

CHAPTER SEVEN

**THE PRIME MINISTER,
MINISTERS
AND THEIR EXEMPT STAFF**

The Prime Minister, in the Canadian parliamentary system, occupies the highest position in government and exercises a great deal of power, especially when his or her party enjoys a majority in Parliament. Indeed, a growing body of literature suggests that there has been an increasing concentration of power in the Prime Minister's Office (PMO). Many Canadians have also concluded that the Prime Minister and the PMO hold too much power, judging from the comments made on the Commission's website. One participant said we should now "limit a Prime Minister to two terms of office. More than this is too many and puts too much power into the hands of one man. Power corrupts." Another wrote that the structure of power needs to be overhauled so that no one single individual, such as the Prime Minister, can influence by

appointment the decisions of others. The concentration of power in the PMO makes it progressively more difficult for counter-balancing forces in Cabinet, in the public service and in Parliament to modify or to oppose measures advocated by the Prime Minister.

The purpose of this chapter is to map out the respective roles and responsibilities of the Prime Minister, Cabinet Ministers and their exempt staff. Gaining a sound understanding of the roles of key political actors in our system of government is necessary before we can contemplate recommendations to encourage government officials at all levels to accept responsibility.

The Prime Minister

Prime Ministers will naturally wish, in a political sense, to make the Government their own. They provide the style, leadership and coherence that any successful Government requires, and the ebb and flow of the fortunes of the Government are directly linked to their performance. The media, politicians, Cabinet Ministers and senior public servants know that, once exposed, any prime ministerial weaknesses, real or imagined, will serve to stimulate opposition and to make it more difficult to govern. This vulnerability explains why every effort is made to protect the Prime Minister from partisan attacks, recalling the saying, often heard inside government, that “when the head goes, the rest of the Government is sure to follow.” If the Prime Minister resigns, the whole Cabinet also resigns, as a constitutional requirement. Ministers and senior public servants know that there can be only one leader of the Government, and the Prime Minister must accept responsibility for its political fortunes.

Notwithstanding the above, the Prime Minister is only rarely mentioned in statutes and does not benefit from the kind of statutory powers that Ministers have in their portfolios. The power of the Prime Minister derives from three sources: the appointment of individuals to key

positions; the organization of the Cabinet, including portfolio composition and mandates; and providing leadership and direction to the Government.¹

Government insiders, including Ministers and public servants at all levels, know intuitively the role, responsibilities and power of the Prime Minister. Indeed, Ministers and Deputy Ministers owe their appointment and future promotion to the Prime Minister. Participants at all the roundtables organized by this Commission emphasized the importance of the Prime Minister's power of appointment. One former senior Cabinet Minister made the case that it is one thing to say No to a Cabinet Minister, but quite another thing to say No to the Prime Minister. Put differently, Treasury Board Ministers can, and do, say No to a colleague, but they will be highly reluctant to say No to the Prime Minister, who can change membership in the Cabinet simply with the stroke of a pen.

Deputy Ministers have a variety of ways to say No to their Ministers or to stop them from committing the department to a course of action that might create a problem for the Government. If the difficulty cannot be resolved by discussions, they can appeal to the Secretary of the Treasury Board on management issues or, as a last resort, to the Clerk of the Privy Council, who is also Secretary to the Cabinet. But the situation is different for Prime Ministers, because they appoint both the Clerk and the Secretary of the Treasury Board.

Canadian Prime Ministers have an office of over 100 officials to assist them with their responsibilities. The office is led by a Chief of Staff, classified for salary and benefit purposes at the most senior Deputy Minister level in the public service. By contrast, the Chiefs of Staff or Executive Assistants in ministerial offices are classified at a lower rank. Of course, the political staff in both the PMO and in ministerial offices are exempt staff and not part of the public service.

The PMO performs many functions. It advises the Prime Minister on matters of policy, on appointments ranging from Cabinet positions to boards of Crown Corporations, on relations with the government caucus and the media, on anticipated questions in the House of Commons, and on any issues or initiatives that are of special interest to the Prime Minister. In a research study prepared for this Commission, Liane Benoit writes that the PMO now also performs an oversight role in the hiring of exempt staff in ministerial offices.²

Separating the Political from the Administrative

The Prime Minister's Chief of Staff joins the Clerk of the Privy Council and Secretary to the Cabinet in meeting with the Prime Minister on most mornings when the Prime Minister is in Ottawa. It is at these meetings that the Government's political agenda is provided with the advice and concerns of the public service. In an ideal world, both sides would know where the political space ends and the world of administration begins, but things are rarely that straightforward. Administrative issues can quickly turn into highly charged political considerations. No one has been able to draw a clear line of division between the political world and the administrative one.

Still, some politicians and public servants will argue that although it is not always possible to draw a clear line that will apply at all times and in all circumstances, there are some elements that belong to the political sphere (politics, political parties and establishing policy) and other elements that necessarily belong to the professionals of the public service (the actual delivery of government programs and services). The problem is that some questions cannot be assigned exclusively to one or the other. In those cases, a clear delineation of the responsibilities of politicians and public servants should be made.

The Privy Council Office (PCO), staffed by career public servants, would normally wish to maintain an administrative space in order to apply

objective program criteria. When Jean Pelletier, Prime Minister Jean Chrétien's Chief of Staff, was asked if he recalled that the Clerk had called for more rigorous criteria to approve initiatives under the national unity reserve, he stated that the PCO did not like to have a "political authority directly linked to the Prime Minister that did not have to go through public servants."³

Special Reserve Funds

It is also important to recall that the Sponsorship initiatives were initially financed from a special reserve, and did not have the procedures and criteria normally associated with standard government programs. Government programs are usually governed by criteria that guide managers and their staff in selecting projects. Though a special reserve provides flexibility and enables many different political and policy actors to influence the project selection process, it makes it more difficult for career public servants to delineate an administrative space in which they can make program decisions. This point was also made before the Commission by Sylvain Lussier, an attorney representing the Attorney General of Canada, when he stated that the absence of program criteria was undoubtedly a mistake. He added it was "une invitation à l'abus . . ." (an invitation to abuse).⁴ He quoted Alex Himelfarb, the Clerk of the Privy Council, on this issue: "Oh, it's not illegal, it's dangerous."⁵ It may be concluded that public servants will have difficulty in accepting responsibility for program implementation when the program is financed from a special reserve, as distinguished from a standard government program. The absence of clear program criteria opens the selection process to dangerous forces and pressures.

Special reserves also pose problems for Parliament. In its written submissions to the Commission, the Office of the Auditor General stated:

Parliament was not adequately informed about the creation of sponsorship initiatives in 1996. Nor was it informed in an appropriate

manner of the objectives of the Sponsorship Program, nor the results achieved in relation to the expenditures made. Parliament was also misinformed about how the program was managed. In short, there was a lack of transparency in the way the Sponsorship Program was created, delivered and reported to Parliament.⁶

Evidence before the Commission suggests that the Estimates may no longer help Parliament in holding the Government accountable. In particular, the use by Government of special reserves aggravates the problem of accountability to Parliament.

Reserves may play an important role in enabling the Government to deal with unforeseeable events (for example, a natural disaster), to provide a contingency fund for emergencies, or to finance government activity in matters of continuing concern such as national unity. However, they should not be under the uncontrolled discretion of only one Minister or even the Prime Minister, and there should be an obligation to report to Parliament periodically on their use.

Recommendation 9: Special reserves should be managed by a central agency experienced in administrative procedures, such as the Treasury Board or the Department of Finance. The Government should be required at least once a year to table a report in the House of Commons on the status of each reserve, the criteria employed in funding decisions and the use of the funds.

Ministers

In the Canadian parliamentary system, most Ministers are gifted amateurs. This comment is not in any way derogatory. Ministers are drawn almost exclusively from the House of Commons and come from all sectors of society, depending on their ability to win election at the riding level. This system is in contrast to the American one, where Cabinet

members are chosen from a vast talent pool and where potential candidates have to establish their qualifications in front of a Senate committee before their appointment is confirmed.

In Canada, whether gifted or not, Ministers have to rely on the work of a professional, non-partisan public service. Many government policies and statutes tell Ministers to leave administrative matters to public servants. The various Treasury Board documents published in 2005 suggest that Deputy Ministers should accept more responsibility for the management of their departments and that their performance should be evaluated on a regular basis. As indicated elsewhere in this Report, legislation informs Ministers that they have no role in public service staffing and promotions, in the application of the *Official Languages Act*⁷ and in certain aspects of financial management. Ministers have only a limited role in the appointment of their Deputy Ministers, the administrative heads of each department.

All departmental acts establish the powers, duties and functions for which Ministers are responsible, and these acts provide Ministers with the authority to manage both their departments and their financial resources.⁸ That is the system in theory. In practice, the authority to manage the department and its programs is almost invariably delegated to the Deputy Minister. Precious few Ministers believe that their role is to manage their departments. J.W. Pickersgill, a former Cabinet Minister and former Clerk, wrote: “No one with any experience expects a Minister to manage his department. That is the duty of the Deputy Minister . . . in the normal course ministers do not, and should not, concern themselves with these large areas of day-to-day administration.”⁹

In Canada, Ministers, the majority of them with little or no government experience before being appointed to Cabinet, come to their position from a variety of sectors, including law firms, small businesses or teaching positions. To be sure, the learning curve is steep. They are handed

a series of briefing books, on their first day as Ministers, dealing with a variety of issues including departmental policies, emerging challenges and issues, and ways to set up their offices. They meet senior departmental officials on a regular basis, typically twice a week for briefings or when a special situation arises that requires a meeting with the Minister.

Ministers lead busy lives, and ministerial time is a rare commodity. They must deal with their constituencies; attend Cabinet and Cabinet committee meetings; prepare for Question Period and parliamentary committees; deal with the requirements of their political party, the media and their Cabinet colleagues; and act as members of the government caucus. Though there are no specific rules to determine if particular Ministers are successful, they must focus on key priorities to have an impact. Former Clerk Gordon Osbaldeston once issued this warning to Cabinet Ministers:

[H]aving many roles, you will be under constant and unremitting pressure to allocate some of your time to this or that worthy endeavour. You must establish your priorities and the time frame within which you want to accomplish them, and allocate your time accordingly. If you don't do this, and do it well, you will be lost.¹⁰

He added that Ministers work between seventy and eighty hours a week, but that “surveys indicate that they often have only three hours a week to spend with the Deputy Ministers.”¹¹ It follows that it is difficult for Ministers to assume full responsibility for the management of their departments, even if they wished to do so.

Canadian politics is highly regionalized. Members of Parliament and Cabinet Ministers view their world from a regional perspective, from their constituency, their province and their regions. Public servants have a different perspective. It is a world of policy analysis, bounded by

hierarchy, economic sectors, government departments, central agencies, policy and decision-making processes. In Canada, if tensions surface between Ministers and career public servants, it is often over the application of program criteria against the desire to do something for a particular constituency or region. It is rarely over management or human resources issues, the way departmental estimates are prepared, or relations between the department and the Treasury Board.

Ministers will often be left to their own resources in pursuing projects in their constituency or regions and in dealing with politically sensitive issues, even when they explode in the media. They have, however, an exempt staff to assist them in handling these responsibilities.

Exempt Staff

The Privy Council Office has published a document, *Governing Responsibly: A Guide for Ministers and Ministers of State*, which tells Ministers they have the right to hire their own staff, known as “political” or “exempt” staff.¹² It also explains that “the purpose of establishing a Minister’s office is to provide ministers with advisors and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the Public Service. Consequently, they contribute a particular expertise or point of view that the Public Service cannot provide.”¹³ The Guide adds: “The exempt staff do not have the authority to give direction to public servants, but they can ask for information or transmit the Minister’s instructions, normally through the Deputy Minister.”¹⁴

Liane Benoit, in a research study prepared for this Commission, states that exempt or political staffers do not have the authority to give direction to public servants, but they “can, and often do, exert a substantial degree of influence on the development and in some cases on the administration of public policy in Canada.”¹⁵ She adds: “It is evident

from the current and historic record that these powers can be and are, on occasion, open to abuse.”¹⁶

J.R. Mallory, in a seminal article published in 1967, was one of the first to raise concerns about the work of exempt staff. He wrote:

It is clearly undesirable that a considerable number of persons not a part of the civil service should be interposed between a Minister and his department. They lack the training and professional standards of the public service: it may even be the peculiar nature of the appointment means they escape the security screening which is an unpleasant accompaniment of most candidatures for responsible posts in the public service. Not only do these functionaries wield great power because they control access to the Minister and can speak in his name, but they may wield this power with ludicrous ineptitude and in ways that are clearly tainted with political motives.¹⁷

How are exempt staff members recruited? Liane Benoit reports that it is a “somewhat mysterious confluence of political patronage, personal contact, old fashioned nepotism and serendipity.”¹⁸ Political loyalty and partisan affiliation, it seems, matter a great deal. The PMO plays an oversight role in the recruitment process by a dual veto system, so that both the PMO and the relevant Minister can veto the appointment of executive assistants or chiefs of staff in ministerial offices.

To be sure, the exempt staff in the PMO stand far above those in ministerial offices. They enjoy more senior classification and higher pay, and they are much greater in number than in any of the ministerial offices.

Do exempt staff members in the PMO or in ministerial offices respect the directive from the PCO document that the exempt staff should not give direction to public servants, simply because they have no authority to do so? Some ministerial offices have a process in place to record

ministerial directions and requests for information, and the directive is to a large extent respected. However, other ministerial offices are “pretty loose with the term ‘the Minister wants.’”¹⁹ Ministers will have their own approaches on how to employ their staff in dealing with their departments, and departments will have their own culture and history in their dealings with their particular Minister and the exempt staff. Contacts between exempt staff and public servants are numerous, and it is simply not possible to establish a pattern or a process that applies to all departments and at all times. The unwritten rule that the Deputy Minister should be kept informed of all contacts between the Minister’s office and the department is not always observed. As Alex Himelfarb observed, “there is a huge amount of flexibility in our system about who interacts with whom, and we don’t have walls to stop it. In fact, in many cases it is encouraged for logistical reasons [and] for other reasons.”²⁰ He added that it is key on important matters for the Deputy Minister to “be in the loop . . . to ensure the respect for the decision process and that no decision process is abrogated.”²¹

The influence of exempt staff does not end when they leave the Minister’s office. They have acquired knowledge of how the system works and have established a network of contacts inside government. They are often able to sell this knowledge and these skills to lobby firms in Ottawa, and there is evidence that many of them join such firms after serving in Ministers’ offices.²²

Other exempt staff join the public service through a special exemption at a level that is equivalent to the one at which they were employed in the Minister’s office. The Treasury Board’s *Guidelines for Ministers’ Offices* reads:

Persons with a Minister’s Staff priority are entitled to be appointed without competition to any position in the Public Service for which they are qualified, in priority to all other persons except for surplus employees of the Public Service being placed within their own

department . . . and except for employees who are entitled to Leave of Absence priority under section 30 of the Act. The entitlement is for one year from the date the person ceases to be employed in the office of a Minister but ceases on appointment to the Public Service.²³

This policy guideline allows exempt staff members to enter the public service through the back door, unburdened by the merit principle or competition. Pierre Tremblay, the former executive assistant to Alfonso Gagliano, Minister of Public Works and Government Services, for example, moved from the Minister's office to a senior position within the department and, a short time later, took over responsibility for Sponsorship initiatives. The risk, as illustrated by Mr. Tremblay's case, as in others, is the politicization of the public service. This caution is not to suggest that exempt staff members who wish to join the public service should find their way blocked. Many former exempt staff members have gone on to become top-flight public servants, including some who are currently Deputy Ministers. However, the skills and knowledge gained in a Minister's office should serve such persons well in a merit-based competition. Entering through the front door would remove any notion of entitlement and potential politicization of the public service.

Recommendation 10: The Government should remove the provision in the law and in its policies that enables exempt staff members to be appointed to a position in the public service without competition after having served in a Minister's office for three years.

Two points need to be emphasized in regard to the role of exempt staff. First, the Government should make every effort, through briefings, training or other means, to state in the clearest of terms that exempt staff members do not have the authority to give direction to public servants. This fact must be communicated clearly to both exempt staff

and public servants. Second, Ministers need to understand clearly that they are accountable, responsible and answerable for all the actions of their exempt staff. Exempt staff members also need to understand this situation from the first day they join a Minister's office.

The Commission is of the opinion that the Government should develop and adopt a Code of Conduct for Exempt Staff defined to include part-time advisors and consultants. The Code should deal with the relationship between exempt staff and public servants, including recognition that the Minister is fully accountable for their on-the-job activities. There should be post-employment guidelines, with sanctions if violated. Exempt staff, on confirmation of their hiring, should be required to participate in a training program that would address at a minimum the requirements of access to information legislation, the Code of Conduct for Exempt Staff, and the policies, rules and regulations dealing with ministerial-departmental authority.

Recommendation 11: The Government should prepare and adopt a Code of Conduct for Exempt Staff that includes provisions stating that exempt staff have no authority to give direction to public servants and that Ministers are fully responsible and accountable for the actions of exempt staff. On confirmation of their hiring, all exempt staff should be required to attend a training program to learn the most important aspects of public administration.

Endnotes to Chapter 7

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- ¹ Canada, Privy Council Office, *The Responsibilities of the Privy Council Office* (1999), chapter 2.
- ² See Liane E. Benoit, “Ministerial Staff: The Life and Times of Parliament’s Statutory Orphans,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. I, under heading “The ‘Right’ Staff: PMO Scrutiny.”
- ³ Testimony of Mr. Jean Pelletier, Transcripts vol. 71, p. 12414 (OF), p. 12405 (E).
- ⁴ Testimony of Mr. Sylvain Lussier, Transcripts vol. 136, p. 25707 (OF), p. 25704 (E).
- ⁵ *Ibid.*
- ⁶ Exhibit P-474 (U), para. 17. Submissions of the Office of the Auditor General, 10 June 2005.
- ⁷ RSC 1985, c. 0-3.
- ⁸ Canada, Privy Council Office, *Responsibility in the Constitution* (1977, reissued 2003, under heading “The Minister”).
- ⁹ J.W. Pickersgill, “The W. Clifford Clark Memorial Lectures, 1972 (no 1): Bureaucrats and Politicians,” *Canadian Public Administration*, 15(3) (1972): 420.
- ¹⁰ Gordon Osbaldeston, “Dear Minister,” *Policy Options politiques* 9, (June 1988): 4.
- ¹¹ *Ibid.*
- ¹² Canada, Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State* (2004), p. 33.
- ¹³ *Ibid.*
- ¹⁴ *Ibid.*
- ¹⁵ Liane E. Benoit, “Ministerial Staff: The Life and Times of Parliament’s Statutory Orphans,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies vol. I under heading “Introduction”.
- ¹⁶ *Ibid.*
- ¹⁷ J.R. Mallory, “The Minister’s Office Staff: An Unreformed Part of the Public Service,” *Canadian Public Administration*, 10(1) (1967): 32.
- ¹⁸ Benoit, “Ministerial Staff,” under heading “Hiring—An Unconventional Exercise.”
- ¹⁹ *Ibid.*, under heading “Thou Shalt Not Give ‘Direction.’”
- ²⁰ Testimony of Mr. Alex Himelfarb, Transcripts vol. 12, pp. 1842-43 (OE).
- ²¹ *Ibid.*, p. 1843 (OE).
- ²² Benoit, “Ministerial Staff,” under heading “Practical Applications: Who is Exercising the Exemption?”
- ²³ Canada, Treasury Board of Canada Secretariat, *Guidelines for Ministers’ Offices* (July 2005), p. 77.