

THE PRIVY COUNCIL OFFICE AND THE CLERK

The Privy Council Office (PCO) is, in many ways, the nerve centre of the federal public service. Its purview encompasses vital elements of government: it has direct access to the Prime Minister; houses all the machinery-of-government issues; serves Cabinet and Cabinet committees; and gives advice on who should become Deputy Ministers, who should be promoted within the community of Deputy Ministers, and even who should be appointed to Cabinet. The Clerk of the Privy Council and Secretary to the Cabinet (the Clerk) is also the head of the federal public service, occupying the most senior permanent position in government. It is through the Clerk that advice to the Prime Minister is provided on both political and administrative matters. This link places the Clerk in a position of considerable influence with both Ministers and Deputy Ministers.

The Commission chooses to examine the roles of both the Privy Council Office and the Clerk because of the pivotal role they occupy in the machinery of government. Indeed, it is not possible to write about management and decision-making in government or to consider the issues identified in the Commission's mandate without reviewing the role and responsibilities of the PCO and the Clerk.

The Privy Council Office

As outlined in chapter 7, the Prime Minister's Office (PMO) links the Prime Minister to the world of politics, and thus to Cabinet Ministers, caucus members, the party and the media. The PCO, meanwhile, links the Prime Minister to the world of administration and government departments. Accordingly, the Prime Minister receives streams of information from two sources, the PMO and the PCO. The two worlds overlap from time to time, and there is close cooperation between the two offices. But both recognize or, at least, should recognize where the world of purely partisan politics begins, one that PCO intuitively tries to avoid. Still, both offices occupy the same historic Langevin Building on Wellington Street, directly across from the Parliament Buildings. It is in their mutual interest to collaborate, and, on the great majority of files, there is, indeed, close cooperation.

The PCO, in one of its publications, recognizes that maintaining an "appropriate relationship between the political staff of Prime Ministers and their public service staff is particularly important."¹ On this issue it quotes with approval former Clerk Gordon Robertson, who wrote:

[T]he Prime Minister's Office is partisan, politically oriented, yet operationally sensitive. The Privy Council Office is non-partisan, operationally oriented, yet politically sensitive. What is known in each office is provided freely and openly to the other if it is relevant or needed for its work, but each acts from a perspective and in a role quite different from the other.²

However, things appear to have changed in Ottawa since Gordon Robertson wrote those words 35 years ago. The political and the administrative seem to be merging more and more into each other. Paul Thomas, a political scientist at the University of Manitoba, recently observed that the “knowledge and skills required of politicians and senior public servants are converging.”³ This appears to be particularly true in the case of the federal government.

The Prime Minister and the Clerk enjoy a unique working relationship, one that is not duplicated anywhere else in government. For one thing, Prime Ministers are completely free to appoint whomever they wish to the position. No other Ministers enjoy the same prerogative with respect to their Deputy Ministers. For another, the Clerk of the Privy Council is not only the head of the public service but also dean of the community of Deputy Ministers. The Clerk can influence decisions on who should become Deputy Ministers and who should not, and no one should underestimate the importance of the power of appointment. The Clerk is also the Prime Minister’s principal policy advisor. At least from the public service perspective, the Clerk represents the final brief for the Prime Minister on all issues.

In its publication *The Responsibilities of the Privy Council Office*, the Government of Canada states:

The Prime Minister is the authoritative spokesperson on what is and is not the policy of the Government. Responsible to Parliament for the overall spending program of the Government which ultimately reflects how the priorities, policies and programs of the Ministry are defined and implemented—the Prime Minister leads the process of setting the general directions of government policy. One of the key roles of the Clerk . . . therefore, is to support the Prime Minister in providing leadership and direction to the Government. The Clerk . . . provides advice to the Prime Minister on the overall conduct of government business, including the

strategic handling of major issues and subjects that are of particular interest to the Prime Minister.⁴

It follows that the Prime Minister and the Clerk jointly exercise enormous power and influence in shaping both the Government's policies and its overall direction.

PCO, through the Clerk, can also be asked to play an important role in the relations between Ministers and their own departments. If a conflict should surface in a department between the Minister and the Deputy Minister, the PCO may well intervene. On this issue, PCO says:

[C]onflict between the deputy's loyalty to the Minister and his or her responsibility to the Prime Minister will be symptomatic of a failure of the confederal principle [of Cabinet government]. If it occurs, the clear line of responsibility passing between the minister and the deputy may be destroyed and in the extreme will only be restored through the resignation of one or other, in which event who goes will depend on the particular circumstances.⁵

PCO makes it clear in its guide that if a disagreement between a Minister and a Deputy Minister cannot be resolved between them and it appears to affect the operations of the department, the deputy may wish to discuss the matter with the Secretary to the Cabinet. One of the accepted roles of the Secretary to the Cabinet has been to discuss with a deputy matters related to a department and the deputy's relationship with his Minister, when the deputy is uncertain of the proper course of action. Similarly, a Minister might prefer to discuss a concern with the Secretary to the Cabinet first before seeking the consideration of the Prime Minister.⁶

Thus, Deputy Ministers are expected to manage as best they can a kind of *ménage à trois*, which, if nothing else, explains the need for them to be flexible and accommodating.

PCO employs over 1,000 public servants and has a multitude of units that monitor virtually all facets of government policy and the machinery of government. Its 2005-2006 *Report on Plans and Priorities* details a number of issues, notably, a focus on key policy areas, medium-term policy planning, improving the management of government, and strengthening PCO's internal management practices.⁷ It houses the capacity to move into any policy area whether it is health care, the environment, the economy, the organization of government or, for that matter, any issue that may be of interest to the Prime Minister.

PCO staff members enjoy a higher classification than officials in line departments operating at the same level, and PCO is home to several officials classified at the Deputy Minister level. It has senior officials leading units to look at macroeconomic policy, foreign affairs, relations with the media, the operations of government, social policy, economic and regional development policy, and numerous other areas.⁸ These senior officials and their units do not have programs or services to deliver, and their client is primarily the Prime Minister; but they also serve Cabinet, the Deputy Minister community and officials in line departments. In brief, it is their job to know what is going on inside government, to be in constant communication with other government officials, and to be on top of policy issues in virtually every sector.

It is difficult to hold PCO and its officials accountable for things that fall outside their immediate sphere of responsibility. Ministers and their departments are on the front line delivering programs and services, and it is they, not central agencies, who must deal with criticism when things go wrong. Central agency officials operate behind the scenes, away from the front line. They may have great influence, but their work is away from the limelight, so accountability is difficult.

It is important to underline the tremendous growth in central agencies in Ottawa. The PCO employed 209 people in 1969, 446 in 1993, 662 in 1997 and, today, it employs about 1,100.⁹ We can discern a similar

growth pattern for both the Department of Finance and the Treasury Board Secretariat. That said, we may question whether the increase in the number of central agency officials and the growth in their policy advisory role have served to dilute accountability in government. The 3,000 central agency officials do not manage programs or deliver services to the public. Rather, they make government decision-making more complex. Central agency officials influence line departments and agencies, as well as government programs and services. It is fair to ask whether there are now “too many cooks,” thereby contributing to a sense that no one is fully accountable when things go wrong.

To appreciate fully the role of the PCO and its impact on government, we must give special attention to the role of the Clerk. This official now wears three hats: Deputy Minister to the Prime Minister, Secretary to the Cabinet, and head of the public service. Sometimes, the obligations incumbent on one of the Clerk’s functions are in conflict with the duties associated with another.

The Clerk: The Early Years

The modern architect of the Office of the Clerk of the Privy Council and Secretary of the Cabinet is Arnold Heeney. In 1938 Prime Minister William Lyon Mackenzie King invited Mr. Heeney to become his principal secretary, “which position would correspond in a way to that of a Deputy Head of a Government Department.”¹⁰ Mr. Heeney accepted on the condition that he would, in time, be appointed to a position where he would be able to “develop in Canada the kind of post formerly held in the United Kingdom by Sir Maurice Hankey—namely, that of Secretary to the Cabinet.”¹¹ In an article published 18 years after he left government, Mr. Heeney wrote that though “the Prime Minister is the *master* [to use the old expression] of Cabinet business . . . the Secretary to the Cabinet is one whose chief interest and concern is the formulation, recording and communication of decisions by those who compose the Cabinet of the day and the chief function of the Secretary is to do

everything possible to facilitate and assess the deliberative process onward to informed decisions.”¹² He concluded that “in his guise of Secretary to the Cabinet, he became responsible for the discharge of these duties . . . and had little or no time to act as the personal staff officer to the Prime Minister.”¹³

The Clerk Today

The Clerk’s position has evolved considerably in recent years. The most significant facet is the Clerk’s supporting role to the Prime Minister in managing the “machinery of executive government.”¹⁴ In Ottawa, the Prime Minister sits at the apex of the political hierarchy, while the Clerk sits at the apex of the bureaucratic hierarchy. Together, they wield a great deal of power and influence.

Professor Sharon Sutherland explains in a research study prepared for the Commission: “[T]he Prime Minister not only chooses Ministers and dismisses them individually, but . . . [His or her] organizational work includes managing Ministers in Cabinet; determining meeting schedules, the agendas and order of discussion . . .”¹⁵

But that is not all. The Prime Minister also articulates the Government’s political and strategic direction, establishes the mandate of individual Ministers and their departments or agencies, has a hand in establishing the Government’s fiscal framework, and establishes the consensus for Cabinet decisions. The Clerk, meanwhile, as the Prime Minister’s key non-political advisor, exercises considerable influence in deciding who should get promoted to the ranks of Deputy and Associate Deputy Minister, offers advice on Cabinet appointments, chairs the influential Coordinating Committee of Deputy Ministers, chairs the weekly meetings of Deputy Ministers, attends all Cabinet meetings, and ensures that the Government’s decision-making process operates smoothly.

The Clerk, as Secretary to the Cabinet, must communicate frequently with Cabinet Ministers regarding their proposed policy or program

initiatives and should identify any potential conflicts with those of other departments. As Deputy Minister to the Prime Minister, the Clerk meets with the Prime Minister on a regular basis and performs a number of tasks. As head of the public service, the Clerk represents the public service to the Prime Minister and the Cabinet, and the Prime Minister to the public service.

The Clerk's presence looms large at both the political and the public service levels. Ministers wishing to promote their agenda will try to communicate frequently with the Clerk, knowing that the Clerk has considerable influence in shaping the Prime Minister's policy agenda and, by extension, the Government's agenda. The Clerk meets with the Prime Minister and his or her Chief of Staff every weekday morning when the Prime Minister is in Ottawa. Two individuals in the capital are certain to have their telephone calls returned quickly: the Prime Minister and the Clerk.

The Clerk chairs the Committee of Senior Officials (COSO), made up of several senior Deputy Ministers, including the Treasury Board Secretary. The Committee advises the Clerk on the performance of Deputy Ministers and other senior officials aspiring to become Deputy Ministers. The performance evaluation is based on several sources. However, as Professor Sutherland observes, "COSO does not and perhaps cannot run an accountable process. Much depends on the self-restraint of the Clerk not pushing loyalists or known entities and for permitting the process to operate as well as it can."¹⁶

The Need for Reform

Peter Aucoin writes in his research study for the Commission:

[T]here is mounting evidence that the existing Canadian model of a professional, non-partisan public service needs to be reformed if the public service is to have sufficient independence from the Government of the day in order to secure its neutrality in the

administration of public affairs. The existing model is one that has been reformed in many ways since it was established in the early part of the 20th century. The most important missing piece in reforms to the model is the staffing and management of the Deputy Minister cadre that constitutes the professional leadership of the public service. The conventions respecting the staffing and management of the Deputy Minister cadre that once served to secure the required neutrality of the public service have diminished in their effectiveness.¹⁷

The Government of Canada is out of step with other jurisdictions in the way it appoints Deputy Ministers.¹⁸ Though COSO plays an advisory role, the process still essentially relies on a private discussion between the Clerk and the Prime Minister on who ought, or ought not, to be appointed at the Deputy Minister level. Deputy Ministers know that their past and future appointments are made by the Prime Minister according to his or her sole discretion, after receiving the advice of the Clerk. There is a danger that they will feel a greater sense of loyalty to these two individuals than to the Ministers with whom they have to work on a daily basis. Divided loyalties of this kind do not promote a single-minded dedication to the welfare of the department to which the Deputy Minister has been assigned. The most important loyalty of all, of course, should be to the public interest.

The Government of Alberta has completely overhauled its process for appointing Deputy Ministers.¹⁹ Whenever a vacancy occurs at the Deputy Minister level, an open competition is automatically held. The position is advertised and the process is managed by an executive search group inside the Government. The applications are then ranked into A, B and C lists, with those on the C list essentially screened out of the competition. The first screening will usually leave 20 to 25 people still in the running, a process that involves either a face-to-face or a telephone interview. The relevant Minister is consulted as the list is pared down

to several individuals for the final interview process. At times, someone on the B list is brought forward for an interview because the Minister or someone else in government can speak to his or her background and competence. The final interview panel is made up of the Deputy Minister of the Executive Council, the head of the Government's executive search group, two other senior government officials, and two or three individuals from outside government. The outside representatives are industry or "stakeholder" representatives; as an example, the president of the Chamber of Commerce sat on the panel recently set up to name the Deputy Minister of the Environment Department. The final interview process will result in two or three names going to the relevant Minister, usually with a recommendation along these lines: "Candidate X is better than candidate Y, but if you wish you can go with candidate Y." The Minister then goes to Cabinet with the final recommendation. The Premier retains a veto power over the appointment, a power that he has chosen not to exercise since the new process came into effect.

The Deputy Minister of the Executive Council of the Government of Alberta insists that there is no turning back and that the process currently in place enjoys wide support, including that inside government. It introduces a much higher level of transparency in the appointment process, encourages competent people from both inside and outside government to become candidates, casts a much wider net in the search for the best-qualified people, and strengthens the application of the merit principle. It directly confronts any possibility of "cronyism" in the appointment of Deputy Ministers. It also gives the newly appointed Deputy Minister a sense of independence from the Clerk and the Premier, as well as the assurance that the position was won through an open competition that tested skills, experience and knowledge among several candidates both inside and outside government. Given that stakeholders had a say in the appointment process, the newly appointed Deputy Minister will probably be a "known quantity" to groups outside government which have to deal with the department.

By contrast, in the federal government, the Prime Minister, on the advice of the Clerk, appoints each Deputy Minister without explanation or any kind of an open competition. The great majority of the appointments are drawn from the senior ranks of the public service. This process conceivably lessens the risk of partisan appointments, but, as Peter Aucoin points out, we should not ignore the “personalization” or “functional politicization” factor.²⁰ This factor may explain why senior public servants may be willing to accommodate political direction. Professor Aucoin quotes the former Secretary to the Cabinet in Australia: “[I]t is ‘the competition for influence’ in the court-like inner circles of prime ministers where power has become concentrated that has driven ‘some public servants [to be] excessively eager to please their political masters.’”²¹

The Alberta model holds considerable merit both in strengthening the hand of the public service to resist undue political interference in the performance of its administrative duties and in strengthening management practices in government.

Recommendation 12: The Government of Canada should adopt an open and competitive process for the selection of Deputy Ministers, similar to the model used in Alberta.

The Commission accepts the opinion of one of its advisors that the role of the Clerk “has been or is being politicized.”²² Professor Sutherland calls for changes to the role of the Clerk, first by abolishing the Clerk’s role as head of the public service. She points out that the Treasury Board controls the bulk of human resources management functions and is regarded as the “employer.” The Treasury Board is a committee of Cabinet and is able to take charge of the Government’s collective responsibilities. Professor Sutherland also urges the Government to dispense with the Clerk’s designation as Deputy Minister to the Prime Minister. She explains:

[T]here is a lack of restraint in brandishing the title. It seems to imply an unlimited power acquired through access to the Prime Minister. As one interviewee said, Gordon Robertson, as a kind of gold standard as Clerk, would have been offended to be called “DM to the PM.” The Clerk is before anything else the guardian of the system of responsible government, which includes Cabinet government.²³

Professor Lorne Sossin, in his research study for the Commission, also argues that the Clerk’s mandate needs to be reviewed.²⁴ He insists that, since the role of the Clerk is to represent the public service to the Government, the Clerk cannot also represent the Prime Minister or the Cabinet to the public service. He adds: “[P]otential conflict between voices articulating constitutional and legal boundaries between political and public service spheres will be complicated still further if and when new whistleblower legislation is enacted which would create yet another body with authority over the interface between political and public service spheres.”²⁵

The Commission, recalling the difficult position outlined in the first Report when the Prime Minister chose to disregard the Clerk’s advice about management of Sponsorship initiatives, shares the opinions expressed by these expert academics. It agrees that a revision of the Clerk’s role and designation would contribute to better governmental accountability.

Recommendation 13: The functions and titles of the Clerk of the Privy Council should be redefined, by legislation if necessary. The title of this official should be “Secretary to the Cabinet,” and his or her main role should be to represent the public service to the Prime Minister and the Cabinet. The designations “Clerk of the Privy Council” and “Deputy Minister to the Prime Minister” should be abolished. The Privy Council Office should be renamed the “Cabinet Secretariat.” The Secretary of the Treasury Board should assume the title and function of “Head of the Public Service.”

Endnotes to Chapter 8

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- ¹ Canada, Privy Council Office, *The Responsibilities of the Privy Council Office* (1999), chapter 2, under heading “Support for the Prime Minister.”
- ² R. G. Robertson, “The Changing Role of the Privy Council Office,” *Canadian Public Administration* 14 (4) (1971): 506.
- ³ Paul G. Thomas, “The Importance of the Public Service: Ideas, Leadership and Management,” a paper presented at the Conference on Responsibilities of Citizenship and Public Service organized by the Institute for Research in Public Policy/Trudeau Foundation in Toronto on November 10-12, 2005.
- ⁴ Privy Council Office, *The Responsibilities of the Privy Council Office*, chapter 3, under heading “Government Policy Directions.”
- ⁵ Canada, Privy Council Office, *Responsibility in the Constitution* (1977, reissued 2003) under heading “The Deputy Minister’s Accountability.”
- ⁶ Canada, Privy Council Office, *Guidance for Deputy Ministers* (2003), section III (2) (a).
- ⁷ Canada, Privy Council Office, *Estimates Part III: Report on Plans and Priorities, 2005-06*, section I (C) (5).
- ⁸ Canada, Privy Council Office, *The Role and Structure of the Privy Council Office* (1999).
- ⁹ Donald J. Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics* (Toronto: University of Toronto Press, 1999), p. 298; and Privy Council Office, *Estimates Part III*, section I (B).
- ¹⁰ Quoted in J.L. Granatstein, *The Ottawa Men: The Civil Service Mandarins, 1935-1957* (Toronto: Oxford University Press, 1982), p. 195.
- ¹¹ Quoted *ibid.*, p. 197.
- ¹² A.D.P. Heeney, “Mackenzie King and the Cabinet Secretariat,” *Canadian Public Administration* 10 (September 1967): 373.
- ¹³ *Ibid.*, p. 372.
- ¹⁴ A.D.P. Heeney, quoted in Sharon Sutherland, “The Clerk of the Privy Council,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. III, under heading “Secretary to Cabinet.”
- ¹⁵ *Ibid.*
- ¹⁶ *Ibid.*, under heading “Clerk’s Role in Deputy Head Appointments.”
- ¹⁷ Peter Aucoin, “The Staffing and Evaluation of Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. I, under heading “Introduction.”
- ¹⁸ *Ibid.*, under heading “Canada in a Comparative Westminster Perspective.”
- ¹⁹ Information for this section is based on an interview Donald J. Savoie held with Ron Hicks, Deputy Minister of the Executive Council, Government of Alberta, November 17, 2005.
- ²⁰ Aucoin, “The Staffing and Evaluation of Deputy Ministers in Comparative Westminster Perspective,” under heading “A Proposal for Reform,” citing Colin Campbell, “Judging Inputs, Outputs, and Outcomes in the Search for Policy Competence: Recent Experience in Australia,” *Governance* 14 (2) (2001): 253-82; Jacques Bourgault and Stéphane Dion, *The Changing Profile of Federal Deputy Ministers, 1968 to 1988* (Ottawa: Canadian Centre for Management Development, 1991).

- ²¹ Michael Keating, quoted in Aucoin, "The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective," p. 27.
- ²² Sutherland, "The Clerk of the Privy Council," under heading "Clerk as Prime Minister's Mediator."
- ²³ *Ibid.*, under recommendation 3.
- ²⁴ Lorne Sossin, "Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implications for the Accountability of the Public Service," Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. II, under heading "Role of the Public Service Commissions."
- ²⁵ *Ibid.*