

Strengthening Accountability, Transparency, and Governance

**Discussion paper for the House of Commons Standing
Committee on Procedure and House Affairs**

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INTRODUCTION

Background

Canada's Constitution establishes our system of responsible government. Under this system, the executive branch of government (Ministers and the public service) is accountable to the legislative branch (House and Senate), and the House and Senate are accountable to the electorate—the people of Canada.

Over the last decade, significant public attention has been devoted to issues of responsible government and accountability in Canada¹, partly because of the Report of the Gomery Commission of Inquiry into the Sponsorship Program and Advertising Activities.²

Similar discussions have taken place in other jurisdictions, both in Canada and internationally. As a result, increased public disclosure of expenses is becoming the norm.

Current situation

The ongoing investigations into housing and other expenses claimed by certain Senators have prompted commentary on governance and accountability of the legislative branch of government.

In response, the House of Commons passed a motion on 21 October 2013 asking the Standing Committee on Procedure and House Affairs to undertake a broad examination of the administrative oversight systems, policies, and practices of the House of Commons. Consideration of replacing the Board of Internal Economy with an independent oversight body will be included in the review.

The objective of the Committee's work is to bring full transparency and accountability to House of Commons' spending. The Committee must report its findings to the House not later than 2 December 2013.

Key points of the motion include

- holding public hearings;
- inviting the Auditor General, the Clerk, and the Chief Financial Officer of the House of Commons to participate fully in the hearings;
- reviewing oversight practices used in Canada's provinces and territories and in other countries that have a similar style of government;
- proposing changes to the House of Commons' administrative practices;
- proposing legislative changes if needed; and

¹ *Federal Accountability Act* (S.C. 2006, c. 9)

² John H. Gomery, Commission of Inquiry into the Sponsorship Program and Advertising Activities: Restoring Accountability Recommendations (2006)
<http://publications.gc.ca/pub?id=287355&sl=0>

- involving a person who is not a member of a recognized political party as a temporary, non-voting member of the Committee.

While this motion acknowledges the importance of accountability and transparency for responsible government, a third element—governance—is also fundamental to ensure that elected officials are accountable to Canadians.

Role of the Office of the Auditor General of Canada

As an independent Agent of Parliament, the Office of the Auditor General has long played a role in promoting accountability. Our reports are objective, non-partisan, and reliable. They provide the fact-based information that Parliament needs to fulfill one of its most important roles: holding the federal government accountable for its stewardship of public funds. This is the first aspect of responsible government.

The Committee’s mandate focuses on the second aspect of responsible government—assisting elected members of Parliament to demonstrate accountability to Canadians. In my view, the Office of the Auditor General also plays a role in this area.

Purpose of this paper

This paper provides comments on three elements of responsible government—accountability, transparency, and governance. It suggests approaches to strengthen these elements and provides examples from significant audits of members’ spending from federal, provincial, and international jurisdictions. We hope that it will assist members of the Committee in their deliberations.

For ease of reference, the term “members” in this paper means the members of the House of Commons.

DISCUSSION

Accountability

Definitions. There are many definitions of accountability, each tailored to a particular relationship. In our 2002 study on Modernizing Accountability in the Public Sector,³ we proposed the following enhanced definition of accountability in public management:

³2002 December Report of the Auditor General of Canada, Chapter 9—Modernizing Accountability in the Public Sector
http://www.oagbvg.gc.ca/internet/English/parl_oag_200212_09_e_12403.html

Accountability is a relationship based on obligations to demonstrate, review, and take responsibility for performance, both the results achieved in light of agreed expectations and the means used.

The report from the Treasury Board to Parliament entitled Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials (2005) defined the notion of accountability as:

the means of explaining and enforcing responsibility. It involves rendering an account of how responsibilities have been carried out; taking corrective action and fixing any problems that have been identified; and, depending on the circumstances, accepting personal consequences if the matter is attributable to the office holder's own action or inaction.⁴

In the United Kingdom, the concept of parliamentary accountability is based on the premise that:

Parliament, as the highest representative organ of government, has the duty to check on the activities of the executive through a number of measures. However, also tied to this is the institutional accountability of members of Parliament, collectively and individually. Thus, champions of accountability must first be accountable to themselves and to the electorate.⁵

The 2009 High Court ruling on the members' expenses scandal in the United Kingdom declared that members are accountable to the electorate. With respect to the use of public funds, the High Court stated, "At a time when trust in our elected representatives is at a very low ebb, it is important that politicians are accountable to the public they serve and are seen to be bound by the same conventions as the electorate."⁶

I am of the view that these various notions of accountability apply equally to our Members of Parliament. Canadians expect their members to spend the monies they receive for the functions of their office in an ethical manner and for approved purposes. Members are accountable to one another in the House and to the public for their actions. It is their responsibility to carry out their assigned mandate in light of these expectations.

Strengthening accountability

In February 2011, the Agents of Parliament wrote to the Speaker of the House of Commons and the Chairs of various parliamentary committees to provide information on the accountability mechanisms that apply to their offices. The Agents of Parliament discussed the structural and institutional features of their organizations and the safeguards they use to promote transparency, accountability, and good governance. The

⁴ Treasury Board to Parliament: Meeting the Expectations of Canadians (2005)
<http://www.tbs-sct.gc.ca/report/rev-exa/ar-er01-eng.asp#Toc117051194>

⁵ Government Accountability and Parliamentary Committees,
<http://www.parliamentarystrengthening.org/committeesmodule/pdf/UNIT%206.pdf>

⁶ <http://www.hansardsociety.org.uk/high-court-right-to-force-disclosure-of-mps-expenses/>

paper highlighted mechanisms that strengthen the chain of accountability including: accountability sessions with parliamentary committees; the use of independent audit committees chaired by external members; the use of internal audits; and annual, independent financial and performance audits conducted by the Auditor General. It is my view that implementing similar mechanisms may strengthen accountability of members.

I want to elaborate, in particular, on Canadian and international experience with independent audits and oversight as methods to strengthen accountability.

Independent audits have been successful for promoting compliance with rules and improving systems and practices related to governing members' expenses.

- In Canada, audits of some provincial legislatures have uncovered instances of improper spending by members [Newfoundland (2007) and Nova Scotia (2010)]. Other audits have revealed significant deficiencies in the administration, financial control, and governance of the financial affairs of the legislature [Manitoba (2009) and British Columbia (2012)].

As a result of these audits, provincial Auditors General made a number of recommendations that led to changes in legislation, management practices, and operating procedures for expenses of members of the legislatures. Provincial responses have varied from establishing sanctions for illegal spending (ranging from impeachment to criminal charges) to establishing an arms-length body⁷ or office to review policies and spending controls and make recommendations to improve accountability

- Internationally, audits conducted in New Zealand and Australia found similar issues in the spending of public funds by their members of Parliament. These countries have now established mechanisms to ensure that members are accountable for the money they receive to carry out official functions.

Oversight. I want to highlight two examples where governments have adopted some form of oversight to increase members' accountability for spending.

- In 2001, following the New Zealand Auditor General's report, the New Zealand *Parliamentary Services Act 2000* was amended to establish a committee of members with the mandate to review the amount of money appropriated by Parliament and allocated to the members.
- Following the United Kingdom parliamentary expenses scandal, the *Parliamentary Standards Act 2009* created the Independent Parliamentary Standards Authority (IPSA) with responsibility for managing the expenses of Members of Parliament. The Act also created the position of compliance officer to conduct investigations if the officer has a reason to believe a member may have been paid an amount that should

⁷ For example, in Manitoba, on September 1, 2010, an Allowances Commissioner was appointed with the mandate to review the Auditor General's 2009 Report as it relates to Members' allowances, to decide what regulations or amendments to existing regulations should be made in order to implement the recommendations contained in the Auditor General's Report and to make regulations requiring details about members' allowances and how they should be published.

not have been allowed under the rules set out in the Act or by the House of Commons' code of conduct.

I believe that independent audits and some form of oversight would strengthen members' accountability and enhance the public's confidence in the governance mechanisms of the House of Commons.

In most Canadian provinces, Auditors General have a clear legislative mandate to audit the spending of the Legislative Assemblies, including MPPs expenses.⁸ In the past, my office has conducted performance audits of the House of Commons upon invitation. I would welcome a clear statutory mandate as the auditor of the House of Commons.

Transparency

To ensure accountability, there is a need for transparency. In my view, it is not possible for an individual to be held accountable if that individual's actions do not come to light. Accountability flourishes more easily in a system where the public has access to information about their members' spending. Transparency does not guarantee accountability but makes it possible. As well as ensuring accountability, greater transparency promotes fundamental democratic principles, including participation in public affairs. Transparency may also encourage members to make better value for money choices and allow for informed public debate.

A lack of transparency makes it possible for the public to make allegations that members subvert process and bypass lines of accountability. Where the expenditure of public money is involved, openness and accountability are essential to maintain public confidence.

⁸ In British Columbia, the Auditor General is the auditor of the Legislative Assembly (sections 1 and 11(8) of the British Columbia *Auditor General Act* and sections 5(6) and (7) of the *Legislative Assembly Management Committee Act*). The British Columbia Auditor General conducted an audit of the Legislative Assembly's Financial Records in 2012. In Nova Scotia, the Auditor General is the auditor of the House of Assembly (sections 2, 18, 21 and 25(2) of the Nova Scotia *Auditor General Act* and sections 22 and 23 of the *House of Assembly Management Act*. The Nova Scotia Auditor General reported on the Office of the Speaker Member's Constituency and other expenses in 2010. The New Brunswick Auditor General conducts audits of the Legislative Committees under sections 9 and 15(1) of the New Brunswick *Auditor General Act*. The New Brunswick Auditor General reported on the Constituency Office Costs for Members of the Legislative Assembly and Executive Council in 2011. The Newfoundland Auditor General conducts audits of the House of Assembly under sections 2 and 12 of the Newfoundland *Auditor General Act* and section 43 of the *House of Assembly, Accountability, Integrity and Administration Act*. The Newfoundland Auditor General conducted a review of constituency allowance claims from 1989-1990 through to 2005-2006 in 2007. Under sections 1, 9 and 14 of the Manitoba *Auditor General Act*, section 1 of the Manitoba *Financial Administration Act* and section 9(3) of the *Legislative Assembly Management Commission Act*, the Auditor General of Manitoba conducts audits of member's allowances. The last Manitoba Auditor General report was in 2009. The Alberta Auditor General conducted a financial audit of the Legislative Assembly in 2010 under sections 1, 11 and 19 of the Alberta *Auditor General Act*. The Ontario Auditor General can conduct audits of the Legislative Assembly under section 86 of the *Legislative Assembly Act of Ontario*.

I believe that transparency should be enhanced by providing clearer policies and processes for parliamentary expenditures. More detailed public disclosure of members' expenses through reporting and auditing, would significantly improve transparency and, as a result, accountability.

Strengthening transparency

International experience. In recent years, several countries have advanced significantly in increasing transparency related to members' expenses.

- In November 2009, the United Kingdom Committee on Standards in Public Life noted the following in relation to the 2009 members' expenses scandal, which revealed widespread misuse of the allowances and expenditures available to Members of Parliament:

The House of Commons has belatedly accepted that full details of all expenses claims should be made publicly available. Had this degree of transparency existed in the past, it is unlikely that the previous flawed system would have survived as long as it did. We firmly believe that regular publication, along the lines of the arrangements already introduced in the Scottish Parliament, is an essential part of the way forward.⁹

- The Scottish Parliament makes full details of members' allowances available through the Internet. The public may view claims made by members for carrying out their parliamentary duties along with the relevant receipts.
- In March 2010, the New Zealand Auditor General made the following comments in the context of an inquiry into certain types of expenditures:

The public rightly expects all those who spend public money to recognize that it is public money. Any such spending that provides or can be seen to provide private benefit to an individual can be controversial. Although the spending may be justified, the potential for sensitivity means that careful decision-making and judgment is needed to manage the expenditure appropriately. Everyone who spends or administers public money needs to recognize this sensitivity and to take extra care that the expenditure is reasonable and able to stand up to public scrutiny. That means considering how an outside observer may reasonably perceive the expenditure. Individuals making decisions about such expenditures need to be guided by the concepts of integrity, honesty, transparency, impartiality and openness.¹⁰

⁹ Committee on Standards in Public Life, MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer (2009) <http://www.official-documents.gov.uk/document/cm77/7724/7724.pdf>

¹⁰ Office of the Auditor General, Auditor-General's Inquiry into certain types of expenditure in Vote Ministerial Services-Part I, (2010) <http://www.oag.govt.nz/2010/vote-ministerial-services/docs/vote-ministerial-services-part-1.pdf>

Canadian experience. In my view, the observations quoted above about the value of transparency apply equally in Canada. As Justice Gomery stated in the context of the Sponsorship Inquiry:

...a key concept that may be learned from the private sector: greater transparency promotes accountability and better management. The best managers are those whose administrative practices are transparent and who accept that they are accountable not only to their superiors but also to the shareholders of the corporation. Consider, for example, the availability of information about salaries of CEOs whose shares are publicly traded. Such information is almost always disclosed, and shareholders expect to have access to it.¹¹

- At the federal level, the House Administration prepares annual audited financial statements, which include expenditures incurred by the House Administration, House Officers, and members, under the authority of the *Parliament of Canada Act* and Board of Internal Economy Members' bylaws. Certain information about the annual entitlements and expenditures of members is available through the Members' Expenditures Report.¹²

While this practice provides some information on the total spending of members, I believe that full transparency is lacking. In our 2012 audit report on the Administration of the House of Commons of Canada,¹³ we commented on the lack of transparency in recent years in the Members' Expenditures Report. Although the Report has increased the number of expense categories that are included, we suggest that transparency could be further increased by a more detailed report (including, for example, supporting documentation such as receipts). The Committee may wish to consider adopting the Scottish or Alberta model of full proactive disclosure of members' expenses.¹⁴ With respect to transparency, concerns from respondents for the need for transparency encouraged the Gomery Commission to ensure that all "the doors should remain open and the light left on."¹⁵ In my view, enhanced transparency leads to improved accountability.

- In their 2011 paper on accountability and transparency, the Agents of Parliament indicated that transparency of their organizations is enhanced by the following reporting practices

¹¹ Gomery, <http://publications.gc.ca/pub?id=287355&sl=0>

¹² Members of Parliament expenditures report and audited financial statements: <http://www.parl.gc.ca/about/house/boie/boie-expenditures-e.html>

¹³ 2012 June Report of the Auditor General of Canada to the Board of Internal Economy of the House of Commons—Administration of the House of Commons of Canada http://www.oag-bvg.gc.ca/internet/English/parl_otp_201206_e_36890.html

¹⁴ In Alberta, the following information must be disclosed on the Legislative Assembly website: name and position of individual who incurred the expense; date of transaction, transaction amount; expense category (travel, including transportation, accommodation, meals and incidentals, and hospitality, description and rationale for meals and hosting and supporting documentation including receipts when applicable).

¹⁵ Gomery, <http://publications.gc.ca/pub?id=287355&sl=0>

- publishing Internal Audit Plans and Reports,
- publishing Reports on Advertising Expenses,
- proactive Disclosure of Contracts above \$10,000,
- proactive Disclosure of Hospitality and Travel Expenses, and
- proactive Disclosure of Grants and Contributions.

Agents of Parliament are required to make these disclosures by government policy. While these policies do not apply to members, I believe the Committee should consider some of these reporting practices in its review.

- At the provincial level, it is also worth noting that various provincial legislatures now proactively disclose their members' expenses (Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Saskatchewan).

As long as there are questions about the transparency of payments made to members, the public will have doubts about the integrity of the whole system. It is essential for the well-being of Canada that its Parliament enjoys public respect, rather than being criticized for a lack of transparency in public spending that would be open to scrutiny in other jurisdictions.

Governance

Unfavourable public perceptions appear inevitable when individuals are involved in determining the benefits they receive. A recent media article has highlighted, "how the coziness of behind-closed doors collegial oversight can create a culture that enables fiddling expenses."¹⁶

A prime concern with the current system is that the mechanisms for setting, reimbursing, and overseeing expenses and entitlements are not independent from the people who stand to benefit from them. As long as members continue to have exclusive determination of their own entitlements, there is a risk of public suspicion about the legitimacy of those entitlements.

Strengthening governance

In my view, creating oversight mechanisms that are independent of Parliament should be considered to improve governance of parliamentary expenses and enhance public trust in the parliamentary system.

International experience once again provides examples to support this approach. The Committee may wish to examine in more detail experiences from Australia, the United Kingdom, and New Zealand, which are summarized below.

¹⁶ CBC News, October 10, 2013, <http://www.cbc.ca/news/politics/politicians-expense-claims-lessons-in-reining-them-in-1.1931563>

- Australia's Remuneration Tribunal¹⁷ is an independent statutory authority established under the *Remuneration Tribunal Act 1973*. The Tribunal's role is to determine, report on, and provide advice about remuneration, including allowances and entitlements.
- Following the 2009 parliamentary expense scandal in the U.K., the Fees Office, which had been criticized for its role in the scandal, was abolished. The Independent Parliamentary Standards Authority (IPSA) was created by the *Parliamentary Standards Act 2009*. IPSA has responsibility for managing expenses and maintaining the Register of Members' Interests. A separate office (the compliance officer) under the authority of the IPSA investigates allegations about improper expense claims or conflicts of interest.
- Following the 2001 New Zealand Auditor General report, the New Zealand *Parliamentary Services Act* was amended to establish a committee of members responsible for reviewing the amounts of money appropriated by Parliament and allocated to members.

International experience could be adapted to the Canadian context in a number of ways. For example:

- **Use of an Independent Audit Committee chaired by an external member.** Establishing an independent audit committee was recommended in our 2012 audit on the administration of the House of Commons of Canada. The House Administration accepted this recommendation.

The Newfoundland House of Assembly and the Nova Scotia House of Assembly Commission have already taken steps to create an independent audit committee to oversee the province's work of internal audit and the system of internal controls.¹⁸

In my opinion, an independent audit committee would provide the House of Commons with a broader perspective, along with in-depth advice and recommendations on the adequacy and functioning of its risk management practices, including practices for member entitlements and expenditures.

¹⁷ Remuneration Tribunal, Australia, <http://www.remtribunal.gov.au/>

¹⁸ See Hon. J. Derek Green, *Rebuilding Confidence: Report of the Review Commission on Constituency Allowances and Related Matters*, 2007 <http://www.gov.nl.ca/publicat/greenreport/mainreport/mainreport.pdf>, section 23 of the Newfoundland House of Assembly Accountability, Integrity and Administration Act and sections 15 and 17 of the Nova Scotia House of Assembly Commission Act

Report of the Auditor General to the House of Assembly on a Review of Constituency Allowance Claims 1989-90 through to 2005-06, 2007, <http://www.ag.gov.nl.ca/ag/special/2007MHA/MHAReport2007.pdf>

Establishing an independent body to review and manage members' entitlements. In Canada, the roles of the Clerk, Board of Internal Economy, and the House Administration are clearly set out in legislation. Among other functions, the Board of Internal Economy makes bylaws concerning the use of funds provided to the members. In addition, each year, the Board of Internal Economy publishes a Finance Bylaw which establishes the global budget for the fiscal year, including budgets for Members, House Officers, and Committees. The budget constitutes the primary control over the expenditure of funds for members. The Board also determines the terms and conditions for members to manage and account for the funds they receive.

In my view, the Board's role with respect to determining members' expenditures and entitlements should be given to another body—independent of the House of Commons. However, an alternative option could be for an independent body to provide advice or additional perspective on issues and recommendations to the Board of Internal Economy about allowances and entitlements.

I recognize that the House of Commons enjoys the exclusive right to control its debates and proceedings. It can make and change its own rules, and manage its internal affairs without outside interference. It determines its own agenda, controls its own proceedings, and its decisions are free from judicial review. These rights and powers are part of parliamentary privilege. Parliamentary privilege refers to the sum of the privileges, immunities, and powers enjoyed by the House of Commons and each member individually, without which they could not fulfill their functions. What impact would creating a new independent body have on this privilege? Once again, international experience provides some insight. When the Independent Parliamentary Standards Authority was created in the United Kingdom, it was determined that an independent body responsible for putting together and administering an expense scheme for members of Parliament does not trespass on parliamentary privilege.

CONCLUSION

This paper discussed three fundamentals for the system governing members' expenses:

- Transparency—how much is paid, and for what;
- Governance—structures to ensure that payments are set by a process independent of those who receive the money; and
- Accountability—who answers to whom and for what.

In my view, the existing system does not possess any of these elements to a sufficient degree. As a result, members' expenses and allowances attract significant criticism and media attention. Such negative attention can undermine public confidence in the integrity of the parliamentary system.

In this paper, I have outlined a number of mechanisms that would address these shortcomings. Clearer policies and processes for parliamentary expenditures and more detailed public disclosure of members' expenses would significantly improve transparency. In addition, governance could be improved by creating oversight mechanisms that are independent of Parliament, such as an independent body with responsibilities relating to member's expenses. Finally, independent audits would

strengthen the overall accountability of members and enhance the public's confidence in the governance mechanisms of the House of Commons.

Members must be properly supported in order to carry out their duties effectively. Refining the mechanisms that promote the three fundamental elements of responsible government will enable members of Parliament to fulfill their roles and responsibilities and meet the expectations of Canadians.