INTRODUCTION

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In the fall of 2004, Justice Gomery invited me to join the Commission of Inquiry into the Sponsorship Program and Advertising Activities as its Director of Research for phase II of the Commission's work, or what commonly became known as the recommendation phase. He laid out an important challenge for the research program by asking: "Do you know what makes a good judge?" I did not know the answer, as my puzzled look surely revealed, and he quickly replied: "Two good lawyers in front of the judge representing both sides of the case in a very competent manner." To be sure, the point was not lost on me: Justice Gomery was prepared to consider any issue, so long as the research program was able to provide a solid case for both sides. At no point did Justice Gomery indicate a bias on any question, a preconceived notion or the suggestion that the research program should consider any issue, or look at it from a given perspective. This approach also guided his participation at all the Advisory Committee meetings and at roundtable discussions held in five regions between August and October 2005.

I took careful note of the Commission's mandate and its terms of reference. The terms of reference called on Justice Gomery to make recommendations, "based on the factual findings" from phase I, "to prevent mismanagement of sponsorship programs or advertising activities." It listed a number of specific issues to review and asked for "a report on the respective responsibilities and accountabilities of ministers and public servants."

I monitored the testimony from witnesses who appeared before Justice Gomery, in both the Ottawa and the Montreal sessions. I also produced a paper designed to identify the key issues for the Commission to consider. I met regularly with Justice Gomery to review the issues and the Commission's research program as it was being planned. He asked early on that I take into account what the government was doing to reform its management activities and to review the various documents being tabled by the President of the Treasury Board, so the Commission would not try to reinvent the wheel. He noted, for example, that the Treasury Board had produced a solid document on the governance of Crown corporations. He made the point that, rather than start from scratch, we should offer a critique of the document and compare its findings with developments in this area in other countries.

The Commission's research program was the product of many hands. In particular, I want to single out the work of Ned Franks, Professor Emeritus at Queen's University and one of Canada's leading students of Parliament. He helped with every facet of the research program, from identifying issues to study to recommending scholars and practitioners.

The Commission's Advisory Committee also provided important advice and support to the research program. The Commission was able to attract an impressive list of Canadians to serve on the Committee, led by chairman Raymond Garneau, a leading business person from Quebec, a former Minister of Finance in Quebec and a former Member of

Parliament in Ottawa. Other members included Roch Bolduc, a former Senator and former senior public servant with the Quebec Government; Professor Carolle Simard, from the Department of Political Science and Public Administration at the Université du Québec à Montréal; Bevis Dewar, a former Deputy Minister of Defence and head of the Canadian Centre for Management Development, recently renamed the Canada School of the Public Service; the Honourable John Fraser, a former federal Cabinet minister and former Speaker of the House of Commons; Constance Glube, a former Chief Justice of Nova Scotia; Ted Hodgetts, Professor Emeritus at Queen's University and a member of the Royal Commission on Financial Management and Accountability (Lambert Commission) and editorial director for the Royal Commission on Government Organization (Glassco Commission); and Sheila-Marie Cook, a former official with the federal government and the Commission's Executive Director and Secretary. I acted as Secretary to the Advisory Committee.

I can hardly overstate the importance of the work of the Advisory Committee in designing and overseeing the Commission's research program. I benefited greatly from the wise counsel members provided to me both individually and collectively, from their insights and their necessary words of caution. They were generous with their time and their patience. They read the various research papers and provided advice on how to make use of their findings in shaping the phase II report.

At its most general level, the Commission's research program examined how Parliament relates to the Canadian Government and to public servants, and vice versa; how best to promote transparency in government; and the role of key political and administrative actors in government. The papers produced for the Commission promote various perspectives, and at times conflicting ones. This diversity was by design. The papers also offer different methodologies. We were fortunate in being able to attract leading scholars in their fields to produce these

research papers for the Commission. We also turned to practitioners for papers dealing with exempt staff, internal audit, and advertising and sponsorship issues.

The papers deal with all the issues Justice Gomery was asked to address. They look at the respective roles of Parliament, ministers and senior public servants; the appointment process for deputy ministers and the evaluation process for them; access to information; and legislation for whistle-blowing and lobbying.

The Papers

"Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implication for the Accountability of the Public Service," by Lorne Sossin, states that the constitutional conventions and provisions that influence or make up the form and extent of bureaucratic/political boundaries have accumulated over time. They now give rise to obligations, constraints and responsibilities for decision-making by both public servants and political executives.

Sossin suggests that the largely unwritten conventions and principles, having evolved in the Westminster model, in common law, guidelines and codes, have conferred constitutional status on the public service as an "organ of government." Though public servants have a constitutional status, it is not reflected in legislation, nor is there general acknowledgment that it forms a tangible demonstration of the accountability of the public service. The bureaucratic/political boundaries have value and they are, as Sossin says, "key prerequisites for the success of government and a foundation of Westminster democracy." Another constitutional convention calls for a non-partisan bureaucracy, which means that public servants must execute the policy decisions of politicians; they are appointed and promoted by merit; they are not permitted to engage in partisan politics; they must not publicly

express personal views on government policies or administration; they must provide advice confidentially; and they must be loyal to the government of the day.

Sossin reviews several court decisions that have established the terms of the relationship between public servants and the political executive, decisions that specifically address the constitutional conventions of neutrality, rule of law and loyalty. He explains how bureaucratic independence can be maintained through judicial intervention, but, more importantly, through the political will to introduce measures such as guidelines, training and clarification of procedures which will change the culture that currently blurs or misrepresents bureaucratic/political boundaries.

He suggests that a key element of the constitutional convention is what he describes as "the duty on public servants to question, and if necessary to decline to follow instructions which are motivated by partisan interests." At the same time, he cites the Treasury Board's ethical code, which fails to provide explicit instruction to report or act upon observed or experienced improper, illegal or unethical instances. In that and other examples, the constitutional convention is not reinforced by procedural requirements or by an explicit legislative mandate.

Sossin proposes a reorientation of the public service ethos and culture through the adoption of the following measures: a training and education program for public servants, to be established with formal instruction related to dealing with the bureaucratic/political interface; the Privy Council Office (PCO) to be the lead organization charged with providing ministers and political officials with an understanding of the standards and guidelines for their relationship with public servants; and the Public Service Commission to assume responsibility for the standards and compliance requirements for public servants in their relationship with the political executive and the public service.

Sossin proposes the strengthening of the various codes in ways similar to Britain's Civil Service Code. It provides declarative, specific and instructive advice, in contrast to Canada's Privy Council Office, which offers suggestions that public servants "may" or "can" deal with matters of wrongdoing or inappropriate conduct. He recommends that Canada's Code of Values and Ethics for the Public Service be entrenched in legislation. This code, in its revamped version, should reflect the deliberate will of Parliament and give statutory expression to the constitutional convention of a non-partisan public service.

Sossin also recommends the adoption of the Accounting Officer model. Deputy ministers, in the Treasury Board's view, are "answerable to Parliament in that they have a duty to inform and explain," but their ministers are the ones responsible to Parliament. He points out that no constitutional impediments preclude deputy ministers from being directly accountable to Parliament through the committee system. He adds that when deputy ministers are "called before parliamentary committees to account for the conduct of public servants (and their own conduct) they speak to Parliament as the leadership of the public service, a distinct 'organ of government' with a voice independent from their ministers." In these circumstances, deputy ministers are already accountable to Parliament for those matters that are not within the minister's scope of responsibility. Sossin proposes that this independent constitutional duty belonging to deputy ministers be recognized, along with their accountability.

"Encouraging 'Rightdoing' and Discouraging Wrongdoing: A Public Service Charter and Disclosure Legislation," by Ken Kernaghan, recommends that the federal government adopt both a Charter of Public Service Values and disclosure legislation as integral parts of its accountability regime.

The Charter would take the form of a formal written statement outlining the constitutional position of the public service, including its

relationship with the political sphere of Government. It would replace the current Public Service Values and Ethics Code. A disclosure of wrongdoing statute would provide protection for public servants who reveal information about such forms of misconduct in Government as illegal activity and gross mismanagement. Kernaghan examines the Charter and disclosure ideas within a comparative context that focuses on Australia, New Zealand and the United Kingdom.

He explains that Australia does not have a Charter, but the APS Values statement and Code of Conduct in its *Public Service Act* are designed to promote a values-based public service. The objective is a change in public service culture which includes a greater relative emphasis on values, rather than rules, and on results, rather than processes. The Public Service Commission has reported steady progress in integrating values into the structures, processes and systems of Australia's federal public service.

New Zealand has a Public Service Code of Conduct emphasizing such core public service values as integrity, honesty, political neutrality, professionalism, obedience to the law, and respect for the institutions of democracy. This Code is complemented by a *Statement of Government Expectations of the State Sector and Commitment by the Government to the State Sector*, which provides a concise statement of values. This document, issued by the ministers, prescribes mutual obligations for both ministers and public servants. Thus, New Zealand comes closer than Australia to articulating the kind of constitutional position of the public service that would be required in a public service Charter for Canada.

Kernaghan reports that, in comparison to Australia and New Zealand, the United Kingdom, in its Civil Service Code, focuses more on democratic values, expresses these values in more elegant language, and is even more concerned than New Zealand with the constitutional role of the public service in its relations with ministers and Parliament. The overall format, language and content of the UK Code provide the best model for a Canadian Charter of Public Service Values.

In all three countries, the main values document contains, or is linked to, disclosure protection for public servants. However, each country's disclosure regime differs significantly from the others.

The Code of Conduct in Australia's *Public Service Act* is followed by a section on "Protection for Whistleblowers." No categories of wrongdoing are provided, and wrongdoing is simply defined as a breach of the Code. With a few exceptions, public servants are "expected" or "encouraged" to make any disclosures within their agency rather than take them to an external authority. The management of disclosures, investigations and the imposition of sanctions are the responsibility of the heads of agencies. This Australian approach has been criticized because it does not cover all public sector employees, protection from reprisal is limited, and the Public Service Commission does not have strong enough investigative and remedial authority.

New Zealand's *Protected Disclosures Act* covers both public and private sector employees and specifies several categories of serious wrongdoing. While employees are "required" to make their disclosures within their own agency, they can, in exceptional circumstances, make them to an "appropriate authority" outside their department. Among the criticisms of the Act are its inconsistent application, the excess of external authorities to whom allegations can be made, and inadequate protection of the identity of those making allegations.

The disclosure provisions in the UK Civil Service Code are an integral part of the government's disclosure regime. The other main mechanism is the *Public Interest Disclosure Act*, which covers not only all public sector employees but private sector employees as well. The UK Civil Service Code deals substantively with the disclosure of wrongdoing. It sets out several categories of wrongdoing and provides a complex system of disclosure procedures for making allegations within or outside one's department. Like Australia and New Zealand, the United Kingdom

provides protection against reprisal for public servants who disclose wrongdoing. The provisions for confidentiality in the disclosure process are strongest in New Zealand and weakest in the United Kingdom.

Kernaghan makes a number of recommendations on the basis of his comparative analysis and his examination of the current regime of public service values and disclosure in Canada's federal government. He outlines a disclosure regime that he believes would be more credible and effective than those in Australia, New Zealand and the United Kiingdom. His proposed regime would

- provide disclosure protection in the form of a statute rather than the current policy;
- cover virtually all public sector employees;
- have a Public Service Integrity Office as an independent investigative body accountable to Parliament;
- encourage public servants to exhaust internal remedies but permit them to take allegations directly to the Public Service Integrity Office;
- protect the identity of persons making allegations of wrongdoing to the extent compatible with principles of natural justice; and
- provide for penalties against flagrant and intentional misuse of disclosure mechanisms.

He also recommends the adoption of a Charter of Public Service Values, which would provide a foundation and a framework for good governance by setting the core values of the public service within the broader context of the principles of Canada's parliamentary democracy. He suggests that

- the Charter be positioned as the centrepiece of the federal government's values and ethics regime;

- the Charter include a statement of the core values of public service—as in the current Values and Ethics Code;
- the Charter give pride of place to democratic values such as accountability and neutrality;
- reference be made to the existence of other key documents relating to values and ethics and to relationships between politicians and public servants; and
- the legitimacy of the Charter be enhanced by having it adopted by means of a parliamentary resolution.

Kernaghan concludes that disclosure legislation will promote formal accountability in the sense of prescribing rules of right conduct, and the Charter will foster personal or psychological accountability in the sense of an internalized commitment to do the right thing. Over time, this approach should promote a public service culture that encourages "rightdoing" and discourages wrongdoing.

"Two Challenges in Administration of the *Access to Information Act*," by Alasdair Roberts, states that disclosure laws, such as Canada's access to information legislation, have been promoted as a powerful tool for improving the accountability of public institutions. But disclosure laws are not without problems and issues. He reports, for example, on problems of delay caused by special procedures for "sensitive" requests. He writes that, in Canada, PCO communications staff insisted on reviewing responses to requests relating to the grants and contributions scandal of 2000. Such delays, he points out, reveal that a basic principle of the access to information legislation is widely flawed by federal institutions. Two challenges arise in the enforcement of this Act: adversarialism and erosion of scope.

Roberts reports that the majority of requests made under the legislation are from businesses. The number of journalists who turn to Access to Information legislation is small, and those who report on specific topics

smaller still. Still, a significant number of requests come from the opposition parties and the media, particularly on sensitive matters. When these requests are deemed to be "sensitive," according to an internal scale that determines the degree of "sensitivity" and the extent of any political risks, they are routed directly to the ministers' offices or to the Prime Minister's Office, or turned over to committees of communication specialists. Everything is done on a basis of risk management and crisis management, and that invariably extends the time needed to respond to the requesting parties. Not all requests, then, are treated equally, as they should be under the Act.

Roberts also reports that a number of government officials hesitate to record information, thinking that the "less we have on file, the better." Factors that can limit the possibility of transcribing information include budget cuts, the decline of formality in the decision-making process in the federal government, and new technologies (such as the wireless e-mail device).

Several other reasons, according to Roberts, explain the resistance by many government officials to access to information legislation. They include the nature of parliamentary politics, the tendency of the party in power to employ defensive strategies, and the complexity of the governance environment. There is also an erosion of the ability to govern efficiently, resulting from greater fiscal constraints, proliferating interest groups, globalization, and the appointments of more outside players such as auditors, commissioners and ombudsmen. The decline in government authority, the new media environment, new technologies and constitutional issues are also factors contributing to the destabilization of an already complex environment. The access to information legislation adds yet another layer of complexity.

Roberts maintains that the culture of "openness" has proven to be "elusive." He does not detect a "profound shift in bureaucratic culture in Commonwealth jurisdictions," though he warns we should not

conclude that disclosure laws have failed as tools for obtaining information. Quite the opposite, he contends, given that government departments have had to disclose sensitive information. He recommends that we ought to construct "rules of engagement that are transparent, perceived as fair and appropriately enforced." In this light, he urges that steps be initiated to strengthen the capacity of access to information coordinators as guardians of the smooth functioning of the process.

Roberts explores the application of the access to information legislation to bodies working for or with Government. He argues that the list needs to be revised according to the following criteria: when the body is completely or partially funded by parliamentary appropriations or represents a component of the administration of a parliamentary institution; when it represents a parent body (parent company) belonging in whole or in part to the Government of Canada; when it appears in Schedules I, I.1, II and III of the *Financial Administration Act*; when it or a parent body in the Government is directed or managed by one or more people designated as being under federal trusteeship; when it offers products and/or services to the Government of Canada or to one of its institutions; when it offers products and/or services in an area of federal jurisdiction in which essential services are provided to the population (health, safety, the economy, and protection of the environment).

Roberts offers a number of specific suggestions, including strengthening the role and responsibilities of the Commissioner; limiting special treatment practices at the request of the requesting party; limiting the circulation of information so as to decrease response time; granting more authority and autonomy to the coordinators; adopting the "duty to assist" concept in requests and responses; reviewing the legitimacy of the process for appointing commissioners (he recommends establishing an independent committee); and including new organizations in the Act when they are created and making them automatically subject to the legislation.

He concludes that access to information legislation requires reform. He urges the government to address the problem of adversarialism directly and to amend the legislation to accommodate new realities of governance. In particular, there is a need to recognize that the public sector has changed and that it now consists of a variety of governmental, quasi-governmental and even private sector actors. Legislation needs to take account of this change and of other developments.

"The *Lobbyists Registration Act*: Its Application and Effectiveness," by Paul Pross, reports on the *Lobbyists Registration Act* that came into force on September 30, 1989. Amendments in 1995, 1996, 2003 and 2004 introduced incremental changes that reflected experience with its provisions and with the need to support its stated goals with real legislative muscle. However, refinements are still needed. Pross reports that the initial Act defined a lobbyist as anyone who receives payment to represent a third party in arranging meetings with public office holders or in communication with them concerning the formulation and modification of legislation and regulations, policy development, and the awarding of grants or contracts (s. 5). The Act recognized the legitimacy of lobbying, established a registry, and required consultant lobbyists and those working for corporations and non-profit organizations to report the names of their clients, or employers, and the subject matter of their undertakings. Penalties were set out for failing to register.

Pross writes that the aims of the Registry were modest, the powers of the Registrar limited, and the resources of the Lobbyists Registration Branch sufficient only to inform Canadians of the identity of lobbyists working on selected files. It reflected the Mulroney Government's view that lobbying should be monitored, but not regulated, and that public disclosure, not prosecution, would best preserve the integrity of the policy-making process.

In its current version, the Act creates the following regime:

- Three classes of individuals—consultant, corporate and association lobbyists—must register any paid undertaking that involves communicating with public officials with respect to the development, or defeat, of legislative proposals, regulations, public policies and programs, and the awarding of grants and contracts. Volunteer lobbyists are not required to register.

- Some specified materials are exempt: official representations by employees of other governments; communications with officials concerning the routine application of regulations; and the presentations made by all interests before commissions of inquiry, parliamentary committees and other hearings that are on the public record.

- Registration must occur within defined time limits, and, in addition to identifying the lobbyist and lobbying firm, must disclose (a) the names of clients (or employers); (b) the subject matter of communications with public officials; (c) any official positions previously held by lobbyist in the Government of Canada; (d) the names of the agencies lobbied; and (e) the communications techniques employed.

- Because consultant, association and corporate lobbyists work in somewhat different circumstances, they report their undertakings differently, though essentially the same information is required of each.

- A code of conduct is laid out and must be observed by lobbyists.

- The Registrar of Lobbyists' responsibilities include monitoring of the code and the administration of the registry, including conducting audits of registrations and, where necessary, reviewing the information provided by lobbyists. The Registrar reports annually to Parliament and must also provide Parliament with the final report of any investigation carried out under the Act.

From its inception, "registration, but not regulation" has been a key feature of the regime established by the *Lobbyists Registration Act*. Successive governments have attempted to create a system that neither discourages the general public from petitioning government nor creates a regulatory process bedevilled by excessive information and unenforceable reporting requirements. This approach, Pross reports, has achieved some worthwhile results. It also, however, until recently, ensured that those responsible for administering the Act could not effectively fulfill its objective of ensuring that "public office holders and the public be able to know who is attempting to influence government."

The weaknesses of the *Lobbyists Registration Act* centre on five areas: securing compliance, providing clear instructions to lobbyists and officials, defining an appropriate disclosure regime, investigating infractions, and ensuring the independence of the Registrar.

Pross suggests that the problem is best addressed through a multifaceted outreach program, including training for public servants, providing better and more accessible information, and involving business groups and the media in putting more information about registration before the general public. Training and expanded public knowledge of lobbyist registration should, however, be reinforced with policies that require public servants to be more alert to the registration process and oblige them to establish and, where necessary, report the lobbyist status of individuals communicating with them. He notes, however, that unless staffing at the Branch is considerably increased, significant non-compliance—intentional and inadvertent—will continue. More staff is needed to verify registrations, monitor compliance, and investigate non-compliance, on the one hand, and, on the other, to put the outreach program into effect.

In addition, Pross makes several suggestions to improve disclosure. In response to arguments that political operatives ought to be banned from participating in lobbying, he suggests that a more effective approach

would be to require disclosure of party positions held and to introduce changes to election finance rules that would equate volunteer time donated to political parties to financial contributions. Other proposals relate to the previous employment of volunteers, and to lobbyists' participation in conferences and meetings.

Pross also looks at the Registrar's independence. He recommends that, for two reasons, both the Registrar and the Office should be placed under the supervision of Parliament itself: at present, the Registrar is subject to the pressures that ministers and other senior officials can bring to bear on it; and the Office is vulnerable to budgetary, staffing and organizational decisions that can, subtly or not, severely limit its effectiveness.

"For the Want of a Nail: The Role of Internal Audit in the Sponsorship Scandal," by Liane Benoit and Ned Franks, describes and analyzes the Public Works and Government Services Canada (PWGSC) internal audit function in relation to the evolution of the Sponsorship Program from 1995 to 2000; canvasses a range of explanations for the failure of internal audit during this period; and assesses the October 2005 accountability and financial management reforms of the Government of Canada.

Benoit and Franks describe how, in late 1994, the PWGSC staff responsible for advertising/sponsorship procurement (negotiating contracts with agencies) were moved into a new unit under Charles "Chuck" Guité, who was already responsible for the selection of advertising firms and for monitoring government advertising. This amalgamation removed the existing structural checks on sponsorships and advertising contracting. The PWGSC Audit and Review Branch advised on a management control framework for the newly established unit, the Advertising and Public Opinion Research Sector (APORS). Its report identified a high level of risk inherent in the organizational

independence and apparent politicization of APORS and recommended an early compliance audit of the amalgamated unit. Twice (in 1995–1996 and 1996–1997), the recommendation was not followed. Meanwhile, in mid-1996, following a complaint to his union, Allan Cutler's allegations of contracting irregularities were considered by the Audit and Review Branch, which recommended further investigation. This review led to two consequences: a modest internal compliance audit conducted by Ernst & Young, and reprisals against Mr. Cutler that emphasized Mr. Guité's impunity.

Drafts of the 1996 Ernst & Young audit noted the limited scope of the audit, identified major areas of risk, and directly addressed contracting irregularities. On the insistence of the Audit and Review Branch, these passages were removed. The final report also included misleading statements to the effect that no evidence of personal gain or benefit had been detected, and that APORS lacked expertise in the procurement function. This deceptive information formed the basis for the PWGSC Audit Committee's acceptance of the final report and the resulting Action Plan prepared by Mr. Guité; it may also account for Treasury Board's inaction when it received summaries of these documents.

The next internal audit was conducted in 2000, in the wake of the HRDC scandal. It identified irregularities very similar to those found in 1996, but again PWGSC muted their seriousness with "soft language;" moreover, all references to the 1996 report and its disregarded recommendations were deleted. The failure of PWGSC to acknowledge the similarities with the 1996 audit results, and the fact that nothing was done about them, amounted to deliberate concealment, a "total abdication of integrity" in the PWGSC internal audit. Nonetheless, the Sponsorship Program had, by 2000, attracted enough scrutiny from outside PWGSC that the attempt at concealment failed, and various other audits were conducted over the 2000–2003 period.

In the second part of their paper, Benoit and Franks canvass cultural, institutional and structural factors that might have led PWGSC auditors to avoid investigating activities that posed such risks to the Department. Among the possibilities cited are incompetence and/or poor judgment on the part of senior PWGSC audit officials; "structural politicization," whereby public servants identified with Mr. Guité's efforts to preserve national unity at any cost; and political interference. It may also be that the audit officials simply believed Mr. Guité's version of events over Mr. Cutler's. They note that, in general, the pattern of interaction between audit staff and departmental managers can sometimes reflect a "clash of cultures" and result in personal or organizational rivalries.

Benoit and Franks make the point that internal audits are no longer genuinely internal, as they can be released under the access to information (ATI) regime. Laypersons are not attuned to the differences in meaning and purpose between internal and external audits and believe all audits are concerned with financial probity. After ATI came into effect in 1983, managers became more concerned over the language and findings of internal audits, with a view to possible public disclosure of these documents. Serious negotiations between managers and auditors or auditors and outside contractors are often pursued; the result is a tendency to obfuscation. The ability to control the language of audit reports can become more difficult when outside auditors are employed to assist in internal audits. While consultants are usually responsive to the wishes of their clients, and many will revise reports accordingly to ensure further business, the issue becomes ethically more difficult when both parties are not in tune with the larger interests of the organization. The authors observe that the tendency for departments to sanitize reports for public consumption affects the utility of the internal audit as a reliable management tool. It can also seriously mislead deputies and audit committees that rely on the integrity of this information to make organizational decisions.

Benoit and Franks summarize the October 21, 2005, government reforms aimed at improved accountability and financial management. They note that the overall direction is to bring the audit regime in line with private sector practices. They argue that, in contrast to the Auditor General and the findings of Justice Gomery in his first report, the reforms attribute the Sponsorship affair to an internal failure of bureaucratic control, not to external political pressure. Assuming, however, that the Sponsorship problem was the fault of easily intimidated departmental officials, the reforms' reinforcement of ministerial and central agency power is likely to make matters worse. They also point out that the President of the Treasury Board is now suggesting that ministers, not deputies, be the primary managers of departments. This understanding reverses the assumptions behind the current machinery of government and the *Financial Administration Act*. They add that the approach to audit appears designed to shift the internal audit function into a hybrid form, which would aim to provide assurances associated with external audits, and that the new departmental Chief Audit Executive function introduces a dual reporting relationship into the departmental structure, which further obscures accountability.

Benoit and Franks emphasize the significance of restructured departmental audit review committees and the large number of external (outside-the-department) experts who will be involved under the new scheme. Among the issues raised by this innovation are (a) the risk of patronage and/or politicization in the appointment and operation of these committees; (b) disrupted minister-deputy relations stemming from annual in-camera meetings between the committees and ministers, which exclude the deputy minister; and (c) the conflict, suspicion and resentment that are likely to arise from a scheme that has deputies (as members of audit review committees) provide assurances to ministers for other departments. Another issue of confused accountability could arise when a committee provides a minister with false assurances

(possibly based on misleading audit reports); in that scenario, the minister and the deputy will both be in a position to blame the outside body for its failure to identify the department's errors.

Benoit and Franks argue that restoring the Office of the Comptroller General means more audits, along with greater central agency involvement. While there is clearly a need for improved internal audit, they see the prospect of an oppressively intrusive audit regime and a resulting cost in the morale and self-esteem of officials. They offer a number of concluding observations:

- The reforms neglect a salient issue in the failure of the PWGSC internal audit—the impact of ATI on internal audit integrity; Benoit and Franks suggest that the demands of transparency could be met by publishing only summaries of internal audits.
- The reforms do not address the classification of departmental auditors, and therefore appear to neglect serious issues of quality and professionalism.
- The Sponsorship affair demonstrated the need for a public service with the confidence to resist political interference. Instead, the reforms empower central agencies at the expense of departments and exaggerate ministerial management at the expense of deputy ministers.

"Federal Government Advertising and Sponsorships: New Directions in Management and Oversight," by Ian Sadinsky and Thomas Gussman, states that an unholy alliance has existed between advertising agencies and political parties ever since Confederation in 1867. The understanding of this alliance is straightforward: "Work for our party for free or at a substantially reduced cost during the election campaign, and you will be rewarded with contracts, should we be elected." This tradeoff, the authors point out, runs counter to traditional values found in Canadian public administration.

In addition, Canada's population is now well informed and highly educated, compared with the situation 40 years ago. There has also been a concerted effort in recent years to strengthen standards of transparency and accountability in government through various measures. One such measure is the election financing reform initiative, which makes it easier for political parties to pay election campaign costs. To be sure, the Sponsorship scandal also brought home the point to many Canadians that something needed to be done to further strengthen administrative processes and financial management in government.

Sadinsky and Gussman outline a number of overriding objectives in the management of government communications activities, including both advertising and sponsorships. These objectives include the effectiveness of the program; value for money; transparency; fairness; proper oversight; flexibility; accountability of political officials, public servants and service providers; and capacity development through a skills and training program.

Sadinsky and Gussman report that the Government of Canada has introduced a number of measures during the past three years designed to strengthen management practices in advertising. They include increasing the number of suppliers for advertising, the number of opportunities for firms to compete, and the variety of contracting tools; and payments based on hourly remuneration, as opposed to the former commission-based remuneration. Other methods of payment, such as retainers and performance-based methods, can be considered when warranted. Additional measures include the selection of a new Agency of Record through a competitive Request for Proposal (RFP) process; establishment of a Canadian content requirement of 80 percent; and new requirements to increase transparency.

But that is not all. The Government has also introduced several administrative and structural changes, including the creation of two new

responsibility centres to manage advertising activities, such as procurement, and a priority-setting unit for all government advertising in a central agency (the Privy Council Office). In addition to these changes, there are new financial management oversight measures, including the establishment of a Chief Financial Officer in every department.

Sadinsky and Gussman applaud the reform measures and make the case that they could well make "less likely" the risk of another sponsorship scandal. Nonetheless, they call for even more measures. They ask, for example, whether PCO is the right place to locate responsibilities for advertising, given its close relationship to the Prime Minister's Office. They look to experience elsewhere for the answer. In the case of the Ontario government, new measures have been introduced to isolate advertising activities from partisan considerations. The Auditor General of Ontario (AG) must review most advertising in advance and can also establish an Advertising Commissioner to undertake a review of advertising issues on his or her behalf. As a result of this process, 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 contravention of the new law and on advertising expenditures (both for government advertising generally and for specific advertising items reviewable under the law).

The authors attach a great deal of importance to professional credentials and to training and skills development. They applaud recent government efforts in this area. They insist that advertising is a sophisticated communications field that requires specific skills and a proven track record.

They also review the means to reduce the unholy alliance between advertising agencies and political parties. However, they are reluctant to support a "cooling off" period for agencies working on political campaigns before they can bid on government contracts. Companies and individuals should not be denied their democratic rights to

participate in elections—but they should also not be unfairly rewarded for their participation.

Sadinsky and Gussman note that the federal Government has become "gun shy" about sponsorship programs, and this withdrawal has caused concern, especially among small organizations. They affirm that government advertising and sponsorship activities are legitimate, if properly managed. They offer advice should the Government decide to re-enter the sponsorship field. They recommend that (a) sponsorship activities be conducted in a fair and transparent manner, free from political interference in the selection and management of individual sponsorship activities; (b) sponsorship activities be clearly identified and described in all planning, management and reporting documents to departmental management, central agencies and to Parliament; (c) regular evaluations and audits be undertaken to ensure that sponsorships are meeting stated objectives, providing value for money, remaining free from partisanship in their management and administration, and not creating unintended consequences; and (d) 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. It might also be useful to have an advisory group which could 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 Partnerships Sector in PWGSC.

The authors conclude that the Office of the Comptroller General may prove in the long run to be the most neutral location in which to house the overall coordination of advertising. Given the current preoccupation of that Office with implementing a new audit regime and raising professional standards, they believe that the function should remain for the present in the custody of PCO, given the safeguards put in place.