

Association  
of Canadian  
Financial  
Officers



Association  
canadienne  
des agents  
financiers

# *Checks & Balances*

*Accountability and Liability under the  
Financial Administration Act*

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## *Introduction*

The Association of Canadian Financial Officers (ACFO) is committed to a strong financial control framework for the Government of Canada. Over the years, financial officers have expressed concerns about their role in this framework; and, with the recent “sponsorship scandal” and other issues highlighted by the media, concerns about accountability for spending have been raised.

This prompted ACFO to develop a paper providing a legal opinion on financial officers’ accountability and liability associated with the performance of their duties under the *Financial Administration Act*. The results show that the concerns expressed by financial officers were legitimate.

Below is an executive summary of the paper and ACFO recommendations for addressing the findings. The complete paper is also attached.



## *Executive Summary*

It is government policy that departments must exercise sound comptrollership. In 1997 the Treasury Board Secretariat established the Comptrollership Modernization Initiative in order to strengthen management capabilities and accountability in the federal public sector. A clear, structured approach coupled with strong commitment and support from senior management and the central agencies were viewed as prerequisites to the success of the initiative. The Office of the Auditor General of Canada has expressed concern that controls for financial systems are still weak and has recommended that the Treasury Board Secretariat, in particular, provide much clearer direction and guidance on how to put into practice key areas of comptrollership.

The financial control framework under the *Financial Administration Act (FAA or the Act)* defines the roles and responsibilities for the management and accountability of public resources. Departments must establish and maintain adequate controls within their systems to ensure the completeness, accuracy and authority of financial information and are further required to ensure that suitably qualified financial personnel are directly involved in development of systems to ensure proper financial control. In order to facilitate the management of public funds in accordance with public service principles of good stewardship, economy, prudence and probity, there is a requirement for a separation of duties in the payment authorization and verification functions under the *Act*. Financial officers are directly involved in the payment certification and verification processes described in the section 33 and section 34 controls in the *FAA*.

In practice, the control framework and corresponding policies and guidelines that are intended to support effective comptrollership are not producing the enhanced accountability that is an objective of the modern comptrollership initiative. In fact, the practical experiences of front line financial officers performing the payment certification and verification functions under the *Act* disclose ongoing concerns relating to four main themes that potentially give rise to liability exposure for the individuals engaged in these functions:



1. Within the hierarchical structure, financial officers are pressured to certify payments based on processes that fail to comply with the requirements of the control framework. Although this is not experienced in the majority of transactions, these are not isolated incidents. Financial officers have been pressured to authorize payments where they have expressed concerns that controls were inadequate. Pressures have taken the form of real or perceived threats to job security, promotions and reprisals such as marginalization in the workplace;
2. The automated payment system does not lend itself to conformity with section 33, *FAA* accountabilities where the verification process is delegated as a function of the high volume of payments generated within the automated system. Most departments have assigned one individual to authorize all payments; and, practically, it is impossible for that person to ensure that the control framework is working as it should across the country. Yet, legally, this one individual is accountable;
3. There is a circularity embedded in the section 33, *FAA* (payment) and section 34, *FAA* (verification) processes that obscures the distinction between the separate accountability ascribed to the two functions. Section 34, *FAA* officials are responsible for transactions they authorize; however, Section 33, *FAA* financial officers are obligated to ensure that section 34 officials are fulfilling their responsibilities. Therefore, financial officers certifying under section 33, *FAA* reexamine transactions for errors. This in effect obscures the accountability; and,
4. There is a need to re-evaluate accountabilities under the control framework insofar as payment authorization functions are performed by individuals who may not meet the requirements to otherwise exercise financial officer (FI) responsibility. These individuals may not meet the business, education or financial expertise requirements of the FI classification within the public service.



In addition to the above, control of commitments for payment (section 32, *FAA*) is inextricably connected to the obligations for payment authorization (section 33, *FAA*). Section 32 of the *Act* prohibits any commitment for payment in excess of the unencumbered balance in an appropriation. In some departments, there are loose protocols which renders section 33, *FAA* control virtually moot. For example, the use of credit cards creates a legal obligation to pay and bypasses section 32; however, the accountability under the section 33, *FAA* payment requisition procedures has been triggered.

Delegation of section 33 and 34 of the *Act* to persons outside the public sector in alternative service delivery arrangements is another area for concern. In those cases accountabilities are not, as a practical matter, strictly within the purview of the public sector control framework. Nonetheless, with particular reference to section 33 of the *Act*, the Senior Financial Officer remains entirely responsible for the effectiveness and efficiency of the person exercising the delegated authority. There is a loss of direct oversight for authorities delegated outside the public sector, yet the accountability for the exercise of that authority rests within it.

Since the implementation of the Modern Comptrollership Initiative, there has been significant dialogue, review and assessment of the elements of the framework concerning accountability and relationships. Conversely, there has been little focus on individual liability arising within the control framework, a matter of particular concern for those financial officers who find themselves in a position where they are being asked to compromise the discharge of their obligations under the *FAA*. Individual liability derives from multiple statutory sources, including the *FAA* itself and the *Criminal Code*, as well as the common law and the requirements of professional governing bodies. Sanctions for misconduct are prescribed in those sources of liability and include disciplinary measures within the ambit of the employment relationship.



The current environment of enhanced scrutiny of the conduct of public officers in the administration of public funds suggests little tolerance for failure to strictly adhere to financial protocols. The concern for financial officers in the present environment is that any departure from their strict adherence to protocols under the control framework will be the subject of disciplinary sanctions regardless of the circumstances. There is presently inadequate protection and support for financial officers who seek to disclose improprieties in the discharge of their obligations under the *FAA*. Although the federal government has committed to introducing legislation to afford such protection, it is critical that the legislated regime provides genuine and effective protection for employees.

The experience of front line financial officers demonstrates that the control framework under the *Financial Administration Act* is not being adhered to consistently and in some circumstances the legislated requirements are being bypassed. There is a lack of appreciation for the importance of the statutory obligations associated with the payment authorization functions under the *Act*. Arguably, the importance of the *Financial Administration Act* has been undermined, which raises serious potential consequences for financial officers.



## *ACFO Recommendations*

1. **A thorough review of the *Financial Administration Act*, to bring clarity to:**
  - a. the issue of circularity of accountability within sections 33 and 34, *FAA*;
  - b. the liability risk to financial officers who sign off on automated payments in the financial control framework;
  - c. effective and practical commitment controls; and,
  - d. the specific qualifications required of financial positions in the organization that are exercising section 33, *FAA* authority.
  
2. **Any individuals in departments who play a role in the financial control framework** must receive relevant training on the accountability and liability regime associated with the *Financial Administration Act* prior to being allowed to exercise any authorities under the *Act*. This requires an organizational and financial commitment to training, guidance and support from Treasury Board, the Comptroller General, other central agencies and senior management. This will contribute to the integrity of the comptrollership function within the federal public sector and will achieve the strengthened accountability that is advocated by the Auditor General.
  
3. **Take steps to ensure that financial officers are able to fulfill their duties in a professional manner without the fear of implied threats of reprisals or marginalization of their role within a department or agency.** In order to achieve such an environment, ACFO recommends that:
  - a. all financial officer positions be classified by the Comptroller General's office. Currently, departments are responsible for classifying positions, and this can be used as a means to intimidate financial officers. Moreover, the classification standard is not applied consistently across departments; and,



- b. any reorganization of financial positions or of the financial function within a department requires the approval of the Comptroller General. This recommendation will help ensure that departments, in their pursuit of program results, are not bypassing the requirements of the financial control framework.
4. **The integrity of the financial control framework must be championed by departmental Senior Financial Officers who themselves hold, at a minimum, the same professional qualifications required of financial officers on the front line.**

ACFO is committed to a strong financial control framework for the Government of Canada, and as such, would welcome the opportunity to work with Treasury Board and the Comptroller General to address all of the issues outlined in this document and the accompanying paper.



# *ACCOUNTABILITY AND LIABILITY UNDER THE FINANCIAL ADMINISTRATION ACT*

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## **Introduction**

In 1997 the Treasury Board Secretariat established the Comptrollership Modernization Initiative in order to strengthen management capabilities and accountability in the federal public sector. A clear, structured approach coupled with strong commitment and support from senior management and the central agencies were viewed as prerequisites to the success of the initiative.

In its April 2002 Report the Office of the Auditor General of Canada expressed concern over the need to enhance the commitment and support from senior management in the public sector, the Treasury Board Secretariat and from Parliament itself in such key areas as:

- providing direction and guidance;
- ensuring that departments clearly understand comptrollership; and,
- monitoring progress in the implementation of the initiative.

In particular, the Treasury Board Secretariat, although committed to the initiative, needed to provide much clearer direction and guidance on how to put into practice key areas of comptrollership.<sup>1</sup> This need for greater clarity and direction advocated by the Auditor General continues to exist and is exemplified by the uncertainty that remains inherent in the complex and, at times, obscure accountabilities associated with the practical application of the control framework by financial officers in the public sector. The breakdown of the control framework identified in the November 2003 Auditor General's report on the sponsorship program underscores, yet again, the necessity for sufficient guidance and support as well as proactive intervention, where necessary, to ensure the effective implementation of the modern comptrollership initiative.<sup>2</sup>

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<sup>1</sup> *Strategies to Implement Modern Comptrollership*, Chapter 7, April 2002 Report of the Office of the Auditor General of Canada

<sup>2</sup> *The Sponsorship Program*, Chapter 3, November 2003 Report of the Office of the Auditor General of Canada



What follows is a summary of the framework under the *Financial Administration Act (FAA)* that sets out the authorities and obligations relating to the payment authorization and verification procedures under that legislation. Achieving greater accountability within that framework has largely been the focus of development and review of the modern comptrollership initiatives. However, the financial administration policies and guidelines that are intended to support the application of controls do not provide the clear direction and guidance that are needed to support the practical implementation of the control framework. In addition, a lack of commitment to training at both management levels and in the field has resulted in a climate where the requirement to adhere to control protocols is, at times, not appreciated or loosely regarded. The practical experiences of front line financial officers performing the certification and verification functions under the *Act* disclose ongoing concerns in this regard that potentially give rise to individual liability exposure. These experiences also demonstrate that there is presently inadequate protection and support for financial officers who seek to disclose improprieties in the discharge of their obligations under the *FAA*.

## **Financial Officers and the Control Framework**

It is government policy that departments must exercise sound comptrollership.<sup>3</sup> Comptrollership is defined as comprising the essential, integrated business processes that must be in place in an organization to:

- manage financial risks;
- understand the financial implications of decisions before they are taken;
- report on financial results; and,
- protect against fraud, financial negligence, violation of financial rules or principles, and losses of assets or public money.<sup>4</sup>

The process requirements of the Treasury Board Secretariat's *Policy on Responsibilities and Organization for Comptrollership* prescribe that, within an organization, deputy heads must designate a Senior Financial Officer

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<sup>3</sup> *Policy on Responsibilities and Organization for Comptrollership*, section 4, Policy Statement Treasury Board Secretariat

<sup>4</sup> *Policy on Responsibilities and Organization for Comptrollership*, section 2, Definition, Treasury Board Secretariat



(SFO), who must have a direct reporting relationship to the deputy head. The SFO must devise and implement a financial management organization and processes in the department that are consistent with the policy objectives of ensuring the division of responsibilities and supporting effective comptrollership. Depending on the size of the organization, the Senior Financial Officer may delegate the authority for key financial responsibilities to a Senior Full-Time Financial Officer (SFFO).

Senior financial officers within departments are responsible for providing advice on financial implications of management proposals and actions as well as advising on the approval and adequacy of financial controls in programs. Senior Financial Officers exercise comprehensive responsibility for development of financial administrative systems and also function as financial specialists in the case of program-related systems ensuring financial control and acting in an advisory capacity.<sup>5</sup>

Departments must establish and maintain adequate controls within their systems to ensure the completeness, accuracy and authority of financial information and are further required to ensure that suitably qualified financial personnel are directly involved in development of systems to ensure proper financial control. Financial officers are directly involved in the payment certification and verification processes described in section 33 and section 34 of the *FAA*.

## **Sections 33 and 34 of the Financial Administration Act (FAA)<sup>6</sup>**

The financial control framework under the *Act* defines the roles and responsibilities for the management and accountability of public resources. In order to facilitate the management of public funds in accordance with public service principles of good stewardship, economy, prudence and probity, there is a requirement for a separation of duties in the payment authorization and verification functions.

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<sup>5</sup> Policy on *Financial Systems and Controls*, Part 4, Treasury Board Secretariat

<sup>6</sup> The full text of sections 33, 34 and 32 of the *Financial Administration Act*, R.S., c. F-10 is reproduced in Appendix A



### **Certification of Payment Requisition (Section 33)**

Sub-section 33(1) of the *Act* mandates that the Minister of the department in respect of which an appropriation is made cannot make a charge against the appropriation except on requisition. The sub-section further provides for the delegation of that authority and is referable to financial officers who are routinely involved in this activity.

Sub-section 33(2) of the *Act* provides that the certification of every requisition for payment out of the Consolidated Revenue Fund must comply with the regulations prescribed by Treasury Board. The regulations governing requisitions, in turn, provide that the certification of a requisition must<sup>7</sup>:

- be in such a form that it cannot be replicated by someone other than the person authorized to certify and that the individual certifying is clearly identified;
- be based on information personally generated at the time of certification by the authorized individual and does not originate from a stored location as part of an automated process; and,
- be in a form that can be authenticated before payment is made and can be audited afterwards.

Sub-section 33(3) of the *Act* prohibits any requisition being made for a payment that:

- would not be a lawful charge against an appropriation;
- would result in an expenditure in excess of the appropriation;
- or,
- would reduce the available balance in the appropriation to an amount insufficient to meet commitments charged against it.

The obligations associated with signing off on payment requisitions pursuant to section 33 of the Act are inextricably connected to the control of commitments for payment in respect of appropriations under section 32. In this respect, there is a direct relationship between section 33 and section 32 of the FAA. In essence section 32 prohibits any commitment for payment in excess of the unencumbered balance available for the appropriation and also requires the

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<sup>7</sup> *Payments and Settlements Requisitioning Regulations, 1997*, section 4 (F-11 – SOR/98-130)



implementation of procedures and maintenance of records respecting the control of financial commitments chargeable to appropriations.

However, in practice there is frequently loose and, in some cases, no adherence to the commitment protocols under section 32. As one example, the widespread use of credit cards in the federal public sector to facilitate payment to suppliers of goods and services effectively bypasses section 32 protocols and renders section 33 control virtually moot. In this respect, consider that the simple tender of a credit card creates the legal obligation for payment absent any conformance with section 32. Compliance with both section 33 and section 32 in these types of transactions is illusory, yet the accountability under the section 33 payment requisition procedures has been triggered in the process of the transaction.

### **Verification Process (Section 34)**

All payments and settlements must be verified and certified in accordance with Section 34 of the *FAA*. Certification must comply with Treasury Board's Account Verification policy for control of financial transactions<sup>8</sup>. According to this policy:

- primary responsibility for verifying individual accounts rests with officers who have the authority to confirm and certify entitlement pursuant to *FAA* section 34;
- persons with section 34 authority are responsible for the correctness of the payment requested and the account verification procedures performed in relation to the payment request;
- however, responsibility for the *system* of account verification and related financial controls rests ultimately with those officers who are delegated payment authority pursuant to section 33; and,
- these section 33 officers must provide assurance of the adequacy of the section 34 account verification and be in a position to state that the verification *process* is in place and is being properly and conscientiously followed; although,
- primary responsibility for verifying individual accounts rests with officers who have the authority to confirm and certify entitlement to payment pursuant to section 34 of the *Act*.

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<sup>8</sup> *Policy on Account Verification*, section 4, Treasury Board Secretariat



The Treasury Board *Account Verification Policy* also outlines safeguards within the payment verification process including that:

- section 34 spending authority cannot be exercised in relation to a payment from which that person can benefit directly or indirectly;
- no person can exercise signing authority pursuant to both section 33 and section 34 in respect of a particular payment; and,
- the policy reiterates the requirement that the account verification process must provide for auditable evidence of verification including identifying the various individuals who performed the verification.

The policy also goes on to require the existence of departmental verification policies and procedures based on the extent of risk associated with the various transactions. There is a corresponding requirement for a quality assurance process to test the adequacy of the section 34 account verification based on statistical sampling for low and medium risks and a review of all relevant aspects of high risk transactions.

The guidelines to the verification policy indicate that the department's Senior Financial Officer (SFO) should approve the sampling plan and, when sound statistical sampling is implemented in compliance with an approved sampling plan, officers exercising payment authority under section 33 will not be held accountable for account verification errors before payment requisitioning in those transactions not included in the sample about which they have no personal knowledge.<sup>9</sup> However, if the payment officer is not confident about the adequacy of verification, transactions may be classified at a higher level of risk for a period of time, implying a proactive role in assessing the adequacy of verification, at least insofar as identifying the risk level of transactions is concerned.

Ultimately, there is a circularity embedded in the responsibility between section 33 and section 34 certifications which obscures the obligations and accountabilities associated with the payment authorization process circumscribed by the statutory framework. In this respect there is a need for the greater clarity and enhanced direction from Treasury Board that is advocated by the Office of the Auditor General.

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<sup>9</sup> *Account Verification Policy*, Appendix A – Guidelines, Treasury Board Secretariat



## **Delegation of Authority to Persons Outside the Public Sector**

Departments are being encouraged to explore alternate program and service delivery arrangements within the private sector and other levels of government. In the context of alternate delivery arrangements, section 33 and section 34 authorities may be delegated to persons outside of the public service. In those cases accountabilities are not, as a practical matter, strictly within the purview of the public sector control framework. Apart from articulating the departmental responsibilities and the need for control systems and procedures, the Treasury Board policies do not provide sufficient guidance in respect of accountabilities for the payment authorization processes under sections 33 and 34 of the Act.

Pursuant to the legislation, and in accordance with the Treasury Board Policy on *Delegation of Financial Authorities*, where section 33 and section 34 authority are delegated to persons outside the public service, policies and procedures must be established to ensure an adequate level of control over delegated authorities. With particular reference to the payment authority under section 33 of the *Act*, the Treasury Board policy specifically states that the Senior Financial Officer of the federal department having responsibility for the overall quality of financial management nevertheless remains entirely responsible for the effectiveness and efficiency of the person exercising the delegated authority in accordance with departmental standards and control objectives. Although Treasury Board recommends that the SFO establish procedures and perhaps an audit program to ensure compliance, there is no direction as to how the mechanisms embedded in the public sector control framework are to be practically implemented where, for example, there is a contract for program delivery by a private sector organization. Moreover, there is no explicit reference to compliance with section 32 protocols regarding control of commitments. Clearly there is a loss of direct oversight for authorities delegated outside of the public sector, yet the accountability for the exercise of that authority rests within it.



## Practical Application of the Control Framework

The statutory framework of responsibility sets out a scheme whereby departmental SFO's oversee the quality of financial management at large but assurance of process and verification of the quality of control lies with the financial officers in the front lines. For those individuals, the practical application of this framework gives rise to concerns that transcend systemic accountability issues and relate directly to their personal liability associated with the discharge of their responsibilities under the payment authorization provisions of the *Act*. In this respect, four main themes emerge from the concerns expressed by financial officers in various departments across the federal public sector arising from their practical experiences:

**1. Within the hierarchical structure, financial officers are pressured to certify payments based on processes that fail to comply with the requirements of the control framework.**

Many financial officers have experienced situations where they have not felt comfortable signing off on section 33 payment authorization but felt pressured into so doing. Although these experiences do not represent the majority of transactions approved within the payment framework, neither are they isolated incidents and their prevalence gives rise to a genuine concern that the system is not functioning at all times in a manner that is consistent with the public service principles of prudence and probity.

By way of example, section 33 officers have expressed concern that the section 34 financial controls in a department were inadequate. The section 33 officer has nonetheless been pressured by management to sign off on the section 33 payment authorization. The pressure tactics range from accusations that the failure of the financial officer to authorize payment will precipitate the loss of multi-million dollar projects, to direct confrontations by managers alleging that the financial officer is deliberately creating problems and obstructing the advancement of specific initiatives.

In light of their specific obligations under the *Act* to ensure the adequacy of the section 34 controls systems, this example begs the question as to why a financial officer would nonetheless capitulate and sign off on the payment authorization in the face of inadequate controls? Based on information



from a large segment of financial officers involved in these situations, the precipitating factor in each instance was the real or perceived threat to job security, or some other form of more insidious reprisal including marginalization in the workplace or some other threat of compromise to their future advancement or promotion. Where payment officers have succumbed to these tactics, they also expressed fear of being labeled as obstructionist for endeavoring to implement proper controls and procedures for managers to follow. It is not surprising that financial officers collectively express concern over their ability to actively promote adherence to control mechanisms with their managers, part of the very purpose underlying the payment certification process.

This collective experience illustrates the conflict arising from the competing interests between the financial officers' focus on compliance with their statutory obligations under the control framework and the functional approach currently embedded in management culture, being to facilitate the implementation and execution of programs in respect of which the payment authorization is sought; that is, management's focus on outcomes. To the extent that the discharge of statutory obligations is met with *any* resistance at the management level also illustrates the need for education, training and culture change to facilitate the necessary "buy-in" to ensure that effective control within the framework is not compromised.

**2. There is a need to re-evaluate accountabilities under the control framework in light of the automated payment system and "quasi-33".**

The automated payment system does not lend itself to conformance with section 33 accountabilities within the control framework. Notably the control framework was drafted in an environment where cheques were physically signed and not automatically generated. Given the large volume of cheques that are generated within the automated system it is not practically possible for the section 33 officer to review hard copies of all invoices in the verification process.

In practice, invoices are typically reviewed by an individual whose position is classified as CR 4, AS 1 or AS 2 in addition to any financial officers who are performing this function. These individuals do not have section 33 authority but have, what is known within certain departments as, "quasi-



33.” There is no statutory foundation for this “authority.” The quasi-33 individual will review the hard copies of the documents and approve them internally for the department. The clerk or administrator entering the invoice into the system will ensure that section 34 verification has been signed, that the invoice does not exceed any of the monetary limits and that goods and services were received. The department has typically assigned section 33 authority to one financial officer who will provide approval for the entire department. The duly authorized section 33 officer typically does not see the hard copy of the documents, because it is not practically feasible. Nonetheless, the section 33 officer is accountable for the discharge of the payment verification obligations under the *Act*. As a practical matter the verification task has been effectively delegated as a function of the high volume of payments generated within the automated system.

**3. The relationship between section 33 (payment certification) and section 34 (individual account verification) obscures the accountability between the individuals engaged in the payment and verification process.**

Section 34 officials are ultimately responsible for each individual payment they authorize, whereas the section 33 officers are responsible for ensuring that the section 34 accountability system is in place and working adequately. Section 33 officers are also obligated to ensure that section 34 officers are fulfilling their responsibilities under the *Act* to ensure that account verification is diligently performed. To the extent that section 33 officers are re-examining payments for errors prior to the issuance of cheques there is, in practice, significant reliance on the functions performed by section 33 officers. This has the effect of obscuring the distinction in the separate accountability ascribed to the two functions.



**4. There is a need to re-evaluate accountabilities under the control framework because payment verification functions are effectively performed by individuals who may not meet the requirements to otherwise exercise FI responsibility.**

As described in the second theme, there is a trend to delegating the performance of section 33 functions to individuals who are not classified as financial officers (FI). These individuals may not meet the business, education or financial expertise requirements of the FI classification within the public sector. Comptrollership in the government has been appropriately focused on financial controls and accounting and requires the engagement of financial specialists in order to effectively implement the control function. It is apparent that the quality of the control function has been eroded as a result of this trend.

In practice, the control framework and corresponding policies and guidelines that are intended to support effective comptrollership are not producing the desired result. The lack of strict adherence to the payment authorization protocols suggests a failure to appreciate the importance of the controls under the *Act*. Historically, training in this respect has been a low priority and this deficiency has contributed to the prevailing culture. The end result is that the enhanced accountability that is an objective of the modern comptrollership initiative is not being achieved.

## **Accountability Under the Control Framework**

There has been a shift in traditional accountability practices as a result of developments in public sector management and governance as a combined result of:

- the shift in management focus to results and outcomes;
- the increased use of partnering arrangements to deliver programs and services; and,
- the fact that managers are encouraged to innovate and take reasonable risks.

The December 2002 report of the Office of the Auditor General of Canada proposed an enhanced definition of accountability in the public sector that



takes into account these modern developments in public management and governance.

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.<sup>10</sup>

The enhanced definition of accountability was formulated in the context of three questions applicable to these developments:

**1. For what can ministers and program managers be reasonably held to account?** This question arose in the context of the observation that traditional accountability has been tied to accounting for inputs, adherence to detailed rules and procedures and actions taken. The shift in focus to outcomes must recognize that the outcomes sought for most programs are not entirely controllable in so far as they may be influenced by a number of external factors including economic trends and programs at other levels of government.

**2. What is shared accountability, and in a related sense, how can accountability be shared by equal or independent partners?** This question addressed the complex accountability relationships that derive from networks and partnering arrangements with other levels of government and in the private sector, some of which involve no hierarchic relationship.

**3. How can accountability accommodate the risks that come with an innovative and flexible public sector?** To the extent that managers are required to take well considered risks in order to innovate, the move to greater discretion, flexibility and innovation may not be supported by accountability that focuses solely on complying with too many and unneeded rules and procedures. This should not, however, be interpreted in any fashion as a license to degrade the comptrollership function.

The expanded definition of traditional accountability is intended to apply to a wide range of relationships and allow for shared accountability involving

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<sup>10</sup> December 2002 Report of the Office of the Auditor General



organizations, which may have non-hierarchical structures as well as reciprocal accountability, stressing mutual accountability relationships, a departure from the traditional focus on the obligations of the subordinate party. The enhanced definition also recognizes the importance of both ends and means whereby parties are accountable for the manner in which results are achieved and not just the outcome itself.

In this respect, a good accountability framework recognizes the need to establish a clear understanding of roles and responsibilities including clearly identifying the specific activities and tasks expected of each party, their obligations and how the relationship is to be managed within the context of related authorities. There may, however, be a reluctance in the public sector to accept accountability for outcomes when control over the ultimate results is often limited. This is apparent in the circularity embedded within the verification process under section 33 and section 34 of the FAA as well as the problematic accountability features associated with delegation of authorities outside the public sector.

The accountability framework must clearly set out performance expectations, including what each party is expected to contribute to the end result, and the means used to achieve that outcome. Particularly where external partnering relationships are involved, the framework must set out the basic operating principals and rules that are to be followed. To the extent that public sector values and ethics, such as fairness, honesty, probity, integrity and fidelity to the public trust underlie any public accountability process, there is also a need to actively promote and enforce a corporate culture of high ethical standards embodying these public sector values.

In addition to clearly delineating roles and responsibilities as well as performance expectations, a good accountability framework also requires clarity in reporting requirements including identifying how the required information is to be defined, collected, verified, analyzed and by whom, how and when. In order to close the “accountability loop” the framework must also incorporate a fair and reasonable review process directed towards identifying ways to improve future performance and describe how that will be implemented. There is also a requirement that appropriate consequences be rendered, whether that be rewards or sanctions, based on performance under the accountability framework.



## **The Relationship Between Liability and Accountability Under the Control Framework**

The financial control framework is designed to establish accountabilities in order to ensure the exercise of effective stewardship over public resources. Since the implementation of the Modern Comptrollership Initiative, there has been significant dialogue, review and assessment of the elements of the framework concerning accountability and relationships as previously described. It is important, however, to look beyond these elements and recognize that there are associated liabilities embedded within the accountability structure. There appears to have been little focus on individual liability within the control framework, a matter of particular concern for those financial officers who find themselves in a position where they are being asked to compromise the discharge of their obligations under the *FAA*.

Individual liability derives from multiple statutory sources, for example the *FAA* itself and the *Criminal Code*, as well as the common law and the requirements of professional governing bodies. Sanctions for misconduct are prescribed in those sources of liability and include disciplinary measures within the ambit of the employment relationship.

### **Financial Administration Act**

The issue of misconduct is generally dealt with in Part IX of the *Act* concerning civil liability and offences.<sup>11</sup>

Section 80 describes the type of activity constituting an offence and provides a range of sanctions on conviction:

80. Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who
  - (d) willfully makes or signs any false entry in any book, or willfully makes or signs any false certificate or return, or in any case in which it is the duty of that

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<sup>11</sup> The full text of Part IX is contained in Appendix B.



officer or person to make an entry, certificate or return,

- (e) having knowledge or information of the contravention of this Act or the regulations or any revenue law of Canada by any person, or of fraud committed by any persons against Her Majesty, under this Act or the regulations or any revenue law of Canada, fails to report, in writing, that knowledge or information to a superior officer...

**is guilty of an indictable offence and liable on conviction to a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding five years.**

The word 'willfully' has not been uniformly interpreted and its meaning to some extent depends upon the context in which it is used. Its primary meaning is 'intentionally', but it is also used to mean 'recklessly'. Generally in penal statutes the word 'willful' or 'willfully' means something more than a voluntary or intentional act and includes the idea of an action intentionally done with a bad motive or purpose.

**Section 11(2) of the *FAA* gives Treasury Board the authority to create standards of discipline and prescribe penalties including suspension and termination of employment:**

(2) Subject to the provisions of any enactment respecting the powers and functions of a separate employer but notwithstanding any other provision contained in any enactment, the Treasury Board may, in the exercise of its responsibilities in relation to personnel management including its responsibilities in relation to employer and employee relations in the public service, and without limiting the generality of sections 7 to 10,

- (f) establish standards of discipline in the public service and prescribe the financial and other penalties, including termination of employment and suspension, that may be applied for breaches of discipline or misconduct, and the circumstances and manner in which and the authority by



which or whom those penalties may be applied or may be varied or rescinded in whole or in part;

(g) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, for reasons other than breaches of discipline or misconduct, of persons employed in the public service, and establishing the circumstances and manner in which and the authority by which or by whom those measures may be taken or may be varied or rescinded in whole or in part.

### **Criminal Code**

There are a series of related offences under the *Code* that proscribe the type of activity also prohibited by the sections in the *FAA* described above.<sup>12</sup> They include:

- breach of trust by a public officer;
- disobeying a statute;
- forgery and offences resembling forgery that include making a false document, altering or destroying documents; and,
- fraud.

Although it is conceivable that engaging in any of this type of activity may result in charges being laid under the *Code* it has historically been more likely that this type of conduct would be prosecuted under the *FAA* possibly in conjunction with disciplinary sanctions in the context of the employment relationship. However, with increased public scrutiny over control and administration of the public purse exposure to this type of sanction is conceivably greater than ever before.

### **Governing Body**

A majority of financial officers within the federal public sector hold professional accounting designations or business degrees. In addition to adhering to the public service principles of prudence and probity, those individuals holding professional accounting designations are obliged to comply with the rules of professional conduct, regulations and by-laws of

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<sup>12</sup> The full text of the relevant provisions of the *Criminal Code* are reproduced in Appendix C.



their respective governing bodies and are subject to a range of disciplinary sanctions for failure to do so.

The respective governing bodies of all certified accountants (CA, CMA and CGA) prescribe Rules of Professional Conduct. The Rules are addressed to a high moral standard and are intended to serve the dual purpose of guiding the accounting profession as well as providing a source of assurance for the public it serves. The special obligations embraced by the accounting professional are predicated on the reliance of the public and the business community on sound and fair financial reporting and competent financial advice. The underpinning of the professional obligation is objectivity and integrity to the execution of professional services. The cardinal position of a member of the profession is that they will not subordinate their professional judgment to the will of others and that they will express their conclusions honestly and impartially.

Sanctions for a breach of the professional obligations are administered by the respective governing bodies through the disciplinary process and include mandatory training, reprimand, fines, suspension from membership and practice restrictions. Financial officers holding professional certifications are thus faced with additional exposure to sanctions from their governing body in circumstances where they are pressured to overlook compliance with the *Act*.

### **Common Law**

Although there is authority for the proposition that public servants who breach a duty imposed by law may be personally liable for damages flowing from that breach, the more likely scenario is that any affected third party would seek recourse from the government agency, as employer, on the principle of vicarious liability. This principle is actually codified under the *Crown Liability Act*<sup>13</sup> which provides that the Crown is liable for torts or breaches of duty committed by its servants. The potential for government liability under this legislation emphasizes the need to improve the education of staff and diligently enforce controls in order to minimize liability exposure.

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<sup>13</sup> Section 3, *Crown Liability Act*



## **Employment Relationship**

The final concern for public servants is obviously discipline. In accordance with principles of progressive discipline, sanctions for misconduct or contravention of obligations under the *FAA* may range from reprimand through suspension, with dismissal from employment at the far end of the disciplinary spectrum. The current environment of enhanced scrutiny of the conduct of public officers in the administration of public funds suggests little tolerance for failure to strictly adhere to financial protocols. The concern for financial officers in the present environment is that any departure from their strict adherence to protocols under the control framework will be the subject of disciplinary sanctions regardless of the circumstances. Moreover, those sanctions may be disproportionate to the desired objective of establishing actual control within the financial environment in order to demonstrate the appearance of such control to bolster public confidence. Although the legislation and control framework requires the reporting of wrongdoing there is little internal guidance in the federal public sector and no enforceable statutory remedy to support an employee who reports such activity and to protect them from reprisal.

## **Inadequacy of Support and Protection for Disclosure of Information Concerning Wrongdoing**

An employee who considers disclosing information concerning wrongdoing confronts competing interests and obligations. Inherent in the concept of “whistleblowing” is the conflict between the duty of loyalty and confidentiality owed to the employer and the public interest in the disclosure of wrongdoing. There is no clearly-defined boundary between these competing interests of employee loyalty and the public interest. Several arbitral decisions have considered the balance between employee loyalty and the public interest in the context of grievances in relation to claims for unjust dismissal. Courts and arbitrators have generally recognized that there is a public interest exception to the duty of loyalty that may justify disclosure by employees in certain situations. Employees are nevertheless encouraged to raise their concerns through internal channels prior to external disclosure. This approach provides little comfort to a financial officer who fears reprisal where the offending conduct is the departure from control protocols under the *Act* that have been internally



sanctioned, or even imposed, in the first instance as described in some of the examples cited earlier.

Canada does not have any legislation providing such protection against employment reprisals for disclosure of wrongdoing.<sup>14</sup> In this respect, Canada is lagging behind the United States, Great Britain, New Zealand and Australia. Although there is an internal policy adopted by the federal government that is intended to protect federal public servants in this respect, the mechanism is policy-based and is not supported by legislation.

In this respect, the *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*, effective November 30<sup>th</sup>, 2001, calls for the establishment of internal procedures for the disclosure of certain instances of wrongdoing. The policy also establishes the office of the Public Service Integrity Officer (“PSIO”). If the employee does not feel that the disclosure can be made internally in the department, they may make that disclosure to the Public Service Integrity Officer who may, in turn, make recommendations. Although the policy is designed to protect the employee from reprisal resulting from the disclosure, there is no legislated basis for the recommendations made by the Public Service Integrity Office and their recommendations are unenforceable.

The experience of the front line financial officers discloses a general reluctance of individuals to court the risk of reprisal for the benefit of the public interest. This is inherent in a highly hierarchical and bureaucratic environment such as the federal public sector. There is clearly a need for legislated protection from reprisal for employees with respect to the reporting of wrongdoing. This is particularly so in the comptrollership context in order to support the effective implementation of the control framework.

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<sup>14</sup> There is one exception relating to the New Brunswick *Employment Standards Act* which provides certain limited protections.



## Conclusions

In its April 2003 report, the Auditor General's office assessed the government's systems, policies and practices to manage the quality of financial information. The two-part assessment consisted of determining whether departments have implemented financial systems, policies and practices to provide managers with appropriate and reliable financial information as well as to determine whether the central agencies have put in place systems, policies and practices to provide sufficient direction and guidance to support that implementation.

The results of that audit disclosed that controls for financial systems were still weak, particularly in managing and accessing rights to the financial systems and the ability to modify information, as well as control weaknesses emerging as a function of mobility of people within an organization. The Auditor General's Office also observed that the Treasury Board Secretariat provided limited guidance on the quality of financial data and recommended that more guidance and education is required to facilitate the quality of financial reporting and improve the weaknesses in the control framework. The results of the November 2003 audit reinforce this recommendation.

The experience of front line financial officers demonstrates, in fact, that the control framework under the *Financial Administration Act* is not being adhered to consistently and in some circumstances the legislated requirements are being actively ignored. There is a systemic failure to appreciate the importance of the statutory obligations associated with the payment authorization functions under the *Act*. Training on the statutory obligations and the significance of those responsibilities has historically been a low priority both at management levels and in the field. There is a critical need for enhanced training throughout the public sector to effect a significant change in the prevailing culture in order to effectively implement the control framework.

It is also imperative that qualified people are performing the financial functions and payment authorities under the *Act*. The trend to delegate the performance of financial functions to individuals who do not meet the education, business or financial expertise requirements of a financial officer



must be reversed in order to prevent further erosion of the quality of control.

Structurally, the accountabilities within the control framework must be clearly developed and identified in a manner that has practical application in light of the shift in management focus on outcomes and the trend toward partnering arrangements. The accountability framework has particular importance where authorities are delegated outside of the public service in alternate delivery arrangements for programs and services.

The practical experiences of front line financial officers performing financial functions under the *Act* also disclose the potential for individual exposure to liability. There is presently inadequate protection and support for financial officers seeking to disclose improprieties in the discharge of their obligations under the *FAA*. A legislated basis for protection of employees from reprisal is necessary to facilitate the reporting of wrongdoing and, in turn, enhance the effectiveness of the control framework.

Arguably, the importance of the *Financial Administration Act* has been marginalized. A strong commitment to training, guidance and support from Treasury Board, the central agencies and senior management is required to effect change within the prevailing culture. There must be a demonstrated willingness to actively foster the integrity of the comptrollership function within the federal public sector in order to achieve the strengthened accountability that is advocated by the Auditor General.



***Appendix A***

***Financial Administration Act***

***R.S., c. F-10***

***Sections 32, 33 and 34***

Control of Commitments	32. (1) No contract or other arrangement providing for a payment shall be entered into with respect to any program for which there is an appropriation by Parliament or an item included in estimates then before the House of Commons to which the payment will be charged unless there is a sufficient unencumbered balance available out of the appropriation or item to discharge any debt that, under the contract or other arrangement, will be incurred during the fiscal year in which the contract or other arrangement is entered into.
Record of commitments	(2) The deputy head or other person charged with the administration of a program for which there is an appropriation by Parliament or an item included in estimates then before the House of Commons shall, as the Treasury Board may prescribe, establish procedures and maintain records respecting the control of financial commitments chargeable to each appropriation or item.
	R.S., 1985, c. F-11, s. 32; 1999, c. 31, s. 107(F).
Requisitions	33. (1) No charge shall be made against an appropriation except on the requisition of the appropriate Minister of the department for which the appropriation was made or of a person authorized in writing by that Minister.
Form	(2) Every requisition for a payment out of the Consolidated Revenue Fund shall be in such form, accompanied by such documents and certified in such manner as the Treasury Board may prescribe by regulation.
When requisition not to be made	(3) No requisition shall be made pursuant to subsection (1) for a payment that <ol style="list-style-type: none"><li>would not be a lawful charge against the appropriation;</li><li>would result in an expenditure in excess of the appropriation; or</li><li>would reduce the balance available in the appropriation so that it would not be sufficient to meet the commitments charged against it.</li></ol>



Reference to  
Treasury Board

- (4) The appropriate Minister may transmit to the Treasury Board any requisition with respect to which that Minister desires the direction of the Board, and the Board may order that payment be made or refused.

R.S., c. F-10, s. 26.

Payment for  
work, goods or  
services

- 34.** (1) No payment shall be made in respect of any part of the public service of Canada unless, in addition to any other voucher or certificate that is required, the deputy of the appropriate Minister, or another person authorized by that Minister, certifies
- (a) in the case of a payment for the performance of work, the supply of goods or the rendering of services,
    - (i) that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged is according to the contract, or if not specified by the contract, is reasonable,
    - (ii) where, pursuant to the contract, a payment is to be made before the completion of the work, delivery of the goods or rendering of the service, as the case may be, that the payment is according to the contract, or
    - (iii) where, in accordance with the policies and procedures prescribed under subsection (2), payment is to be made in advance of verification, that the claim for payment is reasonable; or
  - (b) in the case of any other payment, that the payee is eligible for or entitled to the payment.

Policies and  
procedures

- (2) The Treasury Board may prescribe policies and procedures to be followed to give effect to the certification and verification required under subsection (1).

R.S., 1985, c. F-11, s. 34; 1991, c. 24, s. 13.



*Appendix B*

***Financial Administration Act***  
***R.S., c. F-10***

**PART IX**  
**CIVIL LIABILITY AND OFFENCES**

Notice to  
persons failing  
to pay over  
public money

76. (1) Where the appropriate Minister or the Receiver General believes on reasonable grounds that any person
- (a) has received money for Her Majesty and has not duly paid it over,
  - (b) has received money for which the person is accountable to Her Majesty and has not duly accounted for it, or
  - (c) has received any public money applicable to any purpose and has not duly applied it,

the appropriate Minister or the Receiver General, as the case may be, may cause a notice to be served on that person, or on the person's representative in case of the person's death, requiring the person, within such time after the service of the notice as may be named therein, duly to pay over, account for or apply that money, as the case may be, and to transmit to the appropriate Minister or the Receiver General, as the notice provides, proper vouchers that the person has done so.

Proceedings  
where notice not  
complied with

- (2) Where a person does not comply with a notice served under subsection (1), the appropriate Minister or the Receiver General, as the case may be, shall state an account between that person and Her Majesty showing the amount of money not duly paid over, accounted for or applied, as the case may be, and may charge interest on the whole or any part of that amount from such date as the appropriate Minister or the Receiver General may determine and at such rate as may be prescribed pursuant to subsection 155.1(6).

Evidence

- (3) In any proceedings for the recovery of money referred to in subsection (2), a copy of the account stated and certified by the appropriate Minister or the Receiver General is evidence that the amount stated in the account, together with interest, is due and payable to Her Majesty, without proof of the signature of the appropriate Minister or the Receiver General or the official



	character of the office.
<b>Recovery</b>	<p>(4) Any amount of money referred to in subsection (1) and the interest on that amount may be recovered as a debt due to Her Majesty.</p> <p>R.S., 1985, c. F-11, s. 76; 1991, c. 24, ss. 20, 50(F); 1999, c. 31, s. 114(F).</p>
<b>Evidence</b>	<p>77. Where it appears by the books or accounts kept by or in the office of any person employed in the collection or management of the revenue, in any accounting by that person or by his written acknowledgement or confession, that that person has, by virtue of his office or employment, received money belonging to Her Majesty and refused or neglected to pay over that money to the proper persons at the proper times, an affidavit deposing to those facts, taken by any person having knowledge thereof, shall, in any proceedings for the recovery of that money, be admitted in evidence and is, in the absence of any evidence to the contrary, proof of the facts stated therein.</p> <p>R.S., c. F-10, s. 90.</p>
<b>Liability for loss</b>	<p>78. Where, by reason of any malfeasance or negligence by any person employed in collecting or receiving any public money, any sum of money is lost to Her Majesty, that person is accountable for the sum as if that person had collected and received it and it may be recovered from that person as if that person had collected and received it.</p> <p>R.S., c. F-10, s. 91; 1980-81-82-83, c. 170, s. 19.</p>
<b>Regulations in respect of losses of money and public property</b>	<p>79. The Governor in Council, on the recommendation of the Treasury Board, may make regulations</p> <ul style="list-style-type: none"><li>(a) prescribing the actions to be taken in respect of losses of money or public property, however caused, suffered by Her Majesty;</li><li>(b) respecting the charging of losses of money suffered by Her Majesty against the appropriations to which they relate; and</li><li>(c) prescribing the records to be kept and providing for the reporting in the Public Accounts in respect of every loss referred to in paragraph (a).</li></ul> <p>1980-81-82-83, c. 170, s. 19.</p>
<b>Offences and punishment</b>	<p>80. Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who</p> <ul style="list-style-type: none"><li>(a) receives any compensation or reward for the performance of any official duty, except as by law prescribed,</li></ul>



- (b) conspires or colludes with any other person to defraud Her Majesty, or makes opportunity for any person to defraud Her Majesty,
- (c) designedly permits any contravention of the law by any other person,
- (d) wilfully makes or signs any false entry in any book, or wilfully makes or signs any false certificate or return in any case in which it is the duty of that officer or person to make an entry, certificate or return,
- (e) having knowledge or information of the contravention of this Act or the regulations or any revenue law of Canada by any person, or of fraud committed by any person against Her Majesty, under this Act or the regulations or any revenue law of Canada, fails to report, in writing, that knowledge or information to a superior officer, or
- (f) demands or accepts or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of any charge or complaint for any contravention or alleged contravention of law,

is guilty of an indictable offence and liable on conviction to a fine not exceeding five thousand dollars and to imprisonment for a term not exceeding five years.

R.S., c. F-10, s. 92; 1980-81-82-83, c. 170, s. 20.

**Idem, where  
bribes offered or  
accepted**

**81.** Every person who

- (a) promises, offers or gives any bribe to any officer or any person acting in any office or employment connected with the collection, management or disbursement of public money, with intent
  - (i) to influence the decision or action of that officer or person on any question or matter that is then pending, or may, by law, be brought before him in his official capacity, or
  - (ii) to influence that officer or person to commit, or aid or abet in committing any fraud on the revenue, or to connive at, collude in, or allow or permit any opportunity for the commission of any such fraud, or
- (b) accepts or receives any such bribe,

is guilty of an indictable offence and liable on conviction to a fine not exceeding three times the amount so offered or accepted and to imprisonment for any term not exceeding five years.



R.S., c. F-10, s. 93.

Books, etc.,  
property of Her  
Majesty

**82.** All books, papers, accounts and documents kept or used by, or received or taken into the possession of, any officer or person who is or has been employed in the collection or management of the revenue or in accounting for the revenue, by virtue of that employment, shall be deemed to be chattels belonging to Her Majesty, and all money or valuable securities received or taken into the possession of that officer or person by virtue of his employment shall be deemed to be money and valuable securities belonging to Her Majesty.

R.S., c. F-10, s. 94.



*Appendix C*

*Criminal Code of Canada  
R.S., 1985, c. C-46*

*Sections 122, 126, 366, 367, 368, 380, 397 and 399*

**Breach of trust by public officer**      **122.** Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

R.S., c. C-34, s. 111.

**Disobeying a statute**      **126.** (1) Every one who, without lawful excuse, contravenes an Act of Parliament by wilfully doing anything that it forbids or by wilfully omitting to do anything that it requires to be done is, unless a punishment is expressly provided by law, guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

**Attorney General of Canada may act**      (2) Any proceedings in respect of a contravention of or conspiracy to contravene an Act mentioned in subsection (1), other than this Act, may be instituted at the instance of the Government of Canada and conducted by or on behalf of that Government.

R.S., 1985, c. C-46, s. 126; R.S., 1985, c. 27 (1st Supp.), s. 185(F).

**Forgery**      **366.** (1) Every one commits forgery who makes a false document, knowing it to be false, with intent  
(a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or  
(b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.

Making false document

(2) Making a false document includes  
(a) altering a genuine document in any material part;  
(b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or  
(c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.

When forgery complete

(3) Forgery is complete as soon as a document is made with the



knowledge and intent referred to in subsection (1), notwithstanding that the person who makes it does not intend that any particular person should use or act on it as genuine or be induced, by the belief that it is genuine, to do or refrain from doing anything.

Forgery complete though document incomplete

- (4) Forgery is complete notwithstanding that the false document is incomplete or does not purport to be a document that is binding in law, if it is such as to indicate that it was intended to be acted on as genuine.

R.S., c. C-34, s. 324.

**Punishment for forgery**

- 367.** Every one who commits forgery
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
  - (b) is guilty of an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 367; 1994, c. 44, s. 24; 1997, c. 18, s. 24.

**Uttering forged document**

- 368.** (1) Every one who, knowing that a document is forged,
- (a) uses, deals with or acts on it, or
  - (b) causes or attempts to cause any person to use, deal with or act on it, as if the document were genuine,
  - (c) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
  - (d) is guilty of an offence punishable on summary conviction.
- Wherever forged
- (2) For the purposes of proceedings under this section, the place where a document was forged is not material.

R.S., 1985, c. C-46, s. 368; 1992, c. 1, s. 60(F); 1997, c. 18, s. 25.

**Fraud**

- 380.** (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,
- (a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
  - (b) is guilty
    - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
    - (ii) of an offence punishable on summary conviction, where the value of the subject-matter of the offence does not exceed five thousand dollars.

Affecting public market

- (2) Every one who, by deceit, falsehood or other fraudulent means,



whether or not it is a false pretence within the meaning of this Act, with intent to defraud, affects the public market price of stocks, shares, merchandise or anything that is offered for sale to the public is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., 1985, c. C-46, s. 380; R.S., 1985, c. 27 (1st Supp.), s. 54; 1994, c. 44, s. 25; 1997, c. 18, s. 26.

**Books and documents**

**397.** (1) Every one who, with intent to defraud,  
(a) destroys, mutilates, alters, falsifies or makes a false entry in, or  
(b) omits a material particular from, or alters a material particular in a book, paper, writing, valuable security or document is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Privity

(2) Every one who, with intent to defraud his creditors, is privy to the commission of an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 355.

**False return by Public Officer**

**399.** Every one who, being entrusted with the receipt, custody or management of any part of the public revenues, knowingly furnishes a false statement or return of  
(a) any sum of money collected by him or entrusted to his care, or  
(b) any balance of money in his hands or under his control,  
is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

R.S., c. C-34, s. 357.