
PART TWO

ACCOUNTABILITY

PARLIAMENT AND GOVERNMENT

This chapter deals with the broad question of the relationship between Parliament and the Government. Parliament, through statutes and the budgetary process, assigns powers and resources to the Government. The Government administers these powers and resources, while Parliament holds the Government accountable for its stewardship.

Ministers and the public service form the executive branch of government. The executive branch derives its powers and its authority from Parliament and, in turn, is accountable to Parliament and, through Parliament, to the people of Canada. The principle of the rule of law provides an overarching framework that both enables and limits the actions of the Government. The principle of ministerial responsibility identifies the members of the Cabinet, collectively and individually, as the persons at the head of the executive branch who hold broad responsibility and exercise the power to govern. The principle of the supremacy of Parliament establishes Parliament as the body that creates the laws that

give powers to Ministers and the rest of the executive, and the body to which the executive must be accountable.

The supremacy of Parliament means that Parliament can make any law it wishes within the limits set by the Canadian Constitution, including the distribution of powers between the federal and the provincial levels of government established in the *Constitution Act, 1867*, and the constraints established through the *Canadian Charter of Rights and Freedoms*. The responsibilities of Ministers and public servants are established by constitutional conventions and legislation passed by Parliament.

Ministers, who are normally elected members of Parliament, are also the heads of the departments that form the executive branch of government. Ministers serve as the political heads of the departments of government. They also sit in Parliament, defend their conduct of the business of government, initiate government business in Parliament such as the annual budgets, and propose policies, programs and legislation.

The Government, not Parliament, has the responsibility for managing and administering programs. Canadian parliamentary government is a system of government in Parliament, and with Parliament, but not by Parliament. Parliament does not govern. Parliament passes laws that give the Government the powers it requires to govern, and it approves budgets that give the Government the financial resources required to carry out its work. The Government initiates legislation and budgets; Parliament discusses, criticizes, perhaps modifies, and ultimately approves or rejects legislation and budgets. Through legislation, Parliament specifies the sphere in which the Government can act. The Cabinet, consisting of the elected politicians who are both Members of Parliament and heads of the departments of government, governs the country.

Parliament is the central forum in which the Government is held directly to account for both policy and administration. Ministers are

accountable collectively to Parliament for policies and for the Government's actions or failures to act, and they are ultimately accountable to the people of Canada through general elections. Parliament holds the Government accountable in two ways. First, it holds the Cabinet collectively accountable for its policies, for its responses to the challenges facing the nation, and its stewardship of the public sector and the business of governing the nation. Second, it holds the Government accountable for the way it has used the powers and resources that Parliament has granted it. This accountability applies to administration, not policy, and it must be directed to those who hold responsibility for administration. Public office holders, whether Ministers, directors of Crown Corporations or public servants, can be held accountable only for things for which they are responsible. Though in a broad sense Ministers are responsible for the general direction of the management of the Government's activities, public servants, boards of directors of Crown Corporations and many other public office holders are assigned statutory responsibilities in their own right.

In this chapter, we examine the areas in which the Commission found problems and areas for concern in the allocation by Parliament of powers to government and in accountability to Parliament. It looks at the three aspects of control by Parliament: first, the allocation of powers and resources to the Government; second, responsibility for the use of powers by government; and third, accountability to Parliament for the use of these powers.

We begin at the front end of the responsibility-administration-accountability circle with parliamentary consideration of the Estimates, the documents through which the Government informs Parliament of its spending proposals and gets Parliament's consent for them. We then look at the role and accountability of the public service, those involved in administration and the handling of funds by Government. Finally, the chapter returns to this circle of control and the question of

accountability to Parliament, through an examination, first, of the issue of partisan and non-partisan behaviour by Parliament in accountability and, second, of the role and functioning of the Public Accounts Committee, the instrument through which Parliament holds the Government accountable for its management of the public purse.

The Estimates

Parliamentary review of expenditure begins each spring when the Government submits a comprehensive annual Budget to Parliament. Voluminous and complex “Estimates” documents support the Government’s request to Parliament for authority to spend public funds. Part I of the Estimates describes the Government’s expense plan and provides an overview of federal spending. Part II, the “Main Estimates,” identifies the spending authorities (Votes) and the amounts to be included in appropriation acts. Part III, the departmental expenditure plans, is divided into two components. The Departmental Reports on Plans and Priorities provide details of activities and contain information on strategic outcomes, initiatives and planned results, including links to resource requirements for a three-year period. These reports are normally tabled in the spring, as are Parts I and II. The second component of Part III, the Departmental Performance Reports, are accounts of the results achieved by individual departments, compared with the performance expectation as set out in each department’s Report on Plans and Priorities. The reports from this second component are tabled in the fall. Altogether these Estimates documents for the Government of Canada total thousands of pages. They would fill a large shelf in a bookcase. It must be a daunting, if not impossible, task for a Member of Parliament to grasp all the details of what the Estimates have to offer.

Parliament grants funds to the Government by approving an amount to be spent in a Vote, and each Vote in the appropriation acts forms the

starting point for parliamentary control of the public purse. The Government can spend funds only for the purposes and in the amounts approved by Parliament for each Vote. Preparation of the Estimates is the responsibility of the Government, and that role is confirmed through the constitutional principle that, while Parliament can reduce the amounts in Votes, it cannot increase them.

The Estimates have two functions. First, they are major policy documents. The Government's spending plans and annual Budget documentation express the Government's priorities, the emphasis it has chosen to place on different programs, and how it has decided to respond to the needs and challenges facing Canada and the Canadian people. Second, the Estimates are essential documents for control of the public purse. Since parliamentary Votes of funds define the amounts and purposes that constrain government spending, Parliament, for effective control of the public purse, must assure itself that the Government respects the constraints on spending authorized by the appropriation acts. Assurance that the Government has complied with the statutes and other authorities governing each parliamentary Vote of funds is the first step in the audit process by the Auditor General and in accountability to Parliament for financial administration.

Corresponding to these two different functions for the Estimates, the proposals and the appropriations found in them embody two kinds of accountability to Parliament. For the policy decisions embodied in the Estimates on the amounts to be spent on the various programs of government, on the balance between "guns and butter," between what the Government proposes to spend on social programs compared with defence, or industrial development compared with protection of the environment, and all the other myriad competing needs and wants of the people of Canada, responsibility and accountability belong to the Ministers collectively. The spending plans of the Government are matters of confidence, and the Government survives or falls depending

on Parliament's support or rejection of these plans. The accountability of the Government to Parliament for these aspects of the budget and Estimates is very much a matter of partisan politics. To the extent that discussion of the Estimates in Parliament or parliamentary committees is about policies, program proposals, and other government decisions, it is to be expected and is entirely appropriate that Parliament regards them as subject matters for debate and dispute between Government and the Opposition.

For the Government's compliance with the Estimates as control documents, accountability is less a matter of partisan politics and more one of reviewing the administration of the funds. An audit of compliance with the appropriation acts and other relevant statutory authorities for each parliamentary Vote in the Estimates is an essential part of the annual work of the Office of the Auditor General. Compliance is more an administrative than a policy issue, and, unless Ministers have been involved in decisions and actions reported on by the Auditor General, compliance is not normally regarded by Parliament or parliamentary committees as a partisan matter.

Present procedures provide Parliament with ample opportunities to debate the Budget and the Estimates as broad policy documents, and they are generally considered to be satisfactory. However, the problems identified in the Sponsorship Program suggest that compliance with the laws and Estimates authorized by Parliament to serve as controls over the use of funds is far from being assured.

Parliamentary review of the Estimates has not met the hopes and expectations set for it. In its research study for the Commission, the Parliamentary Centre found:

Members often admitted—sometimes with regret—that they did not pay much attention to the Estimates, that they had only a weak

idea of what level of resources was expended to achieve program results, and [that] they did not know what financial instruments departments use to achieve their assigned results. In the series of incidents over the last few years (Human Resources Development Canada (HRDC) contributions program, gun control, sponsorship), a number of MPs apportioned at least some “contextual” blame to inadequate parliamentary oversight of program expenditures.¹

The Parliamentary Centre study expressed concern that weak parliamentary attention to the Estimates can have a further negative impact on financial stewardship. Insufficient attention risks leaving the officials charged with protecting financial integrity and reporting to Parliament vulnerable to pressures from program managers who regard financial stewardship procedures as a bother and an impediment.

Problems in the parliamentary review of programs are not new. Before the reform of the committee system of the House of Commons in 1968-69, Members of Parliament examined the Estimates in a “committee of the whole” on the floor of the House. In this situation, the Ministers, with the support of departmental officials, responded to questions by Members about the departmental estimates. Individual Members of Parliament found this interrogation of the Ministers to be rewarding, because it allowed them to raise the problems and needs of their constituencies on the floor of the House.

The committee reforms in 1968-69 were intended to invigorate a largely moribund committee system. They assigned three functions to the departmentally-oriented standing committees: consideration of bills at the committee stage; special inquiries and investigations; and consideration of departmental Estimates. Though one of the motives for shifting consideration of the Estimates from the committee of the whole to the smaller parliamentary standing committees was the hope that the standing committees would make a closer examination of

programs, another equally strong motive was the Government's desire to eliminate the opportunities for obstruction of government business on the floor of the House. The change succeeded in this second goal of reducing opportunities for obstruction, but it did little to improve parliamentary review of the Estimates and programs.

It was not clear what the committees were supposed to do with the Estimates. Presumably they were to examine and study them. In the early years of the reformed committee system, several committees, notably the one dealing with fisheries programs, tried to make substantive reports on its investigations into the Estimates. Their reports, however, were not accepted by the Speaker. This response meant that, though committees could call witnesses on the Estimates and even be united in making an investigation, their recommendations led nowhere. That situation was frustrating to members, and, consequently, House committee review of the Estimates was superficial at best and, for some committees and programs, frequently non-existent.

Under subsequent changes to the standing orders, committees wishing to make substantive recommendations concerning government programs may do so, using a broad committee mandate to make investigations. However, not many committees have taken advantage of this provision. In 2005, 36 years after the reform of the committee system, consideration of the Estimates and examination of government programs by the standing committees are still not satisfactory. As the House Standing Committee on Government Operations and Estimates reported:

[C]ommittees continue to provide relatively cursory attention to the main spending estimates and explanatory reports provided by government departments each year. Each year, some 87 departments and other government organizations provide parliamentary committees with separate spending estimates and related reports, and many of these receive no formal attention in committee

meetings. And when meetings occur, they are typically dominated by partisan exchanges with ministers that shed minimal light on the estimates. Consideration of the supplementary estimates, which allow departments to obtain additional funding at specified intervals during the year, has been even less satisfactory. With only a few exceptions, committees regularly fail to examine them at all.²

Given that the Estimates function as major policy documents, it is unfair to make the criticism that, when Ministers are called as witnesses, committee meetings are dominated by partisan exchange. Review of the Estimates quite legitimately raises questions of the Government's priorities, of the adequacy of resources devoted to a program, of what the Government has done or left undone. Adversarial exchanges are quite appropriately part of parliamentary debate.

Members have limited time to fulfill their unlimited obligations to constituency and party, their roles in debate and in Question Period in the House, and their duties as committee members. If MPs who are part of the executive or who hold special responsibilities (e.g., Leader of the Opposition or party Whip) are removed, only about 210 MPs are available to hold the Government accountable in the Estimates process. Each backbench Member sits on at least one parliamentary committee. Some sit on two or three (there are 20 parliamentary standing committees). In addition, members must attend functions and deal with all kinds of responsibilities in their constituencies and on Parliament Hill, and, in comparison, committee work does not attract much attention in the media. It is not surprising that, given the frustration they find in committee examination of Estimates and programs, many Members do not devote much time to it.

The research and other resources provided by Parliament to committees are not generous. Committee membership and committee chairs change much too frequently, giving the committees little sense of

common purpose or corporate identity. Consideration of the Estimates comes well down on the list of priorities of both Members and committees. Committees receive the Estimates by March 1. If they have not reported back on them by May 31, they are deemed to have approved them, whether the committee considered them or not.

Parliament has recognized that the Estimates deserve more attention, in form and content and in their review by committees. Issues need to be examined, such as the overall Vote structure and the effectiveness of the Estimates in both clearly identifying the various programs of government and serving as effective instruments for control and accountability. Concern has been expressed that the practice of consolidating activities into fewer and fewer Votes has gone too far and that Estimates conceal as much as they reveal about government programs. The Government should consider increasing the time allocated to the study of the Estimates and review with Parliament the number of Votes on discretionary spending, with a view to making program spending more visible.

Supplementary Estimates request funds from Parliament to accommodate increases in expenditures after the Main Estimates have been submitted. It is not unusual for up to 10 percent of the expenditures of some programs to be contained in Supplementary Estimates. The committee review of Supplementary Estimates is customarily even more cursory than that of the Main Estimates.

The Commission's *Fact Finding Report* found that the Sponsorship Program was not identified in the Estimates as a separate activity and that the statutory authority for the Program was far from clear. Indeed, concerns about both the ability of the Estimates to serve as a control document over government financial administration and the adequacy of the review of the Estimates by Parliament and parliamentary committees appear to be shared by experts and parliamentarians alike.

In 2005 the Research Branch of the Library of Parliament added three experienced persons to its staff to assist parliamentary committees in their review of the Estimates. This additional staffing is intended to be a first step in an incremental approach to improving the resources available to committees for this task. The Government has also expressed its commitment to improving the resources available to assist parliamentary committees in their investigations. Committees need at least two sorts of assistance: first, the invaluable help given to both individual parliamentarians and to parliamentary committees by the Library of Parliament; and, second, the ability of committees to hire the assistance of and advice from experts when making investigations into both programs and management and accountability issues. The Commission is encouraged by the commitment expressed by both the Library of Parliament and the Government to improving the assistance available. It supports the initiatives already taken to improve the Estimates and their review as well as the review of programs by Parliament, but feels that more needs to be done.

When faced with the almost unlimited resources the Government can marshal when defending its administration of a program that has come under attack before a parliamentary committee, members of the committee in question should be able to engage whatever expert assistance they need to assist them in their inquiries. Having access to such assistance would probably stimulate committee members to conduct their inquiries with more diligence and in a less partisan fashion.

Recommendation 1: To redress the imbalance between the resources available to the Government and those available to parliamentary committees and their members, the Government should substantially increase funding for parliamentary committees.

The Identity and Role of the Public Service

Once the Estimates have been approved by Parliament, the Government must administer and manage them in conformity with the amounts and purposes that Parliament has authorized. In theory at least, all expenditures by the Government must be made on the basis of well-established laws, rules and regulations, although these were largely ignored in the administration of the Sponsorship Program. The public service is the organ of government that is responsible for the administration of government programs. The public service has many responsibilities and commitments: to the public it serves; to the laws that govern its powers and management; to the Ministers who are the political heads of departments; to future governments that might some day be in power; and to the Parliament that passes the laws and approves the budgets administered by the service. Many of these obligations extend beyond the duty of the public service to the politicians who form the Government of the day.

These multiple responsibilities can create tensions between the duty of the public service to serve the Government and its ethical obligation to promote the public interest. Obligations and responsibilities create accountabilities. Resolving these tensions requires that two issues be examined: first, the role and identity of the public service apart from that of the Government of the day; and, second, the accountability of the public service, and particularly whether its accountability is entirely internal, within government, or whether Parliament should have a role as well.

In its submission to the Commission, the Government firmly expresses its belief that the public service has no independent identity, and hence no accountability apart from that of Ministers and the Government of the day.³ In his research study for this Commission, Professor Lorne Sossin of the University of Toronto Law School takes a contrary view.

He argues that “a range of unwritten constitutional conventions and principles clearly give rise to obligations, responsibilities and constraints on decision-making by members of the public service which arguably together confer constitutional status on the public service as an organ of government.”⁴

The public service must adhere to the principle of the rule of law, even when that means having to oppose an instruction from a Minister which contravenes a law. In practice, as we have seen, individual public servants may hesitate to voice such opposition, for fear of losing their jobs or jeopardizing their chances of advancement. The public service must be managed in a way that recognizes and observes the principles of the service’s neutrality and impartiality. The Commission’s inquiry into the Sponsorship initiative has shown that these principles are not always observed. Professor Sossin reaches the disturbing conclusion that “the primacy of political expediency has created a climate with insufficient safeguards against political interference in public service decision-making.”⁵ The Commission shares his concern.

Whether or not the public service has a constitutional identity separate from that of its Ministers and the Government of the day, it is clear that the public service has a statutory and legal identity separate from that of Ministers. This identity appears in and is affirmed by such statutes as the *Financial Administration Act*, which requires the public service to meet standards of probity and compliance with the laws and regulations in administration. The *Public Service Employment Act* and other statutes establish principles of merit and political neutrality for the public service, and they also legislate systems for human resources management and accountability that are separate from the responsibilities and accountabilities of Ministers.

The statutes governing the public service make Deputy Ministers directly accountable to the Public Service Commission for the

preservation of the principles of merit and neutrality. The accountability of Deputy Ministers for these responsibilities is not to Ministers; nor can Ministers be accountable for the way in which Deputy Ministers manage these responsibilities. If Ministers, the political heads of departments, were accountable for ensuring that the principles of neutrality and non-partisanship prevail in the public service, that would contradict the spirit and intent of the statutory framework for the public service. The Public Service Commission is accountable to Parliament for ensuring that the principles of merit and neutrality are observed within the departments and agencies of government.

Professor Sossin points out that Canadian courts have recognized an identity for the public service distinct from that of Ministers and the Government of the day. The Federal Court of Appeal has considered a right of the public at large to be served by a neutral public service.⁶ The Supreme Court of Canada has characterized the public service as an “organ of government” with its own distinct duties and responsibilities.⁷ Further, the Supreme Court has determined that “public confidence in the civil service requires its political neutrality and impartial service to whichever political party is in power.”⁸ The Government of Canada itself has recognized that the public service has a duty extending beyond its obligation to the Government in power: the service must support and advance the agenda of the Government of the day, but it must do so “without compromising the non-partisan status that is needed to provide continuity and service to successive governments of differing priorities and political stripes.”⁹

The principle of the rule of law requires the neutrality and impartiality of the public service. A non-partisan public service and adherence to the rule of law are compatible with the duty of the public service for loyalty to the Government of the day, though the challenge of balancing loyalty with neutrality requires operational principles and standards that are sufficiently flexible to accommodate political realities.

Though the arguments for respecting the requirements of neutrality and impartiality in the public service are strong, Professor Sossin finds the instruments for ensuring that these requirements are observed to be relatively weak:

When push comes to shove, it is the public service that more often than not ends up back on its heels. . . . It is far from clear that the status quo provides the public service with the capacity (and legitimacy) to fulfill its obligations to ensure respect for the rule of law. In the current climate, we are left to question whether a culture of intimidation is more likely than a rule of law culture to prevail when political pressure is brought to bear on public servants.¹⁰

In order to strengthen the position of the public service, Professor Sossin suggests that a variety of instruments are needed, including an effective code of conduct for the public service, protection for whistleblowers, and a Public Service Commission which actively ensures that the principles of impartiality and neutrality are observed. Operational meaning and observance of these principles, he explains,

cannot be left entirely in the hands of the political executive or the public service to work out as they please. The courts have a role to play in resolving disputes and elaborating boundaries. The mere fact that the relationship between organs of executive government involves constitutional principles does not imply that it must be left entirely for lawyers to define, either. Bureaucratic independence engages norms of constitutional and administrative law, the political processes and public administration. Only measures which resonate in all of those spheres will be effective.¹¹

In a research study prepared for the Commission, Professor Ken Kernaghan lists the advantages that would be realized if Parliament were to adopt a Public Service Charter (which could, of course, have another title such as the Public Service Code of Conduct or Code of Ethics). It would:

- signal and symbolize strong political support for the Charter, including the support of parliamentarians as well as Ministers;
- promote greater public, parliamentary and media discussion of, familiarity with, and respect for the Charter;
- inform the public in a highly visible manner about the values for which public servants stand and their rights and responsibilities in relation to politicians;
- foster greater all-party support for the Charter; and
- provide a firm legal basis for promoting and requiring compliance.¹²

This Public Service Charter would also serve to boost the morale of public servants and afford them the recognition to which they are entitled for their work on the public's behalf.

In 2003 a *Values and Ethics Code for the Public Service* was prepared by the Treasury Board, and it came into force on September 1, 2003.¹³ It is a lengthy document (over 5,000 words), and not the sort of Charter to which a public servant can easily relate. In its present form it cannot be fully comprehended and committed to memory. In her Report of November 2003, the Auditor General found that the Code has significant shortcomings:

It uses terms such as public interest, impartiality, loyalty, and integrity, but it does not define them adequately; it presumes that they are self-explanatory. While it calls for conflict among values and ethics to be resolved in the public interest, the *Code* does not provide adequate guidance on how to determine the public interest in a given situation. Nor does it provide guidance on how to reconcile or assign priority to conflicting values. A significant effort will be needed to explain the *Code* and translate it into practice. Otherwise, it may simply be put on a bookshelf to collect dust.¹⁴

The Commission endorses these concerns and notes that the Code has been rarely referred to and quoted. What is needed is a shorter and simpler statement of the essential values that all public servants could be expected to embrace. Such a statement is found in the *Seven Principles of Public Life*, the basis for codes of conduct in public organizations in the United Kingdom. These principles are listed as selflessness, integrity, objectivity, accountability, openness, honesty and leadership.¹⁵

Surely it must be possible for the Government of Canada to prepare and adopt as legislation a public service code of conduct which would serve both as a charter of the rights and obligations of public servants and as a symbol of the Government's undertaking to give new respect to the public service.

Recommendation 2: The Government should adopt legislation to entrench into law a Public Service Charter.

Accountability of the Public Service

The public service operates under the broad umbrella of ministerial responsibility. The Government states:

[W]hile public servants provide advice, it is the democratically elected Ministers who have the final say, and public servants must obey the lawful directions of their Minister. In sum, all government departments over which a Minister presides, and all public servants who work for them, must be accountable to a Minister who is in turn responsible to Parliament. Were this not so, the result would be government by the unelected.¹⁶

Nothing in law permits Ministers to give unlawful commands to public servants, and public servants should not be required to obey instructions from Ministers which transgress the law. As the Government states, the

public servants' duty to obey is limited to the "lawful" directions of Ministers. The rule of law must govern administration.

The Government does not explain how public servants can go about refusing to obey unlawful commands from Ministers or, for that matter, from more senior public servants under whom they serve. The recently adopted whistleblowing legislation, discussed in Chapter 10, is one approach to giving public servants some means of protest against unlawful commands and some assurance of protection against reprisals. The recommended Public Service Charter would also provide a standard supporting the identity and duties of the public service. A public servant could invoke the Public Service Charter as a reason for refusing to obey an improper instruction. The Charter would, it is hoped, be perceived by public servants as a shield against the kind of intimidation some of them experienced during the years of the Sponsorship Program.

The Government's views on the accountability of public servants illustrate the conundrum that even senior public servants face when they appear before parliamentary committees: "[T]hey do so on their Minister's behalf. These officials are answerable to Parliament in that they have a duty to inform and to explain. Public servants have no direct accountability to Parliament."¹⁷

This lack of accountability holds true, the Government argues, even when the public servants, not the Ministers, have the statutory responsibility: "The fact that Parliament enacts the statutory obligations of Deputy Ministers in certain areas does not give rise to an accountability relationship between the Deputy Minister and Parliament."¹⁸ In the Government's view, the accountability of public servants is internal and within government. Public servants have no accountability relationship with Parliament.

The Commission does not share this view. In its Inquiry, the Commission found many instances where the instructions given to public servants

were either not lawful or contradicted the rules and regulations under which the public service operated. The Commission found that the desire of public servants to obey their superiors (whether those superiors were within the public service or in the ministry) on many occasions outweighed their duty to respect the laws and rules governing administration. Fortunately, the problems found in the administration of the Sponsorship Program seem to be rare.

However, the fact remains that the Sponsorship Program did not observe rules or acceptable standards of probity, and that the problems remained uncorrected for an unacceptably long time. Some of the blame for these unfortunate events lies in unsatisfactory processes for the accountability of public servants. Ultimately Parliament and, through Parliament, the people of Canada must be satisfied that the Government spends the public's money with due regard to the applicable rules and principles of probity and economy. The present approach does not provide that assurance. It is not acceptable that a Minister, whose interests and desires may conflict with the principles under which the public servants in his or her department must operate, should be the person to whom those same public servants are accountable. It puts the Minister into a position of conflict of interest and deprives Parliament of the assurance that those who administer and manage in the public service are respecting the laws and rules governing administration.

The Government's view that public servants' only accountability is to the executive risks leading to a sense, among both public servants and Ministers, that, if all accountability is ultimately to Ministers, then all responsibility also belongs to Ministers. Persons can be held accountable only for those things for which they are responsible. When Parliament created the statutory framework that governs the public service, it did not intend that Ministers be accountable to Parliament for responsibilities assigned by statute to public servants. Nor have Canadian courts interpreted the position and role of the public service that way. In certain

areas of management, including financial and human resources administration, responsibility belongs exclusively to public servants. Accountability for actions taken under these powers also belongs exclusively to public servants.

The present approach of the Government does not adequately recognize the statutory identity and responsibilities of the public service. This is demonstrated by the problems that the Commission encountered in its efforts to identify who, Minister or public servant, held the formal responsibility for ensuring that administration of the Sponsorship Program met the statutory and other regulatory requirements. The confusion over who was responsible at the senior levels led to a blurring of responsibility and accountability at subordinate levels.

Partisanship and Accountability to Parliament

The fundamental constitutional principle of ministerial responsibility and accountability to Parliament is that:

Ministers remain individually and collectively responsible for their statutory duties and accountable to Parliament and the prime minister for the stewardship of the resources and exercise of powers assigned to them.¹⁹

This does not mean, as the Government claims, that Ministers are accountable to Parliament for all the actions of a department, including those taken by public servants under authorities directly vested in them by Parliament. Nor does it mean that “all accountabilities in Canadian government flow from ministers’ individual and collective accountability to Parliament.”²⁰

The governments of comparable parliamentary democracies do not make these claims. Britain, Australia and New Zealand all recognize an accountability relationship between Parliament and the public service

for the responsibilities that public servants, not Ministers, hold in their own right. In Britain, for example, civil servants are accountable upwards through audit and parliamentary scrutiny, and outwards through transparency and openness to stakeholders and to the public at large. The view that all accountability to Parliament for administration belongs to Ministers and to Ministers alone is not maintained outside the Government of Canada.

The Canadian Government supports its viewpoint by arguing that the parliamentary environment for accountability is “that of partisan politics. Parliament and its processes are inherently *political* . . . its mechanisms [for ensuring that executive power is properly exercised] are political and partisan.”²¹ It does not explain how the partisan and political elements of Canadian parliamentary processes differ so much from those of other Westminster-style parliamentary democracies that this unique view of accountability must hold true here but not elsewhere.

The Commission believes that the Government is in error in making this claim and that partisanship is only one element, and by no means a universal one, in the accountability of the executive to Parliament. Though much of the activity through which Parliament holds the Government accountable is partisan in nature, some is not. Responsibility for policies, or for the lack of policies, belongs to Ministers individually and collectively. So also does responsibility at large for the business of government and the Government’s stewardship of its use of the powers and resources given to it by Parliament. Accountability for these broad ministerial duties and responsibilities is clearly “political” and a legitimate object for dispute between parties in Parliament. Disagreement and competition between parties is the lifeblood of parliamentary and electoral politics.

The responsibilities and accountabilities of the public service should not, however, be the subject of partisan debate. Parliament has explicitly

and unequivocally assigned broad powers for administration to the public service. Its intention in so doing is to ensure that the administration of government and of government programs is conducted in a non-partisan manner under laws, rules and regulations. Parliament has two legitimate and essential concerns in the field of administration. First, it is entitled to assure itself, and through this the people of Canada, that Ministers do not interfere in these areas of administration where responsibility belongs to public servants. Second, it is entitled to assure itself that, within these areas, public servants perform their work in accordance with the prescribed standards, including neutrality, probity, economy and efficiency.

If Ministers improperly intrude into areas where responsibility belongs to the public service, then it is to be expected that the Ministers concerned must bear the responsibility and be held accountable. This intrusion will, and should, be a subject for critical review of their actions and, therefore, partisan in its treatment by Parliament. But if accountability is for the areas in which responsibility attaches only to the public service, accountability must belong there. Responsibility and accountability are, and should be, linked together. Accountability in these areas is about how the public service has conducted its duties and met its responsibilities. It is not about the decisions of Ministers, and it should not be the object of partisan dispute.

Parliament has established areas of responsibility for administrative action which are the responsibility of public servants, not Ministers. The Commission firmly believes that the conduct of administrative actions in these areas should be non-partisan and that Parliament is entitled to ensure that the administration there is conducted according to the standards of good administration. This interest of Parliament transcends party differences.

Although Parliament, and especially the House of Commons, acts in a partisan manner much of the time, that is not always the case. The

Standing Joint Committee for the Scrutiny of Regulations has a history of being studiously and convincingly non-partisan in its investigations into the important area of subordinate legislation. The Public Accounts Committee of the House of Commons, though it can on occasion be extremely partisan, normally conducts its investigations in a non-partisan manner. Unfortunately, it is partisan hyperbole that gets reported in the media. The challenge facing Parliament in accountability for administration is to find ways for it to ensure that accountability, in so far as it is the responsibility of public servants, is conducted in a way that is non-partisan in nature and that preserves and reinforces the non-partisanship of the public service.

Parliament holds the executive accountable through three principal types of activity: Question Period, debates on the floor of the House, and investigations by parliamentary committees.

Question Period in the House of Commons, noisy, raucous and chaotic though it often seems to be, serves to alert the country to problems and issues. Question Period is by far the best-reported parliamentary process. It is intensely partisan, both in its structure (giving the Opposition parties the dominant role in asking questions) and in the kinds of questions asked. Question Period in the Canadian House of Commons does not really function as a means for eliciting information from government but as a way of drawing attention to problems and issues, and of continuing to focus parliamentary, press and public attention on them. Only Ministers answer questions in Question Period, a practice that serves to hold them accountable for their responsibilities and for what they, as the political heads of government, have done or failed to do.

Debates on the floor of the House of Commons, like Question Period, are normally about the Government's policies and its general stewardship of the country's business. Some debates, such as the debate on the Speech from the Throne and on the Government's Budget, are about the general

conduct of government. They are partisan, as are debates on legislation and government policies in general. The layout of the House, with the two sides facing each other, assumes a division between parties and between the Government and Opposition sides. On some occasions, perhaps on a private member's bill or on an issue that crosses party lines, such as capital punishment, abortion or same-sex marriage, the House does not divide on party lines. However, most debate in Parliament is partisan.

In contrast, investigations and inquiries by committees can be, and often are, non-partisan. The extent of partisanship in a committee investigation is roughly proportional to the extent of ministerial involvement in the issues that a committee is investigating. Investigations into policy areas in which the Government has not made a decision, and especially into matters on which the Government has asked Parliament for advice, are non-partisan. Committee consideration of contentious legislation, depending on the extent to which the contentious issues reflect disagreements between parties, can be quite partisan. When a committee investigates issues in which there has been no ministerial involvement, and in which the disagreements are not between parties, its proceedings are much less likely to be partisan.

In view of the importance of the neutral nature of administration and the public service, it is vitally important that accountability for administration, as well as administration itself, be conducted in a non-partisan manner. The Commission found that neither the administration of the Sponsorship Program nor the accountability for it by Parliament was conducted in a non-partisan manner. The first step towards reform is to ensure that administration in government is free from improper political influences. Only once that is assured can Parliament be expected to hold the executive accountable for administration in a non-partisan manner. Accordingly, it is very important for the Government and Parliament to ensure that the non-partisan nature of the administration of government programs by the public service be recognized and strengthened.

The Role of the Public Accounts Committee

The Public Accounts Committee of the House of Commons occupies a central position in accountability to Parliament for administration. The functions of the Committee are to ensure that the Government has used public money only for the purposes authorized by Parliament, that extravagance and waste are minimized, and that sound practices are encouraged in financial administration. The Committee does not and should not concern itself with the merits or weaknesses of the Government's policies. Most of its investigations find their starting point in the reports of the Auditor General, whose mandate is to draw the attention of the House to instances where

- accounts have not been properly maintained or money not properly accounted for;
- the accounting procedures used are insufficient to safeguard the collection and expenditure of public money;
- money has been spent without due regard for economy and efficiency, or for purposes other than those appropriated by Parliament; or
- appropriate procedures to measure and report program effectiveness have not been implemented.²²

Like other parliamentary committees, the Public Accounts Committee has no executive power and can only make recommendations or express opinions. It cannot punish, reward or instruct public servants.

The British Public Accounts Committee has been described as the "queen of the select committees." It is the most prestigious of the committees of the British House of Commons, one on which members have considered it desirable and an honour to serve for over 140 years. Since Gladstone's time in the 1870s, it has,

exerted a cleansing effect on all departments. The knowledge that, on its day, the PAC could put the most seasoned permanent secretary [Deputy Minister], 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

The Canadian Public Accounts Committee does not enjoy the long and admirable record of non-partisan work of its British counterpart. For much of Canada's history, the Public Accounts Committee was inert. It did not meet. Ministerial control over contracts, grants, appointments and other aspects of administration was the instrument 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 in 1958, after Prime Minister John Diefenbaker 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. Even then, the record of the Committee remained spotty. Some years it did not meet because the House did not refer the Auditor General's Reports to the Committee. These reports are now automatically referred to the Committee, and it meets regularly. By 2005, the Public Accounts Committee had earned a record of over three decades of regular, useful inquiries into issues raised in the reports of the Auditor General.

The Public Accounts Committee has not been consistently non-partisan in its operations. For most of its work, however, the Committee does not divide along party lines. The partisan and non-partisan modes were vividly illustrated in two investigations it carried out in 2004-2005. Early in 2004 the Committee conducted an investigation based on the Auditor General's November 2003 Report into the Sponsorship Program. This investigation was wracked by partisanship. Interparty conflict was common, with recorded votes taken on many issues. Though the committee hearings featured some "thoughtful and detailed questioning of witnesses . . . they also saw acrimonious and accusatory exchanges, although [these were] normally between members rather than between members and witnesses."²⁴

Frequent changes in committee membership created a lack of continuity in proceedings. This investigation was well reported and succeeded in drawing attention to the issues raised in the Auditor General's Report, but it also divided the Committee into warring party factions and did little to advance knowledge beyond what was already contained in the Auditor General's Report.

The problems in the Sponsorship Program implicated Ministers. The Opposition members of the Committee therefore attacked the Government, and Government members protected the Government. That is a standard mode of behaviour for Parliament. The Opposition's duty is to oppose, while the Government protects and defends itself. A highly partisan battle between parties is not, however, the appropriate way for Parliament to investigate accountability for financial administration in areas where responsibility clearly belongs to the public service.

Immediately following this highly partisan investigation, the Public Accounts Committee investigated and reported on the responsibilities and accountabilities of Ministers and Deputy Ministers.²⁵ The Committee

had been frustrated in its investigation into the Sponsorship Program because no officials had accepted responsibility for ensuring that the program was run according to the rules and regulations governing financial administration. The Committee concluded that “the events surrounding the Sponsorship Program have revealed the flaws in the doctrine of ministerial accountability as it has been interpreted and practised in Canada.”²⁶ Unlike its previous investigation into the Auditor General’s Report, the Committee behaved in a non-partisan manner in conducting this investigation into accountability. The report was unanimously agreed to by all members of the Committee, and there were no dissenting or minority reports. Partisanship in the Committee is moderated 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.

The members of the Public Accounts Committee are politicians and members of political parties. An Opposition member chairs the Committee 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.

Canadian observers have commented that the Public Accounts Committee behaves in a more partisan manner than its British counterpart. What has not been pointed out is that the British Public Accounts Committee zealously protects itself from the temptation of acting in a partisan way. The witnesses before the British Committee are the senior civil servants who are responsible for financial management and probity. Though the British Public Accounts Committee, like the Canadian, has the power to call Ministers as witnesses, it does not do so. When an issue involves a ministerial decision, the Committee’s investigation is limited to satisfying itself that the Minister, not the civil servant, is responsible and hence should be held accountable. The

accountability of the Minister, then, is in another committee that examines policy issues or on the floor of the House.

The Canadian Government's insistence that all accountability to Parliament must be by, or on behalf of, Ministers prevents the Canadian Public Accounts Committee from protecting an administrative space for which public servants, not Ministers, bear responsibility and are to be held accountable. This approach makes accountability for administration both political and partisan. The British system for accountability and for investigations into administrative matters protects the Public Accounts Committee from partisanship; the Canadian approach encourages it.

Despite these handicaps, the Public Accounts Committee can and does make non-partisan investigations. It has an essential task to perform on behalf of Parliament and the people of Canada, and it should become one of the most prestigious parliamentary committees because it guarantees parliamentary control of the public purse, ensuring that the Government spends money only for the purposes, and only in the amounts and ways, approved by Parliament. The Commission is firmly of the opinion that, to achieve its objectives, the Committee must act as a cohesive body, not as a partisan forum. It should have a sense of continuity and commitment in its members, who would be rewarded for their objectivity and diligence by the increased prestige that would accompany membership. Improved resources available to members would provide additional value to their contribution and enable them to prepare carefully for committee meetings.

To summarize, the Public Accounts Committee must focus on the administration and management of government finances, not on policy issues or disagreements between Government and Opposition. The Committee's appropriate subject should be the areas of administration for which public servants, not Ministers, hold responsibility.

Recommendation 3: To enable the Public Accounts Committee to perform its responsibilities more effectively, the Government should increase its funding substantially to provide the Committee with its own research personnel, legal and administrative staff, and experts as needed.

Endnotes to Chapter 4

- ¹ Parliamentary Centre, “Parliament and Financial Accountability,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. I, under heading “Parliamentary Perspectives on Financial Oversight.”
- ² Canada, House of Commons Standing Committee on Government Operations and Estimates, *Meaningful Scrutiny: Practical Improvements to the Estimates Process*, 6th Report, 37th Parliament, 2nd Session (September 2003), p. 1.
- ³ “[P]ublic servants as such have no constitutional identity independent of their Minister”: Exhibit P-474 (GG), para. 77.
- ⁴ Lorne Sossin, “Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implications for the Accountability of the Public Service,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. II, under heading “Introduction.”
- ⁵ *Ibid.*
- ⁶ *Osborne v. Canada (Treasury Board)*, [1988] 3 FC 219 at 225 (Federal Court of Appeal).
- ⁷ *OPSEU v. Ontario (A.G.)*, [1987] 2 SCR 2 at 41 (para. 93 in electronic version).
- ⁸ *Ibid.*, p. 44 (para. 99 in electronic version).
- ⁹ Exhibit P-474 (GG), para. 76.
- ¹⁰ Sossin, “Defining Boundaries,” under heading “The Rule of Law.”
- ¹¹ *Ibid.*, under heading “The Duty of Loyalty.”
- ¹² Kenneth Kernaghan, “Encouraging ‘Rightdoing’ and Discouraging Wrongdoing: A Public Service Charter and Disclosure Legislation,” Research Studies, vol. II, under heading “The Public Service Charter.”
- ¹³ Canada, Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Service: Democratic, Professional, Ethical and People Values* (2003).
- ¹⁴ Canada, Office of the Auditor General, *Report of the Auditor General of Canada to the House of Commons, November 2003: Accountability and Ethics in Government*, chapter 2, para. 2.56. (page 13 of chapter 2 in electronic version).
- ¹⁵ United Kingdom, Committee on Standards in Public Life, *Standards in Public Life (First Report)* (London: Her Majesty’s Stationery Office, 1995), p. 14.
- ¹⁶ Exhibit P-474 (GG), para. 76.
- ¹⁷ *Ibid.*, para. 77.
- ¹⁸ *Ibid.*, para. 86.
- ¹⁹ Canada, Treasury Board of Canada Secretariat, *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials-Report to Parliament* (2005), p. 10.
- ²⁰ *Ibid.*, p. 4.
- ²¹ *Ibid.*, pp. 4-5.
- ²² See *Auditor General Act*, RSC 1985, c. A-17, s. 7(2). The text quoted is a paraphrase of the Act, not an exact quote.
- ²³ Peter Hennessy, *Whitehall* (London: Pimlico, 2001), p. 332.

²⁴ Jonathan Malloy, “The Standing Committee on Public Accounts,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. I, under heading “The 2004 Sponsorship Inquiry.”

²⁵ *Ibid.*

²⁶ Canada, House of Commons Standing Committee on Public Accounts, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*, 10th Report, 38th Parliament, 1st Session (May 2005), under heading “Introduction.”