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# THE STAFFING AND EVALUATION OF CANADIAN DEPUTY MINISTERS IN COMPARATIVE WESTMINSTER PERSPECTIVE: A PROPOSAL FOR REFORM

*Peter Aucoin*

## 1 Introduction

There is mounting evidence that the existing Canadian model of a professional, non-partisan public service needs to be reformed if the public service is to have sufficient independence from the government of the day in order to secure its neutrality in the administration of public affairs. The existing model is one that has been reformed in many ways since it was established in the early part of the 20th century. The most important missing piece in reforms to the model is the staffing and management of the deputy minister cadre that constitutes the

professional leadership of the public service. The conventions respecting the staffing and management of the deputy minister cadre that once served to secure the required neutrality of the public service have diminished in their effectiveness.

In this paper, I first outline the basic elements of the Canadian model and its conventions as they relate to the staffing and management of the deputy minister cadre. I then introduce the political pressures on the public service from what I call the New Public Governance. I seek to distinguish this development from the New Public Management, a more loosely defined and internationally applied potpourri of public management reforms that has introduced another set of pressures on the public service but which has a different kind of impact on the issues of public service independence and neutrality. Third, I analyze the Canadian experience within a comparative Westminster perspective in order to highlight the extent to which the Canadian experience is not unique and to identify possible avenues of reform. Finally, I propose a set of reforms that builds on the traditional Canadian and Westminster conventions while establishing a firmer base of public service independence and thus neutrality in the administration of public affairs.

## 2 The Canadian Model and Conventions

The most recent reforms to the Canadian public service system have sought to reinforce the professional and non-partisan characteristics of the public service. The authority to staff the public service is vested in the Public Service Commission (PSC), an independent executive agency, headed by a President and two (or more) part-time commissioners. It is independent insofar as the authority to staff the public service is vested with the commission and not with ministers. Ministers, in other words, are deprived of what is usually considered a fundamental executive function, namely, staffing the executive's organization.

However, not all those who are conventionally regarded as public servants are appointed by or under the authority of the PSC. The two highest ranks in the public service—deputy ministers and associate deputy ministers—are appointed instead by the Prime Minister using the authority of the Governor in Council.<sup>1</sup> The most senior deputy minister is the Clerk of the Privy Council, who is also Secretary to Cabinet and Head of the Public Service, and who serves as the deputy minister to the Prime Minister. The Clerk leads the deputy minister community, and chairs the Committee of Senior Officials (COSO) that assists in managing the deputy minister cadre. The Clerk, assisted by this committee, advises the Prime Minister on deputy minister staffing and performance evaluation (Canada, Privy Council Office 2003).

## 2.1

### Strengthening Independent Public Service Staffing

The most recent reforms did not alter this traditional structure of authority. Staffing authority remains with the commission, even though the new regime is designed to have the commission delegate staffing authority to deputy ministers. The commission then holds deputies to account for their use of this authority, with sanctions that the commission can apply if it decides they are necessary. Staffing is to be based on “merit” and merit is defined in ways that are meant to guard against both partisan considerations and bureaucratic favoritism.

At the same time, the neutrality of the public service has been strengthened by the personal decision of the first President following the reform to position the PSC more explicitly at arm’s length from the deputy minister community. For many years the President of the commission participated as a member of the deputy minister community in regard to corporate responsibilities for human resources management across the public service, notwithstanding the commission’s unique status as an independent executive agency. Some were subsequently appointed

to other positions in the public service, including the position of deputy minister. These presidents were treated, in other words, as akin to a deputy minister. At present, the President of the commission no longer participates as a member of the deputy minister team.

The President of the commission is now appointed by the Governor in Council with the approval of Parliament, serves a seven-year term during good behavior, and can be removed only on address to the House of Commons and Senate. These conditions of the position clearly distinguish it from those of deputy ministers who are appointed and serve at the pleasure of the Prime Minister. What is new in these conditions is the requirement that the government's appointee be approved by the two houses of Parliament. More importantly, both the President of the commission and the Clerk have agreed that a new relationship is in order. It was noteworthy that the first president under this new regime was appointed from the Office of the Auditor General, and not from the deputy (or associate deputy) minister cadre or from the public service appointed under the authority of the PSC, and she will have reached retirement age at the conclusion of her term.

The new relationship between the President of the commission and the Clerk and the deputy minister community was needed because the President had increasingly become viewed as a member of the senior public service executive team. This raised concerns about the independence of staffing in the public service insofar as the senior executive of the public service has been seen by some to be too politically responsive to the government of the day. As some observers see it, deputy ministers now function with less independence from ministers than is required for them to ensure the neutrality of the public service. As Donald Savoie puts it, the "bargain" respecting the independence of the public service that once secured the neutrality of the service has been "broken" (Savoie 2003). The Canadian system of staffing and managing the deputy minister cadre is regarded by public

service leaders in other Westminster systems as the most politicized, given the powers of the Canadian prime minister relative counterparts in Britain, Australia and New Zealand.

## 2.2

### The Conventions of the Neutral Public Service

The existing regime for the staffing, managing and evaluating deputy ministers, in my opinion, is a fundamental part of the problem. The traditional model is based partly on convention. Formally, as noted above, the Prime Minister, as head of government, appoints, assigns, and removes deputy ministers, using the statutory authority vested in the Governor in Council.<sup>2</sup> Except in the case of the Prime Minister, who appoints his or her own deputy minister, ministers do not appoint their deputy ministers. Although they may be consulted on appointments, the appointment of deputy ministers is deemed a prime minister's prerogative. Ministers have no right to challenge a prime minister's staffing decisions. These powers in respect to the deputy minister cadre complement the Prime Minister's powers in respect to the appointment, assignment, and removal of the ministers themselves. The prime minister, in these respects, is the first minister, the chief executive.

By convention or tradition, however, the Prime Minister decides on appointments, assignments and dismissals on the basis of advice from the Clerk, assisted by COSO. Also by convention, deputy ministers are appointed primarily but not exclusively from among the ranks of the public service that is staffed under the authority of the PSC on the basis of merit, the highest rank being assistant deputy minister, although there is now increased interest in recruiting more deputy ministers from outside the service. An appointment to the deputy minister cadre is thus usually a career promotion based on considerations, by the Clerk and COSO, of ability and past performance of career public servants from the federal public service. The appointment is meant to be based on merit, as is the case with the public service that is staffed by or under

the authority of the PSC. Notwithstanding their formal appointment by the Governor in Council and the prerogative powers of the Prime Minister, deputy ministers are thereby deemed to be professional and non-partisan public servants. The prerogative powers of the Prime Minister, in other words, give way to an understanding, or bargain, that allows the public service leadership themselves to staff and manage the deputy minister cadre.

The very few exceptions to this tradition, where the Prime Minister on his or her personal initiative appoints a deputy minister from outside the public service, serve to confirm the acceptance of the convention, especially in those instances where a prime minister is seen to be acting from a partisan perspective. The tradition of the federal public service is also seen to stand in sharp contrast to the more partisan-political traditions or practices in some, if not all, provincial governments (Lindquist 2000). Where such partisan-politicization occurs, deputy ministers are appointed by the premier precisely because they are known to share the partisan persuasions of the government of the day. This usually means that these deputy ministers are recruited and appointed from outside the provincial public service in question, especially following a change in government. In some instances, attention is given to their qualifications as well (“partisan but expert”); in some other instances, partisanship and/or personal connections to the premier are the dominant, even exclusive, considerations. In the latter cases, appointments come close to being patronage appointments for past partisan services rendered and invariably have the not unexpected consequences of introducing incompetence into the public service. In any event, where partisan considerations come into play the deputy ministers in question are merely an extension of the ministry; however otherwise personally qualified, they cannot claim to be members of the professional and non-partisan public service. They are appointed by partisans acting, at least in part, on a partisan basis.

### 3 The Political Pressures of the New Public Governance

While provincial experiences over the past two or three decades indicate a general movement away from the worst excesses of partisan patronage in the staffing of their deputy minister cadres, both provincial and federal public services have been subject to the pressures of what I call the New Public Governance that has emerged over the past three decades. As discussed below, the New Public Governance is not unique to Canada; it is an international phenomenon. These pressures are political but not primarily partisan in their character. They have a partisan effect, nonetheless, because the government of the day is always a partisan entity—the governing party (or parties, in the case of coalition governments). They are the pressures that prime ministers and their ministers apply to their public services to make them as responsive as possible to their political agendas, including the maintenance or promotion of political support from specific interest group constituencies as well as from the general public as the electorate. As discussed below, the New Public Governance should not be confused with the New Public Management, although most observers do not distinguish between them.

These public governance pressures are “new” in the sense that they emanate from:

- the transparency resulting from the modern communications technology revolution;
- the emergence of greater assertiveness and aggressiveness by mass media;
- the openness that comes with the advent of a public right to access government information;
- the establishment of a host of more intrusive and independent audit and review agencies;

- the public exposure of public servants as witnesses before parliamentary committees as well as in public engagement or consultation exercises, and,
- a less deferential citizenry that demands greater public accountability by both ministers and public servants.

There has always been a political dimension to public administration, of course; politics is an inherent part of public governance. So what is new is only relatively so. At the same time, the New Public Governance has significantly raised the ante for Westminster systems by insisting that the public service not only be loyal to the government of the day but that it also be fully responsive to political direction and be and be seen to be enthusiastic and zealous in its promotion of the policies of the government. In this context, a neutral public service is viewed by some ministers not as a foundation of good public administration but as an obstacle to be overcome by ministers in the pursuit of their agenda.

### 3.1

#### Concentration of Power

One consequence of the New Public Governance is an increased concentration of power in the office of the Prime Minister. This phenomenon is well known in Canada. Prime ministers in the Westminster systems have always been more than first among equals in their governments. The pressures of the New Public Governance, however, have everywhere increased their efforts to control power and everywhere they have been more or less successful. Institutional arrangements vary, nonetheless. Canadian prime ministers may be the most powerful, given the absence of effective intra-party checks and balances within the parties that have governed in Canada, namely, the Liberals and the Conservatives. In contrast, for example, over the past two decades, Margaret Thatcher in Britain, Bob Hawke in Australia, and David Lange in New Zealand were each dismissed as party leader by



their respective party caucuses while in government, and thus each had to resign as prime minister.

The concentration of power in the office of the Prime Minister has made the prerogative powers of the Prime Minister in respect to deputy ministers even more significant. To the extent that the Prime Minister takes an active interest in the staffing, assigning and evaluating of deputy ministers as instruments to advance her or his government's agenda, the likely result is what Colin Campbell (2001) calls the "personalization" of the deputy staffing process, a form of politicization but not one that entails appointing partisans to public service positions. Deputies, nonetheless, become associated closely with the Prime Minister and her or his agenda under the guise of attending to corporate or whole-of-government responsibilities as they relate to each deputy minister's department. They are, in a sense, the Prime Minister's public service "agents" in the various departments of government. Of all the deputy ministers' accountabilities—to the Prime Minister, the Clerk as the Prime Minister's deputy minister, their ministers, the Treasury Board, and the Public Service Commission—the first is clearly the most critical for their careers, their status in the public service pecking order, and their influence in government. In this context, the scramble of deputies and other senior public servants to gain access to and influence with the Prime Minister, and/or her or his political staff, by being responsive to the Prime Minister's agenda cannot but reinforce the perception that some form of politicization is a factor in the staffing and management of the deputy minister cadre. The "court-like" character of the inner circle around the Prime Minister, as portrayed by Savoie (1999), clearly invites this appearance of politicization.

## 3.2

### Reliance on Political Staff

A second consequence of the New Public Governance has been a significant increase in the number and roles of “political staff” to assist ministers with the partisan-political dimensions of their governmental tasks. These ministerial staff are housed in the Prime Minister’s Office and departmental ministers’ offices. They are appointed personally by ministers and serve at their pleasure, with no right of tenure. They are referred to as “exempt staff” because they are not appointed according to the staffing requirements of the professional and non-partisan public service. In the Canadian system, however, they have been given the right to be given “priority” status if they apply for a position in the public service for which they are considered qualified. In this circumstance, they may be appointed without competition. In short, they can enter the public service through the proverbial back door. Given that those who serve as political staff invariably gain a measure of knowledge and experience in dealing with general administrative and policy matters, this special provision tends to mean that they have relatively easy access to most general administrative or policy positions, that is, to all but those that also require specialized technical or professional credentials.

Political staff are increasingly problematic for the conduct of good government in the Canadian system. Although they serve merely in a “staff” role to ministers, with no authority whatsoever to direct public servants at any level of the hierarchy, to the extent that their ministers rely on them to get things done to implement their agendas they invariably interact with public servants (and not merely with deputy ministers). In these interactions they will tend to use whatever influence they can to get public servants to respond, including the “spin” that the government or a minister wants to impart in governmental media communications. While so-called “spin doctors” who pressure public service communications officials may be the most visible of the political staff, they are not necessarily the ones who cause the most grief for

public servants. Those who cause grief are those who present their views and suggestions in ways that imply that they convey ministerial wishes. Evidence presented to the Public Accounts Committee and the Commission of Inquiry into the Sponsorship Program and Advertising Activities provide ample illustrations on this matter.

### 3.3

#### Responsiveness of the Public Service

In 1984, following the election of the Progressive Conservative government, an increased number and enhanced role of political staff was adopted by the new government as an alternative to an explicit adoption of a politicization of the senior ranks of the public service along the lines of the American model. While the career public service may have escaped a major assault on its very foundations, the message to the deputy minister cadre was nonetheless explicit: be loyal to the government and responsive to its agenda or expect to be sidelined in the governance process, or worse.

In fact, the Canadian public service has traditionally given high priority to its loyalty and responsiveness to ministers, even if long periods of Liberal party rule have complicated political and media perceptions of this feature of the federal public service culture. Responsiveness has not been viewed as the result of political pressure; nor has it been seen to undermine the neutrality of the public service. Rather, the public service leadership independently has placed a high priority on responsiveness as a core public service value. And, they did so because they felt that the conventions on the relative independence of deputy ministers from ministers, including the Prime Minister, were sufficiently respected to enable them to balance the values of political responsiveness and public service neutrality. Moreover, they also had confidence in their abilities to articulate to successive prime ministers and ministers the virtues and benefits of this balance—the “bargain”, as Savoie (2003) aptly calls it.

The public service may not have welcomed the suspicions of the Conservative government that took office in 1984 but, as it unfolded, its relationship with the Progressive Conservative governments of Brian Mulroney and Kim Campbell from 1984 to 1993 was not radically different from its relationships with the Liberal governments immediately before or after this period of Progressive Conservative rule. Indeed, after an initial period of transition that was rocky for the public service but even more turbulent for the ministry, the public service was paid the ironic compliment by Prime Minister Mulroney when he called on one of its own members, Derek Burney, then with the Department of External Affairs, to take over as chief of staff to the Prime Minister in order to rescue the Prime Minister's Office (PMO) from its obvious disarray.

It is important to stress, however, that the pressures that the Progressive Conservative governments faced were not unique to them simply because they were a party coming to power after what was a considerable period in Opposition (if one discounts their brief period in office under Joe Clark). Not surprisingly, these pressures did not abate with the election of the Liberal government in 1993, even though some public servants (and public service unions), who equated the popularity among many politicians of "bureaucracy-bashing" with so-called neo-conservative governments, especially those of Thatcher, Reagan and Mulroney (Savoie 1994), thought otherwise. As discussed below, these pressures are experienced in all the Anglo-American systems, and extend to governments from across the partisan-political spectrum. These pressures have been especially pronounced in the Westminster systems most comparable to Canada—Australia, Britain and New Zealand—because they all share a common Westminster tradition of ministerial-public service relations that requires a balance of loyalty/responsiveness and independence/neutrality in order to secure both good governance and good public administration.

There has been no explicit partisan-politicization of the Canadian federal public service. (The same cannot be said for all provincial governments and their public services.) At the same time, in response to the pressures of the New Public Governance, prime ministers and ministers have expected their senior public servants, starting with their deputy ministers, to be fully responsive in helping them to cope with the new political dynamics of modern governance. They may not expect their deputies to become partisans to their party. They do expect, however, that they be fully abreast of and helpful in dealing with the political dimensions of their government responsibilities and ambitions in formulating and implementing public policy. In the context of the New Public Governance environment, deputies must be and be seen to be fully on side if they are to be trusted and engaged by ministers, including the Prime Minister.

Although the tradition of the public service supports the value of responsiveness, the traditional culture also requires that it be balanced with neutrality. The pressures of the New Public Governance have tipped this balance too far in the direction of responsiveness. The public service leadership has become either too subservient to the Prime Minister, ministers and their political staff or their conventional independence has been eroded by the breaking of the bargain on the part of prime ministers and ministers. In either case, the independence of deputy ministers needs to be restored to secure the required balance and, thus, strengthen adherence to the value of public service neutrality. The new independence of the PSC is a start. The perceived need to separate the President of the commission from the deputy minister community constituted, at least in part, an admission that the deputy minister community was not a proper environment for an official charged with ensuring non-partisan and merit-based staffing in the public service. But more is required in any event. The deputy minister cadre must be incorporated into the public service by way of a new staffing

and management regime that is independent of the Prime Minister. The old bargain cannot be resurrected simply by a renewed effort at acknowledging the legitimacy of the conventions on which it was based. Such an acknowledgement would help, but a firmer foundation in law is now required, given the relentless pressures of the New Public Governance that are not about to diminish or disappear.

#### 4 The New Public Management: Management to the Fore

As noted above, most, if not all, observers make no major distinctions between the pressures on the public service that come from what I have called the New Public Governance and what is widely referred to as the New Public Management. New Public Management is a term that was coined for the major, even radical, public management changes (always labelled as reforms) in the Westminster systems over the past twenty five years, in particular in New Zealand and Britain, and to a lesser extent Australia and Canada, with Canada considered the laggard in most respects (Aucoin 1995). In the American system, the reform movement started slowly but picked up a major head of steam, at least rhetorically, with the “reinventing government” movement that the Clinton Administration adopted as its own. The World Bank, the International Monetary Fund, and the Organization for Economic Co-operation and Development, among others, have helped to spread the NPM doctrine, albeit as a potpourri of methods and techniques, as part of a “global public management revolution” (Kettl 2005).

Although there may not be universal agreement of the defining dimensions or elements of the NPM, the following pressures are among the most significant that brought about the reform movement:

- an insistence on greater economy in the use of public financial resources, especially in light of the deficit/debt situations faced by all governments at the advent of NPM;

- a relentless push for achieving greater efficiency in the management of public resources (financial, human and technological inputs) in the production of public services (outputs);
- a refocusing of service delivery so that the needs, preferences and priorities of citizens (users, consumers, “customers” of public services) take precedence over the convenience and interests of the public servants and public service organizations that provide and deliver public services to citizens (or internally to other government organizations that deal directly with the public);
- an increasingly greater concern that public servants, in designing and delivering public policy and programs, pay close attention to what needs to be done to achieve desired outcomes; and,
- an unrelenting demand by parliamentarians, the media and interested publics that public servants report publicly on the results that they have achieved.

Although public service reform is not new, NPM was seen as a revolution because of the extent to which the perceived need for reform and the general direction of reform were widespread across countries, accepted by political leaders of different partisan stripes, and pushed by reformers from both pragmatic and theoretical perspectives. In some respects, especially with the passage of time, it is clear that the Anglo-American systems were the most affected of the advanced industrial democracies. NPM reforms have been less pronounced in the continental European countries, although other forms of reform have been instituted in many of those systems. In the Canadian context, as noted, there was a more modest adoption of the NPM script, but there have been consequences for the public service.

## 4.1

### Deregulation and Decentralization

The emphasis on management in the NPM necessarily led to reforms that would deregulate the administrative system. In Canada, this meant efforts to streamline the regulatory regimes that governed, in particular, the management of financial and human resources at the departmental and operational levels of the public service. These regulations—the infamous “command and control systems”—stemmed largely from the Treasury Board, the “management board” of the federal government, but also from the Public Service Commission as well as from the central administrative or corporate management units in government departments.

Deregulation was logically accompanied by decentralization insofar as managers, from deputy ministers down the departmental hierarchies, were given greater management authority. They were also expected to assume greater responsibility and accountability as well. The intent was to overcome the impoverished state of management that resulted from excessive regulation and centralization by giving managers down the line, especially those actually administering programs or operations, expanded scope to exercise discretion in ways that would achieve economy, efficiency and effectiveness, especially the first two, in the use of the resources.

In several respects, deregulation and decentralization taken together have been the key components of NPM, for they have given managers greater room to manage. At the same time, this has pressured public service managers, starting with deputy ministers, to pay much more attention to management matters. Indeed, this has required them to manage in ways that previously were not expected of them. Previously, central management authorities in effect dictated how they had to manage and this meant that deputy ministers and their senior operational managers, relied almost exclusively on their administrative specialist



managers, in areas such as financial and personnel administration, to handle the “management” side of public administration (Hodgetts 1973). Indeed, senior managers, including deputy ministers, made no claim to be knowledgeable in these areas of functional administration. NPM was meant to change all this by making the managers, including deputy ministers, manage.

## 4.2 Decoupling Policy and Operations

A second consequence, although less pronounced in Canada than elsewhere, especially New Zealand and Britain, has been the organizational design that decoupled, or separated, responsibilities for policy formulation and policy-making, on the one hand, and the management of policy implementation or operations, on the other. The Canadian experience here has included a dozen or so “special operating agencies”, as well as three “service agencies”, including most notably the Canada Revenue Agency. Where the decoupling is used, the intended effect is to have managers responsible for operations focus their attention first and foremost on continuously improving management and achieving economy, efficiency and effectiveness.

For the most part, Canada has maintained the integrated ministerial department with a minister who is responsible for policy and its implementation. This means that the vast majority of deputy ministers head departments that do not separate policy and operations. Given the pressures noted above to make them manage, this also means that these deputies must attend not only to the traditional deputy minister preoccupations with policy, broadly defined, but also with management, that they cannot as easily shuffle off to functional specialists.

## 4.3

### Performance Agreements and Evaluations

If managers are given more authority, flexibility and autonomy, then there must be mechanisms to ensure that they exercise this authority in ways that achieve its intended results. The means that have been used are performance agreements or contracts so that managers are held to account. This requires that superiors be explicit in stating their objectives, priorities and expectations and in setting targets for subordinate managers to meet and achieve. It also means that superiors conduct appraisals or evaluations of the performance of managers using agreed performance measures for individual performance and organizational performance.

NPM has introduced a greater formalization of performance agreements and evaluation, especially at the senior levels of the public service, including the performance management of deputy ministers by the Clerk, with input from COSO, the deputy's minister, and officials in the Privy Council Office and the Treasury Board Secretariat. The evaluation of deputy ministers, among others, is linked to a system of performance-based pay. For deputy ministers, the Clerk is the key superior in setting the expected performance, assessing performance, and determining the consequences, including performance-based pay, although the Prime Minister and cabinet must approve performance awards.

## 4.4

### Marketization, Citizen Choice, and Contracting-Out

In addition to the privatization of public enterprises that has been part of NPM, the agenda has brought about much greater attention to the use of market competition and contracting-out so that the public service is subject to competition from the private sector for the provision of public services, including various internal government operations. In some cases, it is a matter of using competition to promote economy and efficiency; in others, it is to introduce elements of citizen, or

consumer, choice of service providers. In either case, it has introduced a measure of uncertainty for many public servants, as contracting-out has consequences for job security, with attendant consequences for managers and the value of a career public service.

Citizen choice and competition have also brought about a reorientation of service delivery so that it is citizen-centred. Major challenges have faced public service managers as they have sought to restructure the ways that services are delivered in line with citizen preferences and priorities, while at the same time maintaining both public services values and attention to affordability. The widespread use of new information and communication technologies has helped immensely here, although citizen-centred service delivery complicates the management of service delivery because of the tensions between the public policy requirements of programs and program delivery and the expectation of citizens, especially those who think of themselves as “customers” of public services.

## 4.5

### Performance Measurement and Results-Based Reporting

Finally, NPM has led to an enormous effort to engage in performance measurement for both results-based management and results-based reporting. The latter, in particular, has been a major development given that it is tied to and required by government commitments to Parliament that departments and agencies will report on results in ways that meet the expectations of parliamentarians. In addition, the government provides Parliament with a whole-of-government report on results of national indicators on several key areas of government policy.

Performance measurement is considered by many reformers to be the critical factor in public management reform: “you can’t manage what you can’t measure”. Many public service managers have much less

faith in performance measurement, as evidenced by the extent to which performance measurement is often tangential to managerial decisions and the degree to which the performance measurement systems used for reporting to Parliament are not used for management. Nonetheless, the widespread acceptance of performance measurement as essential to good management, as well as to public accountability, leaves public service managers with little discretion on the matter. For 2005-2006, “management for results” was the first of four “corporate priorities” set by the Clerk for the public service. These are among the expectations of the Clerk for deputy minister performance—the others relating to departmental plans and priorities and personal objectives—that constitute the performance agreement that each deputy minister has with the Clerk, as established on an annual basis.

## 4.6

### The Pressures to Manage

The most important consequences of the New Public Management have been the several pressures to improve public sector management—of financial resources, staff, and services. Although the experience of the Canadian public service has been one of more modest and incremental change or reform than in other Westminster systems, the record of improvement has been significant and on several fronts. In a number of areas, the record puts Canada at the forefront or among the best. Budget deficits have been eliminated and the debt substantially reduced. The quality of service delivery, including electronic service delivery, gets the highest international scores from citizens and independent experts alike. Inefficiencies have been reduced across a wide range of functions and operations as a result of decentralized authority, with considerable cost-savings being the result.

This “good news” receives little media attention. Media attention is focused on the shortcomings in the system, including the various

political and administrative debacles. These are matters that need to be addressed. However, there is little reason to think that the traditional system of centralized commands and controls, which severely restricted the capacity of managers to manage, constitutes an appropriate response to these kinds of debacles. On the contrary, these debacles are not “management” problems arising from poor management systems. Rather, they are the result, among other things, of managers being too responsive to political directions. That is the issue that must be addressed. A reassertion of centralized commands and controls would undermine the capacity to maintain the momentum of improvements and it would do so at a high price, financially and in terms of public service morale. Although there are dimensions of the New Public Management, as practiced in the Canadian government, which may well require revision, nothing good would be accomplished by resorting to more rules and regulations as a general reaction to recent debacles. At the same time, improved management, as measured by the standards of economy and efficiency, will not address the shortcomings of maladministration evidenced in several recent debacles. Something else is required.

## 5 Canada in a Comparative Westminster Perspective

The Canadian experience is by no means unique internationally, and especially not in the Westminster systems of Australia, Britain and New Zealand. The American system is different, of course, but the New Public Governance has exerted similar pressures. The American response has been straightforward and not very helpful to others looking for innovative practices. In a nutshell, the number of public service positions subject to appointment by the President has been subject to a huge increase, on the assumption that political responsiveness on the part of the bureaucracy is the fundamental problem. The increase has been so large that the major problem for successive presidential administrations is finding suitable candidates for all the positions. And, there is no solid evidence that the fundamental problem is the lack of

political responsiveness on the part of the public service bureaucracy, at least not in the American government where there has never been the kind of professional and non-partisan public service that developed in the Westminster systems.

## 5.1

### Similarities

The Canadian experience in respect to the staffing and management of the deputy minister cadre shares some common features with the Australian, British and New Zealand systems but also has a number of distinct differences. For the purposes of this paper, the following similarities are significant:

- the senior public servant who heads a government department or ministry under a minister—deputy ministers (Canada), departmental secretaries (Australia), permanent secretaries (Britain), and chief executives (New Zealand)—is the link between the minister/government *and* the professional and non-partisan public service;
- this official has both departmental/ministry *and* corporate/whole-of-government responsibilities;
- these officials are members of the senior public service executive team; and,
- in every case, these officials are considered to be members, and indeed the leadership, of the professional and non-partisan public service, however they are appointed or whatever their employment status/contract.<sup>3</sup>

For these reasons, one can speak of a public service leadership cadre of deputies to ministers in these four Westminster systems.

## 5.2 Differences

There are differences. In Canada, the senior public service has long been and perceived to be responsive to political direction. The Conservative governments taking office in 1957, 1979 and 1984 were suspicious that long periods of Liberal rule had politicized the upper echelons of the public service, but there were no major battles between these Conservative governments and the public service, at least not following some initial posturing. The fact that the Prime Minister had the power to appoint, assign and dismiss deputy ministers was understood and accepted on both sides of the political-public service divide to be a major instrument of democratic authority.

The same cannot be said for the other three systems, even if the differences are relative. In each case, both between the three systems and Canada and the three other systems themselves, the divide between government and its public service was deeper in terms of both the cultures and structures. The “Yes, Minister” culture, as popularized by the British Broadcasting Corporation comedy of that name which portrayed the minister as the hapless victim of a self-serving, self-regarding and self-governing bureaucracy, was certainly more pronounced in these three other systems, at least in respect to the view that the public service could claim to have a legitimately independent view on what constituted the public interest in matters of public policy and administration. As John Halligan put it in reference to Australia: “The bureaucracy was seen as too elitist, too independent, too unrepresentative and insufficiently responsive” (2004, 83). In Canada, of course, it helped that a number of prominent “career” public servants in the post second world war period jumped ship and ended up as ministers, even as prime minister (in the case of Lester Pearson, a former deputy minister!).

Equally important, each of these three other systems, prior to reforms, had institutional arrangements that made it difficult, almost impossible in some circumstances, for the Prime Minister or ministers to assert their executive authority over their deputy minister cadre. The ideal of a permanent public service extended all the way to the top; hence the British title of “permanent secretary” (or the former Australian and New Zealand title of “permanent head”). In each case, the major reforms included changes to the staffing and management of the deputy minister cadre in these systems in order to overcome what was perceived to be a lack of political responsiveness.

### 5.3

#### Australia

In Australia, the process was reformed so that ministers, and in particular the Prime Minister, came to have enhanced and more effective powers over the appointment and management of the departmental secretary cadre (Weller 2001; Weller and Young 2001). The prime minister is now fully in control of departmental secretary staffing; even the formality of a Governor-in-Council appointment has gone by the wayside. The prime minister is advised, on both appointments and evaluations, by the Departmental Secretary to Prime Minister and Cabinet, who is assisted by the Public Service Commissioner in evaluations. (The prime minister is advised on the appointment of the Departmental Secretary to Prime Minister and Cabinet by the Public Service Commissioner.) At the same time, ministers are now much more involved in the appointment process, including interviewing potential appointees. What has emerged is a form of “personalization” of the appointment process that Weller and Young suggest “may be more insidious than politicization because it is far less blatant” (2001, 173).

Departmental secretaries are appointed on contract for fixed terms up to five years. They no longer have tenure, although they can be re-



appointed. The actual length of time served by these secretaries has been declining considerably, to less than five years on average in the 1990s (Weller and Young 2001, 160). The prime minister need consult no one on the dismissal of a departmental secretary.

The prime minister assesses the performance of each departmental secretary on the advice of the Secretary to Prime Minister and Cabinet and the Public Service Commissioner who consults with the relevant departmental minister. General guidance, rather than required criteria, is used. Performance awards are based on these assessments by the Prime Minister (Australia, Public Service Commission 2003).

Beginning with Labor governments in the 1980s, and extending to the incumbent Liberal-National coalition government in the 1990s under John Howard, political staff have also assumed a major role in government. Prior to the Labor victory in 1983, the party platform proposed moving to an explicit politicization of the top ranks of the public service, in the American fashion. In office after the 1983 election, the Labor government opted instead to expand the number and roles of political staff (as previously noted, the Mulroney Conservatives in Canada did likewise after coming to office in 1984). According to Campbell, the Australian system has experienced the most pronounced use of political staff in governance of these four Westminster systems, and with mixed consequences for the effective engagement of the professional public service in public governance (Campbell 2001).

Under the two successive Labor governments that preceded the current Howard government, in office since 1996, there was increasing interest on the part of the public service in developing a more collective structure to advise on the staffing and management of the departmental secretary cadre (Weller 2001). In part, this was a response to pressures respecting politicization, and certainly to allegations of politicization (Halligan 2004; Nethercote 2003).

The election of the Howard government put an end to these musings, but not to the concerns. Indeed, six departmental secretaries were sacked without explanation when Howard government came to power, and it appointed its first Departmental Secretary to Prime Minister and Cabinet from outside the public service, a move that was regarded in most public service quarters as a blatant partisan-political appointment (Campbell 2001). Although the official in question had a public service background, he was also a former adviser to two Liberal state premiers and his willingness to express negative views of the career public service could hardly endear him to career public servants. His successor better fits the model of Departmental Secretary to Prime Minister and Cabinet promoted from the ranks of the departmental secretary cadre, illustrating perhaps the common Westminster experience that once a government is in office for some time, it is able to identify for promotion those senior public servants who are sufficiently responsive to their agendas. Nonetheless, the choice is clearly the Prime Minister's to make and there cannot but be some perception that a Departmental Secretary to Prime Minister and Cabinet so chosen owes her or his position to more than merit as defined by her or his peers, even if the Prime Minister must consult the Public Service Commissioner. In this case, the "dual role" of the Departmental Secretary to Prime Minister and Cabinet—deputy to the Prime Minister and head of the public service—can be problematic, notes Nethercote (2003), if the occupant is not accepted by other departmental secretaries as one of them.

## 5.4

### Britain

In Britain, Thatcher was known to become actively engaged in the appointment of permanent secretaries. Famously, she was wont to ask: "Is he one of us?" Her question was designed to ascertain whether the recommended candidate for appointment was inclined to her personal style of public management rather than what she took to be the

excessively bureaucratic approach of the career public service. She shocked many career public servants when she went outside the career bureaucracy for a senior Treasury appointment (Campbell and Wilson 1995). By the time she left office, she had established the expectation that the Prime Minister's approval of recommendations was not merely pro-forma (Barberis 1996).

The formal process is that the Prime Minister is advised by the Cabinet Secretary, as Head of the Home Civil Service, assisted by a Senior Appointments Selection Committee, consisting of senior permanent secretaries along with two external members. When an open competition is used, the First Civil Service Commissioner will supervise the process. Under Blair there have been an increased number of open competitions and outside appointments, especially from the private sector (as opposed to the broader public sector). This is a strategy that the Prime Minister considers fundamental to his reform program to build an open public service with no tenure for the senior ranks, including those below the ranks of the permanent secretaries (United Kingdom 2004). Performance evaluation in this context is thus carried out in the consideration of performance awards.

The process is now seen as more open than it once was and thus less of an "old boy network", although personalization on the part of prime ministers and ministers has become more pronounced in response to the "search for greater political control" (Rhodes 2001, 118).

As elsewhere, the number and influence of political staff has been increased and enhanced. This has been especially the case under the Labour Government of Prime Minister Tony Blair. Indeed, under Blair there has been some significant blurring of the boundaries and roles between the partisan-political and public service staff at the very centre of government. Indeed, Blair took the unprecedented step of giving his chief of staff and his press secretary power to issue orders to public servants (Wilson and Barker 2003, 352 and 367).

## 5.5

### New Zealand

In New Zealand, reforms to the process of appointment and management of what had been the cadre of permanent heads sought to give ministers individually and collectively a greater role in the appointment of chief executives (as they were designated by the reforms in question). Under the new model, based on reforms inspired by so-called “agency theory”, the relationships between ministers and chief executives were to be structured as relationships between “principals” and “agents”; the relationships were to be contractual in character. Ministers were to decide what should be produced in terms of public services (outputs) and what would be provided as budgetary resources (inputs) for the production of the required outputs. Ministers would then contract with chief executives for the production of these outputs at the agreed budgetary “price”. The second part of the model had management authority almost completely devolved to the chief executives so that they could decide on their own how to produce these outputs most economically and efficiently, according to the targets set by ministers. Under this scheme, in theory, ministers could contract with any department with the capacity to provide the desired outputs.

Without getting into the details of the theoretical model upon which the reforms were based, two elements need to be noted. First, the reformers wanted to end the closed career structure that had governed the permanent heads cadre. The system was to be open to those outside the public service and subject to competitive selection processes. Second, ministers, as democratic “principals”, needed to have a say and an influence, even a right of appointment in certain circumstances, to ensure the democratic legitimacy of the system (Boston, Martin, Pallot and Walsh 1991).

Although many consider the New Zealand NPM reforms to be the most radical in attacking the traditional public service model, its process for

appointment and evaluation of the chief executive cadre has ended up being the most independent of the several Westminster systems (Halligan 2004). The paradox is a classic instance of a reform being conditioned in some large part by where the system was originally on a continuum. In this case, ministers had been effectively shut out of the staffing and management of the permanent head cadre altogether; the regime was a self-governing “old boys club” if ever there was one (Boston, Martin, Pallot and Walsh 1996).

The reform established a State Services Commissioner who is responsible for open advertising and, as necessary, conducting competitions when vacancies arise in chief executive positions, chairing interview panels for short-listed candidates, and then making a single recommendation to Cabinet. At the outset of the process, the Commissioner is required to seek the input of ministers on the position and on any possible candidates. Cabinet has a power to reject the Commissioner’s recommended candidate and have the Commissioner bring forward another recommendation, and to make a unilateral appointment, although this decision must also be accompanied by a public announcement to this effect, an intended deterrent to politicization. As a matter of practice, the Cabinet accepts the recommended candidate. From 1988 to 2001, only one recommended candidate, out of over 80 recommendations, was rejected (Boston 2001).

The Commissioner is appointed by cabinet on the recommendation of the Prime Minister, but can be dismissed only following a resolution of the House of Representatives. This official heads the State Service Commission, a central management agency, reporting to a minister of state services. The Commissioner has statutory responsibilities for the state of the public service as an institution. (There is no Canadian equivalent, as some of the Commissioner’s responsibilities, in Canada, reside with the Clerk and the Privy Council Office, the Treasury Board and Secretariat, the Public Service Commission, and the Canada School of Public Service.) The Commissioner, as the employer of chief

executives, is responsible for the evaluation of chief executives and decides on their performance and its career and compensation consequences. The Commissioner also has the power, with the approval of Cabinet, to dismiss a chief executive. The Commissioner in these several roles is not the chief executive to the Prime Minister and cabinet; that position is separate. Given its responsibilities in staffing and evaluation the chief executive cadre, this position is unique in the Westminster systems, especially in securing independence from “political interference” (Norman and Gregory 2004).

This regime has its complications but has been evaluated positively by government reviews and academic specialists for its success in staffing the top ranks of a professional and non-partisan public service (Logan 1991; Boston 2001; Norman 2003; Schick 1996).

## 5.6

### A Proposal for Reform

In Australia and Britain, the practice and form have moved closer to the Canadian tradition. In most important respects, these two systems now look very much like the Canadian model: that is,

- a concentration of power under the Prime Minister;
- a coterie of political staff exercising considerable influence in governance; and,
- a cadre of senior public service executives staffed and managed by a prime minister who expects them to be fully responsive to political directions and to actively promote the implementation of the government’s agenda.

The successive prime ministers of different partisan persuasions who have governed over the past three decades constitute ample evidence that this dynamic of New Public Governance is neither an idiosyncrasy of a particular prime minister nor the result of a particular partisan

ideology. New Zealand stands out here. This is not because it has not been subject to the same pressures; it has been. Rather, it is because, among other things, it put in place a more independent process for the appointment and evaluation of its chief executives that has placed constraints on the capacity of ministers, including the Prime Minister, and their political staff to exert undue political influence over these chief executives and thus over the public servants who are their subordinates.

In each of Australia, Britain and Canada, there have been major debacles that have raised serious questions about the pressures that ministers and political staff exert on public servants in some circumstances, as well as the roles of political staff in the public management process (Keating 2003; Weller 2001; Campbell 2001; Wilson and Barker 2003). These same episodes also raise serious questions about the public service cultures that are fostered by the dynamics of the New Public Governance. The most important of these focus on the degree to which public servants consider themselves required to be submissive to political direction under the guise of ministerial responsibility and public service loyalty. Are public servants, as one British scholar put it, required to be “promiscuously partisan” in an attempt to square loyalty to the government of the day with public service neutrality (Wilson 1991)? Must public servants be advocates, even cheerleaders, for the government’s agenda in order to demonstrate their loyalty?

With the exception perhaps of Australia, there has not been a major outbreak of partisan-political staffing of permanent secretaries, departmental secretaries or deputy ministers (as there clearly have been in both some Canadian provincial governments and some Australian state governments). In this sense, these public services, including Australia, proclaim themselves to be non-partisan and thus neutral. And, in each of these systems, the rhetoric from prime ministers, ministers and senior public servants themselves supports the tradition of a neutral public service, even though some recent reforms are hard to square with the

traditional notion of a career public service as the means to a neutral public service.

In the Canadian case, the critical question at this point in time is whether the existing regime for staffing and evaluating deputy ministers is adequate to meet the requirements of a neutral public service that will thereby meet the highest standards of integrity and competence. The existing regime is predicated on three major assumptions:

- first, the Prime Minister will appoint as Clerk a public servant who is judged by her or his peers to be among the most suitable, preferably the most suitable, for public service leadership at a particular point in time;
- second, the Prime Minister will normally defer to the Clerk's recommendations on deputy minister appointments and dismissals (or other sanctions); and,
- third, the Clerk will evaluate the performance of deputy ministers accordingly to public service criteria that encompass demonstrated integrity and competence.

In short, the regime assumes that the independence and thus the neutrality of the public service is secured by the Prime Minister respecting the judgement of the senior public service executive as to the staffing of the deputy minister cadre, including the Clerk, and by the Clerk then managing the deputy minister cadre, with her or his peers, in ways that conform to professional public service values.<sup>4</sup>

The primacy of the Prime Minister in this regime is both constitutional and democratic: the Prime Minister exercises the powers of the crown in making these important Governor-in-Council appointments; the Prime Minister is the leader of the government of the day under the democratic system of responsible government. But, of course, the Prime Minister is also a partisan. And, it is for this reason that the Prime



Minister is expected to defer to her public service executives. This is the convention. At best, the Prime Minister exercises discretion as a democratic check on these executives so that they function as professional public servants and do not use their delegated powers to promote their own self-interests.

Canadian prime ministers are especially powerful, both absolutely and in comparison to their Westminster counterparts. The reason is that they are subject to comparatively fewer constraints. The Canadian Charter and the courts as well as the federal distribution of jurisdiction between the federal and provincial governments are huge constraints on executive government and the federal government in the Canadian federation, but they do not act as major constraints on the political executive powers over the management of the public service. Access to government information is a constraint, but pressure applied to the public service by ministers and/or their political staff can minimize the record that is kept. The powers of external audit and review, especially as exercised by the Auditor General, are substantial but are usually minimized by the weaknesses of the Canadian Parliament in scrutinizing and holding ministers and officials to account. In other words, the Canadian regime is one in which a powerful partisan politician has the power to appoint and manage the public service leadership that is meant to be non-partisan and neutral with full discretion and with no transparency or external expert participation. Only by full adherence to the conventional bargain, as noted by Savoie, can the claim be made that the public service leadership so appointed is neutral and will to act independently when necessary.

Insofar as the deputy ministers come from the ranks of the public service, the likelihood of partisan appointments is diminished. However, as noted, what Campbell (2001) calls “personalization” and Bourgault and Dion (1991) call “functional politicization” cannot be ignored, even though this kind of politicization is virtually impossible to prove

given the discretionary powers of the Prime Minister to act on her or his own without explanation and the fact that the officials chosen are invariably selected from among the senior ranks where all of whom will have a claim to promotion.<sup>5</sup> At the same time, this is precisely the kind of politicization that is most likely to result in a public service that can be tempted to be willing to be submissive to undue political direction under the mistaken guise of ministerial responsibility and public service loyalty. And, it is reinforced by the significant extent to which prime ministers and ministers have allowed political staff to participate in the administrative process. As a former Australia departmental secretary to prime minister and cabinet notes, it is “the competition for influence” in the court-like inner circles of prime ministers where power has become concentrated that has driven “some public servants [to be] excessively eager to please” their political masters (Keating 2004:12).

One of Canada’s most respected former deputy ministers, Arthur Kroeger, has concluded that the Sponsorship Program debacle, as the most serious of a string of recent instances of maladministration, indicates that the public service needs “to exercise an independent role” (quoted in Greenway 2004). No one has come forth to dispute this conclusion, nor, for that matter, has anyone challenged Savoie’s conclusion that the conventional bargain is broken. The relevant question, therefore, is how to institutionalize “an independent role” for the public service and what would that mean?

In my opinion, an independent role means the institutionalization of what was the conventional bargain, namely to have the public service leadership—the deputy minister cadre, including the Clerk—staffed and managed by the public service itself but subject to a democratic check. The New Zealand system offers a model, but one that would need to be adapted to the Canadian system as well as strengthened to provide public assurance that public service independence operates in ways that serve the public’s interest in good governance and good

public management. Independence should not mean that the public service is able to frustrate the legitimate authority of ministers to take executive action. At the same time, independence should help to secure public service, and particularly deputy minister, adherence to its statutory responsibilities and obligations, such as found in the *Financial Administration Act* and the *Public Service Employment Act*.

## 5.7

### A Deputy Minister Commission

What needs to be done is not complicated. The authority to recommend the appointment of deputy ministers, including the Clerk, and the responsibility to evaluate their performance could be assigned by statute to a Deputy Minister Commission, chaired by the Clerk and consisting of a select number of senior deputy ministers and at least two external members appointed by the Governor in Council, on recommendation by the Commission, and with the approval of Parliament, for terms of five years.

The commission would recommend appointments to the Governor in Council, as required by vacancies or the recommendations of the Commission to reassign one or more deputy ministers. The Governor in Council would approve the appointment, ask for another recommendation, or make a unilateral appointment. In order for a unilateral appointment to be made, the Prime Minister would be required to disclose to the House of Commons that the person so appointed had not been recommended by the Commission. The appointment of the Clerk would differ only in that the chair of the Commission would be occupied by one of the external members for the purpose of this appointment.

The Commission would also manage the evaluation of deputy ministers, assess their performance, and decide on consequences, including remuneration.

In the conduct of both its staffing and evaluating functions the Commission would be required to consult with the Prime Minister and appropriate ministers and to have access to personal performance evaluations of public service candidates. It would be supported by the existing staff unit responsible for senior appointments in the Privy Council Office. In most respects it would build on the existing system as administered by the Clerk assisted by the Committee of Senior Officials. At the same time, however, it would make the staffing and management of the deputy minister cadre a collective responsibility of the commissioners. The commission would not be merely advisory to the Clerk, and the Clerk could not submit recommendations that were not approved by the commission. The commission, as chaired by the Clerk, would have collective authority. The two external members would have a special responsibility to ensure that the staffing process was not undermined by collusion among the deputy ministers or between the Clerk and the Prime Minister.

This institutionalization of the process need not make the staffing and evaluation of the deputy minister cadre excessively complex, slow or inefficient. For instance, because of the checks and balances in this proposed process, including the democratic veto and unilateral appointment power of the Cabinet and the presence of two external members, the Commission should possess the authority to decide when to use open or internal competitions as opposed to the redeployments of those already in the cadre or the recommendation of new candidates from within or without the public service without competitions. This discretion would address the one major criticism of the New Zealand model, where statutorily required procedures can slow down the process, a problem that is compounded in New Zealand by the small public service pool from which to recruit deputy minister candidates internally. And, unlike the New Zealand model, it would maintain the dual role of the Clerk as deputy minister to the Prime

Minister and head of the public service. At the same time, the Clerk's role as Head of the Public Service would become a shared power and responsibility with the Deputy Minister Commission. Finally, the entire Commission would be required to find the proper balance, in staffing the deputy minister cadre and in evaluating individual deputy ministers, between political responsiveness and non-partisan neutrality.

These several provisions, perhaps buttressed by others, should also work to reduce the temptation and capacity of the public service leadership to become a self-perpetuating class of self-serving executives. The need to find the proper balance in staffing the deputy minister cadre and in evaluating individual deputy ministers between political responsiveness and non-partisan neutrality raises the question of the length of tenure of deputy ministers in a particular position. Although the issue is acknowledged, the average tenure of deputies in a position is still too brief and deputies retire too young. The professionalism of the service is diminished accordingly, notwithstanding the qualities of the deputy minister cadre. Short tenure and early retirement also establish career incentives that give undue priority to being responsive to the prime minister and the Clerk against other obligations.

A more independent and collective leadership of the public service in staffing and managing the deputy minister cadre is necessary to secure the required degree of political neutrality for the public service. These two conditions may not be sufficient to achieve this objective, but they are likely to assist in helping the senior public service leadership remain committed to staffing on the basis of merit, rather than ministerial preferences, and evaluation on the basis of administrative performance, rather than support for a minister's or the government's political agenda.

## Endnotes

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- <sup>1</sup> A few deputy ministers and associate deputy ministers are actually appointed under the *Public Service Employment Act* but their appointments are excluded from the provisions of the act by the Public Service Commission and they hold office at the pleasure of the Prime Minister (formally the Governor in Council).
- <sup>2</sup> With the exceptions noted in endnote 1.
- <sup>3</sup> Australia might be considered to have diminished its commitment to its departmental secretaries being seen as members of the professional and non-partisan public service.
- <sup>4</sup> These assumptions would not rule out the appointment of deputy ministers from outside the public service, but it would assume that they be recommended by the Clerk. A Clerk from outside the system would probably be considered problematic.
- <sup>5</sup> Over the past two or three decades, it is essentially only in the Canadian provincial governments or Australian state governments where officials, or outsiders, with very dubious credentials have been appointed to the most senior ranks.

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