
The Ethics Police Era

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The *Federal Accountability Act* created six new agents reporting to Parliament on the conduct of the federal bureaucracy. These agents joined eight existing entities already charged with keeping tabs on various bureaucratic functions. Collectively, these agencies form a formidable oversight array. The impact of this extra-parliamentary apparatus and the accompanying central agency values and ethics initiatives on government and the public service is unclear. Will the agencies and initiatives demonstrably increase accountability and ethics in government? Do they address the root causes of the values and ethics problems in the federal government? Is it clear how they will prevent or mitigate values and ethics problems in the future?

Most of the recent federal government values and ethics initiatives are a response to a series of events characterized as “scandals” by the media and opposition political parties. The events include the Somalia Inquiry (1997), the Krever Inquiry into tainted blood (1997), the grants and contributions controversy in Human Resources Development Canada (2000), overspending on the Firearms Registry (2003) and the contracting problems in the Sponsorship Program (2003). To these events could be added the misappropriation of funds from the RCMP Pension Fund in 2003 that came to full light in 2007. Associated with them are allegations of improper spending by the heads of the National Labour Relations Board (1997), the Privacy Commissioner (2003) and the Office of the Correctional Investigator (2006) and allegations of conflict of interest connected to “Shawinigate” (1999). There is no doubt that these events raise serious questions about accountability and ethics in government.

As a start to answering the questions posed, this article identifies the various Parliamentary agents, their budgets, and mandate, the key Treasury Board Secretariat

(TBS) and Canada Public Service Agency (CPSA) initiatives, and presents some initial observations on their potential effectiveness.

The agents that have a direct impact on federal government departments and agencies include the:

- Office of the Auditor General of Canada (1878)
- Public Service Commission (1908)
- Official Languages Commissioner (1970)
- Privacy Commissioner (1983)
- Access to Information Commissioner (1983)
- Canadian Human Rights Commission (1985)
- Commissioner of the Environment and Sustainable Development (1995)
- Public Sector Integrity Commissioner (2007)
- Procurement Ombudsman (2007)

The agents that directly affect Parliament and the political process are the:

- Chief Electoral Officer (1920)
- Conflict of Interest and Ethics Commissioner (2007)
- Commissioner of Lobbying (legislation not yet proclaimed)
- Parliamentary Budget Officer (2007)

In addition, the Office of the Director of Public Prosecutions was created in 2007.

The *Federal Accountability Act* also created the position of the Accounting Officer. The Act designated deputy ministers and heads of agencies as Accounting Officers. The position is a pale copy of its British model. (For a comparison of the Canadian and British Accounting Officer mandates please see my previous article “The Accounting Officer: What are Canadians Getting?” *FMI Journal*, Volume 18, No. 1, fall 2006.) The House of Commons Standing Committee on Public Accounts (PAC) holds the position that the Accounting Officer is accountable to the Committee. If

this is the case then the Accounting Officer could be considered a quasi-parliamentary agent. However, the Privy Council Office’s position is that the *Federal Accountability Act* simply enshrined existing practice, that nothing has changed, and certainly Accounting Officers are not accountable to the PAC.

The spending and staffing plans of Parliamentary agents for fiscal year 2008-09 are summarized in Table 1. Based on available information, the agents that directly affect the federal bureaucracy plan to have over 2,100 full-time equivalent employees and spend over \$258 million in 2008-09. The Office of the Auditor General (OAG) and the Public Service Commission (PSC) have most of the resources. In 2007-08 the OAG forecasted that it would have 625 full-time equivalent employees and spend \$80.6 million. It planned to spend about \$44 million on performance audits of departments and agencies, \$5 million on audits of the financial statements of the Government of Canada, \$24 million on financial audits of Crown corporations and territorial governments, \$4 million on special examinations of Crown corporations, and \$2.2 million on sustainable development monitoring activities.¹ In 2007-08, the PSC planned to spend about \$29.8 million on its “oversight of integrity of staffing and political neutrality” program. This program involves examining whether organizations have implemented PSC monitoring

Table 1. Summary of 2008-09 spending and staffing plans of Parliamentary Agents

Parliamentary Agent	Planned Spending (\$ millions)	Planned Staffing (Full-time Equivalent Employees)
Office of the Auditor General, including the Commissioner of the Environment and Sustainable Development	79.2	625
Public Service Commission	99.6	1,030
Commissioner of Official Languages	19.9	177.5
Privacy Commissioner	19.0	150
Access to Information Commissioner	9.6	90
Human Rights Commission	20.6	190
Public Sector Integrity Commissioner	6.55	41
Procurement Ombudsman ¹	3.7	N/A
Chief Electoral Officer	110.5	388
Conflict of Interest and Ethics Commissioner	N/A	N/A
Commissioner of Lobbying	N/A	N/A
Parliamentary Budget Officer ²	2.5	N/A
Director Public Prosecutions	120.6	530

Source: Departmental Reports on Plans and Priorities 2007-08, <http://www.tbs-sct.gc.ca>
1. PWGSC estimate for funding in 2007-08 2. Hill Times, March 31, 2008

and audit and the recommendations and conducting examinations of the public service staffing. Spending on this area is expected to rise to \$40.8 million in 2010-11.²

The mandates of the agents of Parliament are summarized in Table 2. As described, these agencies have significant powers and oversee almost every aspect of activities of the federal public service. In 2008-09, the OAG plans to report on the findings of 29 performance audits which will be published up to four times a year in reports of the Auditor General of Canada and the Commissioner of the Environment and Sustainable Development to Parliament. These audits impact on all sectors of government. For example, in 2008-09 the OAG will report in May 2008 on the First Nations Child and Family Services program, in November 2008 on the governance of small entities, and on contracting for services, and in February 2009 on the Canada Revenue Agency's efforts to ensure compliance.³ In 2008-09, the PSC plans to "initiate a new audit cycle, including audits of large entities."⁴

Another significant part of the array of activities to oversee ethics in the federal government is the establishment of codes of conduct for members of the House of Commons, ministers and Governor-in-Council appointees, the public service, lobbyists and suppliers of goods and services to the government. Table 3 summarizes key elements of these codes. The Office of the Conflict of Interest and Ethics Commis-

sioner, deputy ministers, and the Canada Public Service Agency, the Office of the Registrar of Lobbyists (or the Commissioner of Lobbying), Public Works Government Services Canada, and the Treasury Board of Canada Secretariat (TBS) are responsible for the administration of these codes.

To add to these codes, the *Public Servants Protection Disclosure Act* requires the Treasury Board to establish a new code of conduct for the entire public sector that "will set out the values that should guide public servants in their work and professional conduct." Further, it requires "chief executives of federal departments and organizations to establish their own codes that are consistent with the Treasury Board code, but adapted to the needs of their organizations." Chief Executives are also required to designate a senior officer to be responsible for handling disclosures of organizational wrongdoing that have been made within the department rather than to the Public Service Integrity Commissioner.⁵

This apparatus of parliamentary agents, codes of conduct and internal and external disclosure regime for wrongdoing is supplemented by TBS requirements built into its Management Accountability Framework (MAF) initiative. The MAF exercise established the Treasury Board's "expectations of senior public service managers for good public service management."⁶ The MAF is supposed to provide an integrated model of different management initiatives, provide a basis for deputy ministers to ensure good management, and allow Treasury Board to

assess management performance. Departments are rated on 10 elements using a four category scale ranging from the lowest rating, needs attention, to opportunity for improvement, to acceptable, to the highest level, strong. One of the elements is public service values consisting of two areas: values-based leadership and organizational culture. The MAF process is now in Round V (2007-08). For Round V, the Office of Public Service Values and Ethics (OPSVE) in the Canada Public Service Agency is using a departmental self-assessment approach. Departments are rating themselves by answering 10 questions substantiated by supporting facts and evidence. The OPSVE reviews this information, consults, and then provides overall ratings.⁷

Preliminary Observations

For the most part, the commissions of inquiry and the audits by the OAG of the key "scandals" focused on the role of public servants and violations of government regulations and policies. By the nature of its mandate the examinations conducted by the OAG totally focused on the role of departments and their public servants. The major exception to this pattern was the Sponsorship Commission of Inquiry which focused on the role of ministers and their advisors as well as public servants. The focus on the role of public servants not unsurprisingly resulted in recommendations that called for changes in the internal workings of government and more oversight of the bureaucracy by external bodies, preferably by parliamentary agents. The assumption behind these recommendations is that the conduct of public servants was a root cause of the "scandals." Thus, fixing the public service, especially the role and duties of senior public servants, with more rules and central agency direction, and particularly, external oversight will cause them to act properly. Hence, the establishment of the OAG, the PSC, the Access to Information and Privacy Commissioners, the Human Rights Commission, the Procurement Ombudsman, and the Public Service Integrity Commissioner.

Is this assumption valid? Or, is it the result of most of the inquiries and all the OAG audits focusing on departments and the role of public servants (implicitly the levels below the deputy minister) rather

Table 2. Summary of mandates of Parliamentary Agents

Parliamentary Agent	What They Do
Office of the Auditor General, including the Commissioner of the Environment and Sustainable Development	<ul style="list-style-type: none"> • Performance audits of departments and agencies • Performance audits of environment and sustainable development activities • Audits of Nunavut, the Yukon, and the Northwest Territories • Audit of the Public Accounts of Canada • Financial audits and Special Examinations of Crown corporations
Public Service Commission	<ul style="list-style-type: none"> • Recruitment strategies and staffing practices implemented across the public service • Organizations have implemented PSC monitoring and audit recommendations • Enhanced risk-based oversight of the integrity of public service staffing • Staffing and assessment services
Commissioner of Official Languages	<ul style="list-style-type: none"> • Reviews complaints and investigates • Conducts investigations on his own initiative • Evaluates the language performance of federal institutions and other organizations produces performance report cards • Where there is a high level of risk, he conducts in-depth audits • Intervenes in court cases, “judiciously” in major official languages issues, and in development of laws, regulations and policies • Monitors implementation of the Official Language Act by federal institutions and other organizations. • Heightens Canadians’ awareness of the benefits of linguistic duality
Privacy Commissioner	<ul style="list-style-type: none"> • Advocate for the privacy rights • Investigates complaints, conducts audits • Pursues court action
Access to Information (ATI) Commissioner	<ul style="list-style-type: none"> • Investigates complaints • Pursue judicial review in situations where there is an important principle of law • Monitors the performance of federal institutions engaging in systemic or repeated breaches of the ATI Act
Canadian Human Rights Commission	<ul style="list-style-type: none"> • Proactive and influential catalyst for moving forward on human rights issues, both nationally and internationally • Audits federally regulated employers • Investigates human rights complaints
Public Sector Integrity Commissioner	<ul style="list-style-type: none"> • Establish a safe, confidential mechanism for public servants or members of the public to disclose potential wrongdoing in the public sector. • Conducts investigations • Protects public servants from reprisal for making such disclosures or participating in investigations.
Procurement Ombudsman	<ul style="list-style-type: none"> • Review procurement practices across government • Review complaints from suppliers
Chief Electoral Officer	<ul style="list-style-type: none"> • Making sure that all voters have access to the electoral process; maintain National Register of Electors • Conduct federal electoral events such as: <ul style="list-style-type: none"> – Register political parties, party leadership contestants – Administer controls on the financing sources and election expenses – Examine and disclose financial reports – Authorize payment of allowances to registered parties – Reimburse the election expenses according to Canada Elections Act – Appoint returning officers
Conflict of Interest and Ethics Commissioner	<ul style="list-style-type: none"> • Administer the Conflict of Interest Code for Members of the House of Commons
Commissioner of Lobbying*	<ul style="list-style-type: none"> • Oversee the enforcement of the Lobbying Act • Establish a registry of lobbyists • Investigate alleged breaches of the Lobbying Act or of the Lobbyists’ Code of Conduct.
Parliamentary Budget Officer ¹	<ul style="list-style-type: none"> • Provide objective analysis to the Senate and House of Commons about the estimates of the government, the state of the nation’s finances and trends in the national economy, • Undertake research when requested by certain Parliamentary committees • Provide estimates of the costs of proposals contained in Bills introduced by members of Parliament other than in their capacity as ministers
Director Public Prosecutions	<p>Prosecution of:</p> <ul style="list-style-type: none"> • Drug ,organized crime and Criminal Code offences • Federal offences to protect the environment, natural resources, economic and social health • Charges under the Part II.1 of the Criminal Code (Terrorism), the Proceeds of Crime (Money Laundering) Terrorist Financing Act, the Customs Act, the Excise Act, and the Excise Tax Act to combat trans-national crime and terrorism.

Source: Departmental Reports on Plans and Priorities 2007-08, <http://www.tbs-sct.gc.ca>

1. Federal Accountability Act, Summary, <http://www2.parl.gc.ca>

than the role of the minister and their advisors? The role of ministers and advisors was only alluded to by the Somalia and Krever inquiries, and avoided in the reports of the Auditor General. The impression left was that public servants were the problem.

A careful reading of the Krever report places the responsibility for the tainted

blood scandal at the feet of the federal and provincial ministers who failed to approve a much needed blood fractionation facility because several provinces wanted the economic benefits from such a plant to accrue to their province. Rather than give one province a possible benefit, no facility was built. The result was that Canada had to

buy the needed blood components from U.S. suppliers who obtained the blood from groups at high risk of being infected with HIV/AIDS and hepatitis C.

Similarly, the Somalia Commission report summarizes the decisions made by ministers to rapidly deploy unready Canadian Forces to a war torn country, but it was lower level

Table 3. Key elements of federal codes of conduct

Code of Conduct	Key Elements
Conflict of Interest Code for Members of the House of Commons ¹	<ul style="list-style-type: none"> • Maintain public confidence and trust in the integrity of Members, and respect and confidence in the House of Commons • Demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case; • Provide guidance for Members on how to reconcile their private interests with their public duties and functions • Foster consensus among Members by establishing common standards and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan advisor.
Conflict of Interest Act ¹ Part 1: Conflict of Interest Rules <ul style="list-style-type: none"> • Ministers, Secretaries of State and Parliamentary Secretaries • Ministerial Staff and Ministerial Advisors • Governor in Council Appointees and Ministerial Appointees 	<ul style="list-style-type: none"> • Don't exercise official power to further private interest • Arrange private affairs to prevent conflict of interest • Don't give preferential treatment to any person • Don't use confidential information for private purpose • Don't allow offers of outside employment to influence decisions • Don't accept gifts or advantages that would be reasonably seen as influencing a decision
Values and Ethics Code for the Public Service ²	<ul style="list-style-type: none"> • Democratic, professional, ethical, and people values • Conflict of interest measures • Post-employment measures • Avenues of resolution for public servants who feel that their organization has breached the Code
Lobbyist Code of Conduct ³	<ul style="list-style-type: none"> • Conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists • Be open and frank about their lobbying activities, while respecting confidentiality. • Observe the highest professional and ethical standards, conform fully with not only the letter but the spirit of the Lobbyists' Code of Conduct, all relevant laws, including the Lobbyists Registration Act and its regulations.
Code of Conduct for Procurement ⁴	<ul style="list-style-type: none"> • Responsibilities of public servants under law and values and ethics code • Responsibilities of vendors, including respecting the responsibilities of public servants • Vendor complaints and procedural safeguards
Policy on the Prevention and Resolution of Harassment in the Workplace ⁵	<ul style="list-style-type: none"> • Harassment in the workplace is unacceptable and will not be tolerated

1. Office of the Conflict of Interest and Ethics Commissioner, <http://www.parl.gc.ca/ciec-ccie>

2. Canada Public Service Agency, Values and Ethics Code for the Public Service, <http://www.psagency-agencecfp.gc.ca>;

3. Office of the Registrar of Lobbyists, <http://www.orl-bdl.gc.ca>

4. Public Works Government Services Canada, Code of Conduct for Procurement, <http://www.pwgsc.gc.ca>

5. Treasury Board of Canada Secretariat, Policy on the Prevention and Resolution of Harassment in the Workplace, <http://www.tbs-sct.gc.ca>

officers and soldiers that faced court martial.

Finally, a review of the events leading to \$1 billion HRDC grant and contribution program controversy indicates that there were three major sources of the problem. The first major source was the program review process of the mid-1990s which significantly reduced the ranks of middle managers in HRDC and throughout the government by offering monetary retirement packages too good to turn down. This left HRDC without the necessary managerial talent to supervise a new major grants and contributions program which was under pressure from ministers to get the money out as soon as possible. The second source of the problem was the delegation of project and funding approval authority to relatively junior inexperienced officers in decentralized regional offices without middle management supervision. And, the third source of the problem was the initiation of a "breaking barriers" policy jointly

sponsored by HRDC and the TBS that was interpreted as encouraging public servants to focus on results with the implicit suggestion that no significant consequences would accrue if key financial controls were ignored or circumvented in the process. In the end, the brunt of the criticism and the consequences for the problems were borne by assistant deputy ministers, a new deputy minister, and a minister who was not there when the program was initiated.

Will the expanded federal government values and ethics apparatus prevent or mitigate these types of "scandals" in the future? Its effectiveness is questionable based on the track record of the existing Parliamentary agents and central agency initiatives. For example, the OAG despite extensive audits of Public Works Government Services Canada contracting in 1997 and 1999 did not detect the problems in the Sponsorship Program. And, while it reported on the problems in the HRDC grants and contri-

butions program in October 2000, its April 2000 report on HRDC's service quality at the local level concluded that HRDC had "made considerable progress in addressing service quality."

A second assumption is that a major cause of problems is individual conflict of interest (COI) involving the gain of monetary or other benefits sometimes in exchange for preferential treatment of the party offering the benefit; and, if it is made clear what a COI is then difficulties will be avoided. This is seen as applying to ministers, their advisors and Governor in Council appointees as well as senior public servants. The establishment of the codes is supposed to make it clear to the parties how to arrange and conduct their private affairs so as not to benefit or be perceived as benefiting from their public offices. However, the existing conflict of interest codes, the provisions of the *Financial Administration Act*, and the *Criminal Code* should have

prevented the allegations of wrongdoing associated with the heads of the National Labour Relations Board, the Office of the Privacy Commissioner, the Office of the Correctional Investigator and the Office of the Prime Minister. Given the track record of the government relating to whistleblowers is it reasonable to expect that public servants will place their faith in the new *Public Servants Disclosure Protection Act* and risk their careers to report such wrongdoing?

A third assumption is that the more the oversight bodies are removed from direct government control the more rigorous they will be in implementing their mandates and as a result government will be more ethical. The establishment of the OAG and the other agents of Parliament reflect this thinking. However, while there may be more oversight bodies there are still few consequences for not complying with the codes of conduct or legislation they oversee.

The *Access to Information Act* is a clear example. The 2006-07 Annual Report of the Office of the Commissioner of Access to Information reported that both the Privy Council Office (PCO) and the Department of Justice (DOJ) received failing grades for handling access to information requests in 2004, 2005 and 2006. The Access to Information Commissioner held out some hope for improvement by DOJ. However, he expected that despite a modest workload the PCO would continue to be chronically unable to deal with ATI requests despite assurances in 2005 to the Commissioner and the Standing Committee on Access to Information, Privacy and Ethics that the

matter would be addressed. The Commissioner also reported a case under the heading the “PCO Made Me Do It” where the Department of Finance did not release documents it should have released on the advice of the PCO. What values and ethics message does this type of conduct by the lead agency of the public service send to other departments and to public servants?

Lastly, let’s look at the TBS Management Accountability Framework process. What is the evidence that it is effective? To date the history of public service management “reforms” is littered with initiatives that have “underachieved and over-promised.”⁸ For example, the TBS initiated Program-Planning-Budgeting System (PPBS) in the 1970s and Management By Objectives (MBO) in the 1980s involved a lot of paper work and were unceremoniously discarded. While these initiatives do not appear to have caused significant damage except for their high cost, time consumed and morale lowering effects, newer initiatives like the “breaking barriers” ideology can cause major harm – witness the experience of HRDC which led the “breaking barriers” effort. The MAF process was adopted without a full understanding of why the previous management “reforms” did not work.

Clearly, the purpose of adding new Parliamentary agents and adopting new management programs is not to motivate public servants to be more careful to leave a trail justifying their actions or more creative in circumventing rules and regulations because the pressures to get the job done have not changed and the consequences for

not following the rules are insignificant. If the pressures that lead to values and ethics problems and the correct means to prevent them have not been clearly identified, then the effectiveness of the expanded effort is questionable from the start. Based on previous experience, it is not clear how the new federal government values and ethics initiatives are designed to address the causes of the problems in Somalia, HRDC, the tainted blood supply, the Sponsorship Program, and the RCMP Pension Fund, or more effectively prevent wrongdoing by ministers or heads of agencies. What is needed is a systematic review of federal initiatives to ensure that they are addressing the root causes of the ethics problems in government, that their cost and the work to meet their demands is justified, and that there are real consequences for not complying. ✧

Notes

1. Office of the Auditor General, Report on Plans and Priorities, 2008-09, Section III, Supplementary Information, Table 2, Financial and Human Resources and Subactivities, <http://www.tbs-sct.gc.ca>
2. Public Service Commission, Report on Plans and Priorities, 2008-09, Table 2: Departmental Planned Spending and Full Time Equivalents, <http://www.tbs-sct.gc.ca>
3. Office of the Auditor General, op. cit., Section III—Supplementary Information
4. Public Service Commission, op. cit., Plans and Priorities, Priority II
5. Canada Public Service Agency, Overview of the Public Servants Disclosure Protection Act, <http://www.psagency-agencefp.gc.ca>
6. Treasury Board of Canada Secretariat, Management Accountability Framework, www.tbs-sct.gc.ca
7. Ibid
8. Lebow, R. and R. Spitzer, *Accountability: Freedom and Responsibility without Control*, San Francisco, CA: Berrett-Koehler Publishers, Inc., 2002.