministers and how and to what extent are ministers, deputy ministers, and officials to be held responsible and accountable for government actions in the 21st century?

2.3 We have concerns about the clarity of the documents and we have recommended that the government should further explain how it intends to turn the principles in the documents into action. We believe the documents provide an opportunity for Parliament to examine the appropriateness and effectiveness of some of the basic ways ministers and senior public servants can be held to account for their decisions.

2.4 The government needs to determine the root causes of major problems in government programs. We believe that the government, as an urgent matter, needs to initiate independent, in-depth studies to examine this issue and take steps to prevent their reoccurrence.

2.5 Departments responsible for major procurements and for grants and contributions programs are making slow progress toward establishing comprehensive values and ethics initiatives. The Treasury Board Secretariat needs to develop a model for comprehensive initiatives and set deadlines for departments to establish such initiatives.

2.6 We believe that public servants must have a robust, credible mechanism for addressing cases of wrongdoing. The government needs to act to address the concerns identified in the report of the Public Service Integrity Office, issued in September 2003.

Background and other observations

2.7 A sound basis of values and ethics is critical both to reduce the likelihood that there will be significant problems in programs and to ensure that when they do occur, problems will be dealt with properly. In our October 2000 Report, Chapter 12, Values and Ethics in the Public Sector, we recommended that the government take steps to address the need for maintaining public trust. Since then, as part of its ethics action plan, the government has

- published official guides that describe the responsibility and accountability of ministers, secretaries of state, and deputy ministers;
- developed a management accountability framework for deputy ministers; and
- issued a code of values and ethics for the public service.

2.8 The guide, framework, and code establish principles for holding the government to account. There are still gaps that need to be addressed, however, and the principles will have to be translated into action.

2.9 The Clerk of the Privy Council stated in March 2003 that the public service's dedication to values and ethics must be unassailable and unwavering. We agree and we believe that leadership by both elected officials and senior public servants for values and ethics must be uncompromising.

2.10 If the government clarifies and successfully implements the principles in its guides and other initiatives, it will increase accountability and strengthen the organizational and cultural measures that support it. This will help to reduce the likelihood that major programs could go off track.

The Privy Council Office has responded on behalf of the federal government. Its response appears at the end of the chapter.

Introduction

2.11 In a large organization like the federal government, there are bound to be problems and failures, despite best efforts. Over time, the cumulative impact of such events could lead Canadians to question the integrity of government as a whole—at both the political and the public service levels. A sound basis of values and ethics is critical to reduce the likelihood that there will be significant problems in programs and to ensure that when they do occur, problems will be dealt with properly.

2.12 Canadians expect the government to meet the highest standards of administration in conducting public business. The government has responded to those expectations with measures to improve public administration and with initiatives that emphasize values and ethics. These measures themselves raise public expectations for the proper conduct of public business.

2.13 In June 2002, the government announced an eight-point plan of action on government ethics that included

- issuing a guide for ministers and secretaries of state;
- developing guidelines for ministers' dealings with Crown corporations;
- providing ministers with guidelines to govern their personal political activities;
- establishing a new procedure for appointing the Ethics Counsellor;
- seeking support for a code of conduct for members of Parliament and senators;
- improving clarity, transparency, and enforceability of the *Lobbyist Registration Act*;
- introducing legislation to govern the financing of political parties and candidates; and
- strengthening public service management and accountability for public funds, including mechanisms for more explicit accounting of departmental affairs by deputy ministers.

Focus of the study

2.14 The study described in this chapter reviewed the government's action on our October 2000 Report and our recommendations for government-wide and departmental actions to promote values and ethics in the public sector (Exhibit 2.1). Similar recommendations were made in our May 1995 Report, Chapter 1, Ethics and Fraud Awareness in Government; the government's *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics* (the 1996 Tait Report); and *Principles for Managing Ethics in the Public Service*, developed in 1998 by the Organisation for Economic Cooperation and Development (OECD). It also builds on our work on accountability that we reported in our December 2002 Report chapter, *Modernizing Accountability in the Public Sector*.

2.15 In this study, we reviewed recently released key documents on the leadership responsibilities and accountabilities of ministers and deputy ministers. We also reviewed the Treasury Board's new *Values and Ethics Code for the Public Service*.

2.16 We looked at the progress made on values and ethics initiatives of key departments responsible for procurement and for grants and contributions programs. In addition, we reviewed how well the Treasury Board's November 2001 policy on the internal disclosure of information on wrongdoing was working. Our review of the relationship between the public and private sectors was limited to activities of lobbyists.

2.17 Our observations in this chapter will serve as a starting point for further examination of the initiatives set out in the government's June 2002 action plan on ethics.

2.18 More details on our study objectives, scope, and approach are presented in **About the Study** at the end of this chapter.

Exhibit 2.1 Auditor General's October 2000 Report recommended priorities for action

- Reinforce leadership for promoting ethical conduct by, for example,
 - clarifying the principle of ministerial responsibility and the responsibilities of officials; and
 - identifying the responsibilities of senior and line managers for promoting sound values and ethics.
- Re-invigorate an extensive dialogue on values and ethics that emphasizes the primacy of the principles of respect for law, the public interest, and public service as a public trust.
- Develop a statement of values and ethics for the federal public sector and for each federal entity.
- Develop a set of values and ethics to guide the interaction between the public and private sectors.
- Establish comprehensive values and ethics initiatives in federal entities and interdepartmental communities.
- Provide guidance for ethical decision making and develop recourse mechanisms to allow the voicing of ethical concerns, with appropriate protection for all concerned.
- Explain to all members of the federal public sector the general and specific laws and policies relating to improper conduct.
- Provide objective assessments and reports to Parliament on values and ethics in federal entities.

Observations and Recommendations

Parliamentarians are working on a code of conduct

2.19 The 1984 report *Ethical Conduct in the Public Sector* (Michael Starr and Mitchell Sharp) asked parliamentarians to set an example for the public sector. Parliament has made various attempts since then to establish a code of conduct for both chambers. For example, in 1997 a joint committee of the House of Commons and the Senate proposed a code of conduct and ethical principles for consideration by Parliament. However, this proposal was not adopted.

2.20 In October 2000, we recommended that parliamentarians again consider their leadership role as part of a comprehensive approach to values and ethics in the public sector.

2.21 Such action would be consistent with developments in similar jurisdictions. In 1995 the United Kingdom House of Commons established a Parliamentary Commissioner for Standards, appointed by the House of Commons and responsible for registering interests, providing guidance and training, and investigating complaints by parliamentarians and the public. Members of the UK House of Commons are governed by a Code of Conduct (1996) and the Guide to the Rules Relating to the Conduct of Members. The code of conduct sets out seven principles of public life that guide the public sector in the United Kingdom: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

2.22 In October 2002, the Canadian government asked Parliament to consider addressing ethical issues; in April 2003 it introduced Bill C-34, which would create an ethics officer for the Senate and an ethics commissioner for the House of Commons. The Bill received third reading in the House of Commons. In June 2003, the House of Commons Standing Committee on Procedure and House Affairs issued a report recommending to the House that a code of conduct be included in the Standing Orders of the House.

Ministerial responsibility and accountability

Guidelines for ministers and deputy ministers have been issued

2.23 The Tait Report in 1996 said that ministerial responsibility touches on the “deepest values of public service in a parliamentary democracy” and, if these values are shifting, “much else is in doubt.” It identified concerns that the concept was unclear, outdated, “just unreal,” or “meaningless.” Our October 2000 Report recommended that a clear statement of ministerial responsibility be developed.

2.24 In June 2002, the Prime Minister issued *Guide for Ministers and Secretaries of State*. In June 2003 the Privy Council Office issued *Guidance for Deputy Ministers* and a management accountability framework developed by the Treasury Board Secretariat.

2.25 The documents provide a basis for a much-needed discussion of ministerial and deputy ministerial responsibility and accountability. The documents deal with a question that is central to maintaining trust in

government: How and to what extent are ministers, deputy ministers, and officials to be held responsible and accountable for government actions in the 21st century? The documents are important in helping to clarify the meaning of responsibility and accountability of ministers and deputy ministers. However, we believe the government needs to further explain to Parliament how the principles in these documents (such as responsibility, accountability, and answerability) will be implemented.

2.26 The Guide requires that ministers uphold high standards of ethical conduct in both their public and their private lives. It promotes ethical conduct by providing more transparent criteria for assessing ministerial actions and makes it clear that ministers have a responsibility to respect the non-partisanship of the public service.

2.27 The Guide uses key terms such as responsibility, accountability, and answerability, among which the June 2003 *Guidance for Deputy Ministers* distinguishes as follows:

- Responsibility entails ministerial use of authority.
- Accountability refers to a minister's obligation to explain and justify how he or she has discharged a responsibility and to accept the personal consequences for problems the office holder may have caused or that could have been avoided or corrected, had the office holder acted appropriately.
- Answerability refers to the obligation of ministers to provide information on the use of powers by bodies that report through them to Parliament or on actions taken by previous incumbents of their office. It does not include the personal consequences that are associated with accountability.

2.28 The Guide for Ministers and *Guidance for Deputy Ministers* use these definitions to formulate basic principles of ministerial and deputy ministerial responsibility, accountability, and answerability that apply in particular situations (Exhibit 2.2).

2.29 However, questions remain. For example, the Guide states that ministers are accountable to Parliament for actions that they have taken in their current portfolio. Current ministers are also to be accountable for taking steps to correct errors and to prevent their reoccurrence. The Guide also indicates that ministers are either accountable and answerable or merely answerable to Parliament. The Guide goes on to state that, "...current Ministers are answerable for actions taken by previous incumbents." This leaves open the implication that the obligations of current ministers to the past is limited to answerability, and begs the following question: Who if anyone is to be accountable to Parliament for matters that had their origins in the actions of a predecessor of the current minister?

2.30 The Guide indicates that ministerial accountability for Crown corporations is limited to the degree of ministerial control over and responsibility for the corporations as defined in their establishing legislation.

Exhibit 2.2 Principles of ministerial responsibility and accountability

- Ministers are responsible and accountable to Parliament for the use of powers vested in them by statute. This requires their presence in Parliament to answer questions on the use of those powers. It is of paramount importance that ministers give honest, accurate, and truthful information to Parliament.
- Whether a minister has used the powers appropriately is a matter for political judgment by Parliament. The Prime Minister has the prerogative to affirm support for ministers or ask for their resignation.
- Ministers are not required to resign when departmental officials make administrative errors. When errors or wrongdoing are committed by officials under their direction, ministers are responsible for promptly taking the necessary remedial steps and for providing assurance to Parliament that corrective action has been taken to prevent reoccurrence.
- Accountability of ministers for Crown corporations is limited to the degree of their control over and responsibility for the organizations as defined in the corporations' establishing legislation.
- Parliamentary questions cannot be directed to a former minister concerning policies or transactions in a portfolio he or she no longer holds. Current ministers are answerable for actions taken by previous incumbents.
- Public servants are accountable to ministers and not directly to Parliament. Before parliamentary committees, ministers are responsible for deciding which questions they should answer personally and which questions may be answered by officials speaking on their behalf. Officials provide factual answers and explain policies, but they do not defend or debate them.
- When requested by parliamentary committees, deputies should personally appear to give an account of their stewardship of the department.

Source: *Guide for Ministers and Secretaries of State and Guidance for Deputy Ministers*

Ministers are not answerable for matters over which they have no authority, and they are not subject to the consequences of powers not vested in them. However, the Guide does not indicate who would be held accountable in Parliament for actions over which a minister had no authority but that were taken by a Crown corporation or a non-departmental organization in his or her portfolio.

A need to clarify accountability of deputy ministers

2.31 Concerns about appropriate accountability of deputy ministers are long-standing. The 1979 *Report of the Royal Commission on Financial Management and Accountability* (Lambert Commission Report) and the 1985 *Report of the Special Committee on Reform of the House of Commons* (the McGrath Report) called for deputy heads of departments to be accountable before parliamentary committees for the administration of their departments.

2.32 The government indicated in June 2002 that it would introduce new measures to provide for a more explicit accounting by deputies for the affairs of their departments. The government stated that this initiative would lead “to enhanced accountability mechanisms in Parliament and in public for proper management practices.”

2.33 Deputy ministers' responsibilities. The government's *Guidance for Deputy Ministers* (June 2003) states that the deputy minister is responsible for the effective management of his or her department and must account to the minister if something goes wrong. It says that deputy ministers have a general obligation to ensure that resources allocated to them are managed well, are being used for the priorities identified by ministers, and are achieving results for Canadians.

2.34 The document points out that deputy ministers' responsibilities flow from delegation by ministers; from certain provisions of the *Financial Administration Act*, the *Public Service Employment Act*, and the *Official Languages Act*; and from common law. It notes that the *Financial Administration Act* (FAA), for example, assigns the following responsibilities to deputy heads:

- Ensure that there is an adequate system of internal control and audit (section 31(3)).
- Ensure that their organizations have the money to pay for any goods and services before ordering them (section 32(1)).
- Establish procedures and maintain records to control financial commitments (section 32(2)).
- Authorize payment for contracted goods and services by certifying that goods received and services rendered are satisfactory (section 34).
- Maintain adequate records of public property and comply with regulations governing its custody and control (section 62).

2.35 *Guidance for Deputy Ministers* also points out that the Treasury Board, using its powers under the FAA, has placed considerable responsibility on deputies for the proper management of public funds and property. In addition, the Treasury Board and the Public Service Commission may also delegate to them certain responsibilities for human resources management. Deputies will have additional responsibilities if Bill C-25 (*Public Service Modernization Act*) becomes law. The Bill encourages the Public Service Commission's delegation of hiring to deputy heads and delegation by them to as low a level as possible in the public service.

2.36 Deputy ministers' accountability. Although the government indicated in June 2002 that deputy minister accountability in Parliament was to be enhanced, it is not clear what has changed. We note that the *Guidance for Deputy Ministers* includes a new management accountability framework for deputies that has the potential to improve accountability. However, the Guide for ministers indicates that deputies are not accountable to Parliament. In addition, *Guidance for Deputy Ministers* restates the principle that deputy ministers are accountable to ministers, to the Prime Minister through the Clerk of the Privy Council, and to the Treasury Board and the Public Service Commission for responsibilities assigned to them.

2.37 The accountability for administrative errors described in these documents is complex. *Guidance for Deputy Ministers* uses the term responsibility in discussing ministerial responsibility for administrative errors:

- Ministers are individually responsible for their personal acts, the general conduct of their departments, and acts done in their name (or left undone) by their departmental officials with or without their prior knowledge.
- Ministers must be present in the House of Commons to account for the powers assigned to them, to respond to questions, and to defend how they or their officials have exercised power.
- Ministers must be present in Parliament to account for the use of powers vested in them, including any errors committed in administration. However, ministerial responsibility does not mean that a minister will be required to resign whenever an administrative error is made in his or her portfolio. If a departmental official makes a mistake, the requirements of ministerial responsibility are satisfied when the minister answers in Parliament for the mistake and takes the necessary corrective action.

2.38 However, the Guidance document also states that a deputy minister appearing before a parliamentary committee has a “special obligation to describe the progress, activities and performance of the department in such areas as financial management, program and service delivery, and human resource management.” It says that deputies “should give careful attention to this dimension of their role, and when requested to do so, should personally appear before parliamentary committees *to give an account of their stewardship of the department* [emphasis added]. They should ensure that their officials do likewise.”

2.39 When there is a disagreement between a minister and a deputy, the Guidance document says it is of the utmost importance that deputies give due weight to their own specific responsibilities directly assigned under legislation. If the disagreement cannot be resolved, deputy ministers are advised to discuss the matter with the Clerk of the Privy Council.

2.40 **Public Accounts Committee guidelines.** Developed in 1989 by the Canadian Council of Public Accounts Committees, *Guidelines for Public Accounts Committees in Canada* provides a contribution to this discussion of the responsibilities and accountability of public servants from the perspective of parliamentarians and legislators. The document uses the term accountability to describe the relationship between public servants and public accounts committees. The document states, “Public Accounts Committees should hold public servants accountable for their performance of the administrative duties and implementation activities which have been delegated to them.” It provides the following explanation for holding public servants accountable:

...because of the size of most government departments today, considerable authority has been delegated to public servants for the day to day management of the department. Public servants have been given authority to make decisions and take actions

concerning the spending of most public funds and the management of resources. *It is appropriate that these people be held accountable for their decisions and actions, and it is not acceptable for them to be able to use the principle of ministerial responsibility when they are asked to account for their decisions and actions* [emphasis added].

Because of the amount of delegation that is required today, it is not fair to the Ministers to expect them to be personally responsible for the actions and decisions of all employees in a department. As well, it is impossible for a Minister to have knowledge of all actions and decisions taken by department officials.

2.41 The Guidelines also recommend that public accounts committees call before them public servants who have been responsible for actions the committees are reviewing, even if they have moved to other positions or have retired. The Canadian Council of Public Accounts Committees reported in 1991 that its recommendation to “hold public servants accountable for the performance of their administrative duties” had been implemented at the federal level.

2.42 Parliamentary context for deputy minister accountability. Reports by parliamentary committees have pointed out that the parliamentary culture may have to change before reforms can be made such as holding deputy ministers and other public servants to account for the exercise of their authorities. The key change that the committees have recommended is the establishment of a non-partisan approach to reviewing the administrative responsibilities of public servants. For example, *The Business of Supply: Completing the Circle of Control* (Standing Committee on Procedure and House Affairs, 1998) noted that committee review of government spending estimates would be helped significantly if committee hearings were less confrontational. In addition, the guidelines for public accounts committees state that committee hearings should focus on administration rather than policy and should operate in a non-partisan way.

2.43 Need for clarification. It is not apparent how the government’s intention to enhance deputy minister accountability to Parliament has been achieved by the government’s publication of *Guidance for Deputy Ministers*. On the one hand, the government documents say that deputies are not accountable to Parliament. On the other hand, when giving specific guidance to deputy ministers with respect to appearances before parliamentary committees, they say that deputies have a duty “to give an account of their stewardship of the department” when asked by committees. This phrasing implies accountability because it directs the deputy to account for his or her exercise of personal responsibilities. The phrase is also similar to the one used by the government in the *Guidance* to define accountability as “rendering an account of how responsibilities have been carried out and problems corrected and, depending on the circumstances, accepting personal consequences for the problems the officer holder caused...”

2.44 We believe there is a need to resolve this ambiguity, given the intention of the government to enhance deputy minister accountability to Parliament and the expectations of parliamentarians.

2.45 **Recommendation.** Parliament may wish to consider reviewing *Guide for Ministers and Secretaries of State* and *Guidance for Deputy Ministers*. The government should clarify *Guidance for Deputy Ministers* to indicate whether deputies are to be accountable to Parliament in their own right for their administrative responsibilities or only answerable on behalf of ministers.

Management accountability framework for deputy ministers could be used by parliamentary committees

2.46 *Guidance for Deputy Ministers* also contains a management accountability framework developed by the Treasury Board Secretariat. The Privy Council Office told us that the framework and the Guidance together “have clarified the responsibilities and accountabilities to which Deputy Ministers will be held, and form the basis of a rigorous accountability regime for the Public Service, including values and ethics.”

2.47 The Privy Council Office also noted that it has refined “the Performance Management Program for Deputy Ministers to place a greater focus on how results are achieved, with a direct link to the role of values and ethics in achieving results.” The program is administered by the Clerk of the Privy Council. A performance agreement is established annually as a mutual understanding between each deputy minister and the Clerk as to what is expected of the deputy minister. At the end of the year, performance is reviewed. The Clerk seeks input from a variety of sources, including ministers, committees of senior officials, the Treasury Board Secretariat, and senior management of the Privy Council. A performance rating is assigned and approved by the Governor in Council.

2.48 The framework states, “Departmental leaders by their actions continually reinforce the importance of public service values and ethics in the delivery of results to Canadians.” It outlines indicators and measures for assessing achievement—for example, staff assessment of the organization’s performance against public service values and ethics.

2.49 While the framework is intended to help ministers and central agencies hold deputy ministers accountable, parliamentary committees could also use it when they call deputy ministers to account for their stewardship of their departments, as contemplated in *Guidance for Deputy Ministers*.

2.50 **Recommendation.** Parliament may wish to consider how parliamentary committees could use the Treasury Board Secretariat’s management accountability framework as a gauge when committees ask deputy ministers to give an account of their stewardship of their departments.

Raising awareness of values and ethics

Values and ethics code for the public service

2.51 The tenth Annual Report to the Prime Minister on the Public Service of Canada by the Clerk of the Privy Council (March 2003) noted that the reputation of the public service “has been damaged in recent years.” The Clerk wrote,

There have been public controversies about the way we managed grants and contributions, distributed sponsorship funds and managed a national registration system. This scarring may not be permanent but it shakes the pride we have in our institution. It undermines the contract of trust between citizens, parliamentarians and us.

He emphasized that “values and ethics are the immutable core of the public service” and the public service’s “dedication to values and ethics must be unassailable and unwavering.”

2.52 We recommended in October 2000 that the government reinvigorate the dialogue on values and ethics and develop a statement of values and ethics for the federal public sector as whole. Since then, the Treasury Board Secretariat together with two deputy minister co-champions and the Canadian Centre for Management Development (CCMD) have devoted considerable effort to raising awareness of values and ethics in the public service. For example, the Treasury Board has issued a values and ethics code for the public service and provided guidance to public servants on its Web site. The CCMD has initiated a discussion series on values and ethics, and it has developed a two-day course on the subject for public service executives. Because it is voluntary, there is currently no plan for the roughly 4,000 senior managers in the government to take this course.

2.53 In 1997 the Treasury Board launched its modern comptrollership initiative, which now extends to about 90 departments and agencies. Values and ethics are one of the four pillars of this initiative. In 2000 the government adopted a new management framework, *Results for Canadians*. The framework identifies values as one of four areas critical to a well-performing public sector. It states that public service management “must respect and reinforce Canadian institutions of democracy and it must be guided by the highest professional and ethical values.”

2.54 In June 2003, the Treasury Board published a new *Values and Ethics Code for the Public Service*, effective 1 September 2003. Public servants recognized that a code was needed, and the outcome is the result of a long process of consultation with many public servants. It applies to the departments and agencies for which the Treasury Board is the employer—those listed in Part I, Schedule I of the *Public Service Staff Relations Act*. Thus, it does not apply directly to organizations such as the Canada Customs and Revenue Agency, the Canadian Food Inspection Agency, or Crown corporations. However, it does state that the Code is a policy of the Government of Canada and that public service institutions not covered by the Code should respect its spirit and adopt similar provisions.

Values and ethics code has strengths and some shortcomings

2.55 It is clear in *Guidance for Deputy Ministers* that deputies must take the lead in ensuring that they and their employees uphold and demonstrate public service values and ethics. The new Code has among its strengths the following:

- It makes deputy ministers responsible for ensuring that mechanisms and assistance are in place to help public servants raise, discuss, and resolve concerns about the Code, including designating a senior official to deal with such matters.
- It presents four sets of values—democratic, professional, ethical, and people values—and acknowledges that tensions exist among them and conflicting values need to be reconciled in the public interest.
- It makes adherence to the Code a condition of employment in the public service.
- It extends the application of the post-employment rules of conduct to positions two levels below executives.
- It makes a breach of the Code a wrongdoing that can be reported under the government’s internal disclosure policy to either a senior departmental officer appointed under the policy or to the Public Service Integrity Officer.

2.56 The Code also has shortcomings. It uses terms such as public interest, objectivity, impartiality, loyalty, and integrity, but it does not define them adequately; it presumes that they are self-explanatory. While it calls for conflict among values and ethics to be resolved in the public interest, the Code does not provide adequate guidance on how to determine the public interest in a given situation. Nor does it provide guidance on how to reconcile or assign priority to conflicting values. A significant effort will be needed to explain the Code and translate it into practice. Otherwise, it may simply be put on a bookshelf to collect dust.

2.57 Our October 2000 chapter recommended that the government establish comprehensive values and ethics initiatives in federal entities. However, the Treasury Board Secretariat chose to give departments considerable latitude to develop and implement values and ethics initiatives. We are concerned that the Secretariat has no model outlining what a comprehensive value and ethics initiative should contain and no deadlines for departments to develop and implement an initiative. Nor has it identified the resources needed for this undertaking.

2.58 Integrating the code into public service management. The publication of the Code sets the stage for the even more difficult challenge of integrating the Code’s principles into decision making. The government recognizes that there is a need for better integration of values and ethics into the daily practices of government organizations. The Treasury Board Secretariat is concerned about a continuing perception among public servants that senior managers do not “walk the talk,” and that responsibilities are delegated without an adequate framework of values or any assurance of

the support or backing of superiors. The Secretariat has a project underway to address these concerns and integrate values and ethics into the public service. At the time of our study, the Secretariat had not determined a completion date for the project.

2.59 We noted that steps have been taken to integrate values and ethics into decisions about creating arrangements for alternative service delivery. The April 2002 policy on alternative service delivery contains a public interest test to determine whether such an arrangement would be in the public interest. The policy asks officials to determine that a proposed arrangement will “promote values and ethics and an organizational culture that are consistent with public sector values and ethics” and that “the expected organizational culture (including a framework of values and ethics) will materialize.”

2.60 Recommendation. The Treasury Board Secretariat should

- provide guidance on the meaning of key terms in the *Values and Ethics Code for the Public Service*, particularly what is meant by the public interest in specific situations and how to integrate values and ethics into decision making;
- develop a model for comprehensive departmental initiatives on values and ethics that takes into account the risks faced by departments;
- ensure that departments have the expertise they need, a working knowledge of organizational ethics and best practices, and the capacity to provide appropriate training to staff in a reasonable time frame;
- identify the funding needed for departments to develop and implement their own comprehensive values and ethics initiatives; and
- establish deadlines for departments to develop and implement comprehensive values and ethics initiatives.

Internal disclosure policy on wrongdoing

2.61 We believe that public servants must have a robust, credible mechanism for dealing with cases of wrongdoing. In 1996, public servants told the Tait study group that there was no point in asking them to uphold public service values or maintain high ethical standards if they were not given the tools to do so. The Tait Report concluded that unless recourse mechanisms were created, many public servants would consider all the talk about values and ethics as “so much hot air.” Our October 2000 Report expressed similar concerns.

2.62 In response, the Treasury Board developed its Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, which came into effect in November 2001. The policy defined wrongdoing as a violation of any law or regulation or a misuse of public funds or assets; gross mismanagement; or an act causing substantial and specific danger to the life, health, and safety of Canadians or the environment. Violations of the *Values and Ethics Code for the Public Service* have since been added to that definition.

2.63 The President of the Treasury Board indicated that the policy was instituted to help the public service carry out its “fundamental role in serving the public interest.” The policy called for departments to designate senior officers who would receive and investigate disclosures of wrongdoing and ensure prompt action. It also established the Public Service Integrity Office (PSIO) to receive disclosures when public servants believe that they cannot disclose the information in their own departments or that their departments have not addressed such disclosures properly. The PSIO does not have the mandate to receive complaints from the public, officials in Crown corporations, and major federal entities such as the Canadian Food Inspection Agency and the Canada Customs and Revenue Agency.

2.64 The policy allows for the disclosure of wrongdoing; however, it fails to adequately address the fact that disclosure is seen as highly risky in a risk-averse public service.

2.65 The Public Service Employee Survey by the Treasury Board Secretariat in December 2002 shed some light on the extent to which public servants feel vulnerable to reprisal for reporting wrongdoing. While the survey did not ask public servants whether they believe they can report wrongdoing without fear of reprisal, it did ask whether they believe they can seek formal redress without fear of reprisal on such matters as a grievance, right of appeal, or a health and safety concern.

2.66 The survey found that

- 35 percent of public servants did not feel they could seek formal redress without fear of reprisal and
- 40 percent of finance officers and 38 percent of procurement officers felt they could not seek formal redress without fear of reprisal.

2.67 A July 2003 study by the Secretariat surveyed public servants’ awareness of, knowledge of, use of, and willingness to use the policy on internal disclosure of information on wrongdoing.

2.68 About 13 percent of the public servants who responded to the survey said that they had been aware in 2002 of wrongdoing in the workplace; of that group, 65 percent said they had not disclosed the information. However, the survey did not report the types of wrongdoing that had occurred.

2.69 During our study we found that a small number of cases had been reported to senior internal disclosure officers in National Defence, Public Works and Government Services Canada (PWGSC), Human Resources Development Canada (HRDC), and Industry Canada. Many of them were related to personal employment concerns rather than disclosure of wrongdoing as defined by the government.

2.70 The Public Service Integrity Office released its first annual report on 15 September 2003. The report contains a thoughtful analysis of the current situation and recommendations to improve it. The report concluded that the PSIO “does not have sufficient support and confidence of public sector

employees” and that serious consideration should be given to making the PSIO legislation-based instead of policy-based.

2.71 On 16 September 2003, the President of the Treasury Board told the Senate Standing Committee on National Finance that she was creating a working group “to examine disclosure of wrongdoing in the workplace and to propose concrete solutions.” The President appointed a working group on 29 September 2003 and a report to the President is expected by the end of January 2004. Based on our analysis, we believe the working group should give serious consideration to the PSIO report recommendations, including that the PSIO should be based on legislation rather than policy.

Lobbyists Registration Act and Code of Conduct

2.72 The *Lobbyists Registration Act* and the *Lobbyists’ Code of Conduct* (1997), both administered by the Office of the Ethics Counsellor, address elements of the interaction between the public and private sectors. The Act covers communications by paid lobbyists with public office holders in respect of the development of legislative proposals, the introduction of bills, the making of any regulation, the development of any policy or program, the awarding of any grant, contribution, or other financial benefit, and the awarding of any contract. It also covers the arranging of meetings between a public office holder and any other person.

2.73 The Act recognizes lobbying of public office holders as a legitimate activity. The *Lobbyists’ Code of Conduct* establishes the conduct the government expects of lobbyists, and they are legally obliged to comply with the Code. The Act authorizes the Ethics Counsellor to investigate breaches of the Code and report the results to Parliament.

2.74 The *Lobbyists Registration Act* was amended in June 2003 to expand the requirements for registration of lobbyists and improve the enforceability of the Act. The Act focusses on disclosing the names of lobbyists who have been paid. It does not attempt to regulate how lobbyists lobby. It does not categorize requests for information as lobbying, and it does not apply to unpaid lobbyists.

2.75 One of the key services that lobbyists offer is obtaining timely information for their clients. The information they obtain is not secret, but some of it may not be readily available to the public. For example, lobbyists

- obtain information on upcoming procurements or regulatory initiatives,
- obtain information on the different views and interests of the government departments affected,
- identify the key decision makers in departments for particular issues, and
- provide decision makers in departments with information in an effort to improve the chances that the bids of the lobbyists’ clients will be successful.

2.76 These services may give the lobbyists’ clients the advantage of access to information that is not readily available. This may compromise the public interest.

2.77 The Supply Manual of PWGSC partly addresses this issue. It states that to ensure the integrity of the competitive process for any procurement under its control, enquiries and other communications are, from the date when bids are solicited until the date when a contract is awarded, to be directed only to the PWGSC contracting officer responsible for the procurement and not to other government officials. It also states that any significant information about the proposed procurement that is given to one supplier after the solicitation of bids must be given to all other interested suppliers in adequate time for them to consider it.

2.78 These principles need to be expanded to cover all stages of procurement, including activities before bid solicitation—for example, when the specifications for goods and services are being developed. Appropriate government policies based on these principles are needed for grants and contributions, regulation, and policy development.

2.79 Recommendation. The government should protect the public interest by affirming the principle that any significant information given to one party by public office holders at any stage of the process for procurement, grants and contributions, regulation, or policy development must be available to all known interested parties.

Values and ethics in procurement and grants and contributions

2.80 Our October 2000 Report recommended that departments establish comprehensive values and ethics initiatives. Our current study reviewed the extent to which certain components of a comprehensive values and ethics initiative were present in departments and agencies responsible for procurements and for large grants and contributions programs.

2.81 The departments we reviewed were PWGSC, National Defence, HRDC, and Industry Canada, as well as related agencies such as the Atlantic Canada Opportunities Agency (ACOA), Canada Economic Development for Quebec Regions, and Western Economic Diversification Canada.

Progress is being made overall, but it is slow

2.82 Sound values and ethics and financial and management controls are needed to maintain probity in government. Overall, agencies responsible for major procurements and for grant and contribution programs are making progress in developing and implementing comprehensive values and ethics initiatives. Based on the state of departmental activities at July 2003, however, that progress is still slow.

2.83 Procurement. PWGSC and National Defence are responsible for major government procurements. We found in October 2000 that they had the most comprehensive values and ethics programs, and they still do. Each has

- a departmental statement of values and ethics,
- a program office,
- an advisory board,
- a senior champion of values and ethics,

- a significant course in values and ethics,
- inclusion of values and ethics in the performance appraisal criteria for most senior managers, and
- staff surveys of values and ethics.

2.84 Each department is also developing an approach to evaluating the effectiveness of its values and ethics program. PWGSC has reviewed elements of its program strategy and it plans to complete an evaluation of the effectiveness of its program by 31 March 2004. We believe that the results of these evaluations should be reported to Parliament. We have recommended that the Treasury Board Secretariat develop a model for a comprehensive values and ethics initiative. The programs of these two departments could be used by the Secretariat as a starting point to develop such a model that takes into account the risks faced by departments.

2.85 PWGSC officials are responsible for following the procurement process as laid out in the Supply Manual. However, they do not certify that the process has been followed. They certify only that terms and conditions of contracts are in accordance with departmental policies, regulations, and directives. This means the certification does not cover other important parts of the procurement process—for example, the solicitation and evaluation of bids.

2.86 PWGSC is developing a procurement quality assurance system to improve the contracting process. In looking at ways to improve the procurement process, the Department considered the findings of several departmental internal audits between 1996 and 2001. These findings included serious instances of non-compliance with policies designed to ensure the clarity and completeness of bid solicitations and the accuracy and fairness of bid evaluations.

2.87 PWGSC plans to finish testing its quality assurance system by 31 October 2003 and plans to ask for funds to implement the system in 2004-05. However, it has not yet been decided whether the system will require certification by officials at key stages in the procurement process that the Supply Manual requirements have been followed.

2.88 In September 2000, the Treasury Board Secretariat established an initiative to develop and implement a professional development and certification program for the large and diverse community responsible for government procurement, materiel management, and real property management. The Treasury Board Secretariat estimates that there could be as many as 10,000 officials carrying out these responsibilities; it is in the process of conducting a demographic study of these officials. The Secretariat told us that it plans to complete the course material and the certification component of the program in spring 2004. The curriculum includes material on values and ethics. The Secretariat added that how and when the program will be delivered will depend on the establishment of the School of the Public Service as proposed in Bill C-25, *The Public Service Modernization Act*.

2.89 In 2002 the Secretariat, in consultation with departments responsible for procurement, developed a draft framework for ethical decision making and a draft values and ethics statement for the procurement function. At the time of writing, it estimated that about 1,400 officials responsible for procurement, materiel management, and real property had received some training in values and ethics.

2.90 Grants and contributions programs. Following an internal audit report on problems in its grants and contributions program, in 1999 HRDC established a life cycle process and a quality assurance tracking system to ensure that its grants and contributions process is followed. The new system is part of an HRDC approach to strike a balance between client service and good financial management practices. These developments enhance accountability by requiring officials to certify compliance with the grants and contributions policy and process. With respect to values and ethics, HRDC has taken many of the same steps as PWGSC and National Defence. However, its values and ethics champion, program office, and advisory board were not substantially in place at the time of our examination, and it has discontinued staff surveys of values and ethics. A new values and ethics champion was appointed in August 2003, and in September 2003 the Department's Human Resources Planning Committee assumed responsibility for providing values and ethics leadership.

2.91 In addition, during 2002–03 HRDC received funds from the Treasury Board Secretariat to develop an internal audit methodology for departments to assess whether key management elements of modern comptrollership, including strengthening values and ethics, are in place; the methodology is being tested in HRDC. However, assessing the effectiveness of modern comptrollership pillars such as values and ethics is not part of the audit methodology. HRDC planned to provide a final report on the project in October 2003.

2.92 Industry Canada relies on its program services board to ensure prudence and probity in issuing grants and contributions. The board makes recommendations to the Deputy Minister and the Minister for approval of grants and contributions.

2.93 Industry Canada's values and ethics initiative is in a formative stage; its Comptroller's Branch, which co-ordinates such initiatives, plans to develop a departmental statement of values and ethics by 2004–05. Other agencies such as ACOA have also taken some steps but do not have comprehensive values and ethics initiatives.

2.94 We believe the quality assurance systems established by HRDC and Industry Canada have enhanced accountability by requiring officials to certify that government policies have been followed at key stages of decision making.

2.95 The Treasury Board Secretariat has not established a professional development and certification initiative for officials responsible for grants and contributions programs. It informed us that there is no grants and contributions community requiring certification. It stated that this

community is “not a recognized professional community in the same sense as the financial management, procurement, or real property community, for example.” However, the Secretariat is encouraging the development of training programs for such officials.

2.96 Recommendation. To enhance accountability and protect the public interest, the government should require all departments and agencies responsible for procurement and for large grants and contributions programs to develop quality assurance systems that provide departmental management with appropriate assurance, including certifications at key stages of decision making, that procurement and grants and contributions policies and processes have been followed.

Getting at the root causes

2.97 The government has instituted several initiatives to enhance accountability and values and ethics for ministers, deputy ministers, and public servants. However, it needs to determine the root causes of problems in major government programs. It is not clear whether its initiatives will succeed unless the obstacles are identified and addressed.

2.98 The government needs answers to why there have been problems in major government programs, for example:

- Were the responsibilities and accountabilities of ministers, deputies, and other officials not sufficiently clear?
- Were fundamental values and ethics not adhered to?
- Was there perceived or actual direction that compromised program integrity?
- Were results achieved at the cost of due diligence?
- Were oversight mechanisms ineffective, particularly those exercised by central agencies?
- Were resources and expertise not sufficient?

2.99 The government also needs to know

- the nature and pervasiveness of the problems,
- why senior officials did not intervene to prevent or correct the problems,
- whether persons responsible for the problems were identified and held accountable, and
- what steps were taken to prevent the reoccurrence of the problems.

2.100 We believe that an independent, in-depth examination of these and other related matters is urgently needed.

2.101 Recommendation. The government should, as an urgent matter, initiate independent, in-depth examinations to determine the root causes of problems in major government programs. It should report the results of these examinations to Parliament along with the steps it has taken to prevent their reoccurrence.

Conclusion

2.102 In our view, Canadians deserve the highest standards of accountability and ethics in the government's conduct of public business. The government has issued *Guide for Ministers and Secretaries of State*, *Guidance for Deputy Ministers*, a management accountability framework for deputy ministers, and a values and ethics code for the public service. The documents deal with questions that are central to maintaining trust in government. We believe the documents provide an opportunity to examine the appropriateness and effectiveness of some of the basic ways ministers and senior public servants can be held to account for their decisions. We believe that to strengthen accountability and ethics in government,

- leadership for values and ethics by elected officials and senior public servants must be uncompromising,
- responsibility and accountability for decisions need to be clear,
- values and ethics need to be better integrated into day-to-day operations,
- public servants need a robust, credible mechanism for dealing with cases of wrongdoing, and
- the government needs to determine the root causes of major problems in government programs and take steps to prevent their reoccurrence.

The federal government's response. The *Guide for Ministers and Secretaries of State* and *Guidance for Deputy Ministers* have clarified that the government's approach to implementing accountability is based on the system of ministerial responsibility in place in Canada and other Westminster-style jurisdictions for over a century. This system recognizes that only the person to whom responsibility and authority are assigned can take action. Consequently, incumbent Ministers are accountable to the House for their departments, including for any corrective action required to address problems that may have occurred prior to their appointment. This principle also governs the practices of the House of Commons, as defined over time by practice, precedents and statements by various Speakers of the House. Speakers have consistently ruled that Ministers may be questioned only in relation to current portfolios.

Guidance is equally clear that Deputy Ministers' accountability is exercised within the same framework of ministerial responsibility, and Ministers are responsible for their departments, acts done or left undone in their name by departmental officials, and departmental financial and administrative practices. The requirement that Deputy Ministers "should personally appear before parliamentary committees to give an account of their stewardship of the department" should be seen in the overall context of the Minister's accountability to Parliament, with Deputy Ministers appearing on behalf of the Minister. Treasury Board Secretariat is implementing the Management Accountability Framework which will assist Deputies in reporting on departmental stewardship.

About the Study

Objectives

The objectives of the study were the following:

- to examine the government's action on our October 2000 recommendations for comprehensive government-wide values and ethics initiatives and
- to examine values and ethics initiatives in departments responsible for major procurements and for grants and contributions programs.

Scope and approach

This study reviewed the government's action on the recommendations made in our October 2000 Report, Chapter 12, Values and Ethics in the Public Sector, for government-wide and departmental actions to promote values and ethics in the public sector. Similar recommendations were made in our May 1995 Report, Chapter 1, Ethics and Fraud Awareness in Government; the government's *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics* (the 1996 Tait Report); and the Principles for Managing Ethics in the Public Service, developed in 1998 by the Organisation for Economic Cooperation and Development (OECD). It also builds on our work on accountability that we reported in our December 2002 Report chapter, Modernizing Accountability in the Public Sector.

We examined the values and ethics initiatives undertaken by the Treasury Board Secretariat, the Privy Council Office, the Canadian Centre for Management Development, and key departments responsible for procurement and for grants and contributions—National Defence, Public Works and Government Services Canada, Human Resources Development Canada, and Industry Canada, as well as associated agencies such as the Atlantic Canada Opportunities Agency, Canada Economic Development for Quebec Regions, and Western Economic Diversification Canada.

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