



HOUSE OF COMMONS
CANADA

**PROTOCOL FOR THE APPEARANCE OF ACCOUNTING
OFFICERS AS WITNESSES BEFORE THE STANDING
COMMITTEE ON PUBLIC ACCOUNTS**

**Report of the Standing Committee on
Public Accounts**

**Hon. Shawn Murphy, M.P.
Chair**

March 2007



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THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

has the honour to present its

THIRTEENTH REPORT

Pursuant to Standing Order 108(2), the Standing Committee on Public Accounts has considered the roles and responsibilities of the Treasury Board Secretariat (Protocol for the appearance of Accounting Officers as witnesses before the Standing Committee on Public Accounts). The Committee as agreed to table this Report as follows:

Summary: What the Protocol Means

For Parliament, the public service, the government, and the public at large:

- No new statutory powers or authority are given by the accounting officer approach to Deputy Ministers and heads of agencies or any other public servants.
- This protocol codifies and clarifies practices for the accountability for the existing statutory and delegated powers of accounting officers - the Deputy Ministers and heads of agencies.
- The accounting officer approach does not diminish the responsibility or accountability of Ministers to Parliament.

For the Public Accounts Committee:

- The Public Accounts Committee examines matters of administration, economy and efficiency in the use of funds.
- The Committee inquires into issues raised in the reports of the Auditor General.
- The Committee does not examine the merits or defects of policies.
- The main witnesses before the Committee are accounting officers - Deputy Ministers and heads of agencies.

For Accounting Officers:

- Accounting officers should ensure that financial administration in their department or agency meets the standards of compliance and prudence and probity.
- Accounting officers answer as the holders of responsibilities in their own right before the Public Accounts Committee.
- Accounting officers should be fully briefed and prepared for questioning as the responsible officials before the Public Accounts Committee.

For Members of the Public Accounts Committee:

- Questions should be relevant to the responsibilities and accountabilities of Accounting officers.
- Members should bear in mind that they are studying the actions of Canada's non-partisan public service.

For the Chair of the PAC:

- The Chair of the PAC should ensure that members are aware of the responsibilities and accountabilities of accounting officers.
- The Chair of the PAC should ensure that proceedings remain focused on the issues and topics under study.

For Ministers:

- Ministers are accountable to Parliament for the general management and direction of their departments.
- Ministers may provide general direction in areas where the accounting officers possess statutory responsibility, but cannot provide direction on specific activities in these areas.

For the Treasury Board:

- The Treasury Board should provide departments with a clear sense of the government's management expectations and provide Parliament with the assurance that effective internal management systems are in place.
- The Treasury Board should ensure that accounting officers are fully informed of their responsibilities and their accountability before the Public Accounts Committee, and their duty to be properly briefed for the attendance before the Committee.

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1. Introduction.

Under the *Financial Administration Act*, as amended by the *Federal Accountability Act*, Deputy Ministers and heads of agencies are identified as accounting officers with the duty to account for conduct of their statutory and delegated management responsibilities before committees of Parliament. Accounting officers are held accountable before the Public Accounts Committee for their duties in financial management. The accounting officer approach, and this protocol, clarify and codify the accountability of these senior public servants. No new statutory or other powers have been given to Deputy Ministers, heads of agencies, or other public servants through these reforms.

The Treasury Board concluded from its study of the responsibilities and accountabilities of Ministers and senior officials that: "actions will need to be taken to provide both Ministers and senior officials with clarity in their roles and responsibilities. In particular, Ministers and senior officials must be given the authority to adapt and to lead change. To the degree practical, the areas of confusion over responsibilities must be cleared up. It must be transparent to all who is accountable for what and to whom. In any assignment of authority and requirements of accountability, the essential principle of a non-partisan, professional public service must be preserved and strengthened."¹

The Public Accounts Committee concurs with this assessment. The statutory provisions for accounting officers are the first step towards eliminating confusion and providing the needed clarity. This protocol is the second. It describes and explains the ground rules for the attendance of accounting officers before the Public Accounts Committee. It is intended to assist the Committee, witnesses before it, the Treasury Board and others involved with and interested in the Committee's activities and work procedures. It has been developed in recognition of the common interest of the Public Accounts Committee and the Treasury Board in ensuring good financial management in government departments and agencies.

The protocol will evolve over time as roles and responsibilities are clarified through experience. The principles governing the responsibilities and accountability of accounting officers will, over the years, be defined as much by the precedents established through the recommendations of the Public Accounts Committee and the responses of the government as by rules and regulations.

2. The Mandate of the Public Accounts Committee.

The mandate of the Standing Committee on Public Accounts of the House of Commons is to review and report on the Public Accounts of Canada and all reports of the Auditor General of Canada.² During the past few Parliaments 90-95% of the Committee's time

¹ *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, a report to Parliament, Treasury Board, 2005, p 40.

² Standing Order 108.3(f).

has been devoted to considering the Auditor Generals' reports. These reports are authorized by section 7(2) of the *Auditor General Act*, which instructs the Auditor General to:

... call attention to anything that he considers to be of significance and of a nature that should be brought to the attention of the House of Commons, including any cases in which he has observed that

(a) accounts have not been faithfully and properly maintained or public money has not been fully accounted for or paid, where so required by law, into the Consolidated Revenue Fund;

(b) essential records have not been maintained or the rules and procedures applied have been insufficient to safeguard and control public property, to secure an effective check on the assessment, collection and proper allocation of the revenue and to ensure that expenditures have been made only as authorized;

(c) money has been expended other than for purposes for which it was appropriated by Parliament;

(d) money has been expended without due regard to economy or efficiency;

(e) satisfactory procedures have not been established to measure and report the effectiveness of programs, where such procedures could appropriately and reasonably be implemented...

The Public Accounts Committee directs its inquiries towards matters of administration, economy and efficiency in the use of funds. The mandate of the more policy oriented "departmental" committees of the House of Commons includes the programme and policy objectives of the department, and the department's effectiveness in the implementation of these objectives as measured by the results obtained compared with its stated objectives. The Public Accounts Committee's review of departmental management complements but does not duplicate the mandate of the departmental committees. Departmental committees concern themselves with policies and success, while the Public Accounts Committee concerns itself with management issues.

This "non-policy" orientation of the Public Accounts Committee fosters a spirit of collegiality within the Committee that encourages members to identify problems and find solutions. The spirit of collegiality is also encouraged by the structure of the Committee. Since 1958 its chair has been selected from the opposition side. An opposition member chairs the Public Accounts Committee because he or she will be motivated to make thorough and tough inquiries into the Government's activities. The Government retains a majority (or plurality in a minority Parliament) of members on the Committee so that they can ensure that the Committee is fair and balanced in its work. Much of financial administration by statute is the responsibility of the non-partisan public service and should be treated in a non-partisan manner by the Public Accounts Committee. The

Public Accounts Committee in its examination of expenditures traditionally seeks consensus among all its members, regardless of party.

Because the mandate of the Public Accounts Committee directs it towards management and administration, the chief witnesses before it are normally the senior public servants - the accounting officers - who hold the responsibility for management as heads of departments and agencies. Accounting officers may be supported by other staff. Only in rare instances are Ministers witnesses before the Committee.

The Public Accounts Committee performs a crucial role in control of the public purse. Its review of the public accounts and reports of the Auditor General gives Parliament and the people of Canada assurance that funds voted by Parliament are spent for the purposes intended, and in accordance with the laws, regulations and principles governing financial administration.

3. The Responsibilities of Accounting Officers.

The responsibilities of accounting officers are defined in section 16.1-3 of the *Financial Administration Act* as amended by the *Federal Accountability Act*. This states that "Within the framework of the appropriate minister's responsibilities and his or her accountability to Parliament, and subject to the appropriate minister's management and direction of his or her department, the accounting officer of a department ... is accountable before the appropriate committee of Parliament for":

- (a) the measures taken to organize the resources of the department to deliver departmental programs in compliance with government policies and procedures;
- (b) the measures taken to maintain effective systems of internal control in the department;
- (c) the signing of the accounts that are required to be kept for the preparation of the Public Accounts pursuant to section 64; and
- (d) the performance of other specific duties assigned to him or her by or under this or any other Act in relation to the administration of the department. ...

The obligation of an accounting officer under this section is to appear before the appropriate committee of Parliament and answer questions put to him or her by members of the committee in respect of the carrying out of the responsibilities and the performance of [these] duties.

The Deputy Ministers and heads of agencies designated as accounting officers are listed in Schedule VI of the *Financial Administration Act* as amended by the *Federal Accountability Act*.

Accounting officers have delegated or directly assigned management responsibilities under many statutes. The *Financial Administration Act* confers responsibility directly on Deputy Ministers for the prudent management of resources allocated to their department, in compliance with Treasury Board policies, regulations, and standards. Under the *Public Service Employment Act* responsibilities relating to personnel management, including the organization of the department, are either assigned directly to Deputy Ministers or delegated to them by the Public Service Commission. Ministers may provide general direction in areas where the accounting officers possess statutory responsibility, but cannot provide direction on specific activities in these areas.³ Both responsibility and accountability belong to the accounting officers in areas where they possess statutory authority.

The responsibilities and accountability of the Minister in relation to the non-departmental agencies varies and depends on the statutory framework governing a particular agency. In general, the power of the Minister to instruct the management of these non-departmental agencies is more limited than for departments.

Accounting officers are responsible for ensuring departmental *compliance* with the statutes, policies and procedures governing administration as is made clear in 16.1(a) of the amended *Financial Administration Act*. They are also responsible for ensuring that the administration of their department or agency is conducted with *Prudence and probity*, that is acting as one ought, and the careful and responsible management of public resources.⁴ Accounting officers have a duty, as do all public servants, to act at all times in a manner that will bear the closest public scrutiny; an obligation that is not fully discharged by simply acting within the law. They should exercise good judgement.

Accounting officers, as the most senior public servants and the administrative heads of departments and agencies, have a special responsibility and leadership role in ensuring that the principles of compliance, prudence and probity are observed in administration.⁵ The Public Accounts Committee is entitled to satisfy itself that the actions and behaviour of accounting officers sets a high standard for their organisation, and that accounting officers ensure that their organisation's staff is aware of and acts in accordance with these standards.

The responsibilities of Deputy Ministers and heads of agencies as accounting officers are personal and belong to them in their own right. This is formally recognized in the requirement that they sign the accounts of their department or agency. An accounting officer cannot delegate his or her responsibilities to others, whether upwards to Ministers, downwards to other departmental officials, or sideways to other officials. The duties of Deputy Ministers and heads of agencies under the *Financial Administration Act* are the prime focus of reports of the Auditor General and studies by the Public Accounts Committee.

³ *Guidance for Deputy Ministers*, Privy Council Office, 2003, p 8.

⁴ Treasury Board, *Financial Management Accountability in Departments and Agencies*, 8 March 1991.

⁵ *Guidance for Deputy Ministers*, p 12.

4. Accountability Before the Public Accounts Committee.

The principle that senior public servants are accountable for their responsibilities before parliamentary committees has been recognized in Canada for many years. It was stated thirty years ago by the Privy Council Office in its submission to the Royal Commission on Financial Management and Accountability:

Officials are... accountable *before* Parliament for matters of administration. This is a matter of observation. It does not detract from the responsibility of ministers, which will be invoked in cases where administration infringes on matters of policy or political controversy.... It is... possible to distinguish between a deputy's accountability *to* the minister for all that occurs under the minister's responsibility, and the deputy's accountability *before* parliamentary committees for administrative matters so long as they do not call directly into question the exercise of the minister's responsibility.⁶

Accounting officers are not accountable *to* the Public Accounts Committee. The accountability of accounting officers *before* the Public Accounts Committee exists within the context of Ministers' responsibility and accountability for the policies and general management and direction of their departments. The direct accountability of accounting officers lies *within* government, in their accountability to their Ministers, to the Prime Minister through the Clerk of the Privy Council, to the Public Service Commission and the Treasury Board.

The Public Accounts Committee has the power to inquire and report. In its studies the Committee receives testimony from accounting officers on their stewardship of the powers and responsibilities entrusted to them. That accounting officers are accountable *before* the Public Accounts Committee does not mean that the Committee can reward, punish, or instruct them. The Committee cannot do this, any more than can any other parliamentary committee. The power to reward, punish, and instruct accounting officers resides within the executive, as it does for all public servants.

One of the main forces in all aspects of accountability and responsibility in the Canadian system of responsible parliamentary government is the deterrent force of bad publicity. Accounting officers should act, and ensure those under them act, at all times in a manner that will bear the closest public scrutiny. The Public Accounts Committee is the parliamentary forum which gives this closest public scrutiny to the actions and decisions of accounting officers on behalf of Parliament and the people of Canada.

The accountability of accounting officers before the Public Accounts Committee flows from the statutory and delegated powers that they hold in their own right. The accountability of accounting officers before the Public Accounts Committee is limited to the area of their personal responsibilities and the observance of the principles of

⁶ Privy Council Office, *Responsibility in the Constitution*, 1977, reprinted 1993, pp 74-5.

compliance, prudence and probity. Accounting officers cannot be held accountable for actions for which they do not hold statutory or delegated responsibility.

5. Conduct of Studies by the Public Accounts Committee.

The Public Accounts Committee examines the exercise of management responsibilities by accounting officers. The Canadian public service, including non-departmental agencies, conducts its business in a non-partisan manner. To this effect the Public Accounts Committee and its members do not enter into partisan matters in their questioning of accounting officers. In its reports the Committee strives to achieve consensus among all members regardless of party. The accountability of accounting officers is not and should not be subject to the political considerations that apply to the accountability of Ministers.⁷

The reports of the Auditor General form the start of the Committee's inquiries. The Committee does not usually review or question policy decisions of Ministers, does not inquire into the reasoning behind the decisions of Ministers, and does not as a rule study decisions when it is clear that these decisions have been made by Ministers rather than public servants. Normally the Committee does not question Ministers.

Accounting officers are the key witnesses when the Public Accounts Committee examines matters relating to their department or agency. Accounting officers may be accompanied by other officials who can assist them in their responses to questions in committee hearings, but the accounting officer is the official who has responsibility, and hence can answer for the department or agency before the Committee. In practice, an Accounting Officer will have delegated authority within his or her department or agency, but that does not absolve the accounting officer of responsibility.

The accounting officer should provide the Committee with explanations of issues brought to its attention through the reports of the Auditor General or on other relevant issues the Committee may wish to pursue related to the public accounts. Accounting officers are responsible for ensuring that their testimony before the Public Accounts Committee is accurate. An accounting officer should ensure that he or she is adequately and accurately briefed on matters which are likely to arise at the hearing. The accounting officer may request to supply information not within his or her immediate knowledge through a later note to the Committee. If errors are discovered in the evidence provided to the Committee, these should be made known to the Committee without delay. The Committee may request the accounting officer to provide additional information.

The general rules for the testimony of public servants before parliamentary committees apply to the attendance of accounting officers before the Public Accounts Committee. As members of the non-partisan public service, they do not enter into partisan issues and discussions. They can explain departmental policies to the Public Accounts Committee. They do this by providing information. They do not defend or

⁷ *Guidance for Deputy Ministers*, p 26.

criticize policies or decisions of the government. They do not debate matters of political controversy and do not discuss confidential advice given to Ministers, whether on policy or administration. They do not present their own views on political or policy questions. These rules remain in force whether the Public Accounts Committee is studying matters that are the responsibility of the Minister, or of the accounting officer. Accounting officers, like other public servants, have an obligation to serve as witnesses before parliamentary committees in a manner that allows Ministers to maintain full confidence in their loyalty and trustworthiness.

Because accounting officers appear before the Public Accounts Committee in their own right they are entitled to offer the information necessary to defend their actions, as long as providing such information does not come into conflict with the principle of confidentiality of advice provided to Ministers and other constraints on the disclosure of information.

For its part, the Public Accounts Committee should avoid entering into partisan and irrelevant lines of inquiry. It should focus on the responsibilities and decisions of accounting officers. The members of the Committee are expected to observe these rules for the conduct of inquiries. The chair of the Public Accounts Committee should ensure that these rules are observed by the members during its inquiries.

6. Disagreements between Minister and Accounting Officer.

Occasionally situations will arise where Ministers and Accounting Officers disagree over a course of action. In the vast majority of these cases, the disputes will be worked out through discussions between the Minister and the Deputy Minister. When the Minister and departmental accounting officer are unable to agree, provisions of the *Financial Administration Act* as revised by the *Federal Accountability Act* come into play:

16.5 (1) Where the appropriate minister and the accounting officer for a department named in Part I or II of Schedule VI are unable to agree on the interpretation or application of a policy, directive or standard issued by the Treasury Board, the accounting officer shall seek guidance in writing on the matter from the Secretary of the Treasury Board.

(2) Where guidance is provided under subsection (1) and the matter remains unresolved, the appropriate minister shall refer the matter to the Treasury Board for a decision.

(3) A decision by the Treasury Board shall be in writing and a copy shall be provided to the Auditor General of Canada.

(4) The copy of a decision provided to the Auditor General of Canada is a confidence of the Queen's Privy Council for Canada for the purposes of any Act of Parliament.

These procedures establish a process for resolving disputes when an accounting officer and Minister are unable to agree on the interpretation or application of a policy,

directive or standard issued by the Treasury Board. Guidance from the Secretary of the Treasury Board, or decisions of the Treasury Board itself made under this section will on occasion contain a resolution of issues relevant beyond the issue at hand. For example it could express an interpretation of a policy that affects many departments and agencies. In these situations it will be incumbent upon the Secretary to the Treasury Board to communicate the interpretation of the policy, directive, or standard to those affected by the interpretation.

Some disagreements might not be resolvable simply in terms of legality or the interpretation of policies, directives, and standards. In these cases, the dispute may be resolved with the help of the Prime Minister through the Clerk of the Privy Council. The Clerk acts as necessary, as an intermediary, discussing the issues with Ministers and Deputies and seeking a resolution. If the Deputy disagrees with the final outcome, he or she can resign rather than implement the Minister's decision.⁸

The Committee will accept that the responsibility and accountability of the accounting officer is limited when an issue it is studying involves a direction to an accounting officer through these processes. The Public Accounts Committee may, when the action of the accounting officer involves ministerial direction, wish to report the matter to the House of Commons, and in so doing bring it to the attention of the appropriate standing committee of the House.

Disagreements between Ministers and accounting officers over courses of action for the accounting officers listed in Part III of Schedule VI are not covered by these procedures in the revised *Financial Administration Act*. Ministers do not have the same responsibilities for these non-departmental agencies as they do for the departments and agencies listed in Parts I and II of Schedule VI.

7. Former Office Holders as Witnesses before the Public Accounts Committee.

On occasion, the current accounting officer did not hold the office when the events occurred that are the subject of inquiry by the Public Accounts Committee's. In these instances the Committee might want to question the former holder of the office under whose tenure the decisions were made. Former holders of an office may appear as witnesses and give testimony, but they appear before the Committee as individuals, that is to say as private persons, not as the responsible holders of the office.

A previous office holder does not have the power to rectify a problem. Only the current office holder has responsibility in this sense of possessing the capacity to act. Nevertheless the Committee will expect former holders of an office if requested to give an account of their decisions related to the issue while in office. But since they no longer hold the office the previous incumbent cannot commit to action and hence cannot, in the practice of Canadian parliamentary government, be the "responsible" officials. However

⁸ *Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, pp 24-5.

there is another sense of responsibility - that of being the person responsible for taking a specific action, making a decision, or failing to act. In this sense the personal responsibility of accounting officers represented by their signing of the accounts does not end when they leave office. Decisions and actions of former office holders can be and often have been the subject of study and comment in Committee reports.

The Committee can be expected to recognize that when the issue relates to decisions made during the tenure of a former office holder, the current office holder's responsibility is limited and primarily related to taking corrective action. Though the current office holder is expected to answer questions as the responsible official, the Committee will not normally insist on the incumbent's personal responsibility for past events in such circumstances.

8. The Role of the Treasury Board.

The Treasury Board is a committee of the Cabinet (formally of the Queen's Privy Council) established under the *Financial Administration Act*. The Board's operational arm is the Treasury Board Secretariat, headed by the Secretary of the Treasury Board, a senior public servant with the status of Deputy Minister. As the general manager and employer of the Government, the Treasury Board oversees financial administration in departments. Under the *Financial Administration Act* the Treasury Board has authority over all matters relating to administrative policy, financial management, expenditure plans, programmes of departments, and other matters relating to the prudent and effective use of public resources in support of government objectives. The Board plays a critical role in establishing management policies.⁹ It is responsible for dealing with Deputy Ministers and heads of agencies in their capacity as accounting officers.

Accounting officers are accountable to the Treasury Board for their delegated and statutory management responsibilities. The Treasury Board should provide departments with a clear sense of the government's management expectations and provide Parliament with the assurance that effective internal management systems are in place. The Treasury Board and its Secretariat oversee policy compliance, maintenance of control systems and, based on risk assessment, individual transactions.¹⁰ In practice, an accounting officer's accountability to the Treasury Board is normally carried out through providing reports and working with its Secretariat. The Secretary to the Treasury Board will support Deputy Ministers in their role as accounting officers. In addition to these specific accountabilities to the Treasury Board, an accounting officer remains accountable to his or her Minister for the management of the department.

The Treasury Board and the Public Accounts Committee share a common interest in ensuring that administration in government achieves the standards of compliance,

⁹ *Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, p 28.

¹⁰ *Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, p 30.

prudence and probity. They also share a common focus on the administrative heads of departments and agencies - the accounting officers for departments and agencies. The Treasury Board should ensure that accounting officers are fully informed of their responsibilities and their accountability before the Public Accounts Committee, and their duty to be properly briefed for the attendance before the Committee.

The vast bulk of the recommendations of the Public Accounts Committee are directed towards the responsibilities of the Treasury Board and toward matters for which accounting officers are accountable to the Board. The Public Accounts Committee may request that the government table a comprehensive response to a report from the Committee within 120 days. The Auditor General will continue to report, when he or she considers it desirable, on the government's actions and response to reports and recommendations of the Committee.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 13, 20, 24, 25, 26, 27, 30, 35, 44 and 45 including this report is tabled).

Respectfully submitted,

Hon. Shawn Murphy, M.P.
Chair

