

## **MINISTERIAL STAFF: ISSUES OF ACCOUNTABILITY AND ETHICS**

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## MINISTERIAL STAFF: ISSUES OF ACCOUNTABILITY AND ETHICS

### INTRODUCTION

In addition to office and constituency staff, ministers of the Crown – whether Members of Parliament or Senators – can hire additional staff paid for by public funds. These are often referred to as “exempt staff” because they are exempt from the normal public service hiring processes and regulations. They are expected to provide ministers with the political support and advice that the politically neutral public service cannot.

Ministerial staff have become the subject of debate. Because they can have a significant influence on the development and administration of public policy, concerns have been expressed about their accountability and, on occasion, their ethical conduct. Also, ministerial staff currently have the ability to move into the public service without undergoing the normal competition process.

This paper will provide some background on ministerial staff and will discuss in turn issues of accountability, ethics and their priority status for moving into the public service. It will also look at a couple of international examples, as well as recently introduced legislation which proposes to address some of the concerns that have been raised with respect to ministerial staff.

### BACKGROUND

Ministers are empowered to hire staff under the *Public Service Employment Act*.<sup>(1)</sup> Ministerial staff brief the minister on relevant policy, legislative and administrative issues; liaise with the department, the Prime Minister’s Office, and other ministers’ offices;

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(1) *Public Service Employment Act*, section 128. This clause also applies to the Leader of the Opposition in the House of Commons and the Senate.

prepare speeches and media releases; organize scheduling; and handle other administrative tasks as required.<sup>(2)</sup> According to the Privy Council Office,

The purpose of establishing a Minister's office is to provide Ministers with advisers and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the Public Service. Consequently, they contribute a particular expertise or point of view that the Public Service cannot provide.<sup>(3)</sup>

Although ministers are freed from the constraints of the Act when making staffing decisions, Treasury Board issues guidelines for ministerial offices that cover, amongst other things, human resources management.<sup>(4)</sup> Treasury Board provides ministers with an overall budget range for staff salaries, which varies depending upon departmental size and complexity, and it provides the salary ranges for various positions within ministerial offices.<sup>(5)</sup> Ministers with regional representation and ministers with a parliamentary secretary receive additional funds to hire staff. In addition to exempt staff, ministers have a budget for departmental staff from the public service who are seconded to the minister's office to act as a liaison with the department and to provide non-political departmental advice.

The minister has discretion to configure his or her staff as desired and to set the salaries, as long as the overall budget and salaries are within the specified ranges.<sup>(6)</sup> The minister also has complete discretion over hiring, although the Prime Minister's Office is sometimes involved in the selection of senior staff, especially the chief of staff. Ministerial staff usually obtain their position through political and personal connections – a situation that has prompted some questions as to whether senior ministerial staff have adequate experience,

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(2) Treasury Board of Canada Secretariat provides some general job descriptions in its *Guidelines for Ministers' Offices*, February 2006, Appendix A, [http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/mg-ldm/gfmo\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/mg-ldm/gfmo_e.asp).

(3) Privy Council Office, *Accountable Government: A Guide for Ministers*, 2006, p. 29, [http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=guidemin/accountable-guide\\_e.htm](http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=guidemin/accountable-guide_e.htm).

(4) Treasury Board of Canada Secretariat (2006).

(5) The budget range for the total number of exempt staff salaries is between \$322,000 and \$875,000. The positions that ministers may hire include: chief of staff, senior policy advisor, director of communications, director of parliamentary affairs, special assistants, support staff, and regional staff.

(6) For example, if a minister pays staff higher salaries and has more senior staff members, then his or her office will have fewer staff members than an office that has more clerical staff.

training and professional standards.<sup>(7)</sup> A survey of 20 chiefs of staff who were in office in 1990 found that the average age at the time of appointment was 38 and most had at least several years' work experience in ministers' offices.<sup>(8)</sup>

Ministerial staff have very little job security. They cease to be an employee 30 days after their minister is no longer a minister, and they can be dismissed at the discretion of the minister with no mechanisms for complaint or appeal. They are entitled, however, to severance pay, and the minister may provide separation pay. As well, ministerial staff contribute to a public service pension and receive health and other benefits.<sup>(9)</sup>

## ACCOUNTABILITY

By legislation and convention, ministers are accountable to Parliament for the operation of their department. The senior public servant of the department, the deputy minister, is accountable to the minister, and in turn, public servants within the department are accountable through the bureaucratic hierarchy to the deputy minister.<sup>(10)</sup> However, there is little legislation or convention to govern the activities of ministerial staff or to inform their relationships with public servants.

On behalf of the Prime Minister, the Privy Council Office offers very general guidance to ministers; the guide includes a section regarding ministerial staff and was updated most recently in 2006. According to the Privy Council Office, "Ministers are personally responsible for the conduct and operation of their office."<sup>(11)</sup> While ministerial staff will be expected to interact with departments within the minister's responsibility, "The exempt staff do not have the authority to give direction to public servants, but they can ask for information or transmit the Minister's instructions, normally through the deputy minister. Good working relations between the Minister's office and the department ... are essential in assisting the Minister and deputy minister in managing departmental work."<sup>(12)</sup> Stronger language was added to the latest version of the guidance:

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(7) See, for example, J. R. Mallory, "The Minister's Office Staff: An Unreformed Part of the Public Service," *Canadian Public Administration*, Vol. 10, No. 1, 1967, p. 32.

(8) Micheline Plasse, "Ministerial Chiefs of Staff in the Federal Government in 1990," Canadian Centre for Management Development, April 1994.

(9) Treasury Board of Canada Secretariat (2006), p. 12.

(10) The deputy minister is also accountable to the Prime Minister, the Treasury Board, and the Public Service Commission; see Privy Council Office, *Guidance for Deputy Ministers*, 2003.

(11) Privy Council Office, *Accountable Government: A Guide for Ministers* (2006), p. 29.

(12) *Ibid.*

Such a relationship requires that exempt staff in the Minister's office respect the non-partisanship of public servants and not seek to engage them in work that is outside their appropriate role.

In meeting their responsibility to respect the non-partisanship of public servants, exempt staff have an obligation to inform themselves about the appropriate parameters of Public Service conduct, including Public Service values and ethics, and to actively assess their own conduct and any requests they make to departmental officials in the light of those parameters. Ministers and deputy ministers should be vigilant in ensuring that the appropriate parameters of interaction between officials and exempt staff are observed.

To the extent practicable, relations between officials and exempt staff should be conducted through the deputy minister's office. The deputy minister's office should be informed about contact between exempt staff and public servants in the department.<sup>(13)</sup>

The very broad and general guidance provided by the Privy Council Office paints a rather pure picture of the interaction between ministerial staff and departmental officials, but, as the former Clerk of the Privy Council admitted, there is "a huge amount of flexibility in our system about who interacts with whom and we don't have walls to stop it."<sup>(14)</sup>

The numerous contacts between ministerial staff and departmental officials can make it impractical to inform the deputy minister's office on each occasion, and there can be genuine reasons to bypass the hierarchy, such as reacting to a crisis in an urgent manner. Also, interaction between a minister's office and the department covers a wide variety of activities, which may range from participation in departmental meetings to advice on changing the wording of a document or revision of a funding formula.

Whether or not "advice" from ministerial staff constitutes inappropriate "direction" can be a matter of interpretation, especially since ministerial staff often act as a proxy for a busy and preoccupied minister. In practice, it may be very difficult for a public servant to tell whether ministerial staff are simply passing on ministerial instructions or, alternatively, acting on their own initiative. Ministerial staff have no legislated delegated authority, but may nevertheless speak on behalf of the minister. Liane Benoit, who conducted a study on ministerial staff on behalf of the Commission of Inquiry into the Sponsorship Program and Advertising Activities, sums up the situation: "To the issue of whether political staff give, or attempt to give,

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(13) *Ibid.*, pp. 29-30.

(14) Quoted in Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Recommendations*, February 2006, p. 137, <http://www.gomery.ca/en/phase2report/>.

direction to departmental officials, one can only conclude that the practice is subtle, reasonably pervasive, and in many instances, a practical necessity.”<sup>(15)</sup> She goes on to say, “as long as all sides stick to their respective roles, the system, by and large, bumps along with an acceptable degree of efficacy, efficiency and propriety. Except, of course, when it doesn’t.”<sup>(16)</sup>

The Sponsorship Program would be an example where the system did not work as intended. In this case, Justice John Gomery found that there was direct input by the then minister and his staff, as well as the chief of staff for the Prime Minister, regarding the selection of particular activities for sponsorship support by the Government of Canada. Justice Gomery concluded that this constituted inappropriate “political encroachment into the administrative domain.”<sup>(17)</sup> Moreover, the deputy minister at the time was not kept informed of interactions between the minister’s office and bureaucrats in charge of the program.

Justice Gomery recommended that the government prepare a code of conduct for ministerial staff, which would include provisions that “exempt staff have no authority to give direction to public servants and that Ministers are fully responsible and accountable for the actions of exempt staff.”<sup>(18)</sup> However, two high-profile cases demonstrate the lack of agreement on the meaning of responsibility and accountability of ministers for their staff.

In 1991, Mohammed Al-Mashat, a former Iraqi ambassador to Washington during the Gulf War, discreetly requested and then received highly expedited permission to enter Canada as a landed immigrant.<sup>(19)</sup> When controversy erupted, the then Secretary of State for External Affairs, Joe Clark, said he could not be held responsible for a highly sensitive decision because he was not made aware of the application. After an internal inquiry, the government placed blame on the associate undersecretary of state for External Affairs and on Mr. Clark’s chief of staff for not doing enough to bring the matter to the attention of the Secretary of State.

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(15) Liane E. Benoit, “Ministerial Staff: The Life and Times of Parliament’s Statutory Orphans,” in Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Research Studies Volume 1 – Parliament, Ministers and Deputy Ministers*, February 2006, p. 237, <http://www.gomery.ca/en/phase2report/volume1/index.asp>.

(16) *Ibid.*, p. 196.

(17) Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Who is Responsible? Fact Finding Report*, November 2005, p. 427, <http://www.gomery.ca/en/phase1report/ffr/index.asp>.

(18) Commission of Inquiry in the Sponsorship Program and Advertising Activities, *Restoring Accountability: Recommendations*, 2006, p. 139.

(19) S. L. Sutherland, “The Al-Mashat Affair: Administrative Accountability in Parliamentary Institutions,” *Canadian Public Administration*, Vol. 34, No 4, Winter 1991, pp. 573-603; also Greg Taylor, “Bungle or Coverup?” *Maclean’s*, Vol. 104, Issue 21, 27 May 1991, p. 20.



In 2004, the then Minister of Citizenship and Immigration, Judy Sgro, was accused of giving temporary residence and work permits to people who had volunteered on the Minister's re-election campaign. The Ethics Commissioner was asked to investigate the apparent conflict of interest.<sup>(20)</sup> The Commissioner concluded that the main burden of responsibility for placing the Minister in a conflict of interest lay with the chief of staff, who continued to work on departmental matters during the election. The Commissioner said this did not absolve the Minister of responsibility, quoting from Privy Council Office guidance stating that ministers are responsible for the actions of officials under their management; but he noted that the meaning of "responsibility" in this context was rather vague.

As ministerial staff often act on behalf of their minister and act as a buffer between the department and the minister, they wield considerable influence, if not de facto authority. While they are not to direct public servants, there is a lack of clarity over what constitutes appropriate interactions with public servants. This lack of clarity has led to disputes over the proper role of ministerial staff and the responsibility and accountability of the minister for their actions when controversy arises. Apart from the brief guidance from the Privy Council Office, the role of ministerial staff is relatively undefined. Justice Gomery also recommended that, to help them understand their role, "all exempt staff should be required to attend a training program to learn the most important aspects of public administration."<sup>(21)</sup>

## ETHICS

There is a code to govern the behaviour of ministerial staff, though it applies primarily to conflicts of interest and to actions after employment. On behalf of the Prime Minister, the Privy Council Office prepares the *Conflict of Interest and Post-Employment Code for Public Office Holders*.<sup>(22)</sup> As the Code is not a statute, it can be amended by the executive power of the Prime Minister, and changes were made for the incoming Prime Minister, such as the five-year ban on lobbying discussed later in this paper.

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(20) Office of the Ethics Commissioner, *The Sgro Inquiry: Many Shades of Grey*, June 2005, [http://www.parl.gc.ca/oec/en/media/inquiry\\_reports/poh.asp](http://www.parl.gc.ca/oec/en/media/inquiry_reports/poh.asp).

(21) Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Recommendations*, 2006, p. 139.

(22) Privy Council Office, *Conflict of Interest and Post-Employment Code for Public Office Holders*, 2006, [http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=guidemin/code-conflict\\_e.htm](http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=guidemin/code-conflict_e.htm).

Ministerial staff are covered by this Code because, in addition to ministers, the term “public office holder” includes “a person, other than a public servant, who works on behalf of a minister.”<sup>(23)</sup> However, ministers must designate the staff to whom the post-employment provisions of the Code apply.<sup>(24)</sup> Further, part-time employees who work less than 15 hours per week, including contractual workers and volunteers, are subject only to the Code’s general principles and not the more detailed conflict of interest and post-employment provisions.<sup>(25)</sup> Some have expressed concerns that these exceptions constitute “loopholes.”<sup>(26)</sup>

The Code consists of 12 general principles and detailed provisions on conflict of interest and post-employment. Public officer holders must: provide the Ethics Commissioner with a confidential report of declarable assets; make a public declaration of outside activities; disclose gifts, hospitality and other benefits; avoid preferential treatment; and comply with post-employment measures.

The Ethics Commissioner is charged with the administration of the Code and may impose compliance measures with respect to conflicts of interest.<sup>(27)</sup> Also, if the Ethics Commissioner advises that there is failure to comply with the Code, the Prime Minister may impose sanctions, including discharge or termination of appointment, as deemed appropriate.<sup>(28)</sup> It does not appear, though, that the Commissioner can instigate investigations into the actions of ministerial staff, as he wrote the following in 2006 with respect to the Chief of Staff of the Prime Minister: “Beyond these provisions [in the *Parliament of Canada Act* regarding Members of Parliament and ministers], there is no statutory authority for the Ethics Commissioner to conduct examinations in regards to any other category of public office holder [e.g., ministerial staff].”<sup>(29)</sup>

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(23) *Ibid.*, section 4(1b).

(24) *Ibid.*, section 24.

(25) *Ibid.*, section 4(3b).

(26) Benoit (2006), pp. 209-212; Kady O’Malley, “Prime Minister’s new code of conduct includes loophole that could allow ministers to dodge lobby loophole by hiring part-time or contract exempt political staffers,” *The Hill Times*, 6 March 2006, p. 39.

(27) Privy Council Office, *Code for Public Office Holders* (2006), sections 5 and 7.

(28) *Ibid.*, section 22(8).

(29) Office of the Ethics Commissioner, *The Grewal – Dosanjh Inquiry*, January 2006, [http://www.parl.gc.ca/oec/en/media/inquiry\\_reports/reports/Grewal\\_Dosanjh/G\\_D\\_Inquiry.asp](http://www.parl.gc.ca/oec/en/media/inquiry_reports/reports/Grewal_Dosanjh/G_D_Inquiry.asp). This conclusion is based on section 72.08 of the *Parliament of Canada Act*, which allows Members and Senators to request investigations of ministers or parliamentary secretaries, but not of other public office holders. The Commissioner is empowered to initiate investigations into compliance by Members of Parliament with the *Conflict of Interest Code for Members of the House of Commons*, section 27(4), <http://www.parl.gc.ca/information/about/process/house/standingorders/appal-e.htm>. The Commissioner raised a concern about his ability to examine the actions of ministerial staff in *Issues and Challenges 2005*, October 2005, p. 12, [www.parl.gc.ca/oec/en/media/annual\\_reports/reports/2005/Challenges2005web\\_EN.pdf](http://www.parl.gc.ca/oec/en/media/annual_reports/reports/2005/Challenges2005web_EN.pdf).

In the past, some ministerial staff have become lobbyists after their time in a minister's office because their knowledge of how the political and bureaucratic systems work, as well as extensive contacts, can be very useful in the lobbying business. Some, though, have been concerned that this could constitute a conflict of interest.<sup>(30)</sup>

There are a number of provisions in the Code dealing with post-employment; specifically, former public office holders cannot work with an entity they had significant dealings with for a period of one year, and a clause was recently added to prohibit public office holders from working as lobbyists for five years after leaving public office.<sup>(31)</sup> However, the post-employment provisions rely upon voluntary disclosure and compliance, as there are no means to enforce compliance with respect to those who have left public office.<sup>(32)</sup> The Code is enforceable with respect to current public office holders, who must report dealings with former public office holders to the Ethics Commissioner.<sup>(33)</sup>

## PRIORITY STATUS

Another option for former ministerial staff is to move into the public service. Under the *Public Service Employment Act*, ministerial staff are entitled to bypass the normal competitive process and be appointed to any position in the public service for which they are qualified, in priority to all others except for surplus employees and those on leave.<sup>(34)</sup> To qualify, ministerial staff must: have previously worked for the public service; meet the essential qualifications for appointment to the public service in an external competition process; or have spent three consecutive years working as an executive assistant, special assistant or private secretary to a minister (i.e., senior positions). Departments make the assessments and decisions for the appointment of ministerial staff, except to executive positions, as the Public Service Commission has retained this authority.<sup>(35)</sup> This priority status, or "priority entitlement" as it is sometimes called, has become the subject of debate.

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(30) Benoit (2006), p. 221.

(31) Privy Council Office, *Code for Public Office Holders* (2006), sections 28 and 29.

(32) The Ethics Commissioner noted the lack of sanctions for post-employment provisions in *Issues and Challenges 2005*, p. 14.

(33) Privy Council Office, *Code for Public Office Holders* (2006), section 32.

(34) *Public Service Employment Act*, sections 41(2) and (3). This provision also applies to staff of the Leader of the Opposition in the Senate and the House.

(35) Public Service Commission, *Guide to the Ministers' Staffs Priority*, May 2005, [http://www.psc-cfp.gc.ca/staf\\_dot/priority-priorite/staff\\_priority\\_guide\\_e.htm](http://www.psc-cfp.gc.ca/staf_dot/priority-priorite/staff_priority_guide_e.htm).

Those who argue for the priority status of ministerial staff say that it is compensation for the lack of job security associated with working for a minister;<sup>(36)</sup> moreover, a number of senior public servants, including highly regarded deputy ministers, began their career as ministerial staff. Also, it is pointed out that relatively few appointments to the public service are made through priority status – 304 over 12 years between 1993 and 2005, or an average of 25 per year.<sup>(37)</sup> (More staff take advantage of priority status during government transitions than at other times.)

Those who argue against priority status for ministerial staff say that it acts against the merit principle and could politicize the public service. If ministerial staff are competent, they would be identified and hired through the normal competitive processes. Also, it does not appear that other countries offer priority employment status to ministerial staff entering the public service.<sup>(38)</sup> In 2003, the House of Commons Public Accounts Committee recommended the repeal of the relevant sections of the Act.<sup>(39)</sup> The government responded by saying that the recommendation would be considered when the *Public Service Modernization Act* comes up for review in 2010.<sup>(40)</sup>

In his inquiry into the Sponsorship Program, Justice Gomery found that the former chief of staff, and his special assistant, to the then minister of Public Works and Government Services Canada took advantage of the priority status provisions to move into the department in 1999 and took responsibility for sponsorship activities, which represented a possible politicization of the public service. Justice Gomery also recommended removing the priority status provision.<sup>(41)</sup>

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(36) Peter Larson, “Should Cabinet ministers’ exempt staff be allowed to ‘parachute’ into the public service? Yep,” *The Hill Times*, 20 February 2006, p. 8.

(37) Kathryn May, “604 top political aides eased into PS jobs: ‘Priority entitlement’ lets ministerial staff bypass competition,” *Ottawa Citizen*, 28 December 2005, p. A1.

(38) *Ibid.*: “Ms. Barrados [the head of the Public Service Commission] said Canada is the only country she knows of that offers preferential treatment to ministerial staff.”

(39) House of Commons Standing Committee on Public Accounts, *Report 9 – Chapter 3 (The Sponsorship Program), Chapter 4 (Advertising Activities) and Chapter 5 (Management of Public Opinion Research) of the November 2003 Report of the Auditor General of Canada*, April 2005, Recommendation 28, <http://www.parl.gc.ca/committee/CommitteePublication.aspx?COM=8989&Lang=1&SourceId=108952>.

(40) Government of Canada, *Government Response to the Ninth Report of the Standing Committee on Public Accounts*, July 2005, [http://www.tbs-sct.gc.ca/report/gr-rg/2005/0720\\_e.asp](http://www.tbs-sct.gc.ca/report/gr-rg/2005/0720_e.asp).

(41) Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Recommendations* (2006), p. 138.

## INTERNATIONAL COMPARISONS

Canada is not the only Westminster parliamentary system to employ political ministerial staff with public funds. Both Australia and the United Kingdom began systematically to use ministerial advisors, or “special advisers,” in the early 1970s.<sup>(42)</sup>

### A. Australia

In Australia, the behaviour of ministerial staff is governed by a brief section in the *Guide on Key Elements of Ministerial Responsibility*, which sets out broad principles and requirements to prevent conflicts of interest.<sup>(43)</sup> A key concern in Australia is the accountability of ministerial staff and whether or not they can be called before parliamentary committees when controversy arises.<sup>(44)</sup> For the most part, ministers have resisted allowing their staff to either appear or answer questions. This has come to be known as the “McMullan principle,” named after Minister Bob McMullan who ordered his staff not to give evidence to a parliamentary committee, saying that “ministerial staff are accountable to the minister and the minister is accountable to the parliament and, ultimately, the electors.”<sup>(45)</sup>

### B. United Kingdom

In the United Kingdom, the Cabinet Office distributes a *Code of Conduct for Special Advisers* and a *Model Contract for Special Advisers*.<sup>(46)</sup> The Code of Conduct sets out the general role and duties of special advisers, as well as providing general parameters governing their behaviour. It states that special advisers should:

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(42) In Australia, Prime Minister Gough Whitlam introduced ministerial advisors in an *ad hoc* fashion in 1972. In the United Kingdom, Prime Minister Harold Wilson authorized the systematic appointment of special advisers in 1974.

(43) Prime Minister of Australia, *Guide on Key Elements of Ministerial Responsibility*, December 1988, pp. 20-21, [www.dpmc.gov.au/guidelines/docs/ministerial\\_responsibility.pdf](http://www.dpmc.gov.au/guidelines/docs/ministerial_responsibility.pdf).

(44) Ian Holland, *Accountability of Ministerial Staff?* Research Paper No. 19 2001-02, Parliamentary Library, Parliament of Australia, June 2002.

(45) Quoted in Holland (2002), p. 15.

(46) United Kingdom Cabinet Office, *Code of Conduct for Special Advisers and Model Contract for Special Advisers*, July 2005, [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/special\\_advisers/code/index.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/special_advisers/code/index.asp).

- act in accordance with the *Civil Service Code* (except the provisions on impartiality);
- avoid taking public part in political controversy;
- limit political party activities to their own time;
- not take part in national political activities; and
- establish relationships of confidence and trust with the civil service.

The Code also specifies what civil servants should do in the case of concerns about requests coming from special advisers.

In 2003, the Committee on Standards in Public Life studied the issue of special advisers and issued a report making a number of recommendations, such as setting out in legislation what special advisers cannot do, legislating an upper limit to the total number of special advisers, and making ministers personally accountable to Parliament for the management and discipline of their special advisers.<sup>(47)</sup> The U.K. Cabinet Office responded with a consultation paper for a draft civil service bill, which would restrict special advisers from authorizing the expenditure of public funds and direct the Minister for the Civil Service to prepare an annual report about special advisers.<sup>(48)</sup> The Cabinet Office also revised the *Code of Conduct for Special Advisers*.

## NEW LEGISLATION

The Government of Canada recently introduced Bill C-2, the proposed Federal Accountability Act.<sup>(49)</sup> This Act would enshrine in legislation many of the provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders*. Bill C-2 contains numerous provisions that apply to ministerial staff and address some of the issues that have been noted earlier. It includes the following changes:

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(47) Committee on Standards in Public Life, *Ninth Report – Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*, April 2003, Chapter 7, [http://www.public-standards.gov.uk/publications/reports/9th\\_report/index.asp](http://www.public-standards.gov.uk/publications/reports/9th_report/index.asp).

(48) United Kingdom Cabinet Office, *A Draft Civil Service Bill: A Consultation Document*, November 2004, [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/civil\\_service/civil\\_service\\_bill\\_consultation.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/civil_service_bill_consultation.asp).

(49) The full title of the Act is: An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability. It was given first reading on 11 April 2006. Clause 2 of this draft legislation introduces the proposed Conflict of Interest Act.

- The definition of reporting public officer holder would be clarified to include ministerial advisers, as well as full-time ministerial staff.<sup>(50)</sup>
- Ministers could exempt staff from the post-employment provisions only if they met select criteria, e.g., did not hold a senior position and did not handle sensitive information.<sup>(51)</sup>
- The Conflict of Interest and Ethics Commissioner could undertake examinations into the activities of any public office holder on his or her own initiative.<sup>(52)</sup>
- The penalty for violating select provisions of the proposed Conflict of Interest Act would be a fine up to \$500.<sup>(53)</sup>
- Ministerial staff, and other senior public office holders, would be prohibited from acting as lobbyists for a period of five years after leaving public office. The penalty for contravening the Act could be a fine as high as \$50,000.<sup>(54)</sup>
- The priority status of ministerial staff for appointment to public service positions would be repealed; they would be permitted, however, to apply for internal competitions for public service positions for a period of one year.<sup>(55)</sup>

## CONCLUSION

Ministerial staff have become a significant part of the Canadian political system. However, they have been involved in a number of political controversies, which has led to considerable debate over their status. Issues likely to be discussed in the coming months, especially in light of the proposed Federal Accountability Act, include the following:

- How should ministers be responsible and accountable for their ministerial staff?
- What is the appropriate relationship between ministerial staff and public servants?
- What rules, ethical and otherwise, should govern the behaviour of ministerial staff and how should they be enforced?
- Should ministerial staff have priority status for appointment to public service positions?

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(50) See the proposed Conflict of Interest Act, clause 2(1).

(51) *Ibid.*, clause 38.

(52) *Ibid.*, clause 45.

(53) *Ibid.*, clause 52.

(54) Federal Accountability Act, clauses 75 and 80 (amending the *Lobbyists Registration Act*).

(55) Federal Accountability Act, clause 103 (amending the *Public Service Employment Act*).