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on

Government Accountability to Parliament During COVID-19

*Improving Relations Between the Public Sector and Parliament:
Moving Forward*

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Improving Relations Between the Public Sector and Parliament Moving Forward

Introduction

Prime Minister Justin Trudeau marked the start of the 2021 National Public Service Week in Canada by praising the federal public servants for their work throughout the pandemic. He began by noting that they had supported the government efforts to reduce the impact of the pandemic on Canadians by delivering emergency financial assistance, procuring vaccines and other needed supplies, and implementing data tracking measures, border controls, and other forms of assistance. Most notably, he commended “their unwavering professionalism and creative thinking,” noting that they “are challenging conventional ways of doing things, adopting new technology, and finding innovative ways” to perform their work, and setting “an example for service excellence.”¹

Praise from the Prime Minister was well-deserved because the Canadian public sector had acted with alacrity to support the government in meeting the challenges posed by COVID-19 throughout 2020 and into 2021. However, this need for quick and agile governance to address rapidly changing circumstances meant that the usual norms built into the accountability relationship of the government and public sector to Parliament were not observed either wholly or in part in three important ways. The decisions of the parties in Parliament early in the pandemic modified parliamentary operations in such a way that its ability was impaired to hold the government to account in a transparent and vigorous way.² Although beyond the remit of this report, I have addressed this aspect of accountability elsewhere.³ The executive branch of government adapted its functioning at the highest levels in a way that reduced parliamentary scrutiny,⁴ primarily by making public spending and program announcements directly to the media instead of in Parliament and by engaging in summit federalism with First Ministers weekly calls to discuss and coordinate policy responses.⁵ Finally, in the early days of the pandemic, Parliament passed legislation authorizing extensive spending and decision making authority for the government and, thus, public sector officials. As Parliament resumed many of its accountability functions in fall 2020, government expenditures and decisions during the pandemic have come under increasing scrutiny with the results examined here.

This short report cannot cover all aspects of the accountability relationship between government officials and Parliament as it was affected by the pandemic. Instead, the report begins with an examination of the core principles of the government-parliamentary accountability relationship, followed by a short discussion of how it altered during the pandemic, and then an account of the tensions that have arisen between the public sector and Parliament. The report makes recommendations in the areas of tension to facilitate good and even improved relations between the two institutions of government in the interests of good governance as the country moves forward.

In making recommendations on improving relations between Parliament and the public sector, this report is grounded upon three important considerations. First, any recommendations must

respect the foundational grundnorms of the government-parliament relationship as defined by the Canadian variant of the Westminster model of parliamentary government. The relevant core principles are outlined in the next section. Second, examples from other countries are used with the expectation that any solutions built on these examples would need to be modified to fit Canadian practices and procedures. Third, and perhaps most importantly, this report is undergirded by the assumption that the pandemic has caused longer term changes in the way governments operate based on the research informing the 2021 G7 conference. Most notably, the June 2021 report of the British Institute for Government identified important insights into the future policy world including the following:⁶

- “The virus will not go away.” The best case scenario is that the virus will be managed,
- “The worst-case scenario is continuing antigenic evolution, large outbreaks and further lockdowns.” Low and middle income nations face waves of outbreaks which combined with vaccine hesitancy and public fatigue with lockdowns and behaviour restrictions cause mortalities to rise.
- “Key controllable drivers between these outcomes will be vaccine distribution, global genomic surveillance and outbreak management.” The G7 jointly committed to addressing these and further measures at the June meeting.⁷
- “There is not going to be an early exit from Covid-19.” Contrary to expectations of wealthier nations, it will remain a global threat increased by outbreaks in less affluent countries.
- “Vaccines alone won’t be enough.” Systemic changes are needed including integrated plans for building capacity in countries and cities with vulnerable populations.
- “The international response remains too weak and fragmented.” New funding and structures may be necessary.
- “Policy makers need to think about the ‘new normal’ and resilience.” Borders are porous despite attempts to shut them. Policy makers will need to maintain public support and the capacity for targeted lockdowns, behaviour and mobility restrictions, and other measures as well as to conduct societal discussions of acceptable rates of mortality and risk.

In sum, going forward policy makers will need to maintain policy agility and public responsiveness while not sacrificing accountability or public confidence and legitimacy. Domestic and international pressures are likely to increase as the world adjusts to new threats. Both the best and worst case scenarios envision a changing policy environment. With these considerations and my previous work in mind, I offer these reflections and insights into improving the public sector-Parliament working relationship. We begin with the basic principles.

Government-Parliamentary Accountability: Core Principles

The executive-centred distribution of power in the Canadian political system often causes people to overlook the importance of Parliament in the governing process or to characterize it as a body that only assigns shame and blame to the government and otherwise is weak and increasingly irrelevant.⁸ However, Parliament is critical to democratic government in Canada for three reasons. First, it provides the support to the government agenda to allow government to function. Although much of the business of government can be conducted through subordinate (or

delegated) legislation, executive order or soft law (guidelines, interpretations, persuasion),⁹ Parliament's support for the government legislative agenda transforms policy ideas into statutes thus permitting and legitimising policy action. Second, Parliament is the most effective body for holding the government to account. The Prime Minister and Cabinet Ministers, with few exceptions, sit in the House of Commons. Through Question Period, opposition days, major debates (Throne Speech, Budget), supply, estimates and so on, Members of Parliament question government decisions and actions, requiring government to defend or offer explanations for its actions, decisions and policies.¹⁰ Parliament controls the purse strings. In passing the government legislative and fiscal agenda, Parliament subjects both to often rigorous and exacting scrutiny, particularly in committees and publicizes the final result.¹¹ Through these means Parliament is the most reliable purveyor and source of information about the government and its actions for the media and public. Government-parliamentary accountability lies at the heart of the Canadian political system, ensuring responsible and responsive governance. Finally, Parliament provides transparency and builds public confidence in the work of government. Canadians can rest easier knowing that parliamentarians are investigating government decisions and actions and will alert them if something is or seems to be amiss. At the heart of this relationship between the executive and legislature in responsible government lies the confidence convention. When government has the support of Parliament, it continues. When government loses the support of Parliament, it falls and an election is called.

From this brief snapshot of the relationship between the executive and legislative branches, four core principles of Canadian parliamentary government may be identified that are relevant to understanding how to achieve the right balance between parliamentary accountability and government action in regular and exceptional times:

1. Parliament is sovereign, meaning that the government executive, embodied in the Cabinet and Prime Minister, sits in the House of Commons and must hold the confidence of the House of Commons in order to govern, and the House holds the government accountable for its decisions.¹² The role of the opposition is to question government, often vigorously, to ensure the public good is being served. In minority government situations, the government must be especially attentive to parliamentary constraints and scrutiny. This relationship between the executive and legislative branches is critical in maintaining public legitimacy and trust.¹³
2. The confidence-accountability nexus between the executive and legislature is captured in the two core principles underpinning how government raises and spends money: (1) Government cannot raise money except by parliamentary approval; and (2) Government can only spend money as authorized by Parliament. In sum, budgets and estimates are key tools in ensuring the accountability of the elected government and through it, the public sector, to Parliament, and through it to the people.
3. The decisions of Cabinet are advised and implemented by a public service that is permanent, merit-based, anonymous and non-partisan.¹⁴ These traits enable public officials to offer frank and fearless advice to the Prime Minister and Cabinet and to execute the government's policy agenda regardless of the political party and ideology of the government. As heads of government departments, Cabinet ministers collectively and

individually are responsible for the decisions and actions of government to Parliament. Public servants are not directly responsible to Parliament but may appear before parliament to answer questions or provide information that ministers cannot.¹⁵ Public servants are not the “public face” of government as Ministers are.

4. The *formal or objective accountability* of the executive to Parliament is supplemented by a *subjective or professional accountability* that governs the public sector in its discretionary decisions and policy advice to the elected government.¹⁶ This subjective accountability is based upon a sense of professionalism and core public sector values that guide and inform discretionary decisions and policy advice in the course of their work. The formal mechanism of parliamentary (objective) accountability is effective and most evident at the higher levels of the public sector while professional (subjective) accountability governs the bulk of public sector activity. Under parliamentary government, a balance between objective and subjective accountability is necessary to ensure that the public sector can perform its functions but be prepared to answer for its decisions and action through the Minister. Trust between the two branches of government is critical in attaining the balance between legislative accountability and executive discretion that is necessary for ensuring responsible government that is effective, efficient, equitable and transparent.¹⁷

Implications of Recent Shifts in Public Sector Management for Government Accountability

The accountability lines in government had been shifting prior to the pandemic as new public management practices changed the way government operated.¹⁸ New public management (NPM), ushered into Canada largely in the 1980s under the Brian Mulroney administration, was an approach to policymaking and service delivery that was intended to restore democratic accountability in the public sector by shifting the focus of policy delivery from process concerns to policy results. NPM embraced values traditionally associated with the private sector, including efficiency, effectiveness, strategic planning, evidence-based decision-making and market competition.¹⁹ NPM emphasized the role of managers with autonomy from the centre in delivering results, discretion in program design and delivery, flexibility in operation and allocation of resources and fewer restrictions from traditional bureaucratic rules but also more accountability for results and operations.²⁰ Central agencies, such as Treasury Board, Finance, the Prime Minister’s Office (PMO) and Privy Council Office (PCO), were strengthened to define central priorities and monitor results in departments.²¹ Under the later variants of NPM, Results Based Budgeting (RBB) and Results Based Management (RBM), efforts were made to restore clearer lines of accountability of departments to central agencies by drawing stronger connections between policy and service delivery results and the priorities and revenue raising capacities of government.²² Audits, evaluation, incentives and performance measures were important for checking results against government objectives.²³ The state’s focus moved from procedural effectiveness and fairness to ensuring that results were achieved in a cost-effective and efficient way that was measured.²⁴ Under NPM, governments aspired to be leaner, more effective steering organizations.

This signified a shift away from the rules-based, process-driven traditional model of public sector management to a more results-oriented, people-based approach intended to move the public sector culture toward private sector values. The consequence was that the traditional lines of public sector accountability from departments to the government and through it to Parliament, while still in operation, existed often uneasily with the emphasis on subjective (internal) accountability and the professional discretion of the public officials. Parliament seemed more remote from the daily business of the public sector. Ironically given the goals of NPM, as decision-making became more complex with flatter structures and more partners, lines of accountability traditionally valued in the public sector became less clear.²⁵

New public governance (NPG) arose out of and yet in contrast to NPM and was intended to restore and strengthen the accountability of departments to government. Core features of NPG include: interorganizational governance driven by steering or networked leadership; interdependence of organizations in policy design and delivery; decentering of the state in policy development with shared acknowledgement of each partners' expertise and knowledge; the use of partnerships to address wicked policy problems with far-reaching externalities; and, a plurality of actors, resources and knowledge working together in networks that are autonomous from exclusive state control and direction.²⁶ Networks share in the allocation of public resources and exercise of public authority giving rise to ideas of co-production, co-management and co-governance. Under NPG, the assumptions are that: one sector possesses insufficient knowledge to define and decipher the policy challenges; and, bureaucratic paralysis, lethargy or intransigence are surmounted by building strategic alliances and partnerships with organizations from the private and non-profit sectors.²⁷ Under the Justin Trudeau government, RBM and RBB principles were embedded in a new framework intended to link spending with government promises more closely. This approach was intended to assist public servants in breaking through the fog of accountability and web of rules in the public sector that were impeding policy agility and innovation.²⁸ Thus, strong centralized control of the policy process was a key component of the approach.

These reforms enabled elected governments to exert more control over the public sector, particularly through strengthened central agencies. However the consequences for public sector accountability are mixed. If central control ensures that the public sector serves the broader public interest in an impartial manner, it is an appropriate exercise of democratic government. However, if "governments seek to use and misuse, even abuse, the public service in the administration of public resources and the conduct of public business to better secure their partisan advantage over their competitors," then political control undermines the core public sector values of impartiality and neutrality in service delivery. This form of "promiscuous partisanship" encourages "a dualistic view of politics in which those who are not allies of the government must be its enemies."²⁹ The traditional Canadian public sector values of impartiality and non-partisanship thus become obstacles to be managed by government. And, as Helen Dickinson observed, then the public sector functions in "the shadow of hierarchy."³⁰ Government is held accountable to the legislative branch with frustration increasing as the expectations of the public sector and Parliament increasingly diverge, the government ties the public sector and its policy tools closer to its agenda, the atmosphere in Parliament becomes more hotly partisan, and the public sector looks more to its own internal sense of professional accountability and discretion than to Parliament. The public sector is expected by government to act with agility to

achieve its results all the while public sector discretion, discretion and actions are scrutinized by a more polarized Parliament. These fault lines in government operations and accountability have been more obviously exposed during the pandemic.

Along Came the Pandemic Accelerating the Trends in Government

These shifts in management meant that the Canadian public sector had begun to develop the core competencies and structures required to deal with a pandemic: networked governance, policy agility and democratic responsiveness, horizontal decision making, shared authorities, coordinated policy delivery across departments and governments, a results-focused mentality and system of policy and program evaluation. However, at the outset of the pandemic it was also still coping with:

- a web of rules and procedures that impeded agility;
- traditional vertical lines of accountability that did not fit easily with horizontality in decision making and action;
- more complex policy issues that defied quick solutions by single departments or even governments;
- stronger ties to the elected government agenda and objectives that often conflicted with the duty to provide best advice; and
- partisan polarization in Parliament that increasingly caused the opposition parties to associate the public sector with the governing party.

Agility: the Ups and Downs

Above all, policy agility and nimbleness were prioritised as governments across the world scrambled to address the pandemic and its fall-out. The Secretary of the Treasury Board provided directions encouraging the Deputy Heads of the departments “to focus on achieving intended results while using flexibilities and noting that if the existing policy requirements were not aligned with actions deemed necessary to serve the urgent need of Canadians, Deputy Heads should default to the urgent need.”³¹ Reflecting back on the actions of the public sector in early 2020, the Clerk of the Privy Council commended public officials for their commitment to “creativity and resourcefulness,” noting that “Agility is our mindset: as this global pandemic quickly evolves, so too will our response.”³² Recall the statement of the Prime Minister about the work of the public sector in 2020 cited at the beginning of this paper; he said “Every day, federal public servants rise to the challenge of delivering timely, effective programs and services that support the work of the Government of Canada and meet the needs of Canadians,” and “They are challenging conventional ways of doing things, adopting new technology, and finding innovative ways to support the government’s efforts” to mediate the impact of the pandemic.³³ Even Parliament responded by reconvening within two weeks of the first lockdown, to expedite the passage of two bills that provided the government with broad legislative and financial authorities and wide discretion to meet Canadian needs.

Policy agility, creativity, innovation and immediate responsiveness come with costs. The directions provided by the Secretary of the Treasury Board exhort public servants to use their

discretion in determining what is necessary and to act. The Prime Minister accepts that normal procedures and rules were not followed. The Clerk of the Privy Council observed:

In responding to the pandemic, the focus has been on delivering support as quickly as possible. There is risk inherent in this approach. Years from now, we may learn that we did not attain perfection. Right now, we are accepting a measure of risk in order to deliver on what needs to be done.

In sum, the government counted on the professional discretion of the public service and accepted that there were serious risks incurred as a result. Policy decisions could be made rapidly but with undesirable consequences (initial problems in vaccine procurement) or hastily with poor information (the WE contracts). While the government response would be vetted by the newly created parliamentary committee on COVID-19, full parliamentary scrutiny of such decisions would be delayed by the modification of parliamentary operations by the multiparty agreement.³⁴ This was a case of results-based governance on steroids with limited formal checks in the first six months.

The Public Sector Response: Subjective Accountability to the Rescue?

These decisions by the government and Parliament had an immediate impact on the public service. With the lines of formal, objective accountability attenuated, the public sector acted nimbly but demonstrated a strong sense of professional discretion and subjective accountability in four key ways.

1. In our conversations with public sector officials, it emerged that they were not only conscious of the broad authority delegated to government but also of the need to exercise that power with caution. A number emphasized that in their decisions on programs and responses to the pandemic, they would not exercise the full powers authorised by the emergency legislation unless necessary and only so far as necessary to meet the needs of Canadians.
2. Public sector officials emphasized that they were conscious of the shadow of hierarchy even as they acted and of their ultimate responsibility to the government and to Parliament. In our interviews, public servants stated that throughout the pandemic, they “always knew they were accountable and proceeded accordingly.” The temporary suspension of Parliament during the pandemic did not change the accountability of government, but it did delay its execution in many cases and required public servants to use their professional discretion to determine the limits of their actions. In the words of one official, “we knew accountability was coming. Lack of immediacy was never mistaken for lack of accountability.”
3. Public sector officials underscored the importance of the distinction between approaches to statutory instruments and regulatory instruments. As one official explained, statutory instruments are vetted and approved by Parliament, but Parliament has less control over regulations despite their importance. In practice, this means that officials tried to modify their decision-making and use of regulatory powers “out of respect for Parliament.” One

official noted that this included providing advice to the government not to use its full powers under Bills C-13 and C14, the emergency legislation.

4. Officials also noted that “COVID-19 changed things but the accountability relationship didn’t formally change. You had to do things differently.” Officials provided anecdotes about how they had to act outside the contours of normal operations in some cases to meet program needs and requirements. They knew that they were assuming more risk but hoped that the reasons for their actions would be understood in any post-COVID-19 reviews. Accordingly, they tried to meticulously document their actions and decisions and to be prepared to explain themselves in any future reviews. They hoped that when Parliamentary accountability was exercised in fuller scrutiny of government actions during COVID, and especially the first phases, their commitment to professional norms and the bounds of professional discretion would be acknowledged and respected.

In short, the public sector acted nimbly and boldly but using their professional discretion to set reasonable contours around those actions and advice to the government. Subjective accountability operated when objective accountability to Parliament was delayed. While these public sector norms operated largely to protect the public interest when Parliamentary scrutiny was more limited, they constitute a shaky foundation upon which to build future responses to emergencies like pandemics. In particular, the extensive use of regulatory instruments by governments during the pandemic when parliaments were suspended or modified their operations has been severely criticized in countries like the UK and Australia.³⁵

Bringing Parliament Back In

The challenge coming out of the first year of the pandemic then, is how to ensure effective accountability of government to Parliament without losing the benefits of professional autonomy and action associated with the sense of subjective accountability that operated during the first year of the pandemic. Public sector officials identified a number of ways in which the reassertion of full parliamentary accountability could impair the ability of the public sector to act with agility.

1. **Polarisation in the Commons**

Public sector officials openly and frequently voiced concerns about the increasing polarisation of parties in the House of Commons prior to and during the pandemic. They dreaded that the charged partisan atmosphere in Parliament might result in “a gotcha” process when public sector officials were called to testify before committees.

Opposition parties would be looking to score points against the government with an eye to the looming federal election instead of trying to understand what measures had been adopted during the pandemic, the reasons for those choices, and where the policies had succeeded, needed amendments or should be abolished. They feared that the desire for partisan advantage would eclipse the need for an accountability relationship with Parliament that involved an open and iterative process where they would be able to explain their actions, the context, their decisions and the reasons for them – “the who, what, where and why” of the pandemic decisions, in essence, as one said, “to tell the

story of why”. Ideally, they hoped, parliamentary scrutiny of their decisions and actions during the pandemic would result in constructive and informed feedback from parliamentary committees on how such circumstances could be handled in future. Officials drew on the examples of established committees in the Canadian Parliament with longer serving members that tended to operate in this way and contrasted them with committees investigating the government contract with the WE foundation or the Public Health Agency of Canada that seemed to be looking for errors, not answers.

Examples of parliaments operating in this more constructive manner during the pandemic can be found. For example, the parliament in France invited representatives from other countries like the South Korean Ambassador to discuss his country’s successes during the pandemic including its use of the COVID-19 tracking app. The Nepalese Upper House of Parliament conducted a post-legislative scrutiny of the 56 year old act that was the basis of that government’s response to the pandemic and made suggestions for its improvement to deal with future pandemics.³⁶ In these cases, constructive Parliamentary scrutiny offers informed advice to the public sector on how to improve its operations.

2. **A “Fraught” Relationship**

Public sector officials noted that opposition parties had increasingly treated them as extensions of the elected government instead of understanding that the public sector operated with distinct norms, a sense of professionalism and offered informed, nonpartisan advice to the elected government regardless of party ideology. Instead of seeking answers to genuine questions about government decisions and programs, opposition members of Parliament seemed poised to oppose government policies and programs regardless of their quality and merit. They were also quite frank in allowing that this association of the public sector with the partisan government actions was reinforced by such matters as the appearance of partisanship by the former Clerk of the Privy Council appearing before the parliamentary Justice Committee as well as the attempts of recent governments to link public sector performance to government defined goals. The consequence, they noted, was that the relationship between the public sector and Parliament had become “more fraught” than it used to be. This caused public sector witnesses to fear appearing before parliamentary committees and to be exceedingly cautious or guarded in offering any answers. One respondent noted wryly that he had had a conversation with a seasoned, senior public sector official in Australia who had confided to him that he too was “terrified” appearing before parliamentary committees because they had become “fishing expeditions” for any missteps.

In contrast to this method of operation, public sector officials noted that some parliamentary committees which had longer serving MPs as chairs tended to engage in a more constructive dialogue based on an understanding of their professionalism. They also observed that witness appearances before Parliament were more productive when MPs were fully briefed and asked informed questions.

3. **Balancing Performance Needs with Information Needs**

Public sector officials spoke passionately about the need to balance performance needs of the public sector with the information needs of Parliamentary committees. All of those interviewed acknowledged the legitimate need of committees to request and obtain information on public sector decisions and actions during the pandemic. However, they also stressed that the October 26th, 2020 request from the Health Committee in Parliament was so broad and “over-reaching” that it was absorbing time and resources to the extent that the work of the public sector was being seriously impeded. More recent requests from the Finance and Ethics committees were having similar effects. Officials noted that such broad requests from parliamentary committees for all documentation on general areas without any guidance on the type of information sought or the reasons for the requests, imposed an unduly burdensome workload on officials who were already exhausted from working long days on a sustained basis throughout the pandemic. They stated that the need to review thousands of pages of documentation to respect Cabinet confidentiality, solicitor-client privilege within government, and security concerns as well as the need to translate all documents was “overwhelming”. One official scathingly observed that “it must be fun to be in opposition since there are no repercussions.”

Public officials were divided over how to address this situation. Some public sector officials suggested that limits should be placed on the ability of parliamentary committees to compel documents to be produced. This caused one official to react with “Oh hell no, it has taken a thousand years of traditions to get this far!” However, all agreed that information requests should consider the full requirements for approval and translation of any documentation provided.

4. **Accountability Yes, Control No**

Finally, public officials stressed the need for Parliament to exert accountability not control in its scrutiny of government actions during the pandemic. They noted that the role of Parliament was not to set parameters around government actions or to evaluate policies choices and substitute their own favoured options. They specified that while parties oppose each other, the role of Parliamentary committees was not to oppose government officials but to solicit information from them instead.

These views echoed voices of past Parliaments. The 2005 Treasury Board Secretariat “Review of the Responsibilities and Accountabilities of Ministers and Senior Officials” quoted the Chair of the Public Accounts Committee as stating that “Parliament is not an institution of management; Parliament is an institution of accountability. We’re not here to run the government; we’re here to hold the government accountable for the way they run themselves.”³⁷ As one remedy to ensure Parliament and the public sector observe this line, it suggests that the government should “put a premium on forthrightness and openness with Parliament. Reporting must be accurate and complete, and the government willingly accepts the need to be respectful of and responsive to Parliament.”³⁸ While this recommendation was specific to accounting and estimates, it applies more generally, even 16 years later.

The need for transparency and clear answers is echoed by UNDP with examples of where it has made a difference during COVID-19. For example in Iran legislative verification of government numbers of victims of COVID-19, reinforced the need for controls on public activities and financial assistance to individuals.³⁹

5. Mutual Misunderstanding and Misinformation

One factor emerged in the interviews with public servants upon questioning and in the reflections on our work. There seems to be a mutual misunderstanding of the work of the other branch. Public sector officials readily agreed that colleagues in the public sector have limited knowledge of Parliament, its role in the policy process, the importance of its committees, and, at times, the need for scrutiny, and criticised Parliamentary procedures as “arcane”, “cumbersome,” “unnecessary,” and “not useful,” especially during a pandemic which required quick decisions and rapid action of quickly changing conditions. While they accepted the need of parliamentary committees and opposition parties for information, they lacked familiarity with the procedures and the uses to which that information is put and expressed discomfort with confrontational questions. Public sector officials forthrightly stated that most of their colleagues do not even begin to think about parliamentary accountability until they reach the senior levels and are called to testify before Parliament. One official captured it this way: “Parliament is an idea not directly relevant until you are higher up.” The officials also questioned what information is most useful to Parliament.

On the other side, public officials expressed scepticism about the extent to which elected members of parliament had any substantive knowledge of the policy-making process including implementation of policy and role of public servants within government. They cited examples of MPs asking questions that were more appropriate for the Minister or appearing skeptical when they declined to answer questions that were outside their responsibilities or requesting information that they do not collect but may be attainable from other sources such as Statistics Canada or the Library of Parliament (ex. data broken down by ridings). In their view, MPs often lack the knowledge and, given constituency commitments, the time to build the knowledge base to ask meaningful questions.

Officials agreed that this mutual lack of knowledge can only contribute to the mutual misunderstandings and frustrations with the responses of the other branch, and that it would be better if both sides understood the policy process “from start to finish.” While this is a perennial problem for many parliaments and legislatures across the globe, it complicated relations between Parliament and the government during the pandemic and potentially during future reviews of government actions.

Reflections and Recommendations

These recommendations are built upon three sets of considerations derived from the preceding comments here.

- The pandemic and its effects are likely to be felt well into the future, governments will need to cope with both domestic and international pressures for effective responses, and policy makers will need to maintain public support while building the capacity and measures to handle these types of challenges.
- The accountability relationship of the executive branch to Parliament is critical to government legitimacy, agility and transparency but is challenged by changing norms in the public sector which emphasize results over process considerations, centralized control with government-defined objectives as primary, departmental autonomy and horizontal networked governance, and the internal professional discretion and accountability of public servants. Both forms of accountability are essential to responsible government. Each one is insufficient in itself.
- The pandemic unveiled the tensions embedded in a governmental system requiring public servants to be nimble, responsive to public needs and quick acting, the risks inherent in an approach where normal safeguards and checks were overridden, and both the positive and negative consequences of a results-based policy process.

If good government and governmental legitimacy are going to be sustained moving forward, then the accountability relationship between the executive and legislative branches must ensure policy agility and democratic responsiveness that can withstand serious scrutiny in the public interest.

Building Better Relations and Trust

Improvements in the Reporting Relationship

The call of public officials for a more iterative rather than confrontational process of government accountability to Parliament is a compelling one because it would result in a more meaningful and thoughtful exchange between public sector and elected officials that could yield constructive suggestions for improving policy and programs. To build this type of process, the public sector needs to support Parliament's ability to scrutinise government actions. While many of these measures are in effect in whole or part or used by some departments, they are not universally and consistently applied.

- *Increase interactions between Parliament and the public sector.* The public sector is one of the most reliable sources of information for government and Parliament and through them to the public and media. Departments can assist Parliamentary committees in their scrutiny function by ensuring that they have the information to ask meaningful questions in three ways.
 - ❖ During appearances before committees and in the production of documents be as open and transparent as possible within the legitimate and existing constraints. To the greatest extent possible, ascertain the purpose and direction of the intent of questions and trust that the opposition is acting in the public interest. Where information cannot be divulged,

state clear and explicit reasons and suggest alternate venues such as the Library of Parliament, if appropriate, to assist committees in obtaining the material.

- ❖ Public servants have the ability and capacity to be called as technical and nonpartisan experts on general subject matters as already occurs regularly. However, department officials can be more proactive if an important subject matter is arising before a parliamentary committee by alerting senior officials thus the Minister that the department is prepared to orally or in writing brief committee members on the topic to ensure fair and full committee deliberations. If the Minister chooses to inform the committee chair of this possibility, then the committee may request such a briefing. An alternate format is for greater use of ministerial statements to inform the House and committees on issues as was done more frequently in the UK in 2020 with the flexibility of questions to be put to the minister as recommended by the British Standing Orders committee.⁴⁰ A well-informed committee is more likely to ask thoughtful questions that foster a meaningful exchange between committee members and public sector witnesses.
- ❖ While the Standing Orders of both the House of Commons and the Senate specify the time period and extensions for a government response to a committee report (HSO 109 - 120 calendar days and 12-24.1 12-24.2 - 150 days) and the PCO has developed guidelines and formats for departmental responses to requests for information including the type of Memorandum to Cabinet required, the government could also adopt a more detailed template similar to the one proposed to the UK parliament for government responses to parliamentary committee recommendations within a set time period. This should include substantive explanations for the adoption, modification or rejection of said recommendations. Similarly guidelines and a template for responses to requests for information with substantive reasons for delays or denials would assist relations.
- *Appearances before parliamentary committees.* The Canada School of Public Service parliamentary committee appearances toolkit for senior officials offers detailed advice on the process and presentation styles. This toolkit is a good start but could be supplemented by material reminding officials that, to quote Speaker Milliken's 2010 ruling, "In a system of responsible Government, the right of the House of Commons to hold the Government to account for its actions is an indisputable privilege and in fact an obligation" from which other principles and processes flow. These materials could emphasize the dual obligation of the public official to answer questions as fully as possible and to provide advice to the Minister. How to balance these roles should be clearly explained to new and continuing public servants in mandatory committee appearance training, particularly if they are to appear before parliamentary committees. This will ensure that the public sector witness understands the line that cannot be crossed and when to advise the committee that the Minister should be called and on what matters specifically. Knowledge builds confidence and reduces anxiety about potential questions. Again the importance of the public sector as a reliable source of information for the committee needs to be emphasized; the public sector serves the public interest not just the government of the day. While South Africa normally requires senior department officials to appear before committees unless a matter of mismanagement requires the Minister to appear, this practice is not suitable to replace Canadian practices of accountability.

- *Production of documents: accountability is a shared function.* This requires the public sector to be more proactive more consistently than it has been in the past. The public sector cannot tell parliament what it can and cannot do but it can adopt internal procedures to manage parliamentary requests for information.
- ❖ Where a committee request is likely to be overbroad or misdirected, public officials should be vigilant and alert and advise their Minister to inform the committee Chair and Deputy Chairs so that accommodations to render the request more gradual and manageable for the public sector and in turn more informative for the committee. While this is done in some cases, it could be constructed as a more regularised procedure. The normal procedure would then be for the chair and deputy chairs of a committee to negotiate a reasonable time frame and scoping of information. The incentive for both sides of the House to negotiate an agreement on the production of documents would be the very pragmatic need to make Parliament and the public sector work manageable.

This suggestion parallels the 2010 decision of then House of Commons Speaker, Peter Milliken, regarding the December 10, 2009 Order of House Commons Special Committee on the Canadian Mission in Afghanistan for the production of documents. The Speaker observed that under parliamentary sovereignty and as confirmed in the Standing Orders, the House has the right to order the production of existing hard copy or electronic documents under the “immediate control and direction of different departments of government” but government officials were still bound by solicitor-client and Crown privilege (Cabinet confidentiality) and other legal duties. Where documents are to be compelled, the Minister or Parliamentary secretary may indicate that the request is acceptable to the government “subject to certain reservations, such as confidentiality, or national security” which the House can consider. In the 2010 decision, the Speaker asked if it would be possible for the government and opposition parties to work out an agreement on the production of documents and chides them that it would be “a signal failure” that would shatter “some 140 years of collaboration” if they lacked “the will to find a solution”.⁴¹ An agreement was reached. Trust and reasonableness must rule both sides in compelling and producing documents.

- ❖ Government members of Parliament could recommend to the Procedure and House Affairs Committee (PROC) a mechanism for motions to be shared with departments in advance of their adoption in committees.
- ❖ Current issues over broad requests for documents, delays in document production, and the extent of the redactions are evidence of the diminution of trust between Parliament and the public sector. Many of these matters, such as whether the government or Parliamentary legal counsel will determine the redacted materials, will only be settled by the negotiation of agreements in Parliament. However, government departments can assist in rebuilding trust coming out of COVID-19 by being more consistent in providing explicit, detailed and clear reasons for any delays in document production and for redactions in government documents that can be published and knowable to parliamentary committees.⁴²

- ❖ When called before committees, public sector witnesses should provide better, fuller information to committees in a streamlined and user-friendly format in a timely fashion whenever possible and to the greatest extent possible according to the nature of the topic. Guidelines for witnesses should provide substantive advice on how to assess reasonable limits for answers and valid explanations for any refusals to answer certain questions.
- ❖ The PCO could recommend to Cabinet that it consider proposing to PROC that it investigate the possibility of adopting the Australian practice of requiring committees to provide a certain level of precision relating to their request for information from a department. This recommendation is not favoured here because it runs contrary to the 2010 Speaker's ruling but merits consideration.
- *Drafting instructions for legislation, regulations and subordinate legislation.* Drafting instructions for legislation already specifies that the objectives of legislation must be clearly laid out but could also more regularly incorporate the need for Parliamentary reviews at set time intervals in emergency or special legislation, specify instructions on delegated or subordinate legislation, outline criteria for review and provide for sunset clauses, money flows and reporting requirements in emergency legislation unless renewed by Parliament (as in the UK and Scotland). This practice was adopted in much of the COVID related legislation, including sunset clauses, money flows and policy and program parameters, but formal guidelines would establish baseline practices. For example, a clause was added to *An Act respecting certain measures in response to COVID-19* (Bills C-13 and C-14) requiring the Minister of Finance to report to the Finance committee every two weeks on the emergency financial powers.

The OECD report on legislative scrutiny of budgets during the pandemic identifies bills in Austria, Israel and Spain with similar requirements.⁴³ The public sector could certainly include measures like this in future bills, by including drafting instructions to that effect in legislation. However, the adoption of this practice would require serious thought and examination given the problems revealed in the Tasmanian case where the constraints imposed on the Tasmanian parliamentary committee to hold the government to account under an outdated 56 year old subordinate legislation regime effectively eliminated accountability during the pandemic.⁴⁴

Bridging the Divide between Parliament and the Public Sector

The limited knowledge of Parliament and the public sector of each other, their processes and cultures, objectives, operations and guidelines should be rectified. A fuller mutual understanding of each other and their respective roles and responsibilities in the policymaking and implementation processes could assist in building trust and better relations. This could include tools such as:

- Onboarding seminars, webinars and videos on the policy process from start to finish including the role and importance of Parliament in policy development that could be

available to public servants and MPs through the CSPA. This can include transition documents;

- Short videos on specific topics such as parliamentary accountability, the purpose, design and mandate of parliamentary committees, public sector decision-making and norms governing discretion, key Speakers' rulings in the House of Commons that affect government operations, and the differences between parliamentary accountability and control. The CSPA and the Library of Parliament could produce and disseminate such materials to public sector and elected officials.
- A series of case studies on successful Parliamentary committee work following it from initial hearing stages to reports and the adoption of recommendations by departments. The studies could identify contributing factors to their success, broadcast examples of high functioning committees and demonstrate productive and positive exchanges between MPs and public sector witnesses.
- Training or information sessions for new committee Chairs and Deputy Chairs as well as members on the committee work and their current and pending subject matters, including the possibility of visits to departments to speak directly with public servants.

A Final Thought

Throughout this exercise, we have been struck by the commitment of the DST participants to improving the government-parliamentary accountability nexus. Although at times baffled and frustrated with the relationship, public sector officials in particular were generous with their time and earnest in their comments on how to make the branches of government work better together to address the needs of Canadians.

¹ Prime Minister Justin Trudeau, “Statement by the Prime Minister on National Public Service Week” (Ottawa: Prime Minister’s Office, June 13, 2021).

² Under a multiparty agreement, the sittings of the House of Commons and its committees were reduced significantly. The lack of a daily Question Period and the irregular attendance of the Prime Minister and opposition party leaders at the improvised COVID-19 Committee meetings (See Kathy Brock and Lori Turnbull, “Multiparty Agreements and a Better Model for Parliament during Crises,” in *The Impact of COVID-19 on the Future of Governance in Canada*,” edited by K.L. Brock et al., (Kingston: School of Policy Studies Working Group Papers, August 2020), pp. 17-22.

³ Kathy L. Brock, “The Perils of Reduced Parliamentary Scrutiny,” in *The Impact of COVID-19 on the Future of Governance in Canada*,” edited by K.L. Brock et al., (Kingston: School of Policy Studies Working Group Papers, August 2020), 9-16. See also Kathy Brock, “COVID-19: Good intentions aren’t the same as good governance” OpEd in the *Ottawa Citizen*, July 13, 2020, and “The Coronavirus Challenge to Democracy” OpEd in the *Ottawa Citizen*, May 29, 2020.

⁴ For an insightful discussion of the operation of Parliament during COVID-19, see Greg Tardi, “Parliament: Managing Change during the Pandemic,” in *The Impact of COVID-19 on the Future of Governance in Canada*,” edited by K.L. Brock et al., (Kingston: School of Policy Studies Working Group Papers, August 2020), pp. 23-34.

⁵ Kathy Brock, “Cooperative Federalism and Managing Intergovernmental Relations through the Pandemic: Setting the Framework,” in K.L. Brock and G. Hale, *Pandemic Federalism: Bridging the Normative and Functional Federalism Gap* (University of Toronto Press, forthcoming 2022).

⁶ Tom Sasse, “Covid-19 futures: Implications for policy makers” (Institute for Government Insight, June 2021). Available at <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Covid-19-futures.pdf>. See also Policy Horizons, *Foresight on COVID-19: Possible Shifts and Implications* (Ottawa: Policy Horizons, March 5, 2021). Available at <https://horizons.gc.ca/en/2021/03/05/foresight-on-covid-19-possible-shifts-and-implications/>.

⁷ Prime Minister’s Office, Canada. “Prime Minister concluded productive G7 Summit in United Kingdom.” (Carbis Bay, United Kingdom, June 13, 2021).

⁸ See Donald Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics* (Toronto: University of Toronto Press, 2000); Alison Loat & Michael MacMillan, *Tragedy in the Commons* (Toronto: Random House, 2014).

⁹ Paul Daly, “Regulating the COVID-19 Pandemic: Forms of State Power and Accountability Challenges,” *Blog: Administrative Law Matters* (administrative law matters.com), May 13, 2020.

¹⁰ *Ibid.*, 87-95.

¹¹ Ian Brodie, *At the Centre of Government: The Prime Minister and the Limits on Political Power* Montreal & Kingston: McGill-Queen’s University Press, 2018), pp. 75-89.

¹² C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987).

¹³ P. Aucoin, L. Turnbull & M. Jarvis, *Democratizing the Constitution: Reforming responsible government* (Toronto: Emond Montgomery, 2011).

¹⁴ D. Savoie, *Breaking the Bargain: Public servants, ministers and Parliament* (Toronto: University of Toronto Press, 2003); Amanda Clark, “The Civil Service in the Westminster Tradition” in Jonathan Craft & Amanda Clark eds. *Issues in Canadian Governance* (Toronto: Emond, 2018), pp. 19-36.

¹⁵ C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987) 229; Canada, Privy Council Office, “Notes on the Relationship of Public Servants in Relation to Parliamentary Committees,” (Ottawa: December 1990); cf. Privy Council of Office, “Open and Accountable Government” (Ottawa: Her Majesty the Queen in Right of Canada, 2015). Interestingly, this PCO guidance document to Ministers of the Crown asserts that they are responsible to the Prime Minister and “are also accountable to Parliament” (p. 1) in contrast to the previous practices of asserting their primary responsibility to Parliament, perhaps advancing the centralization of political authority.

¹⁶ C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987).

¹⁷ P. Milliken, *Selected Decisions of Speaker Peter Milliken, 2001-2011* (Ottawa: Clerk of the House of Commons, 2013).

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- ¹⁸ For a fuller discussion of the ideas here and complete references, see Kathy L. Brock, "Government and Non-profit Collaboration in Times of Deliverology, Policy Innovation Laboratories and Hubs, and New Public Governance." *Voluntas: International Journal of Voluntary and Nonprofit Organizations*. 31:2 (2020), pp. 257-270. Previously published online 2019: DOI: 10.1007/s11266-019-00145-0.
- ¹⁹ P.F. Drucker, *The practice of management*. New York: Harper & Rowe, 1954.
- ²⁰ D. Brown, "Accountability in a collectivized environment: From Glassco to digital public administration," and C. Conteh, "Public Administration and Management Reforms in Canada." Both in J. Craft & A. Clarke, eds. *Issues in Canadian Governance*. Toronto: Emond, 2018.
- ²¹ P. Aucoin. "New Political Governance in Westminster Systems: Impartial Public Administration and Management Performance at Risk." *Governance: An International Journal of Policy, Administration, and Institutions* (2012) 25:2, 177-199. D. Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom*. Toronto: University of Toronto Press, 2008.
- ²² G.C. Richards & M. Kronick. "Does 'Deliverology' Deliver?" *Canadian Government Executive* (2017) 23:1; D. Good. *The Politics of Public Management*. Toronto: University of Toronto Press, 2003.
- ²³ V. Besrest, Presentation to a Seminar on Results Based Budgeting: Objectives, Expected Results and Performance Indicators. Council of Europe, Strasbourg, 2012; E.H. Klijn, "Public Management and Governance: A comparison of two paradigms to deal with modern complex problems." In *The Handbook of Governance*. D. Levi Faur, ed. 201-214. Oxford: Oxford University Press, 2012.
- ²⁴ G. Bouckeaert & J. Halligan. *Managing Performance: International Comparisons*. London: Routledge, 2008.
- ²⁵ D. Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom*. Toronto: University of Toronto Press, 2008; D. Good, *The Politics of Public Management*. Toronto: University of Toronto Press, 2003.
- ²⁶ B. Head, "Wicked Problems in Public Policy." *Public Policy* (2008) 3:2, 101-118.
- ²⁷ Conteh, op cit.; Brandsen & V. Pestoff, "Co-Production, the Third Sector and the Delivery of Public Services: An Introduction." *Public Management Review* (2006) 8:4, 493-501.
- ²⁸ R. Dobell & D. Zussman, "Sunshine, Scrutiny, and Spending Review in Canada, Trudeau to Trudeau: From Program Evaluation and Policy to Commitment and Results." *Canadian Journal of Program Evaluation* (2018) 32:3, 371-393; E. Lindquist, "Deliverology: Lessons and Prospects." *Canadian Government Executive* (2016) 22:3, March 17.
- ²⁹ Aucoin 2012, op.cit.
- ³⁰ J. Craft & M. Howlett, "The dual dynamics of policy advisory systems: The impact of externalization and politicization on policy advice." *Policy and Society* (2013) 32:3, 187-197; Dickinson, H. 2016. "From New Public Management to new Public Governance: the Implications for a 'new public service.'" In *The Three Sector Solution: Delivering public policy in collaboration with not-for-profits and business*. J. Butcher & D. Gilchrist, eds. Canberra: Australian National University Press. Pp. 41-60.
- ³¹ Office of the Auditor General, "COVID-19 impact on government operations" (Ottawa: Office of the Auditor General, March 28, 2021) at https://www.oag-bvg.gc.ca/internet/English/parl_fs_e_43615.html.
- ³² I. Shugart, Clerk of the Privy Council, *27th Annual Report to the Prime Minister on the Public Service of Canada* (Ottawa: Her Majesty the Queen in Right of Canada, 2020).
- ³³ Prime Minister Justin Trudeau, "Statement by the Prime Minister on National Public Service Week" (Ottawa: Prime Minister's Office, June 13, 2021).
- ³⁴ Paul Daly, "Regulating the COVID-19 Pandemic: Forms of State Power and Accountability Challenges," *Blog: Administrative Law Matters* (administrative law matters.com), May 13, 2020.
- ³⁵ A. Edgar, "Law-making in a crisis: Commonwealth and NSW coronavirus regulations," *Australian Public Law (Auspublaw)*: Blog, March 30, 2020. Available at: <https://auspublaw.org/2020/03/law-making-in-a-crisis-commonwealth-and-nsw-coronavirus-regulations/>.
- ³⁶ United Nations Development Program (UNDP), "Accountability and COVID-19: a guidance note on inclusive processes and institutions," (New York: UNDP, 2020), pp. 4, 7.
- ³⁷ Treasury Board Secretariat, "Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials," (Ottawa: TBS, 2005), 9.

³⁸ Ibid., 38.

³⁹ UNDP, op cit., p. 3.

⁴⁰ D. Wilson, "How the New Zealand Parliament Responded" *Parliaments and the Pandemic* (London, UK: Study of Parliament Group 2021).

⁴¹ Milliken, op cit., 91-102.

⁴² Members of Parliament have often complained about the delays in document production and the reasons provided by departments. For example, one MP observed that three separate requests for documents made last summer have not yielded any results with the departments only explanation being "due to COVID." This is not a substantive or acceptable answer that respects Parliament and its scrutiny function.

⁴³ OECD, "Legislative budget oversight of emergency responses: Experiences during the coronavirus (COVID-19) pandemic," (OECD, 25 September 2020).

⁴⁴ G. Appleby & B. Gogarty, "Tasmania's Subordinate Legislation Committee fails to provide democratic accountability during the COVID-19 emergency" *Australian Public Law* 22-05-2020. At <https://auspublaw.org/2020/05/tasmanias-subordinate-legislation-committee-fails-to-provide-democratic-accountability-during-the-covid-19-emergency/>.