

**Commission of Inquiry into the Sponsorship Program
and Advertising Activities
Commission d'enquête sur le programme de commandites
et les activités publicitaires**

**Final Submissions of the
Attorney General of Canada**

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Introduction

1. This document is the submission of the Government of Canada to the Commission of Inquiry into the Sponsorship Program and Advertising Activities (Commission) with respect to the factual-inquiry phase of its mandate. It is structured in two parts.

2. Part One of the submission outlines the core principles of responsible government, the doctrine of Ministerial responsibility, and the roles and responsibilities of the various individuals and institutions which were involved in sponsorships and advertising. These principles have a long tradition and are generally understood by Parliamentarians, Ministers, Deputy Ministers and public servants.

3. Part One makes it clear that Ministers are accountable for all the actions of their department – whether pertaining to policy or administration and whether or not they were taken by the Minister personally or by unelected officials under the Minister’s authority or under authorities vested in them directly by statute. Deputy Ministers are accountable to their Minister, and to the Prime Minister, and have a managerial accountability to the Treasury Board. To support the Minister’s accountability for the department, a Minister and his or her Deputy Minister must work together to understand the level of detail in which the Minister expects to be involved in the department’s work and to ensure that appropriate systems are in place to manage the risk of problems and to correct them when they occur.

4. The role of the Privy Council Office is to ensure interdepartmental coherence and coordination in support of the Government’s agenda and priorities, while the role of the Treasury Board Secretariat is to ensure that expectations of accountability, legality, and propriety are clear and to assess departments’ performance against these expectations. Neither the Privy Council Office nor the Treasury Board Secretariat oversees the compliance of Deputy Ministers and departments and agencies against every transaction undertaken by them. However, the Treasury Board and its Secretariat do oversee policy compliance, maintenance of control systems and, based on an assessment of risk, individual transactions. It is essential that central agencies conscientiously avoid any action that would have the effect of undermining the accountability of Ministers or Deputy Ministers for their line responsibilities, whether in policy or administration.

5. However, when it is clear that a problem is systemic and goes beyond an individual department or the department is not capable of resolving the problem on its own, the role of the central agencies and the Government as a whole is to intervene to address the systemic problem, for example, through new policies. In the case of a departmental problem, there is a range of interventions available to the Treasury Board and its Secretariat, including informal follow-up, external audits or other investigations, direction on specific preventative or remedial action to be taken by the department, and withdrawal of the department’s delegated authorities.

6. Part Two of the submission describes how the system operated in the context of sponsorships and advertising based on the evidence before the Commission

and identifies problems in how those activities were managed during the period under review by the Commission. It summarizes the evidence presented to the Commission concerning the unique combination of factors that came together from 1994 to 2001 and led to these problems, the audits undertaken by Public Works and Government Services Canada (Public Works) and the Office of the Auditor General, which identified these problems, and the reforms the Government of Canada put in place to address them.

7. A number of factors combined to create the conditions in which the mismanagement and financial abuse could occur. As discussed in detail in Part Two of this submission, two of the principal factors were the absence of clear program criteria for the selection of sponsorship events and amounts and the contravention by a line manager of clear policy requirements concerning the selection of agencies. Having clear criteria for decisions does enhance accountability and reduce controversy.

8. There was political involvement in the selection of sponsorship events and amounts. Such involvement is not necessarily inappropriate and there was no evidence of inappropriate political involvement by the former Prime Minister, the Prime Minister's Office, or Ministers. However, the political involvement of the former Prime Minister's office or other Ministers in the selection of events and amounts did not change the accountability of the Minister of Public Works for all decisions taken with respect to sponsorships. Ministerial discretion for those decisions remained subject to the *Financial Administration Act* and any terms, conditions, or policies adopted by the Treasury Board.

9. The regulations and Treasury Board policies that governed the process for the selection of agencies were binding on the Government. If any of the Prime Ministers, Ministers, or their exempt staff participated in the selection of agencies in a manner that contravened the regulations or policies, then that political involvement would have been inappropriate. There was no evidence to indicate a violation of these regulations and policies by the former Prime Minister and Ministers, with perhaps the exception of the former Minister of Public Works, Mr. Gagliano, and a member of his exempt staff, Mr. Jean-Marc Bard, about whom there was some conflicting testimony. If the testimony that conflicts with their evidence is true, then their involvement was inappropriate. Only the testimony of Mr. Guité raised any questions with respect to any member of the Prime Minister's Office.

10. Other factors compounded the problems in the administration of sponsorships. Despite the comprehensive contracting and financial management policies in place throughout the relevant period, there existed a highly irregular concentration of responsibilities within the unit of Public Works responsible for sponsorship activities. Internal controls proved to be insufficient, management's responses to the results of the initial internal audits proved to be inadequate, and the Treasury Board Secretariat's oversight was insufficient to ensure that the problems were corrected.

11. This resulted in an environment in which the manager of the unit was in a position to break the rules and then deliberately misrepresent his compliance with applicable policies as well as the *Financial Administration Act* to Ministers, his Deputy Minister, and the Treasury Board Secretariat over the course of several years. The failure

of Public Works to provide information about sponsorship activities when reporting to Parliament made it difficult for Parliament to perform its oversight role through the scrutiny of departmental *Estimates*.

12. The maladministration of sponsorships created the circumstances in which exploitation and abuse from inside and outside the government could occur. As the doctrine of Ministerial responsibility makes clear, the Minister of the day and responsible officials in Public Works were accountable for any maladministration that occurred during their tenure, whether as a result of their action or inaction.

13. The accountability of the Minister of Public Works, at the time, for sponsorship decisions is reflected in Mr. Goodale's testimony. In response to an inquiry from the former Prime Minister concerning a sponsorship event, Mr. Goodale, as the responsible Minister, advised Mr. Chrétien that the event could not be funded under the terms of the moratorium he had imposed on the sponsorship program. Mr. Goodale testified that the request was not pursued.

14. There was evidence before the Commission linking sponsorship program funding to advertising agencies to political fundraising. This submission does not address this issue as it is outside the scope of Government operations, except to note that there was no evidence before the Commission that the Government was aware of any linkage of the program to political fundraising.

15. The 1996 audit of advertising and public opinion research activities, conducted for Public Works by Ernst & Young, identified non-compliance with contracting policies and procedures, including *Appendix U/Q*, but viewed the findings as more indicative of an effort to serve clients more efficiently than an overt attempt to commit fraud. While the Public Works action plan accepted the recommendation of the audit to move the procurement function into the normal procurement stream of Public Works, the decision was taken instead to transfer further procurement expertise into the unit responsible for advertising and sponsorships. In retrospect it can be seen that if the department had addressed the problems in the manner identified in the audit and as accepted in the action plan, then it would have been more difficult for the maladministration of sponsorships to have occurred. At that time, the Treasury Board Secretariat did not have procedures in place to ensure that the audit was reviewed.

16. The 2000 Public Works audit of sponsorships again identified areas of non-compliance with *Appendix U/Q* and found that the decision-making, and management processes and controls in place were inadequate to allow the department to ensure due diligence in the management and expenditure of sponsorship funds. Public Works implemented a 31-point management action plan and took other administrative steps to address the administrative problems identified by that audit and submitted progress reports on the plan's implementation to the Treasury Board Secretariat. The 2000 audit did not however suggest that the mismanagement had resulted in any financial loss to the Government.

17. The May 6, 2002 report of the Auditor General provided the first indication of potential financial loss resulting from mismanagement within the Public Works' unit responsible for sponsorship and at that time it became evident that a government-wide response was required. This report followed a request from Mr. Boudria, the former Minister of Public Works, to the Auditor General to investigate three sponsorship related contracts in March 2002. At that time, Mr. Boudria indicated that should the audit identify information suggesting criminal activity, the matter would be referred to the Department of Justice for the recovery of funds and to the Royal Canadian Mounted Police for investigation. Until the Auditor General's report, the Government was not aware of potential financial abuses in the administration of the sponsorship program. The evidence indicates that the Government initiated corrective action as soon as this became known. These initiatives are described in detail in Part Two of this submission.

18. On May 8, 2002, Mr. Boudria announced a number of immediate corrective measures related to the selection of agencies and the establishment of clear criteria for the selection of events. Further reforms were announced by Mr. Boudria on May 23, 2002.

19. Also in May 2002, Public Works established the Quick Response Team, which conducted a systematic review of all sponsorship files between April 17, 1997 and March 2000. The Team identified various shortcomings in the administration of the files including improper sub-contracting and breaches of the *Financial Administration Act*. The Team recommended the referral of certain files to the Royal Canadian Mounted Police, the initiation of recovery proceedings and an administrative review to investigate possible violations of the *Financial Administration Act*. The Team's report was tabled in Parliament on October 10, 2002.

20. Also on May 23, 2002, the former Prime Minister asked Madame Robillard, the then President of the Treasury Board, to review the entire management regime for sponsorship, advertising, and public opinion research.

21. Three days later, following his appointment as Minister of Public Works, Mr. Goodale announced a moratorium on all sponsorship activities. In July, Mr. Goodale announced an interim sponsorship program which eliminated the use of advertising agencies. He directed that payments to some advertising agencies be stopped.

22. In December 2002, as recommended by Madame Robillard, the Treasury Board approved terms and conditions for a grants and contribution program for sponsorships which did not use advertising agencies as intermediaries and established clear criteria for the selection of events. At the same time, the Treasury Board eliminated *Appendix U/Q* of the *Contracting Policy* under which the sponsorship program had been managed, and approved changes to the *Contracting Policy* and *Common Services Policy* to improve competition in the selection of advertising agencies.

23. The current Prime Minister, in his first act as Prime Minister, cancelled the sponsorship program on December 13, 2003. On February 10, 2004, the Government

announced the appointment of a Special Counsel for Financial Recovery, and on March 11, 2005, based on his recommendations, the Government of Canada filed claims in excess of \$40 million in the Quebec Superior Court against Mr. Guité as well as a number of communications agencies.

24. In addition to the Government's responses to the Auditor General's 2002 and 2003 reports on sponsorship, Part Two of this submission discusses other initiatives implemented or initiated by the Government that address management problems. Of particular relevance to the Commission are the initiatives discussed below.

25. The expectations of Deputy Ministers in managing their departments are now set out in the *Management Accountability Framework* which was introduced in June 2003. The *Management Accountability Framework* sets out key indicators for assessing a department's management performance and the measures necessary to improve its performance. The Treasury Board Secretariat's assessment of departments' management performance is used by the Clerk of the Privy Council, in consultation with the Committee of Senior Officials, in making recommendations to the Prime Minister on the performance assessment of Deputy Ministers.

26. Internal audit capacity across government is being examined by the Comptroller General, a position re-established by the current Prime Minister as separate from the Secretary of the Treasury Board on December 12, 2003, who is responsible for the government-wide functional leadership of internal audit. The Comptroller General is focusing on building capacity and ensuring professionalism, rigour and common standards in the delivery of audit services. The internal audit function within government is being re-organized and strengthened to ensure comprehensive audit programs, based on sound risk analysis of departmental activities. The Comptroller General will present an annual report to the Treasury Board providing an independent assessment of the overall state of risk management and controls across government, as well as an assessment of the status and performance of internal audit across the Government.

27. On March 22, 2004, the Government introduced the *Public Servants Disclosure Protection Act* (and re-introduced it in the new Parliamentary session on October 8, 2004) to establish a mechanism for the disclosure of wrongdoing in the public sector and to protect public servants who make disclosures.

28. On February 10, 2004, the Government announced a review of the governance and accountability framework for Crown Corporations. The President of the Treasury Board released this review, entitled *Meeting the Expectations of Canadians: Review of the Governance Framework for Canada's Crown Corporations*, on February 17, 2005. The Government has committed to implementing the 31 measures described in the review, ranging from clarifying accountabilities to extending the coverage of the *Access to Information Act*.

29. A new format for the *Estimates* was introduced in November 2004 to improve reporting to Parliament. The practice of "offsetting" unused spending authority with requests for new funding authority (which allowed "offsets" to not be shown in the

Supplementary Estimates for Public Works on a number of occasions for sponsorship activities) has been modified so that all “offsets” must now be shown in the *Supplementary Estimates*.

30. The Commission heard evidence about political fundraising during the 1997 and 2000 elections that have been addressed in Bill C-24, *An Act to amend the Canada Elections Act and the Income Tax Act* (political financing) which was introduced in October 2002, and came into force on January 1, 2004. The Act introduced new limits on contributions to political parties, extended disclosure measures and introduced new public funding measures for political parties. On the enforcement side, new offences were added for violation of contribution limits, including an “anti-avoidance” clause, which prohibits attempts to circumvent contribution limits or disclosure rules.

31. In the context of its ongoing management improvements, the Government looks forward to providing the Commissioner with further submissions during the recommendation phase of this Inquiry, which will outline its intentions for the modernization of public sector management. The Government’s objective is to ensure that a well-managed public sector contributes to Canada’s competitiveness in the global economy. It will pursue this objective recognizing that the goals for a modern federal government cannot be achieved without sound fundamentals regarding accountability, financial management, human resources management and better delivery of services to Canadians. As part of this modernization, the Government is continuing to review further initiatives building on the steps that have already been taken - as described in paragraphs 171 to 207.

32. The Government of Canada understands the importance of strengthening public trust in government institutions. A key component of the modernization initiative will be a package of measures designed to enhance ethics and integrity in all aspects of government operations. Elements of this package that are under active consideration include a proposed *Ethics and Integrity Act* to reinforce key responsibilities and standards of conduct and performance, as well as consequences for failing to meet those standards – for those working within government as well as those who have business relationships with the Government. In addition, consideration is being given to an integrity pact, which could be incorporated into contracts between the Government and third parties and would require compliance with a code of conduct to ensure transparency, accountability, fairness, efficiency and a respect for taxpayer’s money. Further efforts will be made within departments – building upon the comptrollers – to ensure appropriate oversight. In this regard, amendments are being developed to strengthen the *Financial Administration Act*. The Government looks forward to outlining these ideas in its submissions to the Commissioner during the recommendation phase of the Inquiry.

Part One: Responsible Government, Accountability, and Roles and Responsibilities**I. Roles, Responsibilities and Relationships****i. The Foundation of Responsible Government**

33. Canada is a constitutional monarchy and a democracy with a system of responsible parliamentary and cabinet government based on the British Westminster model. The structures and conduct of executive authority are governed both by the *Constitution Acts, 1867-1982* and by conventions and customs that have evolved over the history of responsible government in Canada.¹ Constitutionally, the power of the state flows from the Crown and may only be exercised by or on the authority of the Crown. Parliamentary and Cabinet government ensures the Crown and its advisers exercise power responsibly.²

34. Responsible government in Canada is based on the individual and collective responsibilities of ministers to Parliament. Ministers of the Crown are responsible for the provision and conduct of government. Ministers are accountable to Parliament and the government may remain in office only so long as it retains the confidence of the majority of the members of the House of Commons.³

ii. Individual and Collective Responsibility

35. In explaining the theory and operation of ministerial responsibility, the government has distinguished among three central concepts: “responsibility,” “accountability” and “answerability.”⁴

36. Responsibility, in addition to referring to the constitutional relationship between ministers and the House under responsible government, also refers to the sphere in which a public office holder (elected or unelected) can act, which is defined by the specific authority given to the office holder by law or delegation.⁵

37. Accountability is the means of explaining and enforcing responsibility. It involves rendering an account of how responsibilities have been carried out; taking corrective action and fixing any problems that have been identified; and, depending on the circumstances, accepting personal consequences if the matter is attributable to the office holder’s own actions or inactions.⁶

¹ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 39, **Exhibit P-35**

² *Responsibility in the Constitution*, Chapter II, p. 1, **Exhibit GC-2**

³ *Responsibility in the Constitution*, Chapter I, p. 1, **Exhibit GC-2**

⁴ *Guidance for Deputy Ministers (2003)*, p. 3, **Exhibit P-36**

⁵ *Guidance for Deputy Ministers (2003)*, p. 3, **Exhibit P-36**

⁶ *Guidance for Deputy Ministers (2003)*, p. 3, **Exhibit P-36**

38. Answerability refers to a duty to inform and explain. It is narrower in scope than accountability in that it entails neither responsibility to take action nor the personal consequences associated with accountability.⁷

39. In terms of individual responsibility, Ministers are responsible for their respective departments. Parliament has provided a legislative foundation for departments of government and charged Ministers with the overall management and direction of the department. Even where specific authorities have been delegated or statutorily assigned to an official, the Minister remains accountable to Parliament. The individual responsibility of Ministers means that Ministers are accountable to the House for both their own actions and those of their departmental officials. Ministers are also accountable to the Prime Minister, on whose recommendation they hold office.⁸

40. Collective ministerial responsibility refers to the convention requiring coherence and discipline of the ministry in deciding policy, managing administration and speaking to Parliament with a single voice. The decisions of Cabinet have mostly political and administrative effect, and their implementation is left largely to the Minister or Ministers directly responsible. Thus, accountability for specific policies or programs normally lies with individual Ministers.⁹

iii. The Role of Parliament

41. Parliament is the primary guarantor of the government's political accountability in responsible government.¹⁰ The direct accountability of Ministers to the House of Commons is a central feature of this system, and its efficacy depends heavily on the will and capacity of the House to hold Ministers accountable. But although Parliament is sovereign, it does not exercise executive authority. That is the responsibility of Ministers, individually and collectively.¹¹

42. Parliament's role is to assure itself that Ministers have adequate control over their department to be accountable for the activities carried out under their authority or those authorities vested directly in departmental officials.¹² Ministers, in turn, need to assure themselves that structures and processes are in place to give them the appropriate degree of control, which includes ensuring that their Deputy Minister is managing the department sufficiently well to support ministerial accountability.

43. Parliament has a broad range of means to hold the government to account. Among the most powerful, is control of the public purse – the exclusive right to authorize taxation and the expenditure of public monies. In support of this responsibility, Parliament audits the accounts of revenues and expenditures in a manner of its choosing.

⁷ *Guidance for Deputy Ministers (2003)*, pp. 3, 4, **Exhibit P-36**

⁸ *Statement of Evidence Prepared by the Privy Council Office*, p. 11, **Exhibit P-34(a)** and see also *Responsibility in the Constitution*, Chapter IV, p. 2, **Exhibit GC-2**

⁹ *Responsibility in the Constitution*, Chapter III, p. 2, **Exhibit GC-2**

¹⁰ The primary guarantor of legal accountability is the judiciary.

¹¹ *Responsibility in the Constitution*, Chapter IV, p. 4, **Exhibit GC-2**

¹² *Responsibility in the Constitution*, Chapter VII, p. 2, **Exhibit GC-2**

Other means include Parliament's role in the passage of legislation, the scrutiny and approval of public expenditure, debate over resolutions, and the provision of information, whether through Question Period or formal reporting.

44. The *Estimates* process is fundamental to the exercise of ministerial responsibility and accountability. Revenue can only be raised and moneys spent or borrowed by the government with the authority of Parliament. Regular, ongoing parliamentary spending reviews are intended to ensure that taxpayer dollars are aligned with the priorities set by Canadians, and that the government's management of the public purse is credible and avoids waste. Parliament can scrutinize the government's spending proposal by questioning ministers and performing a regular review of departmental expenditures.¹³ Parliamentary committees usually perform this work by reviewing financial documentation, such as the *Main Estimates* (Parts I, II and III) and the *Public Accounts of Canada*.

iv. The Roles and Responsibilities of the Prime Minister

45. The leader of the political party that appears able to form a government that will have the confidence of the House of Commons, is called upon by the Governor General to form a government. The Prime Minister is, above all, responsible for organizing the Cabinet, providing the direction necessary to maintain the unity of the Cabinet and setting the broad course of government policy.¹⁴

46. The Prime Minister is responsible for allocating ministers' portfolios, establishing their mandates¹⁵ and standards of conduct, identifying the priorities for their portfolios, and clarifying the relationships among ministers.

47. As head of government, the Prime Minister has special responsibilities in the areas of national unity, national security, intergovernmental and international affairs. The Prime Minister may take a special interest in areas under the responsibility of individual Ministers.¹⁶ When this occurs, the Prime Minister's accountability for the government as a whole is heightened by such direct involvement, but the Minister in question retains responsibility for what is done within his or her portfolio and is accountable for it. This follows from the operation of both individual and collective ministerial responsibility: the Prime Minister determines the position of the government as a whole, and the Minister responsible cannot disassociate himself or herself from it except by resigning from Cabinet.¹⁷

¹³ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 17, **Exhibit P-35**

¹⁴ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 40, **Exhibit P-35**

¹⁵ This refers to the mandate letter issued by the Prime Minister to the Minister. The mandate letter does not replace the mandate of the Minister as established by departmental legislation. Rather, it is the vehicle through which the Prime Minister sets out his or her expectations of the Minister and the areas of priority for the Government that the Minister is expected to deliver on.

¹⁶ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 42, **Exhibit P-35**

¹⁷ *Statement of Evidence Prepared by the Privy Council Office*, p. 11, **Exhibit P-34(a)**

48. Given these roles, the Prime Minister is accountable to Parliament for government as a whole. The Prime Minister has a responsibility for the effective operation of the whole of government and may, and often does, answer in the House of Commons for the operation of all departments and agencies.¹⁸

49. In executing these responsibilities, the Prime Minister is supported by the Prime Minister's Office and the Privy Council Office. Although separate organizations, the Prime Minister's Office and the Privy Council Office work closely to ensure that consistent, timely advice is provided on the subjects of greatest importance to the Prime Minister.¹⁹

50. The Prime Minister's Office supports the Prime Minister in carrying out his or her functions as a head of Government, leader of a political party, and Member of Parliament. The political staff of the Prime Minister's Office provides advice on policy development and appointments, draft speeches and other public statements for the Prime Minister, brief the Prime Minister on matters related to proceedings in the House of Commons and manage the relations of the Prime Minister with Ministers, caucus and the party in general.²⁰

51. The Privy Council Office also supports the Prime Minister in carrying out his or her functions as a head of Government. The Privy Council Office is responsible for providing the Prime Minister with non-partisan advice on government policy and operations. This includes the setting of policy priorities, policy coordination and development, overall review of budgetary allocation and expenditure management, government structure and development of ministerial mandates, constitutional issues, intergovernmental and international affairs, national security and defence, national unity, government-wide communications, and appointment of senior officials.²¹

52. The Clerk of the Privy Council, in addition to being secretary to the Cabinet and head of the public service, is the Prime Minister's Deputy Minister. Accordingly, the Clerk, with the assistance of Privy Council Office staff, supports the work – and the accountability to Parliament – of the Prime Minister and is himself or herself accountable to the Prime Minister.²² The Privy Council Office plays an important role in reviewing and challenging the initiatives of departments to ensure quality and coherence with larger government objectives.²³

53. In support of the Clerk's responsibilities as Deputy Minister to the Prime Minister and Secretary to the Cabinet, a major function of the Privy Council Office is the coordination of policy to ensure interdepartmental coherence and coordination in support of the Government's agenda and priorities. Ministers and departments are responsible for implementing Cabinet decisions. As with the other central agencies, it is essential that the

¹⁸ *Statement of Evidence Prepared by the Privy Council Office*, p. 11, **Exhibit P-34(a)**

¹⁹ *Statement of Evidence Prepared by the Privy Council Office*, p. 1, **Exhibit P-34(a)**

²⁰ *Statement of Evidence Prepared by the Privy Council Office*, p. 1, **Exhibit P-34(a)**

²¹ *Statement of Evidence Prepared by the Privy Council Office*, p. 2, **Exhibit P-34(a)**

²² *Statement of Evidence Prepared by the Privy Council Office*, pp. 13, 14, **Exhibit P-34(a)**

²³ *Statement of Evidence Prepared by the Privy Council Office*, p. 3, **Exhibit P-34(a)**

Privy Council Office conscientiously avoid any action that would have the effect of assuming the line responsibilities of Ministers, whether in policy or administration.²⁴

v. The Role of Cabinet

54. The Cabinet is the political forum for the creation of policy consensus among Ministers. It is the setting in which Ministers bring political and strategic considerations to bear on proposed ministerial and governmental actions.²⁵

55. As discussed earlier, once a consensus is reached, Ministers are required to support the collective decision.²⁶ Individual Ministers should not act in a manner contrary to the collective decision of Cabinet and any instructions they may pass on to their Deputy Ministers should align with collective decisions.

56. The decisions of the Cabinet have political and administrative rather than legal effect. Their enforcement is left almost entirely to the Minister or Ministers directly responsible and not to the Privy Council Office. Indeed, proposals to vest the Privy Council Office with “follow-up” authority have generally been regarded as incompatible with ministerial responsibility and alien to the informal and political functions of the Cabinet.²⁷

a. The Roles of the Minister of Finance

57. The Minister of Finance is responsible for preparing the federal Budget, developing tax and tariff policy and legislation, managing federal borrowing on financial markets, administering major federal funding transfers to provinces and territories, developing regulatory policy for the country’s financial sector, and representing Canada within international financial institutions.²⁸

58. The Minister of Finance is responsible for setting and protecting the financial framework in which overall government spending takes place.²⁹

59. The current Prime Minister did not know and was not made aware of the management problems with sponsorship activities at Public Works until the matter became public at the end of 2001.³⁰ As set out in the statement of evidence of the

²⁴ *Statement of Evidence Prepared by the Privy Council Office*, pp. 13, 14, **Exhibit P-34(a)**

²⁵ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 45, **Exhibit P-35**

²⁶ *Responsibility in the Constitution*, Chapter V, p. 1, **Exhibit GC-2** and *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 45, **Exhibit P-35**

²⁷ *Statement of Evidence Prepared by the Privy Council Office*, p. 13, **Exhibit P-34(a)**

²⁸ *Document prepared by Finance Canada for the Commission of Inquiry into the Sponsorship Program and Advertising Activities*, p. 1, **Exhibit P-51**

²⁹ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 24, **Exhibit P-35**, and Testimony of the Right Honourable Paul Martin, Volume 73, p. 12705

³⁰ Testimony of the Right Honourable Paul Martin, Volume 73, pp. 12705, 12706. Internal audits of other departments are not provided to the Department of Finance; thus, internal audits concerning sponsorship activities at Public Works would not and did not come to his attention as Minister of Finance. Testimony of the Right Honourable Paul Martin, Volume 73, pp. 12770 to 12772

Department of Finance, once the fiscal framework is set, departments are responsible for the management of expenditures and the Treasury Board has an oversight role, which is described below. Within the Government, the Department of Finance does not play a role in the oversight of expenditures made by other departments.³¹ Thus, the Department of Finance and a Minister of Finance would not have known about issues of program administration such as arose in the sponsorship audits.

60. Although the Minister of Finance is, by statute a member of the Treasury Board and by convention, its Vice-Chair, he or she does not normally attend Treasury Board meetings. The former Deputy Minister of Finance, Mr. Kevin Lynch, testified that it is not typical for the Minister of Finance to attend meetings of the Treasury Board.³² As the current Prime Minister testified, he would attend only if there was an item of importance for the Department of Finance for which he would be notified by departmental officials. Mr. Martin also testified that the convention in recent times was for the Finance Minister not to attend Treasury Board, and that this was true for his predecessor in the previous administration and also true for his successor.³³

vi. The Role of Treasury Board

61. The Treasury Board is the forum for developing consensus on the spending proposals of the government as well as exercising collective responsibility with respect to management issues. The Treasury Board is established by the *Financial Administration Act* as a committee of the Queen's Privy Council for Canada and, unlike other cabinet committees, it has powers, duties and functions established by statute and its decisions do not require confirmation by the Cabinet and many have force of law.³⁴

62. The Treasury Board is accountable to Cabinet and to the Prime Minister, who appoints the Ministers to the Board. The President of the Treasury Board, like all Ministers, is accountable to Parliament for the use of authority granted to him or her under legislation. Ministers are accountable for respecting Treasury Board's financial and administrative policies.

63. The Treasury Board performs its role through the following general authorities:

- approving management policies that control the delegation and use of authorities in departments and agencies and set management standards

³¹ Document prepared by Finance Canada for the Commission of Inquiry into the Sponsorship Program and Advertising Activities, p. 1, **Exhibit P-51**

³² Testimony of Finance Panel (Mr. Kevin Lynch), Volume 18, pp. 2887, 2888

³³ Mr. Martin, when he was Minister of Finance, only attended 17 of 222 Treasury Board meetings. Testimony of the Right Honourable Paul Martin, Volume 73, pp. 12690 to 12693. Specific information on the attendance of Mr. Martin to Treasury Board meetings is provided in the *Statement of Evidence of Prime Minister Martin*, Tab 2, **Exhibit P-213**

³⁴ Document Prepared by the Treasury Board of Canada Secretariat, p. 15, para. 52, **Exhibit P-10** Further details on the management role of the Board are interlaced with various sections of this submission and are set out in detail in **Exhibit P-10**, Document Prepared by the Treasury Board of Canada Secretariat. The key statutory authorities of the Board are included in Annex F of **Exhibit P-10**

in areas such as human and financial resource management, procurement, real property, and information technology;

- allocating resources through the *Estimates*,³⁵
- holding departments and agencies to account for how they allocate resources (including stipulating how the *Public Accounts* should be kept and reported) and allocating authority to spend through approval of Treasury Board submissions;
- overseeing the performance of departments against established management policies; and
- acting as the principal employer of the public service.³⁶

a. Treasury Board Submissions

64. A Treasury Board submission is an official document submitted by a Minister on behalf of her or his department to seek approval or authority from Treasury Board Ministers to carry out a proposal for which Treasury Board approval has been established as a prerequisite.³⁷

65. Treasury Board submissions are reviewed by the program analyst responsible for dealing with the submission from a given department. The program analysts provide advice to Treasury Board, through their director and assistant secretary, and in the form of a précis, on: whether the department has identified a cost-effective use of resources; whether it has incorporated appropriate safeguards to protect public funds; whether it has identified a suitable program design that conforms with relevant legislation, regulations, and Treasury Board management policies; and whether it has identified a sound plan to measure and evaluate program performance.³⁸

b. Treasury Board Oversight

66. The Treasury Board does not have a role in comprehensively overseeing the compliance of Deputy Ministers or departments and agencies against every transaction.³⁹ However, the Treasury Board and its Secretariat do oversee policy compliance, maintenance of control systems and based on an assessment of risk, individual transactions. It has exercised its oversight role most actively through its review of individual Treasury Board submissions for incremental spending initiatives.⁴⁰ It also endeavours to ensure that expectations of accountability, legality and propriety are clear for departments. The Board relies on departments to manage themselves for the most part; it also has a responsibility to oversee departmental performance against these

³⁵ Spending authorities are approved by Parliament

³⁶ *Document Prepared by the Treasury Board of Canada Secretariat*, p. 13, para. 45, **Exhibit P-10**

³⁷ *Document Prepared by the Treasury Board of Canada Secretariat*, Annex G, p. 66, **Exhibit P-10**

³⁸ *Document Prepared by the Treasury Board of Canada Secretariat*, Annex G, pp. 66, 73, **Exhibit P-10**

³⁹ *Document Prepared by the Treasury Board of Canada Secretariat*, p. 17, para. 60, **Exhibit P-10**

⁴⁰ *Document Prepared by the Treasury Board of Canada Secretariat*, footnote 20, p. 16, **Exhibit P-10**

expectations, based on an assessment of risk, as well as on the Secretariat's resources and capacity to undertake compliance-monitoring activity.⁴¹

67. Treasury Board Secretariat staff, in turn, have a responsibility to draw to the attention of the Secretary and the President or the Board, information on actual or potential management performance issues and to recommend whether or not to take action.⁴² Through such oversight, staff do not, however, become involved in the day-to-day management of a department. Experience has shown that if central agencies proliferate central standards, or if they become control-oriented, there is a danger that the individual responsibility of Ministers and Deputy Ministers (on which the system is built and from which accountability flows) will be eroded.⁴³

68. The Treasury Board Secretariat is responsible for developing government-wide responses to systemic management problems. With respect to individual departments, the Treasury Board's decision to take further action or to intervene hinges on the degree of risk involved in the management problem at hand. Interventions take various forms, including informal follow-ups, external audits or other investigations, and direction on specific preventative or remedial action to be taken by the department, and withdrawal of authorities.⁴⁴

vii. The Roles and Responsibilities of Ministers

69. Departmental statutes vest authority for the management and direction of the department in the presiding Minister. A Minister's accountability to Parliament for his or her department means that the Minister is accountable for all actions of the department – whether pertaining to policy or administration, whether taken by the Minister personally or by unelected officials under the Minister's authority or under authorities vested in them directly. If Parliament has questions or concerns, the Minister must address them, providing whatever information and explanations are necessary and appropriate. If something has gone wrong, the Minister must undertake before Parliament to see that it is corrected.⁴⁵

70. Ministerial accountability does not require that the Minister be aware of everything that takes place in his or her department. Similarly, accountability does not mean that the Minister must accept blame, for example, by resigning, whenever

⁴¹ *Document Prepared by the Treasury Board of Canada Secretariat*, p. 17, para. 60, **Exhibit P-10**

⁴² On December 12, 2003, a portion of the roles and responsibilities of the Treasury Board Secretariat were transferred to the newly formed Public Service Human Resources Management Agency of Canada primarily in the area of policy development related to official languages, classification, grievances, and other human resources matters. See *Document Prepared by the Treasury Board of Canada Secretariat*, p. 33, para. 131, 132, **Exhibit P-10**

⁴³ *Responsibility in the Constitution*, Chapter VI, p. 5, **Exhibit GC-2**

⁴⁴ *Document Prepared by the Treasury Board Secretariat of Canada*, p. 17, para. 60, **Exhibit P-10**

⁴⁵ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, pp. 5, 6, **Exhibit P-35**

something goes wrong in his or her department. Accountability and blame are different: blame applies only if problems are attributable to the action or inaction of the Minister.⁴⁶

71. To support a Minister's accountability for a department, the Minister and his or her Deputy Minister must work together to understand the level of detail in which the Minister expects to be involved in the department's work. This will vary according to the circumstances and style of individual Ministers. Broad direction rather than transactional engagement is the norm, especially with respect to administrative matters, although Ministers will give more specific direction on key priorities such as Cabinet documents and Treasury Board submissions. But, whatever the level of detail in which the Minister becomes involved, the Minister and Deputy Minister need to ensure that appropriate systems are in place to manage the risk of problems and to correct them when they occur.

72. Ministers are similarly accountable for the exercise of authority by the Deputy Minister, whether the authority is delegated by the Minister or assigned directly to the Deputy Minister by statute. While responsibilities can, and indeed often must, be delegated, accountability cannot. The person delegating authority must ensure that appropriate controls are in place to ensure that he or she can reasonably manage the risk of something going wrong. There is sometimes a mistaken impression that Ministers have no role with respect to administrative matters, particularly where Deputy Ministers are assigned authorities directly by statute (for example, under the *Financial Administration Act*). However, Ministers who, unlike Deputy Ministers, are members of Parliament, remain responsible to Parliament for the overall management and direction of their department – a responsibility that is explicit in some departmental statutes. Ministers cannot give specific direction to Deputy Ministers on such matters, but they are accountable for ensuring that Deputy Ministers discharge their responsibilities appropriately.⁴⁷

viii. The Role of the Deputy Minister

73. Deputy Ministers are professional, non-partisan public servants. They are chosen and assigned by the Prime Minister on the advice of the Clerk of the Privy Council and are appointed by the governor in council. Their role is to undertake the day-to-day management of the department on behalf of their Minister and to provide their Minister with the broadest possible expert advice and support needed for the Minister's portfolio responsibilities. They are primarily accountable to their Ministers and to the Prime Minister, through the Clerk of the Privy Council.⁴⁸

74. The Deputy Minister is the principal source of support for a Minister in fulfilling the Minister's collective and individual responsibilities and respecting his or her

⁴⁶ Testimony of Mrs. Jocelyne Bourgon, Volume 47, pp. 8187, 8188; Testimony of Mr. Alex Himelfarb, Volume 12, pp. 1891 to 1895

⁴⁷ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, pp. 5, 6, **Exhibit P-35**

⁴⁸ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 11, **Exhibit P-35**

accountability to Parliament. In providing this support, the Deputy Minister is responsible for:

- providing sound public service advice on policy development and implementation, both within the Minister's portfolio and with respect to the government's overall policy and legislative agenda;
- providing effective departmental management, as well as advice on management of the Minister's entire portfolio⁴⁹; and
- exercising authorities that have been assigned to the Deputy Minister or other departmental officials either by the Minister or directly by virtue of legislation.⁵⁰

75. Deputy Ministers also have responsibilities related to the collective management of the Government. These responsibilities include responding to the policies of Cabinet and Treasury Board and ensuring that appropriate interdepartmental consultation occurs on any matter that may touch upon responsibilities that pertain to other Ministers.⁵¹

a. Supporting the Minister's Individual and Collective Responsibilities

76. The role of the public service is to advance loyally and efficiently the agenda of the government of the day without compromising the non-partisan status that is needed to provide continuity and service to successive governments of differing priorities and political stripes. In order to do this, public servants must provide candid, professional advice that is free of both partisan considerations and fear of political criticism, which in turn requires that they remain outside the political realm. But while public servants provide advice, it is the democratically elected Ministers who have the final say, and public servants must obey the lawful directions of their Minister. In sum, all government departments over which a Minister presides, and all public servants who work for them, must be accountable to a Minister who is in turn responsible to Parliament. Were this not so, the result would be government by the unelected.⁵²

77. In keeping with these principles, public servants as such have no constitutional identity independent of their Minister. Even when senior officials support the accountability of their Minister by providing information publicly, as for example when appearing before parliamentary committees, they do so on their Minister's behalf. These officials are answerable to Parliament in that they have a duty to inform and to explain. Public servants have no direct accountability to Parliament and may neither

⁴⁹ For details with respect to the role of the Deputy Minister in portfolio management see *Guidance for Deputy Ministers (2003)*, p. 8, **Exhibit P-36**

⁵⁰ *Guidance for Deputy Ministers (2003)*, p. 4, **Exhibit P-36**

⁵¹ *Guidance for Deputy Ministers (2003)*, p. 4, **Exhibit P-36**

⁵² *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 11, **Exhibit P-35** and *Guidance for Deputy Ministers (2003)*, pp. 4, 5 **Exhibit P-36**

commit to a course of action (which would require a decision of the Minister) nor be subjected to the personal consequences that parliamentarians may mete out.⁵³

78. In the event of unlawful conduct, both elected officials and public servants are – like anyone else – accountable through the justice system.

79. In their conduct and advice to Ministers, public servants are expected to adhere to the *Values and Ethics Code for the Public Service*, and Deputy Ministers have a particular responsibility to show leadership in this regard. Moreover, Deputy Ministers must comply with the Prime Minister’s *Conflict of Interest and Post-Employment Code for Public Office Holders*.⁵⁴ Adherence to public service values means, among other things, that public service advice must always be mindful of the lawfulness and probity of any initiative. Moreover, in the event of conflict between the Minister’s instructions and the law, the law must prevail.⁵⁵ By the same principle, public servants cannot reject a Minister’s lawful direction simply because they disagree with the Minister. If a Minister’s directions in matters for which he or she is responsible are lawful, public servants, including Deputy Ministers, must obey them.

80. That said, there will occasionally be situations where disagreements arise between Ministers and their Deputy Minister that are not readily resolvable simply in terms of legality. For example, the Deputy Minister could believe that a Minister’s desired course of action, though lawful, would contravene the demands of probity or regularity and therefore run contrary to broad government policy, or there could be disagreement regarding the economy, efficiency or effectiveness of an administrative measure under the Deputy Minister’s statutory responsibilities.

81. In the vast majority of cases, such disputes are worked out through discussions between the Minister and the Deputy Minister. On matters of management policy, the Deputy Minister can seek the advice of the Secretary of the Treasury Board. In a few cases, the dispute may be resolved with the help of the Clerk of the Privy Council or the Prime Minister and his or her senior advisers.⁵⁶ If the Deputy Minister does not concur with the final outcome, he or she has the option of resigning, rather than implementing the decision of the Minister.

b. Managing the Department

82. Generally, Deputy Ministers act under the management and direction of their Minister. In order to fulfill their duties, Deputy Ministers require certain authorities.⁵⁷

83. The Deputy Minister’s authority to exercise the Minister’s powers flows from the *Interpretation Act*. Pursuant to s. 24(2) of the Act, where a Minister is

⁵³ *Guidance for Deputy Ministers (2003)*, pp. 8, 9, **Exhibit P-36**

⁵⁴ *Guidance for Deputy Ministers (2003)*, pp. 7, 8, **Exhibit P-36**

⁵⁵ *Governing Responsibly: A Guide for Ministers and Ministers of State (2003)*, p. 11, **Exhibit P-35**

⁵⁶ *Guidance for Deputy Ministers (2003)*, p. 11, **Exhibit P-36**

⁵⁷ *Guidance for Deputy Ministers (2003)*, p. 5, **Exhibit P-36**

empowered or directed to carry out administrative, legislative or judicial acts, the Minister's Deputy Minister may carry out those acts. However, there may be constitutional, legal or administrative limitations on the Deputy Minister's capacity to exercise the Minister's powers. For example, a Deputy Minister may not exercise a Minister's legal authority to make regulations, answer in the House of Commons on the Minister's behalf, sign Treasury Board submissions involving new money or new policies, sign memoranda to Cabinet or exercise any power that legislation requires a Minister to exercise personally.⁵⁸

84. Along with the relevant departmental statute and the *Interpretation Act*, more specific responsibilities are sometimes conferred upon Deputy Ministers to allow them to manage the department. These specific responsibilities may originate with the Minister. For example, the Minister may delegate spending authority to the Deputy Minister and other departmental officials.⁵⁹

85. In addition, certain provisions in the *Financial Administration Act* and the *Public Service Employment Act* assign powers directly to the Deputy Minister. The Minister is responsible for ensuring that the Deputy Minister carries out his or her obligations under these Acts and may provide general direction to the Deputy Minister. The direct authorities provided to Deputy Ministers are described more fully in Exhibit P-36, pages 5-8.⁶⁰

86. A Deputy Minister is accountable to the Minister (and ultimately, through the Clerk of the Privy Council, to the Prime Minister) for the discharge of his or her responsibilities, as outlined in legislation or in management policies approved by the Treasury Board. In addition, Deputy Ministers are subject to the systems of managerial accountability internal to government, which involve accountability to the Treasury Board. The fact that Parliament enacts the statutory obligations of Deputy Ministers in certain areas does not give rise to an accountability relationship between the Deputy Minister and Parliament. Parliament creates many statutory obligations – under the *Income Tax Act*, for example – but this does not give Parliament the authority to oversee compliance or to enforce the law. That is a function of the executive.

c. Internal Oversight

87. The Deputy Minister is responsible for implementing the frameworks of oversight for financial administration and the Minister is responsible to the House of Commons for their implementation.⁶¹ Deputy Ministers are accountable to their Ministers, the Prime Minister (through the Clerk) and to the Treasury Board in this regard.

⁵⁸ *Guidance for Deputy Ministers (2003)*, p. 5, **Exhibit P-36**

⁵⁹ *Guidance for Deputy Ministers (2003)*, p. 5, **Exhibit P-36**

⁶⁰ *Guidance for Deputy Ministers (2003)*, p. 5, **Exhibit P-36**

⁶¹ *Guidance for Deputy Ministers (2003)*, p.11, **Exhibit P-36** and *Responsibility in the Constitution*, Chapter VI, pp. 4, 5, **Exhibit GC-2**

88. Under the Treasury Board *Policy on Responsibilities and Organization for Comptrollership* there is a requirement that departments exercise sound comptrollership. Comptrollership is defined by the policy as comprising the essential, integrated business processes that must be in place in any 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.⁶²

89. Deputy Ministers are tasked with the responsibility of designating a Senior Financial Officer (SFO) that reports directly to them. The SFO is the primary source of support for a Deputy Minister to fulfil his or her financial management responsibilities to the Minister. The Treasury Board requires that the SFO:

- implement a financial management organization;
- work with managers in the organization to ensure that they exercise their comptrollership responsibilities; and
- determine whether to delegate authority for key responsibilities to a Senior Full-time Financial Officer.⁶³

90. Internal audit and program evaluation are key instruments of oversight for departments.⁶⁴ The Treasury Board has established policies related to internal audit for federal government departments. The relevant policy at the time was the Treasury Board *Review Policy*, which was replaced by the *Policy on Internal Audit* in 2001.⁶⁵ Accountability for implementing the policy rests with the Deputy Minister of an organization. Departments must conduct reviews of financial management accountability on an on-going basis. The Deputy Minister, in conjunction with his senior management team and internal audit committee, determines the timing and nature of reviews to be conducted. Pursuant to the Treasury Board *Review Policy*, Deputy Ministers were required to ensure that the internal audit function was managed effectively with approved plans that addressed the areas of highest risk and significance in order to provide management with information on any significant risks or control issues.⁶⁶

91. These reviews are designed to provide assurance to the Deputy Minister that:

⁶² Document Prepared by the Treasury Board of Canada Secretariat, Annex H-2f, pp. 94, 96, **Exhibit P-10**

⁶³ Document Prepared by the Treasury Board of Canada Secretariat, Annex H-2f, pp. 94, 96, **Exhibit P-10**

⁶⁴ Document Prepared by the Treasury Board of Canada Secretariat, p. 17, para. 57, **Exhibit P-10**

⁶⁵ The 2001 policy contains similar provisions to the prior policy. The changes are described in the Document Prepared by the Treasury Board of Canada Secretariat, Annex H-3, pp. 104 to 107, **Exhibit P-10**

⁶⁶ Document Prepared by the Treasury Board of Canada Secretariat, Annex H-3, pp. 104 to 107, **Exhibit P-10**

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- their managers deliver programs giving due consideration to obtaining the best possible value from public resources;
 - their managers make decisions in light of timely, relevant and reliable financial information, analysis and advice;
 - cost-effective controls, suitable to the government environment, are in place to safeguard assets and to ensure probity;
 - transactions are authorized before they are entered into;
 - their managers understand and report appropriately on their financial accountability; and
 - the financial management organization, systems and processes meet the department's current needs.⁶⁷

ix. The Political-Bureaucratic Interface

92. In a democratic system, it is entirely appropriate for elected officials to make decisions and give lawful direction to unelected officials. While Ministers are elected to decide, officials such as Deputy Ministers are appointed to administer and advise. Indeed, this is precisely what citizens expect – that decisions such as the spending of public funds will be made by office holders who sit in the House of Commons and who can be held publicly and politically accountable for what they have decided.⁶⁸

93. As political actors holding public office, Ministers must at times weigh a balance of political and administrative factors in their decisions. Ministers therefore properly rely on a combination of professional, administrative advice from officials regarding economy, efficiency, and the like, and political advice from exempt staff. Ministerial decision-making is constrained by the law, including statutes, and by the policies and directives established by the Treasury Board.⁶⁹

94. The ways in which Ministers manage their departments vary according to circumstances and to the style of individual Ministers. Generally, it is expected that Ministers:

- set the “general direction” on priorities, both policy and administrative, and the “specific direction” in the department on key priorities;
- review and sign Cabinet documents, submissions to Treasury Board and changes in regulations, which give effect to the direction they have given;
- follow up with department officials, through the Deputy Minister, on specific issues identified by citizens, parliamentarians, and other Ministers; and

⁶⁷ Document Prepared by the Treasury Board of Canada Secretariat, Annex H-2f, p. 95, **Exhibit P-10**

⁶⁸ Statement of Evidence Prepared by the Privy Council Office, p. 12, **Exhibit P-34(a)**

⁶⁹ Statement of Evidence Prepared by the Privy Council Office, p. 13, **Exhibit P-34(a)**

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- communicate with other government players on all matters of importance affecting the department, Parliament, the public, and Cabinet.

95. Under the Minister's direction, the Deputy Minister in turn guides the department and delegates further authority to meet expectations. The extent of ministerial involvement in the detailed work of the department will vary among Ministers and across issues and situations, and Ministers and their Deputy Ministers must work together to understand the level of detail in which the Minister expects to be involved. The Minister and Deputy Minister need to ensure that appropriate systems are in place to manage the risk of problems and support the accountability of the Minister.⁷⁰

96. In managing departmental policy and operations, Ministers may give broad direction to officials or make decisions in response to proposals or other advice that officials bring before them. The transmission of instructions from the Minister to the public service is particularly important in maintaining the hierarchy of accountability upon which ministerial responsibility rests. Accordingly, the lines through which information, advice and decisions are communicated must be clear and consistent.

97. As a general practice, communications between the Minister and his or her office and departmental officials should be conducted through the Deputy Minister's office. Although circumstances will arise in which this is not practical or in which other approaches are appropriate, given a Deputy Minister's accountability, it is important that the Deputy Minister be aware of interactions between public servants within the department and the Minister or the Minister's exempt staff.⁷¹ Of particular importance are interactions between the Minister and public servants. While these interactions are both inevitable and perfectly appropriate in modern government, the public servant must ensure that the Deputy Minister is informed as to the nature of the interaction and the content of any discussion.⁷² Ministers and Deputy Ministers must ensure that appropriate controls are in place so that they receive the information they need to fulfill their respective responsibilities.⁷³

Part Two: Sponsorship and Advertising Activities

I. Genesis of Sponsorship Activities

i. The 1995 Referendum

98. The sponsorship activities that are the subject of the Inquiry's mandate were initiated by the Government of Canada in direct response to the results of the

⁷⁰ See generally *Guidance for Deputy Ministers (2003)*, **Exhibit P-36**

⁷¹ *Guidance for Deputy Ministers (2003)*, p. 12, **Exhibit P-36**

⁷² Testimony of Mr. Richard Neville, Volume 41, p. 6996; Testimony of the Honourable Marcel Massé, Volume 64, pp. 11213 to 11219

⁷³ *Guidance for Deputy Ministers (2003)*, p. 12, **Exhibit P-36** and *Responsibility in the Constitution*, Chapter VI, pp. 4 to 6, **Exhibit GC-2**

October 30, 1995 referendum on Quebec sovereignty and the possibility of a further referendum.⁷⁴

99. The October 30, 1995 referendum on the sovereignty of Quebec was won by the “No” campaign by the narrowest of margins – 50.58%.⁷⁵

100. After the referendum, Mr. Jean Chrétien, Prime Minister of Canada, asked Mr. Marcel Massé, Minister of Intergovernmental Affairs, to chair an ad hoc Cabinet committee on unity matters to develop recommendations on measures that the Government should adopt to ensure that the country was never again placed in such a vulnerable position.⁷⁶

101. At a post-referendum Cabinet retreat in February 1996, the Cabinet decided, among other initiatives, that one part of its national unity strategy would be to increase the visibility of the Government of Canada mainly, but not exclusively, in the province of Quebec.⁷⁷ This decision did not specify the means by which visibility would be increased, but did constitute a clear policy direction with respect to the post-referendum strategy.⁷⁸

102. Subsequently, sponsorships⁷⁹ were identified as one of the ways to increase visibility. At the time, sponsorship was associated with advertising which was the vehicle primarily used by the Government of Canada to achieve visibility. The Government’s advertising activities were administered through contracts managed by Public Works within a new policy framework for the selection of advertising suppliers that had been developed in 1994.⁸⁰

⁷⁴ Mr. Chrétien indicated in testimony that the Government’s approach following the 1995 Referendum was to ensure that the threat of a new referendum would be removed and that winning conditions would never be allowed to develop. Part of the strategy to achieve that objective was to restore the visibility of the Government of Canada in Québec, namely through sponsorships; testimony of the Right Honourable Jean Chrétien, Volume 72, pp. 12511, 12512

⁷⁵ See 1995 Referendum Results on the Directeur général des élections de Québec Web site, www.dgeq.qc.ca/fr/index.asp

⁷⁶ Testimony of the Honourable Marcel Massé, Volume 64, pp. 11193, 11194

⁷⁷ Testimony of the Honourable Marcel Massé, Volume 64, pp. 11200 to 11202; Testimony of the Right Honourable Jean Chrétien, Volume 72, pp. 12510 to 12512; Testimony of Mr. Jean Pelletier, Volume 71, pp. 12355, 12356

⁷⁸ *Documents related to the Cabinet Planning Session held on February 1 and 2, 1996*, Tab 1, p. 8, **Exhibit P-38**. The Minutes for this Cabinet meeting state that: «*Les ministres se sont mis d’accord que la stratégie sur l’Unité nationale devrait s’appuyer sur quatre pôles : ... [incluant] la promotion de l’attachement au Canada et finalement, un plan de communications et d’atteinte des gens. De plus, des ministres se sont mis d’accord sur l’importance de mettre sur pied des programmes d’identité nationale et de communications pour que le message du gouvernement fédéral rejoigne les citoyens le plus rapidement possible.* »

⁷⁹ “So, at the time, in my mind, the term ‘sponsorship’ was associated with a contract, which is a way of getting publicity and visibility and that is managed by Government Services.” Testimony of Ms. Jocelyne Bourgon, Volume 47 p. 8152

⁸⁰ Public Works was responsible for the management of sponsorship activities and the Privy Council Office was not involved in the management of such activities except to advise the former Prime Minister regarding access to the unity reserve. Testimony of Ms. Jocelyne Bourgon, Volume 47, pp. 8176 to 8180

ii. New Policy for the Selection of Agencies

103. Prior to 1993, there had been an explicit political element in the selection of advertising agencies. However, in the 1993 election campaign, Mr. Chrétien promised that, if elected, advertising agencies would be selected through an open bidding process.⁸¹ Upon becoming Prime Minister, he renewed his promise to review advertising, polling and communications as part of the Government's commitment to restore integrity and public confidence in government.⁸²

104. In 1994, Public Works and the Treasury Board Secretariat were tasked with developing criteria for the selection of advertising agencies. Mr. Charles Guité, Director of what became the Advertising and Public Opinion Research Sector (APORS)⁸³ within Public Works, was involved in the development of the criteria.⁸⁴

105. After receiving Cabinet approval, the criteria were incorporated into the Treasury Board's *Contracting Policy* as Appendix U, which later became Appendix Q (hereinafter referred to as *Appendix U/Q*). The new policy became effective in July 1994, before the 1995 referendum in Quebec and before sponsorship activities commenced to any large extent. The policy included measures to ensure competitive bidding and required that departments use Public Works to contract for all advertising services.⁸⁵ Although price was initially to be included as a factor in qualifying suppliers, there was evidence that Mr. Guité successfully advocated that it should not be a factor in qualifying suppliers.⁸⁶

106. Within Public Works, APORS was the unit responsible for the management of sponsorships and advertising. Mr. Guité used *Appendix U/Q* as the policy framework under which he managed advertising and sponsorship activities. He managed sponsorships by selecting agencies to act as intermediaries between the Government and the event organizers.⁸⁷

⁸¹ Testimony of Mr. Jean Pelletier, Volume 71, p. 12337

⁸² Testimony of the Right Honourable Jean Chrétien, Volume 72, pp. 12523, 12524

⁸³ In 1997, APORS was merged with the Print Contract Coordination Services Sector (PRPCSS) and became the Communications Coordination Services Branch (CCSB) of Public Works.

⁸⁴ Testimony of Mr. Charles Guité, Volume 33, p. 5688

⁸⁵ *Main Authorities* Volume 2, Tab 5, p. 81, para.2.1, **Exhibit P-4(b)**

⁸⁶ Testimony of Mr. Charles Guité, Volume 33, pp. 5694, 5695. Mr. Guité convinced his Assistant Deputy Minister, Rick Neville, the PCO and Treasury Board officials that price should not be a factor in qualifying suppliers, but there is conflicting testimony regarding who initiated the idea of eliminating price as a factor in qualifying suppliers. See the Testimony of the Honourable David Dingwall, Volume 60, pp. 10574, 10575; Testimony of Mr. Charles Guité, Volume 108 Revised, pp. 19785, 19786

⁸⁷ *Statement of Evidence of the Department of Public Works and Government Services*, p. 30, para. 146, **Exhibit P-20**

II. What Led to Problems in Sponsorship and Advertising

i. Administration of Sponsorship and Advertising Activities

a. Selection of Agencies

107. The *Government Contracts Regulations* along with the Treasury Board's *Contracting Policy* and *Appendix U/Q* of that policy set out the requirements that governed the exercise of ministerial authority to contract in relation to the selection of agencies for sponsorship and advertising activities.⁸⁸

108. With respect to the selection of agencies, all contracts were to be awarded competitively with the option of using either an open bidding process, the "one-step" process, or a pre-qualified suppliers' list, the "two-step" process.

109. The selection of agencies for advertising generally followed the "one-step" process.⁸⁹ The selection of advertising agencies for sponsorships followed the "two-step" process set forth in *Appendix U/Q*.

110. Step one of the "two-step" process consisted of establishing a pre-qualified list of suppliers. Within APORS, there were a number of problems with this part of the process. For example, the policy required that the pre-qualified list be established by publishing a notice setting out the criteria to be used to qualify potential agencies.⁹⁰ However, certain notices did not contain the criteria required by the policy.⁹¹ Moreover, although Mr. Guité understood that the policy required that a separate selection process be held for each department, this was not done.⁹² Mr. Guité also testified that between 1995 and 1997, advertising agencies were not advised yearly that they could ask to be included on the pre-qualified list as required under *Appendix U/Q*.⁹³

111. Step two of the process occurred when the time came to contract with an agency for a specific activity. The department requiring the service was to provide a statement of its requirements for the activity to Public Works. Public Works was required to invite all of the qualified agencies on the list to present proposals to a selection committee. Included within this invitation would be the criteria to be used to evaluate the proposals for the activity. In addition, the policy required that production estimates be reviewed to ensure that costs were reasonable and in keeping with industry standards.⁹⁴

⁸⁸ *Main Authorities Volume 2*, Tab 5, p. 81, para.1.3, pp. 88, 89, **Exhibit P-4(b)**; Testimony of TBS Panel (Ms. Jane Cochran), Volume 5, pp. 725, 726

⁸⁹ The "one-step" process merged the "two-step" process in that in the single competition suppliers were qualified and those that qualified were then evaluated to select the best proposal.

⁹⁰ *Main Authorities Volume 2*, Tab 5, p. 83, para. 3.3.2, **Exhibit P-4(b)**

⁹¹ *Inventory of Audits and Investigations*, **Exhibit P-3(c)**, Tab 18, p. 22; see Selection of Agencies, **Exhibit P-19**, Tabs A21, B1

⁹² For example, the selection process used for the Department of Heritage in 1995 was subsequently used for the needs of Public Works. Testimony of Mr. Charles Guité, Volume 33, p. 5799

⁹³ Testimony of Mr. Charles Guité, Volume 34, pp. 5908, 5909

⁹⁴ *Main Authorities Volume 2*, Tab 5, pp. 84, 85, paras. 4.2.2, 4.2.3, **Exhibit P-4(b)**

112. The selection committee, chaired by Public Works, was to be composed of public servants and private sector representatives nominated by the department receiving the services.⁹⁵ The purpose of the evaluation was to determine which proposal presented the “best value”.⁹⁶ This required the selection committee to examine price along with the quality of the proposal so as to help ensure that the Government obtained value for money from these contracts.⁹⁷

113. Mr. Guité has testified that for sponsorships, agencies were qualified through what he viewed to be a competitive process – the pre-qualified list. However, individual sponsorship contracts were awarded to agencies without competition.⁹⁸ In Mr. Guité’s view, the agencies were selected competitively and he did not think a further competition should have been held for every contract as required by *Appendix U/Q*.⁹⁹

114. Mr. Guité has testified that he misled his superiors¹⁰⁰ in the public service and at the political level that he was complying with *Appendix U/Q*, when in fact he was not.¹⁰¹

115. The evidence shows that the requirements of *Appendix U/Q* were not followed at either stage of the process. These failures were particularly obvious at the second stage of the process where pre-qualified agencies were systematically not invited to submit proposals for individual sponsorship contracts.

b. Concentration of Responsibilities within APORS

116. Under Mr. Guité’s management, APORS had an unusual range of responsibilities. In December 1994, Mr. Guité became responsible for both the selection of advertising agencies and the determination of the terms and conditions of the contracts for those agencies with respect to sponsorships and advertising. The Senior Financial Officer at the time, Mr. Rick Neville, testified that it would not be normal practice to have both the selection of agencies and contracting services under the same unit. He indicated that the rationale behind this decision was to achieve efficiencies as the old process, according to Mr. Guité, resulted in significant delays.¹⁰² At the time of this decision, no significant sponsorship activities were undertaken or contemplated.

⁹⁵ *Main Authorities Volume 2*, Tab 5, p. 84, para. 4.2.2, **Exhibit P-4(b)**

⁹⁶ *Main Authorities Volume 2*, Tab 5, p. 84, para. 4.1.1, **Exhibit P-4(b)**

⁹⁷ Testimony of TBS Panel (Ms. Jane Cochran), Volume 5 Revised, pp. 766 to 769

⁹⁸ Testimony of Mr. Charles Guité, Volume 33, pp. 5633, 5634

⁹⁹ Testimony of Mr. Charles Guité, Volume 33, p. 5753, 5754; Volume 38, pp. 6484, 6485

¹⁰⁰ From 1995 to 1997, Mr Guité reported to the ADM, Government Operation Service Branch at Public Works (Mr. Jim Stobbe); with the creation of CCSB in the fall of 1997, Mr. Guité’s position was reclassified (to EX-03 and then acting EX-04) and he now reported directly to the Deputy Minister of Public Works (Mr. Ran Quail); *Statement of Evidence of the Department of Public Works and Government Services*, p. 12, para. 68, p. 13, para. 73, **Exhibit P-20**

¹⁰¹ Testimony of Mr. Charles Guité, Volume 33, pp. 5757, 5758

¹⁰² Testimony of Mr. Richard Neville, Volume 41, pp. 6991 to 6993; *Documents pertaining to the testimony of Richard Neville*, pp. 209, 210, **Exhibit P-123(a)**

117. By 1996, the unit under Mr. Guité's management also became responsible for program management of sponsorships.¹⁰³ (Program management of advertising continued to be the responsibility of departments.) As a result, with respect to sponsorships, APORS¹⁰⁴ was not only managing the selection process for advertising agencies and issuing the related contracts but it was also managing the selection and funding of events, the certification that services under the contracts had been delivered, and the certification that payments were made in accordance with the terms and conditions of those contracts.¹⁰⁵ The absence of a segregation of duties between procurement and program management is inconsistent with normal management practices and Treasury Board's *Policy on the Delegation of Authorities*.¹⁰⁶

118. This unusual concentration of responsibilities continued even after APORS and another organization within Public Works, the Public Relations and Print Contract Services Sector (PRPCSS) were merged to form the Communications Coordination Services Branch (CCSB) in November 1997.¹⁰⁷ This merger was intended to make available to Mr. Guité significant contracting expertise formerly housed in PRPCSS. However, for advertising and sponsorships, Mr. Guité chose not to transfer any of his procurement responsibilities to the experts now placed under his management.¹⁰⁸

c. Political Involvement

119. While grants and contributions programs normally have clear terms and conditions, sponsorships at Public Works were managed through contracts without criteria for the selection of events and amounts for a significant period of time. Internal sponsorship guidelines were only put in place in April 2000.¹⁰⁹ More targeted criteria for

¹⁰³ The evidence showed that the various relevant actors considered sponsorships as a form of advertising and that this type of advertising was consistent with the decisions made by Cabinet following the Referendum. There does not seem to be a clear decision to entrust Public Works with the management of sponsorship activities. Advertising was already managed by Public Works for the Government as a whole, and the management of sponsorship activities appeared to have naturally followed the same path. Testimony of the Right Honourable Jean Chrétien, Volume 72, pp. 12590 to 12592; Testimony of Mr. Jean Pelletier, Volume 71, pp. 12355 to 12359; Testimony of Ms. Jocelyne Bourgon, Volume 47, pp. 8115, 8116, 8152

¹⁰⁴ In January 1995, APORD became the Advertising and Public Opinion Research Sector (APORS) and Mr. Guité was promoted to Director General of that unit.

¹⁰⁵ Mr. Mario Parent, a procurement officer under Mr. Guité's supervision, testified that he was placed in a situation where Mr. Guité acted both as his client, as manager of sponsorships, and as his superior, as manager of procurement. He indicated that in the past, he had challenged requests made by clients for lack of conformity, but that was more difficult under Mr. Guité considering the concentration of duties.

Testimony of Mr. Mario Parent, Volume 32, pp. 5510 to 5513

¹⁰⁶ *Statement of Evidence of the Department of Public Works and Government Services*, pp. 28, 29, **Exhibit P-20**; see the testimony of PWGSC Panel, Volume 8, pp. 1254, 1255; Volume 9, p. 1348; Policy on Delegation of Authorities, *Main Authorities, Volume 4*, Tab 11, ss. 1 to 7, **Exhibit P-4(d)**

¹⁰⁷ *Statement of Evidence of the Department of Public Works and Government Services*, pp. 28, 29, **Exhibit P-20**

¹⁰⁸ Testimony of Mr. David Myer, Volume 31, pp. 5269 to 5274

¹⁰⁹ *Office of the Auditor General of Canada, Memorandum of Evidence (Supporting Documents), Volume 1*, Tab 10, p. 6, **Exhibit P-2(a)**

sponsorships at Communication Canada were adopted in February 2002¹¹⁰ and clear terms and conditions were implemented after the grants and contributions program for sponsorships was approved by the Treasury Board on December 12, 2002.¹¹¹ As a result, from 1996 to 2000, public servants were charged with managing activities for which no administrative criteria had been developed and in which there was a high degree of political interest and involvement.

120. Having clear criteria for decisions does enhance accountability and reduce controversy. Political involvement in the selection of events and amounts was entirely appropriate and, as indicated by the Clerk of the Privy Council, reflective of the democratic imperative that elected officials make these kinds of decisions.¹¹² The Minister of Public Works could appropriately take decisions and other Ministers, as well as any Member of Parliament, could make recommendations. However, making these decisions without clear criteria is generally ill advised since it results in a situation where there are no transparent principles upon which decisions are being made. This lack of criteria was one of the factors that led to the kinds of problems that occurred in sponsorship.

121. The exercise of ministerial discretion is, however, limited by law, in particular the *Financial Administration Act*, regulations, and any terms, conditions or policies adopted by Treasury Board.

122. In the case of sponsorship activities, this means that ministerial discretion in the selection of agencies for advertising and sponsorships had to be exercised in compliance with the *Government Contracts Regulations*, the Treasury Board's *Contracting Policy* and *Appendix U/Q*.

123. There was evidence that those who provided political input to Public Works on the selection of sponsorship events and amounts assumed that these policies were being complied with as specified in the relevant Treasury Board submissions.¹¹³

124. Mr. Guité testified that he interacted with the Minister of Public Works, Mr. Gagliano, and the Prime Minister's Chief of Staff, Mr. Pelletier, in the selection of sponsorship events and amounts.¹¹⁴ There was testimony that direct interaction between a Minister and a public servant where the purpose is to make decisions can be problematic when those interactions occur in the absence of the Deputy Minister or without his knowledge. According to Mr. Marcel Massé, former Clerk of the Privy Council and President of the Treasury Board, the Deputy Minister could lose control of the department¹¹⁵ and find himself or herself in a vulnerable position because he or she is

¹¹⁰ *Déclaration de faits de Communications Canada, Volume 1*, Annexe A, p. 10, **Exhibit P-127(a)**

¹¹¹ *Documents Referred to During the Testimony of the Honourable Ralph Goodale*, Tab 4, **Exhibit GC-9**; *Déclaration de faits de Communications Canada, Volume 1*, Tab A, pp. 13 to 17, 19, **Exhibit P-127(a)**

¹¹² Testimony of Mr. Alex Himelfarb, Volume 13, pp. 2093, 2094.

¹¹³ For example, see *Allocations for Sponsorships, Volume 1*, Tab 1C, **Exhibit P-12(a)**

¹¹⁴ See references at footnote 120

¹¹⁵ Testimony of the Honourable Marcel Massé, Volume 64, p. 11215

*“responsible for a system of decisions that he [or she] isn’t part of any more.”*¹¹⁶ Mr. Massé also testified that it is the Deputy Minister’s responsibility to ensure that appropriate procedural systems are in place and that the programs achieve the objectives and reach the goals for which they were created.¹¹⁷

125. Mr. Quail indicated that he was aware of the decision-making process and the level of political involvement, but was not involved in the decision-making process. He testified that he knew about contacts between Mr. Guité, the Minister and the Prime Minister’s Office on sponsorships. While he found the reporting relationship to be “very unusual”, he testified that he thought it was the prerogative of the Minister to function that way and he understood that the Minister and the Prime Minister’s Office would be better placed to implement the policy decision to increase visibility in Québec, as this was a political matter.¹¹⁸ He also testified that he was informed of the decisions being taken and received lists of approved sponsorships.¹¹⁹

126. As discussed earlier, the Minister and Deputy Minister must work together to determine the level of detail in which the Minister expects to be involved in the department’s work. This will vary according to the circumstances and style of individual Ministers. However, whatever the level of detail in which the Minister is involved, the Minister and Deputy Minister must ensure that the appropriate systems are put in place to manage the risks of problems and correct them when they occur. The appropriate systems were not put in place in Public Works to manage risk and enable the Minister, the Deputy Minister and senior officials to ensure that maladministration did not occur.

127. There was no evidence of any inappropriate political involvement in the selection of sponsorship events and amounts by the former Prime Minister, the Prime Minister’s Office, and Ministers. The selection of agencies was subject to regulations and Treasury Board policies that bound the Government and any political involvement that contravened these regulations or policies would have been inappropriate. There was no evidence to indicate a violation of these regulations and policies by the former Prime Minister and Ministers, with perhaps the exception of the former Minister of Public Works, Mr. Gagliano and a member of his exempt staff, Mr. Jean-Marc Bard, about whom there was conflicting testimony. If the testimony that conflicts with their evidence is true, then the involvement of these individuals in the selection of agencies would have been inappropriate. Only the testimony of Mr. Guité raised any questions with respect to any member of the Prime Minister’s Office.¹²⁰ From time to time, and within the bounds

¹¹⁶ Testimony of the Honourable Marcel Massé, Volume 64, p. 11215, 11216

¹¹⁷ Testimony of the Honourable Marcel Massé, Volume 64, p. 11214, 11220

¹¹⁸ Testimony of Mr. Ran Quail, Volume 39, pp. 6725 to 6732

¹¹⁹ Testimony of Mr. Ran Quail, Volume 39, pp. 6725 to 6728

¹²⁰ The testimony of the various witnesses as to the exact nature of the political involvement of the former Prime Minister, the Prime Minister’s Office and Ministers, except for Mr. Gagliano and Jean-Marc Bard, is consistent, but for the testimony of Mr. Guité. Mr. Guité contradicted the testimony of Mr. Pelletier and Mr. Gagliano – he also contradicted his own testimony. Mr. Guité testified that the selection of events and amounts of sponsorships were made by Mr. Gagliano, when he was Minister of Public Works, and/or Mr. Pelletier from the Prime Minister’s Office. In Mr. Guité’s mind any input given by these persons was taken as a decision. Mr. Guité only approved events and amounts for sponsorships of low value and in obvious

of propriety, the former Prime Minister, the Prime Minister's Office, and some Ministers and Members of Parliament made inquiries about sponsorship events and amounts.¹²¹ But ultimately, under the Canadian principles of responsible government, the Minister of Public Works at the time of those decisions was responsible and accountable for those sponsorship decisions. This was reflected in the testimony of Mr. Goodale that when he was the Minister of Public Works, as the responsible Minister, he responded to an inquiry about a sponsorship event from the former Prime Minister by telling him that the event in question was not eligible for funding under the terms of the moratorium on the program he had imposed. He testified that the request was not pursued.¹²²

d. Payments to Agencies

128. Payments constituted another area where serious problems with the administration of sponsorship activities occurred. As noted earlier, the management responsibility for sponsorships was vested in Mr. Guité, as was the responsibility to certify that the terms and conditions of the contract had been met in order to justify a payment as required under s.34 of the *Financial Administration Act*. Mr. Guité has

cases. See Testimony of Mr. Charles Guité, Volume 33, pp. 5652, 5653, 5673, 5707, 5708. But see the Testimony of Mr. Jean Pelletier, Volume 71, pp. 12390 to 12394; Testimony of the Honourable Alphonso Gagliano, Volume 67 Revised, pp. 11596 to 11600 and Volume 68 Revised, p. 11654. Mr. Chrétien indicated that it would have been normal for his political office to provide advice on the selection of events to be sponsored, as this required a political sensitivity that public servants did not have. Testimony of the Right Honourable Jean Chrétien, Volume 72, pp. 12606 to 12609. The evidence on the exact nature of the political involvement in the selection of agencies is also contradictory. Mr. Guité changed his testimony on this point, initially saying that there was no political interference in the selection of agencies – there was political input, but the decisions were his (Testimony of Mr. Charles Guité, Volume 34, pp. 5856 to 5864). Subsequently, he indicated that the new policy adopted for the selection of advertising agencies in 1994 was designed to achieve political influence (Testimony of Mr. Charles Guité, Volume 108 Revised, pp. 19777 to 19783; Volume 111, pp. 20321, 20322) and that there was political direction with respect to the use of agencies for specific sponsorships (Testimony of Mr. Charles Guité, Volume 109, pp. 19887 to 19893). Both Messrs Pelletier and Gagliano have denied any involvement in agency selection, see Testimony of Mr. Jean Pelletier, Volume 71, pp. 12397, 12398; Testimony of the Honourable Alphonso Gagliano, Volume 67 Revised, pp. 11592 to 11595. Two former members of Mr. Gagliano's staff, when he was Minister of Public Works, provided testimony regarding the selection of agencies. Ms. Isabelle Roy indicated that MPs may have called the Minister expressing their dissatisfaction concerning the management of a sponsorship event and asked that another agency be assigned to the event (if the sponsorship was to be renewed the following year). According to Ms. Roy, changes of agencies were approved by the Minister's office in certain cases. Testimony of Ms. Isabelle Roy, Volume 22, pp. 3613, 3614. Ms. Joanne Bouvier indicated that the suggestion to use an agency came from Mr. Guité or Mr. Tremblay, but that the decision was made by the Minister's office and communicated by Mr. Bard. Testimony of Ms. Joanne Bouvier, Volume 25, pp. 4164, 4165. However, Ms. Bouvier indicated that she did not remember the Minister himself directing the use a specific agency. Testimony of Ms. Bouvier, Volume 25, p. 4164. Concerning his contacts with advertising agencies in the context of sponsorships, Mr. Jean-Marc Bard indicated that he would take calls from representatives of agencies asking about the status of sponsorship requests they were proposing on behalf of clients. He indicated he only acted as a transmission belt – asking information from public servants at Public Works on the status of files, and relaying the information back to the agencies. He indicated that his office always left the administration of sponsorships with public servants. Testimony of Mr. Jean-Marc Bard, Volume 63, pp. 11102 to 11112

¹²¹ *Fichier - mplog – Bureau du ministre Alphonso Gagliano, Exhibit P-78*

¹²² Testimony of the Honourable Ralph Goodale, Volume 128, pp. 24100, 24101

admitted that he failed to properly discharge this responsibility, which had been delegated to him by a series of Ministers of Public Works.

129. The legislative and policy requirements with respect to payments were not adhered to in APORS in many instances. Mr. Guité has admitted that he approved payments to certain agencies even though he knew they had done little work. His justification was that those agencies might have been underpaid for the work they did on other files.¹²³ He also admitted that he accepted the invoices, as presented, without doing any further investigations.¹²⁴ He did not recall ever questioning the hours billed by an agency.¹²⁵ The evidence establishes that he was less than diligent in ensuring that the agencies complied with their obligations, particularly those regarding subcontractors.¹²⁶

130. Some of the public servants reporting to Mr. Guité, who signed s.34 on his behalf, indicated that they had previously verified with him that the services had been provided under the contract. They did not feel that they had to secure further verifications.¹²⁷ Other employees relied on Mr. Guité's executive assistant, Ms. Huguette Tremblay, as they believed that her initials on an invoice constituted an indication that the services had been rendered as per the contract.¹²⁸ Ms. Tremblay testified that she affixed her initials on the invoices only to inform Mr. Guité that there was a contract relating to the invoice, and that the amount invoiced did not exceed the amount under the contract.¹²⁹

131. One of the difficulties in the s.34 certification process for sponsorships was that there was little supporting documentation and few *post mortem* reports submitted by the agencies to Public Works. This lack of documentation indicates that Mr. Guité did not have sufficient information to properly certify that the work had been performed as required by s.34.

132. In her November 2003 Report, the Auditor General indicated that advertising agencies were required to submit these *post mortem* reports. However, she found that in 49 per cent of the reviewed files, there were no *post mortems*, and thus no evidence that the Government had obtained the visibility it had paid for.¹³⁰

133. The Auditor General also noted in her November 2003 Report that certain payments made by Public Works to certain Crown corporations were inappropriate and raised issues with respect to the value for money to the Government for the commissions

¹²³ Testimony of Mr. Charles Guité, Volume 35 Revised, pp. 6015, 6016

¹²⁴ Testimony of Mr. Charles Guité, Volume 35 Revised, p. 6137

¹²⁵ Testimony of Mr. Charles Guité, Volume 35 Revised, pp. 6137, 6138

¹²⁶ Testimony of Mr. Charles Guité, Volume 112, pp. 20524 to 20528

¹²⁷ Testimony of Ms. Andrée Larose, Volume 27, p. 4659; Testimony of Mr. Mario Parent, Volume 32, p. 5502

¹²⁸ See the Testimony of Mr. David Myer, Volume 31, p. 5316, 5317

¹²⁹ Testimony of Ms. Huguette Tremblay, Volume 20, p. 3203

¹³⁰ *Office of the Auditor General of Canada, Memorandum of Evidence (Supporting documents), Volume 1, Tab 1, p. 25, para. 3.69*

paid on these payments as well as the potential that Parliament had been by-passed through these transactions.¹³¹

134. The evidence shows that Mr. Guité ignored his statutory obligations with respect to s.34 of the *Financial Administration Act*. He was able to do so with impunity as a result of the concentration of responsibilities within the unit and inadequate controls.

ii. Misrepresentations and Inadequacies in Reporting

a. Appendix U/Q Monitoring

135. In order to monitor compliance with *Appendix U/Q* and its impact on improved competitiveness, Public Works was required to provide a quarterly report to the Treasury Board Secretariat, which in turn would report to the Treasury Board. The Secretariat was responsible for advising the Treasury Board on whether this reporting requirement should be maintained after a one-year trial period.¹³²

136. Mr. Guité provided the information that was forwarded to the Secretariat.¹³³ This information indicated a very high percentage of compliance.

137. On July 17, 1995, Mr. Art Eggleton, former President of the Treasury Board, advised Mr. Chrétien of the high percentage of compliance.¹³⁴ In his response of August 4, 1995, Mr. Chrétien asked Mr. Eggleton and his officials to remain vigilant over the awarding of polling and advertising contracts.¹³⁵

138. After the one-year trial period, the Secretariat analyzed the information provided in 1995 and 1996 and informed the Board that there appeared to be a high level of competition and recommended removing the reporting requirement so as to reduce costs for Public Works and the Secretariat. Treasury Board cancelled the reporting requirement in September 1996, but requested that Public Works continue monitoring the level of competition.¹³⁶

139. In his testimony, Mr. Guité admitted that the reports provided to the Secretariat were inaccurate as to the competitive nature of the selection process for agencies for advertising and sponsorship activities.¹³⁷

¹³¹ *Office of the Auditor General of Canada, Memorandum of Evidence (Supporting documents), Volume 1, Tab 1, pp. 8 to 21, Exhibit P-2(a)*

¹³² *Treasury Board Secretariat, Documents Relating to Appendix U/Q to the Government Contracting Policy, Volume 1, Tab 1, p. 11, Exhibit P-16(a)*

¹³³ Testimony of Mr. Charles Guité, Volume 33, p. 5746

¹³⁴ *Guité Witness Brief, Structural Changes and Contracting Policy, Tab 5, Exhibit P-103(b)*

¹³⁵ *Guité Witness Brief, Structural Changes and Contracting Policy, Tab 6, Exhibit P-103(b)*

¹³⁶ *Document Prepared by the Treasury Board of Canada Secretariat, p. 35, para. 141, Exhibit P-10*

¹³⁷ Testimony of Mr. Charles Guité, Volume 33, pp. 5752 to 5758

b. Treasury Board Submissions

140. A Treasury Board submission is a vehicle through which a Minister on behalf of his or her department seeks approval or authority from Treasury Board Ministers.¹³⁸

141. Public Works made three separate submissions for funding of sponsorship activities. Those submissions were made on November 21, 1996, November 20, 1997, and December 16, 1999.¹³⁹ These submissions were signed by both the Minister of Public Works at the time as well as the former Prime Minister. The signature of the former Prime Minister did not change the responsibility and accountability of the Minister of Public Works for the management of sponsorships.¹⁴⁰

142. Each submission stated that: “*Public Works and Government Services, through the Advertising and Public Opinion Research Sector will ensure that the creative services, media buys, sponsorships, promotions and any other marketing initiatives conform with established Treasury Board policy and guidelines and that they provide added value to the Crown. In addition, they will continue to ensure that all communications services, including advertising and public opinion research, are competitive as required and subsequently that appropriate contracts are issued.*”¹⁴¹

143. Treasury Board relies on the information that is provided by departments and operates on the assumption that the information is accurate and reflective of the actual state of affairs within the department. Mr. Guité testified that in the context of the Treasury Board submission process, he misled Treasury Board Ministers to believe that he, or his unit, would be following Treasury Board policies in administering sponsorship activities.¹⁴²

c. Reporting to Parliament by Public Works

144. Allocations for sponsorship activities were reported to Parliament, but as part of the overall operating vote for Public Works. As a result, the allotments for sponsorships were not distinguishable from the other areas of expenditures within that vote.

¹³⁸ Document Prepared by the Treasury Board of Canada Secretariat, Annex G, p.66, **Exhibit P-10**

¹³⁹ *Allocations for Sponsorship, Volume 1*, Tabs 1C, 2B, **Exhibit P-12(a)**; *Allocations for Sponsorships, Volume 2*, Tab 5A, **Exhibit P-12(b)**. These submissions were the ones prepared and submitted by Public Works. Public Works obtained funds for sponsorships through other submissions as part of the Annual Reference Level Update process or through joint submissions with other departments. The current Prime Minister did not attend the meetings dealing with the three submissions during his time as Minister of Finance. Specific information on the attendance of Mr. Martin at Treasury Board meetings is provided in the *Statement of Evidence of Prime Minister Martin*, Tab 2, **Exhibit P-213**

¹⁴⁰ Testimony of Mr. Alex Himelfarb, Volume 12, pp. 1875, 1876

¹⁴¹ For example, see *Allocations for Sponsorship, Volume 1*, Tab 1C, Annex A, **Exhibit P-12(a)**

¹⁴² Testimony of Mr. Charles Guité, Volume 35 Revised, pp. 6090 to 6095

145. In addition, on a number of occasions when preparing the *Supplementary Estimates*, the Treasury Board Secretariat used the technique of “offsetting”¹⁴³ unused spending authority with requests for new spending authority from Public Works (a standard practice within the Secretariat and used for many departments). The use of “offsets” results in the provision of additional funding without the need to request additional spending authority through the *Supplementary Estimates*. The end result of this practice was that the allocations were not shown in the *Supplementary Estimates* nor were they reflected in the Departmental Performance Report (DPR) for Public Works. However, in 1997-1998, the one fiscal year when there was no unused spending authority in Public Works to “offset” the new spending authority for sponsorships, the Public Works’ DPR¹⁴⁴ identified that \$18.8 million had been allocated to Public Works for communications activities through the *Supplementary Estimates*.¹⁴⁵

146. Public Works did not otherwise explicitly identify sponsorship activities as being part of the work of APORS in the DPR or the Report on Plans and Priorities to Parliament. These reports form part of the *Estimates*, which provide information to assist Parliament in scrutinizing the Government’s spending proposals. Spending items should be brought to the attention of Parliament if they are material, or have significant or strategic importance.¹⁴⁶ For example, Public Works’ DPR for 1998-1999 included a business line for the operations of CCSB of \$78.4 million of which \$35 million was allocated for sponsorship activities. Sponsorship activities do not appear as being part of CCSB’s services, while other activities representing a smaller portion of the budget are listed.¹⁴⁷

III. Audits of Sponsorship and Advertising Activities

147. Between 1994 and 2003, a number of audits of sponsorship and advertising activities were undertaken by Public Works and the Office of the Auditor General.

a. Audit and Ethics Branch (AEB) Review

148. In December 1994, three employees within PRPCSS were transferred to Mr. Guité’s unit. Shortly after his arrival, Mr. Allan Cutler, one of the transferred procurement officers, expressed concerns that the normal contracting rules and regulations were not being applied rigorously.¹⁴⁸

¹⁴³ Annex E of **Exhibit P-10** describes the “offset” technique

¹⁴⁴ Testimony of Ms. Fraser, Volume 2, pp. 291, 292; Office of the Auditor General of Canada, Memorandum of Evidence (Supporting Documents), Volume 2, Tab 18, **Exhibit P-2(b)**

¹⁴⁵ *Allocations for Sponsorships, Volume 1*, Tab 2H, **Exhibit P-12(a)**

¹⁴⁶ Testimony of Mr. Alex Himelfarb, Volume 12, pp. 1927 to 1933

¹⁴⁷ *Office of the Auditor General of Canada, Memorandum of Evidence, Supporting Documents*, Tab 18, pp. 1058201 to 1058204, **Exhibit P-2(b)**

¹⁴⁸ Testimony of Mr. Allan Cutler, Volume 13, pp. 2108, 2109

149. In April 1996, Mr. Cutler was instructed by his direct superior, Mr. Mario Parent, to sign and backdate a contract. When Mr. Cutler refused, he was told that there would be a price to pay for that refusal.¹⁴⁹

150. On April 22, 1996, Mr. Cutler wrote a letter to his union explaining the difficulties he was having and pointing to a number of problems: no financial authority, backdating of contracts, falsification of information on contract files, and preparation of incorrect contract documents.¹⁵⁰ As a result of this letter, the Audit and Ethics Branch (AEB) of Public Works undertook a review of the matter.

151. Following a review, AEB expressed concerns that Mr. Guité was attempting to circumvent policies or regulations, and that the culture of the organization was to pressure employees to do so.¹⁵¹ Considering the seriousness of the issue, outside auditors, Ernst & Young, were retained to perform an internal audit on Mr. Guité's unit on AEB's behalf.¹⁵²

b. Ernst & Young Audit

152. Ernst & Young was asked to perform a compliance audit "to evaluate whether the contracts granted by the department are in compliance with the contracting rules and regulations."¹⁵³

153. The final Ernst & Young report was provided to Public Works in November 1996.¹⁵⁴ Its main findings covered several areas of non-compliance with policies and procedures, including *Appendix U/Q*.¹⁵⁵ Ernst & Young viewed the findings as more indicative of an effort within APORS to serve its clients and to catch up with paperwork than an overt attempt to commit fraud.¹⁵⁶ It made nine audit observations and two recommendations, which were given as alternatives. Given the fact that procurement was a small portion of APORS's activity, and the lack of expertise and training of personnel within APORS, Ernst & Young recommended the transfer of the APORS procurement section to the main procurement stream of Public Works. As an alternative,

¹⁴⁹ Testimony of Mr. Allan Cutler, Volume 13, pp. 2134, 2135

¹⁵⁰ Testimony of Mr. Allan Cutler, Volume 13, pp. 2135 to 2137; *Allan Cutler Document Brief*, Tab 6, **Exhibit P-43(a)**

¹⁵¹ Testimony AEB Panel (Mr. Steinberg), Volume 16 Revised, pp. 2517, 2518

¹⁵² Testimony of AEB Panel (Mr. Steinberg), Volume 16 Revised, pp. 2518, 2519

¹⁵³ *Inventory of Audits and Investigations*, Volume 1, Tab 3, **Exhibit P-3(a)**

¹⁵⁴ In the Executive Summary of its 1996 report, Ernst & Young indicated that "APORS' contracting activities generally follow the prescribed contracting policies but there are recurring instances of non compliance with specific contracting policies"; however, the Ernst & Young Panel admitted that they had found "substantial non compliance with contracting policies and procedures". The Panel admitted that the language in the Executive Summary "could have been stronger, looking at it now." Testimony of Ernst & Young Panel, Volume 14, pp. 2268 to 2281

¹⁵⁵ *Inventory of Audits and Investigations*, Volume 1, Tab 3, **Exhibit P-3(a)**

¹⁵⁶ Testimony of Ernst & Young Panel, Volume 14, pp. 2392, 2393

it recommended maintaining the existing structure but implementing more rigid controls.¹⁵⁷

154. In July 1997, the Audit & Review Committee of Public Works approved an action plan that agreed with the audit observations. The action plan provided that APORS would be transferred to the Supply Operations Service Branch shortly, and that the department would examine the feasibility of creating master standing offers.¹⁵⁸

155. The Executive Summary of the Public Works Ernst & Young audit and action plan were forwarded to the Treasury Board Secretariat on or about September 30, 1997.¹⁵⁹ The expectation of AEB was that the Treasury Board Secretariat would go through the documents and, if they had a greater interest, ask the department for further information.¹⁶⁰ At the time, the Treasury Board Secretariat did not have sufficient procedures in place to ensure that the relevant analysts would review the audit; instead, it simply was filed and posted on its Web site on November 28, 1997.¹⁶¹ Since that time, the Secretariat has established an active notification process to inform program sectors and policy centres of audits and evaluations received by it.¹⁶²

156. However, there was testimony that neither Ernst & Young's recommendation on the redirecting of the procurement function, nor the recommendation on more rigid controls, was implemented.¹⁶³ The Deputy Minister at the time, Mr. Ran Quail, testified that although the recommendation to redirect the procurement process was not formally implemented, its intent was met with the creation of the CCSB in November 1997, when the PRPCSS (the procurement branch) was moved entirely into the new organization, thereby providing it with the expertise that Ernst & Young had found lacking.¹⁶⁴

c. 2000 Internal Audit

157. As one of the actions taken after an internal audit raised concerns about the administration of grants and contributions at Human Resources Development Canada in 2000, Treasury Board asked all departments and agencies to audit all grants and contributions programs. As noted earlier, Public Works' sponsorship activities were not a grants and contributions program, but it was decided that they should be audited.¹⁶⁵

¹⁵⁷ *Inventory of Audits and Investigations*, Volume 1, Tab 3, pp. 20, 21, **Exhibit P-3(a)**

¹⁵⁸ *Statement of Evidence for the Department of Public Works and Government Services, Appendix A, Supporting Documents*, Tab 24, p. 6 (action plan), **Exhibit P-47(a)**

¹⁵⁹ *Statement of Evidence for the Department of Public Works and Government Services, Appendix A, Supporting Documents*, Tab 25, **Exhibit P-47(a)**

¹⁶⁰ Testimony of AEB Panel (Mr. Steinberg), Volume 16 Revised, pp. 2556, 2557

¹⁶¹ Testimony of TBS Panel, Volume 5 Revised, pp. 801 to 803, 807, 808

¹⁶² *Document Prepared by the Treasury Board of Canada Secretariat*, p. 36, para. 144, **Exhibit P-10**

¹⁶³ Testimony of AEB Panel (Mr. Steinberg), Volume 16 Revised, pp. 2585, 2586

¹⁶⁴ Testimony of Mr. Ran Quail, Volume 39, pp. 6764, 6765

¹⁶⁵ Testimony of the Honourable Alphonso Gagliano, Volume 67 Revised, pp. 11549 to 11551; Testimony of Mr. Ran Quail, Volume 40, pp. 6878, 6879

158. Mr. Quail formally directed AEB to conduct an internal audit of the management of sponsorships at CCSB.¹⁶⁶ The objective of the audit was to review CCSB's sponsorship agreements to determine whether they complied with applicable policies, procedures and authorities.¹⁶⁷

159. The AEB's first internal audit report was produced in August 2000. The key findings identified areas of non-compliance with various policies and procedures, namely: that the processes used by CCSB to select and contract with advertising agencies did not fully comply with *Appendix U/Q*, were not competitive, and did not guarantee the best price; and that there were various shortcomings on contractual documentation, such as a lack of *post-mortem* reports on many files.¹⁶⁸

160. A 31-point management action plan was adopted in response to the recommendations made in the 2000 internal audit report.¹⁶⁹ The plan included holding a working session with communications agencies to inform them of all administrative, quality control and contractual requirements; conducting a competitive process in accordance with Treasury Board policies; striking an internal review committee to ensure that all sponsorship procurement activities comply with relevant policies, directives and procedures; developing guidelines for sponsorship initiatives; training and hiring more staff; and requiring the agencies to produce *post mortem* reports.

161. The Treasury Board Secretariat worked with Public Works on the development and implementation of the management action plan.¹⁷⁰ The Secretariat assisted by providing advice as to the interpretation of *Appendix U/Q* and other relevant Treasury Board policies and best practices.¹⁷¹

162. In September of 2000, the Minister of Public Works at the time, Mr. Alfonso Gagliano, was briefed about the results of the 2000 internal audit.¹⁷² During the briefing, it was agreed that the sponsorship program would be frozen until the end of the fiscal year to allow time for implementation of the management action plan.¹⁷³ The Minister also requested that all sponsorship files to March 31, 2000 be reviewed since the internal audit had examined only a sample of the sponsorship files. In December 2000, after having concluded the review of all sponsorship files, the AEB confirmed the findings of the initial audit report.¹⁷⁴ At that point, the freeze was lifted.¹⁷⁵

¹⁶⁶ Testimony of Mr. Ran Quail, Volume 40, pp. 6878, 6879

¹⁶⁷ *Inventory of Audits and Investigations, Volume 1*, Tab 4, p. 1, **Exhibit P-3(a)**

¹⁶⁸ *Inventory of Audits and Investigations, Volume 1*, Tab 4, **Exhibit P-3(a)**

¹⁶⁹ *Office of the Auditor General of Canada, Memorandum of Evidence (Supporting Documents), Volume 1*, Tab 10, Exhibit P-2(a)

¹⁷⁰ *Document Prepared by the Treasury Board of Canada Secretariat*, p. 38, para. 155, **Exhibit P-10**

¹⁷¹ Testimony of TBS Panel (Ms. Jane Cochran), Volume 5 Revised, pp.716, 717, 788

¹⁷² Testimony of AEB Panel, Volume 16 Revised, pp. 2629, 2630; *Statement of Evidence of the Department of Public Works and Government Services*, Tab 73, **Exhibit P-47(c)**

¹⁷³ *Statement of Evidence Submitted by the Audit and Ethics Branch*, p. 45, para. 196, **Exhibit P-45**

¹⁷⁴ *Statement of Evidence of the Department of Public Works and Government Services, Appendix A, Supporting Documents*, Tab 74, **Exhibit P-47(c)**

¹⁷⁵ Testimony of AEB Panel (Mr. Steinberg), Volume 16 Revised, p. 2647

163. A preliminary report on the progress in responding to the audit was forwarded to the President of the Treasury Board by the Minister of Public Works on January 31, 2001.¹⁷⁶

164. All of the items in the management action plan were fully implemented prior to March 31, 2002.¹⁷⁷

165. The last item of the management action plan was the review of sponsorship files initiated after the audit. The final report on the follow-up review of sponsorship files was completed on March 4, 2002. In this report, AEB concluded that, for the period reviewed (between May 31, 2001 to September 1st, 2001), CCSB had, with very few exceptions, ensured that all mandatory documents existed and were included in the sponsorship files.¹⁷⁸

d. Referral to the Auditor General

166. In responding to an Access to Information request made in 2001, Public Works encountered problems in locating documentation for three contracts on the identification of potential sponsorships.¹⁷⁹

167. As a result, on March 19, 2002, Mr. Don Boudria, then Minister of Public Works, asked the Auditor General of Canada to look into these contracts. At the request of the former Prime Minister, the Minister indicated that should the audit bring to light information suggesting criminal activity, the matter would be referred to the Department of Justice for recovery of funds and to the police for investigation.¹⁸⁰

168. The Auditor General issued her report on the three contracts on May 6, 2002.¹⁸¹ She indicated, in her letter of transmission to the Minister, that the nature of her findings was such that she had referred the matter directly to the Royal Canadian Mounted Police and that she was launching a comprehensive audit of all sponsorship and advertising activities that resulted in her November 2003 report, which was tabled before Parliament in February 2004.¹⁸²

¹⁷⁶ Documents sustaining the testimony of Lucienne Robillard, pp. 36 to 43, **Exhibit P-196(b)**

¹⁷⁷ Office of the Auditor General of Canada, Memorandum of Evidence (Supporting Documents), Volume 1, Tab 10, p. 6, Exhibit P-2(a)

¹⁷⁸ Statement of Evidence of the Department of Public Works and Government Services, Appendix A, Supporting Documents, Tab 75E, **Exhibit P-47(c)**

¹⁷⁹ Testimony of the Honourable Don Boudria, Volume 128, pp. 24172, 24173

¹⁸⁰ Testimony of the Honourable Don Boudria, Volume 128, pp. 24176 to 24179

¹⁸¹ Documents Referred to During the Testimony of the Honourable Don Boudria, Tab 3, **Exhibit JC-10**

¹⁸² A compliance audit is not designed to detect fraud or personal gain (Testimony of Ernst & Young Panel, Volume 14, pp. 2229 to 2231; testimony of AEB Panel, Volume 16 Revised, pp. 2547 to 2549). A value for money audit (or performance audit) is conducted to provide parliamentarians with information about how government is managing its programs and activities (Testimony of Ms. Sheila Fraser, Volume 1, pp. 36 to 38). The compliance audits performed by Public Works in 1996 and 2000 did not find the financial abuses that the Auditor General found in her November 2003 Report, since her audit was a performance audit that specifically looked at whether Public Works was obtaining value for money in sponsorships, advertising and public opinion research.

169. In May 2002, Public Works established the Quick Response Team. The Team ended up conducting a systematic review, though not an audit, of all sponsorship files between April 17, 1997 and March 2000. The review identified various shortcomings in the administration of the files including poorly written contracts, incomplete files, improper sub-contracting and apparent breaches of the *Financial Administration Act*. As a result, the Team recommended that certain files be referred to the Royal Canadian Mounted Police, the initiation of recovery proceedings, an administrative review to investigate possible violations of the *Financial Administration Act* and the conduct of time verification audits of certain advertising agents.¹⁸³ All of the recommendations were subsequently implemented.

170. The Quick Response Team's report was tabled in Parliament on October 10, 2002.¹⁸⁴

IV. Changes Implemented by the Government

171. The first part of this section describes reforms undertaken by the Government of Canada in direct response to concerns about sponsorship and advertising activities triggered by the May 2002 Auditor General's report. The second part of the section describes a variety of changes that have been implemented by the Government over the last few years. While these changes are not in direct response to sponsorship and advertising activities, they do relate to various areas of government management and operations, aspects of which are of interest to this Commission.

i. Reforms in Direct Response to Concerns about Sponsorship and Advertising Activities

172. In response to the May 2002 Auditor General report, the Government of Canada implemented a number of reforms to sponsorship and advertising, described briefly below, that addressed many of the problems in the design and administration of sponsorships discussed earlier. These were preceded in September 2001 by the creation of Communication Canada through the merger of portions of CCSB with the former Canada Information Office. The rationale for creating the new organization was to consolidate Government communications services, including sponsorships, within a single organization.¹⁸⁵ The merger also had the effect of separating program authority and procurement for sponsorships, thus correcting a concentration of duties problem also discussed earlier.¹⁸⁶

¹⁸³ *Statement of Evidence of the Department of Public Works and Government Services, Quick Response Team*, Tab 2B, **Exhibit P-48**

¹⁸⁴ *Statement of Evidence of the Department of Public Works and Government Services, Quick Response Team*, Tab 1B, p. 4, **Exhibit P-48**

¹⁸⁵ *Déclaration de faits de Communications Canada, Volume 1*, Tab A, pp. 5 to 8, **Exhibit P-127(a)**

¹⁸⁶ *Déclaration de faits de Communications Canada, Volume 1*, Tab A, p. 6, para. 5, **Exhibit P-127(a)**

a. Changes to the Administration of Sponsorships

173. On May 8, 2002, Mr. Boudria announced a number of corrective measures, including: a new selection of agencies; the establishment of clearer criteria for the selection of events; the creation of regional standing offers to increase access to sponsorship contracts across the country; measures to ensure that agencies maintain an arm's length relationship with subcontractors; and allowing agencies with majority (as opposed to 100%) Canadian ownership to compete for contracts.¹⁸⁷

174. Mr. Boudria approved further enhancements to the management of sponsorships on May 23, 2002. These included: categorizing sponsorship events by size (in order to ensure a better assessment of the requests and allow the negotiation of appropriate visibility for the Government); reducing the need for advertising agencies; introducing a better evaluation framework; and revising the program's objectives.¹⁸⁸

175. On that same day, the former Prime Minister asked the then President of the Treasury Board, Madame Lucienne Robillard, to review the management regime for sponsorship, advertising and public opinion research.¹⁸⁹

176. Following his appointment as Minister of Public Works on May 26, 2002, Mr. Ralph Goodale, imposed a moratorium on all sponsorship activities at Communication Canada until it could be determined that the activities could be operated on a sound basis and in the public interest.¹⁹⁰ He also directed that payments to some advertising agencies be stopped.¹⁹¹ On July 3, 2002, the Minister of Public Works lifted the moratorium and announced an interim sponsorship program under which the use of advertising agencies as intermediaries was eliminated.¹⁹²

177. On December 12, 2002, as recommended by Madame Robillard's review, the Treasury Board approved the terms and conditions for a grants and contributions program for sponsorships. The program was required to have systems, procedures and resources in place to ensure due diligence in verifying eligibility and entitlement before any funding decisions could be made. This change eliminated the use of advertising agencies as intermediaries between the Government and event organizers. It established clear criteria for the selection of events and to determine the level of funding. On the advertising front, also on December 12, 2002, Treasury Board eliminated *Appendix U/Q*

¹⁸⁷ *Documents to be Referred to During the Testimony of the Honourable Don Boudria*, Tab 4, **Exhibit JC-10**; Testimony of the Honourable Don Boudria, Volume 128, pp. 24181 to 24184

¹⁸⁸ *Documents to be Referred to During the Testimony of the Honourable Don Boudria*, Tab 6, **Exhibit JC-10**; Testimony of the Honourable Don Boudria, Volume 128, pp. 24184 to 24188

¹⁸⁹ *Documents to be Referred to During the Testimony of the Honourable Ralph Goodale*, Tab 1, **Exhibit GC-9**

¹⁹⁰ *Déclaration de faits de Communications Canada, Volume 1*, Tab A, p. 11, para. 29, **Exhibit P-127(a)**; testimony of the Honourable Ralph Goodale, Volume 128, pp. 24086 to 24091

¹⁹¹ Testimony of the Honourable Ralph Goodale, Volume 128, pp. 24089 to 24092, 24112 to 24115

¹⁹² *Documents Referred to During the Testimony of the Honourable Ralph Goodale*, Tab 2, **Exhibit GC-9**

and approved changes to the *Contracting Policy* and *Common Services Policy* with a view of improving competition in the selection of advertising agencies.¹⁹³

178. The current Prime Minister subsequently cancelled the sponsorship program on December 13, 2003.

b. Changes to the Administration of Advertising

179. On April 28, 2003, the former Minister of Public Works, Ralph Goodale, announced changes to the management of the Government's advertising activities. These changes have been made to strengthen the management of government advertising, including the selection of a new Agency of Record, development of new procurement tools and open, fully competitive and transparent selection processes.¹⁹⁴

180. The details of this new process are set out in Exhibit P-408, *Advertising Management Renewal within the Government of Canada*. Each of the required steps under the advertising regime is described in detail in Annex 6 of Exhibit P-408.

ii. Other Management Changes¹⁹⁵

181. The Government has undertaken to make a number of management changes in the following areas:

- streamlining Treasury Board management policies to reinforce essential controls and management requirements;
- clarification of the responsibilities of Deputy Ministers and holding them to account for management and program performance;
- strengthening of financial management and oversight, particularly in areas of high risk;
- improvement of internal audit to support Deputy Ministers in ensuring adequate controls are in place;
- reinforcement of public service values and transparency; and
- improvement of the reporting to Parliament on expenditure and management performance;
- improvement of governance of Crown corporations; and
- legislative changes concerning political contributions.

182. These changes aim generally to reinforce the responsibility regime described in Part One of this submission by clarifying the accountability of Ministers and Deputy Ministers.

¹⁹³ Documents Referred to During the Testimony of the Honourable Ralph Goodale, Tab 4, **Exhibit GC-9**; *Déclaration de faits de Communications Canada, Volume 1*, Tab A, pp. 13 to 17, 19, **Exhibit P-127(a)**

¹⁹⁴ Documents Referred to During the Testimony of the Honourable Ralph Goodale, Tab 8, **Exhibit GC-9**

¹⁹⁵ The facts in this section, unless otherwise noted, are based on the *Statement of Evidence Prepared for the Commission: 'Advertising Management Renewal within the Government of Canada'*, Annex 7, **Exhibit P-408**

a. Streamlining of Treasury Board Management Policies to Reinforce Essential Controls and Management Capabilities

183. To hold individuals accountable for their performance in fulfilling delegated responsibilities, it must be clear, through the Treasury Board's management policies, who is charged with doing what. The Government is streamlining the Treasury Board's suite of management policies – both by reducing the number of policies and by simplifying the content of each policy – in order to focus the management policy suite more narrowly on the core principles of sound public management. The renewal of Treasury Board policies is ongoing and will reinforce the essential controls and management systems Deputy Ministers need to have in place in their departments. It will also enable the Treasury Board to focus less on specific transactions that flow from these policies and more on strategic planning and oversight of core government-wide management systems and issues.

b. Clarification of the Responsibilities of Deputy Ministers and Holding Them to Account for Management and Program Performance

184. As the management board of government, the Treasury Board has a duty to provide departments with a clear statement of the Government's management expectations and to provide Parliament with the assurance that effective management systems are in place.

185. To this end, in 2003, the *Management Accountability Framework* was developed setting out the management expectations of Deputy Ministers with respect to ten broad elements of management.¹⁹⁶ This relatively new tool is continuing to evolve as the Secretariat's and Deputy Ministers' experience with the detailed performance measures develop. While not a formal instrument enshrined in Treasury Board policy, the Government believes that it is proving useful to Deputy Ministers as more holistic guidance regarding management and for the Treasury Board Secretariat it is proving to be a more effective means of assessing departmental management performance and risk than previous approaches (oversight was mainly conducted through the Treasury Board submission process,¹⁹⁷ which only provided a partial and time-limited picture of departmental management as submissions focus on new spending initiatives). A chart depicting the core elements of the *Framework* is attached as Annex A to this submission.

186. The *Management Accountability Framework* is being used in three related ways.

187. First, it articulates a vision of sound public management and a means of underscoring the core principles of managerial accountability. It clarifies the expectations for management that pertain to Deputy Ministers and the standards that should guide departmental practices. In this context, the *Management Accountability Framework* is

¹⁹⁶ Document Prepared by the Treasury Board of Canada Secretariat, pp.11, 13, 132 to134, para. 42, 48 and Annex M, **Exhibit P-10**.

¹⁹⁷ Document Prepared by the Treasury Board of Canada Secretariat, p.16, footnote 20, **Exhibit P-10**.

tied to the renewal of Treasury Board management policies and to the development of a learning curriculum that will strengthen departmental management capacity.

188. Second, the Treasury Board Secretariat is using it as a key tool in the monitoring and oversight of departments. For example, the Framework is the basis for the assessment of management performance within departments. It is used in discussions of management issues held between the Secretary of the Treasury Board and Deputy Ministers of departments. Departments themselves are increasingly using *Management Accountability Framework* in developing and executing their internal audit plans. Consequently, the assessment of the risk of inappropriate practices or the eroding of management capabilities, across government and within departments, is being linked to the Framework. In this way, public service managers can use the *Management Accountability Framework* for management improvements.

189. Finally, the *Management Accountability Framework* is also being used in determining the consequences of management performance. For example, the assessment of departmental performance against the Framework, among other things, is considered by the Clerk of the Privy Council, in consultation with the Committee of Senior Officials, in making recommendations on the performance ratings of Deputy Ministers to the Prime Minister. Once the Treasury Board policies have been renewed, the performance of a department's management team, against the standards set out in the *Management Accountability Framework*, will be considered in assessing the delegation of authority to positions within a department under various management policies. Finally, in the future, the *Framework* will be the basis for reporting on whole-of-government management performance.

190. The goal is to reinforce the message that within the framework of ministerial responsibility, Ministers are accountable to Parliament and Deputy Ministers are accountable to Ministers for the management of their departments while the Treasury Board and its Secretariat are accountable for oversight to ensure that the appropriate control systems are in place and that the necessary management practices for using those systems are being routinely followed.

c. Strengthening of Financial Management and Oversight

191. The Government is focusing on financial controls, monitoring and enforcement mechanisms in order to further reinforce the stewardship of public funds. Measures have already been taken.

192. In December 2003, the Office of the Comptroller General was re-established at the Treasury Board Secretariat, as a distinct office under a newly-appointed Comptroller General, who has deputy head status. Senior Financial Officers, who report functionally to the Comptroller General, will go through an accreditation process that will result in additional responsibilities to strengthen financial management and accountability.

193. Investments have been made in developing an expenditure management information system at the Treasury Board Secretariat to provide government-wide financial and human resource information in real time in order to track spending in all departments and to provide tools for effective scrutiny and decision-making.

d. Improvement of Internal Audit to Support Deputy Ministers in Ensuring Adequate Controls are in Place

194. Greater attention is being paid to auditing departments and agencies and the capacity to do so is being increased. The goal is to provide enhanced assurance on risk management, control systems and governance processes. Deputy Ministers need to be supported by objective and independent advice on the performance of the governance regimes, management practices and financial administration systems under their responsibility. This advice needs to rest within departments to be effective. Steps are being taken to increase the independence of audit committees, which report to Deputy Ministers.

195. The internal audit function within government is being re-organized and strengthened to ensure comprehensive audit programs, based on sound risk analysis of departmental activities. An assessment of the audit capacity across government is underway.

e. Reinforcement of Public Service Values and Transparency

196. The Government has acted to strengthen the “accountability reflex” and reduce the risk of public servants acting outside the system.

197. On March 22, 2004 the Government tabled the *Public Servants Disclosure Protection Act* (and re-tabled it with significant revisions in the new parliamentary session on October 8, 2004) to establish a mechanism for the disclosure of wrongdoing in the public sector and to protect public servants who make disclosures.

198. To reinforce its commitment to public service values, the Government has placed greater emphasis on transparency to provide some assurance that high ethical standards are being met by those in control of public funds. Mandatory proactive disclosure has been put in place for the travel and hospitality expenses of Ministers, parliamentary secretaries, political staff and senior public servants (as of April 2004); the Government’s own goods and services contracts over \$10,000 in value (as of November 2004); and re-classifications of public service positions (as of November 2004). Information on these activities is posted on government Web sites and updated quarterly. The Government continues to examine other categories of information where mandatory proactive disclosure measures may be warranted.

f. Improvement of the Quality of Information on Expenditures and Management Performance Provided to Parliament

199. As explained in Part One, the role of Parliament in the accountability framework is fundamental to the Canadian system of responsible government. In order to effectively hold the Government and Ministers to account, Parliament requires the right information and it has to be provided in a timely way.

200. Measures have been taken to improve reporting to Parliament. Reforms have been made to the *Report on Plans and Priorities* and the *Departmental Performance Report*. Greater emphasis is now placed on results-based reporting and a management representation statement has been included in the *Departmental Performance Report*.

201. A new format for the *Estimates* was introduced in November 2004 which makes information more consistent and which includes more horizontal and summary information to aid parliamentarians.

202. Within the *Supplementary Estimates*, the amount allocated to Public Works for sponsorship activities were not always discernable because of the practice of using existing spending authority available within the department's appropriation to fund an activity (offsetting the requirements) which had the effect of reducing the number of items listed in and spending authority sought in the *Supplementary Estimates* to the minimum.

203. This practice has been modified: the display of all offsets being used and an explanation of their nature was introduced in the 2004-2005 *Supplementary Estimates*, resulting in incremental spending items being displayed with explicit identification of where available spending authority is being used to provide parliamentary spending authority. In addition, there is more summary information included at the front-end of the *Supplementary Estimates*, providing an overview of the incremental funding being requested as well as information on initiatives that are managed jointly among the departments.

g. Improvement of Governance of Crown Corporations

204. With respect to the various issues raised by the Auditor General's report regarding certain Crown corporations, the President of the Treasury Board announced on February 10, 2004, as part of a package of initiatives to strengthen transparency, oversight, accountability and management across the Government, that he would undertake a thorough review of the governance and accountability framework applicable to Crown corporations. *Meeting the Expectations of Canadians: Review of the Governance Framework for Canada's Crown Corporations*, Exhibit P-10B, is the result of this review.

205. The Government has committed to implementing the 31 measures described in the Review – ranging from clarifying accountabilities to extending the coverage of the *Access to Information Act*. Some measures require legislation, while

others require the production of guidance documents or the development of training curricula. Some have already been implemented, while others are in progress. If the Commissioner determines that an update on the progress in implementing the measures would be useful for Phase II of this Inquiry, the Government would be pleased to assist the Commissioner in that regard.

h. Legislative Changes Concerning Political Contributions

206. Much evidence has been heard with respect to political contributions and funding during the 1996 and 2000 elections. On January 1, 2004, Bill C-24 - *An Act to amend the Canada Elections Act and the Income Tax Act* (political financing), came into force. The Act introduced new limits on contributions to political parties, extended disclosure measures and introduced new public funding measures for political parties.

207. Individuals can make contributions up to an annual limit of \$5,000 to parties and their affiliated entities. Corporations, unions or associations may make contributions of \$1,000, but only to electoral district associations, candidates and nomination contestants. The Act also provides for increased disclosure requirements. All political participants must now disclose contributions of \$200 or more, and their source. On the enforcement side, new offences were added for violation of contribution limits, including an “anti-avoidance” clause, which prohibits attempts to circumvent contribution limits or disclosure rules. Other enforcement rules were enacted through the adoption of Bill C-3 - *An Act to amend the Canada Elections Act and the Income Tax Act*, such as possible de-registration of a party and liquidation of its assets in case of conviction of certain financial offences.

All of which is respectfully submitted.

DATED at Ottawa, Ontario, this 10th day of June, 2005.

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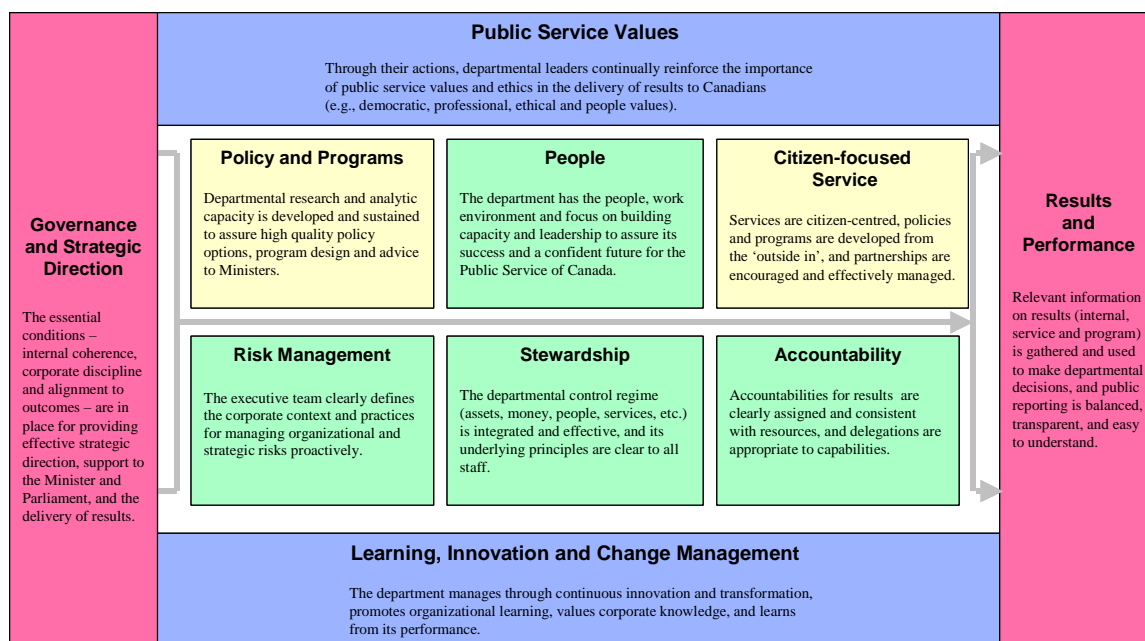
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Annex A

Overview of the *Management Accountability Framework*¹⁹⁸

1. The *Management Accountability Framework* is intended to translate the vision of modern public service management, as established in *Results for Canadians*, into a set of management expectations. The Framework reflects the many management-focused initiatives currently underway and the vision they share. In so doing, it provides a means to understand and connect various TBS management improvement initiatives.
2. The Framework focuses on management results rather than required capabilities; provides a basis of engagement with departments; and suggests ways for departments both to move forward and to measure progress. It consists of 10 essential interdependent elements of sound management, followed by a series of indicators and associated measures. It recognizes that the role of public service employees is to translate the direction provided by government into results for citizens.

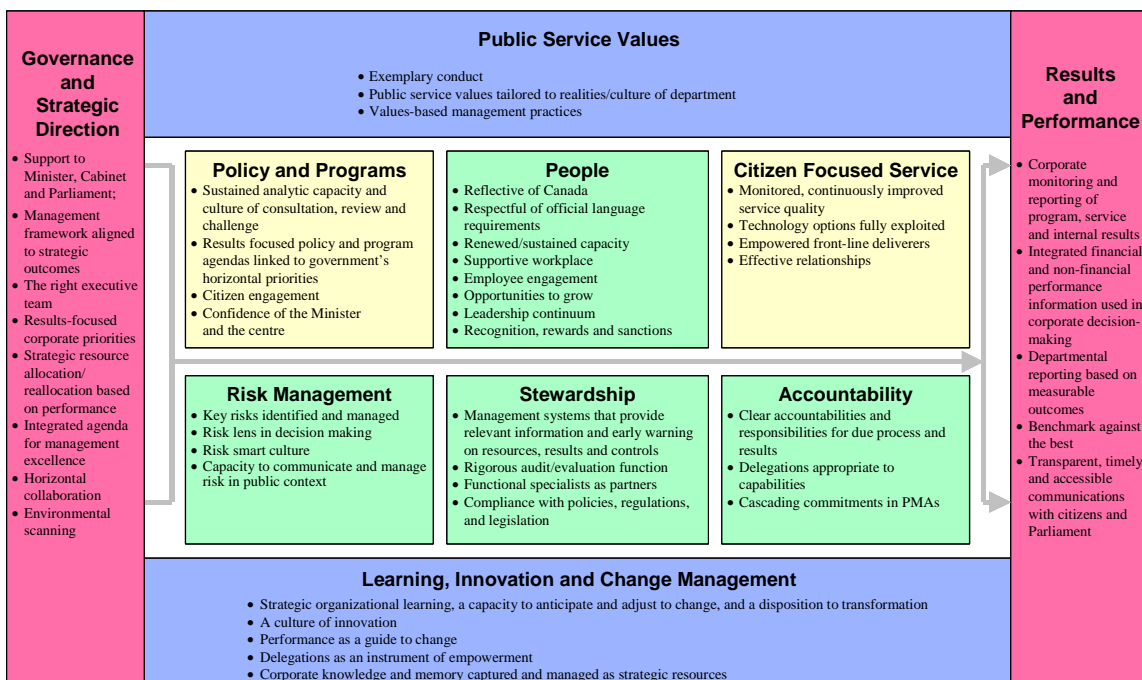


3. Below is a graphical representation of the *Management Accountability Framework*.

Indicators

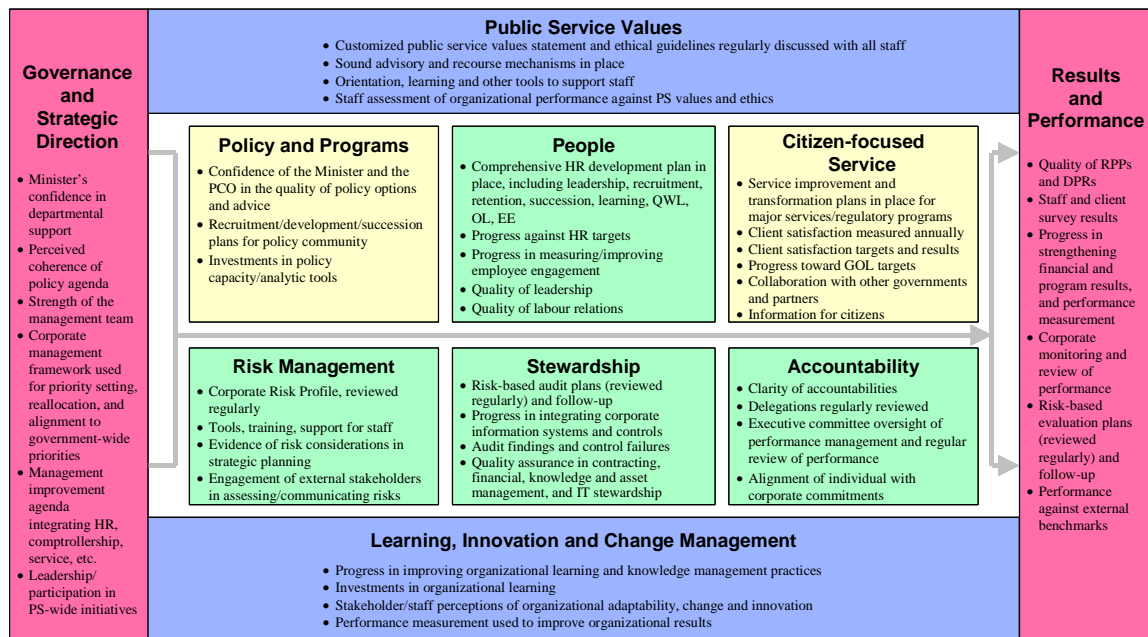
4. Graphic 2 presents the indicators for each expectation in the framework. These indicators are meant to convey the breadth and meaning of the expectations. By setting out the objective for each of the 10 elements, they also help to gauge progress toward those objectives.

¹⁹⁸ Document Prepared by the Treasury Board of Canada Secretariat, Annex M, Exhibit P-10



Measures

5. Graphic 3 presents the measures that can be used to assess progress toward the objectives described by the indicators. While the expectations and indicators of management excellence should remain relatively stable over time, measures of management performance are likely to evolve as conditions, priorities, and government-wide targets change.



Implementation

6. Departments and agencies need to be able to demonstrate progress in implementing the Framework. It is recognized, however, that not all 10 expectations can be achieved at once. The Framework should not be construed as prescriptive; every department and agency must chart its own course to higher organizational performance. Within available resources, choices will have to be made: departments and agencies may need to focus on improving some areas more than others, and the priorities may differ from one organization to another. Nonetheless, the intent is that all departments and agencies demonstrate progress in each of the 10 elements.

