

AUDITS AND INVESTIGATIONS

7.1

Introduction

It is difficult for an ordinary citizen to understand how gross mismanagement of a government program can remain undetected for more than five years. It is even more difficult to understand how a series of audits and investigations conducted during that period, each of which revealed at least some aspects of the mismanagement, did not provoke a reaction from the public servants who were supposed to supervise the work of the employees implementing the program (sometimes called “oversight”) or at least enough of a reaction to prevent the continuation of the problems which had been revealed.

Within Public Works and Government Services Canada (PWGSC) there is an organization named the Audit and Ethics Branch (AEB), which has the function of conducting periodic audits of its various procurement and program management operations. In 1993, the AEB was called the Audit and Evaluation Branch, and in 1996 it was renamed the Audit and Review Branch.

In 2002 it assumed its present name. It is headed by a director general, who reports to the Deputy Minister (DM).

The existence of the AEB confirms that the Government is aware that within a department handling billions of dollars of contracts, the possibility exists of incidents of dishonesty, incompetence and error being committed by public servants. The obvious purpose of periodic audits is to discover and expose such matters, whether systemic or isolated, so that they can be corrected, and so that any incompetent or dishonest government employees can be relieved of their functions, disciplined or retrained, depending on the circumstances.

Audits may be of various kinds. A financial attest audit is designed to give an opinion on financial statements. Compliance audits seek to find out if practices and procedures of the organization being audited comply with the law and Treasury Board policies. Performance audits look into whether value for money is being received. Forensic audits are more detailed and intense, since they seek to uncover mismanagement or wrongdoing. A forensic audit will usually not be ordered unless there has been a serious complaint alleging fraud or wrongdoing, or unless a compliance audit has disclosed circumstances that indicate the real possibility of improper behaviour. No matter what kind of audit has been performed, the opinion and advice of the auditor must be fearless and uncompromising. If anomalies are discovered, they must be reported.

The internal audit function should not be confused with the role played by the Office of the Auditor General (OAG). The OAG is the Government's independent external auditor, reporting directly to Parliament, whereas the AEB reports to the DM about the departmental operations of PWGSC.

With this background, let us examine the various audits and investigations which were carried out over the years, either by the AEB or on its behalf, of the organizations within PWGSC which were handling the Government's advertising activities and sponsorships.

7.2

Management Control Framework Assessment

In March 1995 Richard Neville, the Assistant Deputy Minister (ADM) who was at that time supervising the Advertising and Public Opinion Research Sector (APORS), requested the AEB to carry out an analysis of the management control framework in effect at APORS, then a newly created organization, to ensure that it was starting out on the right foot. The objective was to find out if APORS had made appropriate plans and reporting mechanisms, and if there were proper accountability and performance systems in place. Julia Ginley, an employee of AEB, made the assessment and analysis. She signed a report dated March 25, 1995, which recommended that “at some future date an audit of compliance to the Contracting Policy...should be conducted.”¹

This recommendation was based upon interviews she had conducted with a number of key employees of APORS, including Mr. Guité and Mr. Cutler, who was at that time its manager of contracting. Mr. Cutler made certain troubling statements to her which she recorded in her notes, as “political sensitivities = allegations of bid rigging, or complaints to Minister. Answer is to follow the Rules religiously.” She was also concerned to learn that Mr. Guité was meeting the Minister’s Chief of Staff (Mr. Kinsella) once a week, and had a shredder beside his desk.²

One would think that suggestions of bid-rigging and political interference in the management of an organization charged with administering a huge advertising budget would be enough reason to call for an audit as Ms. Ginley had recommended, but Mr. Neville did not think that an audit was warranted in 1995,³ and that any deficiencies could be attributed to the fact that APORS had been formed only recently. He decided that an audit could be put off until 1996 or 1997.

7.3

Allan Cutler's Complaint

Prior to 1994 Allan Cutler was a procurement officer for PWGSC, working in the Public Relations and Print Contract Services Sector (PRPCSS) which was not then under Mr. Guité's management. However, on occasion he was called upon to negotiate contracts with advertising agencies that had been selected by APORS. Mr. Guité was very unhappy with any delay in concluding contracts. The minutes of a meeting held on November 17, 1994, to discuss this problem contain the following extracts. The minutes were prepared by Mr. Cutler, but their accuracy is not challenged.

Chuck stated that clients are disgusted with the normal contracting rules and regulations being applied by PRPCSS to advertising.

In Chuck's view...PRPCSS should only take two days to get the contract booked. Normal rules and regulations should not apply to advertising. He will talk to the Minister to have these changed.

Also he can not accept that the normal rules requiring a cost analyst and legal review are acceptable in advertising.

Chuck stated that the Minister could remove the responsibility for advertising contracting from PRPCSS and delegate authority to clients if we are going to continue to cause problems.

.....

Chuck said that advertising is clearly a competitive process and that we should not consider it non-competitive...

Chuck stated that it had taken him two weeks to convince Treasury Board that price should not be a factor in the advertising selection process. He objects to any evaluation of cost in PRPCSS preparing and awarding a contract. PRPCSS should just use boiler plate contracts and issue the same contract format to all firms, and not examine cost at all.

Chuck also stated that if he considers the price fair for advertising, PRPCSS should not dispute this. Creativity can not be costed. Any resulting invoice should just be paid. If he tells

us to issue the contract we should do so. He pointed out that the Minister could delegate the contractual authority to him.

Pierre [a different Pierre Tremblay who was then the director of PRPCSS and Allan Cutler's superior] stated that we could appreciate his concerns but that we are working in a structured environment and are responsible for applying the normal contracting rules and regulations to all contracts. In order for advertising to deviate from normal government contract policy, we would need written direction from higher levels.

Pierre stated that we will not resist any decisions made by our Minister, and will respect these decisions.

Chuck stated that he is going to discuss advertising with the Minister today to get the problem rectified.⁴

It should be noted that this meeting took place four months before Ms. Ginley's assessment described above. The minutes show that in spite of the adoption of Appendix Q by Treasury Board, Mr. Guité was not in agreement with its requirements, or with the Government's Contracting Policy in general, at least to the extent that it applied to contracts with advertising agencies. He was obviously confident of his influence with the Minister's office, and of his ability to persuade the Minister to his point of view.

Subsequent events indicate that Mr. Guité's confidence was well founded. Only weeks after the meeting of November 17, 1994, Mr. Cutler was informed that he and two other employees of PRPCSS were being transferred to APORS, and that from then on contracting for advertising would fall under Mr. Guité's authority.⁵

Shortly after his arrival at APORS, Mr. Cutler became concerned about contracting practices there. They were regularly not in conformity with the normal rules. For example, documents were back-dated; contracts were issued with no financial authority, no preliminary analysis and no legal review; information in contract files was falsified; and commissions were paid for work that was not performed. On February 5, 1995, Mr. Cutler began to keep a computer log to record his concerns, some of which he dared to raise with Mr. Guité. The latter's response was to inform him that he would

now be reporting to Mario Parent, who until then had been at a lower level than Mr. Cutler. For all practical purposes, he had been demoted.

Mr. Cutler's concerns about contracting practices at APORS steadily increased and he began to refuse to sign contracts that he considered to be questionable or improper, although he continued to prepare them for signature by others, as instructed. In April 1996, Mr. Parent explicitly ordered him to sign a contract, telling him, apparently on behalf of Mr. Guité, that the latter was tired of his refusal to approve or sign contracts, and that there would be a price to pay for refusing. Mr. Cutler refused to sign.⁶

However, he was sufficiently alarmed by Mr. Parent's vague threat that he wrote to his union representative, detailing the many irregularities which he had observed. The union representative in turn wrote to Mr. James Stobbe, then in charge of dealing with complaints of this kind.⁷ Mr. Stobbe did not favour an audit, but felt Mr. Cutler's allegations were sufficiently serious to discuss them with Mr. Norman Steinberg, the Director General of AEB. The latter delegated Ms. Janet Labelle from his office to investigate Mr. Cutler's allegations. After interviewing him and examining the documentary evidence he had accumulated, she concluded they were well founded.⁸

Although Mr. Cutler had not made an allegation that Mr. Guité was motivated by personal gain, an allegation which would certainly have required verification, Mr. Steinberg decided, over Mr. Stobbe's opposition, that there should be an audit of APORS contracting practices, since there were clearly indications of pressure on Mr. Cutler to break rules or to circumvent policies.⁹

While this was going on, Mr. Guité was dealing with Mr. Cutler in his own way. On June 11, 1996, he called him into a meeting and told him he had been declared surplus, which meant, in effect, that he had no functions to perform and no future in the public service. Mr. Cutler believed that it was a necessary preliminary step towards being fired.¹⁰ Mr. Guité says that his decision had nothing to do with Mr. Cutler's complaint to the union,¹¹ but the coincidence of dates is striking; on June 10, Mr. Cutler had met with Ms. Labelle to provide her with copies of documents supporting his

allegations. It might be noted as well that the decision to shelve Mr. Cutler was taken 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, who insisted on observing the rules, to obstruct or delay his method of handling sponsorship files.

On July 17, 1996, Mr. Cutler filed a grievance, alleging that Mr. Guité's behaviour towards him constituted an improper threat to his employment. The grievance was settled more than a year and a half later, on February 24, 1998, by a reassignment of Mr. Cutler to a new position and by a letter of apology to him from an officer of PWGSC, but not from Mr. Guité himself. The letter acknowledges on behalf of the Deputy Minister that senior management of APORS (presumably Mr. Guité) acted "inappropriately" in informing him that his position would be declared surplus, and that "questionable judgment" had been exercised. The letter goes on to say that "steps have been taken to ensure there will be no recurrence." But, in fact, to the best of Mr. Cutler's knowledge, no such steps were taken nor has the Commission been informed of any such steps.¹² Mr. Neville admits that it is surprising that Mr. Guité was not reproached or reprimanded in any way for his behaviour towards Mr. Cutler.

During the hearings, Mario Parent was questioned concerning his complaisant behaviour in signing contracts and certifying payments on the instructions of Mr. Guité, when he knew nothing about the matters he was approving by his signature. Mr. Parent testified emotionally that he had complied blindly with Mr. Guité's instructions because he remembered well what had happened to Mr. Cutler when the latter had dared to refuse to do what he was told.¹³ Mr. Parent was simply afraid of losing his job. It is probable that the other employees of APORS and CCSB who did what they were told to do by Mr. Guité were moved by similar sentiments and apprehensions.

If whistleblower legislation is to have any meaning, it must protect public servants from the kind of retaliation to which Mr. Cutler was subjected.

7.4

Ernst & Young Audit of APORS

Mr. Steinberg decided to retain the services of outside auditors to carry out a compliance audit of APORS as a result of Mr. Cutler's complaint and allegations. Ernst & Young, which did work from time to time for PWGSC, was engaged in July 1996 for this purpose. The audit team was composed of Ms. Deanna Monaghan, who was its head, Ms. Madeleine Brillant and Ms. Julie Morin.¹⁴ It was not foreseen that they would carry out a forensic audit, but if in the course of their work they uncovered reasons to suspect situations of personal gain, they would be expected to report them.¹⁵

At the time of the Ernst & Young audit, a few sponsorship contracts had already been awarded. They were included in the audit sample, but were not distinguished from advertising contracts. The audit report did not draw attention to the fact that in the case of sponsorship files, APORS was both the project authority and the contract authority.

Mr. Cutler, on the advice of his union representative and because of the pending grievance, refused to be interviewed by the auditors. For unexplained reasons, the results of Ms. Labelle's interviews and investigation were not communicated to the auditors, although they knew about Mr. Cutler's allegations.¹⁶ They reviewed a random sample of files as well as the files specifically identified by Mr. Cutler as problematic. They also reviewed 15 out of 32 competitions to select advertising agencies.

On September 13, 1996, Ms. Brillant sent Mr. Raoul Solon, who had been delegated by Mr. Steinberg to be the representative of AEB having a working relationship with the Ernst & Young team, a draft document entitled "Preliminary Survey Report," which contained the following preliminary findings under the heading "Risk Assessment":

- [APORS] could be acting in a manner not in accordance with Treasury Board policies and specific contracting policies;
- Contracts could be awarded unfairly and to the benefit of [selected] contractors;

- The tendering process could be perceived as not being transparent and open therefore potentially resulting in criticism to the government;
- The government could not receive full value for its money.¹⁷

In a subsequent draft of the same document, these alarming “risk areas” have been eliminated.¹⁸ No one from the Ernst & Young audit team could recall why these preliminary findings had been removed from the “Preliminary Survey Report,” or who suggested such removal. These “risk areas” are not mentioned in the final report of the auditors.¹⁹

The Final Report²⁰ is a 21-page document delivered by Ernst & Young to AEB in November 1996, after its contents had been discussed with Mr. Solon and others.²¹ It constitutes a severe criticism of the advertising competitions conducted by APORS, in which compliance with policy and guidelines was rare. With respect to contracting, instances of irregularities and non-compliance with rules and policies are identified in a high percentage of cases. The section entitled “Audit Conclusions and Recommendations” commences with the following statement:

Our audit findings indicated instances of non compliance to policies and procedures.²²

It then goes on to make two recommendations, which are obviously alternatives, “in order to avoid potential problems.” The first recommendation is to redirect the procurement process away from APORS to another section of PWGSC, due to the lack of trained personnel in APORS to handle this aspect of their activity. The alternative recommendation is to maintain the status quo but to implement more rigid controls.²³

When the audit conclusions were first drafted by Ms. Brillant, the opening paragraph was worded much more strongly. The draft read:

Our audit findings reveal non compliance to policies and procedures on a consistent basis. Fortunately, no legal action or public attention has resulted from the deviations thus far. In order to avoid potential embarrassing situations it is best to address the issues immediately.²⁴

The draft report was discussed with Mr. Solon before it was put in its final form,²⁵ in which “instances of non compliance” replaces the wording “non compliance...on a consistent basis.” The audit team does not recall being asked or told to change the language from the original draft,²⁶ and it is possible they decided to modify it on their own. Certainly, the original draft contains a much stronger warning that immediate remedial work is advisable.

The Final Report is preceded by an Executive Summary of four pages, which includes on the first page a General Assessment which reads as follows:

The audit of the advertising contracting process determined that APORS’ contracting activities generally follow the prescribed contracting policies and procedures but that there are recurring instances of non-compliance with specific contracting policies.

...With a few exceptions, the overall policies and procedures governing APORS were assessed as being appropriate.

We found no instances where non-compliance might have led to situations of personal gain or benefit.²⁷

Mr. Steinberg testified that the General Assessment is not a fair or accurate summary of the report as a whole, and that it gives the impression that APORS was generally following prescribed contracting policies, when in fact the report comes to the contrary conclusion.²⁸ The reference in the last paragraph to “no instances...of personal gain or benefit” leaves the reader with the impression that the auditors had examined this question, when in fact, being a compliance audit, the question of fraud or impropriety had not been looked into at all.

In their appearance before the Commission, members of the audit team of Ernst & Young were hard pressed to explain the mild wording of the General Assessment contained in the Executive Summary. They recognized that, human nature being what it is, most persons who would be expected to take cognizance of the Final Report would rely upon the Executive Summary, or even upon the General Assessment, and would not bother to read the entire

report, or, in many cases, the entire Executive Summary.²⁹ It was therefore imperative that the General Assessment be an accurate reflection of the entire report. Although Ms. Monaghan of Ernst & Young reluctantly acknowledged that the General Assessment should have been “stronger,” she continued to defend it as fair and reasonable.³⁰ Nonetheless, in seven out of 26 areas examined, APORS failed to comply with the rules, a rate of non-compliance of about 27 per cent. It cannot be seriously argued that that constituted general compliance with the contracting policies.

The established procedure at PWGSC required that the report be sent to Mr. Guité, who was expected to put together an “action plan” to remedy the problems that had been identified. Mr. Stobbe followed this procedure and says that he gave no thought to removing Mr. Guité as head of APORS.³¹ Mr. Guité’s “management response” was to agree that the procurement function should be transferred out of APORS, in accordance with the first recommendation. This response was communicated by Mr. Stobbe to Mr. Steinberg six months later, on June 5, 1997.³² No one explains why it took six months to formulate and transmit the management response. Clearly, Mr. Stobbe did not think there was any urgency.

It was also the established procedure that the audit report should be considered by the Audit and Review Committee at PWGSC, which meets, according to Mr. Quail, quarterly.³³ Consideration of the Ernst & Young report and Mr. Guité’s management response was done at a meeting of the Committee held on July 28, 1997, at which time the action plan of Mr. Guité was approved. However, the transfer of procurement out of APORS had to be delayed until administrative arrangements could be finalized. In the meantime, the Executive Summary and management response were forwarded to the Treasury Board Secretariat on September 1997.³⁴ No one alerted Treasury Board that there were serious problems at APORS,³⁵ and it could not be expected to take any initiatives on the basis of the bland General Assessment in the Executive Summary.

Mr. Quail, as a member of the Audit and Review Committee, saw the audit report, and testifies that he took it for granted that the management response would be implemented. He says that in his experience, public servants who undertake to implement action plans may be trusted to do so. He sees nothing wrong with asking the manager who is the source of administrative problems, such as those identified in the Ernst & Young report, to be in charge of implementing the changes needed to correct those problems.³⁶

In fact, the action plan was never implemented. Mr. Stobbe was responsible for supervising its implementation, and he admits that he did nothing.³⁷ No one from the AEB did a follow-up to ensure that it was implemented. Mr. Quail, although he had noted the conclusion in the report that no one in APORS had training or expertise in procurement now that Mr. Cutler was sidelined, took no action. In fact, in the autumn of 1997, he decided to integrate APORS and PRPCSS into a new organization (CCSB) headed by Mr. Guité, thus giving him more responsibility over contracting and procurement than he had had previously.

Mr. Quail sees no inconsistency in this. His reading of the Ernst & Young report did not indicate to him that there were deficiencies in Mr. Guité's management, but rather a lack of trained personnel available to him, which would be corrected by the integration of PRPCSS into CCSB. He expected Mr. Guité to follow the rules,³⁸ even if the experience with Mr. Cutler and the audit showed that this particular manager had never been inclined to follow Treasury Board policies. Mr. Quail's position on this subject is summed up in the following extract from his testimony:

Mr. Quail:

Anyway, you appoint the right people, you give them your trust, you expect them to be able to deliver, expect people to treat people with respect and you expect them to follow the rules. You have a way in which to check some of the work that is going on by way of an audit. You have the audit done, you have some results. The audit results say that you don't have the necessary expertise. I give you

the necessary expertise. You say that you are going to put it into place. I expect that is going to happen.³⁹

For all practical purposes, the Ernst & Young audit was a waste of time, money and bureaucratic effort. No changes within APORS occurred as a consequence, and the creation of CCSB did not serve to correct the issues of non-compliance with policies and regulations, but to concentrate more responsibility and authority in the hands of the same manager whose improper conduct in disciplining Allan Cutler had led to the audit in the first place. The audit report was forgotten and gathered dust until 2000, when it was belatedly remembered in the context of a new compliance audit.

7.5

Internal Audit of 2000

When Mr. Gagliano became Minister of PWGSC in 1997, he was not told there had been an audit of APORS by Ernst & Young, although he was aware that internal audits were routinely conducted of various sections of the department on a rotating basis, or as needed when the Audit Committee decided an audit was warranted.⁴⁰ Nor had his predecessor, Ms. Marleau, been informed of the Ernst & Young audit or of the investigation of Mr. Cutler's allegations. Nobody told either her or Mr. Gagliano that there was or had been any problem at APORS.⁴¹

At the beginning of 2000, as a result of a scandal which erupted concerning Human Resources Development Canada, the Government as a whole became acutely aware of the vulnerability of programs involving what is called "grants and contributions," which is bureaucratic jargon for discretionary spending. Treasury Board recommended to all Ministers responsible for grants and contributions programs that they carry out audits of those programs. Although the Sponsorship Program was not, strictly speaking, a grants and contributions program, Mr. Gagliano thought it was sufficiently comparable to one that an internal audit should be ordered. He says that he expressed this wish to Mr. Quail, who in turn asked AEB to conduct an audit.⁴²

Mr. Quail has a different recollection of the sequence of events. He testifies that the idea of the need for an internal audit came from him, that he discussed it with the Minister, and that the latter approved.⁴³

The idea to conduct an internal audit may have been provoked by an access to information (ATI) request received by PWGSC on January 11, 2000, from Daniel Leblanc of the *Globe and Mail* newspaper, who asked for “all records detailing the sponsorship budget within Public Works, since the 1994-1995 fiscal year. The records would include, without being limited to, the events that received federal money such as festivals, hot air balloons and the airing of commercials.”⁴⁴

The request was tagged “interesting” by the ATI officer handling the file, meaning that it would be brought to the attention of the Minister and Deputy Minister because of the possibility of publication of the information requested, and because such publication could give rise to questions in the House of Commons, for which the Minister would need to be prepared. Mr. Leblanc had already written news stories about some aspects of the Sponsorship Program, on the basis of previous ATI requests, but the Program had not yet become the object of much media attention.

Mr. Leblanc was contacted and agreed to limit the scope of his request. Ms. Anita Lloyd, who was the ATI officer responsible for the matter, was contacted by the Corporate Secretary of PWGSC, Ms. Dominique Francoeur, who made her aware that the file was politically sensitive, and that she was to be kept advised of its progress. In the meantime, the information and documents required from CCSB were slow in appearing, and Mr. Stobbe was known to be following the matter closely. When the material was finally received, Ms. Lloyd did not feel it responded adequately to the request, particularly with respect to the budget for sponsorships. She says that she was asked by Ms. Francoeur to interpret the request restrictively and not to seek its clarification by contacting the applicant. Ms. Lloyd was reluctant on an ethical basis to comply with this direction. She was so disturbed by what was patently an attempt to improperly limit the Government’s response to the ATI request that she consulted her own lawyer to be sure of her legal position.

In the end, the information requested was furnished to Mr. Leblanc to his satisfaction,⁴⁵ although processing the request took far longer than normal. The incident illustrates how a large government department may feel uncomfortable with an ATI request, especially when the disclosure of the information requested risks causing embarrassment at senior levels of the administration or possibly even higher.

Regardless of who or what provoked the internal audit, it was conducted in 2000. Mr. Steven Turner was at the time the acting Director General of AEB and took responsibility for the file. The audit resulted in a Report dated August 31, 2000. The key findings, as expressed in the Executive Summary, were:

- The processes used by CCSB to select and contract with the Communications Agencies and Agency of Record did not fully comply with the spirit or the letter of Treasury Board rules and directives. ...
- The sponsorship approval and decision-making process is subjective and based on professional judgement and experience. Because of a lack of documentary evidence, audit activities could not confirm that the described ad hoc processes for sponsorship approval and decision making have been consistently applied. ...
- The management framework for CCSB's sponsorship decision-making process is inadequate and does not ensure that CCSB sponsorship decisions are transparent, compliant with requirements, or appropriate to achieving value-for-money for the Government of Canada. ...⁴⁶

The audit team learned of many of the problems about which the Auditor General was to remark three years later, such as the consistent lack of documentation in the files and the use of sponsorship funds for events having little to do with the visibility of the federal presence. The expenditures related to the celebration of the RCMP's 125th anniversary in 1998-99 were given as an example.⁴⁷

The recommendations of the report to Pierre Tremblay, then the acting Executive Director of CCSB, were as follows:

- Take the necessary steps to ensure that CCSB's contracting processes comply with TB directives, policies and procedures:
- Formally implement appropriate processes and controls over the granting and management of sponsorships to ensure sound management of, control over, and accountability for sponsorship—encompassing due diligence, consistency in approach, transparency of operations and adequate reporting; and
- Implement adequate management controls to ensure that sponsorship amounts are consistently determined (at a minimum level needed to attain expected results) and appropriately documented; and, the application of effective asset management principles including: control over the disposition of interest earned on cash advances, the establishment and control of production budgets and matching expenditures, control over the inventory of promotional items, stronger linkages between the funds provided and the results achieved and sufficient reporting to support a value-for-money evaluation.⁴⁸

Mr. Steinberg briefed Mr. Gagliano on the results of the audit at a presentation made on September 20, 2000. Mr. Gagliano says that when he learned of the mismanagement of the Sponsorship Program, of which he had not previously been aware, he was furious, and immediately asked if he should call the police. He was assured by Mr. Steinberg that there was no evidence uncovered of criminal activity.⁴⁹ Next, Mr. Gagliano ordered that although the audit team had reviewed 90% in value of the sponsorship contracts, a further review of the remaining 10% should take place. This was done in the months following and did not change, but tended to confirm, the findings.⁵⁰

Finally, Mr. Gagliano says that he ordered that the Sponsorship Program should be frozen at once until an action plan to correct the problems had been put in place. The action plan, prepared in haste by CCSB, contained 3I measures intended to eliminate the problems disclosed by the audit.⁵¹ As noted in Chapter I, the freeze ordered by Mr. Gagliano does not appear to have lasted very long, if in fact it took effect at all.

Many of the problems with the administration of the Sponsorship Program that were described in the 2000 internal audit were similar, and in some cases identical, to the problems described by Ernst & Young in 1996. For example, there are similar criticisms of non-compliance with the procedure for selecting agencies, and criticisms of the decision-making process for sponsorships, of the lack of transparency and of the lack of control over the processing of payments.

In an early draft of the 2000 internal audit report, these similarities are mentioned, and the draft report includes the following text:

...no evidence was found to conclude CCSB management fully implemented the recommendations from that 1996-1997 audit. ...

In our opinion, if management had implemented the recommendations from that 1996/97 audit, the conditions found during this current audit may not have existed. To prevent a similar situation from recurring and to stress the importance of implementing actions to address the deficiencies noted in this report, we suggest the AEB conduct a follow-up audit of the sponsorship activities at CCSB approximately one year following acceptance of this report.⁵²

Mr. Steinberg acknowledges that the audit made it apparent that the management of CCSB had not only failed to implement the recommendations of the Ernst & Young report fully, but that it had failed to implement them at all. Nevertheless, the above paragraphs were dropped from the final text of the 2000 Report, which fails to mention in any way the 1996 audit. The reasons given for eliminating all reference to the earlier audit are unconvincing, to say the least; they include arguments that the audit team had not conducted tests to assess the extent to which the Ernst & Young recommendations had been (or had *not* been) implemented.

A more plausible explanation for the omission of all references to the earlier audit is the probable embarrassment they would cause to the persons who had failed to ensure that the earlier recommendations had been implemented. An internal communication dated July 26, 2000, at the time when AEB was debating whether or not to include reference to the Ernst & Young audit in

the report, reveals that Mr. Stobbe wished to suppress references to the earlier audit. Mr. Tom Murray, who was one of the persons in AEB in charge of the 2000 audit, told Mr. Pierre Lacasse, who was writing the report, not to look into the question of the implementation of the Ernst & Young recommendations, because that would have delayed conclusion of the audit. Mr. Steinberg, who was their superior, testifies that he was not aware of these instructions and would have reversed them had he known about them.⁵³

It should be recalled that the modification of the draft audit report had also occurred in 1996. In each instance, the effect of the modification had been to moderate the severity of the criticisms of management that the auditors were proposing. Such moderation is inconsistent with the obligation of auditors to be fearless in their language. An audit report should not be manipulated to make it more acceptable to the management whose administration is being tested.

7.6

Kroll Lindquist Avey Administrative Review

Kroll Lindquist Avey (Kroll) is a firm of forensic accountants that is well known to the Commission, which retained Kroll's services to assist in its investigation.

In October 2002, long before the Commission came into being, Kroll was retained by the Human Resources Branch of PWGSC to carry out an administrative review of the Sponsorship Program, with the specific objective of determining whether there should be disciplinary action taken against the employees of PWGSC involved in the contracting process.⁵⁴ The review was not to constitute an audit.

Kroll knew of the work that had already been done by a Quick Response Team (QRT), which had been created in May 2002 when the full extent of the mismanagement at CCSB was starting to be revealed. The QRT consisted of about a dozen people recruited from various parts of PWGSC, and its primary purpose was to provide quick responses to the Minister to anticipated questions in the House of Commons, where the Minister was facing a daily

barrage of questions about the Sponsorship Program. To answer these questions, it was necessary to carry out a systematic review of 72I sponsorship files opened over a period of about four years. The QRT had prepared a comprehensive report detailing many of the problems which have since preoccupied the Auditor General and this Commission.⁵⁵

Kroll was retained to do an independent review and was not given a copy of the QRT report, but had access to the same files and to the internal audits conducted by the AEB. Initially it reviewed only 45 files, with a view to documenting the standards under which the employees of CCSB were supposed to operate. Subsequently, it was asked to extend its work to an additional 91 files. It did not conduct interviews of the management of CCSB or its employees.

Kroll produced a report dated February 4, 2003, which provides an analysis of each of the 136 files studied. In 130 of them, instances of non-compliance with the law or government policies were found. The names of the CCSB employees responsible for each instance of non-compliance are given in a detailed appendix to the report; Mr. Guité's name is mentioned repeatedly, but of course he had retired by this time.

The report deals principally with two areas of non-compliance: first, in no case were competitive bids solicited for sponsorship contracts; and second, the tests required by section 34 of the *Financial Administration Act* for certification for payment of an invoice were routinely disregarded.⁵⁶

7.7

Demers Administrative Review

Upon receiving Kroll's report, PWGSC retained the services of an attorney in private practice, Mr. Jacques Demers, Q.C., who has experience in labour relations matters, to head a committee formed to make recommendations for disciplinary action against those employees who had been held to be responsible for non-compliance with Treasury Board policy. This committee interviewed all such employees except Mr. Guité, who had retired, and produced a detailed report on November 24, 2003. Its conclusions may be summarized as follows:

- Paul Lauzon had demonstrated only “benign negligence,” and considering the extenuating circumstances applicable to the files reviewed, should be the subject only of minor disciplinary action.
- Evelyn Marcoux was negligent in only one instance, and her actions should give rise only to minor disciplinary action.
- Andrée LaRose had performed all necessary verifications before signing the invoices in question, and could not be reproached.
- David Myer’s actions in certifying invoices for payment constituted serious negligence requiring a commensurate disciplinary measure.
- Pierre Tremblay was held to have demonstrated unacceptable laxity and lack of rigour for a manager at his level; in spite of the explanations he offered, he was found to have been guilty of very serious negligence that called for commensurate disciplinary action.⁵⁷ The section from that report relevant to Mr. Tremblay appears as Appendix H to this Report.

Following these findings, David Myer lodged a grievance by which he successfully challenged the recommendation that he be disciplined.⁵⁸ Pierre Tremblay retired before he could be disciplined and died before he could be called to testify at the Commission’s hearings. Evelyn Marcoux has a legitimate sense of grievance that she was singled out unfairly as negligent.⁵⁹

The overall result is that as a consequence of all of the faults, irregularities and outright disregard of the imperative prescriptions of section 34 of the FAA that have been committed and documented on numerous occasions, to date only minor disciplinary action has been taken against two public servants of PWGSC, neither of whom played an important role in the mismanagement detailed in the Report of the Auditor General.

No one in a management position at PWGSC has suffered any consequence, either financial or to his or her career prospects, because of what occurred in the Sponsorship Program.

Endnotes to Chapter VII

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- ¹ Exhibit P-3(A), tab I, p. 6.
- ² Exhibit P-3(A), tab I, document numbers I0349I2, I0349I4.
- ³ Testimony of Mr. Neville, Transcripts vol. 4I, p. 7055 (OE), pp. 706I-7062 (F).
- ⁴ Exhibit P-43(A), tab 2.
- ⁵ Testimony of Mr. Parent, Transcripts vol. 3I, pp. 5449-5450 (OF), pp. 5443-5444 (E); Testimony of Mr. Cutler, Transcripts vol. I3, pp. 2I05-2I06 (OE), pp. 2I07 (F).
- ⁶ Testimony of Mr. Cutler, Transcripts vol. I3, pp. 2I08-2I09, 2I1I-2I19, 2I24, 2I34-2I35 (OE), pp. 2I10, 2I20, 2I27, 2I38-2I39 (F); Exhibit P-43(A), tab 4, p. 700I769; Exhibit P-43(B), tab 25(A) p. I04.
- ⁷ Exhibit P-43(A), tabs 6, 7.
- ⁸ Testimony of Mr. Stobbe, Transcripts vol. 40, pp. 6907-6909 (OE), pp. 69I0-68I2 (F); Testimony of Ms. Labelle, Transcripts vol. I6, pp. 25I0-25I1 (OE), pp. 25I5-25I6 (F); Exhibit P-43(A), tab 23(F).
- ⁹ Testimony of Ms. Labelle, Transcripts vol. I6, pp. 260I-2602 (OE), pp. 26I8-26I9 (F); Exhibit P-43(A), tab I2.
- ¹⁰ Exhibit P-43(A), tabs I0, I1; Testimony of Mr. Cutler, Transcripts vol. I3, pp. 2I46-2I47, 2I50 (OE), pp. 2I5I-2I52, 2I55 (F).
- ¹¹ Exhibit P-43(A), tab I0.
- ¹² Testimony of Mr. Cutler, Transcripts vol. I3, pp. 2I48, 2I53-2I54 (OE), pp. 2I54, 2I58-2I59 (F); Exhibit P-43(A), tab I7.
- ¹³ Testimony of Mr. Parent, Transcripts vol. 32, pp. 5505-5507 (OF), pp. 5503-5506 (E).
- ¹⁴ Ms. Morin was “Julie Boisvert” at the time of the audit.
- ¹⁵ Testimony of Mr. Steinberg, Transcripts vol. I6, pp. 2485-2487 (OE), pp. 2486-2488 (F); Testimony of Ms. Monaghan, Transcripts vol. I4, pp. 22I9-2220 (OE), pp. 22I9-2220 (F); Exhibit P-44, tab I; Testimony of Ms. Monaghan, Transcripts vol. I4, pp. 2229-2230 (OE), pp. 2229-2230 (F).
- ¹⁶ Testimony of Mr. Cutler, Transcripts vol. I3, p. 2I50 (OE), pp. 2I55-2I56 (F); Testimony of Ms. Brillant, Transcripts vol. I5, pp. 2409-24I0 (OE), pp. 2409-24I0 (F).
- ¹⁷ Exhibit P-44, tab 7(B), pp. 4-5.
- ¹⁸ Exhibit P-44, tab 7(A).
- ¹⁹ Testimony of Ms. Monaghan and Ms. Brillant, Transcripts vol. I4, pp. 2296-2297 (OE), pp. 2299-2300 (F); Exhibit P-44, tab II(E).
- ²⁰ Exhibit P-44, tab II(E).
- ²¹ Testimony of Ms. Monaghan and Ms. Brillant, Transcripts vol. I4, pp. 2296-2297 (OE), pp. 2299-2300 (F).
- ²² Exhibit P-44, tab II(E), p. 20.
- ²³ Exhibit P-44, tab II(E), p. 20.
- ²⁴ Exhibit P-44, tab II(A), p. I4.

- ²⁵ Testimony of Ms. Monaghan and Ms. Brillant, Transcripts vol. 14, pp. 2296-2297 (OE), pp. 2299-2300 (F).
- ²⁶ Testimony of Ms. Brillant, Transcripts vol. 14, pp. 2251, 2262-2263 (OE), pp. 2252, 2264-2265 (F).
- ²⁷ Exhibit P-44, tab II(E), p. i.
- ²⁸ Testimony of Mr. Steinberg, Transcripts vol. 16, pp. 2528-2529 (OE), pp. 2536-2537 (F).
- ²⁹ Testimony of Ms. Monaghan and Ms. Brillant, Transcripts vol. 14, pp. 2267-2268 (OE), pp. 2269-2270 (F).
- ³⁰ Testimony of Ms. Monaghan, Transcripts vol. 14, pp. 2304, (OE), pp. 2306 (F); vol. 15 (revised), pp. 2417-2418 (OE), pp. 2417-2418 (F).
- ³¹ Testimony of Mr. Stobbe, Transcripts vol. 40, pp. 6910-6912, 6914-6915 (OE), pp. 6913-6915, 6918-6920 (F).
- ³² Exhibit P-47(A), tab 23.
- ³³ Testimony of Mr. Quail, Transcripts vol. 40, pp. 6876-6878 (OE), pp. 6877-6878 (F).
- ³⁴ Exhibit P-47(A), tab 25.
- ³⁵ Testimony of Mr. Steinberg, Transcripts vol. 16, pp. 2556-2557 (OE), pp. 2567-2568 (F).
- ³⁶ Testimony of Mr. Quail, Transcripts vol. 39, pp. 6765-6774 (OE), pp. 6775-6785 (F).
- ³⁷ Testimony of Mr. Stobbe, Transcripts vol. 40, pp. 6916-6917 (OE), pp. 6920-6922 (F).
- ³⁸ Testimony of Mr. Quail, Transcripts vol. 39, pp. 6763-6765, 6778-6779 (OE), pp. 6772-6775, 6789-6790 (F).
- ³⁹ Testimony of Mr. Quail, Transcripts vol. 39, p. 6780 (OE), p. 6791 (F).
- ⁴⁰ Testimony of Mr. Gagliano, Transcripts vol. 69, pp. 12029-12031, 12035-12036 (OE), pp. 12030-12032, 12037-12038 (F).
- ⁴¹ Testimony of Ms. Marleau, Transcripts vol. 62, pp. 10955-10956, 10983 (OE), pp. 10958-10959, 10987-10988 (F); Testimony of Mr. Gagliano, Transcripts vol. 69, p. 12030 (OE), pp. 12030-12031 (F).
- ⁴² Testimony of Mr. Gagliano, Transcripts vol. 67, pp. 11550-11551 (OF), pp. 11549-11550 (E).
- ⁴³ Testimony of Mr. Quail, Transcripts vol. 40, p. 6878 (OE), p. 6879 (F); Exhibit P-45, paras. 116-117.
- ⁴⁴ Exhibit P-117, p. 13.
- ⁴⁵ Testimony of Ms. Lloyd, Transcripts vol. 38, pp. 6555-6556, 6564, 6569-6572, 6574-6579, 6598-6599 (OE), pp. 6561-6562, 6571, 6576-6579, 6583-6586, 6608-6609 (F).
- ⁴⁶ Exhibit P-3(A), tab 4, pp. 2-3.
- ⁴⁷ Testimony of Mr. Turner, Transcripts vol. 16, pp. 2562-2568, 2570-2572 (OE), pp. 2574-2580, 2583-2585 (F).
- ⁴⁸ Exhibit P-3(A), tab 4, p. 4.
- ⁴⁹ Testimony of Mr. Gagliano, Transcripts vol. 69, pp. 11976-11978 (OF), pp. 11968-11970 (E); Testimony of Mr. Hamer, Transcripts vol. 16, pp. 2638-2640 (OE), pp. 2660-2662 (F); Exhibit P-47(C), tab 73.
- ⁵⁰ Testimony of Mr. Steinberg, Transcripts vol. 16, pp. 2639, 2643 (OE), pp. 2662, 2667 (F); Exhibit P-47(C), tab 74.

- ⁵¹ Testimony of Mr. Gagliano, Transcripts vol. 69, pp. 11977-11978, 11983 (OF), pp. 11969-11970, 11974-11975 (E); Testimony of Mr. Steinberg, Transcripts vol. 16, pp. 2644-2645 (OE), pp. 2668-2669 (F).
- ⁵² Exhibit P-46, tab I8, p. I03.
- ⁵³ Testimony of Mr. Steinberg, Transcripts vol. 16, pp. 2585-2591 (OE), pp. 2597-2603 (F); vol. 17, pp. 2680-2685 (OE), pp. 2682-2688 (F); Exhibit P-46, tab I8, p. I04.
- ⁵⁴ Exhibit P-3(A), tab I1; Exhibit P-3(B), tab I2; Testimony of Mr. Whitla, Transcripts vol. 17, pp. 2807-2808 (OE), pp. 2828-2829 (F).
- ⁵⁵ Testimony of Mr. McLaughlin, Transcripts vol. 17, pp. 2706-2709, 2712-2713, 2722-2725, 2742-2748 (OE), pp. 2712-2716, 2719-2720, 2731-2734, 2753-2760 (F); Exhibit P-3(A), tab 8.
- ⁵⁶ Testimony of Mr. Whitla, Transcripts vol. 17, pp. 2825-2833, 2835-2836 (OE), pp. 2848-2857, 2859-2860 (F).
- ⁵⁷ Exhibit P-54, pp. I6, 2I, 23, 29, 48.
- ⁵⁸ Exhibit P-I00, tab 34, p. 23I; Testimony of Mr. Myer, Transcripts vol. 3I, p. 5326 (OE), p. 5333 (F).
- ⁵⁹ Testimony of Ms. Marcoux, Transcripts vol. 26, pp. 4522-4524 (OF), pp. 4508-4510 (E).

