

Governance and The Role of the Public Service in Westminster Parliamentary Democracies

Presentation© by

Mel Cappe

Professor, Munk School of Global Affairs and Public Policy

University of Toronto

To The Commission of Inquiry Respecting the Muskrat Falls Project

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Outline

- Thesis
- What this presentation does not deal with.
- Principles of governance in a Westminster Parliamentary democracy.
- History of the Role of the Public Service.
 - Role of the PS in risk management.
 - Major Project Risk Management Policy.
 - Lessons from the Government of Canada.
- Crown Corporations
- Mega Projects
- Risk Analysis
- Accountability to the public
- Explaining or defending the Government's Agenda
- Documentation and Secrecy

Thesis

Summary and Conclusion

- Governments have to be deliberate in order to manage risk.
- Institutions, policies and practices, coupled with technique and people are required to optimize risk.
- The optimal quantity of risk is not zero.
- Choice of how risky is a political decision.
- The role of the public service is:
 - to be the conscience of the government and expose to them the risks,
 - advise on what risks to take,
 - suggest strategies for managing risk and then
 - implement project and risk management tactics and approaches

What this is not.

- Not a review of Muskrat Falls
- Not a review of Newfoundland and Labrador's policies or practices

What this is.

- Review of principles and practices
- Based on the Government of Canada's practices and policies
- Treatment of Crown Corporations
- Treatment of Mega Projects
- Risk Analysis and its importance
- Accountability to the Public
- Public Servants and Politics
- Role of documenting and value of secrecy

Principles of Governance in a Westminster Parliamentary Democracy

- Supremacy of Parliament
- Confidence of the House
- Professional, non-partisan Public Service
 - Courageous Advice, Loyal Implementation
- Accountability of:
 - the Government;
 - Prime Minister/Premier
 - Ministers;
 - Deputy Ministers;
 - Public Servants.
- Evolution of institutions.
- Constancy of principles.

Selected History of Studies

- Northcote-Trevelyan: UK 1854
 - Meritocracy
- Glassco: Canada 1962
 - Organization of Government
 - Treasury Board Secretariat separated from Finance
 - « Let the managers manage »
- Lambert: 1979
 - Financial and other management principles for public sector
- Public Service 2000: 1990
 - « Make the managers manage »
- Wakerton Inquiry: Ontario 2000

Are Crown Corporations Different?

- Yes, but only to an extent.
- Governance and Role of Board of Directors
- Role of CEO
- Role of Minister
- Role of PM and Governor in Council
- Role of Parliament.
- Role of Legislation.
 - Creating legislation
 - Other legislation
 - Financial Administration Act
 - Privacy and Access
 - Etc.
- Commercial Confidentiality

Mega Projects and the Role of the Public Service

- Major Crown Project Policy
- Major Projects Policy

- Oversight by Treasury Board
- Role of the Secretariat

- Risk management and Accountability
- Place burden squarely on someone's shoulders

Risk Analysis and Risk Management

- Sophisticated and technical assessment methodologies
- Risk reduction, Risk mitigation, Risk provisions

“Risk Analysis for Public Servants”

Formal Risk Analysis

- Technical Conduct of Risk Analysis
- Risk vs uncertainty
- Pooling, sharing and shifting risks
- Optimality in risk analysis
- Non-linearities and corner solutions
 - Low probability/High impact
- Time value of money
- Cost/Benefit Analysis
- Science and Risk

Type I and Type II Errors

- Type I: Action when not justified
vs
- Type II: No Action when justified
- Depends on:
 - Degree of risk preference Whose?
 - Potential severity of consequences
 - Confidence in probability estimates
 - Knowledge of consequences of action
 - Confidence in all other parameters.
 - Black Swans
- **Which error is worse?**

Walkerton: 2000

- The Cabinet decision and the lack of Risk Assessment
 - No member of Cabinet or other public servant directed that a risk assessment or management plan be done.
 - No analysis appears to have been made to justify the conclusion that the risks were manageable.
 - Undated unsigned memo from DM: ‘as dramatic as these constraints are, the Ministry’s capacity to fulfill statutory obligations and implement new priorities was maintained.’
 - Business plan: promised reforms ‘without lowering the current high level of environmental protection in Ontario.’

Top 10 tips from “Risk Analysis for Public Servants”

1. Understand Risk.
2. Be analytic.
3. Translate for Ministers.
4. Plan for relevant contingencies
5. Develop mitigation and adaptation strategies and plans.
6. Be open with the public – but in a careful way.
7. Use teams with different perspectives.
8. Be cautious.
9. Don't be too cautious.
10. Tell the truth.

Public Servants' Responsibility to the Public

- There is none.
- Accountable to Parliament through a Minister
- Ministerial Accountability
- Cabinet Government Responsibility
 - Collective responsibility
- Ministers are accountable to Parliament and through Parliament to the Public.
- Accountability, Responsibility, and Answerability

Responsibility of Public Service in Advancing the Government's Agenda

- Dispassionate explanations
 - Honesty and truthfulness
 - Advising the Minister and Government on how to present their agenda and to justify and explain it.
 - Appearing before Parliament to explain
-
- Social Media
 - Public meetings
 - eGovernment
 - Role of MPs

A Defence of Secrecy

- Openness is desirable for accountability
- Secrecy is desirable for candor and considering the options
- The tension between openness and secrecy is always present.
- There is an optimal degree of openness.
- There is an optimal degree of secrecy.
- Increasing openness REDUCES the written record
- Public Servants and politicians move to an oral approach.
- The record is impaired as a result

May defends secrecy

- “Good government depends on public servants being able to give full and frank advice.”

Theresa May

July 10, 2019

Duty to Document

- Duty to protect documentation requires secrecy
- Secrecy promotes documenting decision making
- Cabinet should use different standards of documenting interventions of Ministers in Cabinet discussions
- Cabinet Confidences **MUST** be preserved.
- In ex post reviews like this Inquiry, the Commission should have access to the record
- But there should be a record to have access to.

Institutional Evolution, Principled Durability

- The Canadian Westminster system is more Westminster-like than Westminster.
- Provinces have adapted more quickly
- Feds adapting more recently
 - Loosening of management controls
 - Senate reform
 - Appointment reform; etc
- Durability of fundamentals of:
 - Supremacy of Parliament
 - Professional, non-partisan Public Service
 - Accountability and Responsibility

Summary and Conclusion

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