
PART THREE

TRANSPARENCY

CHAPTER NINE

**ADVERTISING, SPONSORSHIP
INITIATIVES AND LOBBYING**

As stated in the Preface to the *Fact Finding Report*, the Commission's inquiry chronicled a "depressing story of multiple failures to plan a government program appropriately and to control waste . . . which contributed to the loss and misuse of huge amounts of money at the expense of Canadian taxpayers."¹

In contrast to this discouraging conclusion, the Government, in response to the November 2003 Report of the Auditor General which led to the creation of this Commission, has introduced a variety of measures which, together, paint a more positive picture for the future. This chapter reviews and assesses the reforms that the Government has made in the management of advertising and sponsorships. The Commission considers there is still more to do in this area and suggests further measures that will complement what has already been

accomplished. The intent of these suggestions is to better equip public servants to withstand pressures to “bend the rules” and to ensure that, in cases where someone does attempt to circumvent the regulations, sufficient safeguards will be in place to identify the culprit and to sanction any wrongdoing.

Objectives of the Government's Advertising Policy

The objective of the Government's advertising policy can be simply stated: to make certain that a fair and impartial process guides the selection of agencies to perform the Government's communications work. In the past, the selection process has tended to favour those communications agencies that worked for the winning political party in the previous election. While it is entirely legitimate for political parties to engage agencies of their choice to assist them during election campaigns, those agencies should not be paid with public funds, nor should the Government feel a real or an implied obligation to select them to do government work in the future. The way to ensure non-partisanship in the Government's contracting and agency selection processes is through adherence to fair and transparent rules and procedures.

The system of rules and procedures for the management of government advertising should have the following objectives and values:

- program effectiveness
- value for money
- transparency
- accountability at all levels
- fairness
- oversight

- flexibility
- skills and training

The Commission's *Fact Finding Report* found that, in the administration of the Sponsorship Program, there were significant weaknesses in each of these areas, although to differing degrees.

Changes to Advertising Procedures

Since 2002, the Government has introduced comprehensive changes to its policies and procedures with regard to advertising. These measures include:

- an increase in the number of suppliers for advertising, in the number of opportunities to compete, and in the variety of procurement methods;
- payment for advertising services based on hourly remuneration, not commission-based remuneration (the source of frequent abuses in the past); other methods of payment, such as retainers and performance-based methods, may be considered when warranted;
- selection of a new Agency of Record through a competitive Request for Proposals (RFP) process;
- establishment of a modified Canadian content requirement of 80 percent;
- ongoing strengthening of internal capacity; and
- issuance of an annual report on government advertising activities, with a view to increasing transparency.²

The Commission endorses these changes and reforms, and, in particular, it commends the Government for the elimination of percentage-based commissions and for the introduction of a requirement that fees be based on approved hourly rates, depending on the work to be performed.

These new policies and procedures were accompanied by a number of structural and administrative changes. The key changes include the following:

- The elimination of Appendix Q of the Treasury Board Regulations related to advertising, coupled with the integration of advertising into the mainstream Contracting Policy, which came into effect on January 1, 2003.
- Strengthening of management oversight through
 - the centralization of decision-making with respect to advertising in PCO's Strategic Communications Planning section; and
 - the creation of two new organizations within Public Works and Government Services Canada (PWGSC) to manage and coordinate advertising initiatives: the Public Opinion Research and Advertising Coordination Directorate and the Communication Procurement Directorate.

Defining "Advertising"

Before assessing these administrative changes, we should outline one of the main difficulties in this area: identifying which government activities are covered by the term "advertising." The prevailing definition of advertising in federal contracting policy is quite broad.³ If greater rigour is to be introduced into the management of the Government's advertising function, collateral functions and services must be separated from the definition of advertising. In the Sponsorship Program, an enormous range of activities were subsidized, simply because there was no restriction on the meaning and extent of what was loosely termed advertising and communications. That problem still remains.

In the Government of Canada Communications Policy, advertising is one of 17 subject areas under consideration for additional guidelines. At the end of 2005, Treasury Board had not yet produced a set of

guidelines to govern planned advertising activities. The Commission shares the concern expressed by various observers within both the bureaucracy and the advertising industry that the word “advertising” has been interpreted too loosely and that it encompasses a wide range of activities, including sponsorships, promotional activities, marketing, special events management and other communications services. As a result, competitions are opened up to firms that lack the technical expertise normally required for traditional media campaigns. The door still remains open to the type of problems identified by the Auditor General of Canada in 2003 and by this Commission in its first Report.

The Commission concludes that the official definition of advertising should be narrowed.

Recommendation 14: The Government of Canada should amend its current definition of “advertising” to conform to accepted advertising industry standards, and the new definition should be promulgated in the Government of Canada Communications Policy and related documents.

Advertising Oversight

In response to the Auditor General’s concerns and as part of its search for improved management of its advertising function, the Government has created an elaborate system of administrative oversight.⁴ PCO’s Strategic Communications Planning Group acts as a secretariat to the government-wide Government Advertising Committee (GAC) and provides planning, oversight and “challenge” functions for all government advertising initiatives. Cabinet approves an overall annual budget for advertising expenditures, and each department must make a separate submission to Treasury Board for its individual advertising initiatives.

Public Works and Government Services Canada (PWGSC) now separates advertising planning, which is carried out by the Advertising

Coordination and Partnership Directorate, from advertising procurement, managed by the Communication Procurement Directorate. Each advertising initiative is the subject of a work order, which is tracked in a new management information system. The Deputy Head of each department is responsible for the overall management of communications and its integration with other key functions, including policy and programming. Each Deputy Head is supported by a Director of Communications.

Recent changes announced by the President of the Treasury Board include improvements to the audit function to enhance these oversight mechanisms. They provide for

- a Chief Financial Officer in each department, reporting to the Deputy Head but also functionally responsible to the Office of the Comptroller General; and
- a Chief Audit Executive in each department, who, together with an Audit Committee (which includes a number of external government and non-government members), will establish a departmental Audit Plan.

PWGSC has also introduced a new position at the Assistant Deputy Minister level, the Chief Risk Officer, who will ensure that proper management controls are in place. The incumbent is the former Assistant Auditor General who worked on the Sponsorship file for the Office of the Auditor General.

With all this oversight, the risk of reoccurrence of events that characterized the Sponsorship scandal appears to be diminished, especially considering the continued scrutiny of government advertising activities by the media, Opposition parties and the public. This scrutiny is facilitated by new measures to increase transparency, including the posting on government websites of approved allocations for advertising initiatives,

information on advertising-related contracts, all call-ups to agencies on the standing-offer list, all contracts awarded through competition to firms on the pre-qualified supply arrangement list, and all contracts for larger campaigns that have been competed for through the full Request for Proposals process. In addition, each department and agency must post on its website all advertising contracts with a value over \$10,000. PWGSC also publishes an annual report on advertising activities that includes details on advertising contracts, expenditures by organizations, key results and information on advertising management initiatives.

This system appears to be comprehensive, and it may well prove to be a success. For greater certainty, however, the Commission suggests that certain additional measures be considered. For example, it would encourage the Office of the Comptroller General (OCG) and the Office of the Auditor General to schedule periodic audits to monitor results. In addition, the Government should consider departmental and system-wide evaluations of the impact, intended and unintended, of the implementation of the new regime in federal government advertising management.

The Commission also suggests that the Government consider the following possibilities:

- an instruction by the Office of the Comptroller General to each department and agency to conduct an annual audit of departmental advertising programs and processes, foreseeing that, in due course, it will be possible to make an annual decision by modifying or eliminating this requirement;
- a comprehensive audit of government advertising initiatives by the Office of the Auditor General in either fiscal year 2006/07 or 2007/08, to verify that the new processes and policies in place are ensuring fairness, value for money, effectiveness, training and, above all, the elimination of political intervention in the management and administration of advertising activities; and

- independent assessments of the views of government departments and agencies, advertising firms and the public on the efficiency and effectiveness of the new advertising management systems and policies, and on any other impact or consequence.

What Is the Appropriate Centre for the Oversight of Government Advertising Activity?

Given the close relationship between the Privy Council Office (PCO) and the Prime Minister's Office (PMO), the question lingers whether there is sufficient separation between partisan political interests and public servants in the planning and administration of advertising. To ensure greater independence, the Commission suggests that the management of the advertising function should move away from the PMO/PCO nexus. This would reduce the possibility of conflicts of interest, real or perceived, in the role of the two bodies.

The example of the Province of Ontario is instructive. Ontario requires most advertising contracts to be reviewed by the provincial Auditor General (*Government Advertising Act, 2004*).⁵ Advertising must not be partisan; must not include the names, voices or images of members of the Executive Council or the Legislative Assembly (unless the primary audience is located outside Ontario); and must fulfill at least one of the following purposes:

- informing the public of policies or available programs and services;
- informing the public of its legal rights and responsibilities;
- encouraging (or discouraging) specific types of social behaviour;
- promoting Ontario as a good place to live, work, invest, study or visit; and/or
- promoting an activity or sector of the Ontario economy.

The Auditor General of Ontario (AG) can appoint an Advertising Commissioner to undertake this review of advertising items on his or her behalf. Any advertising items deemed not suitable cannot be used, and the AG's decision is final. The AG also reports annually to the Speaker of the Legislative Assembly on any contraventions to the Act and on advertising expenditures, both for government advertising generally and for specific advertising items reviewable under the Act. Through an open competition, the AG has engaged a private-sector lawyer and an academic, both of whom specialize in advertising, to form an Advertising Working Group to approve advertisements. This system appears to have added an extra level of independence that is not present in the current federal system.

A greater degree of independence for the oversight of federal government advertising could be achieved through several options. To be truly independent, the advertising oversight function should be located in a neutral environment and be seen to be independent. Without creating a new and independent office for this purpose, the logical long-term home for such supervision appears to be the Office of the Comptroller General. At present, the OCG operates within the Treasury Board Secretariat, a central agency, and careful attention would be required to sort out the appropriate lines of accountability. The Commission also recognizes that new expertise and additional resources would be required to enable the OCG to discharge this function adequately. But the OCG is currently preoccupied with devising a new approach for internal audit and financial control management, so it may be too busy at this time to take on an additional function.

Another possible centre for advertising management is PWGSC, but, at present, it too appears to lack both the capacity and the focus to assume a government-wide planning, management and control role while implementing the new procurement procedures. The PWGSC would risk confusing both suppliers and program departments if it took on too broad a role.

A third option, placing the advertising function within the Office of the Auditor General, would be popular with Canadians, given the revelations still resonating from the Sponsorship affair. But the Auditor General's Office would not be the most appropriate location because it does not provide advance rulings or a challenge function to government.

For the immediate future, PCO, under the new rules and processes, appears to be discharging its priority-setting and planning functions in a neutral and professional manner. Until a better long-term solution is developed, it should remain the custodian of advertising oversight.

With all of these checks and balances, the system appears to be foolproof. Still, one question remains: Is there enough flexibility in this new system to allow for creativity, innovation and expediency in advertising? It is too early to tell, but the balance between probity and effectiveness may require some modifications once the new processes and structures have developed further and been evaluated.

Obtaining Value for Money

A major element of the Government's effort to ensure greater accountability was the re-establishment of the Office of the Comptroller General of Canada in December 2003 to oversee all government spending. In addition to efforts to have departmental comptrollers in place, the Comptroller General has introduced professional certification standards, particularly in the internal audit function.

Specific to the advertising area, various safeguards have been introduced throughout the life cycle of advertising initiatives. One such safeguard involves post-campaign evaluations to assess value received for money spent. This evaluation is consistent with the overall trend towards results-based management. Federal departments and agencies are now required, on completion, to conduct evaluations of all major advertising initiatives exceeding \$400,000 in media buys. This research is an

integral part of any advertising initiative and must be included in the planning process: project budgets must ensure that there will be sufficient resources to complete an evaluation. Such planning requires that appropriate indicators to measure success are identified before the campaign for use once the campaign has ended.

PWGSC and PCO work with other departments to research and evaluate the impact and value of their advertising initiatives. Departments and agencies are responsible for ensuring the quality of their evaluations, and data from post-campaign focus groups are relayed to the Library of Parliament. Accountability to the public is further enhanced through annual PWGSC reports on government advertising and on public opinion research.⁶

Building Professional Capacity

Throughout the hearings and in its *Fact Finding Report*, the Commission was concerned that many individuals who managed advertising contracts for the federal government lacked appropriate professional credentials. The public service acknowledges this gap and has begun to respond through the development of a “community of practice” for advertising. This initiative is designed to promote the sharing of information and to encourage training efforts. To date, progress has been modest.

More consideration has been given to greater training for procurement officers in general. Three tiers of training are anticipated. Although procurement officers will be certified at each of the three levels, certification is not expected to be a condition of employment. The training plan will place emphasis on the skills needed for the procurement process, though, for the time being, they will not encompass commodity-specific skills such as advertising management. The Commission supports the inclusion of basic advertising concepts in any specialized procurement officer training and encourages the public service institutions involved to examine this possibility.

The OCG's certification program for internal auditors will establish minimum professional standards. While advertising is not a profession like auditing, advertising management requires specific skills from companies with proven track records. To ensure that the necessary level of competence is present in the agency being selected to perform government work, public servants responsible for the planning, procurement and administration of advertising campaigns should also have demonstrated competence and skill in these areas. The Commission is not authorized by its mandate to make recommendations on areas of provincial jurisdiction such as training, development and the licensing of professional bodies. Nevertheless, it encourages the advertising industry to establish professional norms and standards and to place greater emphasis on training programs.

Within the public service, the Commission strongly supports training in basic skills for public servants engaged in advertising management or procurement. It encourages the Government to explore all means of endorsing professional standards and to recruit and train public servants to meet these standards. Certification and training are two of the best ways to promote competent management of advertising and sponsorship activities.

Sponsorships

Advertising and sponsorship, when properly managed and made fully transparent, are legitimate activities of government. Yet, since the Sponsorship scandal, the word "sponsorship" has all but disappeared from the Government's vocabulary. The systematic disappearance merits comment.

In December 2003 Prime Minister Paul Martin announced the cancellation of the Sponsorship Program and the dismantling of Communication Canada. Nevertheless, the Government's new

Communications Policy includes one section on Sponsorships (section 25) and a more detailed provision dealing with Partnering and Collaborative Arrangements (section 24).⁷ The new policy makes individual Department Managers responsible for arranging or administering sponsorships, though they must consult with the Head of Communications in their department before issuing a sponsorship. In addition, the Deputy Head must be informed regularly of any communications plans or activities where a sponsorship arrangement is involved. Further, sponsorship activities will be subject to the same audit, evaluation and performance reporting processes that are required for other partnering or collaborative communications activities.

While the Government appears to be reluctant to participate in sponsorship arrangements, certain existing programs, such as trade fairs, exhibitions and cultural initiatives, continue to provide a degree of visibility for the federal government. But there is really no program focus for small-scale sponsorship initiatives. The current practice is to consider any sponsorship initiative as part of the Government's "grants and contributions" programs. The relative absence of the federal government from the sponsorship area has been deplored by many grassroots organizations as negatively affecting their events.

The Commission believes that a number of lessons learned from the mishandling of sponsorships should be remembered if the federal government intends to re-enter the area:

- Specific guidelines should be established for the objectives of sponsorship activities.
- Like advertising activities, sponsorship activities should be conducted in a fair and transparent manner, free from political interference in the selection and management of individual sponsorship activities, although Ministers should be free to set overall policies and objectives.

- Sponsorship activities should be clearly identified and described in all planning, management and reporting documents to departmental management, central agencies and Parliament.
- Regular evaluations and audits should be undertaken of sponsorship activities to ensure that they are meeting stated objectives, providing value for money, not creating unintended consequences, and are free from partisanship in their management and administration.
- If a central focus for a formal sponsorship program is required, it should be in a program department, rather than in a central agency or a common service organization such as PWGSC. However, it may be useful to create an advisory group to provide technical advice to departments that are contemplating or entering collaborative or sponsorship activities. This group could, for example, be associated with the Federal Identity Program Office in the Treasury Board Secretariat or with the Advertising Coordination and Partnership Directorate in PWGSC.

The current Government of Canada Communications Policy does not apply to some Crown Corporations and other public institutions listed in Schedule III to the *Financial Administration Act*. This exempt group includes Via Rail, Canada Post and the Royal Canadian Mint. While these organizations may have commercial and institutional reasons for seeking “branding” independence, there should continue to be an onus on them to assist in reinforcing the Government of Canada corporate image in any sponsorship initiatives they undertake.

Final Thoughts on Advertising and Sponsorships

Overall, the Commission believes that the Government of Canada has learned important lessons from the Sponsorship scandal. Its reaction has been to create a “bunker mentality” to ensure that no abuses of the advertising system will occur again. By separating the responsibilities for planning, procurement, agency selection, financing, and evaluation

and audit, and by strengthening many of its policies and procedures, the Government has added necessary checks and balances to the system. It has made a concerted effort to remove the involvement of Ministers and political staff from the administration of advertising initiatives and sponsorships. But these persons still retain their responsibilities for the establishment of strategic priorities. It appears that probity, fairness, transparency, independence and value for money have been given new importance in this once controversial area. The Commission concurs with the Auditor General of Canada in her conclusion that there were enough rules, but that some people did not follow them and others looked away. The ultimate solution to problems of mismanagement is to ensure, first, that rules are inspired by publicly known and accepted values and norms, and, second, that every public servant knows the rules and will be held accountable if they are not respected.

Overseeing Lobbying

Before commenting on what has become a burgeoning part of our political system, it is important to clarify the Commission's interest in lobbying, in what is commonly referred to as "government relations."

The *Fact Finding Report* concluded that certain individuals were paid to contact and influence public office holders on behalf of advertising firms and other companies, without being registered as required under the federal *Lobbyists Registration Act* (LRA).⁸ Their efforts had identifiable results, including the awarding of government contracts or obtaining assurances that certain contracts and policies would continue in effect. At least one former public servant may have breached other policies related to lobbying, such as the *Post-Employment Code*, which requires retired public office holders to have a "cooling-off" period before they engage in lobbying activities.

The focus of the Commission's interest is primarily on non-compliance with the rules and laws with respect to lobbying. Just as advertising and

sponsorships are legitimate fields of activity if properly managed, so too the act of lobbying is legitimate if the rules are followed. Lobbying can play a useful function in the Canadian political process, but, if the rules are not followed, values such as transparency and accountability lose their meaning.

The definition of lobbying is controversial, but the Commission relies on one similar to that which appears in the LRA:

A person is lobbying when he or she, for payment, on behalf of a person or organization, communicates with a public office holder in respect of a matter of public policy or to set up a meeting between a public office holder and another person.⁹

The *Lobbyists Registration Act* has been the law in Canada since 1989. It has received considerable media coverage and is well known in government circles. It is difficult to believe the individuals concerned who claimed not to be aware of the registration requirements. In any event, ignorance of the law is no excuse. The Commission simply wishes to ensure that compliance with the requirements of the law is enforced and that ignorance of the law is not used as a smokescreen.

Canadians told the Commission in its consultations that attempts to influence government decisions are an acceptable aspect of the political process. They believe, however, for the sake of transparency, that individuals seeking to influence government officials, as well as the subject matter of their lobbying activities, should be disclosed. The LRA has accomplished this disclosure function to some extent and, in doing so, has brought improved transparency to the system. Canadians are more able to see who is lobbying whom, and in what areas and departments lobbying is taking place. Recent amendments also make it possible to know what positions in government lobbyists have held in the past.¹⁰

But the Government's duty to enforce the requirements of the *Lobbyists Registration Act* has not been fulfilled, and public speculation that there is no political will to enforce compliance is justified. To date, not one person has been charged or fined under the terms of the LRA. After public reporting in the fall of 2005 on the activities of a former Cabinet Minister and lobbyist, the current Registrar of Lobbyists initiated eight investigations under the *Lobbyists' Code of Conduct*. This Code has been in place for nine years, and it is difficult to believe that there have not been reasons to investigate apparent breaches of either the Code or the Act in all that time.

Non-compliance with the legislation or the Code is often said to occur out of ignorance. When businesses and non-profit organizations fail to register because they are unaware of the obligation to do so or they deny that their contact with public office holders is lobbying, that is cause for concern. Surely the Registrar could advise them of the legal requirement to register, and prosecute only when they fail to respond appropriately. Others are clearly evasive, aware that they are lobbying yet avoiding registration. It is not enough to rely on the media or the vigilance of private citizens. The real problem is the lack of resources made available for enforcement. Professor Paul Pross, in a research study prepared for this Commission, corroborates the expressed concern of the Registrar of Lobbyists that the current resources allocated to his office and staff are insufficient.¹¹

On the basis of these concerns, reflecting the views of the Commission's expert advisors and its findings of fact during the initial phase of the Inquiry, the Commission advocates independence for the Registrar of Lobbyists: the office would then be free of its reporting relationship to a Cabinet Minister, and it would be provided with the means it needed to enforce the LRA.

Recommendation 15: The Registrar of Lobbyists should report directly to Parliament on matters concerning the application and enforcement of the *Lobbyists Registration Act*, and the Office of the Registrar of Lobbyists should be provided with sufficient resources to enable it to publicize and enforce the requirements of the Act, including investigation and prosecution by its own personnel. The limitation period for investigation and prosecution should be increased from two to five years from the time the Registrar becomes aware of an infringement.

Endnotes to Chapter 9

- ¹ Canada, Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Who Is Responsible? Fact Finding Report* (2005), p. xix.
- ² Exhibit P-408, Part IV. Advertising Management Renewal within the Government of Canada - Statement of Evidence Prepared for the Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Management of Advertising Activities Today* (May 2005).
- ³ The parameters of advertising are outlined in Canada, Treasury Board of Canada Secretariat, *Contracting Policy* (revised 9 June 2003), section 16.13.5.
- ⁴ The details of oversight organizations and how they interact can be found in sections 3 and 4 of Ian R. Sadinsky and Thomas K. Gussman, "Federal Government Advertising and Sponsorships: New Directions in Management and Oversight," Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Research Studies*, vol. II.
- ⁵ *Government Advertising Act*, SO 2004, c. 20.
- ⁶ See, for example, Government of Canada, *A Year of Renewal: Annual Report on the Government of Canada's Advertising Activities 2003-04* (Public Works and Government Services Canada, 2005).
- ⁷ Canada, Treasury Board of Canada Secretariat, *Communications Policy of the Government of Canada* (effective November 19, 2004), sections 24 and 25.
- ⁸ *Lobbyists Registration Act*, RSC 1985, c. 44 (4th Supp.)
- ⁹ For the current legal definition, see *Lobbyists Registration Act*, RSC 1985, c. 44 (4th Supp.), s. 5(1), as amended by *An Act to amend the Lobbyists Registration Act*, SC 2003, c. 10, s. 4(1).
- ¹⁰ An interpretation bulletin deals with this subject: Michael Nelson, *Interpretation Bulletin - Disclosure of Previous Public Offices* (Registrar of Lobbyists, Industry Canada, June 2005).
- ¹¹ A. Paul Pross, "The Lobbyists Registration Act: Its Application and Effectiveness," Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Research Studies*, vol II.

