Defending a Contested Ideal
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Published by University of Ottawa Press

Juillet, Luc and Ken Rasmussen.
Defending a Contested Ideal: Merit and the Public Service Commission, 1908–2008.

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CONCLUSION

If Canada is to be reasonably well governed in the future, a professional, non-partisan public service will be essential. For this reason, the most important of the government's central agencies, for the long-term, is not in my view the Privy Council Office, the Treasury Board, or the Department of Finance, dearly though I love them all. It is the Public Service Commission. If the professionalism of the Public Service and its attractiveness to successive generations of talented young Canadians are to be preserved, it is essential that responsibility for the staffing of government positions continues to be vested in an agency whose independence is guaranteed by statute.

Arthur Kroeger, former deputy minister

In his book on the development of the American public service, Stephan Skowronek described the establishment of the U.S. Civil Service Commission as "nothing less than a recasting of the foundations of national institutional power." To some extent, the same claim can be made for the establishment of the Public Service Commission in Canada. The adoption of a merit-based staffing system, entrusted to an independent commission, not only changed the balance of power between Parliament and the Crown over the control of the bureaucracy, and the balance of power between ministers and public servants within the executive, but also entailed the adoption of new norms, such as political neutrality and professionalism, which have shaped the identity of the public service and its behaviour in the governance of Canada.
over the last century. The historical significance of this choice and the lasting impact that it has had on Canadian government and public administration should not be forgotten or underestimated.

While the same basic institutional architecture has remained constant over the past 100 years, as we have shown in this book, the ideal of merit, along with the independence of the PSC itself, has been contested from the very beginning. The commission’s independence was first criticized on constitutional grounds—political appointments being regarded as a matter of Crown prerogative and ministerial responsibility—and then came to be seen by many as an impediment to efficiency and effective management. Over the years, the dominant definition of merit and the rules used to put it in operation have been challenged on various grounds: the need for the bureaucracy to be more responsive to elected officials, the democratic equality of citizens, the need for better representation of underrepresented groups in the public service, the fundamental right of public servants to participate in the political process, the efficient use of public resources and the need for better management. As an ideal, merit has never been straightforward: its exact meaning, its practical implications and even its desirability have been disputed throughout its history. Consequently, much more than a simple search for the “best qualified,” the merit system has always been an awkward attempt to balance competing sets of values and respond to some of the political demands placed on the staffing system of a public service in a liberal democracy. To a great extent, the history of the PSC has been a continuing endeavour to strike an appropriate balance among these competing values and demands, adapting as both Canadian society and the role of the public service have evolved over time.

Throughout its history, the PSC has been both an agent of change and a voice of caution, seeking to ensure that some of the core values of the Canadian public service would not be sacrificed in the pursuit of immediate priorities. For example, in the 1960s and 1970s, the PSC readily embraced the promotion of underrepresented groups and bilingualism in recognition of the growing importance of these realities for the governance of Canadian society. Since the 1970s, through the
Conclusion

Delegation of authority to departments and its contribution to legislative reforms, it has actively sought to increase managerial flexibility in recognition of growing political demands for a more adaptable and efficient public service. In these instances and others, the PSC has fully understood the need for change, and acted either on its own initiative or in response to centrally driven proposals.

However, in other instances, the commission's desire and support for change has unquestionably been measured. While recognizing the need to adapt to changing realities, in particular to answer elected officials' calls for more efficiency, it has also played a key institutional role in reminding politicians and public servants seeking reform of the importance of some of the core values, such as political neutrality and equity, that have historically been served by the staffing system. Throughout its history, the PSC has periodically acted as a brake on reformers' attempts at transforming staffing rules in order to meet the imperatives of efficiency and responsiveness. This institutional role may not be unique, but it is rather exceptional in the public service. While some other institutional actors, notably the clerk of the Privy Council, are entrusted with upholding the core principles and values of Canada's Constitution, the PSC has a unique responsibility for safeguarding the key values that the merit-based staffing regime was originally designed to breathe into the public service. Historically, the PSC has endeavoured to play this important but difficult institutional role. In doing so, it has played an invaluable role in shaping the evolution of the Canadian public service and in defining the role of public servants in the democratic governance of the country.

Over the years, the commission's independence, inscribed in statute, has been an important asset allowing it to play this role. At various points in time, the commission has relied on its statutory independence to resist political pressures on behalf of departments, to voice a dissenting opinion about proposed staffing reforms, and to resist changes that it believed would unduly compromise such core principles of the public service as professionalism and political neutrality. For this reason, while the ambivalent institutional position of the PSC—at once an independent agency exercising executive authority over staffing and
an oversight body reporting directly to Parliament on the integrity of the merit-based staffing system—has been the subject of much criticism over the years, our examination of the commission's history leads us to believe that this dual personality has served it, and the public service, rather well.

It is doubtful that a simple parliamentary agency dedicated to the oversight of staffing—the preferred model of many reformers in the past—could ever have been as effective a check on political pressures for appointments or as effective a voice defending the core values of merit in public and internal debates. The ambivalent constitutional position of the commission, while somewhat unorthodox, has been a powerful asset that has allowed it to remain closer to the realities of departments while giving it sufficient independence and distance from the government, when the circumstances called for it, to fulfill its unique mandate. Staffing a public organization as large and diverse as the public service of Canada is sufficiently complex, and merit sufficiently contested, that combining aspects of regulation, service delivery and audit in an agency like the PSC has proven to be a durable invention.

Moreover, the PSC's statutory independence has provided the Canadian public service with a more resilient institutional arrangement to safeguard its merit system. The commission's independence certainly has not insulated it, or the merit system, from change. As we have seen, the PSC has changed considerably over its history, acquiring and shedding responsibilities for the delivery of various staffing services and modifying its relationship to departments significantly. The merit system has also been considerably transformed, through policy as well as legislation. But through it all, the PSC has maintained a unique degree of independence and successfully fought off attempts to curtail its authority, and, consequently, it has remained a strong and independent voice in the staffing regime of the Canadian public service.

AN EXCEPTIONAL RESILIENCE

The longevity and continued influence of the PSC is particularly notable in light of the fact that its counterparts in other Anglo-American
democracies do not seem to have fared as well in the face of similar pressures for greater managerial flexibility, efficiency and political responsiveness. Commenting on the evolution in the past few decades of staffing systems in these countries, noted scholar Peter Aucoin observed that the “once powerful central agencies for public service staffing and human resource management were greatly diminished in their authority, functions and influence. In every instance, they lost their exclusive authority over public service staffing.” In fact, Britain, Australia, New Zealand and the United States have all significantly transformed their personnel management regimes in the last thirty years and their independent staffing bodies traditionally tasked with the protection and implementation of the merit system have suffered as a result.

In the United States, the Civil Service Commission was abolished with the adoption of the Civil Service Reform Act in 1978. Having been elected on a promise to reform the public service staffing system, President Jimmy Carter quickly began to introduce changes that would make the American civil service more flexible, efficient and responsive to the president. The Civil Service Commission’s functions were distributed to a trio of new offices, including a new Office of Personnel Management, controlled by the president. While a commitment to the merit principle remained, its protection was left essentially to the new Merit Systems Protection Board, which can hear appeals and investigate alleged violations of the law. The third major organization that emerged from the 1978 reforms was the Federal Labor Relations Authority, which took over all the labour relations responsibilities of the Civil Service Commission. These reforms were a clear blow to the independence of the American public service.

Australia and New Zealand have adopted similar reforms. The Australian Board of Commissioners was abolished in 1987. It was replaced by a new Public Service Commission that was entrusted only with authority for setting policy in some areas, such as recruitment and promotion, and with responsibilities for the senior management category. To enhance flexibility and efficiency, most personnel management powers were transferred to departments. Bob Minns, the author of an extensive study on the evolution of staffing legislation in
Australia, asserts that one of the reasons for the “sudden and abrupt disappearance of the Board as a powerful, central agency” was that both ministers and senior executives of the public service sometimes felt aggrieved by its public expression of independent views and believed that it encroached on their prerogatives over the management of the public service. New Zealand also did away with its commission in 1988 in order to emphasize performance-based management and increase the responsiveness of public servants to the political executive. The new body, the State Services Commission, no longer appoints all public servants but rather focuses on the selection and appointment of the chief executives of the public service.

Even Britain, the birthplace of the merit system among Anglo-American democracies, has abandoned its original, more powerful and independent Civil Service Commission. It was transformed into a new Civil Service Commission, composed of twelve part-time commissioners appointed by the government from outside the public service, with few powers and only modest executive responsibilities for staffing the public service. While it publishes a Recruitment Code describing expected standards for merit-based staffing, the new commission does not make appointments itself, a responsibility that now falls to departments and agencies. Instead, the commission now hires a consulting firm to audit departmental staffing practices and uses its findings to comment publicly on the state of departmental staffing. According to British scholar Richard Chapman, the original commission was abandoned because its critics saw it as being out of touch, unresponsive and, in a sense, concerned with the problems of a much earlier era in government. Politicians saw it as an impediment to pursuing an ambitious reform agenda driven by the need for greater managerial flexibility. In other words, it was killed by an “increasing emphasis on a private sector approach to management in Government.”

In these countries, the principle of merit-based appointment has not been abandoned, but it has been changed substantially to meet the growing demand that bureaucracies be more efficient and results-oriented, more in tune with the practices of private sector management, and more responsive to elected politicians. In all cases, the historical
role of the independent staffing agency has come to an end. Over the years, the Canadian public service has faced the same kinds of pressures and its personnel management regime has been transformed as a result. But as an independent agency with staffing authority, the PSC has not suffered the same fate. In comparison with the other commissions, it has remained truer to the original model. Its role has been refocused and its policies have been adapted to the new context, but it has maintained a stronger, more independent presence in the staffing of the professional public service than its equivalents in other Anglo-American democracies. The statutory basis for its independence undoubtedly explains this greater resilience to a large extent, but the willingness of its leadership to adapt to new circumstances over the years while still defending the core values at the heart of its mandate have also contributed significantly to this outcome.

Looking Ahead

As it reaches its centenary, the PSC continues to face considerable, but familiar challenges. The complete effects of the Public Service Modernization Act, which only fully came into force at the end of 2005, have not yet been felt. The PSC is still working with departments to forge a new relationship that will see it devote a larger share of its efforts to the oversight of staffing. The new definition of merit, inscribed in legislation for the first time, also represents a historical change with uncertain implications. The commission will no doubt devote considerable attention to how this shift toward more managerial flexibility will affect the treatment of employees, as well as the professionalism of the public service. Moreover, as the public service as a whole attempts to renew its workforce in the face of an impending wave of retirements and to attract young knowledge workers in a highly competitive labour market, the commission is likely to face new pressures to adapt its practices and policies.

Only a few years after the adoption of the Public Service Modernization Act, the government established a high-level taskforce to look
once more into needed reforms to the public service. In February 2008, releasing its second report, the Prime Minister’s Advisory Committee on the Public Service, co-chaired by former clerk of the Privy Council Paul Tellier and former Mulroney cabinet minister Don Mazankowski, again took aim at the central governance structure for human resources management, describing it as “overly complex” and resulting in a “burden of duplicative and often unnecessary rules.”

Thus, despite the major reorganization brought by the Public Service Modernization Act, the advisory committee has expressed the view that further structural changes are essential. This time, however, the Public Service Commission has been spared; the advisory committee has simply reaffirmed the essential role of the commission in the safeguard of merit and the non-partisan character of the public service. It has merely suggested that the remaining services offered by the commission should be operated on a full cost-recovery basis and that deputy ministers should be appropriately involved in their governance. The advisory committee has not recommended further institutional reform affecting the commission’s role or independence.

Instead, the advisory committee has argued essentially for a disentanglement of the responsibilities of the Canada Public Service Agency and the Treasury Board Secretariat. The committee would like to take the 2003 reorganization further by transferring human resources-related matters to a more unified and smaller human resources central agency. In effect, the Treasury Board Secretariat would lose its responsibilities for classification and compensation policy and focus exclusively on expenditure control. With the Canada School of Public Service remaining in charge of delivering training and development courses and the Privy Council Office continuing to ensure talent management for the deputy head community, a smaller Canada Public Service Agency would be the exclusive source of human resources policy, except in the area of staffing. Continuing to rely on a strong delegation model, the agency would be expected to set expectations, provide as light an operating framework as possible, and then ensure accountability for performance from departmental heads. In effect, the advisory committee seems to be arguing for more of the same, wanting
to push further, in the same direction, the institutional reforms adopted in 2003. The committee's recommendations seem to suggest that the system is at peace, at least for now, with the PSC's new orientation and its role in the human resources framework of the public service.

But in fact, given the trends across Western democracies, it may well be that the value and necessity of the PSC will again be challenged in the years ahead on the most fundamental issue that led to its creation: political control over the public service. As many scholars have observed, the past few decades have seen the politicization of the public administrations in many industrialized democracies.\textsuperscript{11} While an uneasy tension always exists between the neutrality and independence of a professional public service and the need for a public service to respond effectively and loyally to the direction of elected officials, there has been a distinct rise in the desire of politicians to expand their control of the public service. American scholar Ezra Suleiman points out that the bureaucracy is increasingly regarded as being solely the instrument of the political party in power and that it is being transformed accordingly, increasingly deprived of the relative autonomy that it has enjoyed historically.\textsuperscript{12} There has been a cultural shift and "the attempt to gain control of the bureaucracy by an elected government is no longer viewed as objectionable."\textsuperscript{13}

According to Jon Pierre and Guy Peters, who have surveyed the trends in a dozen countries, managerial reforms designed to improve efficiency, from the creation of quasi-autonomous agencies to the adoption of performance-based accountability systems, have in many cases led to the politicization of public administrations.\textsuperscript{14} It has also been observed that the face of patronage is changing: increasingly, elected officials look to reward the loyalty of key allies, including senior public servants, who share their objectives, style and ideology, irrespective of their formal partisan history or attachment. Alongside more traditional political patronage (i.e., appointments of allies from the outside), this form of politicization (i.e., internal promotion of allies) is a significant phenomenon in many countries, such as France and Japan.\textsuperscript{15} As well, in some countries, as a result of an increase in the number of political staffers and changes to staffing legislation, many public employees no longer fall within the purview of the merit system.
While the pressures for politicization might not have been as prevalent in Canada as in some other countries, Canada has not been immune from them. At least as far back as the government of Pierre Elliott Trudeau, elected officials have sought to establish better political control over policy decisions. As we have seen, it was also an important preoccupation of Brian Mulroney's government in the late 1980s. And, referring to the more recent past, scholar Donald Savoie has condemned the rise of “court government,” a concentration of decision-making power in the hands of the prime minister and a handful of courtiers to the detriment of the established policy process operated by the public service. He has expressed concern that political interference in program management and day-to-day operations of the public service is on the rise. Marshalling a wide range of evidence and opinions, he argues that the relationship between public servants and politicians has been broken, and that the Constitution should be amended to clearly carve out a space of autonomy for the public service in the governance of the country. Legislative reform should establish without doubt that the public service has a distinct personality from the government and should give it the legal means to resist “instructions from elected politicians to perform essentially political acts.” Clearly, excessive politicization is also an issue of contemporary significance in Canada.

Politicization is a complex and multi-faceted issue that clearly goes beyond staffing. However, at its core, it indisputably involves the erosion of the political neutrality and independence of the public service and challenges the conception of the public service as a hierarchical meritocracy. And, as we have seen, the staffing of the public service on the basis of merit has historically been a central pillar of the independence of the public service. Politicization is therefore an issue that necessarily speaks to the staffing regime and the purpose of the Public Service Commission. As Canadians and their government wrestle with the difficult issue of the political control of the public service, it may very well become necessary for the PSC to defend, once again, the value of an independent, neutral and competent public administration to democratic government.
In the context of such a debate, it will be useful to remind ourselves of the fact that one of the main reasons the merit system was adopted, and the PSC created, was to provide elected officials with a more effective tool for implementing the democratic will. The goal was to do away with the dysfunctions of patronage and endow the Government of Canada with a professional bureaucracy, effective in making and implementing policy and dedicated to serving the political will of the elected government, but possessing enough independence to allow it to "speak truth to power" and resist political instructions that would violate laws and established norms of ethical behaviour. This complex goal, far from being opposed to the interests of our elected politicians, is in their long-term interest. As Professor Hugh Heclo reminds us, the "independence entailed in neutral competence ... exists precisely in order to serve the aims of partisan leadership." Politicians should be careful that, in the pursuit of more immediate objectives, they do not end up compromising the ability of future governments, and citizens more broadly, to rely on a professional public service that is able to best serve the public interest.

Institutionally, the Public Service Commission will have a key role to play in the debate. In an era of managerialism, the PSC will inevitably have to remind politicians and public servants alike that

because a system of representative government requires officials to act as custodians of the constitutional values it embodies, it cannot frame the role of bureaucrats solely in terms of efficient management, performance, responsiveness and securing results."

Through their myriad of daily tasks and functions, public servants do not merely deliver programs, they also administer laws and, as scholar John Rohr has put it, they "run a constitution." This reality means that staffing the public service must be subject to constraints that, while sometimes difficult to reconcile with managerial and short-term political objectives, serve an important purpose in the democratic governance of the country.
ENDNOTES

5 Ibid., 90–91.
10 The report has been published as an appendix to the fifteenth annual report of the Clerk of the Privy Council to the Prime Minister. Privy Council Office (2008), *Fifteenth Annual Report to the Prime Minister on the Public Service of Canada*, Ottawa, 48–64.
13 Ibid., 214.


Savoie (2008), *Court Government*, 314.

Ibid, 338.


John Rohr (1986), *To Run a Constitution*, Lawrence, Kansas University Press.