



PRIME MINISTER • PREMIER MINISTRE

December 14, 2006

Dear Mr. Ehrenworth:

I am writing to thank you and your co-signatories from across the private and public sectors for your letter of March 3, 2006, in which you commented on the recommendations made by Mr. Justice Gomery in his February 1, 2006 report, *Restoring Accountability* ("the Report"). I hope you will excuse the delay in replying, but I believe that, with the recent granting of Royal Assent to the *Federal Accountability Act*, I am better placed to respond to the issues you have raised. As your letter raises important questions of public policy, and as it has reached a wide audience of Canadians, I will be making this response available to the public.

Restoring the confidence of Canadians by enhancing accountability is central to my government's agenda. As you are aware, detailed proposals for reform were a key element of my party's campaign platform. We put these proposals before Canadians both as a specific response to administrative shortcomings that gave rise to the sponsorship and other scandals, and as a broader initiative to address underlying issues within our system.

Since my government came to office, the development and timely passage of the *Federal Accountability Act* has been a top priority. The *Federal Accountability Act* is part of a comprehensive Federal Accountability Action Plan, which includes supporting policy and other non-legislative measures, as well as a draft bill to amend the *Access to Information Act*. In developing the Act and Action Plan, the government had the benefit of both Mr. Justice Gomery's Report and thoughtful analysis such as that provided by you and your colleagues. While we have been mindful of the experience and best practices in other jurisdictions, we have adopted an approach best suited to Canada's circumstances and system of government.

Mr. Sheldon Ehrenworth

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The intent of the *Federal Accountability Act* was not to be a response to Mr. Justice Gomery's Report, and you will note that the Act and Action Plan are substantially broader in their scope than the Report. However, the Act and Action Plan touch on the majority of the Report's recommendations and are for the most part broadly consistent with those recommendations. At the same time, our approach has been to assess the merits of Mr. Justice Gomery's recommendations on a case-by-case basis, and there are a number of areas where my government finds itself unable to agree with Mr. Justice Gomery.

I note from your letter that you and your colleagues consider the thrust of many of Mr. Justice Gomery's recommendations to be useful, but that you have concerns in specific areas. You identified the following recommendations as useful:

- more effective regulation of lobbyists;
- prohibiting political staff from giving instructions to officials;
- improving resources available to Parliamentary Committees;
- making government more transparent;
- improving the appointment process for Crown corporation Chief Executive Officers and directors;
- reducing the turnover of deputy ministers; and
- avoiding the imposition of further administrative burden.

In each of these areas the government has taken action, either as part of the *Federal Accountability Act* and Action Plan or through other initiatives.

With respect to lobbying, for example, the *Federal Accountability Act* replaces the *Lobbyist Registration Act* with the *Lobbying Act* and establishes a new Commissioner of Lobbying as an independent Agent of Parliament with enhanced investigatory powers and a mandate to enforce compliance with the *Lobbying Act*. Among other provisions, the *Lobbying Act* includes a ban on contingency fees and a five-year ban on lobbying by former designated public office holders.

Concerning the role of political or "exempt" staff, one of my earliest actions as Prime Minister was to ensure that *Accountable Government: A Guide for Ministers*, which sets out core principles regarding the role and responsibilities of Ministers including my personal expectations for ministerial conduct, provides greater detail and clarity on the relationship between public servants and exempt staff in Ministers' offices. In particular, the *Guide* emphasizes that exempt staff are not to provide direction to public servants, and that exempt staff have an obligation to be aware of and to respect the appropriate parameters of public service conduct. It also indicates that Ministers are accountable for their exempt staff.

I would also note that the *Federal Accountability Act* removes the priority appointment entitlement of Ministers' staff to public service positions, as recommended by Mr. Justice Gomery. Regarding the resources available to parliamentary committees, this was among a number of Justice Gomery's recommendations concerning parliamentarians that I anticipate will be the subject of discussion by parliamentarians themselves. I would expect that these recommendations will be reviewed by the House of Commons' Board of Internal Economy, which would make recommendations to the Government of Canada, and also by the Senate Standing Committee on Internal Economy, Budgets and Administration. As a general point, I would note that my government is supportive of the principle that parliamentary committees should have the resources they need to conduct their work effectively. In this connection, the *Federal Accountability Act* takes the important step of establishing a Parliamentary Budget Officer, who will provide objective analysis to Members of Parliament, Senators and parliamentary committees concerning the state of the nation's finances, trends in the national economy, and the financial cost of proposals under consideration by either House. I would also note that improvement to the Estimates process was part of my party's electoral platform.

Improving the transparency of government, another of Mr. Justice Gomery's recommendations that you identified as useful, is a priority of my government. Certain improvements to the *Access to Information Act* (ATIA) are part of the *Federal Accountability Act*, such as bringing Crown corporations not previously covered by the ATIA within its ambit. Additionally, we have tabled for consideration by parliamentary committee a draft bill to further amend the ATIA, and a discussion paper to ensure full consideration of views and possible approaches. I note that the question of creating a duty to document decisions and recommendations is raised in the discussion paper and that the Treasury Board policy *Management of Government Information* currently requires government institutions to document decisions and decision-making processes. To these points I would add that transparency and openness go beyond the ATIA. Thus, for example, the *Federal Accountability Act* enshrines in law a commitment to fairness, transparency and openness in the procurement process.

With respect to the appointments process for Crown corporations, I feel strongly that appointments to public office should be about qualifications, not political connections. Indeed, making qualified appointments is a key component of the government's plan for strengthening accountability in government. The *Federal Accountability Act* provides for the creation of a Public Appointments Commission whose mandate will be to oversee and report on Governor in Council appointments to agencies, boards, commissions and Crown corporations. The government is committed to introducing a new rigour in the appointment process and ensuring the overarching objectives of transparency, competence and fairness are achieved.

As for the question of deputy ministers' tenure, flexibility is required as the appointment of deputy ministers is based on the government's operational and policy needs. However, the government takes into account the value of stability and continuity for government organizations as well as the development of deputy ministers' expertise and experience in making such appointments.

Finally, on the question of administrative burden, I believe our Action Plan strikes an appropriate balance between oversight and flexibility. The government will strengthen and streamline its management policies and consult with stakeholders on reducing barriers that inhibit access to government. As part of this process, the government has established an independent blue-ribbon panel to review the administrative requirements that individuals and organizations must meet in order to access government grant and contribution programs, examine the issues faced by government departments in managing these programs, and assess whether instruments other than grants and contributions are more appropriate for funding some programs. The government will also review its procurement and financial management policies to identify where they could be streamlined and where transaction-level requirements could be replaced with basic principles of management accountability and transparency. We will repeal policies and regulations where they inhibit the effectiveness of public-service employees, rather than promote accountability and good management.

Having noted areas of broad concurrence with Mr. Justice Gomery, let me turn to those of Mr. Justice Gomery's recommendations that caused you and your colleagues concern. These areas were:

- changes to the role of the Clerk of the Privy Council;
- appointment of Deputy Ministers by their Ministers;
- the concept of the Public Service having a constitutional identity independent of the elected government; and
- requiring that Ministers provide Deputy Ministers with written instructions if they wish to overrule them on matters of administration.

I share the concerns you expressed with respect to each of these matters.

Regarding the role of the Clerk of the Privy Council, I agree that it would be inappropriate to change the position of the Clerk. While it is critical that the Clerk, with the support of the Privy Council Office, provide secretariat support to Cabinet, the Clerk's roles as Deputy Minister to the Prime Minister and Head of the Public Service are also vital to the sound functioning of our system of government.

A modern Canadian Prime Minister, faced with a sweeping range of complex demands, has a fundamental need for coordinated, professional public service advice on both policy and operations, and the Clerk of the Privy Council is the appropriate person to provide this advice.

I also agree that Deputy Ministers should not be appointed by their Ministers. I fully agree that Deputy Ministers support not only the individual responsibilities and accountabilities of their Ministers, but also the collective responsibility and accountability of the government as a whole. I also share your view that the Public Service, a recognized and essential institution of government, exists to provide professional advice and operational support for the government of the day, and does not exercise authority independent of the government. This would not be an appropriate role for the Public Service and is not one that is sought by Public Servants.

Finally, with respect to the management responsibilities of Deputy Ministers and the related matters of their relationships with their Ministers and with Parliament.

The *Federal Accountability Act* designates Deputy Ministers and Deputy Heads of all government departments and agencies as accounting officers for their respective organizations, and as such accountable before the appropriate committee of Parliament to answer questions related to their managerial responsibilities. These responsibilities include managing departmental resources in accordance with government policies and procedures, maintaining effective systems of internal control and signing the departmental accounts.

Setting out deputy ministerial management responsibilities in one statute and establishing a statutory obligation to appear before parliamentary committees to answer questions regarding those responsibilities will support high standards of departmental management within the Government of Canada in a number of ways. For example, it sends a strong message concerning the importance of sound departmental management and clarifies the role of Deputy Ministers in achieving it. Additionally, it ensures that Parliament will have the information it requires to assess the way in which all government departments and agencies are managed.

However, as the legislation also makes clear, the responsibilities of accounting officers are exercised within the framework of ministerial responsibility and accountability to Parliament, which will remain unchanged. In other words, the fundamental accountability between a Minister and Parliament and between a Minister and his or her Deputy Minister have not been altered in any way.

Thus accounting officers will be accountable *before* the appropriate parliamentary committee and in so doing they will assist Parliament in holding the government to account. But, as is currently the case, accounting officers will not be accountable *to* Parliament in the sense of being subject to its censure and demands for action in the manner of Ministers. Ministers alone are accountable to Parliament, which is a central tenet of our system of responsible government. Accordingly, the government does not agree with Justice Gomery that Ministers should not appear before the Public Accounts Committee.

With respect to potential disagreements between Ministers and Deputy Ministers in matters of departmental administration, the *Federal Accountability Act* establishes, as part of the accounting officer mechanism, a more systematic and effective means of addressing certain disagreements.

I believe that the approach taken in the *Act* addresses a number of Justice Gomery's concerns. At the same time, recognizing the importance of the Minister-Deputy Minister relationship, the approach set out in the *Federal Accountability Act* does not simply document the disagreement for the purposes of assigning blame after the fact, but instead focuses on the prevention and authoritative resolution of disagreements within the framework of ministerial responsibility. It will also support the consistent application of government management policies.

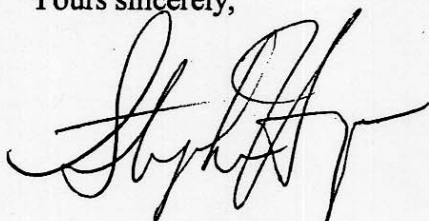
I would like to take this opportunity to highlight a number of additional initiatives the government is pursuing that are consistent with Justice Gomery's recommendations. For example, with regard to amending the definition of advertising to conform to industry standards, the government is defining advertising to distinguish it from collateral services. We have also pursued, through the *Federal Accountability Act*, wide measures to prevent public opinion research and advertising from being used for partisan or political benefit. To improve overall contracting practices, the government is establishing a Procurement Auditor and a Code of Conduct for Procurement, as well as legislating a commitment to fairness, openness and transparency in the procurement process.

On the question of legislating punitive measures for breaching the provisions of the *Financial Administration Act* on payment for work, goods and services, the *Federal Accountability Act* makes fraud involving public funds committed by public officials an offence under the *Financial Administration Act* and the Criminal Code, and will enable the dismissal of any official convicted of this offence. As for the management of special reserves, these are already managed by either the Treasury Board Secretariat or the Department of Finance.

Finally, with regard to Justice Gomery's recommendation that members of the Public Accounts Committee be appointed with the expectation of serving the duration of Parliament, this is a matter for Parliament's consideration.

In sum, my government is taking comprehensive action to ensure that the Government of Canada is fully accountable to Canadians, and we believe that our approach responds effectively to most of the issues, concerns and recommendations set out in Mr. Justice Gomery's final report. Once again, I would like to thank you and your co-signatories for giving me the benefit of your experience and insights as my government developed the *Federal Accountability Act* and Action Plan.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Stephen Harper", written in a cursive style.