
STRUCTURE, RESPONSIBILITY AND LINES OF ACCOUNTABILITY IN THE FEDERAL GOVERNMENT

Roles, Responsibilities, and Accountability of Ministers and Public Servants

The Fact Finding Report describes in detail the structure and lines of accountability in the federal government, including the individual and collective responsibilities of bureaucrats and Ministers. These must be outlined in order to appreciate the absence of oversight and adherence to established procedures.

In brief, **Ministers** are responsible for the departments over which they have overall direction and management. They are accountable to Parliament for how their ministerial responsibilities have been carried out. The Minister must take corrective action should problems occur, correct any problems that have been identified, and accept the consequences if the problem is attributable to the Minister's own

actions or inaction. Answerability refers to a duty to inform and explain to Parliament what has occurred in a government department. Ministers are answerable to Parliament for the department under their jurisdiction, even if the questions refer to the administration under a previous Minister. Accordingly, answerability is narrower in scope than accountability.

The **Prime Minister** has special responsibilities in the areas of national unity, national security, and intergovernmental and international affairs. The Right Honourable Jean Chrétien testified that Canadian unity had been his number one priority. There are no established limits to restrict the involvement of the Prime Minister and his senior staff in whatever issue they decide to take over and manage. The Prime Minister's accountability for the government as a whole is heightened by such direct involvement, but in principle individual Ministers retain primary responsibility and accountability for what is done within their portfolios.

The Prime Minister has political staff headed by the Chief of Staff, who generally works more closely than anyone else with the Prime Minister. At least that was the case when Jean Pelletier was Prime Minister Chrétien's Chief of Staff, which covers the period under review by this Commission. Mr. Pelletier was among a select group of advisors and the Prime Minister's closest collaborator.

The **Privy Council Office** (PCO) is responsible for providing the Prime Minister with non-partisan and non-political advice on government policy and operations. The PCO is headed by the Clerk of the Privy Council, who also acts as Secretary to the Cabinet and is the head of the public service. In effect, the Clerk of the Privy Council is the Prime Minister's Deputy Minister, meeting daily with the PM and the Chief of Staff. Jocelyne Bourgon became Clerk on March 28, 1994, until she was succeeded by Mel Cappe on January 18, 1999.

Ministerial responsibility has to do with the relationship between a Minister and the public servants working in the department of which the Minister has charge. Law, tradition or convention dictate that the Minister has sole authority for the management and direction of a department. However, the principle of Cabinet solidarity requires that the Minister seek the approval of or inform other members of the Cabinet regarding policies and decisions that may have relevance to other portfolios and the conduct of government as a whole. In addition, the Minister has an obligation to report to Parliament, which can discharge this obligation only if it is kept informed of the commitment and disbursement of public monies by individual Ministers and their departments.

The size of modern government places a constraint on the attribution of ministerial responsibility. Most commentators say that it is not fair today to hold a Minister responsible for errors or maladministration attributable to departmental officials if the Minister was not aware of them. The exception occurs if it can be determined that the Minister failed to ensure that appropriate systems were in place to manage the risks that led to those errors or mismanagement.

It is incumbent upon a Minister, according to law and the relevant government policies, to work with the public service to assure the proper implementation of government policy delivered through the program or activity under the Minister's charge. Some witnesses, and the submissions made by certain participants, take the position that individual Ministers and Cabinet are limited to formulating policy, and that their administrative officials, directed by the Deputy Minister, are responsible for implementing the policy. Thus, if errors occur in the implementation of policy of which the Minister is unaware, he or she bears no responsibility other than the obligation to take the appropriate corrective measures. According to this view, the Minister is entitled to assume that the public servants charged with the implementation and

administration of the policy decisions made by the government will act honestly and competently and will, of their own volition, adopt appropriate practices and procedures in so doing.

Mr. Pelletier testifies that Prime Minister Chrétien, on taking office in 1993, met with all Deputy Ministers and expressed the view that they would be entirely responsible for government administration, and that the politicians would be responsible only for policy decisions. Mr. Pelletier acknowledged that subordinate officials might obtain advice from the Prime Minister's Office (PMO) about a program, such as the Sponsorship Program, while still retaining full responsibility for any administrative decisions, even those following suggestions made by persons such as Mr. Pelletier himself. Mr. Pelletier does not consider this to be political interference in administrative matters.

Ministerial responsibility for a department is to be distinguished from the Minister's responsibility for the **political staff** (also known as "**exempt staff**") in his or her office. The Minister chooses to employ staff members (they are "exempt" from the general authority of the Public Service Commission, including the appointment process) and works with them closely. A Minister is *personally* responsible for the actions of his or her political staff. Therefore, if a staff member becomes involved in the department's program administration, the Minister is directly and personally responsible for all consequences.

I believe that the proposition that Ministers and their political staff have no responsibility for the proper implementation and administration of government programs and policies is an inadequate and incomplete expression of the principle of ministerial responsibility. The Minister should take steps, in consultation with the Deputy Minister, to see that trained personnel are available to administer any new initiatives and to establish proper procedures and oversight mechanisms. The Minister should give sufficient directions to the Deputy Minister so that the

latter will be able to properly supervise the actions of the subordinate personnel. Willful ignorance of administrative inadequacies will not absolve a Minister from responsibility for failures within the department.

The **Deputy Minister** is the principal source of support for a Minister in fulfilling his or her collective and individual responsibilities and, in particular, ensuring sound advice on policy development and implementation, effective departmental management, and the fulfilment of authorities that have been assigned to the Deputy Minister or his officials. The role of a Deputy Minister is to be in charge of program management and departmental administration, but also to be sensitive to the political side. The Minister may exercise some discretion in what is delegated to the Deputy Minister. If there is a disagreement between a Minister and a Deputy Minister, the Minister may contact the Prime Minister, and the Deputy Minister may contact the Clerk of the Privy Council, and the problem would be worked out between them.

Ms. Bourgon agreed that a Deputy Minister would be obliged, in the context of program or project management, to ensure that the appropriate structure, policies, personnel and risk management scheme were in place; that the program or project was within the authority of the department; and that managers had clear delegated authority and information management systems so the Deputy Minister could receive feedback.

The **Treasury Board**, supported by the **Treasury Board Secretariat**, functions as a management board overseeing all federal government operations. Its jurisdiction includes general administrative policy, the organization of the public service, financial management and personnel management. Treasury Board establishes standards through its policies, but it cannot oversee Deputy Ministers' compliance with every transaction. The Treasury Board exercises its oversight role most actively through its review of submissions for spending initiatives. The principal

expenditure controls are found in legislation, especially sections 32, 33 and 34 of the *Financial Administration Act*. In brief, section 32 ensures that funds are available to pay for any goods or services contracted; section 33 deals with requisitions for payment; and section 34 ensures that no payment for goods or services requisitioned by the government shall be made unless there is a certification on record that the goods or services have been supplied in accordance with the government contract which authorized the expenditure. These provisions are supplemented by legally binding Treasury Board regulations and non-binding guidelines and policies which public servants must follow.

The **Minister of Finance** establishes the fiscal framework within which overall government spending takes place. Once that framework is set, departments are responsible for the management of the expenditures allocated to them, with general oversight by Treasury Board. The Department of Finance and its Minister have no oversight role for other departments' expenditures, other than setting the financial context via the fiscal framework. The Minister can spend money only after Parliament has approved the spending, and it is primarily the role of that department to ensure proper management and compliance with legislation.

Definition of a "Program"

The Attorney General of Canada argued before the Commission that no Sponsorship Program existed until September 1, 2001, when Communication Canada established formal guidelines, criteria and procedures to govern the administration of sponsorships.

The *Financial Administration Act* and other legislation create responsibilities and obligations where funds are paid out in the context of a program. For example, section 32 of the FAA imposes upon a person "charged with the administration of a program" the duty to "establish procedures and maintain records respecting the control of financial commitments."

The word “program” appears in other sections of the FAA, but it is defined nowhere.

Despite some contrary points of view, I have concluded that the series of projects and initiatives launched by the Government of Canada in 1996 unquestionably constituted a “program.” Sponsorship initiatives were a series of projects or activities planned and undertaken to accomplish the objective of enhancing the visibility of the federal presence and promoting its programs and services. As such, they fit precisely into the dictionary definitions of “program.” The fact that the program was not formally structured and had not been specifically approved by Cabinet, Treasury Board and the Privy Council Office did not make it less of a program.

Evolution of the Management of Advertising Services within PWGSC

Prior to the election of the Chrétien government in 1993, government advertising was managed by the Advertising Management Group (AMG), an organization within PWGSC directed by Chuck Guité. At some point, AMG changed its name to the Advertising and Public Opinion Research Directorate (APORD) and, a year or two later, it became the Advertising and Public Opinion Research Sector (APORS), always under Mr. Guité’s direction.

AMG and APORS were never large organizations. In 1994, the total staff was only 16; only five were involved in advertising—including Mr. Guité as Director, and Andrée LaRose, Huguette Tremblay, Denyse Paquette and Mario Parent. Other employees such as Allan Cutler, Marie Maltais, Evelyn Marcoux, Paul Lauzon and David Myer came and went over the years.

Until November 1994, the contracting function for APORS activities was handled by a separate division of PWGSC known as the Public

Relations and Print Contract Services Sector (PRPCSS). This division led to conflicts between Mr. Guité and PRPCSS.

On November 21, 1994, Mr. Guité wrote a letter to his Assistant Deputy Minister, Richard Neville, about the continuing dispute he was having with PRPCSS as a result of its slowness in completing contracts. His primary recommendation was that clear instructions should be given to PRPCSS that once a requisition had been approved by Mr. Guité's group, PRPCSS was to issue an advertising contract without delay. A second option was to delegate the contracting authority to the client department, subject to prior approval from Mr. Guité's group. The third option, assigning the contracting function to APORS, was chosen, and APORS was given responsibility both for agency selection and for the procurement process, including the signing of contracts. This left Mr. Guité free to ensure that the awarding of advertising contracts would not be subject to a bureaucratic and competitive process. Apparently, from this moment on he felt free to disregard the requirements of Appendix Q to the Treasury Board Contracting Policy which applied to advertising and public opinion procurement.

Mr. Neville testified that he agrees it was not normal that procurement, contracting authority and agency selection would all be performed by the same individuals in the same group. However, he does not recall anyone ever raising this question with the Deputy Minister, Ranald Quail.

Transfer of the contracting function to APORS required Allan Cutler, who had formerly performed this work in PRPCSS, to move to APORS. Mr. Cutler felt that contracting should be done in accordance with Appendix Q, and he was reluctant to perform his functions in the manner that Mr. Guité preferred. When this disagreement resulted in a conflict, Mr. Cutler effectively ceased working within APORS, leaving Mr. Guité free to manage it as he wished.

In July 1995, APORS came under the authority of a different Assistant Deputy Minister, Jim Stobbe. He tended to defer to Mr. Guité's judgment and decisions in advertising matters, requiring only that they be reported to him and the Deputy Minister. These decisions were never questioned, since both Mr. Stobbe and Mr. Quail knew that Mr. Guité was in direct communication with the Prime Minister's Office and, after June 1997, with the Minister of PWGSC, the Honourable Alfonso Gagliano.

After Mr. Gagliano became Minister of PWGSC, Mr. Guité was promoted and given new responsibilities with the creation of CCSB in November 1997. The objective in creating CCSB was to streamline operations, improve delivery of services and eliminate duplication, all with a view to reducing the budget of PWGSC as part of program review. CCSB brought together PRPCSS, APORS and a number of other functions within PWGSC, all under the direction of Mr. Guité. The same small group continued to work on advertising and sponsorships. Mr. Guité made most decisions himself and was not comfortable in delegating authority. There were few administrative procedures, and little structure or organization. The people handling sponsorship contracts all did what Mr. Guité told them to do. There was an atmosphere of secrecy and only the inner circle was informed of decisions.

David Myer was named Director General of Procurement in CCSB in June 1998, but he quickly realized that sponsorship contracts were not given the same treatment as other procurement functions. Effectively, Mr. Myer was excluded from dealing with sponsorship matters except when Mr. Guité was absent and Mr. Myer would sign documents in his place, including certifications for payment.

Financial and Political Context (the Quebec Referendum)

National unity initiatives and what came to be known as the Sponsorship Program were undertaken at a time of severe fiscal restraint. When the Government took power in 1993, one of its highest priorities was to reduce the annual deficit. The reduction and eventual elimination of the deficit were the result of a government-wide exercise known as “program review.” Within PWGSC, program review was something of a nightmare to Mr. Quail, who had worked diligently to meet savings targets as a result of the amalgamation of the two departments which formed PWGSC. Program review imposed further reductions—PWGSC personnel were cut by 25%, or about 5,800 people over three years, and its budget was reduced by \$350 million out of a total of about \$2.2 billion. Mr. Quail was very preoccupied with these adjustments and had little time to deal with problems such as the internal management of APORS.

Program review resulted in the elimination from departmental budgets of reserves of every description, except the Unity Reserve – the principal source of funding in the early years of the Sponsorship Program.

On March 20, 1995, Ms. Bourgon recommended to Mr. Chrétien that he approve the disbursement of \$100,000 to two advertising agencies with well-known Liberal affiliations, BCP and Groupe Everest, for the period leading up to the Quebec referendum. There was no prior call for tenders, and they were treated as advertising disbursements by PWGSC.

A Treasury Board submission dated June 15, 1995, requested \$20 million to support Canadian Unity initiatives, including \$10 million to be disbursed by APORS for advertising, media buys and public opinion research, under PCO’s guidance. The Prime Minister signed this submission himself, highlighting the importance he placed on the referendum file. Maintaining Canadian unity was his duty and first

priority as Prime Minister. He said that his Cabinet was united in its determination to do whatever was necessary to ensure that winning conditions for sovereignty never arose in Quebec.

After the close result of the 1995 Quebec referendum, the federal government adopted a multifaceted post-referendum strategy. Advertising and sponsorships were only one element. A Cabinet committee chaired by the Honourable Marcel Massé, Minister of Intergovernmental Affairs, recommended at a Cabinet retreat on February 1 and 2, 1996, a “substantial strengthening of the Liberal Party of Quebec,” including the hiring of organizers. Most witnesses agreed that such a recommendation would not ordinarily form part of a Cabinet Committee’s Report. It is an indication of the failure of some members of the government at that time to consider that any political party other than the Liberal Party of Canada could have a role in promoting federalism in Quebec.

The Commission concludes that a decision in principle was reached at the February 1996 Cabinet retreat to improve federal government advertising and communications to enhance the visibility of the federal presence in Quebec, but that no specific decisions were made by the Ministers present on mechanisms, financing or responsibility for the program. It was left up to the Prime Minister’s Office, in consultation with the Privy Council Office, to determine how the decision was to be put into effect. Mr. Chrétien testifies that he decided to designate his Chief of Staff, Jean Pelletier, to be in charge of the National Unity file.

Another result of the Massé Report was the creation of the Canada Information Office (CIO), a new secretariat or agency intended to develop and implement strategy and tactics in terms of communications and policy.

Funding for the Sponsorship Program

Mr. Guité must have learned from someone that APORS would be implementing the government's new visibility program. It is extraordinary that no witness is willing to tell the Commission exactly what transpired in the period following the political decision made by Cabinet on February 1-2, 1996, up to the first meeting between Mr. Guité and Mr. Pelletier on April 16, 1996. It is impossible to believe that there were no meetings or discussions involving the Prime Minister and his staff during that period concerning the implementation of the decision, but Mr. Pelletier purports to have no recollection of what happened. There is no doubt that meetings occurred, during which Mr. Pelletier and to a lesser extent Jean Carle would give Mr. Guité advice in at least some cases with respect to the events that should be sponsored and the amounts to be allowed. Mr. Quail knew that such meetings were taking place.

From 1991 to 1996, a special reserve—the Unity Reserve—was set aside in the Budget for use by the Prime Minister for national unity expenditures. Starting in 1996 or 1997, a specific item of \$50 million was included in the Budget to “top up” the Unity Reserve. The funds made available to PWGSC for the Sponsorship Program in its first three years were accessed from the Unity Reserve. In June 1996 the Prime Minister signed a submission to Treasury Board to request an allocation of \$17 million to PWGSC for 1997-98. His signature sent a message to everyone about the seriousness of the initiative.

Although then PWGSC Minister Diane Marleau co-signed the Treasury Board submission in 1996, she really knew very little about the reasons why funds were needed or about the subject of sponsorships in general. The list of proposed sponsorships which supported the submission had been discussed with Mr. Pelletier and representatives of PCO, but it was not discussed with her, and she had nothing to do with the administration of the sponsorship contracts that resulted.

At the time, the Program had not been formalized, adequately defined or publicized. Funds were allocated according to discretion given to Mr. Guité, working under the direction of the PMO and with its approval. No directions or guidelines had been given by the PMO or the PCO to anyone as to how the Program was to be administered, what criteria would guide decisions made regarding the use of the funds, how it would be administered and who would supervise implementation of the Program.

On December 18, 1996, in a memorandum to the Prime Minister, Ms. Bourgon expressed concern about ministerial responsibility for funds allocated from the Unity Reserve on the basis of his signature. She was concerned that the Prime Minister had taken on a very large burden of responsibility. She thought that a review of future projects by the PCO or a group of Ministers would provide better management of the \$17 million allocated to PWGSC for 1997-98 than was the case in 1996-97.

Mr. Chrétien did not reply in any way to the memorandum. Ms. Bourgon repeated her concerns in a second memorandum dated September 30, 1997, on the subject of access to the Unity Reserve, which was under pressure due to the number of requests for funding that were pending, including requests by PWGSC for an additional \$18.8 million for 1997-98, mainly for the Sponsorship Program, and \$50 million for each of the following three years.

Ms. Bourgon's second memorandum establishes:

- that the PCO was aware that the PMO was determining those projects to which sponsorship monies were being directed;

- that the Prime Minister was accountable for the use of funds drawn from the Unity Reserve on the basis of his signature on a Treasury Board submission;
- that this accountability could be transferred to a Minister; and
- that, if the Prime Minister preferred to retain accountability, he could obtain advice or assistance from the PCO or a Minister or group of Ministers, who would review projects to be funded by Unity Reserve monies.

Ms. Bourgon attempted to distinguish between responsibility for the nature of the projects envisaged, and responsibility for the particular projects themselves. I was not convinced that such a distinction could be deduced from the text of the memorandum, which is admirably clear.

Mr. Pelletier said Mr. Chrétien fully understood his responsibilities and accountabilities, chose to retain them, and became accountable for how the funds, accessed on his behalf by PWGSC, were spent or misspent.

Mr. Chrétien was also personally responsible for the actions or the inaction of Mr. Pelletier and other exempt staff in his office. He resisted or ignored all suggestions from Ms. Bourgon that sponsorship initiatives and related events would be better directed and controlled by a Minister accustomed to program implementation and familiar with its requirements.

Ms. Marleau and her Deputy Minister had nothing at all to do with managing the Sponsorship Program other than to seek approval for its financing. The Program was run out of the PMO under the direct supervision of Mr. Pelletier, specifically delegated to carry out this responsibility by the Prime Minister. Mr. Pelletier, for all practical purposes, assumed the role, the functions and the responsibilities of a Minister of a department charged with implementing a program. Mr.

Pelletier failed to fulfil that responsibility, in that he did not give adequate direction to the subordinates in PWGSC to whom he was delegating the task of administering a new program. By his conduct and involvement, Mr. Pelletier made it impossible for Ms. Marleau and Mr. Quail to fulfil their responsibilities, since they were excluded from any participation in the decision-making process and had no effective control over the actions of Mr. Guité.

How Were Advertising and Communication Agencies Selected?

Prior to November 1993, the AMG managed by Mr. Guité included two political appointees designated as “consultants.” The selection and engagement of advertising agencies to assist the government in its advertising activities were openly done on a political basis. The Cabinet Committee on Communications gave instructions to Mr. Guité on how to proceed. Mr. Guité, at that time a relatively minor public servant, reported directly to Senator Lowell Murray, who presided over the committee. This relationship bypassed the normal chain of command, whereby a public servant is expected to take orders from his or her immediate superior.

Under the Progressive Conservative administration, government departments requiring advertising agencies would inform the AMG, which would hold a competition to choose the agency to be awarded a contract. However, the list of agencies invited to compete was prepared by the political appointees within the AMG. Advertising and communication agencies having Liberal Party sympathies or connections had little or no chance of getting government business. Mr. Guité believes that once the list of candidates had been prepared, the competition was fair, but, of course, only agencies acceptable to the party in power had been put on the list.

During the 1993 election campaign, the Liberal Party promised to spend less government money on advertising and polling and to change selection rules to ensure fair, open and transparent bidding. Once in office, Mr. Chrétien immediately instructed the Treasury Board Secretariat to design and develop a new policy for contracting for communications, opinion research, and advertising services. It later became “Appendix Q” and came into effect on July 6, 1994.

What appears to have been a sincere attempt to depoliticize an openly biased procurement policy was subverted almost from the very beginning. Although early drafts of the proposed guidelines all included price as a relevant selection criterion, Mr. Guité and the advertising industry together mounted a concerted campaign to exclude price. When Appendix Q reached its final form, approved by Treasury Board, all price references had disappeared, although there were references to “value.” There must have been a last-minute decision to exclude price. Appendix Q foresees either open bidding for advertising contracts or the creation of a pre-qualified suppliers list by a selection process, followed by competitive bidding for each contract by the agencies listed. Later, sponsorship contracts also were to follow a two-step process, with inclusion of agencies on a pre-qualified suppliers list followed by competitive bidding for each contract.

On February 2, 1995, the requirement in Appendix Q that “only Canadian owned and controlled companies will be considered for advertising contracts” was changed from 51% to 100% ownership. Two advertising agencies, BCP and Vickers & Benson, both close to the Liberal Party, benefited from the new interpretation and became the biggest recipients of advertising contracts reviewed by this Commission. The change took effect on February 2, 1995, the first day of the selection process through which both BCP and Vickers & Benson and three other agencies were selected to provide services for Heritage Canada. This timing cannot be mere coincidence. It would appear that political considerations affected the formulation of an administrative policy.

In practice, the requirements of Appendix Q for a second step, the competitive bidding process, were totally disregarded. In many instances, there were also irregularities in the preparation of the pre-qualified suppliers list. For the next five years, Mr. Guité awarded advertising and sponsorship contracts as he pleased, without respecting the competitive process. No one appears to have questioned the procedures he was following, and no one ever verified whether Mr. Guité and his employees were awarding advertising contracts in accordance with Appendix Q. Indeed, from 1995 on, because of false reports, he was explicitly exempted from making any further reports to Treasury Board.

Use of Communication Agencies for the Sponsorship Program

In the advertising industry, when placing advertisements in various media, the usual practice is to use the services of an Agency of Record (AOR) which, for a fixed commission, verifies that ads have been placed and which pays the various media on the client's behalf. At the outset, the Sponsorship Program did not use an AOR, but on April 1, 1998, a decision was made to use such a mechanism (even though it is not really designed for this purpose).

When a sponsorship contract required creative work such as designing posters, the agency could charge extra for these "production costs," above the set commission fee, based upon various hourly rates for the personnel employed. There was no price competition for production costs; they were usually loosely estimated in advance. Generally, invoices to the government for production costs were almost identical to the amount estimated. No written estimates were requested from the agency, and no records were kept as to the basis upon which PWGSC calculated the estimates.

Following a February 1995 Heritage Canada competition, five of seven communication agencies selected to provide advertising services to Heritage Canada were chosen without competition to supply advertising services to APORS/PWGSC for various sponsorship initiatives. Mr. Guité and Ms. LaRose both acknowledge that the conversion of the Heritage Canada list of pre-qualified suppliers into a list to be used by PWGSC was irregular and did not respect the requirements of Appendix Q. Initially, Lafleur Communication was not put on the pre-qualified suppliers list for either Heritage Canada or PWGSC from the February 1995 competition, yet, between February 9, 1995, and June 30, 1995, this agency received an important number of contracts for advertising services from PWGSC totalling \$1,873,998. As a result, the suspicion lingers that the objective of the PWGSC competition held in June 1995 was to qualify Lafleur Communication as quickly as possible in order to remedy the irregularity of granting contracts to an unqualified supplier. This competition was a sham, and the result was most likely pre-determined.

The 1997 competition was not a competition at all. All of the ten agencies making presentations, even those scoring very poorly in comparison to others, became qualified. It may be concluded that Mr. Guité had determined in advance that more assistance from agencies in managing sponsorship contracts was needed, and the fact was overlooked that at least some of the candidates making presentations had relatively poor capabilities. The government policy to ensure that advertising contracts were let through a competitive process was simply disregarded.