

WHAT CANADIANS SAID

The Commission, in planning this recommendations report, decided to consult Canadians on their views. It relied on three different means to gather these opinions: posting questions on the Commission's website (Appendix F); five moderated roundtables of experts which were held in cities across Canada (Appendix E); and written submissions from both experts and non-experts (Appendix D). This consultation was in addition to the research studies commissioned on specific subjects, which can be found in three accompanying volumes to this Report (listed in Appendix C).

Public input was a pivotal part of our Inquiry. If our main concern is to improve accountability in government, it is essential to hear the voices of those to whom the Government must ultimately be accountable. The important regional and sector-specific concerns that were expressed were a real bonus in this process.

We posed a series of questions to Canadians, focused on three issues: accountability, transparency and responsibility. These concepts are interrelated, but treating them together effectively challenges Canada's public administration to hold both elected and non-elected officials to account. In the end, Canadians want to know "Who is in charge?"

Canadians were asked about a number of accountability and transparency mechanisms, such as whistleblowing legislation, access to information (ATI) legislation, internal audits and other oversight processes. We also asked specific questions about the roles of key government institutions and office holders; the relationships between Parliament and Cabinet and between Cabinet Ministers and departmental officials; and about the management of advertising and sponsorships, including the proper level (if any) of political involvement. As well, we added an open-ended question to allow Canadians to voice their general concerns and to suggest recommendations.

The Sponsorship Program: A Unique or a Systemic Problem?

The Commission found that Canadians have strong, often passionate views on these topics. The Inquiry has ignited a reflective and important debate on the operation of our country's political and administrative institutions. We learned that, despite their concerns, Canadians are proud of their political system. But we also learned that this pride has taken a beating since the revelations of what has been called the Sponsorship scandal. Many Canadians did not waste words, expressing nothing less than disgust with the system. "I have never been so sickened in my life by the political corruption that seems to be ingrained in the Canadian political system. A Canadian politician is a four-letter word," wrote one website respondent. Many felt the Government had let Canada down. "I no longer know what values this country has. I can only wonder what the effect is on the younger generation."

More specifically, many Canadians feel that the Government is not concerned with abiding by its own internal rules, that these rules are applied arbitrarily or only when there is public scrutiny, and that favoured insiders can get what they want and where they want it, in spite of the rules. Perhaps the most widespread feeling among Canadians is that those who break the rules are not punished, but they should be. The simple message many Canadians are sending is that politicians should not see themselves as above the law.

Canadians view the Sponsorship scandal as unique, but they also feel that it is a manifestation of broader systemic cultural or moral problems in government. These problems include politicization, cynicism, moral cowardice, personal opportunism, indifference to the waste of public funds, a routine disregard for Parliament and the public interest, and a lack of respect for the rules. One former public servant wrote:

The management culture has changed dramatically over the past 20 years from solid record-keeping, accountability and dedication to the public service and loyalty according to our oath of office to Canada, to avoidance of record-keeping and accountability, and dedication of loyalty to the individuals who appointed you and who can promote you.

Accountability

Ask Canadians who should be accountable to whom and for what, and they will tell you that the lines of accountability are unclear at best, especially at senior levels of government. The Public Policy Forum strongly urged that the Prime Minister and the Clerk of the Privy Council should both “articulate clear behavioural expectations to their respective spheres and publicly sanction anyone who diverges significantly from such expectations. Any organization’s behaviour,” the Forum continued, “is a reflection of the behaviour of its leaders.”

During our consultation process, Canadians debated at length the respective roles of Deputy Minister and Minister, with little consensus beyond the fact that this relationship is crucial for the proper functioning of a department and that, ideally, it should be a friendly professional relationship where differences are worked out by mutual agreement. There was general agreement that, overall, the Deputy Minister is the person responsible for day-to-day management issues in a department, including delivery of programs, and the Minister is responsible for overall policy decisions.

Many people said that Ministers may instruct their Deputy Ministers on anything they want done, and that Deputy Ministers should do it, except in unusual situations. It is these exceptional situations that need to be defined. Mechanisms for resolving differences that are acceptable to both parties must be developed. For example, what constitutes undue pressure? Does it happen only when a Deputy Minister is asked to break the law? Evidently, in such situations, the Deputy Minister must have the courage to say No to the Minister. But, as mentioned by some, a system based solely on the courage of individuals is most probably bound to fail. And even a Deputy Minister exercising courage should have recourse to a third party, a role normally assigned to the Clerk of the Privy Council.

In the Sponsorship Program, both politicians and public servants were reluctant to acknowledge their respective roles and accountabilities. In the end, no one took responsibility for what went wrong. The Commission heard this concern from Canadians time and again.

Many Canadians also felt that accountability should continue after someone leaves a position. Once a decision is made, it should not “disappear” when the person moves on. Some said, however, that this accountability could be taken only so far: one former Minister who had been obliged to answer for a predecessor’s misconduct said that this matter was “my concern, but not my responsibility.”

There was a sense from some Canadians that the higher up individuals are in government, the more insulated they become from accountability. As one roundtable expert put it, Ministers and Deputy Ministers “hide behind” each other. This same person added: “Avoiding responsibility has become a fact of life and starts at the top. This culture then permeates through society as a whole.”

Exempt (or political) staff members in Ministers’ offices are seen as a hindrance in any effort to achieve accountability. Few respondents had anything good to say about political staff and their growing influence in Ottawa, and many asked how a government could be accountable if it routinely put former campaign workers in positions of power, often with inadequate training. They wanted to know why these individuals were subsequently able to enter the professional public service “by the back door,” and why the staff around the Prime Minister often spoke as though they had the authority of the Prime Minister. As one former exempt staffer wrote:

This role is greatly overlooked as a potential abuse within the system. Too often exempt staffers are young and without much if any experience in managing large dossiers and complex issues. They are vaulted into positions of high influence and power. Their loyalties are often narrow: to their Minister, their party and their government...usually in that order.

Some Canadians spoke about the difficulty of defining accountability in government, where a system of “horizontality,” or issues that extend across departments, increasingly prevails. In addition, when paid lobbyists, program stakeholders, sectoral experts and others are directly involved in the decision-making and program-management processes, these lines are blurred further still. Canadians want them un-blurred.

What Canadians do not want are more rules to ensure accountability. They feel that enough rules are already in place, such as a well-defined

procurement process, a Lobbyists Registry, a values and ethics code, access to information legislation, and the *Financial Administration Act*. Canadians want the rules that already exist to be followed and enforced.

At the same time, Canadians ask for improved accountability structures to detect errors and to deter rule-breaking. These mechanisms include a Public Accounts Committee with independence, more resources and committed members; a more rigorous estimates process; smaller government departments; better lines of reporting between departmental auditors and the Comptroller General; a more powerful role for the Auditor General's Office; and outside monitoring by an ombudsperson.

Taking Responsibility

Calls for displays of responsibility pervaded the responses. "Uneasy lies the head that wears the crown," one website respondent wrote, quoting Shakespeare's King Henry IV. He continues, "Taking responsibility is what the job is all about."

There was a clear difference in opinions with regard to how responsibilities should be divided between Ministers and Deputy Ministers. A large number of Canadians feel there should be no exceptions to the idea of ministerial responsibility—that "the ultimate accountability resides with the Minister," to quote one roundtable member. Many recognize that Ministers' power is discretionary and that they can choose how to use it. That said, Canadians acknowledge that there are limits to this responsibility: it is impossible for Ministers to know everything that goes on in their departments, and many of them lack expertise in their particular sector. Given these restrictions, a lot of Canadians believe that considerable responsibility should rest with senior management in each department. "Everyone knows senior management is the main 'change agent' in a department," one person wrote, adding that senior managers should be accountable to a higher authority for all their actions, including the management of finances.

However, many Canadians are concerned less with where the lines of responsibility are drawn and more with simply having them in place. They want their leaders to act as leaders, to accept responsibility and to be accountable.

Several people we heard from compared our political system to the private sector, saying that a Minister is comparable to a CEO who accepts responsibility and risks fines or a jail sentence. One writer equated Canadian taxpayers to the shareholders of a company. Many people suggested that accounting principles, such as those in private corporations, should be applied to the federal government, including all Crown Corporations and agencies, with strict consequences for failure to manage public funds properly. The Commission heard many calls for a newly empowered Auditor General, with full access to departmental accounts at any time.

Revitalizing the Public Service

Canadians spoke at length about the public service. Many were concerned that this group of highly skilled professionals may not be putting the public interest first. Would stronger adherence to the *Value and Ethics Code for the Public Service* enhance responsibility? The views of Canadians here were insightful. We were reminded in discussions that many people immigrate to Canada precisely because of its ethical standards and its values, such as fairness, tolerance and a responsive government. Most felt that integrity in officials is crucial. It prevents them, as one person suggested, “from signing off on any item that comes their way.”

One view opposed legislating ethics guidelines, believing that ethical behaviour should be a matter of personal conviction. Another view held that these values should be enshrined in legislation to ensure a firm basis in law. Those who argued against legislation took the view that regulations and rules cannot provide protection against people who lack integrity

and good judgment. Those who support legislation insist that only a legal foundation can show that ethical standards are serious. Some Canadians thought the idea of a code to be redundant, believing that values and ethics should simply be required by all public service employees as a prerequisite to, and continuing condition for, employment.

Many Canadians felt a code of ethics should not be a replacement for good management and leadership, and that ethics should be reinforced through staffing, evaluation and training. Similarly, those who supported the idea of a code said there should be accompanying discussions about real-life case studies and dialogue about workplace applications. A few even suggested a larger scope for a code of ethics, one that applied to all corporations that deal with the Government.

Other measures came up in discussions. Some Canadians recommended the addition of new blood to the system on a regular basis, to generate fresh ideas and ensure that no one becomes complacent. They suggested that public servants be rotated through different departments, to prevent them from covering up evidence of the abuse of power or the misappropriation of finances. Some said that if substantial increases in remuneration are needed to attract really good people, then so be it.

The Application of Sanctions

Many Canadians care little about the intricacies of bureaucratic processes in Ottawa, but they want an answer to the question: “Who will suffer the consequences?” The Commission has received a deluge of e-mails from Canadians expressing outrage that no one has yet been put in jail for the Sponsorship scandal. To many Canadians, accountability means nothing without penalties attached to it.

Indeed, it is the misappropriation of funds that angers Canadians the most. In the consultations, we were reminded many times that

infractions of the *Financial Administration Act* were committed. Website respondents in particular displayed a sense of being personally betrayed by what they characterized, at best, as the irresponsible spending of hard-earned tax dollars and, at worst, as the theft of money from their pockets. They pointed out the double standard of their own responsible behaviour in paying income tax, for example, while politicians remain unaccountable and unsanctioned for the misuse of public funds. “Compare the zeal with which CCRA [the Canada Customs and Revenue Agency] goes after the taxpayer, ensuring every last penny is garnered that they deem is owed to the Government, to the cavalier indeed criminal manner in which it is spent,” wrote one contributor to the website.

Many Canadians have come to believe that, within the Government, the system of incentives and disincentives is dysfunctional and ineffective in promoting good conduct. Appropriate sanctions seem to be disconnected from the actions of both elected and non-elected public officials. The Commission was told, for example, that because it is difficult for senior managers to apply sanctions, some “problem” employees are merely shifted between departments.

Fashioning sanctions appropriately appears to be a challenge. As discussed at the roundtables, there is little in the laws of industrialized countries that stipulates there will be consequences for people who do not do their jobs properly. Misconduct in public administration is in a grey area between actual violation of the law, on the one hand, and, on the other, a lack of judgment or deficiencies in performance. The latter most properly merits political punishment by voters or sanctions by government authorities. However, public servants do on occasion commit serious improprieties, and Canadians told the Commission that, in those cases, they insist on some form of disciplinary action.

Advertising, Sponsorships and Politics

For many of the people consulted, “government should not be in the business of persuasion,” to quote one of them. In other words, government must take the responsibility of ensuring that an advertising or sponsorship program does not get perverted to benefit the party in power, which some Canadians view as a form of “propaganda.” At the same time, many Canadians acknowledge that government should be in a position to advocate and advertise its own policies, especially those in the public interest, citing as an example the advertisements explaining the 1982 constitutional changes.

The distinction between what is proper influence and what is improper is often difficult to discern. One organization made the distinction between political *influence*, which it deems unacceptable, and political *direction*, which is the prerogative and a requirement of a government in a democracy. But if the distinction is not recognized and clearly defined, we can end up, as one person put it, with “unhonourable things done for honourable reasons.”

The Need for Transparency and Access to Information

A great number of the respondents to the Commission website were concerned with the need for transparency. One encouraged the Commission to do everything it could to ensure that, from this point on, “all the doors will remain open and all the lights left on.” Accountability and responsibility flourish more easily in a system that is transparent, where Canadians have access to what their government is doing and where wrongdoings are reported. Transparency does not guarantee accountability, but it makes it more possible. As many people pointed out in the consultations, it was through the use of access to information legislation that the problems associated with the Sponsorship Program first came to light.

Although the Commission did not hear from anyone who opposed the idea of transparency, many realized that full transparency is not practical. But Canadians want clearer and more precise definitions about the exceptions to the accessibility of government information. An easy example is the area of national security. Many who have worked in government stressed that the fear of releasing information tends to promote cautious behaviour and to stifle creativity. One person said there should be some degree of confidentiality, for example, in exchanges between Ministers and officials. Cabinet Minutes, or records of decisions in meetings, should remain confidential, some said. One Albertan spoke about the chill that befell his provincial government when its *Freedom of Information and Protection of Privacy Act* was passed:¹ officials stopped developing policies on paper. However, others wondered why people would mind having their work exposed to public scrutiny, if it is done in a rigorous, non-partisan manner.

Many Canadians feel there may be too many exceptions to obtaining information. The *Access to Information Act* has been in effect since 1983, but many Canadians say it does not work as the legislation was intended. With numerous exemptions, and with those handling the requests usually taking the maximum time allowed for responding, the law really operates to restrict access. Journalists, in particular, lamented that information concerning Crown Corporations, Cabinet discussions, security matters, third parties doing business with the Government and other matters was not legally available. Others told stories of officials who deliberately avoided leaving a “paper trail.”

The Commission notes with alarm the numerous complaints about the Government’s “oral culture” as well as the “damage control” on access to information when requests concern Cabinet Ministers, ostensibly because the information might be used to hurt the Minister publicly. Ministerial staff members, the Commission was told, feel tension between disclosing information and their loyalty to the Minister. Countless individuals

reported that senior officials, both political and administrative, find various ways to deny providing information to the public.

Among the suggestions Canadians made for reform are fewer exemptions, reinforcement of mandatory record-keeping, the prohibition of secret funds, the reduction of wait times for access to information requests, automatic disclosure, a public interest override, and including whistleblowing provisions in the *Access to Information Act*. In one discussion we were reminded of Mr. Justice Gérard La Forest's words that the "overarching purpose of access to information legislation... is to facilitate democracy."²

Whistleblowing Legislation

Canadians have given a lot of thought to whistleblowing and the legislation recently enacted.³ Many approve of it passionately, some seeing it as an essential transparency mechanism. They support complete protection for the whistleblower, including anonymity, and advocate other ideas to enhance the whistleblower concept, such as a financial reward or bonus given to the individual concerned, more education about the details of the process, and even a promotional campaign. One Canadian wrote that a proper whistleblowing program might have arrested the Sponsorship affair.

By way of an analogy—if a neighbour were to observe a burglar break into your house to steal your valuables and calls the police to arrest the perpetrator, he/she would be feted as a good neighbour and citizen. Then why shouldn't a civil servant who alerts authorities that someone is stealing the taxpayer's money not be treated the same way?

However, other Canadians take issue with the whole idea, suggesting that whistleblowers who are public servants working for the Canadian public should not need encouragement to provide information about

wrongdoing. Instead, they feel, this disclosure should be seen as a duty that comes with the job.

Experts advise that whistleblower legislation cannot be a substitute for other internal mechanisms to ensure sound management, propriety and adherence to the law. As with health, they say, prevention, and not medicine, should be the focus. One suggestion is to “live” values rather than legislate them. Another Canadian wrote: “Whistleblowing should not be a primary mechanism for achieving accountability, but rather one of last resort.”

Many experts were concerned about how to make protection for the whistleblower against reprisal genuinely effective, while avoiding a breakdown of trust among public servants. Some anticipated a “reign of terror” or a “detective culture.” It was suggested that those civil servants accused of wrongdoing, rightly or wrongly, would inevitably suffer a costly tarnishing of their reputation.

Other Integrity Mechanisms

Other mechanisms that Canadians feel might enhance integrity and circumvent the reliance on whistleblowers include a commitment to routine monitoring, internal audits, an ombudsperson’s office, and training that emphasizes the promotion of ethics.

At the same time, the Commission was cautioned by the not-for-profit and voluntary sector, which represents millions of Canadians, not to make accounting processes too sophisticated and costly. Affected as they were by the reintroduction of more detailed reporting requirements after the “Human Resources Development Canada scandal,” they fear an overreaction by government to the events of the Sponsorship scandal.

Overall, there is a pronounced scepticism about the ability of government to reform itself by internal measures. Many Canadians

associate integrity and probity with independent officials such as officers of Parliament and ombudspersons. In the case of financial management, a lot of Canadians express disappointment with the integrity of the internal auditing system. The exception is the Auditor General, whom many Canadians hail as a near-hero. “She’s the only one with any guts,” one person wrote. They recommend that she be given more funds and more authority, including the power to impose penalties. Several people even suggested that a “mini Auditor General” be assigned to every department, agency and body.

The Need for a Culture Change

In the end, Canadians do not want a wholesale revamping of the system. But they insist that things must be done differently, and it is not sufficient merely to adjust the mechanisms of government. Canadians want a change in the culture of their government, in the values, norms and management standards that underlie public administration.

Accountability is important to them. They want to feel that someone is accountable, and that public servants are there to serve the public, not just to advance their own careers and please their superiors. One expert attributed the Sponsorship scandal to excesses caused by what he called a “private business culture” or “entrepreneurialism” in the public service. This attitude has replaced “public business” standards based on the public interest. In the Sponsorship Program, according to this theory, the Prime Minister and the Cabinet, with the best of intentions, encouraged the entrepreneurialism of certain public servants, who in turn stopped working for and by the rules of their department and cultivated relationships with private-sector sponsorship companies, using a different set of rules and standards.

One legal expert spoke of the Government advertising program as having no rules or direction, suggesting that “a shift to a rule-of-law culture” would shelter advertising programs from corruption. Such a culture

would shift the balance towards public servants' loyalty to the rules of the public service rather than to the wishes of their political superiors.

On the website, calls for such a culture change were widespread. One writer wanted a "culture of integrity;" another attributed the wrongdoings to "une culture où les gens se protègent mutuellement" (a culture where everyone protects each other); yet another suggested better screening of applicants for employment and advancement, and encouraging "a culture of honesty, integrity and respect." One British Columbian wrote:

No set of rules can ever govern every situation and those determined to find a way to manipulate or bypass rules for personal gain or advancement will inevitably find a way to do so. A better means would be for every manager and politician to consciously establish and maintain a culture—the way we do things here—of the sanctity of public trust.

The trust of Canadians in their political and administrative institutions has been badly damaged. Canadians want it restored.

Endnotes to Chapter 3

¹ RSA 2000, c. F-25.

² Justice La Forest included this statement in his dissenting opinion in *Dagg v. Canada (Minister of Finance)* (SCC, 1997).

³ Bill C-11 was passed by the House of Commons on October 5, 2005, and received Royal Assent on November 25, 2005. Its full title is *An Act to establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings*.