



**SUBMISSION TO THE
LEGISLATIVE COMMITTEE ON BILL C-2
Federal Accountability Act**

by the

**ASSOCIATION OF PROFESSIONAL EXECUTIVES OF
THE PUBLIC SERVICE OF CANADA**

Ottawa, May 29, 2006

INTRODUCTION

- The Association of Professional Executives of the Public Service of Canada (APEX) appreciates the opportunity to share its views and provide comments on Bill C-2, an Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability.

BACKGROUND ON APEX

- APEX is a voluntary, not-for-profit organization devoted to promoting professionalism and management excellence in the Public Service and to representing the interests of the approximately 4,000 executives in the Federal Public Service.
- This legislation is very important to the executive community particularly in the area of whistleblowing as executives wear three hats with respect to the disclosure of wrongdoing. They are employees with expectations about the level of protection and support that will be afforded to them should they disclose wrongdoing. They may also, as a result of their management role, be the subjects of disclosures of wrongdoing. And finally as leaders and managers, they are also responsible for the resolution of instances of wrongdoing as they are identified.

AREAS OF SUPPORT

- Our Association and its members support the spirit of this proposed legislation and are committed to maintaining the highest standards of integrity in the Federal Public Service. We believe that no one should be exempt from being cited through the disclosure process. Wrongdoing must be addressed swiftly and the process must be open and transparent while, at the same time, offering all parties the protection of the rules of natural justice.
- The proposed legislation reflects APEX's position that the Public Sector Integrity Commissioner will be an Agent of Parliament.
- APEX strongly supports the creation of codes of conduct both for the government as a whole, and for departments and agencies. This would be an important step in reinforcing the culture of excellence expected of the public service. It would make it possible to have frank and open discussions on sensitive issues, without fear of reprisal or censure. Once uniform codes are in place, they will be useful as evidence before the courts in the future interpretation of the law as every public servant will be expected to abide by the same ethics and values.
- Last fall, APEX Alumni members made representations to the then Minister of PWGSC and to senior officials regarding small and medium businesses that were having their businesses curtailed as a result of PWGSC's decisions that all procurement be through standing offers. APEX is pleased to see that in the FAA Action Plan, reference is made to "provide more resources and greater regional presence to the Office of Small and Medium Enterprises (OSME) with Public Works and Governmental Services Canada (PWGSC), to help these businesses maintain access to government business opportunities and ensure that they are treated fairly."

AREAS OF CONCERN

- While it is crucial to protect whistle-blowers from retribution, legislation should also protect employees, managers and executives of the Public Service from unfounded and vexatious complaints. APEX is particularly concerned that the legislation may be used as means to retaliate against a superior or colleague. For example, in the course of assisting our members we have noted that some employees use harassment charges to stymie a manager's efforts to manage that employee's performance. The Integrity Commissioner has had similar experience and has reported that he accepted only a small number of complaints as being appropriate.
- We urge that the proposed legislation include issues of natural justice. *Natural justice* is associated with concepts of procedural fairness and due process and invokes elements such as time limits for filing complaints, the standard of information required for complaints to be accepted for investigation, and standards for when complaints should be deemed frivolous or vexatious. We recommend that the proposed legislation and policy related to harassment, whistle-blowing and the like should make provision for disciplinary action where vexatious or bad faith complaints have been lodged.
- An employee must be given a clear understanding of what they are accused of having done or not done, and be allowed access to proper legal representation. They must be allowed a fair investigation and have their case decided by an unbiased person. There must be a real opportunity for the employee to attempt to refute the allegation or to explain or mitigate his or her conduct. In addition, the employer must carry out a full investigation of all relevant facts before taking any disciplinary action and the result of such an investigation should be communicated to the employee.
- APEX recommends that whistle-blowing legislation enshrine protection for those making the accusations as well as for those accused; you are innocent until proven guilty. Investigations must be completed quickly and yield the clearest possible results as it would be unjust to leave the individuals in procedural limbo with their reputations in question. Often by the time findings are made, their careers are ruined, even when found innocent.
- Executives in the Federal Public Service have particular challenges in regard to bringing or responding to complaints in that they do not have union representation and should they choose to obtain legal advice, they currently must do so at their own expense. Therefore APEX recommends that, just as with Royal Commissions to which whistle-blowing accusations are accepted for investigation, full indemnification be provided to executives by the government.
- APEX believes that there should be a mandatory review of the legislation and its effectiveness three years after having received Royal assent.
- Whistle-blowing has not traditionally been encouraged in the Public Service. In lieu of a monetary reward, APEX suggests that organizations focus on reinforcing a culture that accepts only the highest standard of ethical behavior while supporting legitimate whistle-blowing. Information on the legislation should be provided to all employees early and often, in order to ensure the long-term success of this initiative.

CONCLUSION

- APEX remains committed to the nurturing of a Public Service culture, which upholds uncompromising values and ethics and continuously strives for excellence.
- We recognize the challenges inherent in creating an environment that will encourage the disclosure of wrongdoing. We are as committed to protecting the career potential of someone who has made a disclosure in good faith, as we are to protecting those who might suffer because of a disclosure made in bad faith. A delicate legislative balancing act is required.

We thank you for the opportunity to contribute to this debate and the Association remains available should you wish to further discuss these important matters.