



Clarion Call



“Government For the People”

Mad River Institute for Political Studies

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Ethics and Accountability



In the light of the reports of Justice John Gomery, detailing corruption, mal-administration, and poor public policy regarding the now-deceased federal sponsorship programme, politicians from all parties fell all over themselves with statements on ethics and accountability during this last election.

In keeping with his promise, newly-minted Prime Minister Stephen Harper has brought forward a Federal Accountability Act to enforce ethical behaviour on the national government. (Passed the House of Commons on 21 June 2006; up for consideration in the Senate) Positions would be established or strengthened, including the Auditor-General, ethics' commissioner, information officer, public prosecutor, and lobbyists' registrar. A public appointments' commission would be established to set out merit-based qualifications for appointments to agencies, boards, and commissions. Financing of parties and elections would change by limiting personal donations to \$1,000, while banning corporate and union donations entirely. As well, candidate trust funds, used by some MPs, would be eliminated. The bill attacks cronyism by banning ministers and their staffers from being federal lobbyists for five years. While a good start, its provisions are too often full of holes, and do not live up to the good intentions that were expressed by reformers.



Highlights (using the government's headings):

Reforming the Financing of Political Parties

The Federal Accountability Act will impose a complete ban on contributions by corporations, unions, and organizations, as well as lower to \$1,000 the annual limit on contributions an individual can make to a particular registered party, candidates, nomination contestants, and district associations, and party leadership contestants. A similar limit will be placed on the contribution that a candidate, a nomination contestant, or a leadership contestant can make to his or her own campaign.

Reducing donor limits is long overdue, so this is a welcome change. It did not take many like-minded people to seriously influence campaigns with sizable contributions. There is still room for improvement, however. Levels could be dropped even further if spending limits were also lowered. Corporations and unions were already barred from donating, so this part is just hype.

Unfortunately, the Conservatives decided to use this provision to take a dirty, partisan shot at the Liberals. The \$1,000 limit is expected to apply to this year, 2006, yet we are already halfway into the year and the Liberals are nearly that far into their leadership convention. With a delegate fee of \$995 (What ordinary Canadian can afford this amount?), anyone wishing to attend the convention may well

violate the law should they have made a prior donation of more than \$5. The legislation should take effect for 2007. This is petty and undermines the spirit of change.

Banning Secret Donations to Political Candidates

The Federal Accountability Act will require that candidates report to the Chief Electoral Officer any gifts they receive worth more than \$500, not including those by will or from relatives. It will require MPs to report to the Conflict of Interest and Ethics Commissioner all private interests from which they derive benefit, including all trusts. It will prohibit MPs from using trust funds for political purposes, banning the transfer of money from a riding association to a candidate when that money is held in trust. The Conflict of Interest and Ethics Commissioner may order MPs to wind up trust funds or handle them in any other manner that the Commissioner considers acceptable. RRSPs and RESPs are exempted.

So gifts of \$500 or less are acceptable? All this means is bribes may come in a whole lot of small packages. Except by will or from relatives, gifts should be banned.

Strengthening the Role of the Ethics' Commissioner

The Federal Accountability Act will combine the functions of the Ethics Commissioner and Senate Ethics Officer and create a new position of the Conflict of Interest and Ethics Commissioner. The Commissioner will have to have a judicial or quasi-judicial background. The Commissioner will administer the *Conflict of Interest Act* and initiate formal investigations, while having the power to levy administrative penalties of up to \$500 for administrative breaches of this Act's provisions. It will apply to both MPs and advisors who work in a minister's office. The Prime Minister will no longer be able to overrule the Commissioner on whether the Prime Minister, a minister, or other public officeholder has violated this Act. Ministers will be prohibited from voting on matters connected with their business interests, and will no longer be allowed to use blind management agreements, or as some have termed them, 'Venetian blind trusts'. This means that public officeholders who are required to divest controlled assets will either have to sell them in an arm's-length transaction or place them in a fully blind trust.

The elimination of semi-blind trusts was necessary. As an example, it was never right that Paul Martin could peer into the workings of Canada Steamship Lines, his company, while he was Finance minister and the person who set out corporate taxes. Yet, this was permitted.

Unfortunately, Stephen Harper did not keep his election promise on permitting public complaints to go directly to the Commissioner. Instead, a concerned citizen will have to settle for going through their Member of Parliament, who will be required to attest by oath or affirmation that, in their opinion, the complaint is well-founded. The Commissioner will have the authority to reject complaints deemed to be frivolous, vexatious, or made in bad faith. Inexorably, this will lead to accusations becoming partisan, as MPs of one party will hardly be willing to attack their own caucus-mates, even if accused of serious wrongdoing. As well, the question of liability comes up. Will MPs voluntarily sign onto a complaint which, if ultimately found baseless, could lead to a lawsuit?

Toughening the Lobbyists' Registration Act

The Federal Accountability Act will establish a new Commissioner of Lobbying as an independent Agent of Parliament, with responsibility for enforcing the proposed *Lobbying Act*. Lobbyists will have to submit information on contacts with senior public officeholders. This will be a record of pre-arranged activities including with whom they met, when, and on what specific subject. Those officeholders will have to verify the accuracy and completeness of this record. The Commissioner will be able to summon and compel people to produce documents relevant to any investigation of possible infractions, prohibit

any lobbyist convicted of any offence from communicating with the government as a paid lobbyist for up to two years, publish the names of violators in reports before Parliament; and undertake expanded outreach, education, and communications activities to foster understanding and awareness of the requirements with the public, lobbyists and their clients, and public officeholders.

Contingency payments will be prohibited, both against lobbyists and in government contracts. That is, they will no longer be permitted to be paid based solely on the success of an endeavour.

Ministers, ministerial staffers, and senior public servants will be banned from registering and lobbying the Government of Canada for five years after leaving office. Certain individuals may be exempted, such as administrative staff, employed students, or individuals seconded from elsewhere.



This is probably the area that has received the most media attention. The Minister responsible, John Baird, tried to add those who had been on the transition team, retroactively, to the ban on lobbying. However, one woman had already registered as a lobbyist, and this would have effectively ended her livelihood. News people picked up on the apparent unfairness of the *ex post facto* prohibition. And while there is no question transition team members should have been banned from lobbying, this point should have been clearly made to them when asked to do the job.

However, there are other concerns the rules go too far. Business-people are concerned their research and development efforts may be exposed through the release of their contacts with government officials. And those lobbying in the public interest, but not for a specific interest, will have to register, if paid. Is that really what the legislation should intend?

As well, almost all commentators agree a 5-year ban is excessive. We do not. Yet five years is just an arbitrary number. We would recommend that ministers and ministerial staffers leaving their positions should be prevented from lobbying for the term of that government, or a minimum of five years. For example, a Cabinet minister defeated in the 1997 election would have been banned from lobbying until the Liberals' loss in January 2006. Senior public servants would face at least a five year interdiction.

Ensuring Truth in Budgeting with a Parliamentary Budget Authority

The Federal Accountability Act will create the position of Parliamentary Budget Officer within the Library of Parliament in order to provide objective, non-partisan analysis on the state of the nation's finances and trends in the national economy, and to estimate the financial cost of proposals currently or prospectively under consideration.

Again, a good idea. However, in typical fashion, the government members are leaving themselves an 'out' by allowing exemptions, similar to those under the *Access to Information Act*, that will restrict the Budget Officer from collecting or releasing certain types of information. In this way, there is no telling how distorted any assessment could be, and no way to guarantee that citizens will ever hear of it anyway.

Making Qualified Government Appointments

The Federal Accountability Act will create a Public Appointments' Commission in the Prime Minister's portfolio, composed of a Chair and four commissioners. They will set a code of practice for the selection process for agencies, boards, commissions, and Crown corporations, as well as overseeing and monitoring this process. However, actual appointments will remain with the Governor-in-Council (Prime Minister), after consultation with the leaders of recognized parties and after approval of the appointment by resolution of the House and Senate.

In past, priority appointment entitlements were permitted for all ministers' staff, allowing them to move from their political office into the general public service. This will end. Ministers' staff with three

years of consecutive service will be able to apply to internal competitions for public-service positions for up to one year, subject to the oversight of the Public Service Commission.

Where the government and opposition parties have previously appointed returning officers, this will now fall to the Chief Electoral Officer, presumably to guarantee merit-based appointments rather than partisan rewards.

The whole issue of the Public Appointments' Commission is a bit of an embarrassment for the Prime Minister. When his hand-picked choice as Chair was rejected by the Parliamentary Committee, Harper angrily said that he wouldn't bother with the commission until he had a majority government and could get his own choices in place. In fact, the government put forward an amendment to drop the commission entirely from the Act. However, it was returned by another amendment, this one from the Opposition.



Gwyn Morgan,
ex-Encana CEO

Cleaning Up the Procurement of Government Contracts

The Federal Accountability Act will establish a Procurement Auditor to review acquisition practices based on principles that will commit the Government of Canada to promoting the fairness, openness, and transparency of the bidding process. He/she will review complaints concerning the administration of contracts for goods and services, manage an alternative dispute resolution programme for contracts, and submit an annual report to the Minister of Public Works and Government Services on activities and outcomes, which the Minister would then table in Parliament.

Contracts will include integrity provisions that require action be taken to preclude corruption, collusion, and the payment of contingency fees in the procurement process.

Cleaning Up Government Polling and Advertising

The Federal Accountability Act will prohibit verbal-only reports by consultants and require departments and agencies to submit consultants' final written reports to Library and Archives Canada within six months of completing the work. As well, there will be a requirement that the contracting of government advertising and public opinion research be open, fair, transparent, and competitive.



Departments and agencies will have to post public opinion research contract information and executive summaries of completed projects on the Internet.

One area where the Martin government got into trouble was paying for consultants while permitting them to supply verbal-only reports, thus resulting in there being no evidence of their work. How does one audit this? Guaranteeing that work is actually done would have meant the worst abuses of the sponsorship scandal might never have happened.

Providing Real Protection for Whistleblowers

The Federal Accountability Act will make the Integrity Commissioner answerable to Parliament, with an expanded mandate. Public-sector employees, including those working for Crown corporations, will be able to directly contact the Integrity Commissioner to report wrongdoing in the workplace, as well as complaints from employees who feel that they have suffered reprisal for alleging wrongdoing. If conciliation fails, the Commissioner may refer the matter to a new, independent Public Servants' Disclosure Protection Tribunal. It will have the power to decide whether any reprisal occurred, ensure the reprisal is remedied, and see to it those who took any reprisals are disciplined. Anyone found to have willfully impeded investigations will face fines of up to \$10,000, imprisonment for up to two years,

or both.

The legislation was initially proposed to reward public-sector employees who exposed wrongdoing with up to \$1,000. That was removed by an Opposition amendment, as it added a rather self-serving note to what should be a selfless act.

Strengthening Access to Information Legislation

The Federal Accountability Act will expand the coverage of the *Access to Information Act*, the *Privacy Act*, and the *Library and Archives of Canada Act* to include such organizations as the Privacy Commissioner, the Chief Electoral Officer, the Auditor-General, the Public Sector Integrity Commissioner, and the Commissioner of Lobbying, Canada Post, Via Rail Canada, the CBC, and Atomic Energy of Canada, among others. These institutions will have to assist all those requesting information, and will be required to clarify the time limit for making a complaint under the *Access to Information Act*.

However, the government has chosen to back off rather strong commitments made by Stephen Harper during the election, and have chosen to study *Access to Information Act* changes, rather than make promised reforms. It will “immediately table in Parliament a separate draft bill that reflects the Information Commissioner's recommendations for access reform” and “a discussion paper to highlight a variety of issues and options for discussion”. Yet, the Information Commissioner states this reasoning – that his proposed amendments “would require more than 88 changes or additions to 46 provisions of the *Access to Information Act*” and he advised the Standing Committee he “had not (yet) had the benefit of consultations with stakeholders” – is untrue, and that their changes to the Act will, in fact, not better the legislation but make it far worse.



John Reid, Information Commissioner

Canadians have a right to know what government is doing. Sadly, our politicians and senior civil servants apparently disagree. At present, there are 13 exemptions to the *Access of Information Act*. The Act, if enacted as is, will amend this legislation to add 10 more! As well, eight of these will be mandatory and permanent and, according to the Information Commissioner, only one exemption like this currently exists "and it has been consistently abused". Secrecy is abhorrent to democratic principles. How can we have 'government by the people' if citizens can have information hidden from them? How can we trust those we select to run things if they can essentially lie to us?

Strengthening the Power of the Auditor-General

The Federal Accountability Act will give the Auditor-General the authority to inquire into the use of funds that individuals, institutions, and companies receive under a funding agreement with any federal department, agency, or Crown corporation. Anyone entering into such an agreement will have to maintain records with respect to federal funding provided, create a contractual right for the Auditor-General to inquire into the use of the funding, and require that recipients provide information and records to the Auditor-General upon request.

Departments will be required to review, at least once every five years, the relevance and effectiveness of each ongoing grants' and contributions' programme for which it is responsible.

This is a good idea if the Auditor-General receives sufficient resources to manage the greater workload.

In what seems an unnecessary move, the Act will provide immunity for the Auditor-General from

criminal and civil proceedings, and protection from being a compellable witness, for actions taken in the performance of his or her statutory duties. Why is this necessary?

Strengthening Auditing and Accountability within Departments

The Federal Accountability Act will designate deputy ministers and deputy heads as accounting officers for their department, and they will be responsible for making sure departmental resources are used while in compliance with government policy and procedures. This has to do with the perception by some that the previous government misused resources for their own partisan benefit. As such, the deputy minister and minister will either have to agree on the interpretation or application of a Treasury Board policy, directive, or standard or, if not, deputy ministers will have to seek guidance in writing from the Secretary of the Treasury Board. Should the matter remain unresolved, the minister would refer it to Treasury Board for a decision, a copy of which would be shared with the Auditor-General.

However, though it is stated as being as a “best practice in corporate governance”, the positions of Chair and CEO of the National Capital Commission, Canadian Dairy Commission, and the Enterprise Cape Breton Corporation will be divided. And while it may make sense from an accountability standpoint, it does create three new, high-paying appointments. In unison with an extension of the terms of Crown corporation boards of directors to four years from three, it looks like the government is more interested in patronage than responsibility.

Creating a Director of Public Prosecutions

The Federal Accountability Act will create the Office of the Director of Public Prosecutions, with the jurisdiction to conduct prosecutions for federal offences, and the power to make binding and final decisions on prosecutions, unless instructed otherwise by the Attorney-General, though these exceptions will be made public.

There are those who see this whole decision as the Harper government again going partisan. Many commentators agree such a position is unnecessary, and suggests existing legal authorities are not neutral in applying justice. One must wonder about the first point, as the job may be less prosecuting and more proselytizing. The Director will conduct a review “to determine when a prosecution for public-sector fraud should be commenced; examine best practices for conducting these prosecutions; determine how the Director of Public Prosecutions can best work collaboratively with provincial and international counterparts; and make clear the seriousness of fraud involving public money, and the importance of pursuing fraud cases quickly”.

Conclusion

The proposed Federal Accountability Act has been a long time coming. There are many elements to it that are worthy and needed. It is unfortunate that it took the so-called “sponsorship scandal” to bring about reform, but outrage is often the impetus behind change.

Sadly, though, instead of taking the high road, Stephen Harper and his government chose to act every bit as arrogant and partisan as the Liberals they loathe. It takes the shine off their intent, as well as grievously weakening the legislation. We can only wait and see what the Senate will do with this flawed proposal.



OUR VIEW

Ontario's New 4-year Municipal Terms

Last February's announcement of Premier Dalton McGuinty that Ontario municipalities and school boards would go to four-year terms was met with widespread criticism, at least from average citizens.

The universal argument was that it's hardly a democratic reform to give municipal councillors and school board members longer terms. Doing so undoubtedly gives incumbents even more of an advantage in getting re-elected, over and over again. It also means bad governance will continue a year longer without correction by voters. Even a few councillors complained that they weren't sure they could commit to four years, where three was okay. In total, it seemed the McGuinty government had little to gain from the change.

So why do it? According to Municipal Affairs' minister John Gerretsen, "There are a number of potential benefits to longer terms of office. A four-year term offers more time for a council or school board to forge an agenda, implement it, and then seek the people's judgement. In addition, municipal councils and school boards would have similar time horizons to those of federal and provincial governments in which to plan for the community and implement those plans." As well, it was a free sop to the Association of Municipalities of Ontario (AMO), which had requested it.

However, critics, in part, missed the point. If it was more democratic to have three-year-terms, why not demand politicians roll back provincial and federal terms to three years? Or, why not argue for something

even less than three years? After all, it was only 1982 when this came into being. Before that it was two-year terms. How about that? Of course, in those days, local politicians spent most of their time campaigning, not governing.

But there might be another reason for going to four-year-terms not stated by provincial officials. With the exception of when a minority government collapses before the end of its four-year-term, provincial administrations are now going to be in power for predictable periods of time. For example, if there is a majority, the next government will be in power from October 2007 to October 2011. This was an earlier Liberal 'reform' with which many agreed.

But in 2003, when the Liberals were trying to wrest power from the Eves' Tories, a mid-October election fell less than a month prior to the civic ones. Given that many provincial candidates come from the ranks of the municipal, the Liberals were denied the experience and profile of a number of local politicians who chose not to chance the provincial election when they had a near-certainty of municipal re-election. As well, most were not interested in potentially fighting two campaigns back-to-back, should they lose provincially but go back for their council jobs. And it must also have occurred to them that, should they lose provincially, it would make them look weaker in their municipal re-election.

So the change to 4-year terms for civic elections should, more often than not, guarantee all the political parties a larger pot of experienced, potential candidates.

But this goes to another point entirely. Provincial parties like to recruit municipal councillors. It means that many MPPs are former local officials, and come with an inherent mindset. Though there is nothing inherently wrong having MPPs with civic experience, perhaps instead of increasing the pool of such people from which to get candidates, the provincial parties should work to enlisting a wider spectrum of ordinary citizens as candidates.

Our Philosophy

As its basic principles, the Mad River Institute for Political Studies, its directors, officers, and members pledge that it, and they, will work to:

1. promote the “public good” through the strengthening of the public nature of government
2. have public servants recognize their inherent responsibilities to citizens
3. create more equity in politics through the expansion of democratic measures
4. have government recognize its inherent responsibility to act directly to help those citizens who need assistance
5. have public servants adopt higher standards of conduct for themselves and all society
6. have public servants recognize their inherent responsibilities in the expenditure of tax dollars while still delivering needed public services
7. have public servants consider more innovative and original ideas to deal with problems
8. assist the public in better understanding the political process and their place in it, as well as the consequences of their political decisions.

It is our belief that people must begin to take greater charge of their own political affairs, and demand more responsibility and accountability from politicians and government for their actions. That is our *raison d’être*. We want to act as an observer, critic, and teacher of government and politics, and try to promote political activity amongst the public by improving the efficacy, accountability, and responsibility of government.



For us, we are in our early days. It is most important we gain members, both for the legitimacy of our cause and for our finances. If you’re not already a member and you think the Institute is on the right track, then please consider joining us. Our basic membership is just \$20.

If you’re already a member, please consider a small donation to help offset the costs of ongoing operations, such as advocating our goals, our educational programmes like **PEAR**, and our everyday expenses, which we keep as low as we can.

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