

CHAPTER V

**SELECTION OF ADVERTISING AND
COMMUNICATION AGENCIES****5.1****Under the Previous Progressive Conservative Government**

Prior to November 1993, government advertising was handled by the Advertising Management Group (AMG), consisting of a small group of public servants in the Department of Supply and Services headed by Mr. Joseph Charles Guité, to which were added two political appointees named by the Prime Minister's Office, designated "consultants." The selection and engagement of advertising agencies to assist the Government in its advertising activities were openly done on a political basis. For direction as to how to proceed, Mr. Guité received instructions from the Cabinet committee on Communications. Although at that time Mr. Guité was a relatively minor public servant four or five levels down in the hierarchy from the Deputy Minister within his department, he reported directly to Senator Lowell Murray, who presided over the Committee.¹ The normal chain of command whereby a public

servant is expected to take orders from his or her immediate superior was accordingly bypassed. Usually a public servant will deal with politicians only in the presence of the Deputy Minister or his or her representative.

In the preceding Progressive Conservative administration, government departments requiring the services of an advertising agency would inform the AMG, which would then hold a competition to choose the agency to be awarded a contract. However, the list of agencies invited to compete was prepared by the political appointees within the AMG.² Advertising and communication agencies having Liberal Party sympathies or connections had little or no chance of getting government business. Mr. Guité believes that once the list of candidates had been prepared, the competition was fair, but of course only agencies acceptable to the party in power had been put on the list.

5.2

Mandate for Change

In the 1993 election campaign, the Liberal Party made it a part of its platform that less money would be spent by the Government on advertising and polling, and that the rules for selecting advertising agencies would be changed to allow fair, open and transparent bidding.³ As soon as Mr. Chrétien became Prime Minister, he took steps to fulfill these promises, instructing the Treasury Board Secretariat to design and develop a new policy, which became known as Appendix U to the Treasury Board Contracting Policy. It was later designated Appendix Q, by which name it is described throughout this Report. The new appendix, entitled *Policy and Guidelines with respect to Contracting Procedures for Communications, Public Opinion Research and Advertising Services*, came into effect on July 6, 1994.

It is discouraging to see how what appears to have been a sincere attempt to depoliticize an openly biased procurement policy was subverted almost from the very beginning. In his testimony Mr. Guité expressed the opinion that politicians, who rely on advertising agencies to help them get elected, will always contrive to reward their friends in the advertising business once they are in office. Naturally, the advertising agencies are pleased to benefit from

such rewards and are tempted to render services to candidates for office at bargain rates during election campaigns, in the hope and expectation that they will eventually get lucrative government business in exchange.⁴ What occurred in the development and drafting of Appendix Q lends credence to Mr. Guité's cynicism, at least with respect to some, but not all, politicians.

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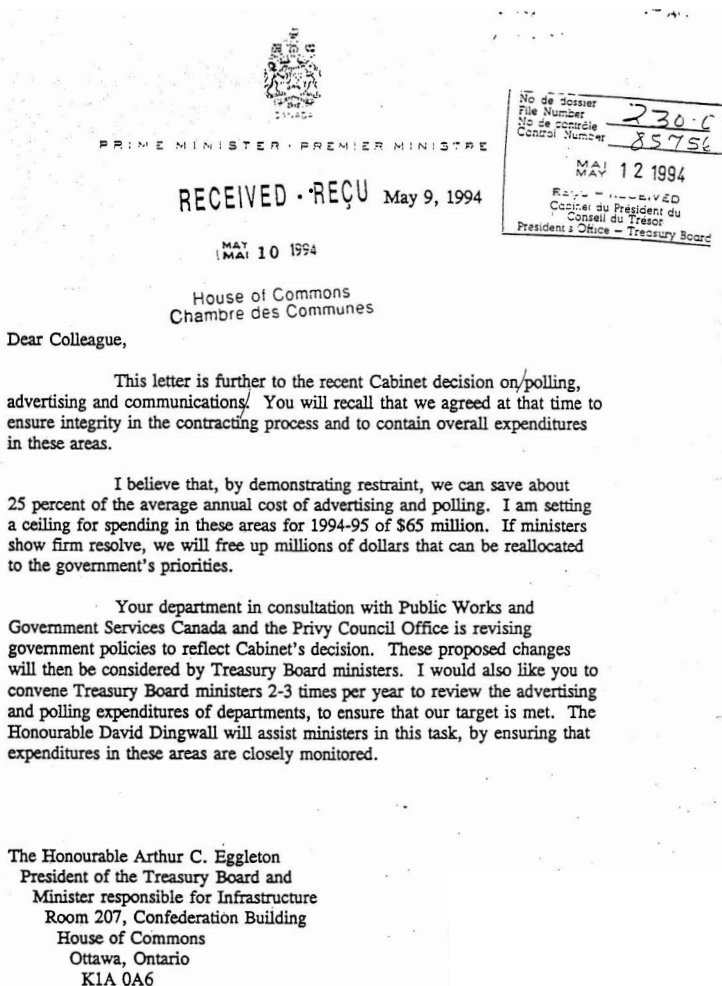
Formulation of Appendix Q

The Treasury Board Secretariat had the main responsibility for the conception and development of the new policy guidelines, but had assistance from personnel from the Privy Council Office. The political direction in the development of the guidelines came from the PMO and from the Honourable David Dingwall as Minister of Public Works and Government Services Canada (PWGSC). Mr. Guité, as the acknowledged expert in advertising matters, was delegated to assist in the process, as was his immediate superior in PWGSC, Mr. James Stobbe, and Mr. Richard Neville, who was then Assistant Deputy Minister, Corporate Services, of PWGSC. Mr. Ranald Quail as Deputy Minister also contributed and was kept informed.

The subject of the new government policy concerning advertising was discussed at a Cabinet meeting on January 27, 1994, at which the Prime Minister is recorded as saying that the “process of advertising and polling would have to be much better managed and more transparent than in the past.”⁵ Nevertheless, there was already reluctance expressed by certain Ministers to do away completely with ministerial discretion in the appointment of advertising agencies to assist them in the advertising needs of their various departments. After discussion, a compromise was reached at the Cabinet level: if as a result of the competitive process two agencies submitted approximately equivalent bids, the Minister concerned would have the right to choose between the two bidders. Eventually this was to become the “10% rule” by which, if two competitive bids were evaluated as being within a range of 10% of each other, either one of them could be accepted at the discretion of the relevant Minister.⁶ This was the first undermining of a completely competitive process.

On April 14, 1994, Cabinet gave general approval to the new policy, including the 10% rule.⁷ At that time the guidelines had yet to be drafted in final form, but the adoption by Cabinet of the new policy apparently permitted Mr. Chrétien to believe that, for the future, the selection of advertising agencies would be as he had promised the electorate, that is to say open, transparent and competitive. That was what he communicated to his colleagues in the letter written on May 9, 1994,⁸ to each Minister of his Cabinet (reproduced in Figure V-I).

Figure V-1: May 9, 1994, letter from Prime Minister Chrétien



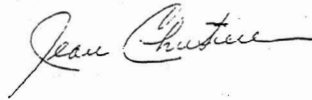
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At Cabinet, we also agreed that contracting procedures for polling, advertising and communications must follow a competitive process, similar to the procurement of other services purchased by the government. Polling and advertising contracts should be open to all qualified suppliers, based on clear criteria, and be subject to a fair and competitive process. Normally, ministers will not be involved in the selection process unless two or more bids are judged to be of equivalent value. In these cases, it will be left to ministerial discretion to choose among these equivalent bids.

You should also ensure that your department supports the government's efforts to become more transparent and accessible. I am therefore encouraging you to release the results of any public opinion research conducted by your department within 90 days of receiving a final report. It may be necessary to withhold some findings using exemptions permitted under the Access to Information Act, but complete disclosure should be the norm.

As you know, your department is now leading the process of ensuring these changes are reflected in the appropriate government policies and procedures. Until such time as they are revised, I expect you and your officials to operate in the spirit of the attached guidelines.

Yours sincerely,

A handwritten signature in cursive script, reading "Jean Chrétien". The signature is written in dark ink and is positioned to the right of the typed name "Jean Chrétien".

A major debate then ensued concerning the inclusion of price as a criterion in the process of selection of an advertising agency. Early drafts of the proposed guidelines all included price as a relevant factor, and at the Cabinet meeting of April 14, 1994, at which the subject of the new policy was discussed, approval was given to the following statement:

The competitive process is to be open, possibly incorporating a two-step process when a significant number of suppliers wish to bid. Under this process a convenient number of those deemed best qualified to provide the required service would be requested to submit detailed, priced offers.⁹

In spite of this clear direction, Mr. Guité and the advertising industry, with which he was obviously on very friendly terms, together mounted a concerted campaign to exclude price as a criterion in the selection of advertising agencies.

Mr. Guité acknowledges that he worked very hard to convince the persons at Treasury Board responsible for drafting the guidelines to exclude price as a factor. It was his opinion that the essence of successful advertising is creativity, and that it is impossible to put a price on the creative process. He made representations to that effect to the persons in the Privy Council Office involved in the development of the policy. He also encouraged executives he knew in the advertising industry to lobby to exclude price from the competitive process.¹⁰ Typical of these efforts was a letter sent to him on June 7, 1994, by the President of the Institute of Canadian Advertising,¹¹ which represented a substantial proportion of the industry. The letter is reproduced in Figure V-2.

Figure V-2: June 7, 1994, letter from President of the
Institute of Canadian Advertising

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PW - 008995

JUN 8 '94 15:37 FROM INSTITUTE OF CDN ADU

PAGE.002



June 7, 1994

Mr. J.C. Guité
Advertising Management Group
151 Slater Street
Suite 215
Ottawa, Ontario
K1P 5H3

Via Facsimile

Dear Mr. Guité:

Advertising Agency Selection - Remuneration

This letter is further to our recent discussions regarding the selection process for advertising agencies.

It is my understanding of the proposed Federal Government guidelines that, in most respects, they represent an efficient and fair procedure for interviewing and appointing advertising agencies. One aspect, however, remains a concern to ICA and that relates to the matter of agency remuneration and how this important subject is handled in the Government's proposed guidelines.

The basic service of any advertising agency is to generate ideas. These would include regular creative and publicity materials, but also cover media and distribution ideas, research ideas, positioning and philosophy ideas and strategic ideas. It is a well-accepted industry position that ideas cannot be, and should not be, purchased on the basis of price or remuneration. Ideas are generated by creators and artists and agency services should be likened to musicians or sculptors, not to the acquisition of hard-goods or services such as insurance, computer software or banking.

Experience has shown our industry that an advertiser who selects an advertising agency largely on the criterion of price is buying a very short-term or non-existent benefit. It would be counter-productive for the Federal Government (or any other reputable advertiser) to determine agency selections on a low price or lowest price basis.

It is important, however, to recognize that agencies should be compensated on an astute, competitive basis. A thorough procedure of searching for the proper agency should be based on other criteria; then compensation can be negotiated with the chosen finalist.

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112 WHO IS RESPONSIBLE? FACT FINDING REPORT

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Mr. J.C. Guité

Advertising Management Group

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The following quotation on this subject is from a well-respected publication, "Managing Agency Relations" of the Association of National Advertisers, Inc.:

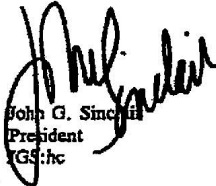
"Advertisers often focused on cost reduction, as such, ignoring the question of how best to maintain the quality or value of the agency service they received. In many instances the desire to reduce costs was so strong that advertisers lost sight of the fact that there would inevitably be some kind of reaction to reduced compensation on the part of the agencies."

The ANA has long recognized the peril of being guided by price and recommends that it not play an important part of the selection process.

It is hoped that the proposed guidelines will correctly position the matter of agency remuneration. It's a critically important consideration and will have a significant effect on the future efficacy of government programmes.

Our organization would be pleased to provide further information or dialogue on this subject if you wish.

Sincerely,



John G. Sinclair
President
JGS:hc

A letter along the same lines, dated June 7, 1994, was written to Mr. Guité by Claude Boulay in his capacity as President of the Association des agences de publicité du Québec.¹² Mr. Boulay was also the president of Groupe Everest and a part owner of the agency which would later be designated as Agency of Record for the Government; in those capacities he was enabled to profit enormously from the fees and commissions generated from the Sponsorship Program, which, of course, at the time he wrote the letter was no more than a future possibility.

Mr. Guité had frequent and easy access to Mr. Dingwall. He showed the Minister these and other letters he had obtained from representatives of the advertising industry, and he gradually was able to persuade Mr. Dingwall that price should be dropped from the guidelines.¹³

On this subject, Mr. Guité's testimony is contradictory. When he first testified at the Ottawa hearings of the Inquiry, he indicated that he had, over time, persuaded Mr. Dingwall to exclude price from the criteria. When he reappeared at the Montreal hearings, he stated that Mr. Dingwall, together with his Executive Assistant Warren Kinsella, had at no time wanted price to be a factor; otherwise, politicians would not be able to hire the agencies they favoured, which had been involved in their election campaigns.¹⁴ On this subject as on others, Mr. Guité was not entirely a reliable witness.

Mr. Dingwall in his testimony acknowledges that there was a debate over whether to include price as a criterion. His Deputy Minister, Mr. Quail, appropriately supplied information and arguments on both sides of the question. The Assistant Deputy Minister, Mr. Neville, was in favour of retaining price as a factor,¹⁵ whereas Mr. Guité, whom he described as their "advertising guru," wanted it out, and supplied him with evidence of representations from the private sector to the effect that price should not be part of the selection criteria. He allowed himself to be persuaded by Mr. Guité,¹⁶ and Mr. Neville admits that he lost the argument.¹⁷

Probably Mr. Dingwall's version is to be preferred to that given by Mr. Guité in Montreal. In any event, no matter how the change in position was arrived at, price ceased to be a criterion for what was supposed to be a competitive process when Appendix Q reached the final form in which it was approved by Treasury Board. All references to price in Appendix Q had by then disappeared, although there were references to "value." The final decision to exclude price must have been made at the last minute: a draft of the guidelines, dated June 10, 1994, would have made price a factor worth 30% of the evaluation of a candidate, as appears from the following extract from the document:

2A The contracting authority will determine "best value" by using the following criteria and criterion weighting (whose sum is a possible total value of 1000 points) in evaluating the bids from prospective suppliers of "advertising services":

- i PRICE 300 points 30%
All forms of remuneration and payment schedules and structures, including administrative and management fee schedules; premiums; commissions; interest; taxes and duties
- ii EXPERIENCE 250 points 25%
Professional qualifications; track record; previous experience with government accounts; availability of senior personnel, talent, professionals; strength of support services.
- iii CREATIVITY 250 points 25%
Innovation; imagination; inventiveness; originality in proposal; understanding and development of program and media planning requirements, including cost effectiveness.
- iv KNOWLEDGE 100 points 10%
Awareness of institutional goals and government objectives; sensitivity to affected publics.
- v SUITABILITY 100 points 10%
Adaptability, motivation, commitment of the prospective supplier and its staff through interview and project proposal¹⁸

On this draft, opposite the paragraph headed “PRICE,” is the handwritten notation “out.” In his testimony, Mr. Dingwall said that he does not know whose handwriting this is.¹⁹

In its final form, Appendix Q²⁰ foresees either open bidding for an advertising contract or the creation of a pre-qualified suppliers list by a selection process, followed by competitive bidding for each contract by the agencies which had succeeded in having their names retained on the list. Open bidding would be used only in connection with advertising contracts.

5.4 Contracting Rules for Sponsorships

For sponsorship contracts, the process leading to inclusion of agencies on a pre-qualified suppliers list was invariably used. It was supposed to be a two-step process.

The first step for selecting a contractor consists of what is called pre-qualification. The contracting authority, which would always be PWGSC, issues a public call for agencies wishing to supply the stated advertising and communication needs of a particular department. Agencies are asked to communicate their interest and complete a questionnaire, prepared by PWGSC, intended to establish their capabilities, relevant experience and expertise. The completed questionnaires are then evaluated by a selection committee, usually consisting of six persons, representing the department involved, the public and representatives of PWGSC. These examiners individually evaluate the questionnaires on the basis of the criteria established in the guidelines; the results are combined, and in this way each application is rated. In some instances, some of the best applicants are invited to make oral presentations before the selection committee. The desired number of applicants having the best ratings are then placed on a pre-qualified suppliers list, subject to approval by the Minister of the department concerned. This pre-qualified suppliers list remains in effect for a year or more.

The second step in the process occurs when the department has a specific advertising need. At that time, all the agencies on the pre-qualified suppliers list are invited to bid competitively. The best bid results in the awarding of a contract.

On February 2, 1995,²¹ the Government made an important policy decision. The interpretation of the requirement in Appendix Q that “only Canadian owned and controlled companies will be considered for advertising contracts”²² was changed from 51% to 100% ownership.²³ According to a briefing book prepared on October 12, 1995, the change was announced by Mr. Guité to the advertising industry on directions given by Mr. Dingwall’s office,²⁴ and was supported by the PMO at the highest level.²⁵

The policy change generated a flurry of memos within the Government. The first one was sent by Jocelyne Bourgon, the Clerk of the Privy Council, to Jean Pelletier, the Prime Minister’s Chief of Staff, on May 16, 1995. Another unsigned memo prepared around August 31, 1995, from Ms. Bourgon to the Prime Minister, deals with the same issue. While this memo may not have been seen by Mr. Chrétien, it would appear from notations on the document that it was discussed with Mr. Pelletier.

While both memos attribute the policy change to Mr. Dingwall, months later PCO was not able to confirm whether Mr. Dingwall’s office had “consulted within government before making this change.” PCO also believed that Mr. Dingwall made the change “after receiving representations from various Canadian firms.” Other memos, prepared for Mr. Quail or by Mr. Quail for Ms. Bourgon, do not include any official notice of the change in the interpretation of the policy, which is strange given its importance.

That the announcement of the policy change took place on February 2, 1995, is confirmed by industry magazine articles.

Two advertising agencies that applauded the change, BCP and Vickers & Benson,²⁶ which are close to the Liberal Party, benefited from the new interpretation and became the biggest recipients of advertising contracts reviewed by this Commission.²⁷ More important, the change took effect on

February 2, 1995, the first day of the Heritage Canada selection process, which will be reviewed later, by which both BCP and Vickers & Benson, along with three other agencies, were selected. This cannot be mere coincidence. Mr. Guité expresses the opinion that this requirement favoured agencies friendly to the Liberal Party, all of which at that time were 100% Canadian owned.²⁸ The documentary evidence supports his testimony. Once again, it would appear that political considerations affected the formulation of an administrative policy.

5.5 Irregularities in the Application of the New Contracting Policy for Advertising

In practice, the requirements of Appendix Q for a second step, the competitive bidding process, were totally disregarded. In many instances there were also irregularities in the preparation of the pre-qualified suppliers list, but in all cases the second step was simply ignored. Sometimes only one supplier would pass the pre-qualification and would therefore automatically qualify for all of the advertising contracts from the department. Where there was more than one agency on the pre-qualified suppliers list, Mr. Guité would simply choose which of them would get the contract, with or without input from the department seeking advertising assistance.

No one in the Government admits to having been aware that the careful procedure prescribed in Appendix Q was being systematically disregarded by the Executive Director of the service involved.²⁹ It is difficult for an outsider to understand how such a total disregard for a carefully crafted and important government policy could have been unknown by everyone, but according to all of the witnesses who testified on this question, that appears to have been the case.

Mr. Guité was required by Treasury Board to report periodically upon the implementation of Appendix Q. He dutifully forwarded reports through Mr. Quail to Treasury Board, in which he stated that the requirements of Appendix Q were being strictly observed and that all advertising contracts were being let competitively. This was simply untrue. On May 25, 1995, the Honourable

Art Eggleton, who was then President of the Treasury Board, wrote to Mr. Chrétien to advise him that a reduction of expenditures on advertising was in accordance with expectations, and that “I have every expectation that the information which will be provided. . . on the level of competitive contracting which has been achieved will be another source of satisfaction.”³⁰ On June 2, 1995, an aide-memoire to the Ministers of the Treasury Board reports that for the period between July 1 and December 31, 1994, advertising contracts exceeding \$30,000 were 100% competitive.³¹ This report, we may presume, was based upon the information being provided by Mr. Guité.

On August 4, 1995, Mr. Chrétien responded to Mr. Eggleton:

[Emphasis added]

I am impressed with the high percentage of contracts awarded on a competitive basis. It appears that we have been able to deliver on our commitment to make the process more open and competitive. I trust we will not allow this early success to in any way diminish our resolve to improve the contracting process. *I would ask you and your officials to remain vigilant over the awarding of polling and advertising contracts.*³²

The Commission has not been informed by anyone of any vigilance brought to bear on the administration of Mr. Guité’s organization. He proceeded for the next five years, until he retired in 1999, to award advertising contracts, and sponsorship contracts which he considered to be a form of advertising, to agencies essentially as he pleased and without the slightest pretense of respecting a competitive process. No one appears to have questioned the procedures which he was following, and no one, from his immediate superiors on up to the highest levels, ever bothered to verify whether or not Mr. Guité and the employees under him were awarding advertising contracts in accordance with Appendix Q. Indeed, from 1995 on, he was explicitly exempted from making any further reports to Treasury Board with respect to the success achieved in implementing the new *open, transparent and competitive* policy.³³

5.6

Tourism Canada Contract

An example of how advertising contracts were awarded without respecting the competitive process is cited by the Auditor General in Chapter 4 of her November 2003 Report at page 6.³⁴ Because this particular contract was the subject of testimony lasting for several days, and because it furnishes a good example of how Appendix Q was circumvented, it deserves to be described in some detail.

In July 1994, almost immediately after the formal adoption of Appendix Q as a Treasury Board policy, Mr. Guité, as Director General of the Advertising and Public Opinion Research Sector (APORS), published a notice of a competition to be held to select an advertising agency to provide a full range of marketing support services to Tourism Canada, an agency of Industry Canada, whose mission was to promote tourism in Canada. The notice listed the requirements of the agency to be selected, the last of which was “substantial knowledge of Tourism Canada’s prime prospect – residents of the United States.”³⁵

A large number of advertising agencies indicated an interest in the competition and completed questionnaires.³⁶ After the agencies had been evaluated, several of them, including Vickers & Benson and BCP, were invited to make presentations to the selection committee on September 14 and 15, 1994. Following these presentations, the selection committee prepared its report, dated September 19, 1994, addressed to Tourism Canada, in which it indicated that Vickers & Benson had been given the highest score of 529 points and had been rated by all the members of the committee as the best agency for this contract. BCP had the second highest score of 509 points and was rated in second place by five out of six members.³⁷ The report concludes as follows:

Committee Recommendation

On the basis of the review described, the Committee wishes to make the following recommendation:

That Vickers & Benson of Toronto be awarded the advertising/communications contracts for Tourism Canada.

Should Tourism Canada wish or have a need for more than one agency, the Committee recommends that the additional agency(ies) be selected based on the ranking established by the Committee.³⁸

The report was submitted to the Honourable John Manley, Minister of Industry Canada, who approved it.³⁹ The letter from the DM seeking his approval contains the following paragraphs:

The department agrees with the Committee's findings and recommends that you approve the selection of Vickers and Benson of Toronto as the agency responsible for the United States component of our tourism marketing program. If any additional funding is provided for that market, it would be added to their contract.

Given the possibility of additional funding being allocated to tourism marketing for a domestic program, we recommend that if such funding is provided, you approve the selection of BCP Advertising as the agency responsible for that program.⁴⁰

A letter dated October 6, 1994, addressed to BCP,⁴¹ advises it that another agency had been chosen to act as Tourism Canada's advertising agency, but Yves Gougoux, the president of BCP, testifies that his agency has no record of having received the letter.

On October 25, 1994, Prime Minister Chrétien made a speech to a tourism industry conference in which he announced a significant increase in government funding for tourism advertising.⁴² In the weeks following, PWGSC awarded contracts to Vickers & Benson for Tourism Canada's advertising programs in the United States and the Pacific Rim, while BCP was awarded the contract for advertising in Canada.⁴³

Although Mr. Guité expressed the opinion in his testimony that BCP was awarded this contract, which brought it over \$65 million in government business over the next decade,⁴⁴ as a result of Mr. Gougoux's direct intervention with the Prime Minister or the PMO, this allegation is totally unsubstantiated and flatly denied by Mr. Gougoux. The notes made by personnel of the Office of the Auditor General of a telephone interview they had with Tom Penney of Tourism Canada were introduced into evidence.⁴⁵ Mr. Penney is reported as saying that there had been an intervention with the PMO by Mr. Gougoux, but this affirmation does not appear to be based upon personal knowledge of the alleged intervention and is probably the result of what Mr. Penney had been told by Mr. Guité. His statements, not made under oath, represent hearsay evidence which is not reliable. The Commission is not persuaded that any such intervention took place, and has no reason to disbelieve Mr. Gougoux's testimony.

Nevertheless, the procedure leading up to the awarding of a contract to BCP was flawed. If the intention of APORS was to award contracts to more than one agency, the notice of the competition should have so stated, and the reference to "required substantial knowledge of the U.S. market" may have discouraged some prospective applicants, possessing Canadian experience only, from participating in the competition.

Although there is no evidence of any impropriety committed by BCP, the way in which it obtained the Tourism Canada contract led to suspicions, unfounded in fact but nonetheless damaging to its reputation, that it obtained the contract because of its well-known connections to the Liberal Party of Canada, for which it has repeatedly worked during election campaigns. Such suspicions also tend to undermine the confidence of the public that advertising contracts are to be awarded on the basis of the capacity and experience of the agency concerned, and not on the basis of its political connections. The Commission agrees with the Auditor General that the availability of substantial new funding for Tourism Canada advertising activities in Canada as well as in the United States made it necessary to hold a new competition, open to all interested parties, in which the new objectives of Tourism Canada were clearly stated.⁴⁶

The Auditor General's review of advertising contracts also included irregularities with respect to Justice Canada's firearms advertising campaign, Industry Canada's advertising campaign for the Year 2000 ("SOS 2000") and the advertising campaign related to the *Clarity Act* ("Project lumière"). These irregularities will be more fully discussed later in this Report in relation to Jean Brault, Gilles-André Gosselin and Paul Coffin.⁴⁷

5.7

Use of Communication Agencies for Sponsorships

Since the personnel within PWGSC handling advertising were insufficient in number to administer by themselves the events and projects that were to be sponsored, they had always used communication agencies for this purpose. The agency was paid a commission as compensation for managing the sponsorship. Mr. Guité believed that 15% of the amount of the sponsorship was the industry-standard commission rate payable for the placement of advertising in the media, and gave no thought to the possibility of negotiating, or attempting to negotiate, a lower commission rate, even for sponsorships of great value.⁴⁸ As will be seen, employing a standard commission rate of 15% sometimes resulted in ludicrously exaggerated commissions being paid to agencies that often had little to do in exchange for this compensation.

When the sponsorship contract required the agency to do creative work such as designing posters or writing promotional material, the agency was allowed to charge additional sums for such work, based upon various hourly rates for the personnel employed, depending upon the skills and experience of each of them.⁴⁹ There was no price competition in the area of production costs; they were usually loosely estimated in advance, and generally the invoices to the Government for production costs were almost identical to the amount of the estimate. No written estimates were requested from the agency, and no records were kept as to the basis upon which PWGSC calculated the estimates.

In its Inquiry, the Commission discovered no instances in which an agency refused to accept a sponsorship contract on the basis that the remuneration for its services would be inadequate to cover its costs. Everything learned in

the course of the Inquiry indicates that the agencies considered the fees and commissions offered to them by PWGSC to be generous. By now we know that the owners of the agencies that handled most sponsorship contracts became very wealthy very rapidly.⁵⁰

5.8

The Agency of Record (AOR)

In the advertising industry, particularly when the advertising agency is engaged to place advertisements for the Government in the media such as newspapers, magazines, television and radio, the usual practice is to use the services of an Agency of Record, described in industry parlance as an AOR, in addition to the advertising agency engaged to design and place the advertising content. The function of an AOR is to receive in advance from the advertiser or client (in this case, the Government) the amount of the contract price and to disburse this amount for the cost of the media placement only after it had been verified to the satisfaction of the AOR that the advertisements had in fact appeared. At that time the commission and any other fees due to the advertising agency would also be paid to it by the AOR, which would retain a 3% commission for its services. In effect, therefore, the advertising agency would receive net commissions of 12%.

Dating back to the previous administration, the Government's AOR had been Genesis Media of Toronto. There was an AOR competition in February 1995. Genesis was the winner, and it was given a three-year contract with an option to renew for two more years.⁵¹ On September 23, 1997, Mr. Guité advised Genesis Media that APORS would not be extending the existing AOR agreement and that a new competition would be held.⁵²

Only two agencies, Genesis Media and a consortium in which Groupe Everest had an interest,⁵³ out of the 24 agencies that had expressed an interest in the competition, were invited to make presentations to the selection committee chaired by Mr. Guité. The consortium was chosen to be the Government's AOR, but the AOR contract was signed with another entity, Média/IDA Vision Inc.⁵⁴

At the outset of the Sponsorship Program, PWGSC did not require the use of an AOR. Each agency employed to manage a sponsorship event was given the responsibility of disbursing, on behalf of the Government, the sum due to the promoter of the sponsored event. However, starting on April 1, 1998, it was decided to use an AOR for sponsorship contracts.⁵⁵ The evidence does not disclose who made that decision, or for what reason; probably it was Mr. Guité. From April 1, 1998, until the end of the Sponsorship Program, Média/IDA Vision earned commissions exceeding \$3 million for its services as an AOR for sponsorship contracts.

5.9

Selection of Agencies in 1994 and 1995

On November 28, 1994, APORS published a public notice that the Department of Canadian Heritage (hereafter Heritage Canada) was seeking a full-service advertising agency “in support of its mandate to promote Canada’s identity and its cultural and natural heritage.” The notice specified that to be considered, agencies would have to be Canadian owned and controlled, and able to provide services to the Department’s headquarters in Ottawa/Hull and to its regional offices in Vancouver, Calgary, Winnipeg, Toronto, Montreal and Halifax. Agencies would be expected to have ability and experience in advertising, marketing and related communication activities; the qualities required of successful candidates were then enumerated. It may be noted that the public notice did not refer to a selection process leading to the qualification of a number of advertising agencies, and that it indicated that one agency only was being sought.

The notice concluded by inviting interested agencies to mail or fax a one-page letter of intent to Heritage Canada, in return for which agencies would receive a capability questionnaire. “A short list will be developed from the responses received,” the notice read.

It should be noted that the notice was silent as to the specific work requirements of the successful agency, how long its services would be required, how candidates would be evaluated and how many agencies were

needed; as already noted, the indication is that only one agency was to be selected.

Seventy agencies submitted letters of interest and were sent questionnaires, of which 31 were completed and submitted.⁵⁶

To evaluate the questionnaires, a selection committee was formed. Mr. Guité acted as chairman. The committee was composed of six members, of whom two were representatives of APORS, Andrée LaRose and Mario Parent, who had been designated by Mr. Guité; two were representatives of Heritage Canada; and two were representatives of the private sector.⁵⁷ When the committee had completed an evaluation of the questionnaires, ten agencies were put on a short list and were invited to make presentations to the selection committee on either February 2 or February 3, 1995. Four agencies made presentations on February 2 and five on February 3; one agency on the short list decided to drop out of the competition and not make a presentation.⁵⁸

The Heritage Canada representatives on the selection committee on February 2, 1995, were unable to return and continue on February 3, and were not replaced.⁵⁹ Uniformity in the evaluation process must necessarily have suffered as a result.

Of the agencies making presentations on February 2, McKim Communications had the best score, but Scott Thornley was within the 10% margin and was also chosen to be on the pre-qualified suppliers list. All five agencies that made presentations on the second day were selected. They were Groupe Everest, BCP Canada, Compass Communications, Palmer Jarvis Communications and Vickers & Benson.⁶⁰

On March 6, 1995, a memorandum was sent to the Minister of Heritage Canada, advising him of the results of the competition. The Minister signed the document, indicating his agreement with the recommendation that seven agencies had been selected to be on the pre-qualified suppliers list.⁶¹

On an unspecified date following these events, Mr. Guité wrote a memorandum to Andrée LaRose,⁶² which appears in Figure V-3.

Figure V-3: Letter from Chuck Guité to Andrée LaRose

MEMO

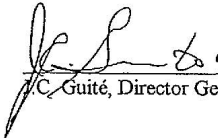
To: Director of APORS

From: Director General, APORS

Subject: Canadian Heritage agency competition

Please note that the Canadian Heritage agency selection seeking full service agencies in support of its mandate to promote Canada's identity and its cultural and natural heritage has been extended for PWGSC-APORS to support their various sponsorship and partnership programs and other communication initiatives.

The 5 firms selected following the February 3, 1995 presentations (Groupe Everest from Montreal, Quebec, BCP Canada Inc. from Montreal, Quebec, Compass Communications Inc. from Halifax, N.S., Palmer Jarvis Advertising Communications from Vancouver, B.C. and Vickers & Benson Companies Ltd. from Toronto, Ontario) will be included on PWGSC-APORS's qualified supplier list for possible communication/advertising contracts on behalf of APORS.


C. Guité, Director General

In his testimony, Mr. Guité states that the use of the Heritage Canada list of suppliers by PWGSC was decided upon during the pre-referendum period, in consultation with public servants in the Privy Council Office who were working on unity and pre-referendum strategy.⁶³ Mr. Guité and Ms. LaRose both acknowledge that the conversion of the Heritage Canada list of pre-qualified suppliers into a list to be used by PWGSC was irregular and did not respect the requirements of Appendix Q. No competitive agency-selection procedure whatsoever led to the qualification of suppliers of advertising services to PWGSC.

Neither Mr. Guité nor Ms. LaRose explained why only five of the seven firms on the Heritage Canada list were declared to be qualified as suppliers of advertising services to PWGSC.⁶⁴ It may be noted that of the five agencies qualified for PWGSC, three of them (Groupe Everest, BCP Canada and Vickers & Benson) were well known to have been closely associated with the election campaign of the Liberal Party in 1993.

Lafleur Communication Marketing (hereafter Lafleur Communication) was not put on the pre-qualified suppliers list for either Heritage Canada or PWGSC in the competition of February 2-3, 1995. Nevertheless, commencing February 9, 1995, and up to June 30, 1995, Lafleur Communication received an important number of contracts for advertising services from PWGSC, totalling \$1,873,998.⁶⁵ In his testimony, Mr. Guité could not explain how and why Lafleur Communication would have received contracts without being on a pre-qualified suppliers list.⁶⁶ Probably someone woke up to the fact that an unqualified agency was receiving a substantial number of contracts, because an advertising agency competition was announced by a notice requiring letters of interest by March 27, 1995, from agencies wishing to be considered.⁶⁷ The notice announces that PWGSC “is seeking a full-service national advertising agency to provide a complete range of advertising services,” but is otherwise silent as to the nature of the services to be provided.

Fifty-eight agencies expressed interest in the competition and completed the questionnaires provided to them.⁶⁸ Four agencies were placed on a short list and invited to make presentations. They were Allard Communication-Marketing, Cala Human Resources Canada, Lafleur Communication and Day Advertising Group Inc.⁶⁹ The Lafleur candidate was in fact a consortium consisting of Compass Communications, Allard Communications, Freeman Rodgers Battaglia, SKS Advertising and Lafleur Communication.⁷⁰

The selection committee's final report indicates that Lafleur Communication (Consortium) was recommended as the agency for PWGSC. This report, dated June 30, 1995, must have received the endorsement of the Minister because Mr. Jean Lafleur was duly advised on July 6, 1995, that his agency had won the competition.⁷¹

Many questions about this competition remain unanswered. Since the Lafleur agency was already receiving a substantial number of advertising contracts from PWGSC, the suspicion lingers that the objective of the competition was to qualify the Lafleur agency as quickly as possible to remedy, to the extent possible, the irregularity of granting contracts to an unqualified supplier. The 54 out of 58 agencies that completed questionnaires but were not invited to make presentations to the selection committee must have wondered what they had to do to be given a real chance to bid for government advertising business from PWGSC. In the Heritage Canada competition only a few months earlier, ten agencies out of 31 that completed the questionnaires were invited to make presentations.

There is no explanation as to why only one agency was selected in June 1995 when seven were selected for Heritage Canada in March 1995.⁷²

It is a reasonable inference from the foregoing that the competition held by PWGSC in June 1995 was a sham and that the result of the competition had been predetermined.

5.10

Selection of Agencies in 1997 and 2001

If the agency-selection process followed in 1995 gives rise to doubts and suspicions about the fairness and legitimacy of the results obtained, the “competition” held in 1997 was even worse.

At the beginning of March 1997, Mr. Guité decided that a new competition was necessary to select agencies to meet the communication and advertising needs of APORS, which was by now involved in awarding an enormous number of sponsorship contracts. It needed the assistance of more communication agencies than it had at its disposal as a result of the previous competitions held in 1995.⁷³

A notice was duly published, questionnaires were sent out, completed and evaluated, and a short list of ten agencies resulted. These agencies were scheduled to make presentations before a selection committee on April 22 and 23, 1997, in Toronto, and on April 25, 1997, in Montreal.⁷⁴ Mr. Mario Parent had been designated by Mr. Guité to act as chairman of the selection committee and to run the competition, but due to last-minute absences, the selection committee was reduced to only two persons, Mr. Parent and a representative of the private sector, Mr. Louis Cattapan.⁷⁵

Mr. Parent testifies that this was the smallest selection committee he had ever seen. There should normally have been, in addition to the chairman, two representatives of the private sector and two representatives of the department concerned, which in this case was PWGSC itself. When he protested to Mr. Guité that the competition should be postponed to a later date to allow a fully staffed selection committee to be empanelled, he was told that the matter could not be delayed and to proceed to hear the presentations of the agencies on the short list. Reluctantly, Mr. Parent agreed to do so.⁷⁶

The presentations made were carefully evaluated by Mr. Parent and Mr. Cattapan. The scores varied from a high of 179 points for Groupaction

Marketing to a low of 120 for Goodman Communications.⁷⁷ Mr. Parent expected that the four or five best candidates would be retained, but when he discussed the results of the competition with Mr. Guité, the latter told him that the needs of the department were such that there would be work for everyone and that all ten agencies should be recommended. Mr. Parent, who was not the sort of person to go against the explicit wishes of his superior, made the recommendation that he had been instructed to make, and all ten firms became qualified to receive communication contracts from PWGSC.⁷⁸

Among the ten firms recommended are names that figure prominently in later revelations concerning the Sponsorship Program, such as Groupaction Marketing, Communication Coffin, and Gosselin and Associates.⁷⁹

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

In 2001, PWGSC issued a standing offer bid to agencies interested in providing sponsorship or advertising services.⁸⁰ Nine responding agencies were invited to make presentations to the selection committee, five of which were involved in the period covered by the 2000 audit.⁸¹ After evaluating the presentations, the committee recommended to Mr. Gagliano that standing offers be issued to all nine, and he approved the recommendation.⁸² Of course, a competition where everybody wins is not really a competition at all.

5.11

Advertising Policy Following Cancellation of Appendix Q

During the Commission's hearings, a representative of Communication Canada testified that, before it was dismantled, the organization had tried very hard to bring order to the clearly deficient procurement process for sponsorship and advertising. The problem was compounded by the obscurity of the text of Appendix Q. In fact, the same witness agreed that Appendix Q "was not a model of clarity" and that its text was "a complicated way of saying something that could have been said much more simply."⁸³ It is reassuring to learn that communication in plain language is a stated objective of the Government's new Communications Policy that came into effect November 29, 2004.⁸⁴

The reforms and initiatives introduced by Communication Canada included the cancellation of Appendix Q in December 2002. The revised Communications Policy includes provisions dealing with advertising activities. The current management of advertising activities represents an attempt by the Government to correct the problems revealed by the Auditor General and the evidence disclosed in the course of this Commission's inquiry.

The success or failure of the new policy will be one of the subjects of study in Phase II of the Commission's work. That reform was needed was obvious, not only within the Government but to the Canadian advertising industry, which wrote to the President of the Treasury Board on July 30, 2002, as follows:

It is timely and critical for the Government to adopt a new system to replace a model that is fraught with problems and abuse and has a reputation in the industry and the public for being subject to inappropriate political influence.⁸⁵

Endnotes to Chapter V

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- ¹ Testimony of Ms. Tremblay, Transcripts vol. 21, pp. 3455-3458 (OF), pp. 3451-3453 (E); Testimony of Mr. Parent, Transcripts vol. 31, pp. 5440-5444 (OF), pp. 5435-5438 (E); Testimony of Ms. LaRose, Transcripts vol. 27, pp. 4640-4642 (OF), p. 4645 (E); vol. 30, pp. 5138-5140 (OF), pp. 5136-5137 (E); Testimony of Mr. Guité, Transcripts vol. 33, p. 5622 (OE), pp. 5624-2625 (F).
 - ² Testimony of Mr. Guité, Transcripts vol. 33, pp. 5622-5624 (OE), pp. 5624-5628 (F).
 - ³ Testimony of Mr. Pelletier, Transcripts vol. 71, p. 12337 (OF), p. 12334 (E); Exhibit P-210(A), p. 9.
 - ⁴ Testimony of Mr. Guité, Transcripts vol. 108, pp. 19786-19787 (OE), p. 19800 (F).
 - ⁵ Exhibit P-186(A), tab 8, pp. 39-43.
 - ⁶ Testimony of Mr. Dingwall, Transcripts vol. 60, pp. 10562-10565 (OE), pp. 10564-10568 (F).
 - ⁷ Exhibit P-210(A), pp. 13-36.
 - ⁸ Exhibit P-103(A), tab 8.
 - ⁹ Exhibit P-186(A), p. 68.
 - ¹⁰ Testimony of Mr. Guité, Transcripts vol. 33, pp. 5658-5659, 5693-5701, 5705, 5741-5742 (OE), pp. 5664-5665, 5705-5714, 5718, 5759 (F); vol. 108, p. 19784 (OE), p. 19797 (F); Exhibit P-103(A), tab 21.
 - ¹¹ Exhibit P-103(A), pp. 146-147.
 - ¹² Exhibit P-103(A), pp. 141-143.
 - ¹³ Testimony of Mr. Dingwall, Transcripts vol. 60, pp. 10574-10575 (OE), pp. 10578-10579 (F).
 - ¹⁴ Testimony of Mr. Guité, Transcripts vol. 108, pp. 19786-19789 (OE), pp. 19799-19800 (F).
 - ¹⁵ Testimony of Mr. Neville, Transcripts vol. 41, pp. 6976-6978 (OE), pp. 6974-6977 (F).
 - ¹⁶ Testimony of Mr. Dingwall, Transcripts vol. 60, p. 10574 (OE), p. 10578 (F).
 - ¹⁷ Testimony of Mr. Neville, Transcripts vol. 41, p. 6977 (OE), p. 6976 (F).
 - ¹⁸ Exhibit I86A, pp. 149, 150.
 - ¹⁹ Testimony of Mr. Dingwall, Transcripts vol. 60, p. 10675 (OE), p. 10579 (F).
 - ²⁰ Exhibit P-16(A), tab 1, pp. 7-19 (E), pp. 20-32 (F).
 - ²¹ Exhibit C-103(B), p. 516.
 - ²² Exhibit P-16(B), p. 48.
 - ²³ Exhibit P-208(E), p. 84.
 - ²⁴ Exhibit P-103(B), p. 516. Exhibit P-16(A), p. 172.
 - ²⁵ Exhibit P-188, p. 49.
 - ²⁶ Exhibit P-103(B), pp. 462-464, 466, 504, 542, 548, 560.
 - ²⁷ Exhibit P-428(A), p. 20.
 - ²⁸ Testimony of Mr. Guité, Transcripts vol. III, p. 20322 (OE), p. 20327 (F).
 - ²⁹ For example, see Testimony of Mr. Neville, Transcripts vol. 41, pp. 7028-7029 (OE), pp. 7031-7032 (F); Testimony of Mr. Quail, Transcripts vol. 41, p. 6870 (OE), p. 6870 (F); Testimony of Mr. Stobbe,

- Transcripts, vol. 40, p. 6895 (OE), 6896-6897 (F).
- ³⁰ Exhibit P-210(A), pp. 86-87.
- ³¹ Exhibit P-103(B), tab 4, p. 363.
- ³² Exhibit P-103(B), p. 391.
- ³³ Exhibit P-103(B), p. 445.
- ³⁴ Reproduced in Appendix B to this Report.
- ³⁵ Exhibit P-413, p. 2.
- ³⁶ Exhibit P-413, p. 34, has an example.
- ³⁷ Exhibit P-424, p. 263.
- ³⁸ Exhibit P-424, p. 266.
- ³⁹ Exhibit P-424, pp. 268-269.
- ⁴⁰ Exhibit P-424, p. 269.
- ⁴¹ Exhibit P-424, p. 271.
- ⁴² Exhibit P-424, pp. 291-292.
- ⁴³ Exhibit P-424, p. 293.
- ⁴⁴ Exhibit 428(A), pp. 176-177.
- ⁴⁵ Exhibit C-375, pp. 103-104.
- ⁴⁶ Office of the Auditor General of Canada, *Report of the Auditor General to the House of Commons: Government-Wide Audit of Sponsorship, Advertising, and Public Opinion Research* (Minister of Public Works and Government Services Canada 2003), chapter 4, p. 6.
- ⁴⁷ Chapters IX, XII and XIII, respectively.
- ⁴⁸ Testimony of Mr. Guité, Transcripts vol. 33, pp. 5658-5661 (OE), pp. 5664-5667 (F).
- ⁴⁹ See, for example, Exhibit P-219(A), p. 11.
- ⁵⁰ Exhibit P-428(A), pp. 86-87, 94-95, 116-117, 125, 130-132, 155-156, 165-166.
- ⁵¹ Exhibit P-55, tab 11.
- ⁵² Exhibit P-56, tab I, p. 2.
- ⁵³ Testimony of Mr. Guité, Transcripts vol. 33, pp. 5785-5787 (OE), pp. 5808-5810 (F).
- ⁵⁴ Exhibit P-56, tabs I5 and I6.
- ⁵⁵ Testimony of Ms. LaRose, Transcripts, vol. 29, pp. 5068-5070 (OF), 5067-5069 (E); Exhibit P-428(A), pp. 57-58.
- ⁵⁶ Exhibit P-19, tabs I-3.
- ⁵⁷ Testimony of Ms. LaRose, Transcripts, vol. 28, pp. 4862-4863 (OF), pp. 4870-4872 (E).
- ⁵⁸ Exhibit P-19, tabs 4-6, 8-10.
- ⁵⁹ Testimony of Mr. Parent, Transcripts vol. 32, pp. 5542-5543 (OF), pp. 5527-5528 (E); Testimony of Mr. Guité, Transcripts vol. 33, p. 5795 (OE), p. 5816 (F).
- ⁶⁰ Exhibit P-19, tab I4.
- ⁶¹ Exhibit P-19, tab I7.
- ⁶² Exhibit P-19, tab 20.
- ⁶³ Testimony of Mr. Guité, Transcripts vol. 33, p. 5800 (OE), pp. 5823-5824 (F).

- ⁶⁴ Testimony of Mr. Guité, Transcripts vol. 33, pp. 5799-5800 (OE), p. 5823 (F); Testimony of Ms. LaRose, Transcripts vol. 28, pp. 4896-4897 (OF), pp. 4887-4888 (E).
- ⁶⁵ Exhibit P-I07, tab 1.
- ⁶⁶ Testimony of Mr. Guité, Transcripts vol. 34, pp. 5805-5806, 5850-5851 (OE), pp. 5805-5807, 5856-5857 (F).
- ⁶⁷ Exhibit P-I9, tab 21.
- ⁶⁸ Exhibit P-I9, tab 23.
- ⁶⁹ Exhibit P-I9, tab 24.
- ⁷⁰ Exhibit P-62, pp. 6-7.
- ⁷¹ Exhibit P-I9, tabs 25 and 26.
- ⁷² Testimony of Ms. LaRose, Transcripts vol. 28, pp. 4896-4897(OF), p. 4888(E); vol. 30, pp. 5130-5131(OE), pp. 5132-5133(F); Testimony of Mr. Guité, Transcripts vol. 33, p. 5799 (OE), p. 5823(F).
- ⁷³ Testimony of Mr. Guité, Transcripts vol. 34, pp. 5904-5905 (OE), p. 5914 (F).
- ⁷⁴ Exhibit P-I9, tabs 27, 29, 37 (E).
- ⁷⁵ Exhibit P-I9, tab 41 (E). Testimony of Mr. Parent, Transcripts, vol. 32, pp. 5546-5550 (OF), pp. 5531-5534 (E).
- ⁷⁶ Testimony of Mr. Parent, Transcripts vol. 32, pp. 5546-5550 (OF), pp. 5531-5534 (E).
- ⁷⁷ Exhibit P-I9, tab 41 (E).
- ⁷⁸ Testimony of Mr. Cournoyer, Transcripts vol. 32, pp. 5549-5551 (OF), pp. 5534-5536 (E).
- ⁷⁹ Exhibit P-I9, tab 41 (E).
- ⁸⁰ Exhibit P-57, tab 2.
- ⁸¹ Exhibit P-57, tab 4 (namely, Groupe Everest, Gosselin, Lafleur, Groupaction and Coffin); Testimony of Mr. Lauzon, Transcripts vol. 26, pp. 4380-4384 (OF), 4374-4377 (E).
- ⁸² Exhibit P-57, tab 4.
- ⁸³ Testimony of Ms. Forand, Transcripts vol. 42, p. 7195 (OE), p. 7196 (F).
- ⁸⁴ Exhibit P-409(BI), p. 10.
- ⁸⁵ P-I96(B), p. 109.