
The Federal Accountability Act: An Unnecessary Fight Over Deputy Minister Accountability

Alan Gilmore

The *Federal Accountability Act* (FAA) received Royal Assent on December 12, 2006. The Act is touted by the government as strengthening accountability. One of its chief means of achieving this objective is to designate deputy ministers and deputy heads of agencies as accounting officers for their organizations. There is now a battle between House of Commons and the government over exactly what this designation means.

The concept of the accounting officer was borrowed from the United Kingdom where for over a century it has underpinned the principle of ministerial accountability to Parliament by ensuring that the permanent head of a department (the equivalent of our deputy minister) is clearly responsible for administration.

Although the accounting officer concept has worked well in the UK, Canadian governments, the Privy Council Office (PCO) and most deputy ministers have opposed adopting it. They are concerned that if Canada adopted the UK approach it would undermine rather than reinforce Canadian ministerial accountability to Parliament and politicize deputy ministers.

After a lengthy battle the FAA appeared to adopt the accounting officer model. However, as discussed in my article entitled *The Accounting Officer: What are Canadians Getting?*²¹ the FAA creates an accounting officer with significantly less authority than UK accounting officers. Nonetheless, even the limited mandate given to Canadian accounting officers is being contested.

In March 2007, the PCO published *Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees* which essentially states that the FAA has changed nothing. In contrast, the Public Accounts Committee (PAC) of the House of Commons believes that the FAA has made significant changes in deputy minister accountability.

To a large extent the cause of this dispute is a misunderstanding by the parties of whether or not the UK accounting officer is accountable to Parliament, particularly the UK Public Accounts Committee. The parties do not seem to realize that the UK accounting officer is not accountable to the Committee. As a result, the language of accountability in Canada has become distorted and thirty years of needless debate has ensued.

The contortion of the language of accountability can be traced to the PCO's 1977 submission to the Royal Commission on Financial Management and Accountability (Lambert Commission) which in 1979 recommended that an approach similar to the UK accounting officer be adopted in Canada. Apparently believing that the UK accounting officer was accountable to Parliament, the PCO sought to blunt the Commission's recommendation by distinguishing between "accountability" and "answerability," and "accountable to" and "accountable before" Parliament. The submission argued that ministers are **accountable to** Parliament while deputy ministers are **answerable before** parliamentary committees. That is, deputy ministers only answer committee questions on behalf of ministers to provide information and explanations on administrative matters. They are not explaining how they have exercised their responsibilities in their own right.

The introduction of this terminology into the language of accountability in Canada was unnecessary since UK accounting officers have never been accountable to the UK Parliament or its committees. If the issue of accountability was the central point of concern, then the PCO need only have made the statement that the UK accounting officer was not accountable to Parliament and then accepted the Lambert Commission's recommendation with this stipulation. This may have avoided thirty years of debate.



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In any event, this did not occur. Over the years the debate has become more obtuse as the government, the PCO, the PAC and others began to use the same phrases but with different meanings and implications. The following examination of the use of these phrases by the Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission), the PAC, the PCO and the government illustrates how the debate has unfolded. Decoding the language of accountability provides an insight on what needs to be done to reconcile the government's, the PCO's and the PAC's positions.

In February 2006, after receiving conflicting testimony over who was responsible for the sponsorship program scandal, Gomery recommended that:

In order to clear up the confusion over the respective responsibilities and accountabilities of Ministers and public servants, the Government should modify its policies and publications to explicitly acknowledge and declare that Deputy Ministers and senior public servants who have statutory responsibility are accountable in their own right for their statutory and delegated responsibilities before the Public Accounts Committee [emphasis added].

To the uninitiated this recommendation seems clear. The phrase "accountable in their own right" would seem to indicate that Gomery wanted deputy ministers to be accountable to the PAC for their own

responsibilities. However, Gomery then used the phrase “**before the Public Accounts Committee**” to describe the status of accounting officers appearing at PAC hearings.

Whether intended or not, Gomery’s use of the phrase “before the Public Accounts Committee” sends a mixed message. As indicated, the word “before” has long been PCO code for distinguishing between the accountability of ministers to Parliament and the answerability of deputy ministers before parliamentary committees. The PCO has employed this language to parry recommendations that it believed suggested that deputy ministers would be accountable to Parliament. However, Gomery used it to recommend that they should be accountable to the PAC.

In May 2005, subsequent to its hearings on the sponsorship program scandal, the PAC recommended that deputy ministers be designated as “accounting officers with responsibilities similar to those held by accounting officers in the United Kingdom.” It further recommended that accounting officers “be held to account for the performance of their duties and for the exercise of their statutory authorities **before the House of Commons Standing Committee on Public Accounts**” [emphasis added]. Like Gomery, the PAC appeared to use the PCO wording “before” as a synonym for accountable “to.”

In August 2005, the Liberal government rejected the PAC’s recommendation arguing that the respective responsibilities of ministers and deputy ministers did not have to be adjusted because they were perfectly clear: Ministers are accountable to Parliament and deputy ministers are accountable to their ministers; and when deputy ministers appear before parliamentary committees they do so as representatives of their ministers.

Despite the government’s opposition to the PAC report, the House of Commons voted to concur with it. Thus, the House of Commons endorsed the PAC’s recommendations to designate deputy ministers as accounting officers with similar responsibilities as their UK counterparts.

In June 2006, the PAC issued a second report criticizing the government’s response for not respecting the serious nature of the subject and the time and effort spent by the

PAC to develop its recommendations. By the time the PAC made this report there had been a change in government; the Conservatives were now in power. The PAC, perhaps expecting a different response, re-tabled its May 2005 report in the House of Commons and requested that the new government respond comprehensively to its recommendations.

The PAC may have based its hopes on the Conservative Party’s 2006 election platform. The platform stated:

The sponsorship scandal first came to light in an internal audit – an audit which the Liberals initially tried to cover up. Under the Liberals, the lines between ministers and non-partisan civil servants have been blurred, and clear lines of accountability need to be re-established.

To establish the “clear lines of accountability” the Conservatives promised to designate deputy ministers as “Accounting Officers” who would be “**responsible to Parliament** for the departmental spending and administrative practices of his or her department” [emphasis added]. Note that the Conservative platform did not use the word “before” to imply that deputy ministers would only be answering questions on behalf of ministers.

In April 2006, the Conservative government introduced the *Federal Accountability Act* in the House of Commons. The wording of the FAA allowed those who were expecting a major change in deputy minister accountability to conclude that this is what was intended.

However, there were clues that this might not be the case. Section 16.4 of the FAA states that the accounting officer is **accountable before** [emphasis added] the appropriate committees of the Senate and House of Commons 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 for preparation of the Public Accounts; and*
- (d) *the performance of other specific duties assigned to him or her by the FAA or*

any other act in relation to the administration of the department.

Note the drafters of the legislation used the phrase “accountable before” rather than “accountable to” parliamentary committees.

Another clue that major change might not occur was that the section is introduced by the statement that accounting officer accountability takes place within the “framework of the appropriate minister’s responsibilities and his or her accountability to Parliament, and subject to the direction of his or her department.” This implies that the clause in departmental statutes stating that the ministers are responsible for the direction of their departments could limit the scope of the accounting officer’s functions and his or her status when testifying at Parliamentary committee hearings.

However, MPs could be forgiven for not challenging this wording because the Conservative government’s response to the PAC’s re-tabled report indicated that the scope of the responsibilities of the accounting officer under the FAA was substantially the same as those recommended by the PAC. Moreover, the government emphasized that the FAA made it a matter of law that deputy ministers “answer questions relating to their management responsibilities” and that accounting officers would appear before parliamentary committees and “answer questions put to them by committee members in respect of the carrying out of the responsibilities and the performance of duties referred to in the proposed Act.”

However, these statements were followed by caveats that “accounting officers are **not accountable to Parliament** in the manner of ministers, in the sense of being politically accountable and subject to censure or its demands that specific courses of action be taken.” It concluded: “Accordingly, the fundamental accountability between the minister and Parliament and between a minister and his or her deputy minister have **not** been altered but have been reinforced and clarified in legislation” [emphasis added]. MPs would have needed a code book to enable them to read between the lines that this group of paragraphs was stating that nothing would change.

The government’s position became clear to the PAC when in March 2007, the PCO

posted on its website *Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees*. The objective of the document is to “help accounting officers understand the nature of their responsibilities” under the FAA and to provide “practical guidance for their appearances before committees of Parliament.” The document contains statements indicating that nothing has been changed by the FAA.

The document states that the accounting officer provisions only “codify long-standing practices whereby deputy ministers appear before parliamentary committees.” It also extensively discusses the meaning of the distinction of “accountable before” and “accountable to.” After reading the PCO’s guidance to accounting officers it would be reasonable to conclude that the FAA was given the wrong title. Rather than the *Federal Accountability Act* a more accurate title would have been the *Federal Answerability Act*.

The document also lectures parliamentarians on how they should conduct themselves. It contains a section entitled “Conduct of Committee Members Toward Officials” which informs parliamentarians of the limits of their authority and that accounting officers should be treated respectfully.

Taken aback by the government’s approach, the PAC immediately issued its own protocol for the *Appearance of Accounting Officers as Witnesses Before the Standing Committee on the Public Accounts*. (Prior to issuing the protocol the PAC had tried without success to discuss drafts of its document with the Treasury Board Secretariat.) According to the PAC, the FAA provides that accounting officers “answer questions as the holders of responsibilities in their own right.” The protocol also interprets the FAA to mean that while ministers “may provide general direction in areas where the accounting officers possess statutory responsibility, [they] cannot provide direction on specific activities in these areas.” In addition, the protocol suggests that the PAC has the authority to assess the performance of accounting officers.

Reconciling the positions of the government and the PAC is possible if they inter-

pret the accounting officer concept as it is practiced in the UK and discard unnecessary and misleading interpretations that have entered the language of Canadian accountability.

The government and the PAC already agree on that the FAA does not diminish the responsibility or accountability of Ministers to Parliament. They also agree that the PAC does not examine the merits or defects of policies; has no authority to punish accounting officers or give them direction; and that committee questions should be relevant to the responsibilities of accounting officers.

Given the wording of the FAA, the government should concede that accounting officers are answering questions about their responsibilities in their own right. This approach is consistent with the wording of the FAA that states accounting officers are accountable before committees of Parliament for “the signing of the accounts that are required for preparation of the Public Accounts,” and for “the performance of other specific duties assigned to him or her by the FAA or any other act in relation to the administration of the department.”

For its part, the PAC should stress its agreement with the government that accounting officers should not be asked questions relating to the merits of public policy or the effectiveness of programs. Answering questions on these areas may entangle accounting officers in partisan political debates. However, this injunction should not preclude deputy ministers from answering questions on the content of departmental reports on plans and priorities and departmental performance reports provided to Parliament. Each report contains a management representation statement signed by the deputy minister indicating that the deputy minister is submitting the report for tabling in Parliament and that among other things the report presents “consistent, balanced, and accurate information to Parliament.” Since this is a representation signed by the deputy minister it would seem reasonable that the PAC could ask questions relating to these reports and expect the deputy minister to answer in their own right.

The government should also concede

that the PAC could make recommendations in reports to the House of Commons on how the measures taken by the accounting officer could be improved. What is required is agreement on how the report can be phrased so as not to imply that the accounting officer is accountable to the PAC. It should be possible to reach such an agreement since the PAC has been making recommendations to departments as a result of hearings on Auditor General reports for many years without implying that ministers or departments are accountable to the PAC.

The second step would be for the PCO and the PAC to delete sections of their documents that divert attention from core issues. The PCO should delete its lesson in manners to parliamentarians. In return, the PAC protocol should emphasize that committee members should not ask accounting officers questions on the merits of public policy or engage in partisan politics.

The PAC should delete its direction to the Treasury Board to provide Parliament with information on the effectiveness of internal management systems. While this may be a useful recommendation it would have been more appropriate to make it in a report to the House of Commons rather than in a protocol addressing accounting officer appearances before the PAC.

The government, the PCO, and the PAC should not be surprised by the current disagreement on the meaning of the accounting officer designation in the FAA. In large part it is the result of an entrenched misunderstanding of the role of the UK accounting officer. However, the positions of the parties can be reconciled by adopting the UK accounting officer model as it is practiced and discarding the confusing language that has developed in Canada. ■

Post-Script: On May 15, 2007, the House of Commons concurred with the Public Accounts Committee Protocol giving it the status of an order of the House of Commons and overriding the PCO statement. This dispute is not over.

Reference

1. *FMI Journal*, Autumn 2006, Volume 18, No. 1, pp. 20-23