

Transparency, Oversight and Accountability

Notes for Remarks at the PPF Symposium

by

James R. Mitchell

February 14, 2007

Check against delivery

-
- I will start with a confession. When the Federal Accountability Act was introduced, I went on record as saying that we should regard the sections on the Accounting Officer as simply a statutory affirmation of what has always been the case in the relationship between Deputies and Parliamentary Committees. That is, Deputies are obliged to come before committee to explain what has been done with respect to program management and departmental administration.
 - Let me remind you of what those sections say.
 - Section 16.4 (1) of the amended FAA reads as follows:
 - “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 named in Part I of Schedule VI is accountable before the appropriate committee of Parliament for:
 - the measures taken to organize the resources of the department to deliver departmental programs in compliance with government policies and procedures;
 - the measures taken to maintain effective systems of internal control in the department;
 - the signing of the accounts that are required to be kept for the preparation of the Public Accounts pursuant to section 64; and
 - 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 Act then applies the same obligations to deputy heads of the other Parts of Schedule VI (that is, the long list of ‘departments for the purposes of the FAA’).
 - What is the accountability of the accounting officer? It is defined in 16. 4 (3) as:
 - “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 the duties referred to in [the preceding sections]”
 - I still think that is true. Certain I believe that was the intention behind this portion of the Act, something reaffirmed most recently by the Prime Minister in his wonderful post-Gomery reply to the former senior officials who had written expressing concerns about what the government might do in response to the Gomery recommendations.

-
- So we all know what the intention was, and many of us – including me – think the intention was correct.
 - But what are the consequences, at least to date? What has been the *actual* impact of the new world of the Accounting Officer?
 - I see some significant consequences which, in my view, suggest some important lessons for future practice by senior officials.
 - First consequence: Committees, and especially the PAC, are using the ‘new world’ of the accounting officer to flex their muscles in relation to Deputies and their departments.
 - They are calling Deputies to appear and expecting them to answer not simply on administration but on why certain things have been done (or not).
 - In many cases, these are questions that put Deputies in a difficult position in terms of their fundamental obligation of professional loyalty to the government they serve.
 - Second, Committees are declaring a right – as yet unchallenged – to go around the Deputy and call forward any particular officials they wish to hear from.
 - That is, although they seem to have a strong sense of the *responsibilities* of the Accounting Officer, they do not seem to acknowledge his or her *authority*. Members apparently feel free to call *anyone* to account before the committee.
 - Third, the tenor of the questioning by committee members has taken rather a negative turn.
 - Officials have been badgered, insulted and too often treated as though they were the subjects of a hostile inquiry into wrongdoing rather than as responsible, senior participants in the constitutionally fundamental relationship between Ministers and the House.
 - So here’s what I think needs to be done about this.
 - First, officials and committee members alike need a public statement of doctrine that will set the ground rules for appearances by officials before Committee. The Prime Minister’s letter would provide an excellent foundation for this. But the key point is, the rules have to be clear or the whole process will suffer.
 - Second, we need to remind ourselves that the term accountability is properly linked with two other concepts that ought not to be overlooked in the present Parliamentary context – those concepts are *responsibility* and *authority*.

-
- If Deputies are to function as Accounting Officers, then their responsibilities, both as Deputy Heads and before Committee, must be made clear to all, and they must be respected by the Committee.
 - Deputies are responsible for administration and for advising on policy. But as Accounting Officers, they appear before Committee solely on matters of administration.
 - They are not accountable to the committee, but they are responsible for accounting before the committee.
 - They can explain government policy, but it is essential that Deputies not try to defend policy or to explain how policy decisions were reached.
 - And if the responsibilities of Accounting Officers are clear, then so should be their authority – it is the Deputy who is accountable before the Committee, not every officer in the department.
 - If persons other than the Deputy are to speak before committee, they should do so as the delegate – the subordinate – of the Deputy, acting under his or her authority. They have no statutory duty to account before the committee on matters of administration. And no responsibility.
 - This means, among other things, that Deputies have to be ready to stand up to protect their people – even if it leads to some tense moments before Committee.
 - But the bottom line is that, in this new world of transparency, oversight and accountability, Ministers have to recognize their fundamental constitutional obligation to account to Parliament for what has been done in and by the departments for which they are responsible.
 - If people don't stand up to do their duty now, this rapidly-evolving situation could turn quite ugly and could be very damaging to the public interest.