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## ADMINISTRATION OF THE SPONSORSHIP PROGRAM

### Problems of Accountability and Direction

Because Mr. Guité was regularly receiving instructions directly from his Ministers, David Dingwall and Alfonso Gagliano, and because he had direct access to persons in the PMO, including the Chief of Staff of the Prime Minister, Mr. Guité was no longer subject to the authority and direction of his immediate superior, either Richard Neville or James Stobbe, nor was he subject to the authority and oversight of the Deputy Minister, Ranald Quail. In their eyes and those of everyone in the public service, he was in a special category, seemingly exempt from the usual reporting rules, and not obliged to conform to normal practices and procedures. Only one subordinate, Allan Cutler, dared to challenge Mr. Guité's authority and methods and, as a result, he was declared surplus by Mr. Guité. Although Mr. Guité's superiors certainly must have known he had exceeded his authority in the Cutler incident, there was never any reprimand or reproach.

## Choice of Events, Amounts and Agencies

Neither Mr. Guité nor the public servants working for him ever received any direction in writing from the PMO, the PCO, his Minister, his Deputy Minister or anyone else on how to select events and amounts for sponsorships. The only guidance was Appendix Q, and it was simply not followed. There was no public announcement of the government's decision to increase its visibility by sponsoring events and activities through PWGSC. We may safely assume that at some point Jean Lafleur had conversations with Mr. Guité during which contracts were discussed and negotiated before they were concluded. It is also apparent that the first list of events to be sponsored, showing the amounts to be paid to the promoter of each of them, was submitted by Mr. Guité to Mr. Pelletier. It is fair to assume that Mr. Guité informed Mr. Pelletier that he was budgeting \$17 million for 1996-97 sponsorships, because that amount appears on the draft Treasury Board submission dated April 22, 1996, signed by Ms. Marleau. Because that draft submission included a line for the signature of the Prime Minister, it must have had the approval of Mr. Pelletier, and in order to fix the financial requirements at \$17 million, Mr. Guité must have made some sort of a preliminary enumeration of projects and amounts to be allocated.

On May 29, 1996, Éric Lafleur, the vice-president of Lafleur Communication, the agency which handled all sponsorship contracts for PWGSC in 1996-97, sent Ms. LaRose a detailed list of sponsored events that were to be managed by Lafleur, some of which were already the subject of contracts with APORS, although funding had not yet been approved. The list includes details of the commissions and production costs to be paid to the agency, but there is no evidence that this information was communicated to the PMO.

In 1997-98, a second allotment of \$17 million from the Unity Reserve was supplemented by additional sums of money from PWGSC's

budget or transferred from other budgets. However the evidence remains fragmentary as to how the events found their way initially onto Mr. Guité's list, or how the amount to be allotted to each event was determined.

In the years following, knowledge of the existence of the Sponsorship Program seems to have spread. Certainly there was no shortage of requests for sponsorships. They came directly to Mr. Guité's office or were redirected to APORS from other sources, and an annual master list would be prepared. Mr. Chrétien testifies that it was not necessary to make any public announcement concerning the Program. Yet most of his Ministers testify that they did not become aware of the existence of the Program until it became a subject of public comment and controversy in 2001.

Mr. Guité testifies that he alone made decisions on requests for less than \$25,000, but anything larger was decided in consultation with Mr. Pelletier or Mr. Gagliano. The master list would be modified on a number of occasions as the year progressed. Mr. Guité says that periodically he would meet with Mr. Pelletier, sometimes in the presence of Mr. Carle, and they would go over lists of proposed sponsorships, which would be approved after modifications suggested by Mr. Pelletier. Mr. Guité says that he took those suggestions to be instructions.

Since the Commission accepts that Mr. Guité went to his meetings with Mr. Pelletier to obtain advice and suggestions about events and amounts to be paid, it is hardly plausible that he and Mr. Pelletier would have studiously avoided any discussion or mention of the important question of which agency would be hired to manage the event or project on behalf of the Government.

Jacques Corriveau was a former vice-president of the Liberal Party of Canada and a friend of the Prime Minister. In light of Mr. Corriveau's

lobbying to persuade PWGSC to sponsor certain events, and his interest that Groupaction Marketing be appointed to manage them, it is unlikely that he would have limited his attempts to influence PWGSC to contacts with Mr. Guité. In turn, Mr. Guité is unequivocal that he was not the decision-maker with respect to Mr. Corriveau's proposals. Mr. Guité produced as evidence a list, in Mr. Pelletier's handwriting, of events and dollar amounts for sponsorships to support his contention that Mr. Pelletier was suggesting events and amounts to him, and was not passively approving Mr. Guité's lists. Mr. Pelletier's version was that he prepared the document as a sort of aide-memoire during a meeting he had with Mr. Guité because the latter had not been taking notes. The proposition that Mr. Pelletier would prepare notes to assist Mr. Guité to remember what had transpired at a meeting is improbable and cannot be reconciled with the rest of Mr. Pelletier's evidence. The list gives credence to Mr. Guité's testimony that Mr. Pelletier was actively promoting certain sponsorships and suggesting the amounts to be paid in at least some cases.

The Commission is of the opinion, in spite of its reservations about the truthfulness of Mr. Guité on other subjects, that his testimony about Mr. Pelletier's role in the choice of events and the amounts to be disbursed to their promoters is credible, whether Mr. Pelletier's suggestions or input were in the form of directions or worded less directly. Suggestions by a person in the position of Mr. Pelletier were the equivalent of an order, and it is probable that Mr. Guité took these suggestions and advice as instructions. I prefer the more logical conclusion that the choice of agencies was a matter in which Mr. Pelletier offered his "input" to Mr. Guité, just as he gave him advice on other aspects of the Sponsorship Program. The choice of agencies was simply too important a decision to leave entirely to a mid-level public servant.

## Involvement of Minister Gagliano

The Commission does not accept Mr. Gagliano's testimony that his meetings with Mr. Guité to discuss sponsorships were few and far between, and only of a short duration. Like Mr. Pelletier, Mr. Gagliano testifies that he did no more than give political advice and make suggestions. This statement is not accepted. Mr. Gagliano, like Mr. Pelletier, had the authority to impose his decisions upon Mr. Guité.

Following Mr. Guité's retirement, Pierre Tremblay, his successor and the former Executive Assistant to Minister Gagliano, continued the practice established by Mr. Guité of going to the Minister's office on a regular basis to review lists of proposed sponsorships. Mr. Gagliano delegated more responsibility in this area to his new Executive Assistant, Jean-Marc Bard, with whom Mr. Tremblay met more and more frequently.

The evidence is overwhelming that Mr. Gagliano was a hands-on manager who took a great interest in the Sponsorship Program and an active part in its direction. He is reluctant to accept responsibility for the errors committed in the course of that administration and the political interference which his decision-making constituted. When Mr. Guité says that Mr. Gagliano gave him advice, suggestions and instructions concerning the choice of agencies to handle sponsorship contracts, I am inclined to believe him in spite of Mr. Gagliano's denials.

## Reporting Lines and Oversight

When Mr. Stobbe became Mr. Guité's superior, Mr. Quail received a telephone call from Ron Bilodeau at PCO. The clear inference from the call was that Mr. Stobbe's supervision and involvement were not welcome and that people in the PMO preferred him not to interfere. Mr. Stobbe and Mr. Quail understood the message: Mr. Guité's direction of the Sponsorship Program was under the direct supervision of the PMO, and no one should intervene.

Mr. Quail understood that his role in the Sponsorship Program had been reduced to ensuring that Mr. Guité's organization did not spend more money than it had available. As a consequence, the normal authority and oversight of the Deputy Minister virtually ceased. The involvement that the Deputy Minister would normally have in the formulation of a new program, its administration and its oversight did not occur, and his involvement was never sought. With the support and approval of persons at the highest level of the government, Mr. Guité was untouchable and beyond the control of Mr. Quail, in spite of the latter's obligation to manage his department.

### Commissions, Fees and Production Costs

The contracts used for sponsorships were the same as those used for the procurement of advertising services. The forms were not well adapted for sponsorships. Personnel at CCSB had only vague ideas as to the services that were to be provided by communication agencies in exchange for their commissions, usually 12 to 15% of the sponsorship's value. No attempt was ever made to negotiate the commission rate downward.

There is no agreement as to what services were to be covered by these commissions and what services deserved additional payment. In the absence of any guidelines on this subject, production costs were established on an ad hoc basis. There are cases where all the hours of a communication agency's employees were billed as a production cost, so that no services at all were provided for the 15% commission.

### Examples of Overcharging

The evidence is replete with examples of inflated hourly rates, double billing for services, a failure to seek competing bids for subcontracts, and even invoices for which no services were performed. The full details are found through the later chapters of the Fact Finding Report,

which provide a detailed review of five communication agencies in particular. Parallel to the many examples of blatant abuse of public funds is the failure of personnel at PWGSC to challenge or question such excessive charges. This failure cannot be excused.

In some cases, sponsorship contracts were used to purchase tickets to sponsored events. The presence at the Grand Prix in 1998 of the beneficiaries of tickets acquired at the expense of the Government of Canada cannot have contributed in any significant way to the promotion of national unity. The beneficiaries of Mr. Guité's largesse received an advantage or benefit for which the Government received nothing in return.

### New Guidelines and Procedures/ Communication Canada

It is reasonable to assume that if the guidelines and procedures introduced in 2001 by Communication Canada to manage the Sponsorship Program had been in place from its inception, the mismanagement and abuses that occurred from 1996 to 2000 would not have been possible. Ralph Goodale, the newly appointed Minister of PWGSC, decided within 24 hours on May 27, 2002, to order a moratorium of the Sponsorship Program to permit him to analyze the situation. He concluded that the contracting out of the administration of a government program of this kind was not appropriate in the circumstances.

The Honourable Lucienne Robillard, President of the Treasury Board, provided the Prime Minister on September 5, 2002 with a series of recommendations for better management, delivery, oversight and transparency. Mr. Chrétien accepted these recommendations and approved the renewal of the Program for one year. The Sponsorship Program was announced publicly for the first time on December 17, 2002. Communication Canada proceeded to manage the Sponsorship Program until it was cancelled in December 2003. Communication Canada was itself disbanded in March 2004.

## Earlier Audits and Investigations

There were ongoing indications prior to the Auditor General's Report that things were not right in the administration of sponsorship and advertising contracts within PWGSC. Several previous audits and investigations revealed at least some aspects of the mismanagement.

PWGSC's Audit and Ethics Branch (AEB) conducts periodic audits of its various procurement and program management operations. Such audits are supposed to expose instances of dishonesty, incompetence and error, whether systemic or isolated, so they can be corrected. The Office of the Auditor General is the Government's independent external auditor, reporting directly to Parliament, whereas the AEB reports to the Deputy Minister.

A 1995 analysis of the management control framework in effect at APORS when it first began operations recommended that an audit of compliance with the Contracting Policy be conducted in the future. Even at that early date, Allan Cutler suggested to the auditor that there was bid-rigging and political interference, providing reason enough to call for an audit.

In June 1996 Mr. Guité declared Mr. Cutler's position surplus at a time when Mr. Guité had begun to award sponsorship contracts. It may be presumed that he did not want someone like Mr. Cutler to obstruct or delay his method of handling sponsorship files. After filing a grievance, Mr. Cutler was assigned to a new position and received a letter of apology from an officer of PWGSC, but not from Mr. Guité. The letter acknowledged that senior management of APORS had acted inappropriately and that questionable judgment had been exercised in declaring his position surplus. Mr. Guité was never reproached or reprimanded for his behaviour. If whistleblower legislation is ever to have any teeth, it must protect public servants from this kind of retaliation.



Mr. Cutler's concerns led to the retention of Ernst & Young to conduct an audit in July 1996. The draft report identifies risk areas relating to APORS activities, including: contracts possibly being awarded unfairly and to the benefit of selected contractors; the tendering process possibly being perceived as not transparent and open; and the government not receiving full value for money. These risks do not appear in the final audit report, though it does severely criticize APORS advertising competitions, in which compliance with policy and guidelines was rare. The audit team from Ernst & Young was hard pressed to explain the mild wording of the General Assessment in the Executive Summary. No changes within APORS occurred as a consequence of this audit, and the creation of CCSB did not serve to correct the issues of non-compliance with policies and regulations. It merely concentrated more responsibility and authority in the hands of Mr. Guité, whose improper conduct in disciplining Mr. Cutler had led to the audit in the first place. The audit report was forgotten until 2000, when it was revisited in the context of a new compliance audit.

In 2000, either Mr. Gagliano or the Deputy Minister initiated an internal audit of the Sponsorship Program. It may have been provoked by an access to information (ATI) request on January 11, 2000, by Daniel Leblanc of the *Globe and Mail*. Many of the problems with the administration of the Sponsorship Program described in the 2000 internal audit were similar or identical to the 1996 Ernst & Young findings, and were reinforced again in 2003 by the Auditor General. The 2000 audit made it apparent that CCSB management had not implemented any of the 1996 recommendations. Nevertheless, information was dropped from the final 2000 report, with no mention of the 1996 audit. The reasons given for eliminating all references to the earlier audit are unconvincing. This omission moderated the severity of the criticisms of management and is inconsistent with the obligation of auditors.

A Quick Response Team (QRT) was created in PWGSC in May 2002 to provide answers for anticipated questions in the House of Commons. The QRT systematically reviewed 721 sponsorship files and detailed many of the problems studied by the Auditor General and this Commission.

Kroll Lindquist Avey (which carried out the forensic audit for this Commission) undertook an administrative review of the Sponsorship Program in October 2002 for PWGSC to determine if there should be disciplinary action against employees of PWGSC. It reported on February 4, 2003, that 130 of 136 files had instances of non-compliance with the law or with government policies. The names of the CCSB employees responsible are given in a detailed appendix to the report where Mr. Guité's name is mentioned repeatedly.

Following the Kroll review, PWGSC retained Jacques Demers, Q.C., to head a committee to make recommendations for disciplinary action against those employees who were responsible for non-compliance with Treasury Board policy. This committee produced a detailed report on November 24, 2003. Only minor disciplinary action was taken against two PWGSC employees, neither of whom played an important role in the mismanagement. No manager at PWGSC has suffered any consequence, either financial or to career prospects, because of what occurred in the Sponsorship Program.

### Involvement of Crown Corporations and the RCMP

The Auditor General expresses concerns about the involvement of Crown Corporations and the RCMP in the Sponsorship Program. First, transfers of funds from PWGSC to a Crown Corporation or to the RCMP did not conform to the intent of Treasury Board's Policy on Transfer Payments. Any grants or contributions made to a Crown Corporation or agency must have prior Treasury Board approval, or Parliament risks losing control over the appropriations process. Second, Crown Corporations and the RCMP should not receive financial

encouragement to promote federal visibility because they are already obliged to do so by virtue of the Treasury Board Federal Identity Program. Third, PWGSC agreed to pay fees and commissions to communication agencies for transferring funds from one department or agency of the Government to another, with little work or services other than the transmission of a cheque. The Commission heard no evidence to contradict the Auditor General's findings. Specific information on various transactions involving Via Rail, Canada Post, the Business Development Bank of Canada, and the RCMP appears in Chapter VIII of the Fact Finding Report.

