



Perhaps the most careful and insightful discussion of public sector accountability ever written for the Canadian context. Aucoin and Jarvis not only adroitly assess the misperceptions about and shortcomings of our mechanisms of accountability, but offer realistic suggestions for improving them. There is not a public servant, MP or student of public administration who should miss reading this.

Susan Phillips, Professor, Public Policy and Administration, Carleton University, and Senior Academic Fellow, Canada School of Public Service

In this readable and insightful study, Aucoin and Jarvis do an excellent job of clarifying the theory and practice of accountability, and offer constructive suggestions for reform. This study should be required reading for both political and administrative leaders in government.

Paul G. Thomas, Duff Roblin Professor of Government, University of Manitoba, St. John's College

No topic in Canadian public administration has elicited so much confused discussion and yet so little thoughtful change. We now have a first-rate comparative diagnosis of the principles, realities, and complexities of accountability in Canadian governance and some thoughtful and practical prescriptions for improvement. This timely and important publication is required reading, not only for all public servants, but for ministers, members of Parliament, and the media. This book will increase their understanding and elevate the level of debate, and could provide a positive agenda for necessary change.

David A. Good, Professor of Public Administration, University of Victoria, and former federal Assistant Deputy Minister

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Modernizing Government Accountability: A Framework for Reform

BASIC RESEARCH

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**Peter Aucoin and
Mark D. Jarvis**

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Library and Archives Canada Cataloguing in Publication

Aucoin, Peter, 1953-

Modernizing government accountability : a framework for reform

Issued also in French under title:

Moderniser l'obligation de rendre compte du gouvernement : un cadre de réforme

Available also on the Internet.

Includes bibliographical references.

ISBN 0-662-39869-6

Cat. no. SC103-15/2005E

1. Representative government and representation – Canada.
2. Cabinet system – Canada.
3. Ministerial responsibility – Canada.
4. Canada. Parliament – Reform.
 - I. Jarvis, Mark D.
 - II. Canada School of Public Service.
 - III. Title.

JL65.A92 2005 320.471 C2005-980097-6

Internet (PDF) :

ISBN 0-662-39870-X

Cat. no. SC103-15/2005E-PDF

Internet (HTML) :

ISBN 0-662-39871-8

Cat. no. SC103-15/2005E-HTML

Publishing and printing cost per unit: \$10.00 (CDN)

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Table of Contents

Preface: A Word from the School	4
Acknowledgments	6
I. Introduction	7
Objectives and Overview	8
II. A Foundation of Democratic Government	12
Representative Democracy: The Accountability Imperative	12
Ministerial Responsibility as Ministerial Accountability: Doctrine and Reality	13
Mechanisms of Accountability	20
The American System in Contrast	22
Parliament: Holding Ministers and Government to Account	24
III. Accountability, Hierarchy and Contracts	29
A Hierarchy of Superiors and Subordinates: Simple and Complex	29
Accountability in Principal-Agent Relationships: Contracts in Place of Hierarchy	32
Partnerships: Shared Accountability among Peers and Equals?	33
The Critical Chain of Delegated Authority, Responsibility and Accountability	34
Completing the Accountability Loop: Reports, Reviews and Corrective Action	36
Conclusion: Conditions and Instruments of Effective Accountability	37
IV. Is the Accountability Regime Defective?	41
Ministerial Responsibility: Enduring Confusions	41
Majority Government and Party Discipline: The Canadian Disease?	44
Deputy Minister Accountability in Parliament	47
Public Service Accountability within Government	58
Results-Based Reporting to the Rescue?	65
Delegated Governance: Who's Accountable for Arm's Length Agencies?	69
V. Modernizing Accountability	72
Parliamentary Scrutiny: Holding Ministers and Officials to Account	72
Improving Deputy Minister Accountability: A New Canadian Scheme	78
A More Independent Public Service: A New Regime for Appointing Deputy Ministers	81
Enhancing Parliamentary Scrutiny through Performance Review	84
Delegated Governance: Extending the Accountability Regime Further	86
VI. Conclusion	89
Appendix I: Glossary of Terms	91
Appendix II: Quick Facts on Executive Government and Parliament	107
Appendix III: Additional Resources	109

Preface: A Word from the School

The last few years have been marked by a growing interest in, and concern about, accountability in government. The concept and practice of democratic accountability are not only central to good government and to public confidence, but also sometimes confusing given the complexities of our Parliamentary and bureaucratic system. As the authors of this publication note, "Virtually everyone to whom an account is due is also accountable to someone else at a higher level." Given recent controversies, it is more important than ever to understand the fundamentals of accountability, to reflect on what accountability means in terms of professional roles, and to engage in the discourse on accountability as a way of further strengthening Canadian democracy.

Dissecting and analyzing this complex regime requires a strong research base that moves beyond anecdote and opinion to support informed dialogue, debate, and decisions. The Governance Research Program of the Canada School of Public Service (CSPS) seeks to build a foundation of knowledge and generate quality research that supports the work of federal practitioners (www.mySCHOOL-monECOLE.gc.ca/research/index_e.html).

Modernizing Government Accountability: A Framework for Reform is the latest publication to be released by the School's Governance Research Program. It is authored by Peter Aucoin, one of Canada's leading scholars in political science and public administration, and Mark Jarvis, an analyst with the Governance Research Program. Valuable insights and feedback from a number of scholars and public servants have further strengthened the work, although the views expressed are entirely those of the authors.

The purpose of this document is to examine the basic architecture of accountability in the Canadian system of governance, in light of changes in the practice of public administration, and to suggest possible ways of strengthening accountability. Following the work

of *Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change* – the first publication released as part of the CSPS Governance Research Program – this report builds on the foundation of responsible government to probe existing mechanisms of accountability "...to promote democratic control, compliance and continuous improvement in the use of public authority and resources." The issue is not only of concern to elected officials, public servants and scholars, but of fundamental importance to all Canadians.

By understanding accountability and related ideas more fully, public servants in particular can better fulfill the fundamentally important role they play in Canada's parliamentary democracy, and provide the best possible support and service to ministers, members of Parliament and citizens.

The Canada School of Public Service is pleased to make this publication available, and I am confident that it will make a contribution to the ongoing national dialogue on accountability and Canadian democracy.



Janice Cochrane
President
Canada School of Public Service

Acknowledgments

The authors would like to take the opportunity to thank the following individuals who assisted us with their insightful and thoughtful comments.

Herman Bakvis	Evert Lindquist
David Good	John Mayne
Ken Kernaghan	Paul Thomas
Arthur Kroeger	Sam Wex

We are equally grateful to a number of public servants who, in the spirit of this publication, remain anonymous.

We thank Leslie Krukoff for her exceptional work in guiding us through the publication process.

I. Introduction

At times, members of Parliament fail to represent their constituents as they wish to be represented, ministers misuse their executive authority, and public servants fail to serve properly. And, more generally, government policies do not always achieve their objectives and public services do not always meet the standards of efficiency, effectiveness and quality that citizens expect.

These shortcomings in Canadian governance and public administration, as elsewhere, occur as a normal course of events. Often, of course, the record of performance is reasonably good, even very good or excellent by comparative benchmarks: MPs are responsive, ministers govern responsibly, public servants are proficient, public policies produce results citizens value, and public services are first class and citizen-centred. At other times, however, the record in one or more respects is not so good, or even bad. Occasionally, it is dreadful.

No single factor causes all shortcomings in governance and public administration. Nonetheless, other things being equal, the effectiveness of the design and practice of accountability within governance and public administration invariably has a significant effect on behaviour and performance. When the public perceives numerous failures or shortcomings, the public demands greater or stronger accountability. The public's logic is clear: accountability is meant to promote democratic control, compliance and continuous improvement in the use of public authority and resources.¹ Accountability is central to representative democracy.

Accountability in democratic governance and public administration requires that those who exercise public authority be subject to scrutiny and evaluation by a superior public official

¹ See Peter Aucoin and Ralph Heintzman, "The dialectics of accountability for performance in public management reform," *International Review of Administrative Sciences* 66, no.1 (March 2000): 45-56.

Accountability in democratic governance and public administration requires that those who exercise public authority be subject to scrutiny and evaluation by a superior public official or public body. Accountability imposes obligations: those who exercise authority must render accounts to superiors, and superiors must extract accounts and pass judgment on them.

or public body. Accountability imposes obligations: those who exercise authority must render accounts to superiors, and superiors must extract accounts and pass judgment on them. When this judgment is negative, superiors take corrective action or apply sanctions, as they deem required.

In Canadian governance and public administration, accountability is complex and multi-layered. Virtually everyone to whom an account is due is also accountable to someone else at a higher level. The ultimate authority is the electorate: citizens possess the constitutional right to pass judgment on those they have elected to the House of Commons and, indirectly, on their government. As a consequence, of course, they have the unfettered right to change who governs them. Only citizens, in this sense, are unaccountable to a superior power. Everyone else involved in governance, including administration, is accountable to someone else, in some manner.²

Objectives and Overview

In this publication we examine the basic architecture of accountability in the Canadian system of governance and public administration³ in light of changes in the practice of governance and public administration. This architecture is built upon the foundation of “responsible government,” the constitutional convention that provides the democratic basis of the Canadian system of parliamentary government.⁴ We know from the practice of government over the past few decades that the understanding of this constitutional convention has become frayed in several quarters, and in some respects our formulation needs to better accommodate changing practices. For many commentators, the constitutional convention is out of sync with contemporary reality; for some, it is an outright

² The judiciary is the part of government with the greatest independence and its decisions are not subject to a superior authority, except within the system of appeals to higher courts. Judges are accountable to judicial councils for their conduct, and they can be removed, although by way of a process with sufficient checks and balances to preserve their fundamental independence from the political process.

³ This is the first publication of a project that will include separate publications on internal public service accountability, parliamentary accountability, results-based reporting and accountability for distributed or delegated governance.

⁴ Peter Aucoin, Jennifer Smith and Geoff Dinsdale, *Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change* (Ottawa: Canadian Centre for Management Development, 2004).

failure because it does not result in elected or appointed officials being held responsible and accountable. Clearly, the effectiveness of accountability in Canadian governance and public administration has been called into question.

Based on the analysis in this report, we conclude that, in light of developments in the practice of governance and public administration over the past few decades, we need to better formulate the way that we understand, articulate and practice the essential elements of public accountability in governance and public administration. There is too much confusion around the subject. In many respects, accountability has been improved considerably. In some matters, government has taken the lead; in others, reform has been initiated by political dynamics or independent forces, including the media. In any event, there are now more accountability mechanisms than ever before. Not surprisingly, these developments have made the regime even more complex.

Nonetheless, demands have been made for further improvements as a result of two factors: first, the changing circumstances of governance and public administration and second, real or alleged cases of wrongdoings or maladministration. While the latter involve greater political drama, the former have been an equally pressing force over time.

At the present time, there are understandably great pressures in the system to address shortcomings by strengthening *controls*, including the control elements of accountability such as audits and reviews that apply to departments and to government agencies that operate at arm’s length from ministers. While some of these changes may be desirable, other changes that improve accountability may be needed to better accomplish the two other major purposes of accountability:

- (1) providing *assurance* to Parliament and the public on the use of public authority and resources by government; and,
- (2) promoting *continuous improvement* in governance and public administration.

None of the possible changes to the system are straightforward. Indeed, several are conundrums — hard questions with no easy answers. This is especially the case with changes intended to strengthen the effectiveness of checks and balances in the system. The most critical of these focus on the political capacity of Parliament to hold the government and the public service to account.

The political capacity of Parliament is determined largely by the extent to which the government dominates Parliament. In Canada, the norm has been single-party majority governments formed from the House of Commons, and a Senate without the democratic legitimacy to check the government. The high turnover in the House of Commons that results from elections in most electoral districts produces relatively inexperienced MPs. In addition, party leadership structures that give a Prime Minister considerable dominance in her or his party have resulted in a situation where MPs are not willing or perhaps not able to hold the government and public service to account.

Changes to improve the situation in these respects would invariably involve some of the following: reform to the electoral system for the House of Commons; a Senate elected through a credible electoral system; reforms to political parties to strengthen the position of MPs with party leaders (including a party leader who is the Prime Minister); and parliamentary reforms to strengthen the position of MPs generally with their parliamentary leaders, in order to diminish the extent to which party discipline undermines the capacity of Parliament to hold the government and the public service to account. These are conundrums for there are no simple answers.

The subject gets no easier when examining other critical dimensions of the accountability regime. Nonetheless, we conclude that changes are necessary in certain areas to preserve the fundamentals of the system and make it more credible. In particular, we think that the time has come to acknowledge that deputy ministers are directly and personally responsible and accountable to Parliament for statutory authorities that are assigned explicitly to deputies by Parliament and for those delegated authorities that are conferred directly on deputies by the Public Service Commission and the Treasury Board. These authorities are assigned directly to deputy ministers and not to their ministers. These authorities cover crucial aspects of the administration of financial and human resources, which are matters of fundamental public importance. These authorities are entirely separate from any delegation of authority that a departmental minister confers on her or his deputy minister for the management of a department and its programs.

This acknowledgment would introduce a new dynamic in parliamentary accountability for deputy ministers (and no doubt by extension, for public service accountability in parliamentary committees generally), even though, *in practice*, MPs occasionally hold deputies (and other officials) to account in Parliament and its committees. To address this new dynamic, the acknowledgment should be

accompanied by two related reforms. First, a set of protocols is needed to govern and guide MPs in holding deputies to account in parliamentary committees. These protocols would also apply to deputies and ministers (and perhaps parliamentary agents who audit and review the performance of deputies). Second, a new process is needed to staff and manage the deputy minister cadre to ensure non-partisan independence for the professional public service. Deputy ministers are not only the link between partisan politicians in the government and the professional public service; they are also the leadership of the professional public service. They need to be, and to be seen to be, independent of partisan politics, both in the parliamentary arena and within the executive arena of government. In our view, the traditions that have served Canada well in these respects now need to be better realized through formal procedures to better preserve and promote the necessary degree of independence.

Strengthening the accountability of the government and the public service requires an enhancement of Parliament's capacity to hold ministers and officials to account. The current regime of performance reporting by departments and agencies is clearly not sufficient, since these reports constitute self-reporting. These reports constitute only one-half of the accountability process. They need to be complemented by independent performance reviews to evaluate departmental programs and their management. These reviews would be different from performance audits, which have a different focus and function.

Although parliamentary committees would receive these reviews, they should not undertake them themselves: MPs on either side of the House are hardly independent. These reviews should be undertaken by professional experts who are "peers" of the professional public servants who manage departments and their programs. Public servants serving on secondment or retired public servants could undertake these reviews. A new parliamentary agency should be established to oversee the conduct of these reviews.

Finally, we think that there are several ways to enforce a more effective and rigorous accountability regime for government agencies that operate at arm's length from ministers. These agencies should not be exempt from those elements of public accountability that promote transparency and ensure integrity in the use of public monies. At the same time, other changes can be introduced to promote even greater independence from partisan politics for these agencies, since ministers are not fully responsible for their day-to-day operations in the case of Crown corporations or for the adjudicative decisions of regulatory commissions and administrative tribunals.

II. A Foundation of Democratic Government

Representative Democracy: The Accountability Imperative

Accountability is a fundamental principle of *democratic* governance and public administration in all representative democracies. In all these systems, elected representatives exercise public authority — the powers of the state — in the legislative and executive branches of government but remain subordinate to the ultimate sovereignty of the people through the democratic electoral process. The elected representatives exercise state power *on behalf of* the people, and not as a matter of their own right. The elected representatives who govern are always accountable to citizens, who can pass judgment on their exercise of power, and remove them if they so desire.

Although Canada is described formally as a “constitutional monarchy,” given that the executive head of state is the Queen, in all important respects, Canada is a representative democracy. It is also a federation with two constitutional levels of government, federal and provincial. Federally, Canadians are governed democratically by their elected representatives in the House of Commons and by the government that must always possess the confidence of the majority of the MPs in the House. Since these MPs are the elected representatives of citizens, and the government is responsible directly to them, both MPs and ministers of the government must be prepared to provide public accounts of their use of legislative and executive powers and to be held accountable to citizens.

The Canadian constitutional system of responsible government is designed on the foundation of accountability because the government must always be present in the House of Commons to account for its actions, when required, and be accountable to the House. The Canadian constitutional regime demands accountability, even when the government has a majority in the

House. The rule of responsible government is that the government must always have the confidence of the majority in the House.

When the House declares its loss of confidence in the government, the Prime Minister must either advise the Governor General to dissolve the House, in which case a general election for a new House of Commons is held, or resign, in which case a new government is formed from the Opposition side of the House without a general election. The first option has been the norm in Canada; indeed, only in 1926 was a new government formed without an election being held.

Democratic elections are a necessary foundation of public accountability. Public opinion, expressed through the mass media, interest groups or social movements, is important in securing responsive government, but nothing exceeds elections in securing the accountability of those who govern. By themselves, however, elections are not sufficient — political competition is essential. A government securely entrenched in office because of the absence of competition is a potentially unaccountable government. Periodic elections must be augmented by requirements and procedures that secure the information and evidence that citizens need to judge those who hold elected office. And of course, between elections there must be institutional mechanisms of accountability for all those who possess public authority or participate in its exercise.

Ministerial Responsibility as Ministerial Accountability: Doctrine and Reality

As part of the ongoing accountability of the government, each individual minister is also expected to be responsible and accountable in and to the House, especially by the Opposition. This is referred to as “ministerial responsibility.” The House requires ministers to render accounts, especially when things go wrong in their spheres of responsibility. Ministers must account for how they and their officials use ministerial authority in carrying out their statutorily assigned responsibilities. And the House passes judgment on them.

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Accountability is a fundamental principle of democratic governance and public administration in all representative democracies. In all these systems, elected representatives exercise public authority — the powers of the state — in the legislative and executive branches of government but remain subordinate to the ultimate sovereignty of the people through the democratic electoral process.

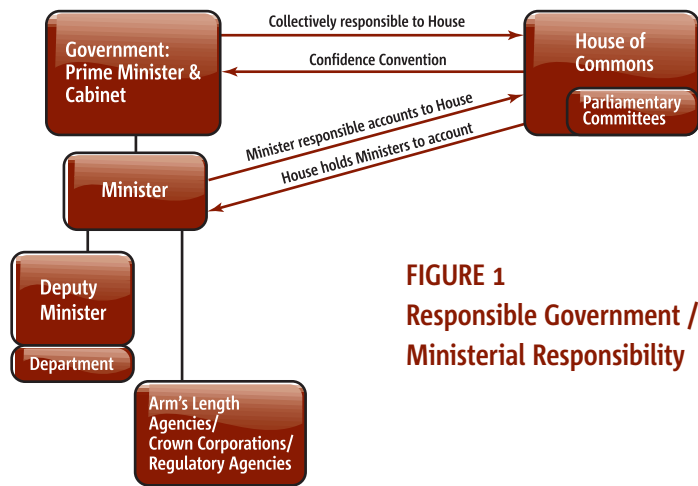


FIGURE 1
Responsible Government /
Ministerial Responsibility

Ministerial responsibility is based on the practice whereby individual ministers, in addition to their membership in the government, have specific executive authorities and responsibilities assigned by statutes for the conduct of public business. Accordingly, saying that a minister is responsible means three things: First, the minister is the chief executive of a department, the person in charge of the officials, the one with the *statutory authority* to take action so that the purposes of the law are realized. Second, the minister has been assigned the *duties or obligations* that are also set forth in statutes. And, third, the minister must *provide an account* and *may be held to account* for his or her actions, or the actions of officials, whether or not the minister had knowledge of these actions. In short, the term responsible encompasses three dimensions of ministerial responsibility: authority, responsibility and accountability.

Although the House of Commons can pass judgment on the government through a vote of non-confidence, it cannot dismiss, fire or require the resignation of individual ministers. Ministers are appointed and dismissed by the prime minister, as the head of the government. However, at times the House is able to use public pressure to force a minister to resign or to force the Prime Minister to dismiss a minister. When a minister is under fire, the Prime Minister must always be alert to the possible loss of the House's confidence in the government itself, or at least to the general state of public opinion toward the government, if a minister's actions discredit the entire government.

Delegation of Authority to Officials.

In the administration of public business, ministers delegate their authority to their officials, explicitly or implicitly, and departmental officials are expected to use that ministerial authority. They act on behalf of their minister. Generally, the minister is not involved personally and does not know precisely what actions are being taken. A minister is expected to give general direction, receive reports, ask questions, and respond to matters that require his or her personal involvement, including things that have gone wrong and require corrective action.

In the normal course of events, public servants appear on behalf of their ministers before parliamentary committees in support of their ministers' accountability to Parliament. However, in responding to questions put to them by MPs, public servants must always answer with only factual information concerning the conduct of departmental business. They are not to provide a defense or justification of government policy, programs or ministerial actions. In other words, they are to answer but not to give an "account" because they do not possess authority on their own; they are agents of their ministers (with the exception of deputy ministers for certain purposes, as discussed later). Nor are they to give an account on behalf of their ministers; ministers must give their own accounts, and defend or justify actions or inactions by them or by their officials.

The doctrine of ministerial responsibility accommodates the delegation of authority and responsibility to a minister's officials by not allowing a minister to delegate her or his accountability. Hence, when something goes wrong, and even though the minister was not personally involved, did not know and could not have been expected to know, the minister must still respond to questions that demand an account. Even when the minister's authority is delegated, the minister still has full authority to act. In this circumstance, the minister is required to:

- 1) provide a description or factual explanation of what has happened;
- 2) indicate what, if any, corrective action he or she will order to be taken; and,
- 3) justify or defend this corrective action or a decision not to act.

Accountable and Answerable.

It is said that ministers themselves sometimes can be "answerable" but not "accountable." For instance, the government's guide for ministers says that ministers are required merely "to answer to Parliament for the use of powers by

[arm's length] bodies that report to Parliament through them.”⁵ This contrasts with ministers being “accountable to Parliament for the use of powers vested in them [i.e., ministers] by statute.”⁶ The logic here is straightforward: “Parliamentary accountability recognizes that only the person to whom responsibility and authority are assigned can take action.”⁷ It follows that:

- where ministers possess statutory authority or powers they are accountable;
- where they do not possess statutory authority or powers, they are not accountable – they are, at most, merely answerable.

In the case of arm's length agencies, of course ministers do have some authority. But since their authority over these agencies is limited, their “accountability is limited.”⁸

When a minister is merely answerable, that is, when he or she answers questions respecting the actions of arm's length agencies over which he or she has limited authority, the minister provides factual information or descriptive explanations, and stops short of giving an account that consists of a defense or justification of the actions in question. In these cases, the board of the agency is accountable to Parliament for the agency's actions, because the board has the authority and responsibility over the matters at issue. Accordingly, the board must provide the defense or justification, and should be held accountable by Parliament.

When a minister refuses to accept personal responsibility and accountability, in the sense of culpability, for something that has gone wrong in her or his department because of what her or his officials may have done without her or his instructions or knowledge, the minister is still required to “answer” questions, as noted in the preceding section. However, once the minister knows or should know of the issues in question, the minister becomes accountable for what corrective action, if any, is needed, because he or she has the authority and responsibility to do so.

Finally, the distinction between being accountable and being answerable also applies when the actions at issue were taken before the incumbent minister assumed the position. In this circumstance, only the incumbent minister is answerable, because only the incumbent can act. From then on, the incumbent is personally accountable for decisions on corrective actions. (As discussed later, the

⁵ Canada, Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, 2004, 3. Emphasis in original.

⁶ *Ibid.*, 3. Emphasis in original.

⁷ *Ibid.*, 18.

⁸ *Ibid.*, 18.

former minister may be held accountable by Parliament, a parliamentary committee or an inquiry for the actions in question, even though that person can no longer act as minister.)

We should conclude this section by noting that the terms accountable and answerable are often used interchangeably, even occasionally when discussing the distinction between the two! Confusion, not surprisingly, is often the result. Sometimes the confusion is deliberate, as when persons who are being held to account try to escape personal responsibility, or personal culpability. Other times, it is due to ignorance or misunderstanding about who has the statutory authority and responsibility, and, therefore, who is accountable. And, sometimes, as we shall discuss further, it is due to a refusal to accept that deputy ministers have statutory and delegated authorities and responsibilities, separate from any delegations from their individual ministers, for which they are accountable and should be held accountable by Parliament. Those who are confused by the use of these terms, with their various meanings, should perhaps be excused for their confusion. Those who should know better have not done everything necessary to help sort things out.

Limits on Ministerial Authority and Responsibility.

Notwithstanding the doctrine of ministerial responsibility, the Canadian system has placed three major limits on ministers' authority and responsibility for the direction and administration of their departments. These are in addition to the limits on ministers' authority and responsibility for arm's length agencies in their portfolios.

First, ministers do not staff their departments. The Prime Minister has authority to appoint deputy and associate deputy ministers, and the Public Service Commission, an independent executive agency, staffs positions below those levels, although the Commission delegates many of its powers to deputy ministers. Second, the Treasury Board, a Cabinet committee of ministers, is vested with a wide range of statutory authorities and responsibilities for the regulation of the management of financial and human resources and various administrative practices. Treasury Board delegates many of its powers to deputy ministers. Third, a range of administrative authorities and responsibilities is conferred directly on deputy ministers by parliamentary statute.

The terms accountable and answerable are often used interchangeably, even occasionally when discussing the distinction between the two! Confusion, not surprisingly, is often the result. Sometimes the confusion is deliberate. Other times, it is due to ignorance or misunderstanding.

Notwithstanding the doctrine of ministerial responsibility, the Canadian system has placed three major limits on ministers' authority and responsibility: First, ministers do not staff their departments. Second, the Treasury Board is vested with a wide range of statutory authorities and responsibilities. Third, a range of administrative authorities and responsibilities is conferred directly on deputy ministers by parliamentary statute.

In each of these three areas, ministers are limited in their powers by the administrative authorities and responsibilities assigned to others, including their own deputy ministers. Some powers are assigned to others to manage and use the financial and human resources of departments. The Prime Minister and the Treasury Board are responsible and accountable on their own, and the Public Service Commission is accountable to Parliament, not to ministers.

As for deputy ministers, the situation is clear insofar as they are accountable to the Treasury Board and to the Public Service Commission for the authority delegated to deputies. But in these instances, the deputy is not accountable to his or her minister since that minister does not possess the authority to direct the deputy to take corrective action. This is especially true in matters of public service staffing. In the case of the authorities and responsibilities directly assigned to deputy ministers by parliamentary statute, the waters are obviously muddied. Ministers have no authority and responsibility here; they are not accountable. Deputies are accountable, but to whom? Should deputies be held accountable in parliamentary committees for these powers assigned directly to them by Parliament? Does the deputy's accountability to his or her

minister, or to the Prime Minister and government, suffice? The official position is that a deputy is accountable only internally "to the Treasury Board, as well as to his or her minister, for their delegated responsibilities and those which are assigned to them directly through legislation."⁹ This position presents a conundrum because deputies are not accountable to Parliament for statutory authority.

Arm's Length Agencies.

The statutes that establish arm's length agencies vest powers directly in the boards of directors of these agencies, thus limiting ministerial responsibility. The boards of Crown corporations and the regulatory commissions and tribunals have authorities and responsibilities that give them some autonomy from ministers. The powers given to the boards of Crown corporations require that ministers not intervene in the management of these corporations except to ensure that the public interest is not placed at risk or undermined. However, ministers do possess sufficient

authority to be able to direct and control these organizations. Ministers possess powers to appoint board members and the corporation's chief executive officer; to approve the annual corporate plan, capital budgets, and where required, annual operating subsidies; and to issue binding policy directives. For the exercise of these powers, or the failure to exercise them, ministers are accountable and should be held to account. In short, ministers are expected to take a hands-off approach to the Crown corporations in their portfolio, although they do possess sufficient authority to be able to direct and control these organizations even if they are required to do so in ways that are more indirect than in the case of their ministerial departments. For the exercise of these powers, or the failure to exercise them, in respect to their general responsibilities for Crown corporations, ministers are accountable and should be held to account.

At the same time, the boards of these corporations are accountable, usually through their chair, to Parliament. They report to Parliament "through" a minister, meaning that their responsible ministers must table their reports to Parliament. These reports, as well as any responses to questions put to the corporation's chair or executive officers in parliamentary committees, constitute the boards' account to Parliament. The board is fully accountable to Parliament for all matters that fall within the board's sphere of authority and responsibility. The board is also accountable to the minister and government as it must account for itself in the context of seeking approvals from the minister and government. The minister and government, moreover, can take required corrective actions, including dismissing board members or the board chair. A similar accountability regime exists for the corporation's chief executive officer, who is usually appointed by the government.

Prime Minister's Prerogative.

Under the Canadian constitution, the Prime Minister possesses the prerogative power to intervene in any minister's portfolio.¹⁰ In doing so, of course, the Prime Minister becomes responsible and accountable for whatever actions he or she takes. The Prime Minister's power has been well illustrated over the past several decades as successive Prime Ministers have made high-profile unilateral decisions on matters that would otherwise belong to another minister, in some cases without the minister in question even being consulted.¹¹

⁹ Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003. <http://www.pco-bcp.gc.ca>.

¹⁰ J.R. Mallory, *The Structure of Canadian Government* (Toronto: Macmillan, 1971), 85-88.

¹¹ Donald J. Savoie, *Governing from the Centre* (Toronto: University of Toronto Press, 1999).

Political Staff.

All ministers, including the Prime Minister, employ political staff in their personal offices who are appointed directly by them and not through the staffing process under the authority of the Public Service Commission. Political staff are exempt from the statutory provisions that govern staffing of the public service. They are not deemed to be public servants or departmental officials. They have no authority over a minister's departmental official. But they can and do speak for ministers, at times to departmental public servants. Staff members from the prime minister's office can and do speak for the Prime Minister to public servants throughout the government.

While these political staff are sometimes called before parliamentary committees, they obviously do not have the same relationship to a minister as that of public servants. Ministers should be held accountable for everything done by these partisan aides. They are appointed by the minister and serve at his or her pleasure. Unlike with departmental officials, there are no limitations on the minister's actual power over, and thus the responsibility for, her or his political staff. The growth in the number of political staff and in their real influence in government complicates accountability in so far as ministers are not held fully accountable for them. When they are not, as recently seen in Australia, an accountability vacuum emerges.¹²

Power to Dismiss.

The House has no constitutional power to dismiss public office holders appointed by the Prime Minister, the Cabinet or a minister, including deputy and associate deputy ministers; political staff; and the chairs, board members and the chief executive officers of arm's length agencies. Neither does the House have authority to dismiss members of the public service who are appointed by, or on the authority of, the Public Service Commission. Disciplinary powers over these public servants, including the power of dismissal, are vested in the deputy minister of each department.

Mechanisms of Accountability

The basic building blocks of the Canadian system of ministerial and government accountability encompass:

- votes of confidence in the government by the House of Commons;

¹² Michael Keating, "In the Wake of 'A Certain Maritime Incident': Ministerial Advisers, Departments and Accountability," *Australian Journal of Public Administration*, 62, no.3 (2003):92-97.

- Question Period in the House, where ministers respond to questions from MPs on both sides of the House, but especially the Opposition;
- scrutiny by parliamentary standing committees, including the House of Commons Public Accounts committee and the Government Operations and Estimates committee;
- the annual publication for Parliament of the departmental plans and performance reports prepared by departments and agencies;
- the Prime Minister's assessment of the performance and actions of individual ministers and order-in-council appointees;
- Treasury Board oversight of the performance of deputy ministers, departments and arm's length agencies;
- Public Service Commission audit and oversight of departmental public service staffing delegated by the Commission;
- internal performance appraisal of public servants by their administrative superiors;
- the audits of the Office of the Auditor General on the administration of public affairs generally and the management of the public purse in particular;
- the reviews of the administration of particular statutes by parliamentary agents, including the Information Commissioner, the Official Languages Commissioner and the Privacy Commissioner;
- judicial review of administrative decisions by courts and quasi-judicial administrative tribunals;
- public commissions of inquiry into alleged instances of maladministration; and
- the public's right of access to government information.

The democratic dimensions of this system assume both healthy competition in elections, and a vigorous and vigilant press.

The accountability system gives priority to:

- the transparency of records, files and data;
- the independent audit of financial statements, management systems and transactions;
- independent review of decisions and behaviour for compliance with the law and policy; and
- the public questioning of ministers and officials about their policies and executive-administrative actions.

Transparency, audit, review and questioning are central to accountability for at least two reasons. First, assessing the effectiveness of ministerial policies, and the performance of ministers and their officials in administering public affairs, is not always easy if the only account is given by ministers or officials at their own initiative or in forums of their choosing. Second, a great deal of ministerial and official behaviour is not readily observable to those outside the executive-administrative arena. It follows that those who directly or indirectly hold ministers and officials to account must challenge them. They must require them to defend, justify and make the case for the policies or behaviours under scrutiny. In other words, self-reporting by those with authority should never be deemed sufficient.

The interaction between those involved in an accountability relationship is not always adversarial or partisan, even in parliamentary arenas. However, the basic structure of the Westminster parliamentary system is a division between government and Opposition, organized along partisan lines.

The interaction between those involved in an accountability relationship is not always adversarial or partisan, even in parliamentary arenas. However, the basic structure of the Westminster parliamentary system is a division between government and Opposition, organized along partisan lines. While the Government constitutes a separate executive branch of government and is able to conduct a great deal of public business without continuous reference to Parliament, its ministers are drawn from Parliament and are held to account in the House, primarily by Opposition MPs. The prime minister and the ministers of the government are also MPs and thus are present in the House to be questioned and held to account by Opposition MPs.¹³

The American System in Contrast

Many Canadians use the American system of government as a reference for comparison on a wide variety of governance issues. Some consider the American system, with its various checks and balances on the use of executive and legislative powers, to be superior to the system of responsible government. Whatever one's view, it is clear that the Westminster parliamentary system of accountability differs radically from the American accountability regime. In place of the requirement that

¹³ Ministers can be appointed from the Senate, but the democratic norm is that ministers are elected. In Canada, this means that they must be MPs in the House. Except where it is politically necessary to appoint Senators as ministers in order to secure representation from regions with no government MPs, the norm is one Senator in Cabinet, who serves as Government Leader in the Senate.

the government have the confidence of the House at all times, the American system relies upon a separation of the executive and the legislative branches of government. They are elected separately for fixed terms. The President is not dependent on the confidence of the House of Representatives or the Senate, the two houses of Congress.¹⁴

Although elected separately, there is a sharing of powers between the executive and legislative branches that constitutes the system of checks and balances. The “power sharing” under this constitutional arrangement gives the President a veto power over legislation emanating from Congress, and gives the Senate a veto power over presidential nominees for appointments to both the executive and the judicial branches of government. In this system, accordingly, the President is not accountable to Congress.

Further, since the President is not a member of either house of Congress, and not accountable to either house, the President is not subject to questioning in the House of Representatives or in the Senate. There is nothing in the American system corresponding to the direct accountability regime that a Prime Minister faces in the House of Commons, particularly in Question Period. On the other hand, congressional committees are extremely powerful and highly visible in the American system, and other members of the executive branch of government, especially officials below the Cabinet level, face questioning in these committees on a regular basis.

American presidents are open to direct questioning only by the media, and then only when they agree to be questioned and on grounds that they establish. The contrast between the direct and continuous political accountability of a prime minister in the House of Commons and the insulation of an American president from any questioning from congressional opponents was recently made explicit with the respective experiences of Prime Minister Tony Blair and President George W. Bush in respect to their accountability for executive actions concerning the war in Iraq.

¹⁴ Congress can impeach the President but this is distinct from the confidence convention in parliamentary government. Many observers opined that the impeachment of President Bill Clinton (who was impeached but not convicted in the Senate trial) had overtones of a confidence vote structured primarily along party lines in Congress.

Parliament: Holding Ministers and Government to Account

Securing meaningful accountability in a parliamentary system depends essentially on two factors. The first is the competence of the Opposition in the House of Commons in extracting accounts from ministers, and holding them accountable. The second factor in determining the meaningfulness of accountability is the robustness of the structures and processes of parliamentary scrutiny in the House and its committees.

Securing meaningful accountability in a parliamentary system depends essentially on two factors. The first is the competence of the Opposition in the House of Commons in extracting accounts from ministers, and holding them accountable by applying political pressure, especially through the mass media. The competence of the Opposition leadership is often best illustrated in Question Period.

While there are occasional opportunities for Opposition and even government backbench MPs to come to the fore, Question Period is primarily a forum for the frontbenches of both government and Opposition. The most important aspect of this accountability mechanism is that the government cannot control what occurs in this forum, even when it has a majority. Opposition MPs have a right to ask ministers any questions relevant to their portfolios or responsibilities.¹⁵ However, since ministers do not have to answer questions directly or fully in Question Period, the degree to which Opposition MPs are able to hold ministers to account and extract accounts, depends on their intellectual skills and preparatory work in framing and focusing their questions. All too often Opposition efforts are siege campaigns against individual ministers, to the exclusion of the coverage of many critical issues, which limits the

effectiveness of this instrument of accountability. Nonetheless, the frequency of Question Period in the Canadian House of Commons means that ministers, including the Prime Minister, know that they will be constantly subject to questioning on at least what the Opposition, and the media, considers to be the weakest points in their performance as government.

The second factor in determining the meaningfulness of accountability is the robustness of the structures and processes of parliamentary scrutiny in the House and its committees.¹⁶ Robustness is a function of several factors, including the total

¹⁵ In Canada, unlike Britain, the party leaders, including the Prime Minister, exercise tight control over their own MPs in managing the operation of Question Period, but the government cannot control what the Opposition party leaders decide should be asked.

¹⁶ Senate committees in Canada often serve as important arenas for the examination of public policy and governance issues and make important contributions to public debate. As mechanisms of accountability, however, they are rarely a major force. This state of affairs is in contrast to Australia, where Senate committees play a leading role in holding ministers and government to account, especially in respect to the annual Estimates process. The fact that the Australian Senate is an elected body (and uses a system of proportional representation) is significant.

number of MPs in the House of Commons, the degree of independence of government-backbench MPs in the conduct of their scrutiny functions and duties, the parliamentary and ministerial experience of MPs, the effectiveness of the rules and procedures for questioning ministers and officials, and the number of government MPs in Parliament and parliamentary committees.

In Britain, a large House of Commons with 659 MPs will often result in government and Opposition backbenches with a sufficient number who are willing and able to take seriously the scrutiny function of accountability. Many of these MPs are willing and able because they are not only reasonably secure in their prospects of reelection in safe seats but also are fully aware of their slim chances of being appointed ministers, even junior ministers. These are experienced MPs who take their parliamentary role seriously, and some are former ministers who have left the government over a matter of principle. And there are usually several former ministers in the ranks of the Opposition.

In contrast, the Canadian House has only 308 MPs, and a high degree of turnover among MPs compared with Britain (and elsewhere, for that matter).¹⁷ In addition, a much larger percentage of government MPs can realistically entertain the hope of a ministerial position, given the so-called representational imperative in Cabinet formation. Under this imperative a Prime Minister must try, wherever possible, to appoint ministers from all provinces, and all regions of the larger provinces, and to ensure that the Cabinet represents the diversity of Canada in gender, race, ethnicity and language.¹⁸ However, since there is no public enthusiasm for a larger House of Commons it is unlikely that parliamentary scrutiny will be enhanced in this way. Reform of the Senate to make it an elected legislative assembly could dramatically increase Parliament's overall capacity to hold ministers and officials to account, as the elected Senate does in Australia, but this would require reform for other reasons as well.

Establishing a tradition of independence for government backbench MPs requires governing political parties that are either unwilling or unable to impose total political control over their backbench MPs in Parliament. In Britain, given the size of the British House, the government often has had a large parliamentary caucus

¹⁷ Jonathon Malloy, "The House of Commons under the Chretien Government," in *How Ottawa Spends*, 2003-04, ed. G. Bruce Doern (Don Mills, ON: Oxford University Press, 2003).

¹⁸ Colin Campbell, "Cabinet committees in Canada: pressures and dysfunctions stemming from the representational imperative," in Thomas T. Mackie and Brian W. Hogwood (eds.), *Unlocking the Cabinet: Cabinet Structures in Comparative Perspective* ed. Thomas T. Mackie and Brian W. Hogwood, 61-85 (London: Sage, 1985), p. 61-85.

with a comfortable majority, resulting in a cadre of independent-minded government backbench MPs acting independently of their leaders. In addition, both the Conservative and Labour parties' parliamentary caucuses have a measure of control over their party leader in that they can rein in and even depose a leader. One result of these several factors is that only some votes are declared to be votes of confidence in the government, which all government MPs must support. These British practices have resulted in a political culture that, at least in comparative terms, gives a high priority to Parliament's role in holding the government to account, and thus lessens the legitimacy of using party discipline as a partisan device to diminish ministerial accountability.¹⁹

In Canada, in addition to a House of Commons less than half the size of the British House, high electoral turnover among the MPs of the two governing parties – Liberals and Conservatives – has meant the first condition, that of independence among MPs, seldom prevails, although turnover declined in the 1997 and 2000 general elections. Equally, if not more, important, parliamentary caucuses lost their power to depose their party leaders once party leaders were selected through national party leadership conventions. This happened shortly after the First World War. By transferring power over the leader from the parliamentary caucus to the party membership at large, the parties, in effect, gave party leaders increased control over backbench MPs. Finally, until the adoption by Prime Minister Paul Martin in 2003 of the British “three-line vote” scheme, government backbench MPs were expected to always vote with the government in the House and its committees except for the occasional free vote. For all these reasons, a political culture that gives Parliament a strong role in holding the government to account has not been established. Among MPs themselves, the scrutiny function of accountability is far down their list of priorities, well behind playing a role in policy formulation and serving their constituents in their contacts with government.²⁰

Finally, there is the matter of the parliamentary strength of the governing party in Parliament and parliamentary committees. The norm in Canada, as in Britain, has been a single-party majority government in which the government controls both the House and its committees. The Senate in Canada, of course, does not count

politically. In contrast, Australia's experience over the past quarter-century has been a single-party (Labour) or a two-party coalition (Liberal-National) majority government that has control of the House but not of the Senate, where the Opposition parties collectively have held the edge.²¹ The inability of the government to control the Senate is important because the Australian Senate is a powerful institution, especially in holding ministers and officials to account. For the purposes of accountability, the most important parliamentary committees are Senate committees.

In New Zealand, the tradition until 1996 was almost identical to that of Canada; indeed, with a smaller House, the capacity of the Opposition was minimal and government backbench MPs had precious little independence. In 1996, however, the House was elected under a new system of proportional representation, and a great deal changed. The norm has become multi-party coalition minority governments, with the government in a minority in both the House and its committees. For the purposes of accountability, House committees have become critically important. They are no longer regarded as a virtual extension of the government.

In Canada, under the typical single-party majority government, House committees have usually been an extension of the government, which has used its majority to control committees. With few exceptions, committees have not been effective in holding ministers or public servants to account.²² Ministers rarely appear before committees, and when they do appear, they are seldom pressured to render accounts. Committees spend most of their time questioning public servants, but they have had minimal success in holding the government to account, in part because the allocation of time among MPs results in little opportunity for sustained questioning. Even the Public Accounts Committee, which is chaired by a member of the Opposition, has had limited success in extracting accounts, despite having the audits of the Auditor General to help them in this work. Ministers do not usually appear before this committee because deputy ministers are expected to “give an account of their stewardship of the department.”²³

¹⁹ Many British commentators and practitioners would paint a much more critical portrayal of British experience, especially over the past few decades. They would not necessarily be wrong in their assessments according to their standards, that is, as distinct from any comparative standards. See, for example, *Parliamentary Affairs* 57, no.4 (2004), Vol. 57, No.4, 2004, an entire issue devoted to an assessment of British parliamentary government.

²⁰ David Docherty, *Mr. Smith Goes to Ottawa: life in the House of Commons* (Vancouver: UBC Press, 1997).

²¹ The party standings in the Senate following the October 2004 election may give the government less opposition than at any time over the past twenty-five years since the balance of power will be held by a conservative party more favourably disposed to the ruling Liberal Party-National Party coalition.

²² Canada, Library of Parliament, *The Parliament We Want: Parliamentarians' Views on Parliamentary Reform* (Ottawa: Library of Parliament, 2003).

²³ Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003. <http://www.pco-bcp.gc.ca>.

The June 2004 election resulted in the first single-party minority government since 1979. The absence of a parliamentary majority can be conducive to effective parliamentary scrutiny, unless the situation is viewed as temporary. This has been the experience in Canada. Only one minority government (the Liberal government of Lester Pearson 1963 to 1968) has lasted beyond a couple of years, and even it tried to change its status by calling an early election in 1965 after only two years in office.²⁴

In political systems where minority governments are typical, as in political systems where single-party majority governments are rare, the combined Opposition parties can hold ministers to account with the sustained vigor that can only be mounted by a multi-party opposition whose members collectively constitute a majority. Although minority governments in this circumstance are not without some political leverage, the government cannot treat parliamentary committees as a virtual extension of the government.

The minority government resulting from the 2004 election could move Canada closer to the recent experiences of Australia and New Zealand, where governments regularly face vigorous and rigorous scrutiny by parliamentary committees. Moreover, this minority government will be the first to face the enhanced degree of scrutiny in the comprehensive “value-for-money” audit mandate of the Office of the Auditor General and the access to government information regime.²⁵ However, because minority governments under the current Canadian electoral system are rare, they tend to behave very differently than minority governments under electoral systems where the prospect of a single-party majority government is remote.

²⁴ The government called an election in 1965 in the hope that it had public support to form a majority government. It failed to get its desired majority. Under a new Prime Minister, Pierre Trudeau, the Liberals won a majority in the next general election, in 1968.

²⁵ The Conservative minority government elected in 1979 was in office for such a brief period that the newly created (1977) mandate of the Office of the Auditor General had no real effect. The access to information scheme did not come until the following decade.

III: Accountability, Hierarchy and Contracts

Notwithstanding the accountability of ministers under responsible government, there is no universal model of accountability that applies to every accountability relationship in contemporary Westminster parliamentary government.²⁶ Models of accountability vary because governments are structured differently. Particularly in continental Europe, judicial and quasi-judicial authorities play a major role in ensuring public officials comply with the law. Administrative law has also been a major feature of public accountability reform in Australia. The American system relies heavily on a system of checks and balances through a shared structure of powers. Westminster parliamentary regimes rely on the accountability of ministers in the House of Commons and to the electorate.

Accountability in governance and public administration usually entails at least the following five elements:

- a governance structure of superior-subordinate relationships;
- superiors delegate authority to subordinates for the discharge of assigned responsibilities;
- subordinates report to superiors on their use of authority in the discharge of their responsibilities;
- superiors scrutinize the performance of subordinates;
- superiors use the assessment of subordinates' performance as the basis for corrective action, rewards or sanctions.²⁷

A Hierarchy of Superiors and Subordinates: Simple and Complex

Accountability usually means a distribution of authority in hierarchies of superiors and subordinates. These hierarchies can be simple or complex.

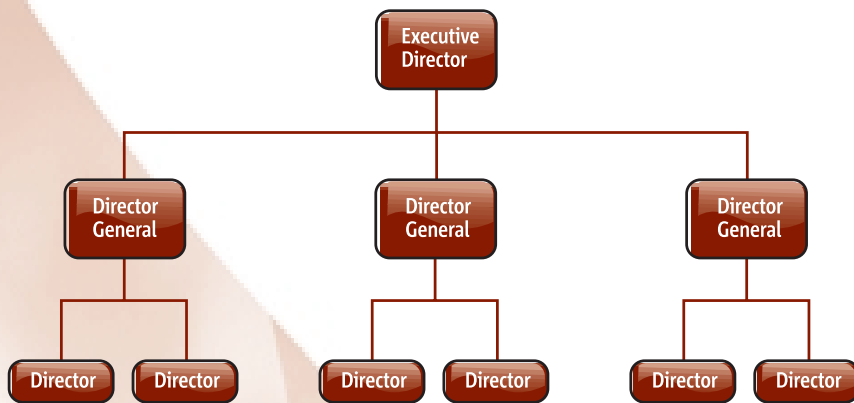
²⁶ Richard Mulgan, *Holding Power to Account* (London: Palgrave, 2003).

²⁷ See, for example, Canada, Auditor General, “Chapter 9: Modernizing Accountability in the Public Sector” in *Report to the House of Commons*, December 2002.

Simple Hierarchies.

Simple hierarchies may involve several levels of superior-subordinate relationships, but each subordinate has and is accountable to only one superior, regardless of the number of levels in the hierarchy. This structure applies to the various levels of so-called line authority in the typical government bureaucracy. In the Westminster model, the minister sits at the top of the hierarchy, with the deputy minister one level below, and successive levels of the departmental hierarchy extend down the line to the front line public servant. Accountability flows upwards, from the bottom to the top of the hierarchy. In each superior-subordinate relationship, the degree of accountability depends upon the extent to which authority has been delegated, formally or informally. Accountability itself, of course, cannot be delegated for that would mean that the superior has given away authority to a subordinate, thus fundamentally transforming the superior-subordinate relationship.

FIGURE 2
Simple Hierarchy

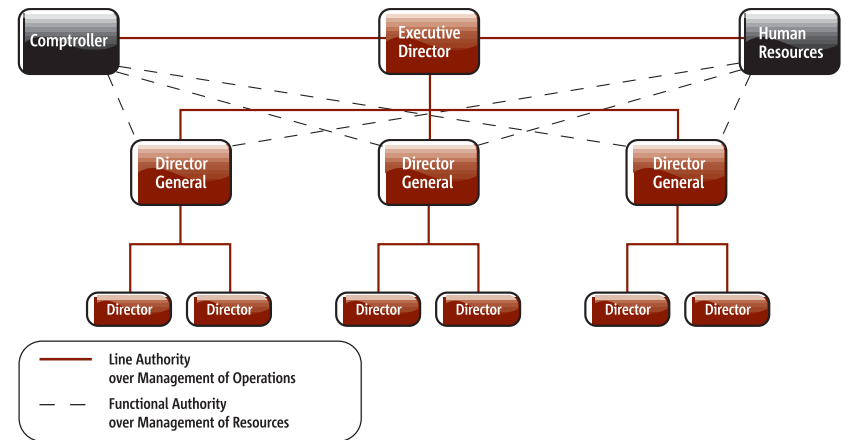


Complex Hierarchies.

Complex hierarchies involve vertical hierarchies of line authority and accountability, as outlined above, but add a second set of superior-subordinate relationships for particular organizational functions; “functional” authority rather than “line” authority. These functions are managerial or administrative, not operational, for example, financial management, human resource management or information management. Those with functional authority possess authority to direct subordinates only in relation to those particular functions. Complex hierarchies with both line and functional authority structures are common in

modern public bureaucracies; indeed, they are the principal organizational design of the federal public service bureaucracy, at both macro and micro levels.

FIGURE 3
Complex Hierarchy



At the macro, or the whole of government, level, the Treasury Board Secretariat and the Public Service Commission represent functional authority structures that extend their reach across the entire governmental apparatus. At the micro level of line departments, functional authority is exercised by the corporate administrative branches or divisions of departments. From deputies on down, government managers are in effect the subordinates of two sets of superiors: a line manager who is their superior for the work of their organization or unit, and one or more functional managers who are their superiors with respect to various dimensions of administration. Complex hierarchies thus result when many subordinates are accountable to two or more superiors. The most recent manifestation is the requirement for departmental comptrollers who have both departmental and corporate responsibilities.

Finally, we need to note that additional complexity is introduced when the political staffs of the Prime Minister and departmental ministers seek to influence public administration by departmental officials. While political staff formally have neither line nor functional authority over public servants, they often exercise considerable informal influence, especially when they imply that they speak on behalf of their ministers and public servants do not challenge them.

Accountability in Principal-Agent Relationships: Contracts in Place of Hierarchy

The spread of the New Public Management movement over the past three decades introduced a second way to characterize accountability relationships that became increasingly fashionable throughout many of the OECD countries. In New Zealand, in particular, this formulation was explicitly adopted as the theoretical basis for a good deal of the restructuring of the authority-responsibility-accountability regime.²⁸ In this formulation the relationship involves “principals” who contract with “agents” to perform tasks for which they lack either expertise or time. The model here is much like a client-professional relationship.

In this relationship, the principal is the superior. But the principal does not assume to be able to manage subordinates to accomplish the undertaking. Indeed, the principal must delegate authority to the agent to act on her or his behalf, and the agent must decide what needs to be done to advance the principal’s best interests. The relationship thus takes the form of a contract rather than a hierarchy. However, the principal contracts to obtain the agent’s expertise and professional judgment. It is not a contract for services in which the principal specifies in advance what must be done, as when a department contracts for office cleaning services. However, the principal generally retains the upper hand in the relationship in that the agent is “employed” by and can be dismissed by the principal.

This model for public governance and management was found attractive by leading public management reformers, including politicians, especially in Britain and New Zealand for at least two reasons.²⁹ First, it clarifies why superiors delegate authority to subordinates, namely, for reasons of time and expertise. Fully realized, this theory portrays citizens as principals who elect representatives as their agents to undertake governance on their behalf, while retaining the right to judge and replace them. These representatives, in turn, become the principals of government ministers, who are their agents for the purposes of executive governance. The ministers of the executive government then enter into principal-agent relationships with professional public servants. In short, the issue involves not only the degree of delegation but also the nature of the relationship, which has changed from a

²⁸ For a critical analysis of this model see Jonathan Boston, John Martin, June Pallot and Pat Walsh, *Public Management: The New Zealand Model* (Auckland: Oxford University Press, 1996), 16-40.

²⁹ Allen Schick, *The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change* (Wellington: State Services Commissioner, 1996).

hierarchical relationship of superiors and subordinates to a contractual relationship of principals and agents.

The second attraction of this model is that it explains why those who delegate authority have difficulty holding accountable those to whom they delegate authority. All too often the principal is disadvantaged: he or she does not have the opportunity to observe what is done and/or to evaluate the agent’s performance; neither does he or she have the same degree of expertise as the agent and/or the same amount of time to devote to the work. As well, the work requires the exercise of professional judgment and discretion, and therefore cannot be undertaken according to standardized rules or procedures. Modern public management entails relationships that are better characterized as principal-agent relationships than superior-subordinate relationships, which helps to explain the challenge of accountability.

At the same time, the theory of principal-agency relationships assumes that both principals and agents are motivated by self-interest. It alerts principals to the dangers of trusting their agents. In practice, the theory has led ministers to assume that they should not trust their officials. A high price is paid for distrust. In New Zealand, for instance, much time and effort has been spent managing the transactions associated with using a much more explicit and formalized system of contracts and written agreements between ministers and the chief executives of the departments and agencies in their portfolios. The increased use of performance management regimes has further complicated the work and increased the burden of accountability for all public servants. Ministers and their officials are expected to demonstrate the public value of their programs and services, and to show that in delivering these programs and services they achieve expected outcomes. At best, the jury is out on whether accountability has been improved.

Partnerships: Shared Accountability among Peers and Equals?

There has been an increased use of so-called collaborative arrangements where the governance relationships are essentially between equals, or peers, as “partners.” In contrast to superior-subordinate or even principal-agent relationships, the parties in these relationships share authority and responsibility for a joint undertaking. The parties may consider themselves accountable to one another for the discharge of their respective responsibilities, a “horizontal” (equal-to-equal) as opposed to a “vertical” (superior-subordinate or principal-agent) accountability relationship.

However, this relationship merely adds to, and does not replace the existing accountability requirements of the two parties. Once again, the complexity of public accountability is increased.

Partnerships are distinct organizational structures only when there is shared authority for shared responsibilities. Otherwise, what might be called a partnership is merely a contractual arrangement. Although Government of Canada legal experts do not favour the use of the term “partnership” to describe what the Office of the Auditor General (OAG) has called “collaborative arrangements,” the term highlights the absence of an organizational hierarchy of superiors and subordinates. And, even though each partner has its own organizational superiors, those superiors may have difficulty in holding them to account when the superiors are well removed from the operations of the collaborative undertakings. And, while the participants may speak of having “shared accountability” to their respective superiors for the results or performance of the collaborative arrangement, deficiencies in accountability can arise if superiors and even subordinates do not take measures to prevent it. This type of situation requires a robust system of review and scrutiny.

The Critical Chain of Delegated Authority, Responsibility and Accountability

In the Canadian system, accountability is a critical component of the democratic system of responsible government because it presupposes that for the business of government to be conducted efficiently and effectively the authority to govern and administer public affairs must be delegated extensively, even to arm’s length agencies and partnerships. Indeed, even hierarchies seldom involve simple and straightforward command and control by superiors of subordinates. Superiors do have their respective powers to command and control in various ways, but, for the most part, they delegate their powers to subordinates, and then seek to hold subordinates to account. Where there is no delegation at all, superiors retain full accountability because their subordinates are expected to act only as instructed.

The basic architecture of the Canadian system includes the following chains of authority, responsibility and accountability:

- citizens govern themselves indirectly through their directly elected representatives in the House of Commons;

- the government formed by and responsible to the House of Commons is also separate from the House in its exercise of the executive powers of the Crown and the executive powers conferred on ministers by statute;
- the Public Service Commission has the exclusive authority to staff the public service (below the level of deputy and associate deputy ministers who are appointed by the Governor in Council on the recommendation of the Prime Minister) and the Commission is expected to delegate its authority to deputy ministers to staff their departments;
- Parliament confers on the Treasury Board and on deputy ministers statutory authority and responsibilities for a range of administrative matters, and the Board delegates many of its powers to deputies;
- public servants, while subordinate to the direction and control of the ministers of the executive government, fulfill their administrative responsibilities by using ministerial authority; and
- boards of directors direct and oversee government agencies that are established by Parliament to operate at arm’s length from ministers, and report to Parliament through a minister.

In each of these respects, accountability is critical because public authority is conferred, assigned or delegated from a superior authority to a designated body or individual.

Responsibilities assigned may be general or highly detailed, and may well be unclear or imprecise. Further, they are usually imposed by a superior and are not subject to agreement by the subordinates, although some consider agreement the ideal.³⁰ Some responsibilities are assigned by statute, regulation or administrative policy and apply across the entire government. Ironically, responsibilities are more likely to be subject to agreement in collaborative arrangements between equal parties who appreciate the need to nail down as much as possible in a contractual-type agreement.

³⁰ The Auditor General defines accountability as a relationship that encompasses “agreed expectations.” See Auditor General, “Modernizing Accountability in the Public Sector,” in *Report to the House of Commons, December 2002*, 1. Paul Thomas agrees: “The assignment or negotiation by a person or body in a position of authority of delegated responsibilities to others, ideally based upon mutually agreed upon performance expectations and standards.” See Paul Thomas, “Control, Trust, Performance and Accountability: The Changing Meaning of Four Key Administrative Values” (Paper presented to the Professional Planning Exchange – Symposium 2004, Ottawa, May 27-28), 14.

Completing the Accountability Loop: Reports, Reviews and Corrective Action

When a superior authority delegates its powers, it does not cease to be the superior body nor is its authority given away permanently or unconditionally. Rather, the superior retains the right, and the obligation, to check and control those to whom authority has been delegated, and respond with corrective action, sanctions, or rewards as appropriate.

These checks and controls should include the following:

- subordinates' reports on the use of authority and the discharge of responsibilities, according to requirements established by the superior;
- independent reviews and audits of these reports and of matters of compliance and performance, as demanded by the superior;
- subordinates' responses to these reviews and audits, as required by the superior; and
- superiors' questions to subordinates, and subordinates' answers, on any matter deemed relevant.

The accountability relationship is meant to be ongoing and interactive. Reporting is insufficient by itself, because it is self-reporting, even when the superior sets the reporting requirements. Independent verification of the statements, data, analyses and methodologies of reports is also insufficient, important as it is. Indeed, even when there are rigorous external reviews and audits, the superior still must hold subordinates to account to ensure that the scrutiny process produces the necessary scope and depth of accounts for it to pass judgment and respond accordingly.

The superior must not only check on the use of authority, but also must control the use of authority. As noted, with few exceptions, those to whom authority has been delegated are themselves subordinate to a superior body.³¹ There is an element of hierarchy precisely to ensure that democratic control over the powers of the state is not lost or compromised.³² Control by the superior body involves taking corrective action, as necessary, in one or more of the following ways:

³¹ The few exceptions are those who occupy judicial, quasi-judicial or regulatory offices for which authority is conferred in such a manner that decisions on the basis of this authority are meant to be final and independent of any legislative or executive authority. Appeals of these decisions, accordingly, would be appeals of a legal challenge made to higher levels within the judicial branch of government, such as the Federal Court.

³² In this particular sense of democratic accountability, there are no relationships that entail equals or partners, as in inter-organizational collaboration. Public-private partnerships as well as inter-governmental partnerships occur outside the authority-responsibility-accountability realm, even though the government parties in question have superiors to which they must always be accountable.

- by changing those who hold the positions or offices in question, through election defeat or dismissal;
- by rescinding the delegation of authority in whole or in part;
- by placing restrictions on the use of authority; or
- by disciplining or sanctioning those found responsible for wrongdoings or shortcomings, including withholding performance pay.

Within the administrative branch of the professional public service accountability can have a positive dynamic as well, with rewards and recognition for work well done. However, in almost all other respects, especially in parliamentary and public arenas, accountability is invariably focused on the misuse or abuse of power or poor performance. In these instances, accountability has a negative or punitive connotation, with sanctions overtaking rewards, and naming and blaming being prominent.

Conclusion: Conditions and Instruments of Effective Accountability

The importance of accountability in governance and public management is most clearly manifested when things go wrong. And things tend to get worse when the conditions that make accountability an effective part of good public governance and good public management are missing or diminished. These conditions and instruments include:

- an electoral process sufficiently robust to secure competition between political parties;
- a parliamentary Opposition able and willing to extract accounts from the government;
- ministers with the political incentive to take their responsibilities seriously and to hold their departments and arm's length agencies to account;
- external audits and performance reviews of the administration of public services; independent evaluations of policies and programs;
- internal audit, monitoring and control capacities in both central agencies and operational departments;
- public access to government information;
- protection for officials who release information as an ethical response to a undisclosed wrongdoing;

- parliamentary processes that require government departments and agencies to prepare performance reports for scrutiny by parliamentary committees; and
- protocols that explicitly or implicitly address the mutual obligations of all those involved in the accountability relationships.

These accountability conditions and instruments are interrelated, and weaknesses in one compromise the usefulness of the others. Over the past four decades, the accountability mechanisms of Canadian government have changed immensely with:

- a new structure of parliamentary committees;
- an extension of the audit mandate of the Auditor General;
- amendments to the *Financial Administration Act* respecting Crown corporations;
- a public right to access government information ;
- revisions to the powers and mandate of the Public Service Commission, and the adoption of a statement of public service values and ethics.³³

In almost every regard, the changes have in effect focused primarily on the accountability of the public service rather than on the accountability of ministers. Parliamentary committees, for instance, have increased considerably the public exposure of public servants, even though ministers are the chief executives of departments and sponsor the legislation examined in parliamentary committees. The expanded mandate of the Auditor General and the access to information regime have had the same effect.

Although the effectiveness of some of these instruments has waned at times, it is clear that, as the standards of accountability have been raised, so have public expectations. It is not clear whether the increase in expectations exceeds the rise in standards, although many of those who are the subjects of enhanced accountability would no doubt conclude that they have. Moreover, the increased aggressiveness of the media, with their critical, even hostile, attitude to politicians and bureaucrats has many public officials doubting the value of enhanced transparency.

It is clear that simply multiplying and strengthening accountability mechanisms will not secure desired behaviour or public service culture. It is important that the

³³ It should be noted that some observers or participants consider at least some of these changes to be improvements or reforms; others deem at least some of them to be constitutional or administrative heresies.

basic building blocks of accountability are not only in place but also are maintained and kept in proper balance. In one sense, accountability is to public governance and management what competition is to the marketplace. In neither context is a monopoly preferred. However, ensuring sufficiently robust scrutiny and evaluation by superior bodies, especially Parliament, requires constant attention to developments that alter the actual distribution and use of power in governance and public administration.

For instance, changes over the past two or three decades have included an increased concentration of power, for certain purposes at least, in the Prime Minister and the Prime Minister's inner circle or, to use Savoie's term, "court."³⁴ This is not a uniquely Canadian phenomenon; political power has clearly increased at the centre of executive government in Australia and Britain as well, and there have been major controversies over incidents involving the unaccountable power exercised by political aides to ministers, especially to prime ministers.³⁵ In Canada, nonetheless, the publicizing of the extensive powers of the Prime Minister has also fueled the perception that a concentration of power has made government less accountable, and that the Prime Minister alone is deciding and orchestrating the responses of ministers to Opposition (and media) efforts to hold them accountable.

The Canadian system, however, has also experienced a great deal of devolution of authority that has challenged the capacity of departments and central agencies to stay abreast of the actual exercise of authority. First, there has been an increased decentralization in the management of human and financial resources and in the management of program or service delivery. Second, there have been efforts to increase managerial discretion and flexibility by removing the heavy burden of central agency regulations, or by partly removing organizations from the ambit of these central agencies. This occurred with the creation of so-called special operating agencies and then a second group of service agencies, including in particular the original Canada Customs and Revenue Agency. Third, there has been an increased use of various kinds of collaborative arrangements. Fourth, there has

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³⁴ Donald J. Savoie, *Governing from the Centre* (Toronto: University of Toronto Press, 1999).

³⁵ Patrick Weller, *Don't Tell the Prime Minister* (Melbourne: Scribe, 2002). The recent British cases are well documented in the reports of various parliamentary and independent inquiries.

been the creation by the government of “independent foundations” that escape established government controls and accountability to Parliament virtually altogether, operating as they do outside governmental structure.

And finally, there has been the streamlining of public service capacity, particularly in internal audit, program evaluation and monitoring, for holding to account departments, private partners and contractors, and arm’s length government agencies. This streamlining occurred in departments and central agencies, as well as in the Public Service Commission, as the federal government substantially reduced its operating expenditures as part of Program Review, the major budget-cutting exercise of the mid-1990s.³⁶ We also note that there has always been a modest complement of staff supporting parliamentary committees in its scrutiny and review functions, at least if one does not count the resources of the Office of the Auditor General.

³⁶ Peter Aucoin and Donald J. Savoie, eds., *Managing Strategic Change, Learning from Program Review* (Ottawa: Canadian Centre for Management Development, 1994).

IV. Is the Accountability Regime Defective?

Election outcomes aside, the public and media perception appears to be that when things go wrong, nothing happens: no one accepts responsibility; no one is held responsible; and not surprisingly, no consequences follow.³⁷ Are the critics of the current accountability regime correct in their portrayal of its defects and deficiencies?

In several respects, the existing regime strikes many as out of step with public expectations on accountability. When things go wrong, the public expects that someone — a minister, preferably, or an official — should resign, be fired, or at least be appropriately disciplined.³⁸ This is what the public assumes to be the norm in private sector organizations. Heads roll as necessary, or so the rhetoric has it. In contrast, ministers and public servants are perceived to be insulated from the kind of consequences that people in private sector institutions face. Given the significant decline in public deference to authority, there is now precious little public tolerance for public officials to escape such consequences.

Ministerial Responsibility: Enduring Confusions

To complicate matters, there is a widespread confusion about the constitutional doctrine of individual ministerial responsibility. First and foremost, there is the myth that the doctrine requires ministers to resign when things go wrong. It is not surprising that the Opposition demands a minister’s resignation, nor is it surprising that Opposition MPs seek to legitimize their demands for a minister’s head by asserting that resignation is the proper constitutional course for a minister. Indeed, the assertion has been

³⁷ See, for example, Jeffrey Simpson, “In search of a ‘responsible individual,’” *Globe and Mail*, 6 December 2002, and James Travers, “A Rotten State of Affairs,” *Toronto Star*, 12 December 2002, <http://www.thestar.com>.

³⁸ As Thomas puts it: “For the public when something goes seriously wrong, the strong expectation is that someone or some institution will pay a significant and visible price.” Paul Thomas, “Control, Trust, Performance and Accountability,” p. 21.

The doctrine of ministerial responsibility has never contained the sweeping requirement that a minister resign in this circumstance, in either the Canadian or the British constitutional traditions. Aside from resignations that occasionally occur over disputes about government policy, ministerial resignations have been restricted to incidents where a minister's personal behaviour or judgment has been deemed inappropriate or worse.

made with such frequency and fervor in recent years that it may well have become the publicly accepted standard by which to judge a minister's acceptance of responsibility. For example, according to one columnist (a former deputy minister and political chief of staff to a Prime Minister),

Bafflelegab is exactly what's become of our doctrine of ministerial responsibility in Canada. In theory, a minister is responsible for all the administrative actions of his department, even if he was not initially aware of them. She or he must defend errors or take corrective action — or resign.³⁹

The reality, however, is that the doctrine has never contained the sweeping requirement that a minister resign in this circumstance, in either the Canadian or the British constitutional traditions. Aside from resignations that occasionally occur over disputes about government policy, ministerial resignations have been restricted to incidents where a minister's personal behaviour or judgment has been deemed inappropriate or worse.⁴⁰ Even in these cases, ministers tend to resign, or to be dismissed by the Prime

Minister, only when the political heat on the government itself becomes too intense.

As previously noted, ministerial responsibility for matters of maladministration, even wrongdoing, by their departmental officials has always been understood to require the responsible minister to:

- respond to questions in the House on what has transpired;
- report on what corrective action, if any, has or will be taken; and
- account personally for their decisions on the course of action pursued.

The great merit in this approach is that the minister responsible can be pressured to act because the minister has the executive authority to act, or is a member of the

³⁹ Norman Spector, "Ducking Responsibility at the Gomery Commission", *Globe and Mail*, 4 October 2004.

⁴⁰ According to Kenneth Kernaghan: "While ministers do not accept vicarious responsibility for the errors of public servants, they are frequently required to resign if they have personally done wrong (e.g., by violating the law), or if they have specifically ordered public servants to act in a manner that results in a serious error." "Ministerial Responsibility: Interpretations, Implications and Information Access," August 2001, 3. Study for Federal Access to Information Task Force Review: <http://www.atirtf-geai.gc.ca/paper-ministerial-e.html>. The definitive record of resignations is found in S.L. Sutherland, "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem," *Canadian Journal of Political Science* 24 (March 1991): 1.

executive government, which has the collective authority to act. In short, with a few exceptions, especially for staffing, a minister cannot claim that he or she or the government is powerless to take corrective action.

The merit of this approach appears to fall on deaf ears, however. And that is not surprising. Even when there is widespread agreement that something has gone wrong, the public perceives nothing to have happened to those who are identified as responsible. When nothing appears to happen, it could be as a result of one of the following conditions. First, the Opposition is unable to compel something to happen. This is the case especially when the government has a comfortable majority and cannot be threatened with a vote of non-confidence. Second, the Opposition (or media) is unable to move public opinion sufficiently to have the government fear subsequent electoral defeat. Third, the responsible officials are protected as a by-product of the government not wanting to increase the possibility of ministers themselves being scrutinized. For both ministers and officials, something usually does happen,⁴¹ although often only after the controversy has passed, and then quietly, if only to avoid revisiting the controversy.

A second confusion arises over a minister's obligation to answer questions on what transpired before the minister was appointed to the portfolio. It is widely assumed that once a minister resigns or changes portfolio, his or her personal responsibility, as culpability, for the former portfolio ends. However, that notion has been partly laid to rest by the parliamentary proceedings resulting from the Sponsorship Affair. More than one former minister was called before the Public Accounts Committee to render an account, although they had to appear as private citizens. And at least some committee members made it very clear that they hold former ministers accountable for the maladministration that occurred while they were in office. In addition, twice a former deputy minister was called before the committee, held to account, and harshly criticized in the committee's report to the House.

⁴¹ In the case of one official see Kelly Egan, "Public servant, public spanking," *Ottawa Citizen*, February 9, 2004, p. B1.

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The idea that former ministers cannot be held to account results from confusion that what ministerial responsibility requires is that there is always a minister who can respond to criticisms and take corrective action in the present moment. Leaving the scene does not erase one's accountability, even if it diminishes the effectiveness or limits the range of possible sanctions.

The idea that former ministers cannot be held to account is due in part to the requirement of ministerial responsibility that there is always a minister who can respond to criticisms and take corrective action in the present moment. A minister answering for a former minister is both providing his or her own account of a matter that happened in the past and also accepting responsibility to act in the present moment if necessary. Obviously, a former minister can no longer answer as minister, nor take any action. It is primarily in this sense that a former minister cannot be held to account. A former Minister who holds another portfolio cannot be questioned in the House or in committee. This is a major defect in the doctrine of ministerial responsibility. In every other sense, however, they can be held accountable and can be censured (or prosecuted under the law). It does not matter whether they are still in the government or even still in public life. The same holds true for deputy ministers and other public office-holders. Leaving the scene does not erase one's accountability, even if it diminishes the effectiveness or limits the range of possible sanctions.

Majority Government and Party Discipline: The Canadian Disease?

Canadians are said to prefer the decisiveness and stability that comes with majority government.⁴² One advantage of a majority is that government has the capacity to act without anyone to block the implementation of its declared program. Another is that voters can hold the government to account for its record since no one else is to blame, which can occur when a minority government must compromise its program in order to get Opposition support for legislation. Majority government allows voters to “throw the rascals out” whenever they find the governing party wanting in terms of its record of performance.

At the same time, Canadians are said not to appreciate the party discipline that characterizes single-party majority government in Canada⁴³ because party

⁴² In the Canadian tradition, at least at the federal level, majority government has always meant single-party majority government.

⁴³ Paul Howe and David Northrup found that Canadians strongly support free votes over a system of party discipline even if this limits the effectiveness of the government (i.e., greater difficulty in implementing its legislative agenda). See “Strengthening Canadian Democracy: The Views of Canadians,” in *Policy Matters* 1 no.5 (July 2004): 23-24.

discipline diminishes the ability of MPs to represent their constituents and turns them into “party representatives,” or “trained seals.” Party discipline allows power to become concentrated in the party leader, especially when the leader is Prime Minister and possesses the prerogative powers of executive appointment and political leverage to dispense numerous other rewards and sanctions. Party discipline turns the parliamentary process into a winner-take-all adversarial process. And most important, party discipline radically reduces the effectiveness of the House in holding ministers to account by not giving backbench government MPs any role in extracting accounts from ministers.

In restricting that role to the Opposition, the accountability system becomes essentially partisan-based. Ministers therefore act in a partisan manner when under questioning or when rendering their accounts. Further, House committees in a majority government have little interest in the accountability function. The committee's government majority is rarely willing to extract accounts from ministers in order to hold them to account, and the Opposition minority does not have the votes to sustain a challenge to ministers. Further, when the Opposition is composed of multiple parties it will lack cohesion.

Party discipline in Canada, however, is excessive only in comparison with Britain. Canada's system of party discipline is similar to that of both Australia and New Zealand, although these two governments normally face more obstacles to the implementation of their programs – from Opposition majorities in Australia's Senate and New Zealand's House,⁴⁴ and from aggressive parliamentary committees.⁴⁵

The key difference between Canada and these other systems is not party discipline, but other features that mitigate the effect of party discipline: government backbench MP independence in Britain, even with a majority government, and the absence of government majorities in Australia's Senate and New Zealand's House of Representatives.

⁴⁴ In all important respects, the federal experience in Canada with party discipline is mirrored in the provincial legislatures.

⁴⁵ In Australia, it is the Senate committees that are crucial in this regard. The House committees are controlled by the government majority, and are no more demanding than in Canada.

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There are two ways Canada could emulate Australia and New Zealand. First, it could adopt new electoral systems that promote more proportional representation in the House of Commons and reduce the likelihood of single-party majority government. Second, it could reform the Senate so that it is elected using a system of proportional representation, again reducing the chances of the government having a majority. One or both of these changes would almost certainly bring about a tougher accountability regime, at least for parliamentary committees holding ministers and officials to account.

The current Liberal government has sought to effect change through a program to address the “democratic deficit.” The Prime Minister’s program, introduced with his new Liberal government in December 2003, seeks to push the Canadian system of parliamentary government closer to the traditional British model, primarily by giving government backbenchers greater opportunities to vote independently, and by strengthening the role of parliamentary committees.⁴⁶ The 2004 Speech from the Throne also committed to a review of the single-member plurality (or first-past-the-post) electoral system.

Party discipline tends not to be diminished in a minority government situation. If anything, there are even greater pressures on government backbenchers to toe the party line on virtually everything that ministers and their political advisors deem strategically important to political survival, which could include a wide range of matters. Similarly, Opposition party leaders are also unlikely to want their party MPs to vote against the party line if that amounts to taking positions or expressing views that support the government.

Minority governments can survive for a reasonable period of time, especially when they result from an electoral system that proportionally represents a multi-party system wherein no one party is likely to receive a majority of the popular vote. However, the test is whether the Opposition parties are able to use their collective majority to make government any more accountable than is usually possible under majority government. A vote of non-confidence is the ultimate accountability sanction that the House of Commons can impose, and in a minority government situation it is a real option for the Opposition. But defeating the government, and thereby forcing its resignation or another election, is not always the most effective option, especially if the defeat brings to a conclusion scrutiny that might have resulted in improvements in governance and/or public management, or in greater

⁴⁶ Peter Aucoin and Lori Turnbull, “The Democratic Deficit: Paul Martin and Parliamentary Reform,” *Canadian Public Administration* 46, no.4 (Winter 2003): 427-449.

political damage to the government. Indeed, defeat could close down a much-needed examination of possible systemic causes of wrongdoing or maladministration, and thus the possible adoption of improved controls, compliance procedures, or learning processes. In this instance, defeating the government is akin to the public hanging of a responsible official as a substitute for asking whether something more substantial needs to be done.

There is, in short, no assurance that a majority Opposition will use its power any more responsibly than would a majority government. And because it is a majority only when two or more Opposition parties act collectively, each Opposition party has the option of blaming other Opposition parties for elements of collective decisions, or for failures to act. An Opposition majority, nonetheless, guarantees that the government cannot treat parliamentary committees merely as an extension of the government.

Deputy Minister Accountability in Parliament

Although the Opposition parties and the press are normally concerned, first and foremost, with linking wrongdoings or administrative failures to ministers—and the more senior the minister the better—the facts in a case often lead them to the public service. Indeed, over the past few decades there has been an inexorable increase in the extent to which public servants are drawn publicly into the accountability of government. And since at least the 1970s, there have been numerous demands for public servants to more publicly account for their exercise of authority, including authorities assigned by statute to deputy ministers, and those delegated to them by their departmental minister, the Treasury Board and the Public Service Commission. Further, public management reforms over the past two decades have explicitly sought to give deputy ministers and their subordinates more administrative or management authority, always with the claim that increased managerial authority will be accompanied by enhanced accountability.⁴⁷

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⁴⁷ Peter Aucoin, *The New Public Management: Canada in Comparative Perspective* (Montreal: Institute for Research on Public Policy, 1995).

Emerging Public Accountability for Deputy Ministers.

All demands to explicitly acknowledge the *public* accountability of deputy ministers in particular have been resisted by successive governments, Liberal and Progressive Conservative, which have refused to accept formally that public servants should be responsible to Parliament or held accountable publicly by MPs. In 1979, the Lambert Royal Commission on Financial Management and Accountability recommended the public accountability of deputy ministers; in 1985, the McGrath House of Commons Special Committee on the Reform of the House of Commons did likewise. Both reports recommended the British practice of designating a senior official in each department as its “accounting officer” (usually the official equivalent to a Canadian deputy minister) who is personally accountable before the Public Accounts Committee of the House of Commons for departmental administration, particularly for financial administration and control. According to its Canadian supporters, this practice is the precedent for establishing public service accountability in Parliament within the constitutional regime of ministerial responsibility.⁴⁸ As recently as 2003, however, the government once again declined to adopt the scheme,⁴⁹ following a June 2002 instruction from Prime Minister Chrétien that the Treasury Board examine this scheme as a possible reform to improve financial accountability.⁵⁰

In practice, nonetheless, deputy ministers and other public servants are now held accountable by MPs in parliamentary committees — MPs ask questions that require them to defend and justify their decisions and actions. This is the same situation now found in Australia and in New Zealand. As in Canada, there has been no formal acknowledgment in either country of a change in the understanding of the constitutional convention of ministerial responsibility or of the formal status of deputy ministers. In Canada, the willingness of MPs to hold public servants to account was most recently illustrated in the 2004 proceedings of the Public Accounts Committee’s inquiry into the Sponsorship Affair. And for more than one

⁴⁸ According to Ned Franks: “The most serious problem with the approach taken by the Canadian Privy Council Office to the British Accounting Officers is not that it is wrong on most major points (which it is), but that the Privy Council Office does not discuss this major derogation from individual ministerial responsibility on its own merits, but on the basis of a false representation of the position and its impact on the parliamentary system. . . there is no constitutional obstacle to assigning responsibility to public servants and making them directly accountable to Parliament for some administrative sectors.” C.E.S. Franks, *Not Anonymous: Ministerial Responsibility and the British Accounting Officers* (Ottawa: Canadian Centre for Management Development, 1996), 15. A version can also be found in C.E.S. Franks, “Not Anonymous: Ministerial Responsibility and the British Accounting Officers,” *Canadian Public Administration* 40, no.4 (Winter 1997): 626-652.

⁴⁹ As evidenced by the fact that its 2003 guidance document for deputy ministers restates the traditional doctrine, although with some nods in the direction of the increased de facto holding of deputies to account in Parliament. See Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003. <http://www.pco-bcp.gc.ca>.

⁵⁰ Canada, Office of the Prime Minister, “Strengthening Public Service Management and Accountability for Public Funds,” June 11, 2002.

public servant, including deputy ministers, the committee’s findings were not gentle, to say the least. While this may be the most recent case, it is by no means the only one. Public servants have also been held publicly accountable by ministers, and in one case, the so-called Al-Mashat affair, even by the Clerk of the Privy Council.⁵¹

While the government has declined to adopt the formalities of the British accounting officer scheme, the most recent government guidance document does make clear that deputy ministers perform their duties on the basis of several types of authority: authority delegated from their departmental minister (the generic “deputy minister” role), authority conferred directly by parliamentary statute, and authority delegated directly to deputies by the Treasury Board and the Public Service Commission. Moreover, this document states explicitly that with respect to those statutory authorities and responsibilities assigned directly to them by Parliament, deputies have:

a special obligation to describe the progress, activities and performance of the department in areas such as financial administration, program and service delivery, and human resource management...[and] should personally appear before parliamentary committees to give an *account* of their stewardship of the department.⁵²

It is worth noting that there is nothing in the constitutional convention that requires that deputy minister accountability be confined exclusively to the executive arena where ministers hold them to account. As the report of the Task Force on Public Service Values and Ethics (the Tait report, after its chairman John Tait) notes, public service anonymity is not an absolute.⁵³ The report also notes that the convention merely requires that ministers have primary authority and responsibility for the administration of public affairs, including sufficient powers to direct and control their departmental officials in the conduct of the department’s public business. As already discussed, it has long been accepted that some matters of human and financial resources should be administered independently of ministers, particularly the staffing of the public service, and that these limitations on ministerial authority do not unduly undermine the implementation of

⁵¹ See S.L. Sutherland, “The Al-Mashat Affair: Administrative Accountability in Parliamentary Institutions,” *Canadian Public Administration* 34, no.4 (Winter 1991).

⁵² Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003, 15. Emphasis added.

⁵³ Canada, Task Force on Public Service Values and Ethics, *A Strong Foundation* (Ottawa: Canadian Centre for Management Development, 1996), 11.

government policy or democratic control over the administration of public affairs. This tradition includes the various parliamentary statutes that assign duties and powers directly to deputy ministers, and the delegations to deputy ministers by the Treasury Board and the Public Service Commission. No one suggests that the constitution of ministerial responsibility is fundamentally compromised or undermined as a consequence.

Ministers and Deputy Minister Accountability.

Canadian experts have disagreed over what the British accounting officer structure means in terms of the personal accountability of accounting officers.⁵⁴ Both sides agree, however, that the scheme is not meant to allow ministers to escape ministerial responsibility. To do so would be to weaken the democratic control of ministerial authority over public administration. The positive view is that holding the accounting officers accountable before the Public Accounts Committee for their prescribed powers and responsibilities enhances public accountability, including that of ministers. It is not viewed as an either/or proposition where if the committee cannot get the minister then it goes after the accounting officer. Those with a less positive view argue that the accounting officer approach only works in Britain because of the minimal partisanship of the Public Accounts Committee.

The Canadian case for direct deputy minister accountability in Parliament is that it would enhance public accountability generally, in at least three critical respects. First, it would strengthen parliamentary checks and balances over the use of executive authority by placing deputy ministers in the position where they could not hide behind ministerial responsibility in providing an account to a parliamentary committee on the use of their own conferred or delegated authorities and responsibilities. Since the authority is given to them, and not to their minister, the deputy minister must account personally. Second, it would encourage all those involved – ministers, deputy ministers and MPs

– to continually update the standards of good public management by which the decisions and actions of deputy ministers are assessed. Third, it would help MPs to better understand the distinctions between (i) the authorities vested directly in deputy ministers by statute and those delegated by the Treasury Board and Public Service Commission and (ii) the authority that ministers delegate to their deputies, explicitly or implicitly, to direct and manage the department.

Critics argue that ministers will always seek to minimize their responsibility when things go wrong. Above all else, partisan politics demands this response: ministers are members of a collective executive that stands or falls as a single entity in a competitive political environment. This feature of parliamentary accountability requires that the Opposition work at extracting an account from ministers. Ministers are not expected to simply offer themselves up to the Opposition. As a consequence, the Opposition will try to get at ministers through the minister's deputy or other departmental officials. Indeed, even backbench government MPs may attack public servants, either because they cannot or will not criticize ministers directly, and thus criticize public servants to vent their displeasure, or because they view public servants as responsible for the shortcomings. For critics, deputy minister accountability in Parliament inevitably means bringing non-partisan public servants into the partisan vortex.

In fact, the Canadian practice is becoming increasingly dysfunctional, as too many ministers and MPs on both sides fail to respect the non-partisan character of the professional public service.⁵⁵ As the Tait report noted, public service morale has been adversely affected by these developments.⁵⁶ In all quarters, it is increasingly recognized that the time has come for a renewed effort to make ministers and MPs better respect the non-partisan independence of the public servants who appear before Parliamentary committees. For their part, public servants need to make every effort to respond to questioning as fully as possible, and in ways that do not suggest they are siding in any way with their ministers. At issue, however, is whether this increasingly dysfunctional system is due to confusion on the part of ministers and MPs, or a failure of the accountability regime to acknowledge changing circumstances.

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⁵⁴ See C.E.S Franks, "Not Anonymous," and J.R. Mitchell, "Reply to C.E.S. Franks," *Canadian Public Administration* 40, no. 4 (Winter 1997): 653-657.

⁵⁵ Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament* (Toronto: University of Toronto Press, 2003).

⁵⁶ Canada, Task Force on Public Service Values and Ethics, *A Strong Foundation* (Ottawa: Canadian Centre for Management Development, 1996), 7-8.

Limits of Accountability before Parliamentary Committees.

One response to this conundrum on direct deputy minister accountability is to be strict in distinguishing between matters for which deputy ministers are personally accountable and those for which, before parliamentary committees, they answer only in support of the accountability of their ministers. Experience has demonstrated that one cannot distinguish between the accountabilities of ministers and those of deputy ministers on the basis of a clear-cut distinction between policy and administration. To be realistic, the distinction needs to be between (i) the authority and responsibility either assigned to deputies directly by statute or conferred by the Treasury Board or the Public Service Commission, and (ii) the authority and responsibility delegated to a deputy by her or his minister as a matter of administrative practice.

For authority and responsibility assigned to deputies by statute or by the Treasury Board or the Public Service Commission, a deputy could be expected to account personally before parliamentary committees. The minister cannot be held accountable here; these are spheres of action over which the minister has no authority and responsibility. Indeed, the minister should not interfere with the deputy's decisions, especially in staffing decisions. In the deputy's exercise of a minister's own authority, on the other hand, the traditional approach makes eminent sense. Here, the deputy merely answers in support of the accountability of the minister. Trying to

distinguish between the actions of the minister and the actions of the deputy in these matters merely invites debate, if not confusion. In some cases, of course, MPs will hold a deputy accountable if they cannot get at the minister, or if it appears that the deputy minister should bear responsibility for the maladministration.

The specification of a deputy minister's sphere of public accountability should be accompanied by protocols to govern the relationships between the various parties involved in the accountability regime. The fact that the government's formal guidance document for deputy ministers has officially acknowledged their directly assigned authorities and responsibilities constitutes a solid foundation for

acknowledging the scope of deputy minister accountability in Parliament.⁵⁷ The various protocols respecting values and ethics, which were recently put in place, should help identify the responsibilities of public servants generally.⁵⁸ The Management Accountability Framework recently developed by the Treasury Board Secretariat also helps specify these responsibilities.⁵⁹

At the same time, deputy minister accountability in Parliament must include the understanding that deputy ministers can be held to account simultaneously by ministers and by parliamentary committees.⁶⁰ The current guidance document for deputies, for instance, does make it clear that deputies are expected to appear before and present accounts to parliamentary committees on the discharge of their personal responsibilities that are spelled out in statutes that directly assign them various administrative powers and responsibilities, and in formal delegations from Treasury Board and the Public Service Commission. However, the guidance document articulates the traditional understanding that deputy ministers are accountable exclusively to ministers and not to Parliament.

It does not necessarily follow that being held to account by parliamentary committees conflicts with deputy ministers' accountability to their ministers, so long as it is clear that their accountability before Parliament is restricted to those matters for which they possess statutory authority from Parliament or delegated authority from the Treasury Board and the Public Service Commission. A deputy minister is accountable to his or her minister for the way in which he or she uses the minister's authority in carrying out the minister's agenda, and supports the minister in the discharge of her or his executive responsibilities. A deputy is also accountable to her or his minister for authorities and administrative responsibilities that are given directly to the deputy to support the minister's responsibilities in upholding the government's responsibilities for sound public administration. Deputies can be accountable both to their minister and to parliamentary committees insofar as they are required to explain, defend or justify

⁵⁷ Canada, Privy Council Office, Guidance for Deputy Ministers, June 20, 2003. <http://www.pco-bcp.gc.ca>. See also Canada, Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, December 2003. <http://www.pco-bcp.gc.ca>.

⁵⁸ Canada, Treasury Board Secretariat, *Values and Ethics Code for the Public Service*, June 19, 2003.

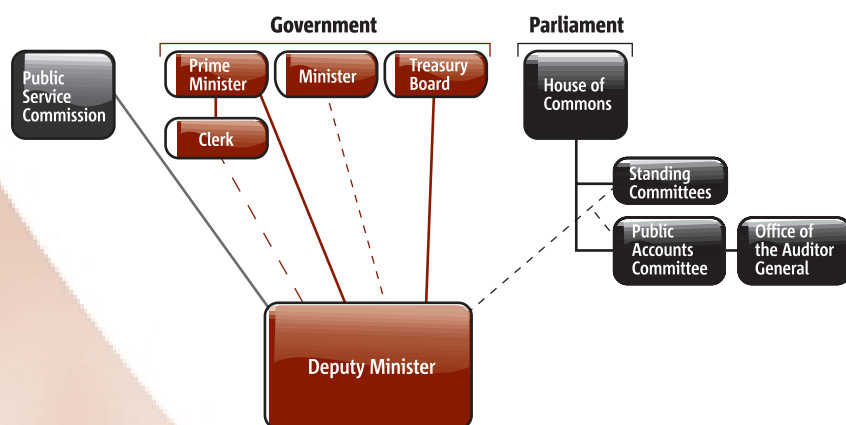
⁵⁹ Canada, Treasury Board Secretariat, *TBS Management Accountability Framework*, 2003. <http://www.tbs-sct.gc.ca>.

⁶⁰ Deputies are also accountable to the Public Service Commission.

Direct deputy minister accountability should be strict in distinguishing between matters for which deputy ministers are personally accountable and those for which, before parliamentary committees, they answer only in support of the accountability of their ministers. This distinction needs to be between (i) the authority and responsibility either assigned to deputies directly by statute or conferred by the Treasury Board or the Public Service Commission, and (ii) the authority and responsibility delegated to a deputy by her or his minister.

their actions to each. Deputies are accountable to their ministers for their responsibilities as their deputies, and to parliamentary committees, on behalf of Parliament, for their personal authority and responsibilities as the administrative heads of departments. It is not impossible to serve two masters; indeed, each deputy is already acknowledged to have at least five masters – her or his departmental minister, the Prime Minister, the Clerk as Head of the Public Service, the Treasury Board, and the Public Service Commission.

FIGURE 4
Deputy Minister Accountability



Note: 1) Public Service Commission is an executive agency.
2) Office of the Auditor General (OAG) audits Departments; Deputies are not accountable to OAG.

Limits of Deputy Minister Accountability.

Parliamentary committees, of course, cannot dismiss or discipline a deputy minister, nor can they direct a deputy minister; they cannot command that a particular corrective action be undertaken. These limits are often put forward as reasons why deputy ministers should not be deemed to be accountable “to” parliamentary committees, as distinct from accountable “before” committees.⁶¹ The

⁶¹ Mitchell, “Reply to C.E.S. Franks,” 654-655. Franks discusses this distinction at length in “Ministerial and Deputy Ministerial Responsibility and Accountability”, A Submission to the Public Accounts Committee of the House of Commons of Canada, 11 January 2005. He notes that the distinction was used by the Lambert Commission in its recommendations and report.

fact of the matter, however, is that neither the House nor any of its committees has the power to dismiss or discipline ministers or to direct individual ministers to take executive action. And yet ministers are deemed responsible and accountable “to” the House and its committees. To hold a deputy minister to account, a parliamentary committee would simply have to examine a deputy minister’s actions, and then issue a committee judgment regarding the deputy’s use of her or his authority and discharge of responsibilities as the administrative head of a department. This is what now occurs from time to time without any formal recognition that deputies are accountable to Parliament.

Under a system that formally acknowledges direct deputy minister accountability, a deputy minister would personally account to parliamentary committees for managing a department’s resources in matters covered by the various statutes and delegations that give deputies direct authority and responsibility for administration. These accounts by deputies would not be merely in support of their ministers’ accountability to Parliament, although they could serve that purpose as well. As the administrative head of a department, the deputy should inform, explain, defend and justify her or his actions in relation to laws, regulations and accepted standards of public administration.

It follows, of course, that when responding to questions on matters that do not fall within a deputy’s sphere of authority and responsibility, a deputy minister puts on a second hat, so to speak, and answers *on behalf of* his or her minister and not in his or her own right. This is the traditional understanding of what deputy ministers and other public servants do when answering questions from MPs in parliamentary committees. In these instances, they answer in support of the minister’s accountability to Parliament because the matters fall within the minister’s authority, even if this authority has been delegated by the minister to her or his deputy minister or exercised by subordinate departmental officials with the deputy’s approval. In this circumstance, furthermore, deputies answer questions in ways that only inform and explain; they do not defend or justify, because they are not expected to give an account. The deputy minister is not personally accountable; the minister is. It is thus the minister’s decision to provide whatever defense or justification is to be offered. Ministers must render their own accounts; their deputies should not be expected to do this for them. On the contrary, they must refrain from doing so.

The Primacy of Ministers.

A deputy minister, or any other public servant, should answer with only factual information or a descriptive explanation any question in committee that addresses matters that fall within the executive authority and responsibilities of ministers for the direction and management of their individual department and the conduct of its public business. These are the matters for which a minister is authorized by specific statutes to exercise executive discretion. While deputy ministers and other departmental officials may advise on these decisions, ministers retain authority and responsibility and are thus personally accountable. These include matters that traditionally have been labeled matters of policy, that is, subjects upon which public servants are to be “anonymous” and thus express no public view.⁶² But policy means more than a minister’s agenda, objectives or even directives. It also encompasses all those matters of administration, implementation or service delivery that are not statutorily assigned to others, including the Public Service Commission, the Treasury Board, or deputy ministers themselves.

On matters for which a minister is responsible, it should go without saying that public servants should never debate MPs, even when these matters have not become subject to political controversy.⁶³ When matters are not politically controversial, deputy ministers, and other officials, can usually provide parliamentary committees with full answers to their questions. In contrast, when a matter of administration becomes politically controversial, there is the danger that a full answer will tempt the deputy or other departmental official to defend or justify an action of a minister. In actual practice, of course, virtually any matter of administration can become politicized. For public servants, the test should be straightforward: an administrative matter should be considered politicized whenever the full response to a question requires an answer that goes beyond information or explanation. If a full response demands a justification or defense, the reply should be that the question is one best put directly to the minister responsible.

Protocols for Practice.

Given the above discussion, it should be clear that acknowledging deputy minister accountability to Parliament would not require a regime that seeks to distinguish “administration” from “policy.” Efforts to do so, in Canada and elsewhere, have not

proven to be useful, at least not when matters become controversial.⁶⁴ The constitutional principle of ministerial responsibility assumes ministers have sufficient executive powers to direct and manage their departments, even when they delegate extensively to their deputies, and through their deputies, to other departmental officials.⁶⁵ The responsibility of ministers for their individual departments demands that a minister’s executive authority encompass matters of administration as well as of policy. The exceptions to this general rule are clearly laid down in the parliamentary statutes that grant administrative authorities and responsibilities to other ministers (the Treasury Board), an independent executive body (the Public Service Commission), and even ministers’ subordinates (their deputy ministers).

In our view it would be much better to build on this Canadian experience of general ministerial powers for their departments and its programs, combined with specific statutory powers assigned to others, than to attempt to devise some analytical scheme to distinguish between policy and administration in order to separate the responsibilities of ministers from those of deputy ministers. This could help to avoid much of the confusion and uncertainty found in those systems that have attempted to construct a regime of public service accountability based on definitions that distinguished between responsibilities for “outcomes” and “outputs,” with public service executives responsible only for the latter.⁶⁶ These attempts have not been as successful as originally anticipated. In Canada, Parliament has already established statutory distinctions between the authorities assigned to individual ministers, for the management of their departments, programs and annual appropriations, and the authorities assigned to deputy ministers, the Public Service Commission and the Treasury Board. These distinctions should be more than adequate for securing the public accountability of deputy ministers in Parliament.

Finally, introducing a Canadian version of deputy minister accountability could help to improve public accountability for no other reason than that its adoption

⁶² Anonymity is distinct from and in addition to a public servant’s duty not to disclose matters that are confidential, including advice to ministers.

⁶³ Canada, Privy Council Office, Responsibility in the Constitution, June 1, 1993.

⁶⁴ See, for example, Diana Woodhouse, *Ministers and Parliament: Accountability in Theory and Practice* (Oxford: Clarendon Press, 1994).

⁶⁵ James R. Mitchell and Sharon Sutherland, “Relations between Politicians and Public Servants,” in *New Public Management and Public Administration in Canada*, eds. Mohamed Charih and Arthur Daniels, 181-197 (Toronto: Institute of Public Administration of Canada, 1997). It should be noted, however, that Mitchell and Sutherland are opposed to any variation from the traditional doctrine.

⁶⁶ See, for example, Robert Gregory, “Political Responsibility for Bureaucratic Incompetence,” *Public Administration* 76, no.3 (1998): 519-38; Charles Polidano, “An Exocet in a Red Box: Parliamentary Accountability in the Sandline Affair,” *Public Administration* 79, no. 2 (2001): 249-275; Michael Keating, “In the Wake of ‘A Certain Maritime Incident’: Ministerial Advisers, Departments and Accountability,” *Australian Journal of Public Administration* 62, no. 3 (2003): 92-97.

would require the development of an explicit set of protocols. This very exercise might help to better inform and educate ministers, public servants and MPs on the Canadian regime. Significant change, however, would depend on parliamentary committees improving their scrutiny of administration with sufficient persistence, effort and conscientiousness. We have already alluded to the reasons why the Canadian Parliament and its committees are less successful than their parliamentary counterparts in Australia, Britain and New Zealand. At the same time, we can expect that there will be continuing interest by government backbench MPs in occasionally holding public servants to account, and that this interest will coincide with the interests of Opposition MPs in holding ministers and their officials to account.

Public Service Accountability within Government

Public servants are accountable to ministers through the department hierarchy that ends at the top with the deputy minister, who is directly accountable to the minister. The matter is more complicated than that, however. As noted previously, the normal hierarchy in Canadian public administration today is complex, with multiple lines of accountability.

Internal Accountability is Complex.

In the Canadian government, deputies are accountable not only to their individual ministers, but also to the Prime Minister as the head of the government. Through the formal mechanism of the Governor in Council, the Prime Minister appoints (and dismisses) deputy ministers and also assigns them their individual mandates. In addition to their departmental responsibilities, deputy ministers have government-wide responsibilities relating to substantive public policy and administrative policy. The Prime Minister defines each set of responsibilities. The Clerk of the Privy Council, as head of the public service, advises the Prime Minister on deputy minister staffing, and also conducts the annual individual performance evaluations of deputy ministers, with the assistance of the Committee of Senior Officials (COSO). COSO, chaired by the Clerk, is a committee of deputy ministers that advises the Clerk on matters of staffing the senior public service. But, the complexity does not stop here. In addition, deputies are also accountable to the Public Service Commission for the staffing authority delegated to them, and to the Treasury Board for further delegations of authority in regard to the management of financial and human resources.

The Canadian situation in the above respects is more complex than in many other systems, including Australia, Britain and New Zealand, primarily because of the number of superiors or principals to whom deputies are accountable. In many other jurisdictions, for instance, the chief administrative officers equivalent to Canadian deputies have more extensive statutory authority and responsibility for the management of financial and human resources; therefore, there are fewer bodies to which they must account for different aspects of their work. On the other hand, compared with these other systems there is a stronger corporate structure in Canada, with deputies managed as a collective public service executive team under the leadership of the Clerk as the deputy to the Prime Minister. This structure has facilitated the development of a performance evaluation system for deputy ministers that is one of the most professional by international standards.

In addition to the inevitable tensions between the departmental and corporate administrative responsibilities of deputy ministers, deputies must work to the government's priorities, also encompassing policy and administrative matters. Changing priorities can present significant challenges to good management, however nimble a deputy's department may be. These priorities establish criteria for the Clerk's and COSO's evaluation of deputy ministers that may well differ from the criteria that may be used by parliamentarians, the press, or external auditors or reviewers in assessing the deputy's performance as a department's chief administrative officer. The fact that the priorities of the government may be public knowledge will not always be sufficient.

Within government and the public service, the difficulties presented by the complex realities of a deputy's accountabilities can be managed, at least within the public service, by professionals. The Clerk and the other members of COSO are themselves experienced deputies who can appreciate the tensions, even conflicts, between what they and their colleagues are required to accept as their priorities. And their nuanced evaluations of their colleagues can be explained to the Prime Minister and other ministers as need be.

External Accountability is Incomplete.

Outside government, however, public judgment of deputies and other officials rarely has the same capacity for nuance, or at least not the same willingness to accept the value of some priorities. In addition, public assessments are based on an incomplete mix of information gleaned from media reports, government information accessed through the access to information regime, and the findings of external audits and reviews from the Office of the Auditor General and other

parliamentary agencies. To the degree that parliamentary committees, for the reasons discussed above, are unable to give deputy ministers a full and complete hearing in assessing not only their management of departments but also their department's performance, the public evaluation of deputy ministers and other public servants may well be at odds with the internal assessment. When this occurs, more than the deputy's reputation suffers if ministers themselves are unable or unwilling either to accept responsibility or to render satisfactory accounts of departmental performance to put the departmental performance into the context of ministerial policies and priorities. This is one reason why direct public service accountability to parliamentary committees should not only be restricted to deputy ministers, but also confined to deputies' statutorily assigned administrative authorities and the powers delegated them by the Treasury Board and the Public Service Commission.

The new Management Accountability Framework, a public statement of the responsibilities of deputies and other public service managers, is perhaps a useful first step towards improving how these managers are publicly assessed. It identifies their responsibilities, outlines the expectations of managers for each element, and describes the measures that can be used to assess a manager's performance against these expectations. The framework's chief virtue is its succinct and yet comprehensive description of the complex set of responsibilities of public service managers. (See www.tbs-sct.gc.ca/maf-crg/maf-crg_e.asp)

The Accountability System is Not Broken.

At a more general level, however, the use of this framework will not by itself overcome the major obstacle to improved public service accountability, which stems from the widespread assumption that the system is broken. Error-free public administration is simply not possible. The recent episodes of shortcomings and wrongdoings are cause for concern, although they are not unique to the past few years in Canada nor do they indicate that Canada is dangerously below the standards of comparable jurisdictions. However, it can be argued that the shortcomings and wrongdoings over the past few years that have preoccupied ministers, MPs, officials, and the public, point to deficiencies but do not lead to a conclusion that the system needs a complete overhaul.

There is a huge difference between failing to enforce a system of controls and an accountability regime that is flawed in its basic design. In our view, the recent troubles in the public service are due more to the former than the latter. In fact, the

exposure of the recent wrongdoings was in part due to the effectiveness of the existing accountability regime. At least some of what has been exposed probably would not have been revealed prior to the adoption of increased methods and practices of transparent public administration.⁶⁷ At the same time, the decline of some traditional methods of accountability, including rigorous financial auditing, could constitute a deficiency.

Canada has a number of accountability mechanisms that are as good as, if not better than, those found in the jurisdictions against which Canada is usually compared. Two of the most critical mechanisms are the access to information regime and the capacities of parliamentary agents, notably the Office of the Auditor General, to audit and review public administration. The access to information regime and the value-for-money auditing mandate of the OAG are recent additions in the past thirty years. They expose matters that were once not exposed in Canada, though they would have been known to some insiders, and matters that even now are not exposed in some jurisdictions. Self-reporting by departments is also an area where Canada is by no means a laggard by comparative standards. Where Canada does come up short, as noted, is in sustained and thorough scrutiny by parliamentary committees.

A number of incidents over the past several years have obviously done damage to the institution of the public service and the credibility of public service accountability. In hindsight, the public service can be faulted in three areas: First, for allowing budget reductions to severely diminish the capacity of the monitoring, auditing and challenge functions in departments and central agencies, which are crucial to effective internal accountability. Second, for promoting, or at least tolerating, a public management paradigm that de-legitimized both administrative controls and compliance with traditional public service values and ethics. And third, for putting the non-partisan character of the public service at risk by failing to counter various pressures to politicize the administration of public affairs.⁶⁸

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⁶⁷ David Good, *The Politics of Public Management: The HRDC Audit of Grants and Contributions* (Toronto: University of Toronto Press, 2003).

⁶⁸ Canada, Clerk of the Privy Council, *Tenth Annual Report to the Prime Minister on the Public Service of Canada* (Ottawa: Privy Council Office, 2003).

In each of these three respects, the public service was confronted with major challenges that it sought to address. At the time of Program Review in the early to mid-1990s, the attitude in many quarters was that the monitoring, auditing and challenge functions were essentially “bureaucratic overhead”. Scaling back on the administrative resources to carry out these functions was thus seen by many as a good thing to do. Second, the initial attack on traditional public administration as rule-bound bureaucracy emanated from the private sector. However, the importance of public service values and ethics has recently resurfaced as a result of several wrongdoings, in Canada and elsewhere, and then perhaps only because similar ethical lapses began to occur in the private sector. And finally, the past two decades have witnessed an increasing number of political staff who have insisted on involving themselves in public administration, and an increasing number of ministers who wish their public servants to be responsive in promoting the implementation of their agenda.⁶⁹

Public Service Executives have been Responsive.

The public service has begun to address the first two matters. The third, and undoubtedly the most important, is more complicated because of the Canadian tradition. Compared with the public service in Australia, Britain and New Zealand, Canada’s public service has always been more politically responsive, especially in the senior ranks. Compared with Canada’s system, the other three to varying degrees were more insulated from political direction, more permanent in their positions, and more independent in determining who joined their ranks and held which positions. However, public management reform in these three countries since the late 1970s has brought their systems closer to Canada’s.

The Canadian practice served democratic governance well as long as the political responsiveness did not hugely interfere with good public administration, and as long as compliance with political direction did not bring the public service into public disrepute. Until recently, public and media deference to authority helped to minimize criticism of questionable public service behaviour. This deference was

⁶⁹ The increased incidence of bullying in public administration, as in other sectors of society, has not helped in fostering or maintaining a public service that is willing to stand up to ministers and their political advisors. This is not a uniquely Canadian phenomenon. See, for example, Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament* (Toronto: University of Toronto Press, 2003); David Good, *The Politics of Public Management: The HRDC Audit of Grants and Contributions* (Toronto: University of Toronto Press, 2003); Colin Campbell and John Halligan, *Leadership in an Age of Constraint: The Australian Experience* (Sydney: Allen & Unwin / Pittsburgh: University of Pittsburgh Press, 1992); Colin Campbell and Graham Wilson, *The End of Whitehall: The Death of a Paradigm?* (Oxford: Basil Blackwell, 1995); Micheline Plasse, *Ministerial Chiefs of Staff in the Federal Government in 1990: Profiles, Recruitment, Duties and Relations with Senior Public Servants* (Ottawa: Canadian Centre for Management Development, 1994).

strengthened by the public service’s ability to keep potential problems hidden within the executive–administrative branch of government. And the public service’s non-partisan reputation survived the occasional deputy minister who left the career service to enter partisan politics.

The balance in minister–public servant relationships, however, has changed over the past two to three decades, in Canada as elsewhere. Even where there was little evidence of senior public service positions being filled by partisans, or by public servants sympathetic to the governing party’s policy persuasion, all jurisdictions have seen an increase in the efforts of a growing body of political staff to intervene in public administration, and a decline in the respect among politicians for a professional and non-partisan public service. This lack of respect has often pushed public servants to the sidelines in the process of advising ministers, and has had the effect of bringing public servants even further into the vortex of partisan politics through administrative actions.

More Public Service Independence and Transparency are Essential.

In Canada, the existing tradition of political responsiveness simply reinforced this new trend of politicization in the administration of public affairs. Public servants did not know how else to respond. One former senior mandarin put it this way: “It was clear what people at the political level wanted. They got their marching orders and they marched.” To do otherwise would have been “quite foreign to the way we function historically, which is to just do as you’re told.”⁷⁰ The fact that some actions would result in the misuse of deputy ministers’ statutory or administratively delegated authorities and responsibilities, either by deputies or their subordinate managers, apparently has been insufficient to prevent their misuse. Given this Canadian public service culture of political responsiveness, something more may now be required to reestablish the non-partisan independence of the professional public service.

Beyond its independence, however, the Canadian system of public service accountability that operates within the government and the public service does not have sufficiently effective methods to assure parliamentarians, the media or the public that public servants are held to account for their actions, or are disciplined or sanctioned as necessary. The very fact that the prescribed course is to sanction

⁷⁰ Arthur Kroeger, quoted in Norma Greenway, “They got their marching orders and they marched,” *Ottawa Citizen*, February 12, 2004.

and discipline internally increasingly conflicts with a skeptical public that demands transparency. The frustrations of public servants with the inability of the system to deal with poor performers—frustrations that are increasingly vented publicly—merely add to the public’s suspicions about the credibility of claims that public servants are held to account by their superiors in the hierarchy. Rarely considered, however, is that all public services have had difficulty finding effective and acceptable procedures for dealing with poor performers. For that matter, large complex organizations in the private sector have similar difficulties.

Aside from one or two episodes in which public servants were publicly disciplined by their superiors, recent criticisms of the public service have focused on efforts to tighten the rules and regulations governing administrative matters, to increase transparency, and to assess various proposals for improvements, including the British accounting officer scheme.

Tightening Rules has Limited Value.

The irony in the present state of affairs, however, is that it is more unlikely than ever that the existing accountability regime could be strengthened enough to ensure error-free government, even with a tighter, more strictly enforced system of rules and controls. Various measures introduced over the past two decades to increase transparency have made the regime even more subject to public exposure. And, of course, errors are inevitable in any complex organization that must operate in a turbulent environment. This is especially true when an extensive delegation of authority is required to achieve a minimal degree of operational efficiency and effectiveness.

Instead of an effort to further tighten the system of central controls, what may be required is a greater independence of the public service, and greater public accountability by deputy ministers. The following part of this paper outlines how this might be done. Here, we conclude by noting that this combination should also enhance the attention that deputy ministers give to the administrative performance of their departments, which has been the result in Australia, Britain and New Zealand. As the Tait report acknowledges:

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We have looked at research that argues both political and public service accountability can be significantly strengthened... [when] ministers gain the ability to be more explicit about what they expect from their departments, and to monitor more precisely whether their expectations are being met. For public servants the notion of accountability becomes more concrete, as they strive to meet the minister’s targets and goals.⁷¹

The Canadian version of New Public Management has perhaps been too obsessed with the North American management consultant’s credo of “let the managers manage” (a slogan first used to describe the central prescription of the Glassco commission in the early 1960s), which can only diminish attention to accountability. In contrast, the New Public Management in Australia, Britain and New Zealand proceeded on the assumption that it was equally or even more important to “make the managers manage,” by subjecting public servants to a rigorous accountability regime. While the New Public Management in these other three countries has had its fair share of criticism, much of it on target, its public service accountability features have generally been viewed in a positive light, at least insofar as they have sought to link public service accountability to performance.⁷² Recent Canadian public service efforts are in line with these comparative experiences.

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Results-Based Reporting to the Rescue?

Results-based reporting to Parliament is an integral element of a reform effort, now almost a decade old, to improve reporting by departments to Parliament in order to improve accountability not only to Parliament, but also to ministers and the public. It is also a crucial part of a larger effort that seeks to improve management through the improved measurement of results.

⁷¹ Canada, Task Force on Public Service Values and Ethics, *A Strong Foundation* (Ottawa, Canadian Centre for Management Development, 1996), 15. Emphasis added.

⁷² See, for example, Allen Schick, *The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change* (Report prepared for the States Services Commission and the Treasury, Wellington, New Zealand, 1996).

Outputs and Outcomes.

The basic design of results-based (or performance) reporting has now become common across Western democracies. Results include performance in the production of outputs and the achievement of desired outcomes. Outputs are the goods and services provided by government in pursuit of its policy objectives; desired outcomes are the desired effects that the government intends from these outputs. Outcomes can also be defined as the actual effects, intended and unintended. Under some regimes, notably those of New Zealand and Britain, public management reform was predicated on the assumption that public servants should be held responsible and accountable for the economical and efficient provision of outputs, while ministers should be held responsible and accountable for whether the desired outcomes are achieved. In other countries, including Canada, the distinctions have never been so clear cut.

In every case, however, ministers decide what public goods and services they want as outputs, their desired levels of quantity and quality, and the budgetary resources to be committed to each output. In doing so, ministers make public policy. These decisions commit them to certain courses of action in pursuit of desired outcomes, and they must account for their decisions about the courses taken. In this respect, it does not matter whether they receive their policy advice from public servants, political staff, private external sources, or some combination of all three: ministers must own their decisions.

For their part, public servants provide the public goods and services in question or have them delivered by third parties. In either case, they are responsible and accountable to ministers for the administrative implementation of the government's program. They must also report publicly on their performance in managing the inputs, or resources used, in delivering these outputs. In so doing they must also report on their compliance with the law and administrative rules on resource management and service delivery, as well as on their performance against standards, targets and measures that have been established in concert with ministers.

Results-based reporting raises questions concerning the respective responsibilities of ministers and public servants when "results" are not clearly defined to distinguish between outcomes and outputs. In some respects, there is nothing new here; the outcome-output distinction is merely another variant of the traditional policy-administration dichotomy. However, it is unlikely that the distinction between outcomes and output will be respected. Ministers increasingly want public

servants to be held publicly accountable for their effectiveness in managing the delivery of outputs to achieve the desired outcomes for which ministers are responsible. As Savoie fittingly puts it, the "boundaries" between ministers and public servants have blurred.⁷³

Promise but Little Progress.

Notwithstanding widespread political and public interest in the basic idea of results-based reporting and the high expectations for measuring government performance, the record virtually everywhere has been disappointing. No national jurisdiction that has been independently audited appears to have received a high score for its achievements in results-based reporting. Similar conclusions were reached in Canadian, British, Australian and New Zealand audits and studies on results-based reporting.⁷⁴ Nonetheless, nowhere does there appear to be a major move to abandon the initiative. The high expectations, it appears, remain unaffected by the limited attention given to these reports in the major processes of public accountability. In part, the persistence is due to a widespread view that public knowledge of government performance is a critical source of citizen power. To the degree that the results are made transparent, so the theory goes, the public is empowered. Governments ignore this expectation at their peril.

Unrealistic Assumptions.

One reason why results-based reporting has not met expectations is that expectations are unrealistically high. The assumption that public servants can attribute results or outcomes – intended, desired or otherwise – to a government's outputs (and inputs), especially on an annual basis, is unrealistic for all but the most straightforward transactions. The assumption that the facts will speak for themselves, and that

Notwithstanding widespread political and public interest in the basic idea of results-based reporting and the high expectations for measuring government performance, the record virtually everywhere has been disappointing. The assumption that the facts will speak for themselves, and that performance measurement is a simple and straightforward accounting exercise, indicates either a profound lack of social science sophistication or too much rhetoric from politicians and public servants.

⁷³ Donald J. Savoie, "Searching for accountability in a government without boundaries," *Canadian Public Administration* 47, no. 1 (Spring 2004): 1-26.

⁷⁴ Canada, Auditor General., Report to the House of Commons, *Reporting Performance to Parliament: Progress Too Slow*, December 2000, Chapter 19; Canada, Auditor General. ; Report to the House of Commons, Rating Departmental Performance Reports, 2003, Chapter 1; United Kingdom, Comptroller and Auditor General, National Audit Office, *Good Practice in Performance Reporting in Executive Agencies and Non-Departmental Public Bodies*, March 2000; House of Commons Public Administration Select Committee, *On Target? Government by Measurement*, Volume 1, Fifth Report of Session 2002-03, July 22, 2003; Australia, Auditor General, Report No. 11, 2003-04, Performance Audit, *Annual Performance Reporting*, 2003; New Zealand, Controller and Auditor General, *Reporting Public Sector Performance*, 2nd ed., January 2002.

performance measurement is a simple and straightforward accounting exercise, indicates either a profound lack of social science sophistication or too much rhetoric from politicians and public servants about what can be produced in terms of meaningful performance or results measurement.

A second reason why results-based reporting has not met expectations is that it is unrealistic to expect Opposition MPs, or political groups or interests which are critical of government policy, to consider the self-reporting by ministers' departments to be completely objective and impartial reports on performance, even when there is no overt cheating with the facts and figures. By design, the accountability process under responsible parliamentary government is partisan and thus adversarial. Public accountability for the effectiveness of public policies cannot be turned completely into a professional management process. The matters at issue are almost always questions of public governance and thus involve conflict over values and priorities; they are rarely technical matters that can be delegated to experts for resolution. Public accountability thus requires checks and balances – checks on the powers of the executive and administrative branches of government, and balances in the competing requirements of efficient government and meaningful democratic control over public administration.⁷⁵ In this context, self-reporting on performance is never sufficient.

The parliamentary process uses the adversarial process for good reason: it gives Opposition MPs the incentive to scrutinize government and hold it responsible and to account in a way that allows criticism without the need to offer an alternative. However frustrating this may be, it serves to encourage robust criticism. In Australia, Britain and New Zealand, for example, where the same shortcomings in performance-based reporting are exhibited, performance reports at least make their way onto the parliamentary committee agenda because parliamentary committees in those countries take the scrutiny of government more seriously than do committees in Canada.⁷⁶

The Two Sides of Accountability.

Finally, the credibility of results-based reporting to Parliament for public accountability is clearly deficient, as it assumes reporting is the principal dimension

⁷⁵ Peter Aucoin, Jennifer Smith and Geoff Dinsdale, *Responsible Government* (Ottawa: Canadian Centre for Management Development, 2004); Donald J. Savoie, "Searching for accountability in a government without boundaries," *Canadian Public Administration* 47, no. 1 (Spring 2004): 1-26.

⁷⁶ Peter Dobell and Martin Ulrich, "Parliament's Role in the Budgetary Process," *Policy Matters* (Montreal: Institute for Research on Public Policy, 2002).

of accountability. With the advent of results-based reporting and results-based management, accountability is often defined as a process of self-reporting by those who are responsible and who must render an account. This definition ignores the importance of the other side of accountability, namely, that superiors who receive reports from subordinates must also extract accounts from them as part of holding them to account. The superior should not be a passive recipient of reports, but instead must scrutinize and question those who present these reports. In addition, the superior should ensure that the work of subordinates is independently reviewed and audited. The accountability process, in short, must be interactive and ongoing to be effective. It must include reviewing as well as reporting.

Delegated Governance: Who's Accountable for Arm's Length Agencies?

Within the Canadian government are a large number of different kinds of agencies that operate at arm's length from ministers. In these cases, ministers do not have the same direct power over these agencies as they do over their departments. But, they retain sufficient powers to ensure ultimate democratic control. These organizations include Crown corporations, quasi-judicial regulatory commissions and administrative tribunals, and various other organizations less easily categorized, some of them unique, such as the Bank of Canada. The Organization for Economic Co-operation and Development recently labeled these organizations as engaged in "distributed governance."⁷⁷ We prefer the term "delegated governance" because in the Canadian constitutional system the authority of the state should flow directly from Parliament or indirectly from ministers, individually or collectively

Quasi-judicial regulatory commissions and administrative tribunals whose primary functions of delegated authority are to adjudicate individual cases, are best considered part of the judicial branch of government,⁷⁸ and therefore are not subject to the accountability regime that applies to all organizations in the executive-administrative branch. In this sense, they are, as the Lambert Royal Commission on Financial Management and Accountability labeled them, "independent decision-making bodies." Their decisions are made on the basis of statutory authority

⁷⁷ The OECD includes "executive agencies", as they are called in Britain, and "special operating agencies" and "service agencies", as they are called in Canada, among the non-departmental organizational forms of distributed governance. In our view, Canadian "agencies" are merely a variation on a department, subject as they are to full ministerial direction and control. See OECD, *Distributed Public Governance* (Paris: OECD, 2002).

invested in them by Parliament, and can normally only be appealed in the courts. These bodies, in short, are not subordinate or accountable to ministers, individually or collectively, or to Parliament with respect to the authorities and responsibilities that require them to operate at arm's length. They are like courts. (For administrative purposes, of course, they are subject to the accountability regime, either as departmental or Crown corporations.)

Although the *Financial Administration Act* is not clear in distinguishing between some types of organizations, it does establish the accountability regime that applies to organizations deemed to be departments and Crown corporations, which is the main general category for non-departmental bodies. Amendments to the act in 1984 were a major reform that brought most, if not all, non-departmental bodies into a minimally satisfactory accountability regime. The reform encompassed various measures for non-departmental bodies to report to ministers and to Parliament. It also established powers of ministerial direction and control sufficient to ensure ministerial responsibility. The critical requirement here, as dOmbrain expresses it, is that ministers be accountable to the House, and that the House be able to hold ministers

to account for “all activities of the state, including those held at arm's length from ministers,” in order that Parliament “know how the power of the state...is being used” and that ministers have the “powers to remedy serious errors caused by the agency in question.”⁷⁹

The 1984 reform met these conditions, and these agencies were no longer outside the constitutional pale as “structural heretics,” as J.E. Hodgetts had labeled them prior to the reforms.⁸⁰

The 1984 reforms did enhance accountability for these non-departmental forms of delegated governance, with the exception of two areas. In some instances the access to information regime does not apply, and in some cases, the Auditor General is not the agency's external auditor. As a result, the degree of transparency is less than it could be, and the coverage of the independent audit is less than it could be because it does not require a full performance audit. Accountability, in short, is less than it could be.

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⁷⁸ Greg Tardi, “Departments and Other Institutions of Government”, in *Handbook in Canadian Public Administration*, ed. Christopher Dunn (Don Mills, Ont.: Oxford University Press, 2002), 281-303.

⁷⁹ Nicholas dOmbrain, “Alternative Service Delivery: Governance, Management and Practice,” in *Change, Governance and Public Management* (Ottawa: Public Policy Forum, 2000), 111.

⁸⁰ J.E. Hodgetts, *The Canadian Public Service* (Toronto: University of Toronto Press, 1973).

In addition, the reforms left appointments to these non-governmental agencies — their boards of directors and their chief executive officers — in the hands of the Prime Minister and Cabinet. These boards of directors are assigned the authority and responsibility to oversee and direct the management of these organizations, although with only a couple of exceptions, they can neither appoint their own CEOs nor dismiss or discipline them. At the same time, it is widely acknowledged that these boards do not have the full range of expertise and experience that they need — a deficiency that is attributed to the appointment process.⁸¹ As a consequence, many boards have neither the capacity nor the incentive to direct, control and hold their own CEOs to account.

In practice, furthermore, departments and central agencies have limited capacity to monitor the performance of these agencies and challenge their corporate and budgetary plans. In fact, the internal capacity of government to critically oversee and challenge the performance of arm's length agencies generally declined after the 1984 reforms until very recently. Finally, parliamentary committees have done little to keep these arm's length organizations within their purview on any kind of systemic or regular basis.

At the same time, another kind of organization has been created to implement public policy, namely the “independent foundation.” These organizations are established and endowed by government, but are not government organizations. They are not at arm's length—they are private and fully independent of government. The bottom line is that ministers do not have the executive authority to take action when things go wrong in a foundation, and cannot, therefore, be held to account by Parliament.⁸² One of the essential elements of accountability is missing, namely, ministers with authority and responsibility. For this reason and because the organizations themselves cannot in any way be held accountable by Parliament, they can be described as, in the Auditor General's words, beyond “the reach of Parliament.”⁸³ A major gap in the accountability regime has been created. According to the Auditor General's February 2005 audit this gap has not been closed.⁸⁴

⁸¹ Canada, Auditor General, “Governance of Crown Corporations” *Report to the House of Commons, February 2005* (Ottawa: Minister of Public Works and Government Services, 2005).

⁸² Peter Aucoin, “Independent foundations, public money and public accountability: Whither ministerial responsibility as democratic governance?” *Canadian Public Administration* 46, no.1 (Spring 2003): 1-26

⁸³ Canada, Auditor General, “Placing the Public's Money Beyond Parliament's Reach,” *Report to the House of Commons, December 2002* (Ottawa: Minister of Public Works and Government Services, 2002).

⁸⁴ See Canada, Auditor General, “Accountability of Foundations” *Report to the House of Commons, February 2005* (Ottawa: Minister of Public Works and Government Services, 2005).

V. Modernizing Accountability

Parliamentary Scrutiny: Holding Ministers and Officials to Account

The genius of responsible government is that ministers are not only responsible in the House of Commons but can be held accountable by MPs, especially in the Opposition, at all times. This is not a system of separate branches of government in which the executive may be checked by the legislature but does not have to render accounts or be questioned in the legislature. However, the effectiveness of the Westminster parliamentary system depends largely on the robustness of parliamentary scrutiny in holding ministers to account, especially in requiring them to render accounts. Indeed, without robust parliamentary scrutiny the system can easily slide into what commentators like to label an “elected dictatorship,” namely, a parliamentary government where the Prime Minister operates without significant checks and balances from the legislative assembly of the people’s representatives.⁸⁵

Robust parliamentary scrutiny can be achieved in different ways. As outlined earlier, in Britain there is the tradition of independence among government backbench MPs and a certain measure of non-partisanship in committees where scrutiny is paramount, notwithstanding the norm of one-party majority government and an unelected upper house. In Australia, the government normally does not have a majority in the powerful Senate where committees are renowned for the vigor of their examination of ministers and officials. In New Zealand, committees in the House of Representatives have been transformed by multi-party coalition minority governments, which have become the norm following the adoption of a proportional representation electoral system. In each of these

⁸⁵ Jeffrey Simpson, *The Friendly Dictatorship* (Toronto: M&S, 2001).

cases, the government cannot assume a passive or weak Parliament, at least not to the extent that traditionally has been the norm in Canada with a single-party government majority in the House and a feeble Senate.

At the same time, Question Period in Canada is not controlled by the government, and it provides abundant opportunities for the Opposition to put ministers under scrutiny. The design (if not the practice) of Question Period in Canada is at least as good as question periods elsewhere. Second, the Auditor General’s mandate, approach and staff capacity make it a powerhouse of public accountability. Its impact is at least as great as parliamentary auditors elsewhere, although some commentators and practitioners have grave doubts about the legitimacy of some aspects of this parliamentary agent. Finally, the Canadian access to information regime has proven to be an important asset in securing public accountability, even if its Canadian critics point out its shortcomings, including that it does not apply to some Crown corporations nor to any of the independent foundations.⁸⁶ Canada’s accountability regime measures up well against the other Westminster systems, however; indeed, Britain still has to fully implement its recently legislated regime.

In Canada, single-party majority governments, with secure majorities at that, have been the norm for the past thirty years.⁸⁷ And, of course, the Senate is even weaker than the government-controlled House, even when the Opposition is in a majority, because the Senate has no democratic legitimacy. Outside of Question Period, ministers of a single-party majority government face little serious political pressure from their parliamentary Opposition. Their tenure as government is not threatened, and there are no obstacles to having their legislation or budgets passed. They control the committees, even when they do not chair them, such as in the case of the Public Accounts Committee. And there has not been a tradition or culture that legitimizes, even promotes, the public value of government MPs cooperating with Opposition MPs in a non-partisan manner in committees in holding ministers and officials to account.

Although minority government has been an occasional feature of Canadian parliamentary government, few observers assume that single-party minority government, much less multi-party coalition government (minority or majority), is

⁸⁶ Alasdair Roberts, “Spin Control and Freedom of Information: Lessons for the United Kingdom in Canada.” *Public Administration* (forthcoming). http://faculty.maxwell.syr.edu/asroberts/documents/journal/roberts_PA_Spin_2004.pdf

⁸⁷ Minority governments have held office for a total of approximately ten years since the Second World War: 1957-58, 1962-68, 1972-74 and 1979-80. The Liberal government that began in December 2003, became a minority government in July 2004.

likely to become the norm in Canada under the existing electoral system. Many commentators assume that a more robust Parliament resulting from strong and effective parliamentary Opposition will likely happen only with electoral reform to achieve greater proportional representation for political parties in one or both houses of Parliament. The objective, obviously, would be to decrease the likelihood that a single-party government is able to control Parliament, or at least easily. Even with these changes, however, the potential for greater scrutiny will be realized only if parliamentarians develop a culture that gives a high priority to accountability.⁸⁸

In the absence of electoral reform, significant changes will be made to behaviour in the House and its committees, and to the culture of Parliament, only through parliamentary reform, such as that introduced by Prime Minister Paul Martin in December 2003. For this reform to work, government backbench MPs and the Opposition must hold ministers to account and be vigorous in extracting accounts from them. Unfortunately, there is not much evidence that MPs, even in the Opposition, are interested in doing the work of extracting accounts from ministers or officials. Most MPs view parliamentary reform as measures that enhance their capacity to have greater influence in the drafting and approval of legislation, or that enable them to be seen to be better representing their constituents in House and committee votes. The bottom line, it appears, is that short of an unforeseen emergence of a radically new parliamentary culture that emphasizes the responsibility of all MPs to hold the government and ministers to account, there is little reason to expect that government MPs would want to use parliamentary reform in ways that would endanger the status of their party as the governing party.

The likelihood that MPs will take seriously their obligations to hold ministers and officials to account is diminished because the value of robust parliamentary scrutiny is not sufficiently recognized in the broader political system. A major obstacle is the widespread claim that the major problem is that ministers do not step forward and accept “responsibility” when things go wrong or are alleged to have gone wrong. It is assumed that ministers are constitutionally obliged to go beyond acknowledging that the matters in question fall within their authority and sphere of assigned responsibilities; they must also admit to personal culpability for what has gone wrong. They must commit political *hara-kiri*.

⁸⁸ It goes without saying, of course, that achieving this objective is not the only criterion with which to assess a change to the electoral system. And for those interested in maintaining the advantages of strong majority government, achieving this objective would not be desirable at all.

The assumption was articulated by Professor Ned Franks in his appearance before the Public Accounts Committee in its examination of the Sponsorship Affair:

Not one of the many witnesses who have come before the committee, neither ex-ministers nor public servants, has stated, yes, managing this [sponsorship] program was my responsibility, and I am responsible and accountable for what went wrong with it. Ours is a system of responsible government. Constitutionally, someone must be responsible and accountable to Parliament for what the government does or fails to do, but no witness before the committee has accepted that the problems were his or her responsibility. Ministerial or any other sort of responsibility has been missing. The breakdown of responsibility and accountability disclosed by the investigation of the public accounts committee shows that something is seriously wrong with the way the principle of responsibility is construed and practiced in Canada.⁸⁹

In our view, the assumption here illustrates how accountability has come to be viewed as the willingness of ministers or officials to “accept” responsibility. In one sense, it means little for someone to accept responsibility if that merely means acknowledging that one has the statutorily or administratively assigned authority and responsibility for a program and its implementation. Indeed, it is now all too common for elected officials to acknowledge that responsibility rests with them, but then to say that they are not personally responsible for what went wrong. They confess to nothing of any significance!

In our view, this interpretation of the issue of accountability constitutes a fundamental confusion about ministerial responsibility. Aside from particular cases in which there will be disagreement over who is responsible for a given matter when authority appears to be dispersed to more than one minister, the critical question for accountability is who should be held responsible in the sense of personal culpability – who should be blamed for what went wrong. This second sense of responsibility, as accountability, is almost always contestable. It can be resolved legally if someone takes the matter to the justice system, administratively

⁸⁹ Canada, House of Commons, Standing Committee on Public Accounts, 37th Parliament, 3rd Session, *Evidence*, May 6, 2004, Number 43:1110. See also Brian R. O’Neal and Jack Stillborn, “Working Paper II for the Standing Committee on Public Accounts”, 11 May 2004, Parliamentary Research Branch, Library of Parliament.

if the matter is dealt with inside the executive-administrative arena, or politically if it is to be resolved in Parliament or the broader political arena, including the media.⁹⁰ Once it is political, a minister invariably will accept personal responsibility as culpability only when the evidence demonstrates clearly and unequivocally that he or she was personally at fault, or when the Prime Minister decides that the minister must accept responsibility so that the wrongdoing does not reflect poorly on the entire government.

Unless the evidence falls from the sky, however, MPs must do the work of scrutiny and questioning in order to hold a minister to account. The bottom line of ministerial responsibility, is that it is, first and foremost, the task of Parliament to hold a minister to account. This is what political accountability means. It really does not matter whether a minister denies responsibility; this response is to be expected. But MPs, individually and collectively, have every right to judge differently in holding the minister to account. And ultimately, the court of public opinion decides.

A second dimension of the assumption that responsibility is culpability was articulated recently by a former chief of staff to the Prime Minister who stated that while the “assumption of personal responsibility by our leaders for their actions may be the expectation of...Canadian public opinion..., in fact this responsibility is denied by a powerful tradition of governance – the school of realpolitik.”⁹¹ According to this interpretation, ministers should accept personal accountability, and it would help support the doctrine of ministerial responsibility if they did, but realists know that this will not happen; the reality is that responsibility is denied at all costs, short of bringing down the government.

This second dimension of the assumption implies that there is something morally inferior about the adversarial political process that is central to ministerial responsibility and accountability in the Westminster system. However, no system of accountability

leaves the matter of responsibility, as culpability, in the hands of the person who is “responsible,” that is, the person who has authority over the matters in question. In the absence of a push from the Prime Minister, expecting ministers to commit political hara-kiri when things go wrong, even when they are patently at fault, is to misunderstand both the logic and dynamics of responsible government, including the obligations it imposes on ministers and MPs alike. The doctrine of ministerial responsibility assumes that the House will have the incentive to hold a minister to account when things go wrong within his or her portfolio. As the Chair of the Public Accounts Committee, John Williams, recently expressed it:

Parliament is an institution of accountability. We’re not here to run the government, we’re here to hold the government accountable for the way they run themselves.⁹²

Notwithstanding this interpretation, the majority of Canadian MPs, even Opposition MPs, do not perform the parliamentary function of scrutiny with sufficient rigor. However, the conundrum is, what explains the poor performance? Is it because the electoral process almost always produces a tame parliamentary majority for the governing party and/or an ineffective Opposition? Is it because the Canadian political culture demands far too little of MPs in this parliamentary function? The examples of Australia and New Zealand suggest that we need to consider ways to make the government less secure in Parliament. Electoral reform to the House of Commons could help here by making the election of single-party majority governments highly unlikely. An elected Senate that was not controlled by the government could help. The British experience suggests that a larger House of Commons might help, if it were large enough so that the governing party’s backbench would invariably include a sufficiently large cadre of independent-minded MPs.

Of the above options, only electoral reform to the House of Commons is on the formal political agenda, and it is there primarily because the current government does not have a majority in the House of Commons – the very outcome that electoral reformers would like to see as the usual outcome of Canadian elections. In the absence of major changes to the electoral system, however, there is little reason to assume that the parliamentary scrutiny function will be dramatically improved in the near future. The paradox is that Canadians want greater accountability of

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⁹⁰ S. L. Sutherland, “Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem,” *Canadian Journal of Political Science* 24 (March 1991): 1; Gregory Tardi, “The Public Accounts Committee: A Lawyer Among the Politicians,” *Perspectives in Public Law*, July 21, 2004.

⁹¹ Thomas Axworthy, “Ethics at Home and Abroad,” *Policy Options*, May 2004, 32.

⁹² Canada, House of Commons, Standing Committee on Public Accounts May 6, 2004 (John Williams, MP) 43:1140.

ministers and public servants through parliamentary agencies such as the Auditor General but have little confidence that Parliament itself is able to secure that accountability. In this milieu, improving parliamentary scrutiny will require greater appreciation of the need to have a healthy balance between the adversarial partisan process, as an essential dynamic of public accountability in a democratic system, and a Parliament that gives high priority to its accountability obligations for oversight and scrutiny.

Improving Deputy Minister Accountability: A New Canadian Scheme

Notwithstanding the general lack of robustness in Parliament's capacity to hold ministers to account, there is, nonetheless, parliamentary interest in holding public servants to account, even if MPs are less than effective in using the opportunities and instruments they now possess. There is also good reason to suppose that the demand for direct public service accountability will continue to increase, as it has since the changes to parliamentary committees in the 1960s. Indeed, these changes continue to propel the interest in direct public service accountability to Parliament. The changes included the enlarged mandate of the Auditor General in the 1970s, with its value-for-money audits, as well as the introduction of televised committee proceedings. Together, these developments led to the idea that deputy ministers, if not other public servants, should be held publicly accountable by MPs in addition to their accountabilities to ministers. The justification was usually twofold: deputy ministers have their own statutory and delegated powers and they, along with other senior officials, are important players in the practice of public management, notwithstanding that they are technically subordinate to ministers.

The most common suggestion to meet this demand for public service accountability has been to formally adopt the British accounting officer scheme or some variation thereof, as proposed by the Lambert Commission. While we conclude that a formal acknowledgment of public deputy minister accountability before parliamentary committees is a good idea, we think it necessary to develop a distinctly Canadian scheme. The British accounting officer model, in our view, would not fit well with Canadian traditions or realities. Moreover, while we do not think that deputy minister accountability in Parliament will be the panacea some suggest, the very act of acknowledging the public accountability of deputy ministers in Parliament should at least draw attention to matters of accountability that need

to be better understood by MPs, the press, the public, ministers and public servants themselves. These matters include the need for appropriate protocols for holding deputy ministers accountable in Parliament. (These protocols should also encompass other public office holders, including boards of directors with authority and responsibility for the direction and management of Crown corporations, and the chief executive officers of Crown corporations.)

In practice, deputy ministers are already held accountable by parliamentary committees. This is as it should be, given that they have personal assigned and delegated authorities and responsibilities. Deputy minister accountability to Parliament is a logical extension of the ministerial responsibility regime as it has evolved in Canada, given the limits on ministerial authority and responsibility respecting the management of their departments. Nonetheless, its formal recognition would help to clarify public accountability in the Canadian regime. In addition to this recognition, two major principles should be understood:

- deputy ministers should be held publicly accountable exclusively and solely for the authorities and responsibilities assigned by statute or delegated to them by the Treasury Board and the Public Service Commission; and
- deputy ministers should not expect their minister to accept responsibility for decisions that fall within the deputy's sphere of authority and responsibility.

The recognition of the limited sphere of deputy minister authority and responsibility is important for two reasons. First, a deputy's sphere of authority and responsibility does not, by definition, encompass everything some would want to include under a generic definition of "management", "administration," "policy implementation," "service delivery" or "operations." Rather, the sphere is defined by what is stated in the law and in formal instruments of delegation from the Treasury Board and the Public Service Commission.

Second, we do not think that Canada should adopt the British procedure that permits an accounting officer to request her or his minister to put an instruction in writing whenever the accounting officer disagrees with the minister on a course of action and the minister insists. In this instance, as noted, the written instruction is

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then sent to the Public Accounts Committee, the Auditor General and the Treasury. This procedure in Canada would invariably establish distrust between a minister and a deputy, and would reduce the capacity for collaboration in the direction and management of a department.⁹³ The fact that the procedure is rarely used in Britain is testimony to this concern. In any event, when faced with proposed transactions that fall within the deputy's authorities and responsibilities, but which the deputy does not want to approve, the deputy, in our view, should either inform her or his minister that she or he will not approve them or accept personal responsibility and accountability before a parliamentary committee. A deputy minister must be able and willing to draw the line at what goes beyond good public administration. They should not be allowed to escape responsibility by sending the Public Accounts Committee and the Auditor General a card proclaiming that "the devil made me do it." And a deputy can always consult with the Clerk when a minister wishes to pursue a dubious course of action that, in the deputy's judgment, would reflect poorly on the government. For their part, departmental ministers can always speak to the Clerk or even the Prime Minister directly when they do not feel well served by their deputies. There are, in other words, existing courses of action for each.

The parliamentary and thus public accounting of deputy ministers' performance in managing their departments should serve to enhance public service accountability, externally and internally. Public accountability will give deputies added incentive to ensure that their subordinates act in ways that do not result in maladministration or wrongdoings, which would reflect badly on their own administrative leadership. Further, it might also encourage the development of procedures whereby deputy ministers, on their own initiative or in response to questioning by MPs, could inform relevant parliamentary committees, *in camera*, what has happened to specific individual public servants in cases where alleged or real maladministration or wrongdoings have been matters of public knowledge and parliamentary discussion. In many cases, this approach to providing assurance should be preferable to the public disclosure of the disciplinary measures or sanctions imposed on specific individuals simply to assure the public and the media that corrective action was taken.

⁹³ We come to the same conclusion in regard to the recommendation of the Lambert Commission, namely that a deputy have the option of informing the minister who heads the Treasury Board. At best, we think that a "note to file" on the part of the deputy would be both appropriate and in keeping with the best practices of complete record keeping.

Finally, deputy ministers and all other public servants would continue to answer on behalf of their minister for those matters for which a minister must personally account. Deputy ministers have a complicated role; they are subordinate administrative officials in the executive branch of government and yet serve as non-partisan professional public servants. This complication is inherent in the ideal of a public service that is a permanent institution in the service of the temporary government of the day.⁹⁴ At the same time, acknowledging that the most senior leaders of the public service are directly accountable to Parliament risks bringing the public service leadership even further into the partisan vortex of Parliament. However, continuing the current situation, where deputy ministers are held accountable by MPs in practice, constitutes a more serious risk because this practice is not guided by accepted understandings, norms or protocols, at least not protocols that are complied with when controversies arise. More than parliamentary protocols are required, however, in order to preserve and revitalize the ideal of a non-partisan professional public service. A new kind of non-partisan independence for the service needs to be put in place.

A More Independent Public Service: A New Regime for Appointing Deputy Ministers

Public service accountability in Parliament, even if restricted essentially to deputy ministers, increases the risk of politicizing the public service. Appointments to the deputy minister (and, more recently, associate deputy minister) cadre have long been among the most vulnerable to politicization, ironically along with positions at the lowest echelons.⁹⁵ In the Canadian government, the power to staff this cadre of senior public servants belongs to the Prime Minister and is not within the ambit of the Public Service Commission's mandate to ensure that the public service is staffed on a non-partisan, meritorious basis.⁹⁶ The leadership of the professional, non-partisan public service, in other words, serves at the pleasure of the Prime Minister,

⁹⁴ Kenneth Kernaghan and John W. Langford, *The Responsible Public Servant* (Toronto: Institute of Public Administration of Canada, 1990).

⁹⁵ This vulnerability is amply illustrated by the practices in several, if not all, Canadian provincial governments where appointments at the deputy minister level are frequently based in part on partisan-political considerations, especially when appointments are made from persons not in the public service in question. See Evert Lindquist, ed., *Government Restructuring and Career Public Service in Canada* (Toronto: Institute of Public Administration of Canada, 2000).

⁹⁶ This does not include those who are employed in government agencies that are managed under the direction of boards and commissions that function at arm's length from ministers, Treasury Board and the Public Service Commission. Nor does it include the Canada Revenue Agency, which possesses its own staffing authority. The staffing authority of the Canada Revenue Agency exists as a result of the persistent failure to reform the general staffing system.

The long-standing tradition has been to staff at the deputy level from the ranks of the public service. With very few exceptions, appointments have been made from within the service, and even fewer have been made from those with known partisan connections. The norm is that the Prime Minister accepts the advice of the Clerk of the Privy Council, who, as noted, has been formally designated head of the public service. It is time to formalize this tradition.

the leader of a political party. In the federal government, however, the long-standing tradition has been to staff at the deputy level from the ranks of the public service. With very few exceptions, appointments have been made from within the service, and even fewer have been made from those with known partisan connections. The norm is that the Prime Minister accepts the advice of the Clerk of the Privy Council, who, as noted, has been formally designated head of the public service.

Traditions for making deputy minister appointments in the Westminster parliamentary systems have varied. Australia, Britain and New Zealand once had more independent and permanent leadership cadres than did Canada, even though the British practice was based on convention and not statutory law as were the two other systems. Public management reforms in the British and Australian systems brought pressure from prime ministers to have deputy level appointments better reflect their leadership style and policy priorities, if not their partisan persuasions. Ministers may also have a major influence on deputy appointments in these systems. The New Zealand reforms, on the other hand, have somewhat unintentionally resulted in a structure that makes staffing these positions more independent of ministers than in other jurisdictions.

In Canada, paradoxically, public management reform has brought little change. The Prime Minister always has had the option of going outside the public service, and more importantly, the political responsiveness of the public service leadership usually means advice on appointments is sensitive to a Prime Minister's style and priorities. Nonetheless, in all four systems the increasing concentration of political power has altered the balance between the pressures of partisan politics in public governance and the norms of a non-partisan, professional public service practice of public management. In Canada, the risk is that the tendency of the senior public service to err on the side of political responsiveness, combined with any increased public service accountability, could well tip the scales too far in the direction of political responsiveness. Donald Savoie says that the "bargain" between politicians and public servants has already been broken.⁹⁷ Arthur Kroeger, one of Canada's

⁹⁷ Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament* (Toronto: University of Toronto Press, 2003).

most respected former mandarins, recently suggested that the public service may now need "to exercise an independent role."⁹⁸

Ironically, in New Zealand, the reforms that were devised to allow more ministerial input to the appointment of deputy ministers led to the most independent of the four approaches to staffing at this level. Appointments are recommended to the Cabinet (and not just to the Prime Minister) by the State Services Commissioner, following competitions that are held whenever positions need to be filled. Cabinet can refuse to appoint the person recommended for a position but it must make public any such rejection. This veto, which provides a democratic check on the State Services Commissioner, has been used on one occasion since the adoption of the new method. Ministers are consulted when vacancies arise, but otherwise, the staffing process is separate from ministers and their political advisors, and thereby conforms to the standards set for staffing the rest of the public service on a non-partisan and meritorious basis. In Australia, public management reform resulted in the practice moving closer to that of Canada. The risk of politicization has prompted Michael Keating, a former Secretary to the Prime Minister and Cabinet (the equivalent of the Clerk in Canada), to suggest that advice on appointments, now rendered solely by the Secretary, become the collective responsibility of a committee of senior public servants chaired by the Secretary.⁹⁹ More recently, he has expressed the worry that the threat of politicization may well lie in forces that have led to increased concentration of power whereby it is "the competition for influence" that makes "some public servants excessively eager to please" their political masters.¹⁰⁰ In Britain, the major change has been the personal interest of the prime minister in appointments at this level, which were essentially a formality before Margaret Thatcher. The blurring of the boundaries between public servants and partisan staff in Britain indicates the need to revisit the protocols respecting the professional public service.

Building on the Canadian tradition, as well as on the lessons from elsewhere, the process could be improved by giving COSO, chaired by the Clerk, responsibility for recommending the appointment of deputy ministers to the Prime Minister and

⁹⁸ Arthur Kroeger, quoted in Norma Greenway, "They got their marching orders and they marched," *Ottawa Citizen*, February 12, 2004.

⁹⁹ Michael Keating, "In the Wake of 'A Certain Maritime Incident': Ministerial Advisers, Departments and Accountability," *Australian Journal of Public Administration* 62, no.3 (2003): 96.

¹⁰⁰ Michael Keating, "Developments in Australian Democracy and the Public Service" (paper presented at the "Parliament, the People and the Public Service" Symposium of the Association of Professional Executives of the Public Service of Canada, Ottawa, October 2004), 12.

Cabinet. The government would have the power to refuse a recommendation provided that it did so publicly. This would maintain a democratic check on the public service leadership. An additional check could be provided by the requirement that the Public Service Commission approve deputy minister recommendations from COSO in order to assure Cabinet and Parliament that partisan considerations had not been a factor in a recommendation. Under this regime, appointments could be made from inside or outside the public service. The committee's mandate would extend to recommendations on the rotation of deputies, and to any dismissals for cause.¹⁰¹

Enhancing Parliamentary Scrutiny through Performance Review

Results-based reporting can be improved to enhance accountability in the following ways: by making technical improvements to data collection and analysis, by independently verifying the data and methods of departmental reports, and by further developing the ways by which departments tell their “performance story” to MPs.¹⁰² But the real improvements in accountability for results or performance depend on better parliamentary scrutiny, especially if such scrutiny is based on independent performance reviews of departments and agencies.

Performance reviews must be conducted independently. They cannot be undertaken by MPs themselves in parliamentary committees. However otherwise qualified, MPs are hardly independent of partisanship, even if they are willing to act in a non-partisan manner at times in committees. The partisan dynamic that is meant to drive Opposition MPs to hold government to account also diminishes the incentive of Opposition and government MPs to engage in a non-partisan dialogue on a department's performance, which might be done, for example, by a board of directors in holding its executive management to account.

¹⁰¹ Term appointments in both Australia and New Zealand have not resulted in all the advantages originally anticipated, and have resulted in some unintended negative consequences.

¹⁰² See John Mayne, “Reporting on Outcomes: Settling Performance Expectations and Telling Performance Stories” (discussion paper, Office of the Auditor General of Canada, Ottawa, April 2003); Canada, Auditor General, Report to the House of Commons, *Rating Departmental Performance Reports*, Chapter 1.; and John English and Evert Lindquist, *Performance Management: Linking Results to Public Debate* (Toronto: Institute of Public Administration of Canada, 1998).

The fact that parliamentary committees are occasionally able to operate on a non-partisan basis should not be taken to mean that this approach can become the norm, if politicians would only somehow “reform” themselves and change the culture of Parliament. Insofar as accountability for results is primarily focused on the record of the government or a minister, independent performance reviews of departments are a necessary complement to the challenge function that MPs should bring to the consideration of departmental reports. The most effective way to ensure that these reviews are independent is to have them conducted by a parliamentary agency that is able to undertake its work without intervention by government or by a committee majority from either the government or the Opposition.

The premiere institution of independent performance review in Canadian public administration is the Office of the Auditor General (OAG). Although the OAG still performs the traditional attest function to the government's financial statements, its primary focus is on value-for-money audits, now officially called performance audits. These audits examine the extent to which the administration of government is conducted economically, efficiently and with due regard to measuring and reporting on the effectiveness of programs.

As comprehensive as these audits may be, they are primarily about the extent to which public service managers comply with rules, policies and systems, and meet what are deemed to be accepted management practices. They are not meant to examine the merits of government programs, which would be delving into matters of government policy—something that is supposed to be beyond the reach of the OAG's mandate. Nor do they do normally critically assess the policy merits of administrative rules, policies or systems. The OAG's audit criteria, in conjunction with its mandate, limit performance audits from becoming full performance reviews. In addition, the OAG's audits are conducted by its own staff; experienced public service managers are not members of the audit team, as would be expected for performance reviews, especially if conducted as peer reviews.¹⁰³

What is required is a new process, with a new agency, for providing parliamentary committees with independent performance reviews of government programs and their administration. While it would be important to have such reviews coordinated with the performance audits of the OAG, such reviews require different methods of

¹⁰³ The OAG regularly uses experienced public service managers and other professionals as members of audit advisory committees, but this falls short of the norm for committees of peers which conduct the reviews themselves.

Real improvements in accountability for results or performance depend on better parliamentary scrutiny, especially if such scrutiny is based on independent performance reviews of departments and agencies. What is required is a new process, with a new agency, for providing parliamentary committees with independent performance reviews of government programs and their administration.

review and evaluation and different kinds of personnel. As much as possible, these reviews should engage subject specialists for the evaluations of programs and experienced managers for the review of management performance. The personnel for these reviews could include public servants seconded for the review, either full-time or part-time, and retired public servants, especially given the recent demographics.

Finally, with an accountability process that features results-based reports, reviews and audits, the parliamentary committees that scrutinize departmental performance require their own staff to assist them in digesting the analyses and findings in these documents, in aligning them with their own interests and agendas, and in developing and prioritizing questions for officials and other committee witnesses. The staff of parliamentary committees should include political assistants, to ensure that the political dimensions of scrutiny are covered, and professional public-service assistants, to ensure that MPs are well informed of the public policy and management issues at stake. The existing paucity of staff for parliamentary committees is, of course, but one more indication of the degree to which the parliamentary capacity to hold ministers and officials to account is undervalued and needs to be strengthened in order to improve public accountability.

Delegated Governance: Extending the Accountability Regime Further

Ministers are responsible for all government agencies that operate at arm's length from them insofar as they have powers to direct and control them. At the same time, because authority and responsibility is vested by Parliament in the boards of directors of these arm's length government agencies, ministers are neither responsible nor accountable for what these boards do on their own. By creating a separate zone of executive authority for the administration of some aspect of public affairs in these agencies, Parliament has established a two-dimensional accountability regime. On those matters for which authority and responsibility are assigned to boards of directors, ministers may be asked to provide a description of a situation or an explanation but not a personal account. For these matters, the board itself is responsible and accountable to Parliament and can be held accountable by parliamentary committees. It is said that these boards report to Parliament "through" a minister, in order to emphasize that the minister is not

responsible or accountable for what these boards do on their own. However, once a minister exercises her or his authority in addressing an issue related to the governance or management of an agency, or refuses to do so, the minister becomes responsible and accountable. The powers available to a minister for the control of Crown corporations and other such arm's length government agencies are essentially sufficient. The same cannot be said for the independent foundations created and funded by government over the past few years.

Public accountability is diminished to the extent that Crown corporations are not subject to the full spectrum of accountability measures that apply to government departments. The most notable omissions, as noted, are the limited application of the access to information regime and the exclusion of some agencies from the mandate of the Auditor General.¹⁰⁴ In terms of public accountability, there is little to justify excluding these organizations notwithstanding the inevitable claims that such agencies will make as to the uniqueness of their situations. Extending both measures to all agencies would constitute an obvious improvement. Any exclusion from the access to information regime should be made on the basis of the nature of the information (as in government departments) rather than the nature of the organization, which has resulted in the exclusion of entire organizations from the regime.

Equally important, and perhaps for some agencies a balancing factor, would be to substantially reduce the powers of the Prime Minister and Cabinet to appoint board members, and restrict them to a veto on recommendations for appointment, along the lines suggested for the appointment of deputy ministers (that is, a public disclosure of any rejected recommendations). In this case, however, the board itself, rather than an agency separate from the board, should be responsible for recommendations. In the private sector, boards are responsible for appointing new members as required, and it is increasingly the practice in Crown corporations that their boards submit recommendations to the Prime Minister and Cabinet. So long as there is a democratic check, through a government veto, this practice should be emulated. It could go a long way to

Public accountability is diminished to the extent that Crown corporations are not subject to the full spectrum of accountability measures that apply to government departments. Equally important, and perhaps for some agencies a balancing factor, would be to substantially reduce the powers of the Prime Minister and Cabinet to appoint board members.

¹⁰⁴ The Government has announced its intention to take action on each of these matters. See Canada, Treasury Board Secretariat, *Review of the Governance Framework for Canada's Crown Corporations* (Ottawa: President of the Treasury Board, 2005).

improve boards' collective capacities in various areas of expertise. The current deficiency in expertise has occurred because factors other than relevant expertise (including especially the prevalence of partisan patronage considerations) have determined the appointment of board members. The Public Service Commission should have a role in approving recommendations in order to ensure that appropriate standards of merit were met and that partisan patronage considerations were not applied indirectly.

Further, boards of directors, rather than the government, should possess the power to appoint their chief executive officers. This power has always been deemed a critical responsibility of boards of directors in the private sector, in part because it makes a board fully responsible and accountable for the direction and control of the management of the corporation. Implicit in the power to appoint, of course, is the power to discipline and dismiss—two powers also presently held by the government. If boards of these agencies are to be effectively held accountable by Parliament for the direction and control of the management of their agencies, they should have these powers over their CEO. Otherwise, the diffusion of authority and responsibility between the board, the minister, the chief executive officer and the Prime Minister is an open invitation to obfuscation by the board or minister before Parliament. In cases where this reform option does not appear to be sound for solid operational reasons, the agency should revert to being a department under the direct authority of a minister rather than an agency operating at arm's length.

Finally, the accountability of these agencies could benefit by an improvement in the robustness of parliamentary scrutiny. All too often these agencies operate below Parliament's accountability radar screen. The fault, however, lies almost entirely with Parliament itself. Leaders on both sides of the House have failed to utilize fully the reforms enacted in 1984, let alone to update them as required with changes in circumstances and standards. Without the pressures that come with robust parliamentary scrutiny, the public accountability of these agencies is unlikely to meet the spirit of reforms to the accountability regime. It is not surprising that the private, independent foundations are subject to so little scrutiny or criticism by parliamentarians.

VI. Conclusion

A fully effective accountability regime for public governance and management in a Westminster parliamentary system requires three things:

- 1) transparency – so that the facts and files on a matter for which an account must be rendered are public knowledge;
- 2) audit and review – so that independent and professional assessments are provided to those who must hold others to account; and
- 3) scrutiny – so that those who must provide accounts are questioned and their reports challenged.

In Canada, considerable progress has been made to what once was a closed if not highly secretive system. There has been a major expansion to the mandate and capacity of Parliament's audit and review agencies, especially to that of the Office of the Auditor General. And Question Period continues to be a forum for intense political scrutiny, especially because it is televised.

However, parliamentary scrutiny via parliamentary committees, which in the modern era must carry the main burden of holding to account ministers and their departmental officials (and the boards of arm's length agencies), has not been up to the task, despite some considerable efforts to measure up and the occasional outburst of independence. House committees are all too often merely an extension of the government; Senate committees do not have the required democratic legitimacy. Among other things, the low priority that MPs on both sides of the House give to the scrutiny function of parliamentary committees indicates the incomplete understanding of how ministerial responsibility and public service accountability are meant to be realized in the Canadian system.

In this context, the failure to adopt measures that explicitly acknowledge and accept deputy minister accountability in Parliament, separate from ministerial accountability, has served to diminish public respect for the constitutional convention of ministerial responsibility. The public and media perception that nothing happens when things go wrong is fed by a misconception that ministers (or public servants) will immediately accept responsibility and personal culpability when things go wrong, without any effort by Parliament to extract accounts and to hold someone accountable. Unfortunately, only the audit agencies of government and Parliament appear to be functioning properly, in part obviously because they have the mandate to evaluate and assess the performance of ministers and their officials.

Recent proposals for an expansion of the mandate and resources of the Office of the Auditor General reflect public confidence in auditing, while continued parliamentary support for results-based reports indicate the high expectations for public reporting on performance. But auditing is a limited form of performance evaluation and results-based reporting is self-reporting. More needs to be done through independent reviews that directly assess management performance and program effectiveness. These reviews need to ensure that qualitative professional judgment checks the inevitable tendencies of managers to manage to the audit or to performance targets.

Finally, the greater diffusion of authority, represented by arm's length government agencies, public-private partnerships and, worse, independent foundations, will constantly challenge the accountability regime to ensure that those who possess delegated authority, including the power to dispense public resources, are held to account. Crown corporations and other government agencies at arm's length are invariably structured so that authority is shared among members of a board of directors. In these instances, the sense of personal responsibility and individual accountability may appear to have been replaced by a form of institutional accountability. In fact, however, the principle is clear: individual members are personally responsible and can be held personally accountable, and provision is made for individual board members to formally express their dissent from majority decisions. Holding government agencies accountable, however, may require that they be given more independence. At the same time, ministers must acquire sufficient powers over independent foundations to bring them into the government fold even if they are to be given greater independence than Crown corporations.

APPENDIX I: Glossary of Terms¹

Account: to justify or defend one's actions (or those of one's subordinates) based on the authority (or powers) and/or responsibilities bestowed by a superior authority. The account may encompass a statement of any necessary corrective action to be taken.

Accountability: the process whereby those to whom authority has been conferred or delegated and/or responsibilities assigned must justify, explain or defend their actions (or those of one's subordinates) to a superior authority who has the obligation to hold to account all those on whom it has bestowed authority and responsibilities.

Accounting Officer: a British practice whereby a senior administrative officer of a department (usually the permanent head of a government department) is assigned statutory responsibility for preparing the Appropriation Accounts of the Department and for giving evidence before the House of Commons Committee of Public Accounts in relation to the stewardship of public funds. The Accounting Officer has a personal responsibility for the propriety and regularity of the public finances, for prudent and economical administration, and for the efficient and effective use of all the resources in their charge. The Accounting Officer role has its origins in the reform of British financial administration in the 1860s.

Answerability: implies a duty to provide information or factual explanation, but not to defend or justify government policy, programs or administration.

Arm's Length: refers to the relative independence of various non-departmental government bodies, including Crown corporations,

¹ These definitions have been created to assist readers who are new to this subject matter. They are intended for specific use with this publication and are not endorsed by the Government of Canada.

regulatory commissions and administrative tribunals. These organizations are at “arm’s length” from ministers to the extent that they possess statutory authorities and responsibilities separate from ministers. Ministers and the government possess limited but sufficient authority to maintain democratic control over the powers of the state and ultimate ministerial responsibility. For the administration of operations or for adjudicative decision-making ministers are kept at arm’s length and do not intervene. These bodies report to Parliament through a designated minister on those matters for which they have authority and responsibility.

Authority: the power that is conferred or assigned by a constitution or statute to exercise the powers of state in respect to some general or particular matter of public policy and administration. Authority so conferred or assigned can also be delegated to others, at least in some cases. A delegation can be explicit, as when formal instruments of delegations are used, or implicit, as when a minister assumes that her or his officials will use her or his authority to conduct the business of a minister’s department. When authority is conferred, assigned or delegated, there is usually not only the obligation for an account to be rendered but also the power of the superior body to extract an account, to pass judgment on the use of the authority, and to take corrective action or impose consequences as deemed necessary.

Backbencher: a member of the legislature who is not a party leader, a minister of the governing party or an Opposition critic (“frontbencher”). The term “benches” refers to the wooden benches of the British House of Commons, where members sit on benches in rows. The frontbenches are occupied by ministers on the government side and Opposition critics (or “shadow ministers”) on the opposing side.

Blame: the assignment of responsibility, as culpability, for a particular wrongdoing to a specific individual or group of individuals whether by admission or accusation.

Cabinet: the members of the political executive. Legally, the Cabinet functions as the active committee of the Privy Council that advises the Governor General in the executive of the executive powers of government. Under the constitution of responsible government, the Cabinet, as the executive, is responsible to the House of Commons and requires its confidence at all times. The Prime Minister appoints ministers to the Cabinet. Senior ministers will be assigned portfolios that encompass at least a department of government to direct and manage and usually one or more arm’s length bodies as well. Junior ministers (with various titles) assist

senior ministers. In Canada, the Cabinet has usually encompassed the full ministry, although from 1993 to 2003 some ministers were not members of the Cabinet. In 2004, Prime Minister Paul Martin appointed a Cabinet that encompassed all ministers. At the same time, parliamentary secretaries were sworn to the Privy Council but not included in the ministry.

Caucus: the organization or meeting of MPs and Senators from the same party, e.g., the Liberal caucus. A party caucus may also have sub-units, such as a regional caucus or a women’s caucus. The organization has no official standing. How a caucus is organized and managed is entirely an internal party matter.

Checks and Balances: a term to describe the dispersal of political powers among branches of government so that no single one dominates the others. The desired result is that power is balanced and that the integrity of each institution remains intact.

Clerk of the Privy Council: the most senior non-political official in the Government of Canada who provides professional, non-partisan support to the Prime Minister on all policy and operational issues that may affect the government. The position of Clerk of the Privy Council encompasses three distinct roles: 1) Deputy Minister to the Prime Minister; 2) Secretary to Cabinet; and 3) Head of the Public Service, each with its own set of responsibilities.

Coalition Government: a government that is formed and consists of ministers from two or more parties. A coalition government can be in either a majority government or a minority government situation in the House of Commons (see below).

Commission of Inquiry: called at the behest of the government, usually to investigate matters pertaining to good government or the conduct of government business of great importance and usually controversy. Commissions of inquiry (or Royal Commissions) usually involve research into an issue and consultations with experts both within and outside of government. Public consultations are often held as well. The commission may also be given investigatory powers, including the power to summon witnesses to testify under oath. Commissions usually publish their findings and policy recommendations.

Committee of Senior Officials (COSO): the committee of deputy ministers, chaired by the Clerk of the Privy Council, comprising a combination of permanent ex-officio and rotating members, who assist the Clerk on matters concerning the management

of the senior levels of the public service, including the staffing, career development and performance appraisals of deputy ministers and associate deputy ministers.

Confidence Convention: responsible government requires that the government have the confidence of the majority of members in the House of Commons. If defeated on a vote of confidence taken in the House, the Prime Minister and Cabinet must either resign or call a general election. A confidence vote is a vote deemed by the government to be a matter of confidence in the government, a vote on an Opposition motion of non-confidence in the government, or a vote on a major government bill, such as the budget or the main estimates.

Congress: the legislative branch of American government that comprises two houses — the Senate and the House of Representatives.

Constitution: Canada's constitution consists of two parts. The first contains the written constitution – the Constitution Act, 1867. It vests executive power in the Queen, with authority to be exercised on the advice of the Queen's Privy Council for Canada. It also provides for one Parliament of Canada, consisting of the Queen, the Senate and the House of Commons, that exercises the legislative powers of government. It also encompasses the Canadian Charter of Rights and Freedoms. Finally, it provides for the distribution of powers to the federal and provincial legislatures. The second part is the constitutional convention of responsible government, the democratic rule that informs how the legal structure of the written constitution is to be modified in practice.

Constitution Act: formerly known as the British North America Act, 1867, this act of the British Parliament granted Canada self-government, and provided the formal legal structures of federal and parliamentary government.

Constitutional Convention: the unwritten rules or principles of the constitution that are acknowledged and accepted by the “body politic” of citizens, especially those who hold elected and appointed office.

Constitutional Monarchy: form of government established under a constitutional system whereby a state is ruled by a monarch as sovereign head of state but subject to constitutional limits on the sovereign power. In Canada, as in almost all cases today, the monarch's powers are symbolic and exercised by the political executive with a system of representative democracy.

Complex Hierarchy: organizational form that includes a hierarchy of superiors and subordinates in a structure that entails a chain of command down the line to the lowest level in the hierarchy (hence the notion of line authority), and one or more additional hierarchies of superior–subordinate relationships involving functional authorities for specific management responsibilities. In complex hierarchies, at least some subordinates are accountable to two or more superiors. The second set of hierarchies involves various functional dimensions of administration (e.g., human resources, financial administration), where the source of authority is vested in the first instance in central management bodies, such as the Treasury Board and the Public Service Commission.

Corporate Objectives, Policies and Responsibilities: government-wide or whole-of-government objectives and policies of the government. Corporate responsibilities are meant to be shared responsibilities for ministers or deputy ministers, even when one or a few ministers or senior officials have specific responsibilities for these dimensions of governance and public management.

Crown: the head of state in whom sovereign power resides, in light of the fact that Canada is a member of the British Commonwealth. The Queen is the monarch of Canada, and the Governor General represents her in Canada.

Crown Corporations: the most commonly used form of non-departmental government organization in the Canada's government. The organizational structures as well as the accountability regimes of these organizations are set out in the *Financial Administration Act* and various Treasury Board policies and guidelines.

Delegated Governance: refers to the use of non-departmental government organizations that operate with a degree of independence from direct ministerial direction and management.

Democracy: a form of government in which the people have a say, either directly or indirectly, in how they are governed.

Democratic Deficit: a popular slogan used to indicate the divide between citizen expectations for democratic governance and what they perceive to be reality. In Canada, it has been most commonly used to signal an over-concentration of power in the hands of a few at the centre of Canadian political executive.

Direct Democracy: a form of government in which citizens directly govern themselves. Various measures of direct democracy can be found within systems of representative or indirect democracy, for example, referendums in which citizens vote to decide a question of public policy.

Executive: the written constitution (*Constitution Act, 1867*) vests executive government in the Queen, with authority to be exercised by the Governor General on the advice of the Queen's Privy Council for Canada. Functionally, the Prime Ministers and ministers exercise the executive powers assigned to the Crown under the written constitution and by ordinary law. Formally, ministers, as the Privy Council, "advise" the Crown; in practice, the Crown always accepts their advice. The Prime Minister exercises the Crown's prerogative powers, although the Governor General retains a reserve power to ensure that the Prime Minister acts according to the rule of responsible government respecting the confidence convention.

Executive Government: term used in the *Constitution Act, 1867*, to indicate the executive branch of government and the executive powers vested in the Queen, as the head of state.

Extra-Parliamentary Party: the association that encompasses all members of a political party and not only the members who are members of Parliament. In Canada, the normal practice in all the major parties is that the extra-parliamentary party chooses the party leader.

Financial Administration Act: the statute that establishes the legal framework for the general financial and human resource management, accountability, and oversight of the public service and Crown corporations.

Federal System: a system of government where constitutional authority is divided between at least two levels of government, each of which has its own set of legislative powers and responsibilities that is beyond the reach of the other level. Canada has a federal system under which there are the federal and provincial levels of government as well as Aboriginal self-government.

First-Past-the-Post: an electoral system in which to be elected a candidate must gain a plurality of votes, that is, the most votes of all the votes cast but not necessarily a majority. When the electorate is divided into territorial districts with each one electing one representative, this system is called the single-member

plurality system (SMP). This is the system used to elect the Canadian House of Commons and all provincial legislatures.

Functional Authority: the authority over particular areas of administration or management, such as financial management, human resource management or information management, as distinct from line authority of superiors and subordinates in a simple hierarchy with a single chain of command from the top to the bottom of the hierarchy.

Government: a term variously used to refer to the ministers who head the executive branch of government, the entire executive branch of government, or the entire apparatus of the state.

Government Operations and Estimates Committee: the standing committee of the House of Commons that is charged with responsibility to review the management of government resources, the processes for considering the Estimates and supply, and the format and content of all financial reporting and Estimates documents.

Governor General: the Queen's representative in Canada who is appointed by the Queen on the advice of the Prime Minister, usually for a period of five years. The Governor General exercises executive powers on the advice of the Prime Minister and the advice and consent of the Queen's Privy Council in Canada, the active part of which is the Prime Minister and Cabinet. The Governor General's prerogative powers are now restricted to those necessary to preserve the confidence convention of responsible government.

Governor-in-Council: the Governor General acting on the advice of the Privy Council, that is, the Prime Minister and Cabinet. The signature of the Governor General gives legal force to all executive orders put forward by the Prime Minister and Cabinet, including appointments to various public service positions and public offices, and regulations made pursuant to statutes.

Head of Government: the Prime Minister is the head of government. The Prime Minister appoints, assigns and dismisses ministers and chairs the Cabinet.

Head of State: the Queen is sovereign. The Governor General exercises the Queen's powers as her representative in Canada. The role of the Queen and her

representative in Canadian government is essentially ceremonial, except for the Governor General's responsibility to ensure adherence by the Prime Minister to the confidence convention of responsible government.

Horizontal Accountability: a form of accountability where the relationship is between equals as opposed to superiors and subordinates. Horizontal accountability is most common in partnership arrangements where there is some form of shared governance, and where authorities are distributed in ways such that the parties to the partnership are deemed accountable to each other for the discharge of their respective responsibilities in the collaborative undertaking.

Horizontality: the practice of coordinating and managing a set of activities between two or more organizational units where no one unit has authority over the other and where the aim is to achieve outcomes that could not be achieved by units working alone.

House of Commons: consists of 308 members, each elected in a single-member electoral district. The House of Commons is the lower chamber of Canada's bicameral legislature (a legislature consisting of both an upper and a lower house) and the Senate is the upper chamber. All legislation relating to the raising and spending of public money must originate in the House of Commons. The 308 seats in the House of Commons are distributed to the provinces on the basis of their proportionate population, with some protection for the smaller provinces, with one seat assigned to each of the three territories. Within each province the electoral districts' boundaries are established by independent federal electoral boundaries commissions.

Line Authority: the direct supervisory authority of superiors over their subordinates down the line of an organizational hierarchy.

Majority Government: the situation that exists when the party or parties that form the government hold a majority of the seats in the House of Commons. A single-party majority government consists of ministers from only one party. A coalition majority government consists of ministers drawn from two or more parties.

Ministerial Responsibility: the constitutional convention by which individual Cabinet Ministers are legally and politically responsible and accountable in Parliament for their own actions, as well as those of their officials, in respect to all matters over which a minister has authority.

Ministry: the entire body of ministers in the government, encompassing Cabinet Ministers and any ministers not included in the Cabinet. (In some provinces, the term refers to a minister's department of state and is used in place of the term department.)

Minority Government: the situation that exists when the party or parties that form the government do not hold a majority of the seats in the House of Commons. A minority government could be made up of a single party or a coalition of parties.

Monarch: in Canada, the Queen who is sovereign and the country's head of state. The Canadian monarch is hereditary.

New Public Management: a reform movement in public administration that began in the late 1970s in Britain, New Zealand and Australia. It originally emphasized methods of privatization, efficiency in the management of operations, the separation of policy and operational responsibilities, the use of contractual-type arrangements for promoting managerial flexibility, and systems of performance management and accountability, including that of contracting out the provision of public services. It eventually came to mean virtually any kind of reform that moved away from traditional bureaucratic forms and structures of public administration, including "reinventing government," as Americans called it, and all measures to foster so-called private sector management methods, including public-private sector partnerships.

Office of the Auditor General (OAG): an independent officer of Parliament who has the responsibility to audit government operations in order to provide the information that helps the House of Commons to hold the government to account for its stewardship of public funds through the conduct of attest, compliance and performance (or "value-for-money") audits.

Official Opposition: the members of Parliament who are members of the party that usually has the second-largest number of seats in the House of Commons. (It is possible for the party with the second largest number of seats to be the Government party as was the case in 1925, when the Liberal Party remained the Government with the support of a third party. The Conservative party won the most seats in the House in the 1925 election but remained the Official Opposition). The leader of this party is recognized as the Leader of the Official Opposition. The Opposition includes the Official Opposition, any other MPs from any other parties, and any independent MPs who are not part of the government.

Order-in-Council: an executive decision that is drafted by the Cabinet, as the active committee of the Privy Council, and given legal force by the Governor General's signature. Orders-in-Council may be appointments or regulations made under the authority of a statute.

Parliament: consists of three elements: the House of Commons, the Senate, and the Queen. Parliament thus encompasses both the executive and the legislative branches of the Canadian federal government. The legislative powers of Parliament are established by and set out in the *Constitution Act, 1867*. The Prime Minister and Cabinet assume the powers of the executive branch under responsible government. They constitute a separate branch of government, but they also sit in the legislature as members of Parliament, are accountable to the House of Commons and require its confidence to govern.

Parliamentary Accounts Committee (PAC): a standing committee of the House of Commons mandated to review and report on the Public Accounts of Canada and all reports of the Auditor General of Canada. In its review of the Public Accounts, the committee focuses on the economy, efficiency and effectiveness of government administration, the quality of administrative practices in the delivery of federal programs, and government's accountability to Parliament with regard to federal spending. The committee is also responsible for reviewing the plans and reports of the Office of the Auditor General. PAC is chaired by a member of the Official Opposition.

Parliamentary Government: a system in which the executive government consists of a Prime Minister and Cabinet, who also sit in the House of Commons and who must maintain the confidence of a majority of members in the House of Commons in order to govern.

Partisan: adherence to or support for a specific political party, its leader or its program.

Party Discipline: the members of a party who hold seats in the House of Commons act as a disciplined group under the direction of their party leader. The party leader, especially when he or she is Prime Minister, uses various rewards and sanctions to secure adherence to the party policy or to discipline party MPs who deviate from party policy. Party discipline ensures that government MPs protect a government from defeat in the House of Commons. It also restricts the freedom of MPs to

criticize the decisions of the Cabinet or to voice the concerns of their constituents by voting against government legislation or motions.

Parliamentary Committees: committees of the House of Commons and the Senate. The composition of the committees is expected to reflect the composition of political parties in the House and Senate. Among other things, these committees review government bills, spending estimates and the performance of government operations.

Performance Appraisal: formal process for reviewing, often annually, individual employee performance. Performance appraisal usually includes a face-to-face meeting between the employee and her or his immediate superior (manager) in which feedback is provided on the employee's performance. The performance appraisal can also include evaluations of the employee by her or his peers and subordinates. Depending on the level of performance, the appraisal can include formal or informal sanctions or rewards, including performance pay.

Performance (Value-for-Money) Audit: audits designed to examine management practices, controls and reporting systems of government programs. Performance audits do not question the merits of government policies or programs; rather they examine how well the policies and programs were managed and implemented.

Performance (or Results-Based) Management: a system of management with emphasis placed on achieving organizational results through the active use of performance measures and standards to establish performance targets and goals, to prioritize and allocate resources, to inform managers about needed adjustments or changes in policy or program directions, and to frame reporting in terms of the performance of the organization in achieving organizational goals.

Political Party: an organization that nominates and supports candidates for election to the House of Commons under the leadership of a person selected as leader by the party organization. Political parties endorse a particular program and attempt to attract voters to support their candidates, leader and program and to vote for their candidate in whatever number of electoral districts are contested by the party. Political parties are not a required part of parliamentary government, but have become a critical mechanism in its operation of responsible government, with parties forming the government and the Official Opposition.

Prerogative Powers: the powers of the Crown, almost all of which are exercised under responsible government by the Prime Minister.

Principal/Agent: relationship between a superior (principal) and subordinate (agent) whereby the superior authorizes and uses incentives to encourage the subordinate to act on behalf of the superior and in the superior's best interests.

Private Member: any member of the House of Commons who is not a minister.

Private Member's Bill: a bill introduced in the House of Commons by a member who is not a minister of the government. Less time is allotted by the House to the consideration of these bills than to government bills, and few private members' bills become law. Only ministers can introduce bills to raise or spend public money.

Privy Council: the body appointed by the Governor General on the advice of the Prime Minister. The active part of the Privy Council is the Prime Minister and Cabinet. All former ministers are formally members of the Privy Council (and may use the designation Honourable, and identify themselves as members of the Privy Council with the initials PC behind their names). The Privy Council also includes several non-ministers, including speakers of the House of Commons and of the Senate, Supreme Court chief justices, provincial premiers and other distinguished persons selected by the Prime Minister.

Privy Council Office: the department of government that serves as the public service department of the Prime Minister and as secretariat to the Cabinet. The primary responsibility of the Privy Council Office is to provide public service support to the Prime Minister, to ministers within the Prime Minister's portfolio and to the Cabinet in order to facilitate the smooth and effective operation of the Government of Canada. The Privy Council Office is staffed by professional, non-partisan public servants. Its administrative head is the Clerk of the Privy Council and Secretary to Cabinet.

Proportional Representation: an electoral system in which the percentage of seats won by the candidates of political parties in a legislative body, such as the House of Commons, is more or less proportional to the percentage of the total vote these candidates or their parties have received in an election. There are numerous forms of proportional representation, including the "single transferable vote" system that is used to elect the Australian Senate, as well as "mixed: proportional-plurality" systems that produce a highly proportional outcome, such as the mixed system

used to elect the New Zealand House of Representatives (the only chamber in the New Zealand Parliament).

Public Service: refers variously to all those who are active in public life, including elected officials, individuals who are employed by the state, and individuals who are employed under the provisions of the *Public Service Employment Act*. The term also refers to the institution whose members act as an independent, non-partisan and professional branch of government that supports the government and its ministers in the development and implementation of its policy agenda, including the management and delivery of government programs and public services.

Public Service Commission: independent executive agency responsible for staffing the public service and for safeguarding the public service values of competence, non-partisanship and representativeness. The Public Service Commission's authorities and responsibilities are established in the *Public Service Employment Act*. The commission delegates staffing authority to deputy ministers and holds deputy ministers accountable by way of its audits and oversight of departmental performance.

Question Period: a 45-minute session held daily in the Canadian House of Commons during which private members direct questions at the Prime Minister and Cabinet Ministers who must respond in some fashion. The media allocate considerable time to the coverage of Question Period, which in Canada is considered a primary mechanism to hold ministers to account, especially by the Opposition.

Quasi-Judicial: decisions made by an official, commission or tribunal in adjudicating the law in cases where discretion must be exercised in applying the law to particular circumstances, often where two or more parties are in conflict over what should be done or who should receive a benefit under the law, such as a license to operate a business in a regulated industry.

Referendum: a decision-making mechanism of direct democracy whereby citizens, are asked to vote, at a minimum, "yes" or "no" to a question in the form of a ballot. The result of the referendum vote may or may not be binding on a government or legislature.

Representative Democracy: a democracy in which the public governs itself indirectly through representatives who are elected by the people directly.

Results-Based Management: *see* Performance Management

Results-Based Reporting: as part of results-based or performance management, the process of reporting to a superior body the results achieved in light of expected outcomes at either a personal, program, departmental or government level. In the Canadian system, reporting on results occurs through annual performance reports to Parliament.

Responsibility: refers variously to a person or a body having the authority or power over a matter, as in being in charge; someone's obligations to carry out certain functions or duties, as in the person responsible"; or someone who must accept culpability for some action or inaction. The term is thus often used interchangeably with authority and accountability.

Responsible Government: the constitutional convention that the government (the Prime Minister and the Cabinet) must have the confidence of a majority of seats in the House of Commons to govern. It makes parliamentary government democratic because the political executive is responsible to elected representatives in the House of Commons. If the government loses the confidence of the House, it must either resign or call an election.

Sanctions: measures taken to discipline a subordinate for misconduct or failure to meet expected performance. Sanctions can be informal (e.g., censure) or formal (e.g., withdrawal of performance pay). Sanctions can include dismissal for most severe breaches.

Scrutiny: the critical examination of the performance of an individual (elected or appointed), a department (or other government organization) or the government. Usually scrutiny is undertaken by a superior body or a representative or agent of the superior body.

Service Agencies: a Canadian government form of a non-departmental government organization designed to provide public services within an established legislative and policy framework. These agencies are expected to be managed on the basis of accountability for results and to require only general ministerial monitoring. The governance and management relationships of ministers and agency heads may vary for each agency, but the responsible minister is fully accountable in Parliament.

Single-Member-Plurality (SMP): *see* first-past-the-post.

Single Transferable Vote (STV): form of proportional representation where voters rank candidates (either the number that are to be elected or as many of these that the voter prefers) in order of preference in multi-member constituencies. Winning candidates are determined through a vote count process that includes a minimum threshold of votes required for election.

Simple Hierarchy: superior-subordinate relationships where each subordinate is accountable to only one superior (though each superior may have multiple subordinates), regardless of how many levels in the hierarchy there may be.

Special Operating Agencies: departmental units designed to have a degree of management autonomy from the department in which they are located in order to allow the required flexibility to deliver government services in a business-like manner. These agencies are accountable to their respective departmental deputy ministers and, through them, to their responsible Minister. Some of these agencies operate on a cost recovery basis; some are partially or fully funded through parliamentary appropriations.

Transparency: refers to the conduct of government business in a manner that provides citizens with timely, accurate and accessible information with which citizens are able to assess government performance. The Canadian Access to Information regime is meant to promote this democratic ideal.

Treasury Board: Cabinet committee statutorily responsible for the management of the government's financial, personnel, and administrative resources. Considered the general manager and employer of the public service, it sets policy in these areas, examines and approves the proposed spending plans of government departments, and reviews the development of approved programs.

Treasury Board Secretariat: central agency that acts as the administrative arm of the Treasury Board.

Three-Line Vote (whip): a system used by the government to classify votes as confidence and non-confidence votes in the House of Commons on various government legislative initiatives or policy positions. On matters considered a

three-line vote, or a confidence vote, all government MPs are expected to vote with the government. On a two-line vote, government backbenchers are encouraged to vote with the government but the vote is not deemed to be a confidence vote. A one-line vote is a free vote for all government MPs, including ministers.

Value-for-Money Audit: see Performance Audit

Vertical (or Hierarchical) Accountability: superior-subordinate accountability relationship where a subordinate is accountable to a superior in a hierarchical structure for the discharge of his or her respective responsibilities.

Westminster System: the form of government modeled after the parliamentary system in the United Kingdom. “Westminster” refers to the palace where Parliament meets in England.

APPENDIX II: Quick Facts on Executive Government and Parliament

These facts are provided to assist readers who are new to this subject matter.

Executive Government

Constitution Act 1867

- Executive powers vested in the Queen
- Executive powers exercised by the Governor General alone or with the advice of the Queen’s Privy Council
- Governor General appointed by the Queen
- Privy Council appointed by the Governor General

Responsible Government

- Executive powers exercised by the Prime Minister alone, or by the Prime Minister and Cabinet
- Government (consisting of the Prime Minister and Cabinet) requires the confidence of the House of Commons
- Loss of confidence = Government resigns or general election is held
- Governor General ensures the Prime Minister respects the confidence convention

Prime Minister

- Forms and heads the government as leader of the political party that commands the confidence of a majority of seats in the House of Commons
- Appoints and dismisses ministers
- Appoints federal judges and Senators
- Decides when to hold elections

Cabinet

- Functions legally as the Privy Council advising the Governor General
- Prime Minister assigns portfolios to Cabinet Ministers
- Prime Minister appoints junior ministers to assist individual Cabinet Ministers
- Cabinet Ministers are politically and legally responsible for portfolios
- Legislation to raise or spend public money must be introduced by a minister
- Prime Minister determines Cabinet structure, procedures and agenda

Parliament

The Queen

- Governor General gives royal assent to legislation as advised by the government
- Ministers, on behalf of the Crown, introduce all legislation related to taxation and spending

The House of Commons

- 308 elected members of Parliament (MPs)
- Seats are allocated to provinces on basis of proportionate population
- MPs elected from single-member electoral districts, in which the candidate with the most votes (a plurality) wins the seat
- The maximum term of a House of Commons is five years
- MPs usually represent political parties and vote according to party position
- House is divided into Government and Opposition
- The largest party in the Opposition is the Official Opposition

The Senate

- 105 members appointed by the Prime Minister
- 24 seats are allocated equally to four regions of Canada (the Maritimes, Quebec, Ontario and the Western provinces) as well as 6 seats for Newfoundland and Labrador and one for each of the territories
- Senators must retire by the age of 75
- Senate approval is required for all legislation but Senate defers to the House of Commons
- Senate is not involved in confidence convention of responsible government

APPENDIX III: Additional Resources

Documents

Peter Aucoin, Jennifer Smith and Geoff Dinsdale, *Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change*, 2004.

This publication is intended to help public servants better understand responsible government, the fundamentally important role they play in Canada's parliamentary democracy, and how they can best support and serve Ministers, members of Parliament and citizens. Through this knowledge, public servants will be better positioned to assert the values of the public service, support effective democratic accountability and, ultimately, strengthen Canadians' confidence in their government and democratic institutions. It can be accessed electronically at <http://www.cspc-efpc.gc.ca>.

Canada, Privy Council Office, *A Guide Book for Heads of Agencies: Operations, Structures and Responsibilities in the Federal Government*, August 1999.

This guide is intended to assist heads of federal agencies, including heads of boards and commissions, and particularly those newly appointed by the Governor in Council (it is not directed specifically toward heads of Crown corporations). It explains the role heads of agencies are called to play. It can be accessed electronically at <http://www.pco-bcp.gc.ca>.

Canada, Privy Council Office, *Guidance for Deputy Ministers*, June 20, 2003.

This publication is intended to clarify how deputy ministers fulfil their role in the Government of Canada. This guidance builds on two publications of the Privy Council Office, namely *The Office of Deputy Minister* (1987) and *Responsibility in the Constitution* (1993). It can be accessed electronically at <http://www.pco-bcp.gc.ca>.

Canada, Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, December (Rev. Ed.), 2004.

This guide sets out the duties and responsibilities of the Prime Minister, Ministers, Ministers of State and Parliamentary Secretaries. It also outlines key principles of responsible government in Canada, and the government's approach to democratic reform. It can be accessed electronically at <http://www.pco-bcp.gc.ca>.

Canada, Privy Council Office, *Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees*, December 1990.

This document has been prepared for the guidance of officials appearing before parliamentary committees. It sets out the constitutional principles that underlie relationships among ministers, officials and Parliament. It can be accessed electronically at <http://www.pco-bcp.gc.ca>.

Canada, Privy Council Office, *Responsibility in the Constitution*, Ottawa, 1993.

This authoritative account addresses the history and foundations of Canada's system of responsible government. Written in 1977 and reissued in 1993, it addresses the essentials of parliamentary government, describes the constitutional system within which ministerial government operates and explains the nature of the personal responsibility and accountability of Ministers and senior public servants. It can be accessed electronically at <http://www.pco-bcp.gc.ca>.

Canada, Treasury Board Secretariat, *TBS Management Accountability Framework*, 2003.

The Treasury Board of Canada Secretariat (TBS) Management Accountability Framework provides deputy heads and all public service managers with a list of management expectations that reflect the different elements of current management responsibilities. It can be accessed electronically at <http://www.tbs-sct.gc.ca>.

Canada, Treasury Board Secretariat, *Values and Ethics Code for the Public Service*, 2003.

This Code sets forth the values and ethics of public service to guide and support public servants in all their professional activities. The Code sets out public service values, as well as conflict-of-interest and post-employment measures, and should be read in the context of the duties and responsibilities set out in *A Guide for Ministers and Secretaries of State*. It can be accessed electronically at <http://www.tbs-sct.gc.ca>.

Eugene Forsey, *How Canadians Govern Themselves (5th ed.)* (Ottawa: Library of Parliament, 2003).

This is a very accessible primer for those wanting to learning about the breadth of Canada's parliamentary system, including the Fathers of Confederation, Canada's democratic institutions, the constitution and even provincial and municipal powers. It can be accessed electronically at <http://www.parl.gc.ca>.

Courses

CampusDirect, Responsible Government: Responsibility and Accountability

This e-learning course provides an overview of the concept of responsible government and what it means for public service managers. It is designed for all managers in the public service who want to learn about responsible government to better understand the challenges involved in applying the principles of responsibility and accountability in their work. It can be purchased and accessed electronically at <http://www.campusdirect.gc.ca>.

Canada School of Public Service, How Ottawa Works

This course provides participants with an opportunity, through a combination of speakers and the use of an actual piece of legislation, to explore "how Ottawa works" and to see what actually happens behind the scenes. During the course, participants discuss the political infrastructure, review the government process (including Cabinet committees) and follow the legislative aspects of how a bill is approved. For more information, go to <http://www.cspcs-efpc.gc.ca>.

Canada School of Public Service, Structures and Operations of Government: Challenges for Accountability

This course focuses on the principles of accountability and how they are challenged by the need to govern within the framework of Canada's parliamentary regime while, at the same time, new ways of serving Canadians are being explored. The course allows participants to probe, at a macro level, the fundamental principles of the Canadian regime and its major political institutions, and to compare them with those of other regimes. For more information, go to <http://www.cspcs-efpc.gc.ca>.

Perhaps the most careful and insightful discussion of public sector accountability ever written for the Canadian context. Aucoin and Jarvis not only adroitly assess the misperceptions about and shortcomings of our mechanisms of accountability, but offer realistic suggestions for improving them. There is not a public servant, MP or student of public administration who should miss reading this.

Susan Phillips, Professor, Public Policy and Administration, Carleton University, and Senior Academic Fellow, Canada School of Public Service

In this readable and insightful study, Aucoin and Jarvis do an excellent job of clarifying the theory and practice of accountability, and offer constructive suggestions for reform. This study should be required reading for both political and administrative leaders in government.

Paul G. Thomas, Duff Roblin Professor of Government, University of Manitoba, St. John's College

No topic in Canadian public administration has elicited so much confused discussion and yet so little thoughtful change. We now have a first-rate comparative diagnosis of the principles, realities, and complexities of accountability in Canadian governance and some thoughtful and practical prescriptions for improvement. This timely and important publication is required reading, not only for all public servants, but for ministers, members of Parliament, and the media. This book will increase their understanding and elevate the level of debate, and could provide a positive agenda for necessary change.

David A. Good, Professor of Public Administration, University of Victoria, and former federal Assistant Deputy Minister

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BASIC RESEARCH

Modernizing Government Accountability: A Framework for Reform

**Peter Aucoin and
Mark D. Jarvis**

Modernizing Government Accountability: A Framework for Reform