
**THE RESPECTIVE RESPONSIBILITIES
AND ACCOUNTABILITIES OF
MINISTERS AND PUBLIC SERVANTS:
A STUDY OF THE BRITISH ACCOUNTING
OFFICER SYSTEM AND ITS RELEVANCE
FOR CANADA**

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1 The British Accounting Officer System

1.1

British Accounting Officers

Britain has had Accounting Officers since 1872, when the Treasury concluded that the “permanent chiefs” (Deputy Ministers in Canadian terms) of departments, rather than “temporary” Ministers, should be

the persons to sign the accounts of the government, as required by the *Exchequer and Audit Act* of 1866. This Act remained the sole statutory base for British Accounting Officers until 2002. The *Government Resources and Accounts Act* of that year requires the Treasury to appoint Accounting Officers for each “Vote” in the estimates; these officers in turn prepare the accounts and transmit them to the Comptroller and Auditor General.

Accounting Officers occupy a central role in the British system of financial control. They hold responsibility in their own right and are also the responsible witnesses before the Public Accounts Committee. Though the Committee may call Ministers as witnesses, it does not normally do so. Its concern is with the Accounting Officers, and much of its work since the Permanent Secretaries were first designated as Accounting Officers has been directed towards defining and strengthening their position as the senior civil servants responsible for the good conduct of financial administration.

1.1.1 The Roles and Responsibilities of Accounting Officers

The British Treasury describes the responsibilities and duties of Accounting Officers in formidable terms:

The appointment of the permanent head of a department as its Principal Accounting Officer reflects the fact that under the minister he or she has personal responsibility for the overall organization, management, and staffing of the department and for department-wide procedures, where these are appropriate, in financial and other matters. The permanent head must ensure that there is a high standard of financial management in the department as a whole; that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the department; and that financial considerations are fully taken into account in decisions on policy proposals. . . .

The essence of an Accounting Officer's role is a personal responsibility for the propriety and regularity of the public finances for which he or she is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the available resources.¹

As an acknowledgement of this personal responsibility, Accounting Officers must "sign the accounts . . . assigned to [them], and in doing so accept personal responsibility for their proper presentation as prescribed in legislation or by the Treasury." They must also ensure that proper financial procedures are followed, "that public funds are properly and well managed," and that, in considering proposals for expenditures, the value for money of the proposal is assessed in accordance with principles set out by the Treasury. Where necessary, such considerations should be brought to the attention of the Ministers (all para. 7). Accounting Officers also have "a particular responsibility for ensuring compliance with parliamentary requirements in the control of expenditure. A fundamental requirement is that funds should be applied only to the extent and for the purposes authorized by Parliament" (para. 13).

The essential core of their responsibilities remains regularity and propriety, along with ensuring value for money. British Accounting Officers appear before the Public Accounts Committee as the holders of responsibility in their own right. Theirs is a personal responsibility, which cannot be delegated: "In practice, an Accounting Officer will have delegated authority widely, but cannot on that account disclaim responsibility" (para. 28).

1.1.2 Regularity, Propriety and Value for Money

The responsibilities of the Accounting Officers, the scope of audit by the British Comptroller and Auditor General, and the work of the Public Accounts Committee are directed towards regularity, propriety

and value for money in financial management. Issues of regularity and propriety have concerned the Committee since the 19th century; value for money is a more recent and still evolving concern.

Regularity according to the Treasury “is about compliance with appropriate authorities.” [It] . . . is the requirement for all items of expenditure and receipts to be dealt with in accordance with the legislation authorising them, any applicable delegated authority and the rules of Government Accounting.²

Expenditures must fit within both the terms of the authorizing legislation and Parliament’s intentions as expressed in that legislation. They must also fit within the ambit of the relevant “Vote” and be in accordance with regulations issued under the governing legislation. Regularity is a straightforward matter of complying with the rules.

Propriety is a more complex and less clear-cut matter than regularity: Whereas regularity is concerned with compliance with appropriate authorities, propriety goes wider than this and is concerned more with standards of conduct, behaviour and corporate governance. It is concerned with fairness and integrity and would include matters such as the avoidance of personal profit from public business, even-handedness in the appointment of staff, open competition in the letting of contracts and the avoidance of waste and extravagance.³

Propriety encompasses “not only financial rectitude, but a sense of the values and behaviour appropriate in the public sector.”

The Treasury recognizes that it is not easy to define neatly what constitutes “proper” behaviour as demanded by the standard of propriety. To assist Accounting Officers in determining whether a proposed course of action meets this standard, the Treasury suggests it should pass these tests:

- it follows the rules and seeks approval where this is required;
- it puts in place and follows clear procedures;
- it resolves any conflict of interests;
- it does not use public money for private benefit;
- it is even-handed;
- there are records; and
- it is transparent—it can accept scrutiny.⁴

The Treasury adds that if any of these tests raises a question about the proposed course of action, there is one key test to apply: *Could I satisfactorily defend this action before the Public Accounts Committee?* And, “since accountability to Parliament is part of a wider accountability, the question might be put even more simply”: *Could I satisfactorily defend this course of action in public?*

The Treasury and the Public Accounts Committee demand a sense of propriety on the part of accounting officers and others involved in financial management. It is not sufficient to follow the letter of rules and statutes, though that is essential to meet the standard of regularity. Propriety demands something more: a commitment to ethical standards, and obligations to be careful stewards of the public purse.

Value for money, according to the National Audit Office, involves three criteria:

- **Economy:** minimizing the cost of resources used or required—spending less.
- **Efficiency:** the relationship between the output from goods or services and the resources to produce them—spending well.

- Effectiveness: the relationship between the intended and the actual results of public spending—spending wisely.⁵

The Treasury recognizes that value-for-money issues can be less clear cut than issues of regularity and propriety. The Treasury's *Value for Money Assessment Guidance* devotes its 41 pages to just one part of the problem: "appraising the value for money of investment proposals to be procured under the Private Finance Initiative."⁶ A value-for-money assessment can involve determining "the optimum combination of whole life cost and quality (or fitness for purpose) to meet the user's requirement, and does not always mean choosing the lowest cost bid. It should not be chosen to secure a particular balance sheet treatment."⁷

Value-for-money audits in Britain do not intrude into questions about the merits of policies. The British *National Audit Act* of 1983 specifically prohibits the Comptroller and Auditor General from questioning the merits of particular policies. Value-for-money audits are examinations of the economy, efficiency and effectiveness with which agencies have used their resources in discharging their functions.⁸

1.1.3 Accounting Officers for Horizontal (Joined-Up) Initiatives

The British Government has endorsed "holistic" government in the belief that "many of the most deep-seated or intractable problems of modern government—such as, for example, crime, social exclusion and the fragmentation of communities—cut across the traditional lines of Whitehall departments. They required, therefore, a coordinated attack between departments at the centre, and between central government, local authorities and other local agencies."⁹ A special unit has been set up in the Cabinet office to secure such coordination.

The Treasury has responded to the special problems for accountability posed by these joined-up activities by insisting that at least one Accounting Officer, and sometimes more, must be appointed for each

horizontal initiative. The senior Accounting Officer, the Permanent Secretary, has the responsibility for ensuring that the appropriate Accounting Officers are appointed:

An Accounting Officer may share with another Accounting Officer responsibility for a joined-up service or for the achievement of a target which depends on the success of separate services. Similarly, a senior official could serve as an Additional Accounting Officer both in his or her parent department and one or more other department for this purpose. The lines of responsibility in all such cases should be designed to support the effective delivery of the service and clearly defined in terms which align responsibility and accountability, so clarifying what each Accounting Officer or Additional Accounting Officer is responsible and accountable for. It will usually be beneficial to set out these arrangements in a Memorandum of Understanding between the departments concerned.¹⁰

These Treasury prescriptions are flexible, as they must be in light of the varied sorts of arrangements of different government departments, levels of government and public agencies a joined-up program might take. Nevertheless, the bottom line is that, for horizontal activities, as for others, Accounting Officers must be appointed, and these officers must have as due regard for regularity, propriety and value for money in these activities as they would in their own department's program and money.

1.1.4 The Variety and Number of British Accounting Officers

With the growth in the complexity and size of government, the number and variety of British Accounting Officers have increased. Permanent Secretaries remain the principal departmental Accounting Officers, but a department can have many more. These additional Accounting Officers come in several varieties. Twenty-five civil servants in the United Kingdom Government with the grade of Permanent Secretary, and 15

with the grade of Second Permanent Secretary, are designated as Accounting Officers by the Treasury. The Treasury also appoints some officials below the rank of Permanent Secretary, or with other titles, as Accounting Officers in respect of particular parts of a department's resource accounts. At present a total of 70 departmental Accounting Officers have been appointed by the Treasury.

The need for so many Accounting Officers compared with Permanent Secretaries is understandable in the context of the structure of modern government departments. Many departments are more of an administrative empire than a single united hierarchical organization. The separate units might require their own Accounting Officer.

British Permanent Secretaries appoint an additional 30 or so Accounting Officers for votes within departments. The responsibilities of these Accounting Officers are usually carried alongside other financial accountabilities. Britain also has 87 executive agencies (equivalent to special operating agencies in Canada), each of which has its own Accounting Officer. Sixty-five of these Accounting Officers for executive agencies are appointed by the host department's permanent secretary, and the remaining 22 by the Treasury. When an agency has its own Request for Funds (or Vote in Canadian terms), or is a trading fund (one which nets out expenses and revenues and is not supported by a parliamentary vote), the Treasury appoints the Chief Executive of the agency as Accounting Officer in the normal way. But "where an agency remains part of a department and is financed from one or more subheads in a departmental Estimate, it is for the Principal Accounting Officer to designate the Chief Executive Officer as agency Accounting Officer."¹¹ In addition, approximately 210 Non-Departmental Public Bodies have Accounting Officers designated by the sponsor department. All these Accounting Officers are accountable before the Public Accounts Committee.

The major nationalized industries and large government corporations are not audited by the National Audit Office and do not have Accounting Officers. These exemptions include the BBC, the Post Office, and the Bank of England. The performance of these bodies is reviewed by the parliamentary departmental select committees of the House of Commons, but not by the Public Accounts Committee.

An added wrinkle to this structure of Accounting Officers comes with smaller agencies, such as hospitals and other organizations under the National Health Service, which are audited by the National Audit Office. These numerous agencies have “Accountable Officers,” and these officers too can appear before the Public Accounts Committee.

1.1.5 The Permanent Secretaries

The British Permanent Secretaries are the senior Accounting Officers among the extensive group described in the previous section. Their centrality warrants a look at their career paths both within the civil service and as Permanent Secretaries. These profiles differ substantially from those of their Canadian counterparts, the Deputy Ministers. In the years 1979-94:

- British Permanent Secretaries normally served 25 to 30 years in the civil service before being appointed to that position.
- Three-quarters were 50 years old or older at the time of their promotion to the Permanent Secretary level.
- The normal tenure of a Permanent Secretary in a single department was three to six years: 63% had served more than three years as Permanent Secretary in the department in which they served; 21% had served more than five years in a single department.
- Half of all appointments to Permanent Secretary were filled from within the department. Most Permanent Secretaries have had previous experience within their department.

- Promotion to the rank of Permanent Secretary usually comes towards the end of a civil service career and is the last position held before retirement, though a minority holds at least two positions at the Permanent Secretary level.¹²

The length of tenure in a single post has an important consequence for the role of British Permanent Secretaries as Accounting Officers: normally they remain in a post long enough for them to come before the Public Accounts Committee to defend actions they themselves took. In Britain, as in Canada, the current holder of the post, not previous holders, serves as the responsible and accountable witness before the Committee. The Treasury states that, by convention, the incumbent Accounting Officer does not “decline to answer questions where the events took place before taking up appointment; the Committee may be expected not to press the incumbent’s personal responsibility in such circumstances.”¹³

Peter Barberis estimates that the time needed for a new Permanent Secretary to come up to full utility is about three years, though it could be significantly less if the appointee had previous experience within the department, especially, as commonly happens, if the new appointee is actually serving within the department at the time of elevation to the Permanent Secretary position. He draws “a crude line of demarcation” marking “a minimum of sufficiency” at “five years of previous service and five years’ tenure” as Permanent Secretary in a department. The Chief Executives and Accounting Officers for executive agencies normally serve less than a five-year contract.

The British Government states that the duty of the individual civil servant is first to the Minister of the Crown who is in charge of the department in which he or she is serving. Barberis wonders if there has been “an undue obsequiousness among top civil servants” and comments that there is “a widespread belief that if top civil servants have any case

to answer for in recent years it is an excessive willingness to please Ministers.”¹⁴ He identifies other “loyalties” (“multiple accountabilities” is the equivalent Canadian term) of Permanent Secretaries which attenuate this loyalty to Ministers. One is a specific loyalty to Parliament in connection with the regularity and economy, efficiency and effectiveness of expenditures. Here “the Permanent Secretary, as an Accounting Officer, [has] the formal authority to register a note of dissent” from ministerial decisions. In questions of financial probity Permanent Secretaries can and do stand up to ministers.

Another loyalty is to the Government of the day. This long tradition has found formal expression in the *Civil Service Code* of 1999:

- The constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales constituted in accordance with the Scotland and Government of Wales Acts 1998, whatever their political complexion, in formulating their policies, carrying out decisions and in administering public services for which they are responsible.
- Civil servants are servants of the Crown. Constitutionally, all the Administrations form part of the Crown and, subject to the provisions of this Code, civil servants owe their loyalty to the Administrations in which they serve.

“Serving the Minister” comes several paragraphs later in the Code, where it is found together with the duty to act in a way that would not harm the civil servant’s ability to serve future governments of a different political stripe.

Some in Britain have argued that Permanent Secretaries owe a loyalty to the Prime Minister through the head of the home civil service, but this idea has little support. What has found support, Barberis says, is

the belief “that civil servants, Permanent Secretaries in particular, should have if not a higher formal loyalty [to the Crown or nation] then a set of higher ideals as their touchstone.” British Permanent Secretaries may not, as Peter Hennessy claims, form a “College of Cardinals,” but there is every indication that, in comparison with their Canadian counterparts, they spend more time on departmental matters, have a longer connection with their department, have more personal responsibility and accountability for their department and for administration of their department, and consider Parliament one of the key forums in which they are held accountable.

1.2

Ministerial Directions: The Process for Overruling British Accounting Officers

Britain has established procedures which allow a Minister to overrule an Accounting Officer when the Accounting Officer objects to a course of action proposed by the Minister. These overrulings are termed “ministerial directions.” The procedures for ministerial directions ensure that, though Accounting Officers hold responsibilities in their own right, their personal responsibility and their accountability before the Public Accounts Committee does not violate the principle of ministerial responsibility. The importance of this preservation of ministerial responsibility is recognized in the British Government’s definitive statement about responsibility in the Constitution:

A Permanent Head of a Department giving evidence to the Committee of Public Accounts does so by virtue of his duties and responsibilities as an Accounting Officer as defined in the Treasury memorandum on *The Responsibilities of an Accounting Officer*, but this is without prejudice to the Minister’s responsibility and accountability to Parliament in respect of the policies, actions and conduct of his Department.¹⁵

1.2.1 The Process for Ministerial Directions

The formal process for “ministerial directions” is described in the Treasury’s *Responsibilities of an Accounting Officer*:

If the Minister in charge of a department is contemplating a course of action involving a transaction which the Accounting Officer considers would infringe the requirements of propriety and regularity (including where applicable the need for Treasury authority), the Accounting Officer should set out in writing his or her objections to the proposal, the reasons for those objections and his or her duty to notify the C&AG should the advice be overruled. If the minister decides, none the less, to proceed, the Accounting Officer should seek a written instruction to take the action in question. Having received such an instruction, he or she must comply with it, but should then inform the Treasury of what has occurred, and should also communicate the papers to the C&AG without undue delay. Provided that this procedure has been followed, the PAC can be expected to recognize that the Accounting Officer bears no personal responsibility for the transaction. (*para. 16*)

If a course of action in contemplation raises an issue not of formal propriety or regularity but relating to the Accounting Officer’s wider responsibilities for economy, efficiency and effectiveness as set out in paragraph 6, the Accounting Officer has the duty to draw the relevant factors to the attention of his or her minister and to advise in whatever way he or she deems appropriate. Such factors may include an assessment of the risks associated with the proposed action and the impact these would have on the value for money provided by the action should some or all of these materialize. If the Accounting Officer’s advice is overruled and the proposal is one which he or she would not feel able to defend to the PAC as representing value for money, he or she should seek a written

instruction before proceeding. He or she will no doubt wish to refer to the possibility of a PAC investigation. He or she must then comply with the instruction, but should inform the Treasury and communicate the request for the instruction and the instruction itself to the C&AG without undue delay, as in cases of propriety or regularity. (*para. 17*)

Clearly, there is no question of who holds the responsibility. Unless formally overruled through this process by the Minister, the Accounting Officer personally holds the responsibility; if the Minister overrules the Accounting Officer, then the Minister, not the Accounting Officer, is responsible and accountable.

The Accounting Officer initiates the process by objecting to a course of action proposed by the Minister which the Accounting Officer believes infringes the requirements of propriety and regularity or raises issues relating to value for money. The Minister and the Accounting Officer thoroughly discuss all relevant factors before a ministerial direction is issued. These discussions are confidential and are not disclosed unless the Minister so directs. The Treasury emphasizes that, for value-for-money disagreements especially, all relevant factors must be discussed. Value-for-money issues can be less clear cut than issues of regularity and propriety: "Value for money is not the lowest price: it is the optimum combination of whole life costs and quality to meet the user's requirement."¹⁶ Most of the ministerial directions in recent years have been about value-for-money matters, and, similarly, the British Public Accounts Committee has devoted its time to these matters.

The Accounting Officer objects to the Minister in writing only after discussion has failed to deter the Minister from a course of action. There can be good reasons for a Minister's insistence. The Minister might overrule the Accounting Officer on grounds of a principle, such as the national interest, which the Minister feels transcends, for the matter

at hand, the rules that the Accounting Officer must observe. Once the Comptroller and Auditor General receives this correspondence, he or she discusses the ministerial direction with the Chair of the Public Accounts Committee. Since most ministerial directions are regarded by those involved as non-contentious, this step normally ends the matter. The Committee itself does not normally investigate the issue. When a ministerial direction is contentious, the Public Accounts Committee satisfies itself that a direction has indeed been issued. It does not investigate further. Ministerial decisions are not the subject of investigation by the Committee. Its concerns lie with the Accounting Officers. Ministers do not appear as witnesses before the British Public Accounts Committee. Their accountability is on the floor of the House or in the parliamentary committees that deal with government policies.

1.2.2 Preservation of Confidentiality

Ministerial directions are subject to access under the *Code of Access to Government Information* and the *Freedom of Information Act*. The information to be made available differs between overrulings on issues of regularity and propriety and issues of value for money. For the more straightforward matters of regularity and propriety, the advice given to the Minister by the Accounting Officer is passed on to the Treasury and the Comptroller and Auditor General; for ministerial directions in the greyer area of value for money it is not, unless the Minister authorizes the Accounting Officer to do so.¹⁷

Anyone hoping to discover political dirt and to uncover the nitty-gritty of the disagreements between Minister and Accounting Officer leading up to an overruling will be sadly disappointed by the publicly released documentation on ministerial directions. Normally the correspondence will be brief, with the Accounting Officer expressing his or her objections and stating the reason as regularity and propriety or value for money. The Minister responds and directs the Accounting Officer to proceed,

perhaps giving a reason such as the national interest, as happened in the Hawk aircraft purchase (see Appendix A).

The confidential nature of discussions between Minister and Accounting Officer is not violated when the Public Accounts Committee investigates a ministerial overruling on value-for-money issues. The Treasury cautions:

The Accounting Officer should . . . avoid disclosure of the terms of the advice given to the Minister, or dissociation from the Ministerial decision. Subject, where appropriate, to the Minister's agreement, the Accounting Officer should be ready to explain the reasons for such a decision and may be called on to satisfy the Committee that all relevant financial considerations were brought to the Minister's attention, before the decision was taken. It will then be for the Committee to pursue the matter further with the Minister if they so wish.¹⁸

The Hawk fighter episode (Appendix A) shows how this system works in practice: the Public Accounts Committee questioned the Accounting Officer, but not the Minister. The Accounting Officer told the Committee that he objected on value-for-money grounds, that he had been overruled by the Minister and would now, to the best of his abilities, implement the ministerial decision, but "the detail of [his] advice to the Secretary of State has to remain confidential. It is now a matter for the Secretary of State."

The purpose of the process of ministerial directions and its attendant correspondence is not to explain in any detail the reasons behind either the objection or the ministerial direction. It simply puts on record that the overruling has occurred, and hence the Minister, not the Accounting Officer, bears responsibility and is accountable for the decision. The Comptroller and Auditor General will make it clear in the report to the Public Accounts Committee that the Accounting Officer was

overruled by the Minister. The Committee does not hold the Accounting Officer accountable. Despite the Committee's power to call Ministers as witnesses if it so wishes, it does not do so.

1.2.3 Frequency and Nature of Ministerial Directions

British ministerial directions are infrequent. In the 25 years from 1981 to 2005, there were only 37, an average of fewer than 1.5 per year. Ten related to regularity and propriety, and 17 to economy, efficiency, effectiveness and value for money. The reasons for the remaining seven were not given, but at least one, the Ministry of Defence purchase of Hawk fighter aircraft (Appendix A), was over value for money.

Not all ministerial directions are the result of a dispute between Accounting Officer and Minister. Sometimes they resolve a difficult situation to both the Minister's and the Accounting Officer's satisfaction. For example, a number of Benefits Agency directions in 1998/99 were of a technical nature rather than a disagreement on policy. The agency discovered that, owing to misinterpretation of a statutory instrument, it had been making payments for certain benefits without legal authority. It concluded that it had to recover the overpayments. The Minister in charge of the agency issued a written instruction to the Accounting Officer not to institute recovery action while the Government reached a view on a long-term solution. The instruction was time limited and had to be renewed twice. In the end, the Government introduced a new statutory instrument that regularized the payments. The Treasury was closely involved in these discussions.¹⁹

1.3

The Role of the British Treasury

The British Parliament "has traditionally regarded the Treasury as an ally in controlling expenditure."²⁰ This view is not wishful thinking. For more than a century the Public Accounts Committee, the Treasury, and

the Comptroller and Auditor General have engaged in a dialogue over the role, responsibilities and accountability of Accounting Officers in ensuring good financial administration. The end result is the present system in which Accounting Officers play the central role as the responsible and accountable permanent officials. The Treasury faces two ways: in one direction it looks outwards towards Parliament and the Public Accounts Committee; in the other it looks inward towards the administrative structure and the Accounting Officers.

The Treasury official who manages relationships with Accounting Officers and the Public Accounts Committee is the Treasury Officer of Accounts. This Officer attends the Committee's meetings, and questions may be directed his or her way by members.²¹ The Officer of Accounts is also involved in preparing the Treasury Minutes, which embody the Government's response to recommendations of the Public Accounts Committee. The department or agency concerned first drafts these minutes "in consultation with the relevant Treasury expenditure team. However, the text requires the approval of the Financial Secretary, the Prime Minister's Office and the Whips Office before publication as a Treasury Minute. These processes are organized by the Treasury Officer of Accounts team."²² When the wording of a Treasury Minute is approved, the department will brief the Prime Minister's Office before the minute is tabled in the House.

The Treasury Officer of Accounts will meet with Accounting Officers before their meeting with the Public Accounts Committee and discuss the issues that will be raised there. The Officer will help new Accounting Officers prepare for their first encounter with the Committee and will direct them to a government agency that specializes in preparing officials for this sort of encounter.

The Treasury Officer of Accounts prepares materials to aid and instruct Accounting Officers in their work. Included in this information are such

documents as the Treasury's *Guide to the Scrutiny of Public Expenditure and Regularity and Propriety: A Handbook*, which has been quoted from and has formed an invaluable source for this study. The Treasury Officer of Accounts produces "Dear Accounting Officer" letters, which inform and instruct Accounting Officers in various aspects of their responsibilities and conduct before the Public Accounts Committee. These letters have discussed such topics as fraud in government, reform of supply estimates and appropriations procedures, money laundering, financial reporting standards, the need for accuracy in evidence provided to the British Public Accounts Committee, the responsibilities of Accounting Officers before the Committee, and the need for accuracy in testimony before the Committee.

The Treasury Officer of Accounts team also keeps the Prime Minister's Office informed of all National Audit Office reports, Public Accounts Committee business and Treasury Minutes. The team provides a briefing on every National Audit Office value for money report, and this briefing sets out the focus of the report and its main findings.

1.4

The British Public Accounts Committee

In his monumental book on the modern British civil service, Peter Hennessy described the Public Accounts Committee as the "queen of the select committees." Since Gladstone's time, by its very existence, the Committee has

exerted a cleansing effect on all departments. The knowledge that, on its day, the PAC could put the most seasoned permanent secretary, in his role as departmental accounting officer, through the wringer over some aspect of procurement, expenditure, and, increasingly, value-for-money, inspired a high degree of preparation at the highest level in a ministry prior to a PAC appearance even if, in the event,

the committee concentrated on minnow-matters instead of sharks and whales. Whitehall reputations could be made or broken in the PAC. They still can.²³

This situation has not changed. The Public Accounts Committee is the most prestigious of the committees of the British House of Commons, and one on which it is very desirable and an honour to serve. It has earned this prestige through its accomplishments during its more than 125 years of existence. The Committee is the forum in which Accounting Officers are called to account. About 90% of its recommendations are accepted by the Government, and they help to formulate financial administration policies and processes. The Committee is the central focus of accountability processes in the British Government.

The Treasury's *Guide to the Scrutiny of Public Expenditure* offers advice to Accounting Officers on how to prepare for and give testimony before the Public Accounts Committee: "Give a considered and direct answer to the question put to you, don't try to fudge it or prolong the answer as each member is given a limited time for questioning. Do not try to pass questions put to you to your colleagues unless they have the specific expertise and knowledge to answer them." A cautionary note quotes one chair's remarks to a witness at the close of a session of the Committee:

I have to say, you have been, in the last three hours, a master of obfuscation and there is no point in having a parliamentary inquiry if we are subjected to platitudes. It is only in the last couple of questions in that line of questioning that you actually told us something of interest as opposed to expressing general expressions of apple-pie and motherhood. . . . That is my opinion.

Being admonished in this way by the chair of the Public Accounts Committee would be a serious blot on the record of an Accounting Officer.

The Accounting Officers are the primary and almost exclusive witnesses before the Committee. The *Guide* states:

An Accounting Officer will be expected to furnish the Committee with explanations of concerns and issues that have been brought to the Committee's attention through C&AG reports. An Accounting Officer will have delegated authority widely, but cannot disclaim responsibility. Nor, by convention, does the incumbent Accounting Officer decline to answer questions where the events took place before taking up appointment; although the Committee may be expected not to press the incumbent's personal responsibility in such circumstances. (Section 4.2)

The Committee occasionally invites former Accounting Officers to appear in tandem with the serving Accounting Officer as a witness, where the Committee believes that the former Accounting Officer is better placed to provide a first hand account of events than others or where the Accounting Officer has moved on shortly before the hearing. The purpose in recalling former Accounting Officers is to clarify matters and not to apportion blame. (Section 4.3)

Occasionally, as well, the Committee will invite other witnesses to appear, such as representatives from a business firm with which the government has had dealings. Ministers do not generally appear as witnesses before the Committee.

The Committee has 16 members, chosen to reflect the parties' voting strength in the House. Traditionally the Chair is from the largest opposition party and, frequently, will have served as a Minister in a previous government. The Committee does not divide along party lines. At Committee meetings:

[m]embers sit around a horseshoe table, with the Chairman at the centre, the Comptroller & Auditor General and the Treasury Officer of Accounts at the either end of the table. The witnesses sit at a straight table at the end of the horseshoe; their assistants may sit immediately behind. The other seats behind are for the public. (Section 3.17)

Each Committee member is given 10 minutes to ask questions and a further 5 minutes of follow up questions, once the first round of questions is completed. The length of the hearing depends on the number of members present. The Chair opens and closes the rounds of questions. (Section 3.18)

The National Audit Office provides suggested lines of questioning to the Committee and briefs the Chair before meetings. The National Audit Office is also involved in the preparation of Committee reports. Both the Treasury Officer of Accounts and the Comptroller and Auditor General may be called upon by the Committee to answer questions during Committee investigations, but not as witnesses so much as officials supporting the Committee in its investigation.

The Comptroller and Auditor General and staff (the National Audit Office) produce about 60 reports a year. Most of them are on value-for-money issues. The Public Accounts Committee usually devotes one meeting to each report. The Committee meets on Monday and Wednesday afternoons when the House is sitting—from November to July. However, in recent years it has found it desirable to meet more often and has taken to meeting in September and October as well. The National Audit Office aims to ensure that its reports are published about three weeks before the Committee meets on an issue so that Committee members, Accounting Officers and other have at least two weekends to prepare and brief themselves for meetings.

Three factors, apart from its long history and tradition as a powerful committee, permit the British Public Accounts Committee to maintain

its importance. First, it is composed of able and long-serving members. It is a matter of great prestige to be appointed to the Committee, and members have to wait for an opening before they are considered for appointment. Once appointed, they remain on the Committee for a long time.

Second, the Public Accounts Committee adopts a non-party attitude in its work and seeks to reach dispassionate findings and recommendations whatever government is in power. The Committee performs a vital function on behalf of Parliament. It gives Parliament, and through Parliament the people of Britain, assurance that the Government handles its finances with regularity and propriety, and, as far as possible, ensures that expenditures are made with due regard to economy, effectiveness and value for money. The Committee's sense of this vital function in the broader scheme of parliamentary government creates a demand that its members act in this non-partisan way.

Third, the British Public Accounts Committee operates within a system of clearly and logically related bodies and functions. Its focus on the Accounting Officers as the officials personally responsible for good financial administration provides a logic and coherence to the system. The Committee has a well-established place within an effectively operating system of roles, responsibilities and accountabilities.

Deviations from the principles of regularity and propriety in financial administration can provide scandals and outrage for Parliament and the media in Britain. However, these transgressions have in recent years normally been reserved for the actions of heads of executive agencies who have been brought into the civil service from the world of business, where the standards of regularity and propriety are viewed somewhat differently. These scandals have been relatively minor and have not caused governments to tremble. The Public Accounts Committee has investigated them. Where there are more important disputes, such as the Hawk fighter aircraft or Pergau Dam affairs (See Appendices A and

B), the responsibility has clearly belonged to the Ministers, not the Accounting Officers. Nor has accountability been before the Public Accounts Committee.

2 Britain and Canada Compared

On the surface, the Canadian and British systems for financial audit and accountability to Parliament are similar. Both countries have Parliamentary-Cabinet systems of government. Both are structured on the basis of departments, with Ministers as their political heads, while under them the public (civil) service is headed by Deputy Ministers (Permanent Secretaries). Both have independent legislative auditors who examine the accounts and transactions of the government and report to Parliament. Both have a central agency—Treasury Board and Treasury—with responsibilities for ensuring good financial management. Both have Public Accounts Committees with the task of reviewing the reports of the legislative auditors and the Government's performance on behalf of Parliament. But this superficial similarity masks profound differences in the ways in which the two systems are structured and operate in actual practice.

2.1

Permanent Secretaries and Deputy Ministers

British Permanent Secretaries hold positions like those of Canadian Deputy Ministers in most respects, but their position as Accounting Officers has no Canadian counterpart. This difference exists despite the fact that, as a recent Canadian Government document points out, “the responsibilities of [British] accounting officers are very similar to those of a deputy minister under the *Financial Administration Act* and Treasury Board policies.”²⁴ Both are responsible for financial regularity and probity; for economy, efficiency and effectiveness; and for financial and management systems for departmental programs and public property.

This similarity in responsibilities belies a striking difference in statutory authority. The Canadian *Financial Administration Act* assigns broad statutory powers to Deputy Ministers in both financial and personnel administration. Deputy Ministers have additional statutory responsibilities under other statutes, including the *Public Service Employment Act* and the *Official Languages Act*. Deputy Ministers hold these statutory powers in their own right. The Minister does not hold these powers, nor are they delegated to Deputy Ministers by the Minister.

In comparison, the position of Accounting Officer in Britain first received mention in the 2002 *Government Resources and Accounts Act*. Their statutory powers are much less than those of Deputy Ministers. The duties of Accounting Officers have been established through the work of the Treasury and the Public Accounts Committee, and they have been defined in Treasury documents.

As the civil service heads of departments, British Permanent Secretaries are accountable to their Ministers for good management of departments. For the standards they are expected, as Accounting Officers, to meet by the Treasury and the Public Accounts Committee—regularity, propriety and value for money—their formal accountability is before the Public Accounts Committee. In stark contrast, the Canadian Government insists that the accountability of Deputy Ministers is entirely internal, within the government, to their Ministers and the Prime Minister:

Deputy ministers are accountable to their ministers (and ultimately, through the Clerk of the Privy Council, to the Prime Minister) for the discharge of their responsibilities, as outlined in legislation or in management policies approved by the Treasury Board. *Even when senior officials support the accountability of ministers by providing information publicly, such as when appearing before parliamentary committees, they do so on behalf of their ministers.*²⁵

This insistence by the Canadian Government that Deputy Ministers have no accountability relationship with the Public Accounts Committee, and that they appear before it on behalf of their Ministers, is the single most important difference between them and British Permanent Secretaries.

In Britain, the responsibilities of Accounting Officers towards Parliament are a recognized exception to the rule that Ministers should be both answerable and accountable to Parliament and the public. With their personal responsibility and accountability in a parliamentary forum, Accounting Officers have a duty to stand up to Ministers—and they do. The responsibilities that Accounting Officers hold in their own right give the civil service a sphere of responsibility and activity separate from that of Ministers.

Canadian Deputy Ministers have different career patterns from their British counterparts. These differences contribute to the identity of a Deputy Minister community whose members are “in a sense, the Prime Minister’s public servant ‘agents’ in the various departments of government.”²⁶ This sense is reinforced by the Canadian doctrine of deputy ministerial accountability to the Prime Minister. Though the British Permanent Secretaries also form a community, their different career patterns, the requirements of their position as Accounting Officers for departments, and the absence of an official doctrine of accountability and loyalty to the Prime Minister root them more firmly in their departments and make them less of a community.

The British Accounting Officer system demands a loyalty by Accounting Officers to rules and regulations, through the requirement that Accounting Officers account for their personal responsibilities before the Public Accounts Committee. This obligation contributes to an emphasis on probity in financial management in departments. Canadian Deputy Ministers, like their British counterparts, have multiple loyalties and accountabilities, but official Canadian doctrine, unlike the British,

places no emphasis on their external loyalty or accountability to Parliament. Indeed, Canadian doctrine denies that such a deputy ministerial accountability exists.

The career patterns of British Permanent Secretaries and Canadian Deputy Ministers differ substantially. In comparison with their British counterparts, Canadian Deputy Ministers have less experience in government, are first appointed at a younger age, have less experience in their department, and as a norm serve as Deputy Minister in two and frequently more departments. Canadian Deputy Ministers also usually retire earlier than their British counterparts. British Permanent Secretaries remain in their department for a period of at least three to five years, and frequently more.

2.2

Regularity, Propriety and Value for Money

Canada has many rules and regulations intended to govern the actions of those responsible for financial administration, but it has not proceeded as far as Britain in codifying the basic principles into straightforward rules of behaviour. The British definitions of regularity and propriety are models of clarity. They provide clear and simple guidelines and standards to Accounting Officers and others involved in financial administration. Canadian rules and regulations lack this simplicity and clarity.

In neither Britain nor Canada does the Auditor General comment on the merits or demerits of a particular program or policy. In both countries the value-for-money audit is directed to the question of whether the administration of policies meets the standards of economy and efficiency. Britain includes effectiveness in its value-for-money audit; Canada does not. To reflect the limitations of these audits, the Canadian Auditor General refers to them as “performance audits” rather than as audits of value for money.

2.3

Ministerial Directions (Overrulings)

There is no Canadian equivalent to the British practice of ministerial directions. The Canadian government offers, instead, an avenue of discussion with the Clerk of the Privy Council, if a disagreement affecting the operations of a department cannot be resolved between Minister and Deputy.²⁷

Though the British Government also offers a similar avenue of discussion with the Head of the Civil Service (Secretary to the Cabinet) when Permanent Secretaries have a problem with their Ministers, there is no indication that consultation of Accounting Officer with the Head normally precedes a ministerial direction. Tim Lankester did not consult with the Head of the British Civil Service before registering his objection to the Pergau Dam project. He considered the issue to be cut and dried. Grants under the program were intended to improve the economic well-being of the recipient country. Studies had shown that the Pergau Dam project would not improve economic well-being and, therefore, it ran counter to the standards he had a duty to uphold. The responsibility for making the decision belonged to him as the Accounting Officer, not to the Head of the Civil Service (see Appendix B).

In both Britain and Canada, the rules regarding the appearance of civil/public servants before parliamentary committees precludes them from disclosing confidential information and the advice given to Ministers. In Britain these same rules of confidentiality govern the content of documents related to ministerial directions, which are available to Parliament and the public.

2.4

Treasury and Treasury Board

The British Treasury is regarded by Parliament as its ally in controlling expenditure. The Canadian Treasury Board is not so regarded by the

Canadian Parliament. There is no Canadian counterpart to the British Treasury's documents describing the responsibilities and duties of Accounting Officers, the processes for the scrutiny of government expenditures or the standards (such as regularity, propriety and value for money) that guide the British system. In contrast to its British counterpart, the Canadian Treasury Board is not concerned with its accountability to Parliament.

2.5

The Role of the Auditor General

Both Auditor Generals conduct an audit that examines compliance with rules and statutes. Both produce reports that form the starting point for the investigations of the respective Public Accounts Committees. However, their role in relation to the work of the two Committees differs: the Canadian Auditor General, unlike the British, does not sit at the table with the Public Accounts Committee during its hearings. Nor does the Auditor General suggest lines of questioning to members or draft reports for the Committee. These two tasks are performed in Canada by staff from the research branch of the Library of Parliament.

In Canada, the task of reporting back to the Public Accounts Committee on action or inaction on its recommendations rests with the Auditor General. The British assign this task to the Treasury.

2.6

The Public Accounts Committees

The Canadian Public Accounts Committee does not have the same understanding of shared objectives and concerns over regularity and propriety with the Canadian Treasury Board that its British counterpart has with the British Treasury. Nor does it have the clear focus on officials who unequivocally are personally responsible and accountable that the

British Committee has in the Accounting Officers. It does not share the British tradition of over 100 years of successful and prestigious work. Membership in the Canadian Public Accounts Committee, like membership in other parliamentary committees, often changes at the whim of party leadership. Members serve on the Committee for a much briefer time and tend to be more transient than those on its British counterpart.

The Canadian Public Accounts Committee has sometimes been highly partisan in its investigations, as it was in the spring of 2004 in its investigation into the Sponsorship affair, with the Opposition attacking both Ministers and public servants, while the Government, in response, protected and defended its Ministers and public servants. The Committee's partisan zeal in hunting scandals is in proportion to the Opposition's perception of ministerial involvement in the issues under investigation.

Combined, these factors leave the Canadian Public Accounts Committee, in comparison with the British, in a relatively weak position, unclear about who is responsible for financial regularity and propriety in departments, and faced with a Treasury Board that does not view itself as sharing a common interest in good financial administration. Moreover, there would appear to be no tradition of improving the system, to enable it to get beyond hunting for scandals and finding persons to blame and to begin tackling more fundamental and important problems of governance and accountability.

2.7

Conclusions: Similar Outside, Different Inside

Perhaps it is surprising that two systems that have so many similarities on the outside should be so different in their internal workings, and particularly in their processes and structures for accountability to Parliament for financial administration. These differences have three sources.

First, Canada has a tradition of government use of funds for patronage—

for local or other purposes that involve political decisions on how specific expenditures will be made. This tradition is by no means extinct, as the Sponsorship affair shows.²⁸ If the issues that concern Parliament and the Public Accounts Committee are the actions of politicians and Ministers, then it follows that Parliament and its committees will treat these issues as political and partisan, and not about ensuring regularity and propriety in the public service.

Second, the Government's insistence that Deputy Ministers before the Public Accounts Committee speak solely on behalf of their Ministers, and not as the holders of responsibilities in their own right, skews the investigations of the Committee towards ministerial and partisan issues. This partisanship leads the Committee away from ensuring that the public service remains a politically neutral instrument which has a responsibility to uphold the law, to act impartially in a non-partisan manner, and to act in such a way that it is capable of serving successive governments of different political stripes with equal effectiveness and trust.

The Canadian public service has a much stronger statutory and formal institutional identity than the British. That is true for Canadian Deputy Ministers in comparison with British Permanent Secretaries. It is also true for the Canadian public service as a whole. There is no *Civil Service Act* in Britain, nothing comparable to the Canadian *Public Service Employment Act* and the Public Service Commission, an agent of Parliament, whose role is to affirm and safeguard the principles of merit and neutrality in the public service. The authority for managing the British Civil Service is found in Orders in Council based on royal prerogative, without the support of statutory authority. A parliamentary committee has recommended that there be a *Civil Service Act* in Britain, but such an Act has not yet been introduced in Parliament.

Yet, through the Accounting Officers, Britain has managed to create a system that recognizes and defines the limits to Ministers' powers to direct the public service when a basic principle of proper administration

is at stake. Barberis considers Lankester's objection to the Pergau Dam project to have been crucial in establishing a limit to the Government's view that the public service has no identity or independence and exists to do what ministers tell it to do:

Tim Lankester's note of dissent over the Pergau Dam project is one of the best known among recent exercises of prerogative. He did not stop the project. But he laid down a marker which was instrumental in the subsequent rescheduling of British financial support. More than this, he re-established in some measure both his own independence and that of the office of permanent secretary.²⁹

If such boundaries have been established in Canada, they were not apparent in the Sponsorship affair or in any of the other scandals that have harmed Canadians' trust in the public service in recent years.

Third, the Prime Minister and the Privy Council Office play a much stronger role in the lives and perceptions of Canadian Deputy Ministers than the British system demands of Permanent Secretaries. There is no British counterpart to the Canadian doctrine of deputy ministerial accountability to the Prime Minister. The concerns of Deputy Ministers in Canada revolve more around the concerns of the centre, and less around their responsibilities as managers of departments. The Glassco Commission in the early 1960s espoused the view, at a time when both human resources and financial administration were dominated by central agencies, that Canadian deputy ministers should be allowed to manage their departments. Its theme was "Let the Managers Manage!" The Lambert Commission, two decades later, when much of the responsibility for management had been delegated to Deputy Ministers, found a different problem. Its theme was "Make the Managers Manage!" The government did not accept the Lambert Commission's recommendation that Canada adopt the Accounting Officer approach. The British Accounting Officer system forces the managers to manage; the Canadian system does not.

The British system is coherent, in the sense that the key players—Accounting Officers, Public Accounts Committee, Treasury, and Comptroller and Auditor General—have clearly defined and mutually supportive and complementary roles and responsibilities. The Canadian approach to accountability lacks this coherence, clarity and effectiveness.

3 The Arguments Against the Accounting Officer System

In 1979, the Lambert Commission on financial management and accountability proposed that Canadian Deputy Ministers “be liable to be called to account directly for their assigned and delegated responsibilities before the parliamentary committee most directly concerned with administrative performance, the Public Accounts Committee.”³⁰ The Government did not accept this recommendation. In 1985, the McGrath Committee on reform of the House of Commons supported the same reform. In 2003, Prime Minister Jean Chrétien expressed himself in favour of the Accounting Officer approach, but nothing came of it. In May 2005, the Public Accounts Committee recommended that “deputy ministers be designated as accounting officers with responsibilities similar to those held by accounting officers in the United Kingdom.”³¹ The Government rejected this proposal.

A mixed bag of arguments has been offered by the Government for its rejections. Some are based on misunderstandings of the British system; some on differences between the way the Canadian and British Parliamentary-Cabinet systems of government work. Others derive from the Government’s interpretation of the constitutional principle of ministerial responsibility. This review of the various arguments against the Accounting Officer system is followed by three questions: Which of the arguments have validity? Can the objections identified in the valid arguments be resolved? Do the principles underlying the Accounting Officer system offer guidelines for reform in Canada?

3.1

Misunderstandings of the British System

Many of the Canadian Government's objections to the Accounting Officer system are based on misunderstandings. These long-standing misunderstandings include the contentions, first, that it would make Deputy Ministers accountable to the Public Accounts Committee, and that would allow the Committee to reward, punish and instruct public servants; second, that it would violate the principle of ministerial responsibility; and third, that it would violate the confidentiality of discussions between Ministers and Deputy Ministers.

If these objections derived from an accurate portrayal of the British Accounting Officer system, they would be powerful grounds for rejecting it. But they reveal a profound misunderstanding of the British system. Indeed, it is difficult to understand how Parliamentary-Cabinet government could have survived in Britain if it had such a dysfunctional set of relationships between Parliament, Ministers and civil servants. Though based on misunderstandings, these arguments have had a life of their own and continue to be uttered by defenders of the status quo.

Like all other parliamentary committees, the British Public Accounts Committee does not reward, punish or instruct Accounting Officers or other civil servants. British Accounting Officers give evidence as witnesses before the Public Accounts Committee. This process can be formidable—one new Accounting Officer recently described the experience as “frightening”—but it is a matter of rendering an account for responsibilities held and exercised, not of being rewarded, punished or instructed on courses of action by the Committee. There is no reason to expect that the Canadian Public Accounts Committee would have these powers. No parliamentary committee, in Britain or in Canada, now has them, nor is giving them to a parliamentary committee consistent with the constitutional principles of parliamentary government.

The origins of the claim that the Accounting Officer system gives parliamentary committees the power to reward, punish and instruct public servants lie in the Privy Council Office's 1977 submission to the Lambert Commission.³² It reappeared 12 years later when Gordon Osbaldeston, a former Clerk of the Canadian Privy Council, rejected the Accounting Officer approach because it would create a "parallel accountability of deputy ministers to parliamentary committees."³³ He mistakenly stated that the Lambert Commission had recommended this system.³⁴ Arthur Kroeger, a respected former Deputy Minister, offered the same argument in objecting to the Accounting Officer approach in his testimony before the Canadian Public Accounts Committee in February 2005: "I don't think that many people seriously suggest that parliamentary committees could give directions to officials, but that has been suggested by the Lambert Commission and by some auditors general in the past."³⁵

The argument that the Accounting Officer system violates the principle of ministerial responsibility was invoked by the Privy Council Office in *Responsibility in the Constitution*.³⁶ It was also invoked by Kroeger, when he told the Public Accounts Committee: "[I]f you say that officials should be accountable to parliamentary committees, you have a conflict. Is the minister the boss, or is the parliamentary committee?"³⁷ There might be a conflict between the responsibilities and accountabilities of Accounting Officers and the principle of ministerial responsibility if British Accounting Officers were accountable to the Public Accounts Committee, in the sense of being subject to punishment, rewards and instruction from the Committee. However, the British Public Accounts Committee does not have these powers, and Accounting Officers' responsibilities and accountabilities do not conflict with those of Ministers.

British Ministers can and do overrule Accounting Officers through ministerial directions. The Accounting Officer's duty is to offer the best advice he or she can. If the Minister does not accept this advice and

issues a ministerial direction, the Accounting Officer's duty is to implement the decision. This power of the Minister to overrule an Accounting Officer ensures that the principle of ministerial responsibility is maintained. Any reforms made in Canada must ensure that the same power to make the final decision when there is a disagreement over a course of action resides in the hands of Ministers, not public servants.

The Canadian Government has expressed concern that the process of making public the documents related to ministerial directions would undermine the relationship between Minister and Deputy:

Systematically formalizing and potentially making public any disagreement on administrative or operational matters runs the risk of significantly undermining the working relationship between ministers and deputy ministers that is essential to the effective operation of government departments.³⁸

It does not lead to this result in Britain, and it is difficult to see how fewer than one and a half ministerial directions per year could do so. The rules regarding the confidentiality of advice given by public servants to Ministers cover the preliminary discussions between Minister and Accounting Officer which precede a ministerial direction. They would do so in Canada as well.

Surely Canadian Deputy Ministers are not as feckless and inconsiderate of their Ministers' well-being as the *Ottawa Citizen* found Arthur Kroeger to believe:

Mr. Kroeger, who strongly opposes the British model, argues that it could "do more harm than good," especially if deputy ministers started routinely demanding written instructions from ministers, which would amount to "second-guessing" politicians in the media.³⁹

It would be up to Canadian Ministers and their Deputies to find ways of avoiding a ministerial overruling. Their British peers generally manage to do so.

3.2

Parliament Does not Want to Make the Distinction Between the Responsibilities and Accountabilities of Ministers and Deputy Ministers that the Accounting Officer System Requires

The claim that Parliament does not want to make a distinction between the responsibilities and accountabilities of Ministers and Deputy Ministers was offered by the Government in its 1977 *Responsibility in the Constitution*.⁴⁰ This claim is not borne out by the evidence.

The Canadian Parliament has addressed the question of making a division between the responsibility and accountability before parliamentary committees on two occasions, first in the *Report of the Special Committee on Reform of the House of Commons* in 1985,⁴¹ and second in the Public Accounts Committee's 10th report of May 2005.⁴² Both Committees supported recognition of a division between the answerability of officials and of Ministers.

The Government's claim also raises the question of whether the Government itself does not want to make a distinction between the responsibilities of Ministers and public servants. Historical evidence suggests that Canadian Governments have not wanted to make this distinction. Much of the activity of government since Confederation has involved the Government's use of resources for partisan and other doubtful purposes. Patronage used to be an accepted practice.⁴³ The Sponsorship affair is only a recent example of this long-standing government practice of blurring the lines of responsibility between Ministers and public servants. Many previous abuses also became political scandals. Administration was highly partisan and political. So

was the way Parliament treated administration. That does not mean that Parliament still wants to treat administration as partisan and political or that the Government is justified in continuing to employ the questionable practices of the past. The Public Accounts Committee has expressed its desire for change.

3.3

The Canadian Parliament and Public Accounts Committee Are Too Partisan to Permit the System to Succeed

The contention that the Canadian Public Accounts Committee has not usually acted in a non-partisan way over the years is correct. In fact, for much of Canada's history, the Committee did not act at all. It was inert. It did not meet. Ministerial control over contracts, grants, appointments and other aspects of administration were the instruments through which Governments won and rewarded supporters. The Government did not want a parliamentary committee to look too closely at its use of funds. The Committee sometimes roused itself when there was a change of government, and it could attack the excesses and improprieties of the previous administration. But, most of the time, with the Government having a majority on the Committee, and the Chair from the Government side as well, the Committee was passive. Only after Prime Minister Diefenbaker in 1958 for the first time appointed an Opposition member as chair did the Canadian Public Accounts Committee begin to become a consistently functioning part of the parliamentary scene.

Regardless of its faults, the Canadian Public Accounts Committee is neither a failure nor doomed to incessant partisan bickering. The Committee can work as a cooperative body in which members from all parties agree on important issues, as was proven by its unanimous May 2005 report on ministerial and deputy ministerial accountability. That the Committee managed to produce this important and unanimous

non-partisan report after its highly partisan inquiry into the Sponsorship issue is no mean achievement.

The Canadian Public Accounts Committee normally acts in this non-partisan way when it is not examining questionable acts in which Ministers were involved. Partisanship in the Committee is attenuated when the issues it examines, unlike the Sponsorship affair, have nothing to do with decisions and actions taken by Ministers or on direct instructions from Ministers. Clear distinctions between the responsibility and accountability of Ministers, and those of the public servants who are the witnesses before the Committee, will reduce partisanship in the Committee.

The members of the Public Accounts Committee are politicians and members of political parties. An Opposition member should chair the Public Accounts Committee, as the British recognized over a century ago, because he or she will be motivated to make thorough and tough inquiries into the Government's activities. The Government retains a majority (or plurality in a minority Parliament) of members on the Committee, so they can act as a moderating influence on the Chair and ensure that the Committee is fair and balanced in its work. That financial administration in Britain is a non-partisan matter, and that the British Public Accounts Committee acts in a non-partisan way, shows that the Committee's work over the years has succeeded in taking the party elements out of its role in overseeing financial administration, not that its members are non-partisan.

The issue of ministerial answerability in Question Period is a different matter. The Canadian Question Period is an intensely partisan parliamentary event, and also the most reported upon of Parliament's activities. Its partisan nature is not going to change. The Government cannot prevent Opposition members from asking questions that, if the Accounting Officer system were adopted, would be the responsibility of Deputy Ministers, not Ministers.

But the Government can change the way it answers parliamentary questions. Any answer by a Minister to a question in Parliament is acceptable, as long as it is relevant to the question and couched in parliamentary language. A Minister could answer: “The question raised by the honourable member relates to the responsibilities of the departmental Deputy Minister. The appropriate venue for raising it is the Public Accounts Committee.” Or the Minister could answer the first question on an issue in this way, and then not answer subsequent questions. No answer at all meets the requirements of being relevant and in parliamentary language. This tactic has been used by Ministers as a response to parliamentary questions.⁴⁴

Ministers at present answer questions, without causing problems, about Crown corporations and other non-departmental agencies that possess statutory powers in their own right. A similar approach to the answerability of Ministers in Question Period for the exercise of the statutory responsibilities of Deputy Ministers could be worked out.

3.4

Parliament Has No Authority to Oversee the Government's Compliance with Laws

The audit and review of “regularity” by both the Comptroller and Auditor General and the Public Accounts Committee in Britain are, in the Treasury’s words, about “compliance with appropriate authorities.” These authorities include statutes, Treasury regulations, and principles and standards established through the work of the Public Accounts Committee. The Comptroller and Auditor General’s audit of compliance forms the basis and starting point for the audit process. Without assurance of compliance to laws, rules and regulations, there is no assurance that the Government’s use of funds meets even the basic standards for parliamentary control of the public purse, let alone the more demanding standards of propriety and value for money.

The Canadian Auditor General's audit of the Sponsorship issue was a compliance audit into the regularity of expenditures. Its main finding was that the administration of the Sponsorship initiative had not conformed with statutory and other rules—had broken “every rule in the book.” Even the Canadian Auditor General's performance audits include a compliance audit.

As in Britain, the audit reports of the Canadian Auditor General form the starting point for investigations by the Public Accounts Committee. Government accountability to Parliament for financial management begins with a compliance audit by the Auditor General. Much of what the Canadian Public Accounts Committee does is a matter of overseeing compliance with statutes, rules and regulations by government.

The Canadian Government appears to question this role. In its *Final Submissions* to the Gomery Commission, the Government made this extraordinary claim:

Parliament creates many statutory obligations—under the *Income Tax Act*, for example—but this does not give Parliament the authority to oversee compliance or to enforce the law. That is a function of the executive.⁴⁵

That Parliament does not have a role in the executive function of the day-to-day administrative activities involved in overseeing and enforcing the law is not in dispute. But to claim that Parliament does not have the authority to oversee the Government's compliance with statutes, or to ensure that statutes are complied with, contradicts the basic constitutional principle that Parliament has the right to assure itself that the Government has complied with Parliament's intentions as expressed in laws.

The Government's claim that Parliament has no authority to oversee compliance to the law defies constitutional principles, the statute

governing the role of the Auditor General, the practices of Public Accounts Committees in both Canada and Britain, and principles established through many centuries of evolution of parliamentary control of the public purse. The fact that the Government not only made the statement in its formal submission to the Gomery Commission, but then repeated it in its response to a report of the Public Accounts Committee, suggests that it actually believes this erroneous and disturbing assertion.

The Government's example of the *Income Tax Act* is a red herring. The *Income Tax Act* is the most detailed and voluminous Act passed by the Canadian Parliament. It is detailed and voluminous because every clause, word and comma in the Act has been or will be subject to scrutiny in the courts. Jurisprudence over the *Income Tax Act* has been extensive and rigorous. The *Income Tax Act* is about the terms and conditions under which the Government takes money out of taxpayers' pockets, and those taxpayers with enough money to afford it can, and do, hire the best and brightest lawyers to take the Government to court when they do not agree with its interpretations of the *Income Tax Act*.

There has been no comparable jurisprudence on the responsibilities and accountabilities of Deputy Ministers, as set out in the *Financial Administration Act*, nor is there likely to be. Those who are concerned with the Government's abuse of the *Financial Administration Act* do not hire lawyers. The courts oversee and enforce compliance with the *Income Tax Act*; they do not do so over the allocations of powers and responsibilities under the *Financial Administration Act*. The task of assuring Parliament, and, through Parliament, the people of Canada, that the Government complies with the provisions of the *Financial Administration Act* and other statutes relating to regularity, propriety and value for money rests with the Public Accounts Committee and the Auditor General, not the courts.

3.5

Canada Already Has an Effective Way to Resolve Disagreements

The Canadian Government claims that there is no need to follow the lines of the British Accounting Officer system because Canada already has a satisfactory route of appeal for a Deputy Minister who disagrees with an instruction from a Minister. This route is to the Clerk of the Privy Council or even to the Prime Minister.⁴⁶ After that, “if the Deputy Minister does not concur with the final outcome, he or she has the option of resigning, rather than implementing the decision of the Minister.”⁴⁷

These avenues of appeal, the government argues, serve Canadian needs well. The main arguments offered in favour of the Canadian approach are as follows:

- It recognizes that both the Minister and the Deputy Minister are appointed by the Prime Minister, to whom both are accountable for the management of the Department and the implementation of the collective policies of the Government, and it allows the Prime Minister to adjudicate.
- It has the potential to avert a problem before any action is taken.
- It respects the confidential nature of advice offered by the Deputy Minister to the Minister, advice that will not become public.
- It clearly ascribes responsibility to Ministers for the final decision.⁴⁸

The following discussion deals solely with issues relating to the Deputy Ministers’ and Accounting Officers’ responsibilities for powers they hold in their own right, those relating to questions of regularity, propriety and value for money within their own department. The discussion does not relate to a Deputy Minister’s or a Permanent Secretary’s task of advising the Minister on policy and general departmental matters.

If a British Accounting Officer wants to discuss a disagreement with the Head of the British Civil Service (Cabinet Secretary, the British equivalent of the Clerk of the Privy Council Office), then he or she may. That this route is not normally used by Permanent Secretaries in relation to their duties as Accounting Officers does not mean that it does not exist. British Ministers can and do discuss such disagreements with their ministerial colleagues, as was seen in the Hawk fighter aircraft events (Appendix A). On occasion the Accounting Officer, Minister, and Treasury discuss issues in order to reach a mutually satisfactory conclusion. There is no British equivalent to the Canadian doctrine of deputy ministerial accountability to the Prime Minister, but, if Canada wished to retain the route of appeal to the Prime Minister, there is no constitutional or other obstacle to doing so.

The British Accounting Officer system, even more than the Canadian, “has the potential to avert a problem before any action is taken.” The British Treasury requires thorough preliminary discussion between Accounting Officer and Minister before an overruling through a ministerial direction. Quite possibly the British system puts an even greater premium on thorough preliminary discussion because both Minister and Accounting Officer know that their decisions must stand up to parliamentary and public scrutiny. The low number of such ministerial overrulings—an average of 1.5 per year—shows that the process has strong and successful inducements for encouraging both sides to reach a mutually satisfactory accommodation.

Nor would there be a problem in maintaining the confidentiality of Minister-Deputy Minister discussions. The purpose of the documentation that is made public on ministerial directions in Britain is to put on the record the fact that the direction has been issued, and to give the general reason for the objection and the overruling. It is not to reveal the content of confidential discussions between Minister and Accounting Officer. Similar protections exist for safeguarding the

confidentiality of discussions between Minister and Deputy Minister in Canada. That would not change under an Accounting Officer system.

The difference between the British and the Canadian procedures lies in the fourth point: identifying who has responsibility when the advice of a Deputy Minister/Permanent Secretary is overruled. The Canadian approach, it is argued, “clearly ascribes responsibility to Ministers for the final decision.” That it did so was not evident in the Sponsorship affair, either to the Canadian Public Accounts Committee or to Justice Gomery. The British Accounting Officer system does not allow this sort of confusion to occur. The Accounting Officer has the responsibility, unless overruled by his or her Minister through the formal process of a ministerial direction. When this happens, the Minister, not the Accounting Officer, has the responsibility and is accountable. There is no possibility of confusion.

The current Canadian practice contains more possibilities for confusion than the British: if the Clerk of the Privy Council or the Prime Minister instructs a Deputy Minister to do something, then who has the responsibility? Is it the Deputy Minister, if the instruction relates to his or her statutory or other powers? Is it the Minister? Is it the Clerk or the Prime Minister? What is the role of the Prime Minister’s Office in issuing orders or recommendations that appear to have the force of the Prime Minister behind them? An informal system like the Canadian one can easily lead to confusion about who is responsible.

The current Canadian practice hides problems and violates transparency. It puts a premium on a Deputy Minister’s sensitivity to the wishes of the centre, even when these might conflict with his or her departmental responsibilities. The dire threat of having to resign as the only alternative to obeying orders must surely be a strong incentive to encourage Deputy Ministers to acquiesce to ministerial orders that they believe do not meet acceptable standards. The route of a formal process for

ministerial overruling offers a much less Draconian and more reasonable alternative: to disagree, to be overruled, and then to implement the ministerial direction to the best of the Accounting Officer's ability.

3.6

Contradictions and Inconsistencies in the Government's Views on Responsibility, Accountability and Answerability

Canada's Auditor General has expressed the need for a clearer definition of the respective responsibilities and accountabilities of Ministers and public servants. The Canadian Public Accounts Committee found that "ambiguities in the doctrine [of ministerial responsibility], perhaps tolerable in the past, are now contributing to a situation in which those with responsibility are able to avoid accountability, as the Sponsorship Program has so clearly and so sadly demonstrated."⁴⁹

Despite these views to the contrary, the Government continues to maintain that there is no ambiguity and no confusion in the respective responsibilities and accountabilities of Ministers and Deputy Ministers:

Even when senior officials support the accountability of ministers by providing information publicly, such as when appearing before parliamentary committees, they do so on behalf of their Ministers.⁵⁰

To understand why those outside Government find ambiguity and confusion, it is necessary to begin with the Government's definitions of three central concepts:

Responsibility identifies the field within which a public office holder (whether elected or unelected) can act; it is defined by the specific authority given to an office holder (by law or delegation).

Accountability is the means of enforcing or explaining responsibility. It involves rendering an account of how responsibilities have been

carried out and problems corrected and, depending on the circumstances, accepting personal consequences for problems the office holder caused or problems that could have been avoided or corrected if the office holder had acted appropriately.

Answerability . . . refers to the duty to inform and explain, but does not include the potential personal consequences that are part of accountability. A Minister can be answerable for any actions taken by bodies within his or her portfolio, but cannot be held accountable—i.e., cannot be expected to suffer consequences—for powers not vested in the Minister.⁵¹

The difficulties arise in the attempt to reconcile the Government's views on ministerial and deputy ministerial responsibility and accountability with these definitions.

A crucial problem arises from the Government's claim that Deputy Ministers appear before parliamentary committees only to "answer" on behalf of their Ministers, not to be "accountable," even when the issue relates to the use of powers held by Deputy Ministers, not Ministers. According to the Government's definitions, Deputy Ministers cannot be "answerable" on behalf of Ministers for the exercise of these powers. These powers are not "vested in the Minister," as would be required for Deputy Ministers to appear in an "answerability" role on behalf of Ministers. For the use of these powers, Deputy Ministers must appear before a parliamentary committee as the holders of power in their own right.

Peter Aucoin and Mark Jarvis have similarly criticized the Government's loose application of the terms "responsibility," "accountability" and "answerability": "[T]hose who are confused by the use of these terms, with their various meanings, should perhaps be excused for their confusion. Those who should know better have not done everything necessary to help sort things out."⁵² They propose that the attempt to

distinguish the “answerability” of Deputy Ministers from the “accountability” of Ministers should be abandoned. They argue that the relationship of a Deputy Minister to the Public Accounts Committee is one of “accountability” and must be treated as such.

The Government’s definitions might also lead to confusion about the relationship of a Minister to his or her department. If Ministers are accountable to Parliament for actions of public servants, then Ministers, by the government’s definitions, must have the specific authority for the actions of public servants under authorities vested in the public servants directly. Perhaps the Government believes that the general responsibility of Ministers for their departments trumps the statutory and other responsibilities that Deputy Ministers possess in their own right. It does not say so.

The terms responsibility, accountability and answerability have been used in many different ways, with different shades of meaning by different persons and in different places. The Privy Council Office’s 1977 *Responsibility in the Constitution* frequently uses the terms accountability and answerability interchangeably. British sources use all three terms in a much different manner from the Canadian Government. Responsibility, accountability and answerability are what philosophers describe as “essentially contestable concepts.” As such, they do not have fixed, rigorous meanings but can be employed in a variety of ways that involve overlapping, complementary and even conflicting intentions and meanings. The way the terms are defined and employed depends on what use people want to make of them.

The Government’s bottom line appears to be that it is not prepared to recognize, or allow Parliament to recognize, that Deputy Ministers possess statutory and other powers in their own right for which they can be held accountable before the Public Accounts Committee. Except through canards about the British system, confused and contradictory

arguments, *ex cathedra* statements, and criticisms of the behaviour of the Canadian Parliament, the Government has not offered convincing reasons for this unwillingness.

3.7

Conclusions

The British Accounting Officer system does not give parliamentary committees the power to reward, punish or instruct public servants. It does not compromise the principle of ministerial responsibility. It does not lead to a plethora of disputes between Ministers and Deputy Ministers being aired in public. It does not breach the confidentiality of Minister-Deputy Minister discussions. It does not mean that the sort of informal system that operates in Canada for resolving disagreements between Ministers and Deputies cannot continue.

Three arguments remain against the adoption of the British system in Canada: one, that there is no need for it because the current Canadian system works well; two, that the Canadian Public Accounts Committee is too partisan to fulfill the role expected of it if Canada were to move towards the Accounting Officer model, as is Parliament itself; three, that it will alter the relationship between Ministers and Deputy Ministers.

This study is not the appropriate place to argue over whether the current Canadian approach works well. What has been made clear here is that there are enough ambiguities, contradictions and gaps in the current approach to the respective responsibilities and accountabilities of Ministers and public servants for financial administration to create confusion over who holds responsibility. That in itself is sufficient to justify serious consideration of other ways of allocating responsibility and other approaches to ensuring probity. The British Accounting Officer system provides a clarity and coherence in roles and responsibilities that is lacking in the Canadian approach.

Clarity and coherence are no guarantee that the system will ensure probity, but they help.

The question of partisanship in the Public Accounts Committee has already been considered, with the conclusion is that it is an overrated concern. While the Committee has indeed been partisan some of the time, as in its investigation of the Sponsorship affair, for the most part it does not operate in a partisan manner. The Committee will likely be partisan when the issues it is examining are the decisions and responsibility of Ministers. But the Committee has a good and consistent record of non-partisanship when it investigates issues that relate to the responsibilities and decisions of public servants. It was admirably non-partisan in its 2005 study of ministerial and deputy ministerial accountability.

Reforms can build on this base, and the Committee can be encouraged to avoid entering into the potentially harmful areas where partisan zeal triumphs over cross-party concern for the probity of financial administration of Canada. It should not, in so far as it can be avoided, be asked to look into issues where the decisions have been made by Ministers. The appropriate focus for investigation of ministerial decisions (or lack thereof) is on the floor of the House or in other parliamentary committees that look at policy issues.

Finally, there is no doubt that reform to the respective responsibilities and accountabilities of Ministers and public servants would require a change in the relationship between Deputy Ministers and Ministers. There wouldn't be much point in making reforms if it didn't. Reform would also alter the Deputy Ministers' relationships to their departments and to the centre, the Privy Council Office and the Prime Minister. Reform would strengthen the Deputy Ministers' commitment to their statutory and other responsibilities for management of their departments. Deputy Ministers are the focus of the sorts of reforms the Accounting Officer model suggests. These reforms go beyond the

Glassco Commission's theme that Deputy Ministers be allowed to manage, "Let the Managers Manage," and the Lambert Commission's "Make the Managers Manage" to a more demanding issue: "The Managers Must Manage."

4 A Canadian Solution

Two conclusions stand out from this study of the responsibilities and accountabilities of Ministers and Public Servants in Britain and Canada. First, there is a problem with the incoherence, confusion and lack of clarity in the Canadian Government's views on the respective responsibilities and accountabilities of Ministers and Deputy Ministers. These views have a profound impact in creating confusion over who, Minister or public servant, holds responsibility and should be held accountable. This lack of clarity in turn handicaps Parliament in its efforts to ensure probity in financial administration. The one clear point seems to be the Government's contention that Deputy Ministers are accountable only inside Government and that all accountability to or before Parliament is to be by Ministers. Second, the Canadian Government has not been prepared to recognize a role for Parliament in interpreting the principle of ministerial responsibility or what statutory provisions relating to responsibility and accountability should mean in practice.

These conclusions are all the more disturbing because Parliament and Government both have tasks to perform in sorting out the processes for accountability to Parliament. So far the dialogue between Parliament and Government has not been conducted in a useful way: The Government has stated its views; Parliament has proposed change; the Government has flatly rejected it. The resolution of differences requires a dialogue between Government and Parliament, not the sort of confrontation that was evident in the Government's summary dismissal of the Public Accounts Committee's proposals in May 2005 for reforming the accountability of Deputy Ministers.

Ministerial responsibility is only one of three central doctrines related to responsibility and accountability in the Canadian Parliamentary-Cabinet system of government. The other two are the supremacy of Parliament and the rule of law. Parliament makes the laws, and Parliament is entitled to claim a share of ownership of the principle of ministerial responsibility and what it means in terms of the accountability of Ministers and public servants in parliamentary forums.

The need for a dialogue is all the more important because some of the Canadian Government's views on responsibility, accountability and the role of Parliament are based on questionable grounds. For example, the Government's contention that Parliament has no authority to oversee compliance with laws does not accurately reflect the constitutional position of Parliament. The Government's views on the accountability of Deputy Ministers does not accord with its own definitions of responsibility, accountability and answerability. Its contention that Parliament does not want to make a distinction between the responsibilities of Ministers and public servants runs against the evidence: both the Special Committee on Reform of the House of Commons of 1985 and the Public Accounts Committee in its report on *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability* supported making this distinction. Up to now, Parliament has not been able to make the distinction between the responsibilities of Ministers and public servants because the Government has not made the distinction in its many formal descriptions of the accountability roles of Ministers, Deputy Ministers and other public servants.

Statutes and rules currently in force establish a regime for deputy ministerial responsibility for ensuring regularity and propriety in financial administration. The Government's interpretation of accountability to Parliament means, however, that even though Deputy Ministers have these statutory powers, only Ministers can be held accountable by Parliament. This interpretation of the principle of ministerial responsibility lacks clarity and causes confusion.

An effective system for financial accountability does not require change to the statutory responsibilities of Deputy Ministers, but it does require change to the way Deputy Ministers are held accountable. Parliament and Government have common interests in ensuring regularity, propriety and value for money in financial administration. The instruments for ensuring these elements of financial accountability are, on the parliamentary side, the Auditor General and the Public Accounts Committee, and, on the Government's side, the Deputy Ministers and the Treasury Board. Two parts of a coherent and effective system are missing in Canada: first, an appropriate focus on the accountability of Deputy Ministers, the persons who hold clearly assigned statutory responsibilities for financial administration; second, a Treasury Board that supports both the Public Accounts Committee and the Deputy Ministers in the quest for probity in financial administration.

The four agencies that need to be involved in the attainment of an effective accountability regime for financial administration are, first, Deputy Ministers, the persons who hold statutory responsibility for administration; second, the Treasury Board, the central agency with responsibility for ensuring that financial administration meets acceptable standards; third, the Auditor General, who performs an audit of the Government's use of funds; and fourth, the Public Accounts Committee, which investigates issues raised in the report of the Auditor General. In Canada, unlike Britain, these agencies do not cohere to create an effective system for financial accountability to Parliament.

Canadian practices took their present form under the different conditions of the past, when the Public Accounts Committee was weak and ineffective, when a strong role for Ministers in the details of financial administration was an accepted practice, and when controls through central agencies of government dictated a minor role for Deputy Ministers. Much has changed. The roles of the various bodies have not adapted to accommodate these changes. The purpose of reform

should be to ensure that each of these players performs the appropriate role and that, together, they create an effective, coherent system for accountability to Parliament for financial administration.

4.1

The Deputy Ministers

The Government's view that Deputy Ministers appear before the Public Accounts Committee solely to answer on behalf of their Ministers is the key point at issue in accountability for financial administration to Parliament. The arguments the Government offers to support this view are not convincing. The alternative, which has been supported by a royal commission, a Prime Minister and parliamentary committees, is for Deputy Ministers to be held accountable before the Public Accounts Committee for program management and departmental administration. The matters for which they are responsible and held accountable must be clearly described. To accomplish this objective, it is recommended that

- *Deputy Ministers be accountable in their own right as the holders of responsibility before the Public Accounts Committee. It must be recognized and accepted by all involved that the responsibility of Deputy Ministers for the use of their statutory and other powers is personal and cannot be delegated.*

The statutory and other responsibilities of Deputy Ministers are restricted to the administration of the department for which they are the public service head. Reforms must recognize that broader national or public interests will at times come into conflict with the departmental responsibilities of a Deputy Minister. The decision that the broader interests should prevail is a political one and should be made by politicians, not by public servants. There are times when the collective and individual ministerial responsibility of Ministers must prevail, even

if it bends or breaks rules. To ensure that an appropriate balance is achieved, a formal process should be established through which Ministers can overrule Deputy Ministers.

Correspondence related to ministerial overrulings of Deputy Ministers should be forwarded to the Treasury Board Secretariat. This correspondence would be available there for the Office of the Auditor General to examine in the course of its audit work. Forwarding this correspondence to the Public Accounts Committee (which, contrary to what has been said by some Canadian observers, is not the British practice) would risk encouraging extreme partisanship in the Committee. The Auditor General is in a position to take a careful look at the correspondence and at issues involved in ministerial overrulings, and to provide a considered report on them to the Committee. It is therefore recommended that

- *The Government establish a formal process through which a Minister can overrule a Deputy Minister's objections on matters related to the powers that Deputy Ministers hold in their own right.*
- *These overrulings be recorded in correspondence between Minister and Deputy Minister: This correspondence should be transmitted to the appropriate officer in the Treasury Board Secretariat and be available for examination by the Office of the Auditor General.*

It has recently been proposed that confusion over responsibilities and accountabilities could be resolved if, "when faced with proposed transactions that fall within the Deputy's authorities and responsibilities, but which the Deputy Minister does not want to approve," Deputy Ministers either inform the Minister that they will "not approve them or accept personal responsibility and accountability before a parliamentary committee."⁵³ This proposal contains no provision for ministerial overruling of a Deputy Minister.

Adoption of this proposal would violate the principle of ministerial responsibility. As has been shown, there can be very good reasons for a British Minister to overrule an Accounting Officer on the basis of national or public interest, or to resolve a problem in a way satisfactory to the Minister, Accounting Officer and Treasury. Deputy Ministers should not be put in the position of having to make decisions that violate the statutes and other rules they are required to observe, even if these violations might be considered desirable in terms of a perceived public or national interest. Political judgments are not made on the same basis as administrative judgments, and, in the British and Canadian systems of Parliamentary-Cabinet government, when there are disagreements between Ministers and public servants, the judgment of Ministers should prevail. That is what the principle of ministerial responsibility demands.

At present, the tenure of Deputy Ministers in a department is too brief. They should remain in an office long enough to ensure that they can properly exercise their management responsibilities and be held accountable for them. The Canadian Public Accounts Committee expressed concern over this issue in its May 2005 report, as, previously, had the Lambert Commission and Gordon Osbaldeston. It is recommended that

- *Deputy ministers serve in an office for three to five years.*

4.2

The Treasury Board

As the central management agency of the Government, the Canadian Treasury Board should play a more active role in the processes of accountability to Parliament for financial management. It should be more actively involved with both the Public Accounts Committee and Deputy Ministers. It is recommended that

- *The Treasury Board prepare a protocol that instructs and informs Deputy Ministers on the scope of those matters for which they hold personal responsibility and are liable to be held accountable before the Public Accounts Committee.*
- *This protocol be agreed to by the Public Accounts Committee and establish the ground rules for the appearance of Deputy Ministers as witnesses before the Committee.*

Other officials besides Deputy Ministers hold responsibilities for financial management in their own right—heads of special operating agencies and government programs that do not fit into the normal departmental category such as the RCMP, Parole Board, and Corrections Canada. Most Crown corporations and government-financed foundations are now subject to audit by the Office of the Auditor General. The chief executive officers of these non-departmental agencies should appear before the Public Accounts Committee in the same capacity and relationship as Deputy Ministers. It is recommended that

- *The Treasury Board maintain a list of heads of the agencies and the managers of horizontal initiatives that are subject to audit by the Office of the Auditor General and advise them of their accountability before the Public Accounts Committee.*

In Canada the task of reporting back to the Public Accounts Committee on action (or inaction) on its recommendations rests with the Auditor General. The Government, not the Auditor General, has responsibility for managing financial administration. This reporting role is not an appropriate one for the Auditor. It more appropriately belongs to the Treasury Board. It is recommended that

- *The Treasury Board report to the Public Accounts Committee on the action taken by the Government on the Public Accounts Committee's recommendations.*

4.3

The Public Accounts Committee

The Government contends that the Canadian Public Accounts Committee does not always act in a non-partisan manner. While that is correct, so also is the fact that the Committee acts in a non-partisan manner most of the time. The Committee becomes partisan when it investigates issues that the Government has made partisan: those in which questionable decisions involve Ministers. The focus of the Public Accounts Committee's concerns and investigation should not be questions about the merits of policies but of how policies have been administered, and in particular the issues related to regularity, propriety, economy and efficiency. These issues are located at the administrative end of the policy-administration spectrum. When there is ministerial involvement in these areas, the issue becomes political and partisan and, as was evident in the Public Accounts Committee's investigation into the Sponsorship affair, becomes fodder for battles between the Government and the Opposition. The Government's insistence that Ministers are accountable for all actions of public servants, including those taken by Deputy Ministers under the statutory powers that they, and they alone, not Ministers, possess, contributes to elevating administrative matters into partisan ones.

The vital function of ensuring probity in financial administration is assigned to the Public Accounts Committee, a responsibility that it performs on behalf of Parliament and, more broadly, for the people of Canada. In accomplishing this fundamental task, the Public Accounts Committee must be fair and even-handed in its investigations. When the witnesses before the Committee are public servants, the Committee should avoid dividing along party lines. The current rules regarding confidentiality of advice to Ministers, and the responses to question about policies, should continue to be observed by the Committee. If the Government wishes to do so, explicit processes for guarding confidentiality could be included in the protocol regarding the

responsibilities and accountabilities of Deputy Ministers prepared by the Treasury Board. It is recommended that

- *Deputy Ministers, as public service heads of departments, others holding equivalent positions, and the heads of other government agencies be the main witnesses before the Public Accounts Committee.*

The Public Accounts Committee, like other committees of the House, suffers from frequent changes in membership. This changeover is especially evident when the Committee conducts an investigation into a political scandal, as it did in the Sponsorship affair. If the Committee is to perform its functions effectively, its membership should be more long term and steady. It is recommended that

- *Members of the Public Accounts Committee be expected to serve on the Committee for the duration of a Parliament.*

4.4

The Auditor General

The Office of the Auditor General currently plays an appropriate role in the processes of accountability to Parliament. Two changes have already been recommended: first, that the function now performed by the Office of reporting to the Public Accounts Committee on the Government's actions in response to its recommendations be transferred to the Treasury Board; second, that the correspondence relating to ministerial overrulings of Deputy Ministers be available in the Treasury Board Secretariat for examination by the Office of the Auditor General in the course of its audits.

4.5

The Process of Implementing Reforms

Implementing reforms will require adjustments and accommodations on the part of Government and the Public Accounts Committee. Many

persons and agencies will be involved, and the process will require change in political and administrative cultures. The Public Accounts Committee should review the Government's progress in implementing reforms. It is recommended that

- *The Government report annually to Parliament on progress made in implementing reforms.*

The Government's reports should be as precise as possible in their commitments on such matters as the identification of who holds responsibility, what timelines it intends to follow, what resources are required, and what has been achieved and are in place. The Auditor General should review and comment on these reports. It is recommended that

- *The Auditor General comment on the status reports from the Government on progress in reform. The Public Accounts Committee should carry out an annual review of the progress in making reform, as described in the Government's reports and the Auditor General's comments.*

Note

These reforms cannot by themselves prevent abuses in financial administration. However, they will ensure that there is no confusion over who holds the responsibility when abuses occur. That should make abuse less attractive and less likely. The greater focus on financial management and probity demanded of Deputy Ministers and heads of agencies will also encourage more concern for probity. It will ensure more openness and transparency in the Government's accountability to Parliament for the management of the public purse. Deputy Ministers and others responsible for financial administration could do worse than to remember the question that the British Treasury recommends Accounting Officers ask themselves if they have doubts about a proposed course of action: *Could I satisfactorily defend this action before the Public Accounts Committee?*

And, since accountability to Parliament is part of a wider accountability, the question can be put even more simply: *Could I satisfactorily defend this course of action in public?*

Appendix A:

The Ministerial Direction over the “Advanced Jet Trainer—Hawk 128”

On July 29, 2003, Sir Kevin Tebbit, the Permanent Under-Secretary of State and principal Accounting Officer at the Ministry of Defence, wrote to his Minister, the Secretary of State for Defence, offering formal advice on how to proceed in the Advanced Jet Trainer Project. This letter was classified as “Restricted-Commercial” and not made public. The Minister responded on July 30, in a letter subsequently made public, thanking the Permanent Secretary for his “formal advice” and complimenting him for having “summarised clearly the range of issues which I [the Minister] have been discussing with Cabinet colleagues.” The Minister informed the Accounting Officer that he had carefully considered the points he had made but that had made his decision:

As you know, the Government attaches considerable importance to maintaining an innovative and competitive UK defence industry. An order for a new advanced variant of the successful Hawk aircraft would support our high technology aeronautical capability, including skilled jobs, and assist future exports of Hawk variants. Having weighed up the military, industrial and economic factors, I have therefore concluded that the Department should proceed, subject to successful contractual negotiations, with an initial order of 20 Hawk 128 aircraft and options up to the full requirement of 44.

The Minister concluded: “I shall be grateful if you and CDP would now proceed accordingly.”

On August 5, 2003, Sir Kevin, as Accounting Officer, wrote to Sir John Bourn, the Comptroller and Auditor General, informing him that he had “sought and received a Ministerial Direction on value for money grounds” and “had no concerns in terms of the regularity and propriety of the Defence Secretary’s decision.” Sir Kevin attached the relevant correspondence to his letter and concluded:

I understand that you will now inform the Chairman of the PAC of this exchange. Both my request for a Direction and the Secretary of State's response are classified as Restricted-Commercial. My minute, in particular, remains commercially sensitive even after the announcement of the Secretary of State's decision, and on those grounds and as internal advice to Ministers, I would not want to see its public release. I would be happy to talk through with you the terms in which you might write to Edward Leigh MP [the Chair of the Public Accounts Committee] if you would find that helpful.

The same day, the Accounting Officer wrote to the Treasury Officer of Accounts informing him of the ministerial direction he had sought and received, and telling him that he had informed the Comptroller and Auditor General, who "will now inform the Chairman of the PAC and consider whether the issue merits further investigation."

The Public Accounts Committee examined Sir Kevin Tebbit on this ministerial direction in February 2004, in the context of its investigation of a report by the Comptroller and Auditor General on major projects in the Ministry of Defence.⁵⁴ Edward Leigh (the Committee's Chair) asked Sir Kevin Tebbit how he justified the decision of the Secretary of State. Sir Kevin's responded:

If I may say so it is not for me to do so. I advised the Secretary of State and went through the proper process. He took my advice, discussed it with his colleagues in the Cabinet and came to a decision. That is the government's decision which I will implement to the best of my ability.

Chairman: What was it that led you to seek the direction? Were you aware of the industrial capacity arguments and the employment argument when you asked for direction? Why did you seek the direction in those circumstances?

Sir Kevin Tebbit: I was aware of those considerations. They were not considerations that I ignored, but I gave my advice which balanced, in my view, the various considerations. Ministers then looked at these issues and made a decision. I cannot say more than that, the detail of my advice to the Secretary of State has to remain confidential. It is now a matter for the Secretary of State.⁵⁵

The Public Accounts Committee did not hear testimony on this subject from the Secretary of State for Defence. It took note of the ministerial direction in its report, but made no comment about it. The Public Accounts Committee's concerns begin and end with administrative, not policy or political issues. Ministers are not witnesses before it, despite the Committee's power to summon them. Subsequently, after reviewing the relevant documentation, the British Parliamentary Ombudsman upheld the withholding of the correspondence between the Minister and the Accounting Officer and related documents on this issue on the grounds that, to release the information, was not in the public interest because, on balance, it would cause more harm than good.⁵⁶

Appendix B:

Sir Tim Lankester and the Pergau Dam

In 1991 the British Overseas Development Administration (ODA), after three years of internal discussion and controversy, decided to spend £234 million on the Pergau Dam project in Malaysia, the largest commitment for a single project ever made through its Aid and Trade Provision program. In 1993 the Comptroller and Auditor General, in a highly critical report on the Pergau Dam project, stated that the Permanent Secretary and Accounting Officer of the ODA, Tim Lankester, had advised against funding the project, but that his formal written objections had been overruled by the Minister, Sir Douglas Hurd, the Secretary of State for Foreign Affairs.⁵⁷

The Pergau Dam became one of the very rare occasions when disagreement between an Accounting Officer and a Minister has become public. Both the Public Accounts Committee and the Foreign Affairs Committee of the House of Commons later investigated the issue. By the time the dust had settled, *The Times* alone had printed over 50 articles, editorials and letters on the Pergau project. This widespread publicity made the Pergau Dam not only the largest such aid project in British history but also a considerable *cause célèbre*.

Not the least of the concerns of Parliament and press was that British aid for the Pergau Dam had been entangled with commitments from Malaysia for arms purchases. Indeed, the Commons Foreign Affairs Committee concluded that a protocol signed by the two governments did appear to link the two, which was contrary to British law.⁵⁸ The press added allegations of kickbacks and inflated contract prices in Malaysia to this already potent and illegal mix of arms and aid. At one point the Malaysian Prime Minister, in objecting to these press reports, for seven months banned contracts of his government with British companies. Also added were allegations that British companies with close ties to the Tory Government stood to benefit from the project.

The Accounting Officer's objections to the project in his memorandum of dissent had, however, been on economic grounds. As he told the Public Accounts Committee, "this project was unequivocally a bad one in economic terms." Sir Tim Lankester's memorandum of dissent (he was honoured with a KCB in 1993) had not been on questions of regularity or propriety, but on economic—value for money—aspects, which were so unfavourable that he concluded he required a ministerial direction in order to proceed.⁵⁹ Sir Tim assured the Committee "that the ODA concentrated exclusively on the economic, the technical, the financial, and commercial aspects of the project and that any idea of linkage with arms sales never came into it."⁶⁰ The department had not considered the question of the project's legality. It had no lawyer on staff.

Under the then-existing rules, a written dissent by an Accounting Officer on the basis of propriety or regularity, and the ministerial response, had to be passed on to the Comptroller and Auditor General. This transmittal was not required for dissent on the grounds of economy, efficiency and effectiveness, though the National Audit Office was to be made aware of ministerial direction if it were conducting any relevant inquiry. Because Sir Tim's dissent had been on economic grounds, the relevant papers were not passed on to the Auditor General, nor were they made available to the Public Accounts Committee in its investigation. Apparently the Auditor General's own concerns had triggered the Pergau investigation, not the formal objection by the Accounting Officer.

Not the least of Sir Tim's economic concerns had been that the contract price for the project increased from £316 million to £397 million, by over 25%, only two weeks after the agreement between the two Prime Ministers had been reached. The Public Accounts Committee concluded that "it was right and in accordance with his responsibilities that the Accounting Officer advised Ministers that he would require a direction before spending money on this project."⁶¹ The Government, the

Committee was told, had decided to proceed because Ministers did not wish to renege on an earlier commitment given to Malaysia at the highest level, and because they considered that there might be serious consequences for British companies and British exports if the aid were refused. The Secretary of State, Sir Douglas Hurd, transmitted to the Committee his views that the Accounting Officer had carried out his responsibilities correctly, but that, as Minister, he had overruled this advice because, from his wider perspective as Minister, there were possible harmful consequences for British companies and British exports to Malaysia if the Government had backed away.

There had been thorough discussions within the department, between Sir Tim Lankester and his Minister, and between the Minister and his ministerial colleagues before the Accounting Officer registered his objections and was overruled by the Minister. Sir Tim did not consult with the Head of the Civil Service (Cabinet Secretary) before registering his objection, though that avenue was open to him. He considered the issue his to resolve. The project did not meet the stated objectives of the program. The purpose of the foreign aid program was to increase the economic well-being of the recipient country. The Pergau Dam project did not meet this objective and, therefore, it should not be supported under this program.

Press reportage of the Pergau Dam issue consistently and strongly criticized the Government. The implications of sleaze, and the actual findings of blithe disregard of economy and efficiency, in this massive expenditure took their toll in public opinion. Ecological concerns compounded the economic and legal objections. A London-based pressure group, the World Development Movement, mounted a legal case against the Government on the basis that funding for the Pergau Dam contravened the Act of Parliament which says that the primary purpose of British aid should be the economic benefit of a country or the welfare of its people. The British High Court concurred, ruling that

using money from the Overseas Development Administration budget to build the dam was illegal. Although the Government did not appeal this judicial decision, it continued with the project, funding it from reserves. At the same time, it declined to restore to the aid budget the £34 million already spent on the Pergau project.

A key recommendation of the Public Accounts Committee in its report on the Pergau issue was that, in future, when a Minister takes any decision involving public expenditure against the advice of his senior civil servants, whether on economic or other grounds, a copy of the note of dissent would automatically be sent to the Public Accounts Committee. The process that was adopted was for the formal objections by Accounting Officers to be transmitted to the Comptroller and Auditor General.

In 1995 senior government officials reported that Ministers were planning a “savage” 40% cut in Britain’s foreign aid program in revenge for the department’s exposure of the illegal and uneconomic use of aid money in the Pergau Dam project. These cuts were much more severe than those faced by other government departments and flew in the face of government commitments to increase the aid budget.⁶² It was claimed that the Treasury supported Ministers in making these punitive cuts to the aid budget.

Sir Tim Lankester, who had been a high flyer in the upper levels of the British civil service (he had been a Deputy Permanent Secretary at the Treasury before heading the Overseas Development Administration, and had been Private Secretary to Prime Minister Margaret Thatcher in 1979-81), left his post as Permanent Secretary to the Overseas Development Administration in 1994 and became Permanent Secretary to the Department of Education. This post became redundant in 1995 because of government reorganizations. In 1996 Sir Tim retired from the civil service at the early age of fifty-two and became Director of the School of Oriental Studies at the University of London.

This very unusual case illustrates the constitutional principles underlying the position of Accounting Officer very clearly.⁶³ Once the Minister had overruled the Accounting Officer's objection, the Minister, not the civil servant, had the responsibility and was held accountable by Parliament. As the Treasury states, once an Accounting Officer has objected in a memorandum of dissent and been overruled in writing by a Minister, the Public Accounts Committee "can be expected to recognise that the Accounting Officer bears no personal responsibility for the transaction."⁶⁴ The Public Accounts Committee in its investigation simply put the events on record and clarified that Sir Tim's dissent had been solely on economic grounds; in no way was he asked to explain or defend the Pergau decisions. The Public Accounts Committee called no Ministers as witnesses; its concern is with the responsibilities and accountability of civil servants. In contrast, Sir Douglas Hurd and several other Ministers and ex-Ministers testified before the Foreign Affairs Committee, though, on the basis of precedent, former Prime Minister Margaret Thatcher declined to do so.

Sir Timothy Lankester was far from anonymous in the Pergau affair. He personally had objected in writing. If he had not objected, he personally would have been responsible for this very dubious expenditure and would have been held accountable by the Public Accounts Committee. But once he had been overruled by the Minister, he no longer had this responsibility. The doctrine of individual ministerial responsibility was upheld.

With very rare exceptions, the informal processes of discussion and negotiation between Ministers and civil servants allow disputes to be resolved without this sort of formal written objection by the Accounting Officer. Occasionally, senior officials do ask Ministers to put proposed actions into writing, whether because of legal dubiety or financial impropriety. This request, with its intimations of trouble to come, is normally enough to deter a Minister. The personal responsibility of the Accounting Officer has become a powerful force in the hands of the

bureaucracy in disagreements with Ministers to enforce compliance by Ministers with the bureaucratic norms of regularity in financial and related transactions. Perhaps the Tory Government, because it had been so long in power and had grown complacent if not arrogant, not only felt that it could override civil servants' objections with impunity but also could intrude into civil service management much more than was conventional British practice. Liz Symons, the General Secretary to the First Division Association, told the Nolan Committee investigating standards in public life that senior civil servants were increasingly being asked by Ministers to act outside accepted guidelines. She added that the FSA had evidence from senior civil servants whose careers had been damaged by giving Ministers "unwelcome" advice.⁶⁵

The doctrine of collective responsibility of Ministers was also upheld in the Pergau affair. Many other Tory Ministers besides Sir Douglas Hurd, including Prime Ministers Thatcher and Major, had been involved in the decisions. A former Secretary of State, Lord Younger, accepted responsibility for the offending protocol that had linked aid with arms, becoming what *The Times* called "the fall guy."⁶⁶ The electorate passed its negative judgment on the record of the Tory Government in the general election of 1997.

By the time the Pergau affair was over, the ramifications went far beyond the concerns of the Public Accounts Committee. In fact, that Committee's review of the matter was much more restricted than that of the Foreign Affairs Committee. The system of accountability through Accounting Officers worked well: an important question of economy and propriety in public expenditure was brought to the attention of Parliament; responsibility for going against the established standards for financial management was squarely placed with the Ministers; the conduct of both officials and Ministers was reviewed by parliamentary committees; and the electorate was allowed to make an informed judgment on the Government's conduct of public business. The Pergau

affair also led directly to reforms to the system of audit itself, becoming another important case in the evolution of audit through the Public Accounts Committee, Auditor General and Accounting Officers.

Endnotes

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- ¹ United Kingdom, Treasury Memorandum, *Responsibilities of an Accounting Officer* (no date), paras. 5-6.
- ² United Kingdom, HM Treasury, *Regularity and Propriety: A Handbook*, July 1997, p. 4.
- ³ *Ibid.*, pp. 6, 8.
- ⁴ These and the following quotations are from *ibid.*, pp. 24-25.
- ⁵ United Kingdom, Treasury, *Guide to the Scrutiny of Public Accounts*, 2004, para. 2.12.
- ⁶ United Kingdom, Treasury, *Value for Money Assessment Guidance*, August, 2004, para. 1.1.
- ⁷ *Ibid.*, para 1.3
- ⁸ Treasury, *Guide to the Scrutiny of Public Accounts*, para. 2.26.
- ⁹ Vernon Bogdanor, "The Civil Service," in Vernon Bogdanor, ed., *The British Constitution in the Twentieth Century* (Oxford: Oxford University Press, 2003), p. 267.
- ¹⁰ Treasury, *Responsibilities of an Accounting Officer*, para. 11.
- ¹¹ *Ibid.*, para. 22.
- ¹² These data are from Peter Barberis, *The Elite of the Elite: Permanent Secretaries in the British Higher Civil Service* (Aldershot: Dartmouth, 1996), pp. 181-98.
- ¹³ Treasury, *Responsibilities of an Accounting Officer*, para. 28.
- ¹⁴ This and the following quotations are from Barberis, *The Elite of the Elite*, pp. 222-27.
- ¹⁵ United Kingdom, Cabinet Office: *The Armstrong Memorandum: The Duties and Responsibilities of Civil Servants in Relation to Ministers*. Note by the Head of the Home Civil Service—the "Armstrong Memorandum" 1985, as amended on July 17, 1996.
- ¹⁶ From United Kingdom, Cabinet Office, *Guidance on Codes of Practice for Board Members of Public Bodies*, October 2004.
- ¹⁷ Treasury, *Guide to the Scrutiny of Public Expenditure*, October 2004, para. 4.6. Also, *Responsibilities of an Accounting Officer*, para. 30.
- ¹⁸ *Ibid.*
- ¹⁹ Correspondence to the author from Brian Glicksman, Treasury Officer of Accounts, June 15, 2005.
- ²⁰ Treasury, *Responsibilities of an Accounting Officer*, para. 26.
- ²¹ All quotations are from Treasury, *Guide to Scrutiny*.
- ²² Treasury, *Guide to Scrutiny*, para. 7.2.
- ²³ Peter Hennessy, *Whitehall* (London: Pimlico, 2001), p. 332.
- ²⁴ Canada, *Government Response to the Tenth Report of the Standing Committee on Public Accounts*, August 2005.
- ²⁵ *Ibid.* (my italics).
- ²⁶ Peter Aucoin, "The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform" (study prepared for the Commission of Inquiry into the Sponsorship Program and Advertising Activities, August 2005).
- ²⁷ For more detail, see Part 3.

- ²⁸ This tradition, and the consequent enthusiasm of the Opposition in Parliament for scandal-hunting, is examined in more detail in Part 3, in the discussion of partisanship in the Public Accounts Committee.
- ²⁹ Barberis, *The Elite of the Elite*, p. 224.
- ³⁰ Lambert Commission, *Final Report*, recommendation 9.2, p. 189.
- ³¹ Canada, House of Commons, Public Accounts Committee, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*, 10th Report, May 2005.
- ³² Privy Council Office, *Responsibility in the Constitution*, 1977, pp. 78-79.
- ³³ Gordon Osbaldeston, *Keeping Deputy Ministers Accountable* (Toronto: McGraw-Hill Ryerson, 1989), p. 168.
- ³⁴ *Ibid.*, p. 195 note 7.
- ³⁵ Canada, Standing Committee on Public Accounts, *Evidence*, February 21, 2005, p. 3.
- ³⁶ Privy Council Office, *Responsibility in the Constitution*, pp. 78-79.
- ³⁷ *Ibid.*
- ³⁸ Government Response to the Tenth Report of the Standing Committee on Public Accounts, August 2005.
- ³⁹ Kathryn May, "Gomery: Accountability Based on Old-Style Government," *Ottawa Citizen* September 12, 2005.
- ⁴⁰ Privy Council Office, *Responsibility in the Constitution*, pp. 78-79.
- ⁴¹ *Report of the Special Committee on Reform of the House of Commons* (McGrath Committee), June 1985.
- ⁴² Public Accounts Committee, *Governance in the Public Service of Canada*.
- ⁴³ Norman Ward, *The Public Purse: A Study in Canadian Democracy* (Toronto: University of Toronto Press, 1962), pp. 275-76. See also Desmond Morton, "Reflections on Gomery: Political Scandals and the Canadian Memory," *Policy Options* 26 (5) (2005): 14-20.
- ⁴⁴ For example, when Jean-Jacques Blais took over the portfolio of Solicitor General during a period of parliamentary excitement over scandalous behaviour by the Security Service of the RCMP in 1978, he responded to the first question directed at him about events that took place during the tenure of his predecessors by saying that he would not discuss them. Subsequently he sat silent in his place when opposition members asked this sort of question.
- ⁴⁵ Government of Canada, *Final Submissions* (to the Gomery Commission), para. 86. This claim is repeated in the Government's *Response to the Tenth Report of the Public Accounts Committee*.
- ⁴⁶ Privy Council Office, *Guidance for Deputy Ministers*, 2004, 3.2(a), and *Responsibility in the Constitution*, p. 87.
- ⁴⁷ Government of Canada, *Final Submissions*, para. 81.
- ⁴⁸ James Ross Hurley, "Responsibility, Accountability, and the Role of Deputy Ministers in the Government of Canada" (study prepared for the Commission of Inquiry into the Sponsorship Program and Advertising Activities, September 9, 2005), p. 20.
- ⁴⁹ House of Commons, *Governance in the Public Service of Canada*, 10th Report, p. 37.
- ⁵⁰ *Government Response to the Tenth Report of the Standing Committee on Public Accounts* (my italics).
- ⁵¹ All quotations from Privy Council Office, *Guidance for Deputy Ministers*.
- ⁵² Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform* (Ottawa: Canada School of Public Service, 2005), p. 17.
- ⁵³ *Ibid.*, p. 80.
- ⁵⁴ *Ministry of Defence: Major Projects Report: 2003*, Report by the Comptroller and Auditor General, HC 195 Session 2003-2004: January 23, 2004.
- ⁵⁵ United Kingdom, Public Accounts Committee, *Oral Evidence*, February 23, 2004, Questions 12-14.

- ⁵⁶ United Kingdom, Parliamentary and Health Service Ombudsman, *Investigations Completed July 2004-March 2005*, Part Two: "Ministry of Defence, Department of Trade and Industry and HM Treasury."
- ⁵⁷ United Kingdom, National Audit Office (NOA) Report, *The Pergau Dam Project*, 1992-93, HC 908.
- ⁵⁸ United Kingdom, House of Commons, 1993-94, Foreign Affairs Committee, Third Report, *Public Expenditure: The Pergau Hydro-Electric Project, Malaysia, The Aid and Trade Provision and Related Matters*, "Defence Exports and Aid Provision," pp. ix-xx.
- ⁵⁹ United Kingdom, House of Commons, Committee of Public Accounts, 1993-94, Seventeenth Report, *Pergau Hydro-Electric Project, Minutes of Evidence*, January 17, 1994, p. 5.
- ⁶⁰ *Ibid.*, p. 6.
- ⁶¹ *Ibid.*, p. vi.
- ⁶² Geoffrey Lean, "Ministers Slash Aid in Revenge for Pergau," *The Independent*, September 17, 1995.
- ⁶³ See Anthony Barker and Graham K. Wilson, "Whitehall's Disobedient Servants? Senior Officials' Potential Resistance to Ministers in British Government Departments," *British Journal of Political Science* 27 (2) (1997): 236-46, 227-28.
- ⁶⁴ Treasury Memorandum, *Responsibilities of an Accounting Officer*; paras. 13-14.
- ⁶⁵ Nigel Williamson, "Defiant Ministers Lose Right to Secrecy," *The Times*, February 2, 1995. See also Barker and Wilson, "Whitehall's Disobedient Servants?" pp. 224-25.
- ⁶⁶ "Younger Accepts Blame," *The Times*, March 4, 1997.