
Harper government tables *Federal Accountability Act*

On April 11, 2006, the Conservative government of Prime Minister Stephen Harper tabled Bill C-2, the *Federal Accountability Act*, an omnibus bill that amends dozens of federal statutes, enacts two new laws, and has the stated aim of making the federal government more transparent. This article will provide a brief overview of some of the Bill's main features.

ACCESS TO INFORMATION

The Bill would expand the coverage of the *Access to Information Act* and the *Privacy Act* to five officers, seven Crown corporations and three foundations, including the CBC, Canada Post, Via Rail, Atomic Energy of Canada, the Auditor General, and the Chief Electoral Officer. New exemptions to access are also added and existing exemptions amended relating to the expanded coverage of the legislation. Heads of government institutions will have a duty to assist requesters of information without regard to the identity of the requester. The Bill clarifies that complaints about an access decision must be made within 60 days of the access decision, or from the time the person becomes aware that grounds for the complaint exist. The amendments also allow for increases to the number of investigators the Information Commissioner may designate to examine records related to defence and national security.

WHISTLEBLOWER PROTECTION

The Bill amends the *Public Servants Disclosure Protection Act*, legislation which had been criticized for not going far enough to protect federal government employees (see also "[Federal whistleblower legislation receives Royal Assent](#)" on our What's New site). It establishes the Public Servants Disclosure Protection Tribunal, which has the power to remedy reprisals against whistleblowers and to order disciplinary action against those who took the reprisal.

The Public Sector Integrity Commissioner will be made an agent of Parliament and will be required to report to Parliament within 60 days of making a finding of wrongdoing. The Commissioner would be permitted to provide access to legal advice to those considering making a disclosure of wrongdoing. The Commissioner would also be authorized to make awards of up to \$1,000 to persons who have shown courage in defending the public interest by reporting wrongdoings.

The Bill includes provisions to protect persons other than public servants who disclose government wrongdoing. For instance, government would be barred from terminating a contract with a contractor who disclosed information concerning an alleged wrongdoing, or from

withholding a grant to a recipient for the same reason. It also provides fines of up to \$10,000, two years imprisonment or both for persons who willfully impede investigations of wrongdoing.

ADMINISTRATIVE OVERSIGHT AND ACCOUNTABILITY

The *Financial Administration Act* is amended to designate certain officials as accounting officers who are accountable before the appropriate committee of Parliament to answer questions related to their responsibilities, including:

- the measures taken to organize the department's resources to deliver programs in compliance with government policies and procedures;
- the measures taken to maintain effective systems of internal control in the department;
- signing departmental accounts; and
- the performance of other specific duties assigned by law in relation to the administration of the official's department.

The Bill also establishes a regime for the resolution of disputes between a minister and a deputy minister related to the interpretation or application of a policies issued by the Treasury Board. Treasury Board would be required to provide a copy of its decision in the dispute to the Auditor General.

The *Financial Administration Act* and the *Criminal Code* would be amended to create indictable offences for fraud with respect to public money or money of a Crown corporation, and makes persons convicted of those offences ineligible to be employed by the Crown or the corporation or to otherwise contract with the Crown. Penalties would include a maximum of five years imprisonment for fraud of \$5,000 or less, and up to 14 years imprisonment for fraud of over \$5,000. Conviction of the offence of fraud involving public funds would lead to automatic dismissal of the convicted official.

The *Financial Administration Act*, the *Farm Credit Canada Act* and *Public Sector Pension Investment Board Act* would be amended to require Crown corporations to establish audit committees composed of members who are not officers or employees of the corporation. The legislation governing a number of federal entities, including the National Capital Commission, would be amended to require different individuals to perform the duties of chair of the Board of Directors and chief executive officer of the corporation.

GOVERNMENT GRANTS AND POWERS OF THE AUDITOR GENERAL

The powers of the Auditor General would be expanded in the areas of government grants. The Auditor General would have the power to inquire into the use of funds by recipients of grants from the federal government and its agencies and Crown corporations. Funding agreements would be required to include provisions that enable the Auditor General to monitor the use by the recipient of the funding, including:

- the obligation of recipients to maintain records with respect to the funding they receive;
- the right of the Auditor General to inquire into the use of the funds; and

- the obligation of recipients to provide information and records to the Auditor General on request.

As well, every government department would be required to review, every five years, the relevance and effectiveness of the grant programs for which it is responsible. Cabinet would be given the power to make regulations deeming clauses to be set out in funding agreements to enable the Auditor General to inquire into the use of funds under the agreements.

PROCUREMENT

The Bill would amend the *Department of Public Works and Government Services Act* to provide for the appointment a Procurement Auditor, whose mandate would be to review procurement practices across government and make recommendations for improvement. The Procurement Auditor would also:

- review complaints from unsuccessful bidders and, where the complaint is found to be valid, make recommendations that the bidder be compensated for the costs of bid preparation and loss of profit up to ten percent of the value of the contract;
- review complaints about contract administration;
- manage an alternative dispute resolution program for contracts; and
- submit an annual report on activities and outcomes, which would be tabled in Parliament.

The *Financial Administration Act* would be amended to provide for a government commitment to fairness, openness and transparency in government contract bidding. Cabinet would be given the power to make regulations deeming certain clauses to be set out in government contracts in relation to prohibiting the payment of contingency fees and respecting corruption and collusion in the bidding process for procurement contracts, and declarations by bidders in respect of specific criminal offences.

CONTROLS ON LOBBYING

The Bill would rename the *Lobbyists Registration Act* the *Lobbying Act* and would establish the position of Commissioner of Lobbying to replace the current Registrar of Lobbyists. It broadens the scope for investigations by the Commissioner, extends from two to ten years the period for investigating and prosecuting contraventions, and increases the penalties for offences. The Commissioner would be empowered to prohibit someone who has committed an offence from lobbying for a period of up to two years and to bar certain public office holders (such as ministers, ministers' staff and senior public servants) from lobbying for a period of five years after leaving office. Lobbyists would be required to record certain activities with senior public officials, such in-person meetings and phone calls. As well, there would be a prohibition on any payment or other benefit that is contingent on the outcome of a lobbyist's activity.

In Our View

The portion of the Bill that has attracted the strongest criticism up to this point appears to be that dealing with the *Access to Information Act*. Specifically, the Information Commissioner has

attacked the new exemptions which have been added, noting that eight of these exemptions contain no requirement for bureaucrats to demonstrate why records should not be disclosed and contain no public interest overrides. As well, the government did not include the Commissioner's recommendations for reform of the Act in the Bill, opting instead to include these recommendations in a separate legislative package to be introduced at a later date. These included subjecting Cabinet records to review by the Commissioner, obliging federal officials to create records documenting their decisions, and ensuring that all exemptions from the disclosure of government information are justified only on the basis of the harm or injury that would result from disclosure, not blanket exemption rules.

For further information, please contact [Lynn Harnden](#) at (613) 940-2731.

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