
THE **ROLE** OF THE **CLERK** OF THE **PRIVY COUNCIL**

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1 Introduction

Richard French aptly notes that, to grasp the gist of our working Constitution at the federal level, Canadians must first learn the history of Westminster Government and its “anachronistic titles and vestigial institutions.”¹ The Privy Council, for example, was once the intimate council of an absolute Monarch. The modern Canadian Privy Council Office (PCO), on the other hand, takes responsibility for the quality of information and advice that move forward to Cabinet; and it runs the Cabinet paper system, distributing necessary information for decisions and discussion and, following decisions, circulating the information to committees of Cabinet and individual ministers. Thus, despite bearing the name of a Council that brought every matter of state to one overloaded and unaccountable Monarch, the gist of the contemporary

function of the Privy Council Office's Secretariat is, ideally, the opposite: to distribute preparatory information to and work among ministers and committees, to increase to the maximum the capacity of the Government to engage its personnel and to act responsibly in the political space granted to it by the electorate.

The historical recency of anything like what we now see as the footprint of responsible government in the Westminster tradition is important to grasp. The gradual confinement of the Privy Council to a minor role is part of a package in which the powers of the Crown, in effect those of the state itself, were removed from the Monarch and put in the hands of a council of elected officials, themselves accountable to the assembly and an electorate. William Pitt the Younger, who led the Ministry from 1783 to 1801, was the first to prevail in obtaining from the King the resignations of other ministers. After this event, the conventions of collective Cabinet responsibility and prime ministerial control of the Ministry could begin to jell. That control would lead to responsible government—the identification of the whole group of ministers with the program of the Government. The *Reform Act* of 1832 emphasized the requirement that the Government be able to retain confidence in Parliament, conferring upon Parliament the responsibility to supervise the executive. The person bearing the title of Prime Minister, although it had been in loose use since the 18th century, was given official recognition by the King only in 1905—the *London Gazette* reporting on December 5 that, in future, the Prime Minister of the day would make his entry to dinners at the Palace and other State occasions after the Archbishop of Canterbury and before the Archbishop of York.² And, as we all know from our Bagehot, the conventions of responsible government, in the sense that an elected executive had full control over the conduct of public business, were working effectively and smoothly enough to be clearly described only by the final third of the 19th century—and before the advent of full male suffrage.³

The “Clerk of the Privy Council” is the most senior non-political official serving the responsible government, in other words, the executive, of the Canadian state. The Clerk’s seniority arises from the importance of his or her duty to facilitate collective government through the flow of papers and information to and from Cabinet, and to serve as the interpreter and guardian of the integrity of the law and conventions of the Constitution in relation to the clerkship. The incumbent holds three titles in addition to “Clerk”: Secretary to Cabinet, Deputy Head to the Prime Minister in the latter’s role as Minister for the Department of the Privy Council, and Head of the Public Service. The double identification as both Clerk and Secretary is owed to the accretion of public law in Canada, which has resulted in the presence of a small number of “different bodies involved in the process of governing”⁴—managing the core executive functions of the state. The more important of these two bodies in terms of decision-making is beyond doubt the Cabinet, but the Governor in Council is formally indispensable to sign off subordinate legislation.

There are further aspects to the Secretary and Deputy Head roles that are easily deduced but which can more readily be kept in mind if made explicit. As the senior official in Government, supporting the Prime Minister, the Clerk will give advice and explanations to the Prime Minister about public policy emanating from anywhere in the system, and will interpret to the Prime Minister the capacities and weaknesses of the public service apparatus. Indeed, given the frequency of the Clerk’s contacts with the Prime Minister, with political staff in the Prime Minister’s Office (PMO) who support the Prime Minister in his or her political responsibilities, and with senior public service colleagues, the Clerk is the centre of one of the most urgent and perhaps the single broadest information flow in Government, with all the associated note-taking for follow-up, reflection, consultation, memorandum-writing and explicit delegation that this implies. It is not surprising, then, that another of the Clerk’s functions is to act for the Prime Minister as a

mediator. Working with the Prime Minister or with the Chief of Staff in the PMO, the Clerk is an important problem-solver in the public service and at the interface between the public service and the political actors.

To cite Peter Aykroyd's summary: "[T]he administrative head of the Privy Council office, the principal officer of the Cabinet Secretariat, the principal servant of the Governor in Council and the principal government adviser to the Prime Minister are all wrapped up in one function, the Clerk of the Privy Council and Secretary to the Cabinet."⁵

2 Terms of Reference

The issues set for this study include the following:

- the institutional context for, and the development and current role of, the Clerk of the Privy Council and the newer role as Head of the Public Service of Canada;
- the institutional context for, and the development and current role of, the Secretary to Cabinet in the United Kingdom, including the role of Head of the Home Civil Service;
- an indication of how successive Canadian Clerks have understood, played and written about their roles (including the role of Head of the Public Service), how others have assessed their performance, how various elements of the Clerk's role have changed over time, and, to the extent possible, identification of the forces that have driven the adjustments—including more recent developments in public administration such as horizontality and the New Public Management;
- a comparison of the roles of the Clerk of the Privy Council and the role of the Secretary to Cabinet in Britain, including contrasts in the organizational machinery and in the broader institutional environment that condition the reception of individual provisions; and
- an assessment of possible adjustments to the Canadian Clerk's role that might improve and clarify accountability.

The research method was, primarily, to draw on published materials, searching for initial and contemporary rationales and commentaries. However, given the comparative lack of published articles on their experiences by Canadian Clerks, I interviewed 13 individuals who currently hold or have held the most senior positions in the federal public service's central agencies, and one of Canada's most respected parliamentary journalists.⁶ I will not cite my interviewees individually in this place because, although each has a unique and revealing take on certain aspects of the role, as one could expect from their experiences, their opinions on the above issues clustered very strongly. Thus the interview materials are central to the arguments made in the judgmental and evaluative portions of the study. Further, to test whether the media profile of Clerks has risen steadily over time, making for more or different challenges for contemporary Clerks, a research assistant, Lindsay Aagaard, and I used the *Times of London* and the *Globe and Mail* as the newspapers of record, searching within years on the names of, respectively, secretaries to Cabinet and Clerks—and on several variations of the titles—and then consolidating the counts into the terms of office of the individual office holders.⁷ The procedure yielded some rough but interesting comparisons between Canada and the United Kingdom.

3 Canada: The Clerk of the Privy Council

3.1

The Clerk Role: Guardian of the Integrity of the Cabinet Decision-making System

In Canada, the title Clerk of the Privy Council dates from Confederation: the Governor General in Council after 1867 would carry on as the formal executive, acting on the advice of the Queen's Privy Council for Canada, "at the same time a Clerk of the Privy Council was appointed and duly sworn."⁸ The first incumbent was the person who had, for the previous 25 years, served as Clerk of the Executive Council of the Province of Canada.

As Halliday notes, “Executive power in Canada is formally vested in the Crown,”⁹ its statutory powers being provided in the *British North America Act*, while prerogative powers are “delegated by the Sovereign to the Governor General acting on the advice of the formal executive”¹⁰—the Privy Council. Hogg defines the royal prerogative as the powers and privileges accorded by the common law to the Crown, and describes it as a branch of the common law, “given that the courts have defined its extent.”¹¹ Prerogative powers are wielded by the Prime Minister and regulated by convention as opposed to formal law. Replacement of an initially wide range of prerogative powers by statute has reduced them to the conduct of foreign affairs, including the settling of treaties and the declaring of war, the appointment of the Prime Minister and other ministers, the issuing of passports, and the conferring of honours.¹²

The *BNA Act* provides that the members of the Privy Council will be both chosen by and summoned to be sworn in by the Governor General. The first Canadian Privy Councillors were sworn on July 1, 1867, swearing at the same time the oath as heads of their departmental assignments. Therefore the Privy Council and Cabinet can be adequately understood as two aspects of one constitutional organism or body.¹³ The Council is a legal entity for tendering advice to the Crown, and the Cabinet is the policy-making body. Cabinet may turn to the Council for a formal instrument (an Order-in-Council, subordinate legislation) conferring authority to implement a policy, but it may also proceed by passing new legislation, or act under an interpretation of existing statute law.

3.2

Secretary to Cabinet

More than 20 years before a Canadian Prime Minister would decide it was necessary to provide a structure of organization for Cabinet business, the British had put such a system in place. Finally, in 1940,

Prime Minister William Lyon Mackenzie King and Arnold Heeney, who would be the first modern Clerk of the Privy Council, found it convenient to graft the vastly more significant role and title of Secretary to Cabinet to that of the Clerk of the Privy Council.¹⁴ The Clerk had long been acknowledged as the most senior public servant in Government, and it was thought wise to place the new powers and machinery under this title.¹⁵ The machinery soon became a modern Cabinet Office modelled on the British Office of 1918, but, as will be seen, functioning under Canadian conditions. As we shall also see, one of the Canadian conditions is, on average, a considerably larger number of Cabinet ministers and departmental organizations than in Britain. At time of writing, there are 38 ministers in Mr. Martin's Cabinet, in comparison to 22 in the United Kingdom, a unitary government.

The Privy Council Office was designated a department of government in 1952 for purposes of the *Financial Administration Act* (FAA), by Order-in-Council, and was assigned to the Prime Minister in 1962.¹⁶ From these two adjustments it falls to the Clerk to serve as Deputy Head for the Department of the Privy Council Office (from this point also to be called PCO), adding planning, policy and management responsibilities for the core functions of the executive to already considerable responsibilities to support the operation of Cabinet as a collective government. It is important to be clear that a meeting of ministers led by the Prime Minister is not a Cabinet meeting or a meeting of a Cabinet committee unless the Cabinet Secretary or a delegate is present, an agenda has been distributed, and a record has been made of the discussion. If these conditions are not met, the event is defined as a political discussion.

The greatest part of the Secretary's profile, perhaps until recently when the role was somewhat eclipsed by the less formal "DM to the PM" title, is owed to his or her supporting role for the Prime Minister's primacy in what Heeney calls "the machinery of executive government,"

or “matters of [Cabinet] organization and procedure.”¹⁷ The Prime Minister not only chooses ministers and dismisses them individually, but he or she also controls how their careers proceed. The organizational work includes managing ministers in Cabinet; determining meeting schedules, the agendas and the order of discussion for full Cabinet and committees; and determining whether there will be more or fewer meetings, the number and terms of reference of Cabinet committees and their membership, and where work will be routed. Mastery of Cabinet business can be subsumed under a list of prerogatives of the Prime Minister first produced as a minute of Privy Council in 1896.¹⁸ This Order was last reissued in 1935, the PCO commenting that the minute did not confer the Prime Minister’s prerogatives, but rather recognized them.¹⁹ Tardi also attributes the powers, duties and functions of the Prime Minister to “constitutional conventions, custom and usages.”²⁰

Besides the Prime Minister’s rights in regard to Cabinet, the above Order specifies that ministers cannot make recommendations to discipline another Minister, lists the most familiar appointments that fall within the Prime Minister’s prerogative, and specifies that the Prime Minister can make recommendations in any department. The Cabinet Secretary supports the Prime Minister in all the above functions. The Cabinet Secretary or a delegate also takes minutes of Cabinet meetings, and the Secretary assigns staff to help organize committee meetings and papers, produces minutes, maintains the full record of Cabinet decisions, makes sure that committee business is coordinated, and further ensures the communication to ministers and involved officials of Cabinet decisions to ensure that differing impressions are corrected or reconciled.

The prime ministerial powers have led to criticisms that Cabinet government could more readily be called “prime ministerial government.” This interpretation was clearly articulated first by Richard Crossman in respect to Britain in 1963.²¹ Similar arguments likewise colour political discussion in Canada.²²

But there are significant forces encouraging Cabinet government in Canada, and the Clerk is, as the guardian of the system, responsible for ensuring that these forces are served. Perhaps first are the federal influences, which affect to some extent the composition of Cabinet and of its committees and their operation. Canadian federal ministers can expect to bring to Cabinet any measure that will conceivably be received differently across the provinces and regions. “Each Minister tends to have a sort of ‘veto’ against actions affecting the region he or she has been assigned to represent,”²³ J.R. Mallory writes, an observation that has stood the test of time.²⁴ Mallory also emphasizes the formative and continuing influence on Canadian politics of colonial practices. In the early days of responsible government, before Confederation, it was useful, Mallory says, for the Governor and Canadian politicians to have an Order in Council as proof that the British Governor was not acting unilaterally and that self-government was an emerging reality. After Confederation, the note-taking in Privy Council meetings was continued as a useful record of what had been decided—although by all other accounts Cabinet itself was not similarly disciplined. The utility of a record reinforced the Canadian wholesale use of Minutes and Orders in Council as the normal form of executive action as opposed to the then more normal ministerial decisions in Britain’s unitary government.²⁵ In short, the paper trail and federalism could make it awkward to proceed to decision without having consulted interested parties.

It may be true that while federalism creates speed bumps for a Prime Minister, it makes the Clerk’s guardianship and management of the Cabinet paper system even more central and indispensable to the Prime Minister and the Government. Still another factor that creates independent weight in the clerkship is that the Privy Council Office is responsible for managing transitions between governments and safeguarding and managing the papers of successive governments.

3.3

Deputy Minister to the Prime Minister

3.3.1 The Organization of the Privy Council Office

The title Deputy Minister to the Prime Minister is applied to the Clerk because the Prime Minister is the Minister for Privy Council Office, making the Clerk its manager. The organization of both Privy Council Office and of Cabinet can change under different Prime Ministers and Clerks. As of August 2005, within the PCO estimates, in addition to the PCO (which provides corporate services to the Prime Minister's Office), the PMO proper, and five additional ministers, there were a number of independent investigations funded by the PCO, which, however, has no management authority over their use of funds. The 2005-2006 Report on Plans and Priorities (RPP) for PCO shows total budgetary estimates of \$149.9 million, with a human resources total of 1,117 full-time equivalents (FTEs).²⁶

In addition to the Prime Minister, there are another five ministers being supported by PCO. These include the two Leaders of the Government, in the House of Commons and in the Senate, plus three other ministers, each with two or more titles: Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness; the Minister for Intergovernmental Affairs, who also holds the title of President of the Queen's Privy Council for Canada; and the Minister for Official Languages and Minister for Internal Trade and Associate Minister of National Defence, who also serves as Deputy Leader in the House of Commons.²⁷

Given that the list of PCO "secretariats" listed on its website does not exhaust the row of boxes lined up horizontally under the Clerk on its organization chart, it is probably simpler to get an idea of how PCO is structured from a site chart dated June 2005. Its share of the estimates above is \$110.8 million, with 846 FTEs (no disaggregation is available in the RPP by secretariat). With one exception, that of National Science

Adviser, all persons in the top row sit on the PCO Senior Management Committee as well as the Legal Counsel and the Associate Secretary to Cabinet. This is a total of 11 direct reports to the Clerk, a large span of control that is added to by the Clerk's additional responsibilities for supervising staff work not included on any organization charts, such as the "Head" position and the associated annual report.

Support for the Cabinet paper system is organized by the Deputy Secretary, Operations, with a budget of \$15.7 million, who manages the whole current flow of papers and meetings, with content support from dedicated divisions within Operations dealing with domestic social and economic affairs, regulatory affairs and Orders in Council. The Deputy Secretary Plans and Consultation, who has the largest budget allocation at \$24.9 million, works on priorities and planning, communications, and longer-term macroeconomic policy advice, and also runs the Aboriginal Affairs Secretariat. The Deputy Secretary for Machinery of Government (\$8.1 million) is charged with protecting "constitutional integrity" in all government activity, and also runs legislation and House planning divisions.

From there, the functions seem to divide into policy advice and services. In the former would be the Expenditure Review Secretariat, Intergovernmental Affairs, Global Affairs and Canada-U.S. relations, and the National Security Adviser. In the services category would be the Senior Personnel Secretariat and Special Projects, and the Corporate Services Branch, the latter supporting both PCO and the Prime Minister's Office (PMO). It should be noted that in addition to PMO, the five other ministerial offices and the PCO as a department, the PCO estimates also include "Commissions of Inquiry, Task Forces and Others" (e.g., the Policy Research Initiative), which total \$8.5 million and 40 FTEs. This, roughly, is the organizational framework that supports and maintains collective government and the Prime Minister's capacity to be ahead of the agenda through the information flowing to the Clerk.

3.3.2 The Advice Function

The “Deputy Minister to the Prime Minister” title is also a way to indicate the scope of the policy advice role that the Clerk must play. The policy scope of the Clerk arises from the requirement for the Clerk to not only ensure that the Cabinet paper system is well managed and that ministers are well served, but also to achieve intellectual mastery of the content of current files and thus provide advice as required to the Prime Minister. One can recall that it is the PM’s prerogative to move into any other Minister’s portfolio. Issues flow in not only to Cabinet from ministers, but also to the Prime Minister from the Prime Minister’s Office.

It is important to be clear that Government is *properly* a political activity, that the Prime Minister’s Office is a co-adviser of the PM, and that the two streams of advice must be reconciled. There are almost daily morning meetings of the PM, his Chief of Staff, and the Clerk, and often there will be telephone calls during the day. Topics could include updates on ongoing issues, including decisions to consult; conversations about emergent issues and who should take them on; and second thoughts about whether to bring a departmental initiative into the Cabinet process. Further, there are weekly scheduled meetings among the units within each organization that work on similar policy. Assistant secretaries heading the various divisions in PCO meet with PMO policy staff, and deputy secretaries with the relevant staff from the offices of the Deputy Prime Minister and the Prime Minister.

For more substantive issues, the Clerk’s advice to the Prime Minister will be in the form of formal memoranda. These are, ideally, responded to in writing by the Prime Minister, typically by initialling the document to indicate it has been seen, and initialling recommendations if they are accepted; and sometimes by providing marginal notes, issue by issue. The PM might also reply to the Clerk in a return memorandum. The written exchanges are important because they constitute a core record

of discussion and decisions on the most significant substantial matters; rationales can be recovered and reviewed. The Prime Minister's attentiveness and response time to the Clerk's advice is important to the Clerk's capacity to maintain the quality of the Cabinet processes itself. An attentive Prime Minister creates direction and purpose, enhancing senior officials' opportunities to bring relevant information forward and creating shared momentum. Everyone in Government is familiar with the phenomenon of a "window of opportunity" created for a policy change by political interest in an issue—a Prime Minister who keeps the Cabinet system moving opens such windows throughout the system. If a Prime Minister prefers verbal communication on even very significant subjects, failing to respond in writing to the Clerk's memoranda, the result can be confusion over what direction is intended, with the Clerk believing one version and the Chief of Staff another. Vagueness and confusion can sometimes even open discussions to the participation of people who may have no right to participate. Therefore it is important that the Clerk and the Prime Minister find an early balance between written records that can prevent circularity and increase efficiency in their own way, and the creativity of verbal communication.

3.4

Canadian Head Role

3.4.1 Creation of the Title

The role, Head of the Public Service, became a formal responsibility of the Clerk of the Privy Council in 1993, with the proclamation of the *Public Service Employment Act* that had been amended in 1992. The relevant clause in the Act states only that the Clerk of the Privy Council and Secretary to Cabinet is the Head of the Public Service, and that the Head should provide to the Prime Minister an annual report on the Public Service of Canada. There had been little previous discussion of the provision, which was said to be an Act that recognized practice and the status of the Clerk. A former Clerk of the Privy Council had

said in 1989 that the Clerk in fact performed the “Head” function without the title.²⁸ It seems clear from the brevity of the establishing clause and from the lack of duties and resources attached to the role that it was never intended to be an executive function.

A description, “Responsibilities of the Privy Council Office,” posted to the PCO website in 2001, says the “Head” role has the following components: advancing the Government’s management agenda with emphasis on reform; ensuring strategic management and planning of the careers of senior public servants; acting on occasion as the spokesperson for the public service; and providing the annual report. In contrast, the terms of reference for the present paper describe a role with only two facets:

In the first [of the Head’s roles], representing the Government to the public service, the Clerk must make clear what the Government wants in terms of policy proposals and administration. In the second the Clerk must express the concerns and needs of the public service to the government.²⁹

This two-sided formulation is clearly compatible with the first and third elements of the above list. The question expressed in the terms of reference is whether these two roles are compatible; and if they are not, must the second role suffer—“expressing the concerns and needs of the public service to the Government”? The formulation assumes that the Head of the Public Service is in a position of a dual loyalty—to the public service as a whole and to the Government of the day—where the two loyalties should be equally intense and should be served with equal intensity.

I have been unable to find in the British literature any such “Janus” formulation of the Head role. The closest parallel is seen in the British civil servant who serves each Minister as his or her Private Secretary.

In the latter case, “He [the civil servant] must explain the demands of the department to the minister and the political needs of his minister to other officials.”³⁰ (The Private Secretary is an early-warning line for the Minister.)

The Canadian document, “Responsibilities of the Privy Council Office,” suggests that the motivation for creation of the “Head” role was for some reason needed to provide greater moral legitimacy to the Clerk’s seniority or desired range of functions in the public service:

Because of the Clerk of the Privy Council and Secretary to the Cabinet’s primary role as chief non-political adviser to the Prime Minister and the responsibility for the overall effectiveness of the Public Service’s support to the Ministry, he or she has traditionally been regarded as the Head of the Public Service. As the senior Deputy Minister, the Clerk of the Privy Council and Secretary to the Cabinet has the combined responsibility both for the overall effectiveness of the Public Service and for its competent and efficient management and administration. Recognizing the fundamental importance of leadership and accountability in the Public Service, the statutory acknowledgement of the Clerk of the Privy Council and Secretary to the Cabinet as Head of the Public Service was included in the Public Service Employment Act in 1993.³¹

The specific activities that assist the Clerk in gathering information and disseminating it are many and varied. The Clerk convenes gatherings of deputy ministers at weekly breakfasts, monthly lunches and semi-annual retreats. He or she chairs several committees of deputy ministers, including coordinating committees. The Clerk also has a statutory duty to serve as Chair of the Board of Governors of the Canada School of the Public Service, formerly known as the Canadian Centre for Management Development.

Overall, in the rationales presented in 2001 for the addition of the title, one senses a degree of indecision about whether the Clerk and Cabinet Secretary's mandate was broad enough to meet felt needs without new authority.

3.4.2 Clerk's Role in Deputy Head Appointments

The Clerk is directly responsible to the Prime Minister to provide support for Deputy Head appointments made to the core public service by the PM under the prerogative, by Order in Council. In Canada, the Clerk has played this role *as Clerk* from the beginning. (In Britain, on the other hand, advice on senior appointments was always provided by the Head of the Civil Service, a title that has belonged to the Cabinet Secretary only since 1981, when the Cabinet Office acquired the full complement of the civil service's personnel-management functions for all levels that had previously been held in the Treasury.)

In Canada, "The Responsibilities of the Privy Council Office" set out work in senior appointments:

The PCO supports the Prime Minister's power to recommend appointments by providing substantive policy and management advice on certain senior appointments, including the appointment of deputy ministers and heads of agencies. As the senior Deputy Minister of the public service, the Clerk of the Privy Council monitors the effectiveness of the support provided to Ministers by their departments, and makes recommendations to the Prime Minister when departmental or agency capabilities require reinforcement.³²

In this senior personnel work, the Clerk chairs and is advised by the Committee of Senior Officials (COSO). It is composed of several senior deputies, plus the Secretary to the Treasury Board. Feedback on persons being promoted is sought from a standard list of sources, such

as performance agreements and annual appraisals.³³ The information base for this system covers appointments of departmental deputies, heads of Crown corporations, and other agencies and bodies. COSO may also have several advisory groups, such as one on executive compensation. Nevertheless, COSO does not and perhaps cannot run an accountable process. Much depends on the self-restraint of the Clerk for not pushing loyalists or known entities, and for permitting the process to operate as well as it can.

At present, the Secretariat for Senior Personnel and Special Projects supports the Clerk on appointments, as well as working on all other Order in Council (OIC) appointments. It has one of the smallest budget allocations in PCO, at \$4.9 million. With some exceptions, Deputy Head appointments are made from among assistant deputy ministers in the current public service, augmented by a few former public servants recruited back into public service from other positions. These people are known entities to COSO, as their progress will have been followed from their entry into executive ranks by the senior community. Identifying future Deputy Minister (DM) potential constitutes, however, an unknowable portion of the work of the Senior Personnel Secretariat, because the Secretariat must work on large numbers of other appointments—from heads of agencies to chairs and members for the boards of Crown corporations and other arm’s-length bodies. Estimating perhaps too generously, the DM group could occupy on average a third or even less of the full-time equivalents employed in Senior Personnel, estimated at about 30,³⁴ assisting the Clerk in his or her senior personnel work, depending on COSO’s schedule and contingencies. These officials would include the four or five senior managers in the Secretariat, who would be most current on the movements of deputy ministers and other senior people.

For a period in Jocelyne Bourgon’s clerkship, left intact while Mel Cappe was Clerk, the Senior Personnel Secretariat added “management

priorities” to its name, and the top official eventually advanced to the position of Deputy Secretary. When Alex Himelfarb became Clerk, however, the management priorities function was dropped, the rationale being that Treasury Board managed the public service. At the same time, the position regained its traditional rank as Assistant Secretary to the Cabinet.³⁵

On the one hand, Mr. Himelfarb’s action seems to remind us that Treasury Board dominates human resource functions. Treasury Board Secretariat (TBS), for example, is the employer, manages numerous personnel policies (e.g., pensions) and the collective-bargaining process; the new Public Service Human Resources Management Agency oversees the management (training, development, recruitment) of the Assistant Deputy Minister community, in almost all cases the pool from which deputy heads of departmental organizations are drawn, as well as the rest of the Public Service. Exercises like *La Relève*, led by Jocelyne Bourgon as Clerk in the mid-1990s, when they are undertaken by Clerks, are done by leveraging the assistance and resources of departmental deputy ministers. In contrast, PCO seems continually reluctant to abandon a claim to human resources management. In 1999 Mel Cappe took the lead for launching the first Public Service Survey of employees, and the Clerk annually publishes his or her priorities on the PCO website: those for 2005-2006 are “management for results, *human resource management*, representation and learning.” (The PCO website content also endorses Treasury Board Secretariat’s list of criteria for assessing the performance of managers, the Management Accountability Framework as it applies to performance management.)

3.4.3 Other Senior Personnel Duties

One of the problem-solving duties of the Clerk is set out in the document “Guidance for Deputy Ministers,” found on the Privy Council Office pages of the Government of Canada site under publications. It addresses the accountability relationships of a Deputy Minister, and speaks directly to the role of the Clerk as a mediator.

The opening section of this document is called “Multiple Accountabilities.” The wording of the document is so careful as to make an attempt at a summary foolhardy, but the gist is that many strands of accountability come from the Deputy Head’s duty to support the Minister in his or her individual and collective responsibilities. Other accountabilities are derived from the Deputy Minister’s own position, in which she or he must meet requirements set out in the powers, authorities and responsibilities in various statutes, as well as in policies, guidelines and codes. This section closes with the statement that where “the required balance” between accountabilities cannot be maintained, *or in any matter the Deputy feels significantly affects his or her own accountabilities, those of their Minister*, or the agenda and direction of the Government, “the Deputy Minister should consult the Clerk of the Privy Council [emphasis added].”

The Prime Minister’s prerogative in appointments—the same in Britain and in Australia³⁶—is said in the document to emphasize the collective interest of ministers to work with the Prime Minister to realize the Government’s plans. The accountability of the Deputy Minister to the Prime Minister that arises in recognition of the appointment reminds the Deputy Minister to keep in mind the agenda and direction of the Government as a whole as he or she provides support to ministerial priorities. The document states that if the Deputy Minister’s “view of the correct exercise of his or her explicitly assigned powers may be inconsistent with the Minister’s views . . . it is *of the highest importance that the Deputy minister give due weight to his or her own specific and directly assigned responsibilities under legislation* [emphasis added].” If a difference cannot be resolved, the Deputy Minister is to consult the Clerk and perhaps the Prime Minister. The final statement of the document is to the effect that if problems are of the kind that would affect the confidence of the House or interfere with the Government’s ability to maintain its agenda, the Deputy Minister will want to add a visit to the Secretary

to the Treasury Board. Thus the document provides clear guidance for officials who know they are having trouble balancing the Minister's wishes with formal requirements in their own roles; it addresses issues felt only by people who have seen and defined a problem.

As for recorded incidents of when a Deputy might have sought assistance from the centre, no examples are available in Canada. It is in the nature of executive studies that documentation is rare to non-existent. And indeed, the consultation provision is intended to solve conflicts before they become public. It is by virtue of the above provisions, the FAA clauses on the Deputy's duties in financial management, and the statutory duties of the Deputy Head as expressed in departmental legislation, that many senior public servants have publicly stated that the probity aspects of the UK Accounting Officer concept do in fact exist in federal Canada, even though the title is not used.

3.4.4 Privy Council and Subordinate Legislation

The work of the staff to the Privy Council proper, which now forms a small division in Privy Council Office, is centred on the machinery "by which advice is tendered to the Crown and emerges as a formal instrument."³⁷ It sounds like a sausage factory—and it is. Ministers originate submissions, and the Clerk of the Privy Council (Secretary to Cabinet) is responsible for their classification as either "routine," when they will be referred to the Committee of Council (any quorum of four current ministers); or, alternatively, as requiring policy, and therefore to be considered by Cabinet. Normal business is conducted by four ministers in committee, Council. Following meetings and the preparation of instruments, papers are bundled in subject clusters under a title page and sent in batches for the Governor General to sign or initial, which she or he does without being in the presence of the Committee. Therefore, the Governor General would not have heard or participated in, for example, the ministerial discussions through 2004

and 2005 on the *Public Service Modernization Act*—a significant set of machinery changes particularly in relation to human resources (personnel) management, constituting public policy, as set in motion by Order in Council.

Nevertheless, the outgoing Governor General as of September 2005, Adrienne Clarkson, revealed in the last days of her term that she believed she had fully exercised the traditional rights of the Monarch to “encourage, advise and warn” the Government of the day. She found, she said, that “[a] minority government does have a wonderfully clarifying effect on the mind.” Explaining that, in Canada, minorities arise on a cycle of once every 25 years, she said that she was “really glad to have participated in one of those cycles.”³⁸ The Governor General’s website states that the Governor General meets “regularly” with the Prime Minister and his ministers.³⁹

4 The UK Cabinet Office and Cabinet Secretariat

In 1916, David Lloyd George created the Cabinet Office and Secretariat and the position of Cabinet Secretary. Most important at the time, a War Cabinet with committees was struck, and procedures were developed that would later be generalized to Cabinet proper.⁴⁰ (Until that time, the record of decisions of Cabinet had consisted of a letter from the Prime Minister to the Monarch.) The modernization of the British Cabinet Office thus preceded the Canadian reforms by almost a generation. At time of writing, Cabinet was composed of 23 ministers leading 22 departments of state. This number includes, as self-standing departments of state, the Cabinet Office, the Department for Constitutional Affairs, the Office of the Deputy Prime Minister, and individual offices for Scotland, Wales and Ireland, as well as a Privy Council Office constituted as a Department of State.⁴¹

4.1

Minister of the Civil Service

In Britain, the contemporary Order of Precedence of Ministers presents the Prime Minister as First Lord of the Treasury and Minister for the Civil Service, the first title being ancient and without function.⁴² The Prime Minister has been Minister of the Civil Service since the creation of the Civil Service Department in 1968, and the ministerial mandate therein was unaffected by the Department's 1981 demise and thus does have function. As Rodney Brazier sets out, the post gives the Prime Minister wide powers in relation to the civil service. In addition to the statutory powers, the basic regulation of the civil service, Brazier notes, rests substantially on the royal prerogative. This is because Britain does not yet have a *Civil Service Act*.⁴³ The full swath of the prerogative has not been used since the mid-1980s, although, according to Peter Hennessy, Prime Minister Blair has a master plan based significantly in prerogative powers to essentially revolutionize the core civil service, which he reaffirmed in 2004. Blair intends to see

a smaller strategic centre; a civil service with professional and specialist skills; a civil service open to the public, private and voluntary sectors and encouraging interchange among them; more rapid promotion within the civil service and an end to tenure for senior posts; a civil service equipped to lead, with proven leadership in management and project delivery; a more strategic and innovative approach to policy; government organized around problems, not problems around Government.⁴⁴

The strategy underlying public service reform in the United Kingdom was set out in March 2002 in a document, "Reforming Public Services: Principles into Practice." This states the methods or means by which goals will be achieved: setting national standards for public services; devolution and delegation, to give local leaders responsibility for

delivery; flexibility in responding to needs and in challenging red tape; and expanding choice or allowing for alternative suppliers.

The Prime Minister makes appointments to the two top levels of the senior civil service (permanent heads of departments and deputy permanent heads) on the recommendation of the Cabinet Secretary acting as Head of the Home Civil Service. The Cabinet Secretary also has direct responsibility to the PM for the delivery and reform group and propriety and ethics issues in the Cabinet Office, and attends Cabinet.

4.2

Cabinet Secretariat

While it is housed in the Cabinet Office, the Cabinet *Secretariat* in Britain is organizationally distinct from the Cabinet Office. The Secretariat's status is emphasized as being "non-departmental in function and purpose."⁴⁵ It serves the Prime Minister and those ministers who are chairs of committees, and, for chairs, only to support that role. The Cabinet Secretary and Head of the Civil Service has direct responsibility and is answerable to the Prime Minister for quality of work by the Cabinet Secretariat proper. Within the Cabinet Secretariat, there are four primary secretariats and two specialized secretariats. In the first group are Economic and Domestic Affairs; European; Defence and Overseas; and Civil Contingencies. In the second are Ceremonial, which looks after the Honours List, and Intelligence and Security, which has a broader mandate than the other units. Each Secretariat is a separate management unit with its own support staff. Among other duties, they work with the ministerial private offices. Only Cabinet Secretariat officials attend meetings of Cabinet or committees.

In Brazier's words, the secretarial functions are as follows: (a) to compile the agenda for the Cabinet (under the Prime Minister's direction) and for Cabinet committees (under the direction of their

chairmen); (b) to summon members to meetings; (c) to take and circulate Cabinet and Cabinet committee minutes, and to draft reports of those committees; (d) to circulate memoranda and other documents for the Cabinet and its committees; and (e) to file and maintain Cabinet papers and minutes.⁴⁶ The Cabinet Secretariat Site emphasizes the close links between the Secretariats and “Number 10”: “These [links] are needed in the planning of business and to ensure that the Prime Minister’s views are taken into account, particularly where business will not come before Cabinet or a Cabinet Committee which he chairs.”

4.3

Cabinet Office

According to the Cabinet Office website, the goal of the British Cabinet Office, as a full Department of State represented by a Minister in Cabinet, is to provide a strong centre for Government, working closely with the Treasury and the Prime Minister’s Office. If one includes the Prime Minister’s Office (fewer than 70 persons), the Cabinet Office employs almost 2,000 people to assist in this effort of coordination and control.

The Prime Minister is, however, *not* the Minister for the Cabinet Office. He appoints another Minister to direct and take responsibility for the management of the Cabinet Office, and this individual sits in Cabinet as Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. The Cabinet Secretary reports to the Prime Minister as Secretary and also reports directly for three important units in the Cabinet Office. The three Cabinet Office units reporting to the Cabinet Secretary are Coordination and promoting standards; Building capacity; and Managing the Cabinet Office. Interestingly, because the PM is not the Minister for the Cabinet Office as a department of state, the Cabinet Secretary cannot be formally identified as “DM [permanent Secretary] to the PM,” and therefore does not serve as either permanent head or Accounting Officer for Cabinet Office. Instead, the official who leads the unit called “Managing the cabinet office,” is, to quote, “Managing

Director, *Permanent Head of the Department and Accounting Officer* [italics added].⁴⁷The Permanent Head runs internal communications, all corporate services, internal audit, and a unit managing records and official histories.

The Coordination and promoting standards division is largely centred on security and intelligence and civil contingencies, government communications and a group of secretariats. These are devoted to Europe and defence, with individual secretariats for economic and domestic matters, ceremonial duties, and propriety and ethics. The Security and intelligence coordinator, who is at the head of this division, reporting to the Secretary of the Cabinet, serves as Accounting Officer for this area. Building capacity is about reform, modernization (including “e-Government”) and regulation.

A number of political officers are attached to the Cabinet Office, among them Government whips in the House of Lords and the House of Commons, and a Parliamentary Counsel. The Minister for the Cabinet Office is also assisted by a Parliamentary Secretary and by the Labour Party Chair, who is also a Minister without portfolio in the 23-member Cabinet.

In conclusion of this section, it should be noted that the British Cabinet Office holds enormous powers in human resources management and in structuring the public sector writ large. To give a general idea of the importance of this department, if one removed the expenditure budget functions from the Canadian Treasury Board Secretariat, then added the whole of PCO to the human resources or personnel-management functions remaining, plus a general responsibility for regulation, one would still have less capacity to effect change or public sector reform than exists in the British Cabinet Office alone. In addition, the Cabinet Office works closely with Treasury on shared objectives, such as working with departments to help them meet their commitments and stay within fiscal rules.

4.4

Head Role

The Cabinet Office Departmental Report of 2005 provides a brief sketch of the Secretary of the Cabinet's role as Head of the Home Civil Service. As Head, this official is responsible for providing leadership to the Government's program of civil service reform, whose goal is to improve public services; and for the work of the Delivery and Reform group. (This takes in a strategy unit, the Prime Minister's Delivery Unit, and otherwise appears to be composed of subdivisions of the three main groupings of services in Cabinet Office.) The Head is also a member of the Cabinet Office Strategy Board, and looks after senior appointments. Parenthetically, there is no record that any annual report is required from the Head of the Home Civil Service in Britain, and it is clear that, in speeches and other forms of communication, the Head addresses the entire civil service.

Three years after the Cabinet Secretariat was created, the Prime Minister, David Lloyd George, created in 1919 the position, Head of the Home Civil Service. This role was first conferred on the Secretary of the Treasury, because the Treasury had responsibility for supervision of the civil service and oversight of the machinery of Government.⁴⁸ From the beginning, the Head had the responsibility to advise the Prime Minister on appointments to senior posts. As of the mid-20th century, the Head and Secretary to Cabinet looked after

the sections of the Treasury responsible for the salaries and conditions of employment of all civil servants, for controlling the total number of staff and the creation of higher posts, and for dealing with general questions relating to training after entry to the civil service.⁴⁹

And in the Treasury the Head of the Civil Service and Secretary remained until the Fulton Report of 1968 took issue with the Treasury's

management of personnel. The report held that moving central management functions out of the Treasury into a new Civil Service Department was necessary before reform of the civil service could occur.

According to Kevin Theakston's account,⁵⁰ William Armstrong, appointed to the role of Head of the Civil Service in the Treasury, excelled beyond any other British Head in serving to lead and inspire the civil service workforce. Armstrong's performance earned him a place in the pantheon of great British civil service leaders. His term as civil service Head, which began in 1968, was situated in the brand new Civil Service Department (CSD), although he was appointed from Treasury. The British would feel strongly the tensions and extra needs for coordination created by having two central coordinating agencies in the personnel-management area—the Treasury and the CSD. For this reason, the CSD was eventually abolished by Prime Minister Thatcher in 1981.

Thatcher's public rationale in abolishing the Civil Service Department was that its existence isolated "central responsibility for the control of manpower from responsibility for the control of Government expenditure."⁵¹ The shake-out, however, was that the Prime Minister did continue to hold responsibility for the CSD's personnel functions, the staff for which was settled into the Cabinet Office. At this point the move of the "Head" job to Cabinet Office appears to have become permanent, with Sir Robert Armstrong (no relation to Sir William), the Secretary to Cabinet, taking on responsibilities for personnel and management that came from Treasury via the CSD. Interestingly, in 1981, early in this shift, the time the Cabinet Secretary found he needed to devote to duties added from Treasury for the control of all civil service personnel was roughly estimated at between one-quarter and one-half of his working day.⁵² Thatcher and Armstrong would appear to have used their new powers to "hive off" civil servants into executive agency forms. By 1994, three years before New Labour would take power, some 60 percent of the previous total of civil servants were working in agencies.⁵³

The Thatcher governments also privatized. The government sold more than 50 major businesses, reducing state-owned industries by about two-thirds.⁵⁴ By some accounts the figure for civil servants currently in agencies or transferred to private sector bodies is as high as 80 percent. But generating a good head count is difficult, complicated by hiring increases to the civil service under Blair, and the winding up of some agencies. Whatever the figure, it is a lot, and the resulting fragmentation complicates accountability and coordination. As Bevir and Rhodes put it,

[S]ervices are now delivered through a combination of local government, special-purpose bodies, the voluntary sector and the private sector. There are now 5,521 special-purpose bodies that spend at least £39 billion and to which ministers make 70,000 patronage appointments. This sector is larger than local government!⁵⁵

4.5

The British Privy Council Office

Operating behind the scenes, the Sovereign's powers are covered in the formula that she has "rights to advise, to encourage and to warn" the Government of the day. She also has a role in the selection of the Prime Minister, a qualified right to refuse a dissolution of Parliament, and reserve powers that would involve the rejection of ministerial advice. This is so far similar to the role of the Queen's representative in Canada.

The Sovereign and the Prime Minister have scheduled 30-minute or hour-long audiences on a weekly basis when Parliament is sitting.⁵⁶ This is a more intense collaboration than that of the Canadian Governor General and our Prime Minister. Another contrast is that the Queen *presides* in person at Privy Council meetings, and may require the requisite four ministers for a meeting of Council to travel to her secondary residences in the country if they wish to do business when she is on holiday, using at least a whole day of their time.

The Privy Council's major divisions include the Secretariat services provided to monthly or fortnightly Privy Council meetings, including advice on the use of prerogative powers and any functions assigned to the Queen and Council by act of Parliament; the Judicial Committee of the Privy Council, a collection of senior judges that considers constitutional cases and acts as a Court of Appeal for the former Commonwealth countries that continue to ask for its services; and a unit that provides support to the Leader of the House of Commons and his Deputy.

As in Canada, the Privy Council's business can include fundamental matters, such as transferring responsibilities between Government departments, or dealing with recommendations that touch the Constitution. Orders in Council transferred powers from ministers of the UK Government to the devolved assemblies of Scotland and Wales.⁵⁷ Nevertheless the Council's time would appear to be dominated by the evolving needs for amendments of the approximately 400 institutions, charities and companies incorporated by Royal Charter, and requests for variances from rules regulating statutory regulatory bodies and universities. The Council also formally invests certain members of the Church of England with their ranks, and generally looks after any variations required by Church commissioners.⁵⁸ The head of the Office is designated Lord President of the Privy Council and sits in Cabinet. The incumbent at time of writing is the Right Honourable Baroness Amos. She is also Leader of the House of Lords.⁵⁹

5 Evaluative Components of the Canadian Clerk Role

5.1

How Have Successive Clerks Played or Understood Their Roles?

5.1.1 Annual Reports as "Head"

This section of the study discusses the manner in which Canadian Clerks have used the annual report—the major formal innovation in

the Clerk's role since the 1940s. The section also provides a partial description of the implementation of the New Public Management (NPM) in Canada. Since Paul Tellier presented to the Prime Minister the initial Head of the Public Service's Annual Report on the Public Service, there have been 12 reports, including that for 2005.

The first annual report was preceded by a long history of reform in the federal public service, with a common theme: a shifting balance between centralization and control versus departmental and individual autonomy, an example of which is the assignment of personnel-management responsibilities to line authorities followed by attempts to hold line authorities accountable for performance.⁶⁰ The goals of reform under the Public Service 2000 (PS 2000) initiatives, the broad subject of Tellier's first annual report, were threefold: to simplify and deregulate the financial and administrative regimes in the public service; to decentralize central control to departments; and to back up delegation with more effective monitoring.⁶¹ Following the 1984 general election, the new Conservative Government launched the exercise known as Program Review under the Deputy Prime Minister, Erik Nielsen. Nielsen's mandate was to consolidate or eliminate programs that were no longer needed, reducing administrative costs. The reduction would be \$18.4 billion.⁶² After 1984, there were more than a dozen successive reductions in departmental operating budgets, the "6 and 5" controls on wage settlements, and still another set of actions to reduce the numbers of the 400 separate organizational entities of the public service—plus reductions in the 500,000-strong workforce and the senior executive population in these bodies through early retirement and workforce adjustment programs.⁶³ Paul Tellier had led the modernization initiative under the general title of PS 2000. He assigned about 120 deputy and assistant deputy ministers to run 10 task forces on elements of the proposed reforms (Common Services, Classification, Compensation, Management Category, Budget Controls, Service to the Public, Staff Relations, Staffing, Training, and Workforce Adaptiveness).

Tellier

The first report by a Head of the Public Service was published by Tellier 1992. He discussed the outcomes of the various modernization initiative task forces, as well as key events and milestones in 1991 (wage restraint, a 10 percent reduction in the executive group, and the general strike by the federal public service). He outlined service improvements by some departments, examples of departmental consultations with Canadians, the creation of the new Executive Group, and increases at the executive level in francophone and female representation. The exercise to develop a universal classification standard (UCS) for public service positions, started under PS 2000, was flagged by Tellier as a critical reform component (the development of the UCS remains a priority in 2005).⁶⁴ Tellier also emphasized the importance of coordination and collective effort in other ways, initiating weekly breakfast meetings of deputy ministers to discuss emerging events and political priorities, and used the assistant deputy ministers' annual forum to communicate Government priorities to that population. He ended his report with a plea to employees to combat skepticism, and he asked that they commit themselves to the tasks of retooling.

Shortliffe

The second annual report skipped a year, appearing in March 1994, under Glen Shortliffe's signature as Clerk, covering his tenure as Clerk and Secretary to Cabinet. Shortliffe reviewed the context of government in which public services were being provided. The report is addressed to Mr. Chrétien as Prime Minister, elected the previous fall. Shortliffe importantly acknowledged the stress that the public service workforce was experiencing. He commented on the challenges presented by the 1993 reorganization begun under the previous Conservative Government. Thirty-five departments were reduced to 22 through amalgamations of their various components

into 10 new departments; 17 departments were abolished; and there was some rationalization in the central agency complex (Federal-Provincial Relations Office was incorporated into PCO, and the Office of the Comptroller General into Treasury Board Secretariat).⁶⁵ The departmental changes affected more than 100,000 employees and were put into effect through Orders in Council to create new shadow departments (until legislation was approved) and move the affected employees to them. The period also saw a reduction to Assistant Deputy Minister positions of nearly a fifth; the consolidation and significant downsizing of administrative support services; and the geographic relocation of some services.

The Program Review, which made a further 45,000 cuts across the public service, was quite separate from PS 2000. (However, by concentrating cuts on overhead services and services to management—internal audit, for example—there was some attempt to protect the service-improvement mood of PS 2000 with the cost-cutting of Program Review.) Verbally, Shortliffe reconciles the two initiatives by stating that the principles and values of PS 2000 have been endorsed by the new Government: “These include recognition of the value of skilled adaptable employees; a focus on service; and a commitment to continuous learning and innovation within organizations.” Likewise, he says, the continual change of the time is shared by the United Kingdom, Canada, Australia, New Zealand, the United States and France as a result of global transformational changes. His characterization of the New Public Management’s “common features,” however, in my opinion, applies most clearly to the Canadian implementation: “greater flexibility in organization, investment in human resources, modernization of personnel systems, a commitment to consultation and a general openness to ideas from outside government.”⁶⁶

Bourgon

Jocelyne Bourgon, as Head, issued four annual reports to the Prime Minister, each of the first three (the fourth was a videotape) longer than those of her predecessors. Her second report, 57 pages, gave many examples of accomplishments and progress of departments and the public service workforce, and put restraint in the Canadian public sector into comparative context with other countries. Bourgon also reported on the launch of the program known in both languages as “La Relève,” perhaps rendered most nicely in English as “renewal.” Similar to Tellier, she mobilized a series of Deputy Minister-led initiatives to build the human resource base for the next 25 years. Bourgon referred to the human resource needs as “the quiet crisis,” to attract, motivate and retain a public service that would match the quality of the past organization at its best. Her fourth and final report, in 1998, was a videotape and was not widely discussed other than for its format. With the PCO apparently abandoning its attempts to motivate servicewide reform initiatives, the reports necessarily had less material to draw on.

Cappe

Mel Cappe, the next Clerk under Chrétien, took a more practical turn with his three annual reports. Among his central topics were the contents of the Speech from the Throne, the results of the first Public Service Employee Survey, progress on bringing visible minorities into the public service, and Canada’s security and other responses to the terrorist attack on the World Trade Center towers in New York. He had put a great deal of energy into preparing the Government for Y2K and its uncertainties in the information technology field.

Himelfarb

The present Clerk, Alex Himelfarb, holds the job in perhaps the most unquiet times since the inception of the annual report. At time of writing, he was serving a minority government with the most slender of margins for survival, one that survived a confidence vote on the budget by one vote—and that with the support of the New Democratic Party. His three annual reports average 10 pages. In the first, he attempted to raise morale. The second report marked the transition and took note of “setbacks.” The report of 2005 talked about the culture of transformation. Thus the communication value of the annual report to the Prime Minister seems to have declined in significance.⁶⁷

In the period immediately following the “Head” legislation, the annual report was more significant than now to the wider public service community. Familiarity with the Prime Minister and Clerk’s thinking about policy that would affect the public service was limited to what could be learned from the general media; from unions; and from the Clerk’s speeches to forums, including the Association of Professional Executives of Canada. More important, in the Tellier-Bourgon years, the public service was effectively being taken apart: who would not be interested in a Clerk’s report? In addition, the last 10 years have seen a surge in the availability of basic information on government and current directions and projects on the official websites of all departments and agencies.

5.1.2 Clerks’ Own Publications on Their Role

Clerks of the Privy Council in Canada tend not to publish.⁶⁸ Gordon Robertson was the last federal Clerk to provide a scholarly review of his job and his relationship with the Prime Minister’s Office, a discussion that is imbued with sober democratic theory as well as idealism.⁶⁹ Paul Tellier in 1972 provided an insightful commentary on two articles in

Canadian Public Administration—one by Robertson on the PCO, the other by Marc Lalonde on the PMO. His remarks, however, are based on their texts and come well before he won the Clerk's job.⁷⁰ Michael Pitfield provided an interpretation of the whole policy-formulation system, but did not provide enough on the problems, which he would surely have understood.⁷¹ Only two other Clerks, Bourgon and Himelfarb, have spoken for the record on their roles and behaviour, and have given their opinions of their office; but they did so under the constraints of specific lines of questioning at the Gomery Inquiry and cannot be taken to represent what they would say if they were to reflect in the same mood as did Robertson. Bourgon was put on the defensive by Judge Gomery, as was Himelfarb—although he had not been in a position related to sponsorship at the time of the events.

Robertson

Gordon Robertson stresses in 1971 the way in which the full use of Cabinet committees and the continuing development of the Cabinet paper system gives individual ministers more opportunities to participate and improves deliberation. Efficiency improved with the concession to committees that their decisions on matters would normally decide the issues. One problem he sees is that the intense participation of ministers in extensive collective government can come at too high a cost to their individual political roles.⁷²

His article is most celebrated for his summary of the roles of the PCO and the PMO. The challenge and coordination work of the PCO, he notes, is “replete with possibilities for misunderstandings, bruised feelings and grievances,” and therefore certain principles have developed. The first and one of the justifiably more familiar principles is that Privy Council Office must “stay off the field”—the ball stays with the departmental team and Minister who are to make the play. Perhaps even more engrained into the psyche of

Canadian public servants and scholars is Robertson's line between the PCO and the PMO: "The Prime Minister's Office is partisan, politically oriented, yet operationally sensitive. The Privy Council Office is non-partisan, operationally oriented and politically sensitive."⁷³ In this formulation, more an ideal to strive for than a formula to be implemented, Robertson points to a factor that some Canadian scholars and control agencies have difficulty accepting: government is and should be "political" because only politicians are accountable to the electorate. "Ideology, technology and bureaucracy have to be restrained so that politics may rule."⁷⁴

Tellier

Paul Tellier's message in his 1972 article appears to be cautionary. He suggests that the Cabinet paper system might concentrate power in the centre as opposed to distributing power. He further suggests that a progressive slide of power toward the executive could alter the meaning of Cabinet solidarity, describing a body of guards around the Prime Minister rather than a group of colleagues.

Pitfield

Michael Pitfield's message was delivered in 1976 as a talk to the Annual Conference of the Institute of Public Administration of Canada, in the second year of his term as Clerk. In his opening remarks, he addresses how government writ large has changed—the rate of change corresponding to the speed at which government has grown. He then describes the process that he was still developing for "greater efficiency, greater effectiveness, and greater political control and direction"—anticipating in "better political control" one of the tenets of the New Public Management—as well as for accomplishing clearer definitions of objectives [of programs] and organizing programs more tightly around those objectives.⁷⁵

In thinking about Pitfield's enthusiasm for measurement in management, it is important to recall that Planning, Programming, Budgeting Systems (PPBS) were in his term of office believed across the western industrialized world to be a necessary reform of public budgeting, previously done only for "line items" that loosely defined categories of expenditure. Pitfield was not alone in believing that much better or even perfect management information could confer power on politicians. Politicians, it was thought, could seek to implement the doable parts of their political programs. So no one should feel superior to Pitfield on the grounds that he was not practical in his system-wide planning requirements. With a few changes in vocabulary—to program management, and to Management Accountability Frameworks (which include the PPBS standard of measured results)—his speech would not seem remarkable in any way to a contemporary group of senior officials.

In this talk, Pitfield also speaks about the reasons for his rationalization of the Cabinet committee system and decision-making processes, mentions a number of crucial decisions of the day, and takes up the topic of implementation.

One key decision was to increase the size of the Cabinet, to "opt for a larger political interface with the bureaucracy and the greater capacity to control and direct that it was hoped this would permit," thus avoiding a more administrative and quasi-judicial, a less political, system.⁷⁶

5.1.3 "Quality" Journalistic Judgments

In addition to these sources on how various Clerks have interpreted their roles, the Privy Council Office website lists three quality magazine pieces: one by Christina McCall-Newman on Michael Pitfield,⁷⁷ serving Trudeau from 1975 to 1982, less one year for the Clark Government; another by Charlotte Gray on Paul Tellier,⁷⁸ serving Trudeau and then Mulroney (1985-92); and Michel Vastel on Jocelyne Bourgon,⁷⁹ serving

the Chrétien Government from 1994 to 1999. One receives the impression that Clerks have great latitude to shape their roles during their terms.

Pitfield

Pitfield had spent some time in the Privy Council Office in 1968, and Trudeau appointed him Clerk of the Privy Council in 1975, when Pitfield was only 37, to follow the elegant Gordon Robertson. McCall-Newman's article is a long psychological deconstruction of the man and (what she presents as) his failures in this position and as a human being. Her mismanagement argument is premised on her assumption that the technocratic system theory that Trudeau and Pitfield designed to force more deliberation into policy-making was, simply, far too impractical to work. The difficulty is that she never explains the nature of the problem with the initiatives. It is described as simple as "impracticality" owed to Pitfield's singular airy wrong-headedness, rather than as owed to corresponding thinking in the entire federal system of financial control, including the push from the Office of the Auditor General. Therefore, she does not explain that the hyper-rationalistic system was destined to be tried because it was in the zeitgeist, and destined to fail because of forces larger than any "mismanagement" by Pitfield. By their nature, so-called "comprehensively rational" decision systems fail because their information costs and time demands are impracticable. This had been established in the United States in the early 1970s. It had been demonstrated by philosophers in the early 1900s.

Nor does McCall-Newman place into the political context the Pitfield scheme to control the criteria for business coming to Cabinet. The Office of the Auditor General had created a political minefield for the Government in its long and public battle for what it presented as established and common-sense techniques for measuring program

outcomes, methods it claimed were already perfected and in use in business. This was not true.⁸⁰ Pitfield perhaps primarily wanted to avoid mistakes and their inevitable scandalizing. The Auditor General of the day, J.J. Macdonell, actually went to the Canadian people in his 1976 annual report to garner the popular support he needed to enlarge his mandate. He reported simply that the Government was losing control of *financial* management. What he was asking Government for was an Act giving the Office broad powers to assess what he at that point called “Value for Money” results of programs.

The Treasury Board and its Secretariat also must have believed in the virtues of comprehensive-rational planning, because “the econometrics logic” of PPBS was implanted into the formal supply system in 1971 by using it as a format for the Estimates. McCall-Newman describes the Glassco Commission and its program to modernize and decentralize the public service, mentioning the “currently fashionable corporate business techniques such as . . . planning, programming, budgeting systems.”⁸¹ But, again, she does not explain that PPBS was intended to force departments to generate reliable information that would centralize system-wide “results” information in the hands of Treasury Board Secretariat, to be used by politicians in making expenditure-allocation decisions. It is important to realize that had PPBS been feasible, it would have counter-balanced the decentralization of decision-making that followed both the abolishment of the old comptrollership function in the TBS and the decentralization of powers to managers that followed on the Glassco Commission Report. Thus the egregious unfairness of McCall-Newman’s conclusion: If you looked back over the decade, it was hard to escape the realization that much of this [depletion and demoralization of the public service] was Michael Pitfield’s fault.⁸² In reality, the “fault” was in a system of belief much bigger than Pitfield, one that intelligent people across the system accepted with far too little hard thought.

Tellier

Charlotte Gray's article of 1985 on Paul Tellier starts with the Privy Council Office as a shell "eviscerated" by Gordon Osbaldeston, who "replaced many of Pitfield's energetic protégés with managers who shared his more low-key approach to government."⁸³ Low key was now bad. Next, John Turner dismantled the two "ministries of state"—the Ministry of State for Social Development and the Ministry of State for Economic Development—which provided a first-stage Secretariat and challenge function, coordinating Deputy Minister and departmental thinking before Cabinet meetings in the British manner. As a third blow, the next Prime Minister, Brian Mulroney, stripped the PCO of its remaining policy analysis capacity and built up a substitute in the PMO. "By the fall of 1984 the mechanisms for policy coordination—for fitting Government decisions into the broader picture of the Government's general direction—had evaporated."⁸⁴ (Those mechanisms had been Pitfield's innovations.) The first Conservative Government appeared lost, losing ministers to a variety of personal lapses. Their mistakes included John Fraser's overruling of his officials at Fisheries, ordering the release for human consumption of canned tuna; although the tuna was not positively dangerous to human health, the officials had ruled it unsuitable for human consumption. This was apparently not the only episode in which ministers overruled their officials.⁸⁵

Although Prime Minister Brian Mulroney campaigned for public office against the bureaucracy, famously threatening "pink slips and running shoes," the difficulties he experienced in his first years in power—with an inexperienced group of ministers and a less authoritative centre than had been run by Michael Pitfield as Clerk—convinced Mr. Mulroney of the importance of coordination run by professional public servants. Having seen Tellier at work,

the Prime Minister appointed him to the Clerk's job.⁸⁶ In 1988, Mr. Mulroney found himself launching an initiative in 1988-89 to prepare the public service for the millennium, PS 2000. And in December 1990, in his preface to the Government's document on renewal, he acknowledged that, as Prime Minister and head of Government, "I hold a custodial responsibility on behalf of all Canadians to ensure the continued effectiveness of this great national institution."⁸⁷

Bourgon

Michael Vastel's portrait of Jocelyne Bourgon is both cruel and crude in its misogyny. After the Charlottetown referendum defeat, Bourgon, then Deputy Head of the Federal-Provincial Relations Office, had a couple of years out of the centre as President of the Canadian International Development Agency and then as DM in the Department of Transport, before returning as Clerk, appointed by Prime Minister Chrétien in February 1994. Her leadership in the sacred corridors of power on the fourth floor of the Langevin Block, Vastel says, given her lack of an Ivy League education and her plain looks, was as unlikely as finding Mother Theresa presiding over a meeting of the Chase Manhattan Bank.

But then she takes charge, Vastel continues, and removes or displaces a dozen of the most senior officials, and shifts another 17 assistant deputy ministers to other positions. Mother Theresa was telling groups of officials that it "is a question of reinventing the Government of Canada [my translation]."⁸⁸ In what must be a phase of Program Review, but not identified as such by Vastel, Bourgon and Marcel Massé, Minister for Public Service Renewal, then grilled the top officials in Government on whether the programs they administered were necessary public services, whether they could be better delivered by the private sector or another level of government, how

they could be more effectively delivered, and were they affordable. The reader feels back with rationalistic Pitfield. After this, more heads fall, parts of departments disappear, whole floors are emptied of government workers, and the mark of the good DM becomes that he or she can reduce by one half the personnel of his or her department. These moves were undertaken to reach Chrétien's and Martin's joint goals of simplification and restraint. In his own realm, Chrétien reduced the number of Cabinet committees and the number of ministers, the latter from 38 to 22.

Having depleted senior ranks, Bourgon switched gears to a renewal exercise called "La Relève." Vastel claims that Bourgon put the Committee of Senior Officials out of business, judging it too elitist. But he does not explain how COSO's function was replaced, or whether it was replaced simply by Bourgon's own preferences and judgment alone.⁸⁹ This is a serious allegation.

Just as he rounds out his article, Vastel comes out with an arresting formulation of an interview. Bourgon and Massé, the latter a "grand mandarin" under Clark, Trudeau and Mulroney, had by Vastel's account removed or driven from the federal public service the last of the people who embodied the old mandarin ethic of service and self-restraint. In Vastel's account, Massé states that the new generation of deputy ministers will not come into being by moving up from one grade to another in a systematic way. "Career profiles will follow the movements of the ideas that are being used to define the federal state [my free translation]."⁹⁰ The right person with the right talents will appear in the right place at the right time and be placed at the right level. This is again a form of systems theory. This time, the necessary people must and will emerge from the situation, the culture and the times. Here we find an open or organic system formulation, far in advance of any system humans can create. If one takes the Massé remark seriously, it would appear that planning for

the future human resources to serve the machinery of the state was founded on a metaphor.

Regardless of its gaps, Vastel's quotation is not a bad summary of what seems to be the content of this review of what quality journalists think Canadian Clerks did with their roles and their powers. Clerks apparently react against what went before and dismantle it, they respond very directly to the Prime Minister with whom they work, they survive like chameleons in the political environment and the power balance in which they find themselves, and they drink in the ambient ideas of their time about management—ideas that lack content, or for which the content has not been tested.

Given what happens to a Clerk's reputation at the hands of even the quality press, the surviving former Clerks, several of whom are young and vital, including Bourgon, might be well advised to put pen to paper to describe and defend their own periods in office.

5.2

How Has the Clerk's Role Changed over Time?

The forthcoming sections are based on my own general reading and reflection, importantly placed in perspective by the interviews conducted for the study. What do former officials who were present in Government during much of the last 30 years believe has changed? And has the public profile of the Clerk or Secretary to Cabinet changed, and in what ways?

There is some belief that, at the start of the Pitfield period, there was a qualitative change in the difficulty of the organizational and coordination tasks that senior public servants are expected to accomplish. Pitfield spoke of a shift in the rate of change. Some of those interviewed noted that both the social and economic sides of government

“exploded” in the late 1960s and 1970s. Nevertheless, most respondents said these forces have not continued to create fundamental change at the same rate. According to the remainder, in the 30 to 40 years since the major shifts, we have become more accustomed to living with the forces named by Sir Richard Wilson, a former Head of the Home Civil Service and Secretary to Cabinet: globalization, science and technology; changes in social attitudes, behaviour and the power of the media.⁹¹ In addition, several respondents doubted that globalization was a permanent feature of life. Globalization requires continuous sources of cheap energy as well as a world at peace and almost totally devoted to trade—both conditions threatened since 2001.

5.2.1 Clerk as Prime Minister's Mediator

In relation to the Clerk's duties, the biggest single change interviewees identified was that the Clerk over the past 30 years has increasingly been expected to be a problem-solver.⁹² This in turn leads to the criticism that the Clerk has been or is being politicized, particularly in that mediation may often involve close consultation with the Prime Minister's Chief of Staff.

One factor is that quality of personnel in the PMO is variable over time. If the Clerk outperforms the political office, then the Prime Minister naturally increases his or her requests for the Clerk's mediation. Political officers will be weaker in minority governments because of personal insecurity. Another factor, already remarked, is that the Clerk is at the centre of information networks in Government. The Clerk meets every morning with the Prime Minister and the PM's Chief of Staff. Thus the Clerk is already up to speed and can act quickly to minimize difficulties where he or she has leverage and believes the activity to be appropriate to the role. Further, it is not in the least improper for the Clerk to point out to the Prime Minister the partisan political consequences of a particular move, or to explain limiting administrative factors to politicians. This is in fact the Clerk's job.

Regardless of the availability of the Clerk's good offices, the incentive is for deputy heads to work out their own problems. The Deputy's job is to assist the Minister in accomplishing the priorities set out in a mandate letter and, further, to meet his or her own obligations.

5.2.2 Government Is Judgmental and Political

Nevertheless, starting before Robertson, which he and other officials have freely and repeatedly acknowledged, in the interactions between PCO and PMO, "no one knows where the lines are." The elected Government is politically led. Given the pace of ongoing work, plus the fact that "hot files" are continually breaking into the struggle for coordination and control and hijacking attention, it is not always possible to definitively allocate blame for particular actions that turn out badly. In the words of one interviewee: "Accountability relations in this area have always been nuanced." The political-official centre of the Government was not designed to routinely generate proof so individuals could be formally and fairly blamed for discrete acts.⁹³ This centre, after all, is the Government, an elected executive and its appointees who must work through the permanent public service via the Clerk's facilitation. The accountability system is found in Parliament. One can well believe that, after a period of observing that the centre is pretty much one entity, the British Prime Minister reached his decision to empower special political advisers to direct civil servants and assign tasks to them both at the centre and, now, in ministerial departments. Certainly this is a step too far for the Canadian political culture, and one that would cause great anxiety.

Of the forces that drive the Clerk role toward problem-solving, the interviews repeatedly turned up four other factors: the changing nature of senior public service personnel (the loss of solidarity of the old mandarin that built the service); the associated diminishing respect for the public service as a whole, with many politicians believing that they achieve their policies in spite of the public service rather than because

of it; the tendency in Canada for high turnover at general elections, which can bring in a group of MPs of whom as much as 60 to 80 percent can be new to politics, putting many first-time ministers into office; and the immediacy and complexity of media-Government interactions.

5.2.3 Can the Clerk Cope with “Invisible Problems”?

Many observers have seen Mr. Justice Gomery’s inquiry into the activities of the Clerk in place at the time the Unity Fund was established, and the subsequent lack of corrective action, as proof of the ineffectiveness of the Clerk’s information-gathering powers and of the value of recourse of deputy heads to the Clerk.

The Unity Fund was first established under the Prime Minister, and then moved to Public Works and Government Services Canada (PWGSC). Ms. Bourgon did write a memorandum about the fund’s placement to the Prime Minister, Mr. Chrétien. In effect she advised that the fund should be placed within a department’s management framework of rules and monitoring, rather than remaining under the PM’s arm in a managerial vacuum that would leave him directly responsible. There the Clerk’s intervention stopped, because, according to the evidence, nothing further of the Sponsorship Program was heard in the Privy Council Office. The PM did what the Clerk advised and this single sponsorship issue seemed to have been dealt with according to the Clerk’s testimony.

The Deputy Minister of PWGSC, Mr. Ranald Quail, testified to both the Public Accounts Committee and the Commission that, after the sponsorship unit was set up in the department for which he was responsible, but with a novel status (he believed his Minister wanted to deal directly with Mr. Guité, the head of the sponsorship unit, directly), the unit’s activity, in his own figure of speech, was no longer on his “radar.” And why not?

The most likely answer is that *if* the program had been merely totally ineffective as opposed to having encouraged fraud, with the same loss, it would have been seen as a completely affordable political exercise. Under current risk management policy, which calculates the “materiality” of risk proportionately to a departmental account or to the accounts of Canada, the Unity Fund did not represent a large sum. Were the entire fund to disappear without value to the taxpayer, there was no risk that the accounts of Canada or even the PWGSC accounts would be qualified in a financial audit. The Unity Fund was, objectively speaking, simply too small a sum to be micro-managed by one of the most busy people in Ottawa—the Clerk—or even the Deputy Head of PWGSC. The Office of the Auditor General, despite the Auditor General’s overdone reaction to findings from the invited 2002 audit of three contracts, had not once gone into the sponsorship unit on its own initiative and authority between 1996 and a sequel to the invited audit. Obviously, the OAG’s dedicated PWGSC audit team’s radar did not pick up on the sponsorship unit. The same can be said of Treasury Board Secretariat; and this, despite whistle-blowing and two rather poorly resourced internal audits that raised difficulties. If Mr. Quail’s radar was defective, he was not alone.

It might be fair to say that the observer has two choices. One is to accept at face value the explanations given by the Deputy Minister of PWGSC and by Ms. Bourgon as Clerk, in effect that they were fully occupied by files where the risk to the public purse was greater or the public policy stakes much more important than with the sponsorship funds.⁹⁴ Alternatively, one might construct a hypothesis to the effect that the Clerk, the PWGSC deputy, TBS and the OAG formed a conspiracy to allow a destructive political scandal to run its course and, at the same time, ruin their own reputations. If one accepts the first explanation as being the more reasonable of the two—that the fund was minor in the context of the amounts dispersed in Government, and therefore it

could be abused without senior management noticing—only then does it become possible to ask a genuinely significant question.

The significant question is whether risk management as it is practised in the federal government is sufficiently attuned to *political* risk as opposed to management risk assessed by margins of error tolerable in large accounts. What made these particular frauds scandal-worthy to the media, the Opposition and the OAG was the involvement of politicians—and the possibility that participating firms were making contributions to the Liberal Party. Therefore, it might be pragmatic for the political level to confer a duty upon Treasury Board to monitor political risk to lower the incidence of political scandals.

5.2.4 The Media Make the Message

The media can make difficult problems uncontrollable. Several persons spoke about the Meech Lake and Canada rounds of the constitutional crisis as clarifying the impact of the media as active creators of political events and outcomes. David Taras of the University of Calgary provides a scholarly analysis of the key events, his main contribution being an examination of how and to what extent television created an arena shared by the media and the politicians who transformed the Constitution-making process.⁹⁵ The basic argument is as follows:

[T]elevision was not only the window through which political leaders conveyed messages to their public but was a vehicle for communication among the parties themselves. The media could be likened to the walls in a squash court [but in motion themselves]; negotiating positions would have to be hit against the media walls to keep them in play, test reactions and give them legitimacy.⁹⁶

Politicians would react instantly to others' comments. They used interviews to float or stake out positions, "leaked" different information to different media figures, and lived with the media for weeks in a kind

of pack, such that they would prepare individual statements for particular media figures. Taras uses the last day before the deadline for approval of the Accord as an illustration of a qualitatively new situation, as did several of my interviewees. This is the episode in which Premier Clyde Wells of Newfoundland, who was expecting a telephone call from Lowell Murray, the federal Constitution Minister, instead found himself watching Murray on television explaining what the federal strategy would be following the imminent vote in the Newfoundland House of Assembly. Murray's decision to use television instead of the telephone was in part a result of the fact that he was himself tuned in, watching developments in Newfoundland. Chantal Hébert found it astonishing to see this new kind of event: using live television to deliver an insult to a negotiating partner. Then, as one of my respondents noted, the next big thing was New Democrat MLA Elijah Harper, a First Nations Cree, holding a single eagle feather in the Assembly to signify that he would deny the unanimous consent in the Manitoba legislature necessary to keep discussions alive—believing that it was not legitimate for the federal government to address the Quebec question before the First Nations issues.

The basic message is that the way television is used in Canada will continue to transform political content and thus public policy in profoundly unaccountable ways. Not least important, Taras says, is the obsession among the journalists covering the constitutional events to declare winners and losers, as well as creating coverage favourable to their own constituencies and beliefs.

5.2.5 Clerks' Media Profiles over Time

Has a rising public profile made either the Canadian Clerk of the Privy Council or the British Cabinet Secretary more of a public figure, complicating the job? Lindsay Aagaard's search for mentions of the Clerk or Cabinet Secretary role in the Canadian and British papers of record, the *Globe and Mail* and the *Times of London*, yielded a number of points.

The search in the *Globe and Mail* archives is most usefully summarized for the period from 1965 to the present by saying that there is essentially no trend of increase in the general profile of the job as shown by increased coverage that is independent of the major events of the day. Clerks/Secretaries to Cabinet do not appear to be becoming “celebrities” in either Canada or the UK. That being said, the *Times of London* does give the Cabinet Secretary considerably more frequent mention than does the *Globe* in Canada. This is most clearly seen in a comparison of five successive Canadian Clerks (Tellier, Shortliffe, Bourgon, Cappe and Himelfarb) with, in the *Times of London* archives, three Cabinet secretaries, Butler, Wilson and Turnbull, in the same period. If one averages annual mentions of Canadian Clerks and British Secretaries, one finds that the British officials are mentioned about twice as often. If one looks just at the Canadian Clerks, one can see that the present Clerk, Alex Himelfarb, is getting just a few more mentions in the *Globe and Mail* than did his predecessors (if one creates annual averages). But the annual averages are totally misleading, because almost all the mentions of Himelfarb occur in 2004-05 and come from his appearances at the Gomery Inquiry. Every transition between governments was covered closely in both Canada and Britain, and this kind of event also makes counts peak in election years. Similar events also tend to drive coverage in both countries: whenever the Clerk or Secretary is tasked with establishing any kind of inquiry, for example.

Perhaps the most solid observation one can make on coverage of the Clerk and the Secretary to Cabinet is the difference in reporting style between the two newspapers of reference. Coverage in Canada seems to be considerably less neutral in tone. In the *Globe and Mail*, there is a tendency to denigration or snide language as part of negative coverage, while in the *Times of London* the language is more often neutral than negative, but nevertheless more often negative than positive. To illustrate, terms used in Canada might include variations on “PM’s favourite,” or

“power broker,” while the UK paper of record would identify the Secretary to Cabinet as the “PM’s main civil service counsellor,” or even, “interpreter of the Constitution.” The *Times* is capable of praise in comparisons, as when one Secretary was said to be as skilled as some predecessor in arranging a smooth transition between governments. The *Globe and Mail* does not seem to see interest in comparing the performances of senior figures, or, more likely, most of its editorial floor staff would not have the necessary background. Finally, one can mention that, although both papers of record are events-driven, the *Times* will present considerably more background on the office and its responsibilities, putting the event into governmental and constitutional context.

In summary, it seems fairly safe to say that politicians in general are put to extreme tests by the media, but that in Canada the situation seems at least somewhat more difficult. The United Kingdom does have quality newspapers that take seriously their duty to provide background and interpretation, while English Canada does not have a national newspaper that would qualify as a quality paper in the British sense. Even our more careful papers largely fill their pages with material that would be somewhere between tabloid journalism and quality fare. (*Le Devoir* is considered by many as the most reflective newspaper in Canada, but it is published only in French.)

5.2.6 Newer Developments Such as Horizontality and New Public Management (NPM)

Among my interviewees, not one would agree that horizontality was new. They say that what is new is the particular emphasis placed upon horizontality, and its problematization in respect to narrow accountability—exactly which individual did what to what. In respect to the first new aspect, one respondent said, the injunction to public servants to think horizontally and to leverage resources is generally in use as a formula for asking public servants to think strategically. To most,

horizontality should be understood as a simple necessity in Cabinet government as collective decision-making. There have always been a large number of departments in Canada in comparison to the United Kingdom. Given that we in Canada have more and smaller jurisdictions for a considerably narrower set of powers, horizontality as intense collaboration across departments has always been necessary to get things done in federal Canada. It is the Cabinet's job to provide collective government and to leverage resources from departments of interest.

Horizontality may even increase political control. To return to Pitfield, he believed that a larger number of departments would increase the density of the interface between politicians and public servants, yielding greater political control—a New Public Management goal before NPM. The Office of the Auditor General has, however, seen horizontal initiatives as a problem when shared resources are not formally contracted between participating departments and on occasions when it is not clear what share of responsibility each participating Minister should bear. (One respondent suggested that if a Cabinet decision to accomplish an objective using the resources and personnel of more than one department is seen to be a problem, then participating departments might consider the formal transfer of resources to a lead Minister, who would answer questions on the initiative in the House of Commons.) The British have largely pre-empted the problem because their system consolidates jurisdictions into huge departments run by one senior Minister who takes full responsibility for the involvement in different areas of a team of junior ministers. In many if not most initiatives, then, the necessary powers and resources will be found under one Minister. The alternative approach, introduced by the first Blair Government, is “Joined-up Government.” In this strategy, a number of ministers participating in any exercise requiring authority from each of them would form a board. This board would then have a Secretariat to serve it, with personnel drawn from participating departments. A senior minister

would answer questions. If more efficient organizational designs suggested themselves during the course of the exercise, the board could then recommend shifts of management units and personnel.

New Public Management was seen by interviewees as another matter entirely. One respondent summed up the Canadian implementation of this vague and shifting set of prescriptions as follows: our shift to a client focus in the 1980s jeopardized understanding of and attentiveness to the public interest; under NPM's "empowerment" prescriptions,⁹⁷ Treasury Board Secretariat backed off, increasing risk, and so did the PCO's Machinery of Government, so as to not impede the emergence of "synergies"; and, finally, in the 1990s, the Public Service looked inward too much in a variety of initiatives, and at the same time placed the Program Review cuts in administrative areas like internal audit, which created new risks.⁹⁸

Another respondent said that the New Public Management environment, with the Program Review cutbacks to audit and other overhead areas such as financial administration (including contracting), provided a background of "administrative laxity" that had not existed before. Public servants did not necessarily wish to operate in a situation of inadequate and infrequent rounds of control and monitoring. But this was the reality created for them: with smaller numbers of employees providing services, and fewer resources, they nevertheless had to deliver services politicians and senior managers had "protected" by concentrating cuts in administrative areas like internal audit.

Other interviewees made the point that "sponsorship misadministration came about from behaviour of individuals and not from badly designed structures. It [the sponsorship frauds] happened because a few people failed to act in accordance with rules they understood very well and had successfully applied throughout their careers." Further, another respondent said, it must be recalled that problems in the sponsorship

unit were reported very early (1996) by a determined whistle-blower, followed by two internal audits that confirmed mismanagement. In short, the depleted and weakened internal audit service did its best to “work,” but it could not get senior management’s attention. The OAG did not come in to audit the unit under its own powers throughout the entire trajectory of misdeeds. The Auditor General had to be invited by the Minister, PWGSC (Don Boudria), in March 2002, to review three contracts, after which it formulated its own investigation in the context of a cross-departmental study.⁹⁹

According to Bevir and Rhodes, the New Public Management is closer to a label than a philosophy. The common trends identified in the literature identify six main changes relevant to British Government: privatization, marketization, corporate management, decentralization, regulation and political control.¹⁰⁰ Bevir and Rhodes, however, explain that NPM refers most properly to a focus on management, not on policy, and on performance appraisal and efficiency (although privatization and marketization are surely policies and not simply instrumental choices).

Characteristically, according to one of Christopher Hood’s first mappings, probably most applicable to the Anglo-American democracies other than Canada, NPM means or meant disaggregating public organizations into single-purpose agencies that deal with one another on a user-pay basis: “the use of quasi-markets and contracting-out to foster competition, cost-cutting and a style of management that emphasizes output targets, limited term contracts, monetary incentives and the freedom to manage.”¹⁰¹

These trends do not accurately describe the Canadian reforms under the label. Political control was being increased well before NPM emerged on the scene. Corporate management in Canada was not well realized. For instance, several interviewees said the Treasury Board Secretariat’s program, Modern Comptrollership, was not explained

clearly by the TBS, was not taken up by PCO in a helpful way, and thus was not well implemented.¹⁰² In addition, there are the intractable intellectual problems preventing demonstrable measurement of accomplishment of results under this name or any other, including the current label “strategic outcomes.” The general result is that strategic outcomes are “measured” without reference to a standard unit of measurement (there is no metric). Therefore, the strategic outcomes cannot in logic close the accountability loop on Government’s accountability to the House of Commons for its granting of supply to Government. Supply is granted in dollars, and accountability is measured in confusion. This in turn cheats Opposition politicians of opportunities to express themselves clearly on the Government’s policy record, forcing them to rely on the Office of the Auditor General as an authority figure. The British Government tends to work with targets, which are more immediately measurable than Canada’s vaguely hopeful “outcomes.”¹⁰³ Some privatization and marketization were pursued in Canada, but not on the scope of British action.

In Canada, decentralization was pursued under restraint; responsibilities hitherto met by the federal government were cascaded down to lower levels of government, but without adequate resources; and there were some major reorganizations creating what are called the legislated agencies, a larger bundle of Special Operating Agencies, and new forms of corporations as with NavCan. As already discussed, Canadian federal NPM was mingled in application with the 1993 reorganization, and with the 1995-96 Program Review cuts; empowerment and risk-taking were the gloss put on restraint measures. It cannot be said too often that issues of control and risk, importantly including the amount of risk created for the political leadership, were not thought through systematically. As an example, the contract is the mechanism that is, in theory, supposed to compensate for both privatization and decentralization. In NPM theory, privatized and decentralized bodies would be constrained by the terms of their contracts to keep producing

all the public “goods” the political actors wanted to create more efficiently. Yet contracting capacity in the federal government was not systematically built up to prepare contracting as the new control.

In the NPM context, regulation internal to government covers the operations of organizations that shape the behaviour of other units by their own demands. Among these bodies are organizations like the OAG and the several small bureaucracies attached to or part of the House of Commons, such as the Commissioner of Official Languages, the Privacy and Information Commissioners, the Public Service Commission, the Ethics Commissioner and the departmental ethics officers. Christopher Hood and his colleagues show that the regulators in Government are not “corporate,” meaning they do not coordinate their initiatives, no one regulates the regulators, and, strongly related, no one computes the totals for public money used in complying with regulatory slogans that provide few or no operative standards before the fact.¹⁰⁴

The federal New Public Management reforms in Canada have been assessed by David Cooper and Ken Ogata, two senior professors from the School of Business at the University of Alberta. They structure their observations around an assessment by Pollitt and Bouckaert that Canada suffered “a significant implementation gap with many initiatives failing to meet anything like their full expectations.”¹⁰⁵ Essentially, Cooper and Ogata conclude that the concern with and dependency upon the OAG of the Canadian media and Opposition undermine the possibility of the reform initiatives that emphasize managerial autonomy and empowerment. On the rare occasions when reforms had been deemed successful, they took place in the context of a “real or imagined fiscal crisis.” Further, they concur in an interviewee’s characterization that over time the federal OAG has functioned as a “pseudo-Opposition.” The political culture in Canada is such that the “most influential and damaging Auditor General reports have dealt with . . . basic issues of stewardship and accountability, rather than weaknesses of results-based management.”¹⁰⁶

Given some of the Canadian initiatives billed as NPM—“results” without methods, empowerment without rules and controls, risk-taking without monitoring—we should probably be quite glad that our NPM petered out in so many directions. The degree of fragmentation in the British state, according to Bevir and Rhodes, now constitutes a situation that may have gone beyond the possibility of coordination. It was, as indicated above, Blair’s expressed intention in 2003 to blur the boundaries between state, private sector and civil society. But neither the private sector nor civil society can be dismissed by the electorate, which makes the question of democracy moot. The basic question is: to the extent that the form and products of the public sector cannot be affected, directed, controlled or coordinated by elected representatives of the electorate, in what sense can one say that a democracy exists? There are the beginnings of a pro-bureaucracy movement.¹⁰⁷

5.2.7 What Can Be Done to Ensure the “Chain of Accountability”?

Gordon Osbaldeston contributed significantly to Canadian public administration in research and publications, but did not write about his own clerkship. Instead, he looked into the role of deputy ministers, detailing the pressures that impinge upon them and creating a complex web of multiple and blended accountabilities.¹⁰⁸ He did *not* see a “chain of accountability” operating upward through the top levels of the service, ending with the Clerk. He saw professionals balancing the contents of their complex mandates such that their balance and powers could be recognized by a committee of their peers.

5.2.8 The Many Hands Problem

Richard Mulgan likewise does not believe that there is a crisp and fair approach to designating the persons who will bear what is sometimes called “sacrificial responsibility” for outcomes described as mistakes or failures. Although the public and the media want ministerial resignations even for very general kinds of institutional failures, Mulgan returns to

the principle that blame and punishment should follow personal responsibility for an action or inaction. In most cases of institutional failure, he says, “the fault is . . . widely dispersed and usually includes systemic failure in the institution’s structures and procedures which are the responsibility of many different people (the so-called ‘problem of many hands).” The problem with *many* hands, with everyone having had a finger in the pie, is the following:

In such a situation, the aim of punishing all those who are involved appears impractical and unreasonable and often results in everyone escaping comparatively unscathed, thus frustrating accountability.¹⁰⁹

Nor is one on morally sound ground in designating the senior person involved. In Mulgan’s words, “[I]t requires the application of criteria for personal blame well beyond those enforceable in a court of law or current in normal moral discourse. . . . their own personal involvement is often too remote and indirect. . . . enforced resignation is often too drastic a penalty. . . .” Mulgan’s conclusion is that “The problem of allocating personal accountability for collective failure . . . remains morally and politically intractable.”¹¹⁰ Although Mulgan does not say so, his arguments shore up the convention of collective responsibility, which rations resignations and “accountability,” as the best moral choice when many hands were involved. Similarly, where public servants have been working in good faith and under the direction of their ministers to collaborate to bring some result about, and the enterprise ends in public failure, the much-mooted idea of “direct public servant accountability” to House of Commons committees does not seem to be a morally defensible option.

Likewise, Charles Polidano, a well-known student and practitioner of public administration, composes the abstract of his article dealing with multiple accountabilities in Westminster democracies as follows:

Politicians and public servants are commonly depicted as being in a unilinear power relationship. However, senior officials are subject

to accountability relationships with various central government authorities in addition to ministers. Multiple accountabilities can work at cross-purposes and prevent bureaucrats from complying with ministerial directions, however legitimate these directions may be. One aim of recent public management reform has been to do away with some of these accountabilities. But they have only been replaced by others. Multiple accountabilities are an inescapable part of the reality of government.¹¹¹

Polidano continues to define ministerial responsibility as it operates in Britain and in the other Westminster democracies, for, as he says in a memorable sentence, it is a model that “shrouds wide,” reconciling a million discrete actions taken under many authorities in the names of ministers. The whole is made democratic and acceptable to the electorate under the answerability of ministers to Parliament for *the action they take to put departmental errors right* [emphasis mine].” This answerability for remedies is at the core of ministerial responsibility and/or accountability. Blame and retribution are not the core mechanisms of Westminster Government. The core is that change in state procedures should be completely under the control of elected officials so that the electorate, when push comes to shove, can have a shot at changing the policy provisions that cause discomfort.

The bureaucratic apparatus of the state, excepting Order In Council appointees, is, to be sure, articulated with the purpose of restricting the range of actions of lower-level incumbents to the contents of their role or job descriptions. Employees perform a role that they do not own or define. The task of the supervisor is to ensure that subordinates maintain direction and focus, even though their work may proceed on several fronts. There is no single “chain” of work moving forward, one project at a time. Very little would be done if people could not multi-task legitimately. The “chain” of effects only comes into being in diagnostic exercises established to find what went wrong after the fact, and in complex situations it represents something like a model.

Weberian theory as prescription was developed to decrease uncertainty in administration, making it more predictable and even more prudent. Gajduscsek asks: “If efficiency is crucial for the prevalence of any organizational form, and if bureaucracy is inefficient, how could it [bureaucracy] prevail?”¹¹² The answer, of course, is that in governments improved predictability is more valued than is efficiency, because, among other benefits like equal access to justice, predictability in performance makes it more possible for politicians to exercise directive control and thus achieve their policies. Even in business, predictability is a primary concern and its achievement is sought by bonuses and performance rewards.

The “chain of accountability” is, according to my interviewees, much more properly a description of the political or power links between the various principal actors—from public service, to ministers, to the House of Commons, to the electorate. And this topic is beyond my remit.

On the topic of increasing the Clerk’s directive power over DMs, all persons interviewed were convinced that giving the Clerk an explicit disciplinary role would jeopardize this community’s willingness to support the Clerk. In one respondent’s words: “The Clerk is a mediator without the power of an arbitrator.”

All respondents agreed that DMs do not serve the Clerk—they serve their Minister. The mechanism of their appointment is, for the most part, far from their minds, partly because so few DMs outside the centre ever have occasion to see the Prime Minister in person, and because each DM provides the Clerk with the information that allows him or her to do the work of advising the Prime Minister. It is a trust relationship, and when trust fails the Clerk will dwindle in stature, if not overtly fail. At the same time, “the Clerk is overwhelmed by transaction costs,” so the Clerk’s time and attention must not be abused. Most respondents said that they had never once felt themselves as an

inferior in a “reporting” relationship to the Clerk. They respected good Clerks, and felt so much personal tension when someone they believed wholly unsuited to the job of Clerk was appointed that several had left the public service, asserting their personal independence.

5.2.9 The Accounting Officer Reform in Canada

None of the respondents believed that the Clerk should become an Accounting Officer in the British mode. The Accounting Officer mechanism—assuming that the Deputy would serve as Accounting Officer—seemed to block the possibility of trust developing between Minister and Deputy, thus allowing the Deputy to assist the Minister in achieving his or her policy mandate. Some believed that the Accounting Officer mechanism in the United Kingdom was in large part responsible for the politicians’ increasing recourse to special advisers. Needing someone with whom it would be safe to brainstorm, a Minister would bypass his or her Deputy Minister/Accounting Officer until it was time to talk about implementation.

Interviewees also explained that the consequences of the Accounting Officer mechanism would be different in Canada. In Britain, both the Public Accounts Committee (PAC) and the National Audit Office (NAO) work coolly and deliberately, the NAO conducting forensic audits, expecting to find a certain incidence of fraud and to undertake long pursuits of those responsible. In Canada, in contrast, fraud is seen as a hot potato and handed off to the RCMP, which has few resources, and is forgotten as quickly as possible. It is therefore difficult to learn about systemic management weaknesses that are wide open to bad faith in federal Canada.

Further, under the provisions of the Accounting Officer mechanism, respondents reasoned, a financial dispute between a Minister and the Deputy Minister would have such high stakes that the provision would be inoperable. The Deputy’s task under the provision, according to the

PAC Chair, would be to write a letter to the AG, who would then pass the letter to the Chair of the Public Accounts Committee. The Chair has said he would in turn circulate the letter to the media. Faced with the choice of instigating a disproportionate reaction from Opposition and media, a Deputy Head might well prefer to bow out in silence. Either strategy—turn over one’s Minister to media frenzy or resign in silence—ends the Deputy’s career. But silent resignation constitutes a form of protest and allows the individual a sense of personal control.

Next is the issue of monitoring deputy heads. To manage the detailed performance of the complement of deputy heads, the Clerk would need, in the estimation of several interviewees, a minimum of 500 employees—greater than the number who had worked in the program branch of TBS at its peak. In the words of one interviewee: “Clean government is not a free good.”

Overall, respondents had two sets of views on accountability as driven by the sponsorship events, one being system risk and the other being political risk. The first was summarized as follows by two interviewees: “The existence of fraud through all of time has never been sufficient justification for building a system that will *prevent* theft. Absolute prevention of theft means a police state.” A recommendation was to “set the level of risk you can tolerate and work to it like a target. Make the risk level high enough to caution a potential offender, and low enough that the inspection system is affordable and can work at the appropriate pace.”

The other view was that risk created by senior public servants but borne by politicians is not taken into account in appropriate ways. “Fraud is the response to risk created by management,” one respondent said. Management is particularly likely to create risk for politicians without considering the significance of what it is doing. If political risk were properly taken into account, officials would think through the risks of, for example, contracting by ministers in their offices. They would

suggest that a body like Treasury Board might create an oversight mechanism for use of funds by the political actors and by Order in Council appointees dominating small offices such as the Privacy Office, all of whom have much to lose.

In summary, respondents believed that the root problem of sponsorship had not been rules and structures, but the behaviour of certain individuals. Thus they were against the Accounting Officer concept, in large part because, in the light of the Canadian scandalizing culture between media and the Office of the Auditor General, “it is like setting a fire in an oil refinery.” But they did also want to see a measure added to performance appraisals that could reduce ambiguity and put on record an extended exchange over any potential ethical problems between the Clerk and a Deputy Minister. The provision could also reduce the possibility of voluntary compliance based on misunderstanding.

6 Canada and UK Cabinet Offices Compared and Contrasted—Can One Import Reform?

6.1

Prime Minister Prerogative Powers

The Cabinet secretariats at the centre of the two governments share some features, primarily in regard to the importance of the respective Cabinet paper systems. But the Cabinet offices, apart from the Secretariat duties, have very different kinds of powers. Most notably, the British Cabinet Office holds the powers over personnel management that are, in Canada, situated under Treasury Board. And many of the British Cabinet Office’s powers flow from the Prime Minister’s prerogative in the area of making policy to define the civil service. There is perhaps a point that should be made early. Documents the British Government places on the Web to explain Government to citizens state clearly that the “civil service as such has no separate constitutional personality or responsibility [from the elected Government].”¹¹³ To the extent that this

lack of personality in the British system is based in the country's lack of a *Civil Service Act*, it is unclear whether we in federal Canada—myself included—should continue to claim that our public service is equally without a constitutional personality: the Canadian public service is described in several statutes, and some of them assign specific responsibilities to particular offices.

In strong contrast to Canadian practice, the British Prime Minister can unilaterally implement major change. For example, in 2003 the British Prime Minister, in an intendedly progressive¹¹⁴ June 12 reshuffle of his ministers, effectively abolished the office of the Lord Chancellor and replaced him with an individual charged with the duty of disbanding that function. As one of the Lord Chancellor's duties was to serve as Speaker of the House of Lords, the Prime Minister in the same act left the Lords without a Speaker from one day to the next. At the time, in the words of the *GuardianWeekly*, “an astonished shadow home secretary” said:

To remake constitutions on the hoof, on the basis of personnel changes within the cabinet, is the height of irresponsibility. To announce it in a press release at 5:45 p.m. on a Thursday evening is nothing short of a disgrace.¹¹⁵

Blair's act brings to the fore the lack of a written constitution covering the relations between the judiciary, the executive and the legislature.

What appears also to be an interesting difference in practice is that, in Britain, departmental officials do not attend Cabinet or its committees while, in Canada, practice is looser. In Canada, the Clerk and the Deputy Secretary Plans, the Deputy Secretary Operations, and an assistant secretary and an analyst from Plans will attend Cabinet to take notes and to keep abreast of what may be expected of them. The PCO officials do not speak unless the PM asks a direct question, when the Clerk will respond. If important issues are on the agenda for a given

department, the Deputy Minister and any other Deputy Head from the Minister's relevant portfolio agencies will attend to answer questions. In Britain, in contrast, only Cabinet Secretariat officials can attend.

The two practices are longstanding. Gordon Robertson takes brief note of it, as it was in 1971, and explains that the British depend on interdepartmental committees of officials for preliminary work and for policy recommendations. Canadian ministers, in contrast, "prefer to hear at first hand the differing views of senior officials from whatever departments may be involved. . . . Interdepartmental committees may have to be relied on rather more in future, but the valuable blend of ministers and officials at committees will undoubtedly be retained."¹¹⁶

Each country's arrangements for ministers assisting the Prime Minister in the Cabinet Office or Privy Council Office are also quite different. The British Minister who oversees the Cabinet Office (excluding the Secretariat) is there to assist the Prime Minister in providing *political* control to the overall management of the Cabinet Office and its areas of deliberation, research and action—to lessen the workload of the Prime Minister. The Canadian ministerial complement attached to PCO, on the other hand, appears assigned to specific and substantial policy functions—security, intergovernmental affairs and official languages.

6.2

Special Advisers in the UK: Bringing Policy to Administration

Another observation on the different use of power in the two centres is that some of the British Prime Minister's special advisers were exercising executive powers over members of the permanent civil service in the handling of intelligence leading up to the Iraq war. This was brought to light by the Hutton Inquiry. Following an enquiry on how this situation was possible, an official from Cabinet Office's Propriety and Ethics Team replied:

The Order in Council to which you refer is the May 1997 Order. This provides for up to three special adviser posts in the Prime Minister's Office to have executive powers, giving them the authority to manage and direct civil servants. Only two of these posts have ever been filled: those of the Prime Minister's Chief of Staff and, until earlier this month [September 2003], the Prime Minister's director of Communications. The Prime Minister has accepted the recommendations of the independent Review of Government Communications (see <http://archive.cabinetoffice.gov.uk/gcreview/> for more details) that it is no longer necessary for the Director of Communications to have these powers. They have therefore not been conferred on the new Director of Communications.¹¹⁷

This order "provides cover" only to the PM's special advisers. Other ministers can also have special advisers, and there is no limit on their numbers other than in the ministerial code set out by the PM. This document provides that each Minister can have two special advisers, but that the number can be increased with permission. The total figure generally floated is about 80. Advisers are chosen by the relevant Minister and can include acknowledged experts. All are paid from public funds.¹¹⁸ The issue of whether special advisers in ministers' offices can advise and direct civil servants is, for the time being, at issue.

As recently as July 2005, the Committee on Standards in Public Life twice formally objected to Government recidivism in the matter of special advisers.¹¹⁹ In June the Government amended the legislation on the role of special advisers—the Civil Service Order in Council—through the Privy Council, but without debate in Parliament or even providing the content of the Order to Parliament or making any public announcement. On July 21, the Government responded to the Committee's first note of July 19, but without taking any of its concerns into account. The Chair then was left with no recourse but to repeat

the Committee's concerns expressed earlier about changes to the Code of Conduct for Special Advisers as proposed in May: that the Prime Minister could be seen as strengthening the mechanisms by which personnel could be recruited to the civil service outside merit-based hiring arrangements (because in the Order advisers were described as providing "assistance" rather than "advice," which could be interpreted quite differently); and that special advisers could now "request" work from civil servants, which the Committee sees as being the same thing as "to commission" work from civil servants. Thus, on the Commission's reading of the Government changes, special advisers were effectively being placed in the hierarchy of the permanent civil service. The discussion ends as of time of writing, with the Commission promising to continue to press for the passage of a *Civil Service Act* as a way of providing parliamentary oversight.

In summary, the role of "special advisers" to politicians, classified as "exempt staff" and managed in a separate employment regime in Canadian ministerial offices, is quite different in the two systems. One can be sure it would have been a florid scandal in Canada had Mr. Justice Gomery uncovered an Order in Council giving the former Prime Minister's or any other Minister's Chief of Staff the right to provide direct orders to permanent officials or had Mr. Pelletier told Mr. Gomery that "this is how it works" (he did not). Overall, in Canada there is considerably more emphasis placed on the politics-administration "moat" between persons hired under different personnel provisions. While relations between staff in Canadian ministerial offices and their public servants are cooperative and friendly, public servants hired under the *Public Service Employment Act* who are not senior executives decidedly would not expect a great deal of informal contact with ministerial staff and certainly would not expect to receive orders from them.

6.3

Permanent Private Secretaries to Ministers

In Canada, there is no Permanent Private Secretary, the civil servant in Britain who serves every Minister, including the PM. The Private Secretary is not a check on the Minister in the way envisioned by the “Accounting Officer” reform. Instead, he or she is chosen from among civil service high flyers to provide advice and insight on business crossing the Minister’s desk. He or she is in fact a decoder. Quite probably, the public servant serving in the Minister’s Office as Private Secretary is able to alert a Minister to the dangers of a proposed course of action at such an early stage that his or her presence would be the reason for the relatively minor number of confrontations between ministers and their accounting officers.¹²⁰ In other words, it may be that the Accounting Officer reform should not be taken on board in Canada without first looking into whether the Principal Private Secretary serves as a significant first line of defence to protect ministers and reduce political risk.

6.4

Terms of Office

The terms of office of the nine Clerks of the Privy Council since the early 1960s are found in Appendix A at the end of this study, with comparative statistics for the United Kingdom and Australia. British Cabinet Secretaries have tended to arise from lengthy high office in major departments, and to have a proven ability to build comfortable relationships with their peers and politicians without being pushovers. They also tend to spend longer in the Cabinet Secretary role, and for that job to be their last in the civil service proper. The terms of the last six Cabinet secretaries have averaged just more than seven years since 1963, with terms being considerably longer at the start of the period—Burke Trend serving ten years, from 1963 to 1973. Since New Labour

came in, Richard Wilson served four years, and Andrew Turnbull, who came up against mandatory retirement rather soon after his appointment, was in the post for three years. Also since 1963, there have been nine Clerks of the Privy Council in Canada, with two long-serving Clerks at the start of the period: Gordon Robertson spending 12 years as Clerk from 1963 to 1975; and Michael Pitfield spending close to eight years, from 1975 to 1982, his service broken by Marcel Massé's one year of service to the Conservative Government of Mr. Joseph Clark. If one removes Robertson, Pitfield and the other Clerk who lasted well, Paul Tellier, the remaining five Clerks (not counting Alex Himelfarb, who is still in office) have served for an average of 2.8 years. In this group is Jocelyne Bourgon, who was Clerk for five years for Mr. Chrétien. While one could not quarrel with the career success that led Canadian Clerks to this highest office, it is a different kind of candidate than the type who took the British office before New Labour—candidates whose elevation could not, and would not, be taken with a grain of salt by their peers. Canadian Clerks also tend to take the office at a point in their careers when they will want to go on to another challenging position. One suspects the job is simply so demanding of time that youth is necessary to survive it.

The formal descriptions of the two Cabinet paper systems are similar, as one could expect. As already noted, most observers tend to accept that, at the moment, the British working of their system is mutable and somewhat unpredictable, but largely in relation to the current Prime Minister's tendency to bypass the formal decision-making systems. The Canadian system does not seem to change much other than in committee structures, depending on the Prime Minister. It is unknowable whether a Clerk can unilaterally restructure PCO, or if the changes made are in response to a PM's preferences.

6.5

The Political Minefields of Imported Reforms

There are some other contextual factors that increase accountability in the British context, but one cannot overemphasize that these provisions do not surely prevent all dubious contracts, payments to political parties, or deals that bypass the powers of the accounting officers. British government is no stranger to scandals, and it is fair to say that in Britain a whiff of scandal does not, in the famous phrase, frighten the horses in the street.¹²¹

These accountability factors that seem to be quite superior in Britain would include:

- *Chairmanships* of the British House of Commons committees are allocated according to the seats held by the parties in the House of Commons. In Canada, only the Public Accounts Committee (PAC) has an Opposition chair.
- The British House has established a Civil Service Committee that can look into matters of any scope affecting the civil service and thus serves as a brake on prime ministerial and central agency unilateralism. There is no such committee in Canada.
- The British House of Commons has established a Liaison Committee that calls the Prime Minister periodically to account for the influence exercised by appointees who work under his direction. There is no such committee in Canada.
- The British Government under Prime Minister John Major established in 1994 a continuing Committee on Standards in Public Life. See the 10-year evaluation of this committee at the end of this study (Appendix B).
- The British Treasury has explicit policies on fraud in Government and publishes annual reports on fraudulent practices and on its efforts

to recover funds. These keep fraud awareness in the minds of civil servants. This is not a policy in Canada, where we are nevertheless subject to important frauds¹²²). The British Public Accounts Committee is non-partisan in working style, makes its own choices among approximately 50 reports tabled annually by the National Audit Office (NAO), and its Chair and other members are the primary interlocutors of the media on topics of probity. The media closely follow the Committee's assessments and interpretations of NAO reports. The NAO provides factual interpretation to the media in the neutral reporting language recommended to its members by the International Organization of Supreme Audit Institutions. In contrast, the Canadian Public Accounts Committee is, and always has been, highly partisan, while the media's principal relationship is with the Office of the Auditor General (not the PAC) and with the Auditor General. In Canada, the OAG uses dramatic language in its reports, which it tables three or four times a year. Because of its great powers, the OAG sometimes functions as a central agency of government in creation of management policy, which is counter to responsible government.

- The British Comptroller and Auditor General heads the NAO. Incumbents are appointed from the senior ranks of the civil service and hold office until retirement. In contrast, since the early 1970s, Canadian auditors general are appointed from the private sector. They freely interpret the provisions of the 1977 *Auditor General Act*, which defines the Auditor General as auditor of the accounts of Canada, the accounts being of course produced annually. Successive auditors general have decreased the amount of annual financial and compliance audit they perform, particularly in departments, in favour of operational-type audit that is essentially similar in nature to internal audit. Further, since the tenure of Mr. Macdonell ended in 1974, Canadian Auditors General simply ignore in their choice of subjects for narrative or operational audit Annual Report chapters their Act's requirement that their accountability work should at least concentrate on the accounts for the year of the supply cycle that has just passed.

- The National Audit Office's proportion of expenditure on traditional financial or probity audit versus its expenditure on "value for money" audit is almost precisely reversed in a comparison with Canada's Office of the Auditor General: the NAO spends a much larger portion of its budget on traditional audit. In addition, its "value for money" studies (which exclude policy evaluations) preponderantly arise from qualifications placed by the NAO on the financial accounts of a department or agency; therefore, they start with a problem. The NAO takes the PAC's suggestions and those made by another House Committee, the Audit Commission, into account, and so its approach to auditing government entities is more structured than in Canada, and its timeliness is notable. Finally, the NAO's reports are superior in quality to those of the OAG, in part because its work is sometimes guided and always vetted by an external panel of academic subject and methods experts. At present, the panel or standing committee on quality is from the London School of Economics. In comparison, the OAG sends chapters for review to individuals who work separately and are paid by the piece.

7 Recommendations

7.1

Theme: Modernize the Canadian Clerk's Role

One thing on which everyone interviewed—including people who had served as Clerks—agreed, is that the role of the Clerk of the Privy Council does not require augmented powers over other officials. The extent of the Clerk's power to *impose*, as opposed to negotiate and influence, is and should be subject to restraint, of which self-restraint is probably the most important element given the discretion inherent in this job in the very centre of the politics-administration interface. A Clerk with augmented authority over other officials would be ever-more tempted to move to action by his or her leveraging areas of authority. Clerk-championed reforms in Canada tend to be intrusive and exhausting for the already overcommitted deputy community. Clerks must "franchise" projects, because the Clerk does not have extensive

program powers or personnel. Overall, leveraging or “championing”-cum-leadership initiatives lead to artificial enthusiasm and reforms composed only of elements that *can* be leveraged. They do not seem to inspire well-reasoned initiatives whose probable effects have been carefully considered and for which institutional insurance has been put into place. For example, there is no excuse for loosening rules and at the same time removing internal control capacity, as was done following program review.

- *Add explicit probes to the Clerk’s script for annual Deputy Head appraisals with the purpose of ensuring that deputy heads communicate their ethical worries to the Clerk, and, reciprocally, ensuring that the Clerk clarifies to the Deputy Head his or her own views. The conversation would be captured in a note and signed by both parties. The purpose is to avoid anticipatory silence and anticipatory compliance by deputy heads, and to ensure that the centre is forced to know about “sleeping dogs” or submerged problems.*

The proposal, which three-quarters of interviewees enthusiastically supported, is that the appraisals exercise could add probes into areas which are not explicitly covered. For purposes of discussion, the Clerk could ask deputies what worries them on the ethical front, what worries them on the management front, and what worries them in their relationship with their Minister. Other questions could be added to handle any possible tendency toward anticipatory compliance by the DM in any “grey area.” The Clerk could ask the Deputy, for each main topic, to state whether he or she believes that the *Clerk* has either a policy or a preference on any sensitive file, and what that is. A summary would be produced, signed by both participants. The result should be fewer surprises on both sides.

- *Abolish the Clerk’s “Head” Role, and create the ministerial title: Minister of the Public Service, for the President of the Treasury Board.*

It is an obvious conclusion that the President of the Treasury Board is the effective head of the public service. The Canadian Treasury Board has all the personnel powers that led the British to appoint one of the Treasury permanent secretaries as Head before the British Prime Minister became Minister for the Civil Service. Only after the acquisition by the Prime Minister of that title and powers did the Secretary to the Cabinet become the Head of the Civil Service. In short, in Britain, the Head role is co-located with management authority over human resources. The Clerk of the Privy Council is not in a position to express “the concerns and needs of the larger public service workforce to the Government,” because his or her personnel duties are limited to providing advice on appointments made under the prerogative, a tiny fraction of the public service. To quote C.E.S. Franks: “The formal responsibilities for personnel administration in Canada, unlike Britain, have virtually excluded the Prime Minister, the Privy Council Office, and the Prime Minister’s Office from a major role.”¹²³ Again drawing from Franks, it seems fair to say that Canada and Britain could hardly have taken more different routes for management of personnel, the Canadian path excluding the PCO, and the British path eventually concentrating personnel-management powers in the Cabinet Office. For many years, the elected Government in Canada had virtually no power over the Civil Service Commission except for appointing the commissioners. Overall, the powers held by the Commission were those of the British Treasury. In theory, the Commission was responsible to the House of Commons, but House committees tended not to work in a dedicated manner for public interest goals, putting partisanship first.

In great contrast, as discussed above, in Britain the Prime Minister is Minister for the Civil Service, holding the powers conferred upon the former Minister for the Civil Service Department (CSD), which was abolished in 1981. These powers, which came from Treasury to CSD, were thus placed operationally into the Cabinet Office, where they

remain. In addition, to this point, the British government has no *Civil Service Act*. Thus, Mr. Blair, like Mrs. Thatcher, will have completed many of the so-called New Public Management (NPM) reforms in Britain under the kinds of powers now held by our Treasury Board, augmented by prerogative powers flowing from the fact that many great departments of state had their origins in the royal household and thus have no statutory basis. Thus, the British Prime Minister and Secretary to Cabinet are not limited to a moving company, although they, too, have such a firm at their command. They can, exaggerating only a little, start at the first day of creation in rearranging government—remodelling mountain ranges, oceans, rivers and lakes as they deem appropriate.

Partly in response to the elected Government's inability to manage the public service directly, Canadian politicians created a rich collection of non-departmental agencies to pursue public policy purposes. By the 1960s, Franks says, the civil service outside the Civil Service Commission's control was almost as large as the one it managed.¹²⁴ (In this sense, Canada had an NPM public sector before the term was invented.) Since the Glassco Royal Commission, there have been more than 40 years of efforts to reform personnel administration and strengthen its legislative base. As of 2004, the new *Public Service Modernization Act* has resulted in the President of Treasury Board having responsibility for a portfolio of agencies to "pursue an integrated management agenda for the Public Service."

The current Treasury Board proper is variously called the "general manager," "employer" and management board." The portfolio centre is the Secretariat (called central agency and budget office in the Report on Plans and Priorities for 2005-2006). The portfolio bodies are the new Public Service Human Resources Management Agency Canada (PSHRMAC) and the amalgamated training function now called the Canada School of the Public Service (formerly the Canadian Centre for Management Development, Training and Development Canada, and

Language Training Canada). With the advent of PSHRMAC in December 2004, the Public Service Commission (formerly Civil Service Commission) is restricted to recruitment, audits and investigations, plus policies on merit, partisanship and representativeness. It had already delegated most of its powers in staffing to departments. For the time being it still appoints the members of the higher public service, known as the Executive, or EX, group, but this will change when the amendments to the *Public Service Employment Act*, incorporated within the new *Public Service Modernization Act*, come into force in December 2005. Deputy heads will take over delegated authority to appoint EX-01 to EX-05 officers, with the exception of EX-level appointees to ministerial staffs.

Changes to the *Financial Administration Act* (FAA) range from formal to substantial, with about 20 new lines of text on “human resources management” responsibilities added to that Act. A formal change is the new section 7(1) (e), removing the phrase “personnel management” and replacing it with “human resources management.” The more substantial changes are elaborated on the PSHRMAC website. These relate to the human resources management powers of Treasury Board and deputy heads for the “core public administration” or permanent public service as detailed in the schedules (I, IV). Section 11 includes ten responsibilities for Treasury Board (for example, human resource planning, classification, pay determination, travel expenses, equity, wrongdoing and harassment policies, and terms and conditions of employment). In section 12 are found six responsibilities for deputy heads (training, awards, discipline/penalties, and termination of employment). These changes were in place as of April 1, 2005.

Given that the President of the Treasury Board now controls human resources management functions, it seems reasonable to give him or her a second title, Minister for the Public Service. There is a formal precedent in Canada for a Minister to head the public service. Minister

Massé in 1995 held the title, Minister Responsible for Public Service Renewal. Deputy prime ministers have executed the functions without the title. Indeed, the President of the Treasury Board, given his leadership of the Secretariat, of the new human resources management agency (PSHRMAC), and of the amalgamated Canada School of the Public Service, is already the *de facto* Head of the Public Service. Further, under section 12.4 of the FAA as amended in November 2003, the President is obliged to report annually to Parliament on the administration of human resources, a report that could be modelled on the annual reports of the first three or four heads. It would therefore appear appropriate to behead the Clerk.

- *Another title that should be removed from descriptions of the Clerk and Secretary to Cabinet's role is the informal one: "DM to the PM."*

The Prime Minister gained no appreciable powers when he was designated Minister Responsible for the Privy Council Office, because the Prime Minister already holds the prerogative to act within any other Minister's portfolio and leads Cabinet by virtue of prerogative powers. The Clerk and Secretary to Cabinet thus has, without the "DM to the PM" publicity, the duty to support the Prime Minister in his or her understanding of the structures and status of administration and policy implementation in all departments of government. In short, the "DM" title is redundant. In addition, there is a lack of restraint in brandishing the title. It seems to imply an unlimited power acquired through access to the Prime Minister. As one interviewee said, Gordon Robertson, as a kind of gold standard as Clerk, would have been offended to be called "DM to the PM." The Clerk is before anything else the guardian of the system of responsible government, which includes Cabinet government.

- *A final title change could be the change from Clerk of the Privy Council to Cabinet Secretary, a more modern and understandable title.*

The Privy Council is the collection of all living persons who have been ministers of the Crown. The active part of the Privy Council is a committee whose quorum is four ministers that meets to pass subordinate legislation, subject to the signature of the Governor General. The title, Clerk of the Privy Council, implies that the Clerk's main duty is to serve the latter organization. Likewise, Privy Council Office as the Cabinet Office should be renamed as such. The small unit serving Council could become something like the Privy Council Secretariat. Although this is a minor and cosmetic change, it would assist the Canadian public—increasing numbers of whom are first-generation immigrants—to develop an understanding of this important role and organization. It would be the beginning of a response to Richard French's complaint, cited in the first lines of this paper, about the lack of intelligibility in the way the Canadian political institutions are presented to citizens.

7.2

Theme: Buttress the Integrity of the Centre

- *The seniority of the Clerk in relation to other deputy heads should be linked to his or her role as the final guardian of conventions of the Constitution and the machinery of Government.*

The Clerk is responsible for machinery of Government. Given the centrality of organizational arrangements and the relationships that obtain between actors, someone has to be responsible to assess the constitutionality and prudence of reforms. Public sector reform is public policy like any other, as important as health or education, and even more important because reforms can bring about qualitative changes to what “can” be done under a particular system. Therefore, reforms must be thought about against standards of prudence, reversibility, institutional insurance (whether one has the resources to reverse the reform and repair the damage), and a number of other standards that would serve the interest of the Canadian people and ought

therefore to be of foremost concern to their representatives in Parliament.¹²⁵ As guardian of the regime and Constitution, the Clerk is truly senior.

- *Canada should consider whether to create a permanent Committee on Standards in Public Life, similar to that established in Britain in 1994, known at that time as the Nolan Committee. (See Appendix B at the end of the study for an assessment of its first ten years.)*

The Prime Minister of the day, in announcing the permanent Committee on Standards in Public Life, dubbed it an “ethical workshop called in to do running repairs.”¹²⁶ The idea of conducting repairs as a system reveals its flaws is pragmatic.

The UK Committee on Standards in Public Life is an advisory non-departmental body sponsored by the Cabinet Office. Less cumbersome and expensive than a Royal Commission, lighter, broader, faster and cheaper on any cluster of topics than a judicial inquiry, the Committee is able to identify its own issues and concerns in relation to the conduct of any group in public life—Britain having a unitary government and belonging to the European Union, this scope can be allowed—and to make any recommendations it deems appropriate. In Canada, such a Committee, adjusted to the federal jurisdiction, could help educate MPs, House committees, the media and the public about the Constitution and our representative institutions. It would also introduce the idea of vigilance in respect to institutional development.

- *The Commission should remind politicians that they can reduce political risk by establishing a self-governing mechanism—perhaps run by Treasury Board—to conduct random audits of contracting in ministerial offices as well as random audits of small-budget organizations overlooked by the OAG, and by this means reduce political risk.*

Canadian federal politics are increasingly “character politics,” where the Opposition and the media challenge the moral fitness of governments

to govern, as opposed to challenging policies or ideologies.¹²⁷ Events that can arguably be construed as scandalous are reconstructed as narratives on haphazard collections of facts. The deal offered the Government by media and Opposition in return for allowing the House to function is that a targeted Minister must resign. Resignation confirms “guilt” and, also, the Opposition and media’s construction of events. Refusal of resignation by the Government confirms its amorality. Yet ministerial responsibility is much more important than this “shooting gallery” approach indicates.

In each Government there will be several ministers who have little or no previous experience of Government. In each Government, particularly in the light of the huge size of Canadian cabinets, there will be some ministers who lack judgment or a sense of self-restraint in relation to available perquisites. Among the political appointees to head small agencies, there will be some individuals who will abuse their budgets and expense accounts. Therefore, it seems appropriate that Treasury Board as the group of ministers should be responsible for establishing deterrence against political missteps. One idea might be to compile lists of all contracts entered into in ministerial offices, then choose from among the census of contracts a random sample that would be audited by Secretariat officials. The mere provision would act as a deterrent to poorly judged behaviours. Each quarter, non-departmental entities could similarly be selected by random sampling for review. The government would be seen to be in charge of its own performance. Individual ministers with doubts as to the possible perception of a proposed contract could ask the Treasury Board for an approval. To address the high turnover of staff in ministers’ offices, mandatory training in the *Financial Administration Act* and contracting rules could be offered to any staff who might want to initiate contracts.

Treasury Board ministers could report periodically to the Prime Minister, disclosing cases where exceptions had been granted for

particular ministers or Order in Council appointees. The Treasury Board reports should ensure that events are considered within the fiscal year. The ideal would be to put to rest issues of fiscal probity in relation to particular ministers in the year or year after the actions were proposed or taken. The Government would characterize itself by its corrective action, which is how responsible government is intended to work. The Office of the Auditor General might be inspired by Treasury Board's timeliness to conduct more of its own work within the supply cycle of the House of Commons.

- *Devise a version of the British Accounting Officer provision to prevent clashes over potentially illegal or clearly unwise expenditure by ministers.*

The Accounting Officer convention appears to be useful in Britain because of its context: a non-partisan and public interest-oriented Public Accounts Committee; National Audit Office legislation forbidding the Comptroller and Auditor General from commenting on government policy; a National Audit Office that shows self-restraint in development of its own public role, uses careful language, and defers to the Public Accounts Committee; and a quality press that follows Parliament closely, combined with large numbers of scholars who are acutely interested in institutions and who publish books and articles on institutions. In Canada, none of these conditions is met. The last great scholars of Canadian political institutions are gone or retired, and too few younger scholars aspire to replace them. The danger that everything surrounding the Accounting Officer provision would be scandalized seems acute.

However, it may be possible to realize the goals of such a reform if the goal were prevention as opposed to punishment. For example, the parties to a dispute over the probity of an expenditure the Minister wished to make could report their differences to the President of the Treasury Board and the Prime Minister and Clerk *before* the transaction in question was made. The Government could then review the situation

and take a decision on what would be allowed. Having done so, it would then bear the responsibility collectively in the House of Commons.

8 Closing Thoughts

One must admit, in reference to all Westminster governments, that the scope of democratic control by the House of Commons is too small and operates too sporadically to control the executive. In Canada, the dominant Opposition parties and House committees are too partisan to devote real effort to protecting the public interest in good government. But the lack of power in the House of Commons cannot be remedied by neutering the executive; that would leave us with bureaucratic government. Neither can the lack of interest in the population in exercising their civic duties of voting and reacting to events be remedied by handicapping the executive. The “government by the media” would only be accelerated by attacking power in the one area in which it is consolidated. While executive-centred government has long been criticized as “executive dictatorship,” it is the form of government that we have, and the one that we know—more or less—how to operate. Executive-centred government in Canada, despite large gaps in the supply of talented politicians, and almost no tradition of career politicians (ranking ministers in Government who will serve in Opposition), has supplied stable government, prosperity and some redistribution of wealth; and it has kept us out of quarrels that the majority of citizens did not want to enter. It could be worse. Therefore, changes and reforms should be undertaken with caution, and with the engagement of the Clerk and Secretary to Cabinet. This is not to say that no changes should be made. But reforms should be planned experimentally and implemented one at a time where that makes sense, such that unwanted consequences can be recognized and reversed. Once again, management policy is public policy, affects what can be done in all areas of government activity, and should therefore be attended to with the utmost seriousness.

Appendix A:

Periods in Office for Secretaries to Cabinet in Canada, UK and Australia

Name	Period in Office	Tenure*
Canada		
Gordon Robertson	1963-1975	12 years
Michael Pitfield	1975-1979, 1980-1982	8 years
Marcel Massé	1979-1980	1 year
Gordon Osbaldeston	1982-1985	3 years
Paul Tellier	1985-1992	7 years
Glen Shortliffe	1992-1994	2 years
Jocelyne Bourgon	1994-1999	5 years
Mel Cappe	1999-2002	3 years
Alex Himelfarb	2002-	
United Kingdom		
Burke Trend	1963-1973	10 years
John Hunt	1973-1979	6 years
Robert Armstrong	1979-1988	9 years
Robin Butler	1988-1998	10 years
Richard Wilson	1998-2002	4 years
Andrew Turnbull	2002-2005	3 years
Gus O'Connell	2005-	
Australia		
John Bunting	1959-1968, 1971-1975	14 years
Lennox Hewitt	1968-1971	3 years
John Menadue	1975-1976	1 year
Alan Carmody	1976-1978 (died in office)	2 years
Geoffrey Yeend	1978-1986	8 years
Michael Codd	1986-1991	5 years
Michael Keating	1991-1996	5 years
Max Moore-Wilson	1996-2002	6 years
Peter Shergold	2002-	

* The tenure of each official fits between the years cited and has been rounded to the nearest year.

Appendix B:

The U.K. Committee on Standards in Public Life*

The Committee on Standards in Public Life has made a difference—on the whole for the good. Created in response to a political crisis over ‘sleaze’ in autumn 1994, it has survived to cope with the era of ‘spin’, and, now, worries over cronyism. The Committee was, and is, necessary because the normal political processes have not devised generally acceptable ways of dealing with ethical problems in the public sector. A decade ago, the House of Commons had failed lamentably to respond rapidly and effectively enough to charges about MPs’ financial conflicts of interest. The same was true over public appointments and the financing of political parties. So finding a solution had to be farmed out to an independent committee of the good and the great. Like all committees, there have been passengers, often rather too many. Eminence in one part of public service has been no guarantee of insight or shrewdness about broader questions of standards. The Committee should have a few more daring and unconventional members.

A more serious fault was the failure in the first few years to commission any research into either public views or the extent of ethical problems. It was a very British process of relying upon the opinions of witnesses, rather than facts. That omission has been partly remedied in recent years by the research into public attitudes and other surveys. Nonetheless, the Committee has had a positive impact. The revamped system of Commons self regulation and disclosure is now operating pretty well, despite a blip in 2000-01 and subsequent adjustments (recommended by the Committee). Similarly, the establishment of the Electoral Commission to oversee the conduct of elections and the finances of parties, has been an undoubted plus. A more qualified verdict can be given about the procedures for public appointments (the Nolan rules).

The most successful of the Committee’s proposals have been increased transparency and disclosure: on MPs’ financial interests, the funding of parties etc. The least effective and most controversial have been the

new regulatory mechanisms. The two are linked since, obviously, disclosure has to be policed. But there are legitimate complaints from parties and local councillors about disproportionate regulatory burdens, particularly when dealing with voluntary and part-time office holders, like local party treasurers or parish councillors. Some of that is not the Committee's fault since its proposals have been 'gold-plated' in both subsequent legislation and implementation. Some of the questions of balance were addressed in the Tenth Report in January 2005.

The Committee's biggest impact has been outside central Government: on Parliament, local councils and the political parties. Whitehall, and particularly the centre (10 Downing Street and the Cabinet Office) have resisted suggested new rules or safeguards which the Prime Minister and Cabinet Secretary fear might cramp their freedom of manoeuvre. In general, the Committee has been right and the Government wrong. Tony Blair would have saved himself lots of grief if he had adopted the Committee's recommendations for an independent ethical adviser to ministers and for a permanent panel of investigators, as well as a *Civil Service Act*. And, now, there is conflict over the procedures for public appointments.

One consequence has been an evolution in the Committee from being a solver of the establishment's problems—during the chairmanships of Lords Nolan and Neill—to becoming more of a thorn in the side of Whitehall. The Committee has become the ethical conscience which Whitehall would rather not have, joined often by other independent monitors like the Civil Service Commissioners and the Public Appointments Commissioner (in itself created following a recommendation of the Committee). At times, it seems that the Cabinet Office would rather that the Committee just faded away. But problems of trust and standards in public life have not gone away. The Committee is still needed.

* "The First Ten Years," by Peter Riddell, Chief Political Commentator, the *Times* (UK). *Annual Report on the Committee on Standards in Public Life 2004*, p. 6.

Endnotes

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- * Visiting Professor, Public Administration Program, School of Political Studies, University of Ottawa. I would like to give special thanks for their help to my colleagues David Elder from Queen's University, and K.P. Joseph of Trivandrum, Kerala, India; and also to C.E.S. Franks of Queen's University, and Donald Savoie of the University of Moncton and Director of Research for the Commission. Lindsay Aagaard of McGill provided such efficient and intelligent research assistance that I am convinced she will go far. More than a dozen friendly colleagues gave me their time to talk about the heart of this assignment. They know who they are. Writing was completed in October 2005.
- ¹ Richard D. French, "Privy Council Office: Support for Decision Making," in *The Canadian Political Process* (3rd ed.), ed. R. Schultz et al. (Toronto: Holt, Rinehart and Winston, 1979), pp. 363-94. Canadians must also be able to decode our successive governments' tendencies to seize upon vestigial titles and bring them to back to life in different forms and sometimes startling vitality. For example, the title, President of the Privy Council, a non-governing body in its entire membership, has recently been used for the Minister who is Leader of the Government in the House of Commons, a lively job, and for the Minister of Intergovernmental Affairs. Earlier, this ministerial office, called by J.R. Mallory a "near sinecure," had since 1896 been almost always held by the Prime Minister. See J.R. Mallory, "Cabinets and Councils in Canada," *Public Law* (1957): 231-51.
 - ² Peter Hennessy, "The Importance of Being Collective: Cabinet Government since 1945," a talk delivered at Queen's University on June 21, 1995, p. 3. See also Rodney Brazier, *Ministers of the Crown* (Oxford: Clarendon Press, 1997), p. 6. Brazier's reading of the *Gazette* has the Prime Minister entering after the Archbishop of York, but what matters is that this is the first formal recognition of the Prime Minister's position as premier. Brazier's first chapter on the composition of government explains the old titles that grew out of the Royal Household, many of which now serve as sinecures in the gift of the Prime Minister to allow important politicians to pursue particular projects as ministers.
 - ³ See John P. Mackintosh, *The British Cabinet* (London: Stevens and Sons, 1977).
 - ⁴ Gregory Tardi, *The Legal Framework of Government* (Aurora, Ontario: Canada Law Books, 1992), p. 83.
 - ⁵ Peter Aykroyd, "To Swell a Progress" (Ottawa: Privy Council Office, March 1974), p. 13. David Elder brought this useful and original work to my attention.
 - ⁶ I very much regret that, owing to time constraints, I was able to interview only three persons who had served as Clerk. However, as the views communicated by these interviewees, 10 others (most of whom had served in PCO and TBS senior positions) and a senior journalist were generally convergent in content, I believe that the insider material, on balance, complements the literature review and provides a solid interpretation of the evolution of the Clerk's role and what is possible for a Clerk to accomplish.
 - ⁷ Lindsay Aagaard conducted a search on the print media coverage of the Clerk (Canada) and Secretary to Cabinet in the UK using the *Globe and Mail* and *Times of London* back to 1985. She also compiled changes in roles and legislation. Work on the media review in Australia was suspended owing to time pressures and lack of user-friendly search tools.
 - ⁸ W.E.D. Halliday, "The Privy Council Office and Cabinet Secretariat in Relation to the Development of Cabinet Government," *Canada Year Book* (Ottawa, 1956), p. 62.
 - ⁹ W.E.D. Halliday, "The Executive of the Government of Canada," *Canadian Public Administration* (December 1959): 229.
 - ¹⁰ *Ibid.*

- ¹¹ Peter Hogg, *Constitutional Law of Canada* (3rd ed.) (Toronto: Carswell, 1992), p. 15.
- ¹² *Ibid.*, p. 17.
- ¹³ Privy councillors from previous governments remain members of the Privy Council for Canada. Other persons may be appointed as councillors as an honour. For this reason, only the privy councillors who have been appointed to positions in the current Government compose the Privy Council active in a current formal executive. See Margaret A. Banks, "Privy Council, Cabinet, and Ministry in Britain and Canada: A Story of Confusion," *Canadian Journal of Economics and Political Science*, 31 (May 1965): 193-205.
- ¹⁴ See J.L. Granatstein, *The Ottawa Men: The Civil Service Mandarins, 1935-1957* (Toronto: Oxford University Press, 1982), pp. 196-97, 202-203, for interesting details on how Heeney won his argument with Prime Minister King, despite opposition from Cabinet, to combine the Clerk job with the new non-partisan job of Secretary to Cabinet.
- ¹⁵ The Governor-in-Council appointment of the Clerk is provided for in the *Public Service Employment Act*, s. 40 (a). Tardi, *Legal Framework of Government*, p. 139, 14.3.
- ¹⁶ Peter Aykroyd, p. 5.
- ¹⁷ A.D.P. Heeney, "Cabinet Government in Canada: Some Recent Developments in the Machinery of the Central Executive," *Canadian Journal of Economics and Political Science* 12 (August 1946): 282.
- ¹⁸ *Ibid.*, Appendix A, "Functions of the Prime Minister," Order-in-Council P.C., 1853, May 1, 1896: 298-99.
- ¹⁹ Privy Council Office, "The Responsibilities of the Privy Council Office," p. 4, <http://www.pco-bcp.gc.ca> and search for the document title.
- ²⁰ Tardi, *Legal Framework of Government*, p. 87, 8.3.2.
- ²¹ Crossman set out his argument in the introduction to the following edition of Bagehot: Walter Bagehot, *The English Constitution* (London: Fontana, 1963).
- ²² For more detail, see Donald J. Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics* (Toronto: University of Toronto Press, 1999). Savoie analyzes the previous 30 years. For an interesting if idiosyncratic long comment on Savoie, see Lorne Sossin, "Speaking Truth to Power? The Search for Bureaucratic Independence in Canada," *University of Toronto Law Journal*, 55 (winter 2005): 55-59.
- ²³ Mallory, "Cabinets and Councils," p. 236.
- ²⁴ See, for example, Herman Bakvis, *Regional Ministers: Power and Influence in the Canadian Cabinet* (Toronto: University of Toronto Press, 1991).
- ²⁵ Mallory, "Cabinets and Councils," p. 236.
- ²⁶ All information in this section is taken from Government of Canada, Privy Council Office, *Report on Plans and Priorities 2005-2006*, web page version.
- ²⁷ It is unclear at time of writing whether the junior ministerial job, Minister of Official Languages, will move to Treasury Board's portfolio, following the management responsibility for the function.
- ²⁸ Gordon Osbaldeston, *Keeping Deputy Ministers Accountable* (Toronto: McGraw-Hill Ryerson, 1989), p. 55.
- ²⁹ "Responsibilities of the Privy Council Office."
- ³⁰ Simon James, "British Cabinet Government" (London and New York: Routledge, 1992).
- ³¹ "Responsibilities of the Privy Council Office."
- ³² *Ibid.*
- ³³ The PCO has responsibility for: maintaining a performance-management and succession-planning system developed in the mid-1990s; assisting PMO with any recruitment activities for Order-in-Council vacancies; management of a classification and compensation system and awards. See the PCO website, <http://www.pco.gc.ca>.

- ³⁴ Information based on two interviews conducted with former PCO senior officers: June 11 and July 31, 2005.
- ³⁵ Interview, September 19, 2005.
- ³⁶ In Australia the equivalent top-layer appointees serve for a specific term of up to five years.
- ³⁷ Halliday, "The Executive," p. 234.
- ³⁸ Tom Blackwell, *Ottawa Citizen*, September 15, 2005: A5. Minority governments occur more frequently than Ms. Clarkson believes, and may continue for some time from the current minority as they reflect the public standing of political parties. According to the Library of Parliament's web document, "Duration of Minority Governments 1867 to Date," minority governments were elected in the following years: 1921, 1925, 1957, 1962, 1963, 1965, 1972, 1979 and 2004, many lasting for a couple of years while others for only months.
- ³⁹ www.gg.ca
- ⁴⁰ Brazier, *Ministers of the Crown*, p. 146. The historical material is drawn from the web version of *Britannica*, sections of which are posted on the UK's site (<http://www.cabinetoffice.gov.uk>).
- ⁴¹ See the site for The United Kingdom Parliament: www.parliament.uk
- ⁴² The title First Lord of the Treasury dates from medieval times, when the Government was consolidating its control and administration of finance. It sometimes became convenient to appoint a group of commissioners to carry out the duties of the Lord High Treasurer. In the commission, which operated into the 18th century, the first-named commissioner held the title First Lord of the Treasury, and other members were Lords Commissioners. When this board wound up, evolving into government whips, the biggest role in financial affairs was taken over by the incumbent of an office called the Chancellor of the Exchequer, who fills that role today. The prestige and gifts controlled by the First Lord made him the *de facto* manager of the emerging Cabinet when, by coincidence, just after the death of Louis XIV in 1715, the title *Premier Ministre* was recognized in France by royal decree. This was seized on and used in Britain as an insult, because a notable faction of politicians and constitutional thinkers resisted the idea of a "first" or "sole" minister. Its eventual acceptance did, however, clarify the political situation. At present, the superfluous title, First Lord, is cemented in place by the *Ministers of the Crown Act* of 1937. This Act provides a salary for "the Prime Minister and First Lord of the Treasury." See Brazier, *Ministers of the Crown*, pp. 5-6.
- ⁴³ At time of writing, two versions were under consideration.
- ⁴⁴ "Prime Minister's Speech on Reforming the Civil Service," 24.02.04, Downing Street press release, as cited in Peter Hennessy, "Rulers and Servants of the State: The Blair Style of Government 1997-2004," *Parliamentary Affairs* 58, 1 (2005): 8. Hennessy's basic message is that, under Blair, Cabinet is either supine or not present for major decisions, many of which take shape in day-long rolling meetings of variable composition, which move between Downing Street and the private quarters. Hennessy cites the Hutton Inquiry to devastating effect. Jonathan Powell, the Prime Minister's Chief of Staff, reported to Lord Hutton that, on consulting his diary, he had established that the "usual pattern is about three written records" for about 17 meetings a day. See Hennessy, p. 12, citing the Hutton Inquiry Transcript at 18.8.03.
- ⁴⁵ There is at present "no formal description" of the "two distinct roles" of the Cabinet Secretary and Head of the Home Civil Service (personal communication to the author from Mr. Mark Talbot, Cabinet Secretary's Office, May 24, 2005). There is likewise no evidence that the Head produces an annual report on his or her activities. Except where otherwise noted, all material on the operations of the Cabinet Secretariat is from the dedicated site www.cabinetoffice.gov.uk.com. The Wikipedia site (www.wikipedia.com?cabinetsecretary) provides a description of the Cabinet Secretary role.
- ⁴⁶ Brazier, *Constitutional Practice* (Oxford: Oxford University Press, 1999), p. 102.
- ⁴⁷ See <http://www.number-10.gov.uk> and also the Cabinet Office through the Government portal.
- ⁴⁸ C.E.S. Franks, "The Head of the Public/Civil Service in Britain and Canada: Relations between Politicians

- and the Bureaucracy”; a paper prepared for the SOG Conference on the theme of “State, Civil Society and Administration: Their Interface,” co-sponsored by Bangalore University and the Research Committee on Structure and Organization of Government, International Political Science Association (Bangalore, March 2000, p. 3), citing House of Lords Debates of 25 November 1942 et seq., as reproduced in G. H. L. Le May, *British Government, 1914-1963: Selected Documents* (London: Methuen, 1966), pp. 273-79.
- ⁴⁹ Franks, “Head of the Public/Civil Service,” p. 6.
- ⁵⁰ Kevin Theakston, “William Armstrong,” chapter 8 in *Leadership in Whitehall* (New York: St. Martin’s Press, 1999), pp. 183-84.
- ⁵¹ *Ibid.*, p. 13.
- ⁵² James, *British Cabinet Government*, p. 201.
- ⁵³ Theakston, “William Armstrong,” p. 15.
- ⁵⁴ Mark Bevir and R.A.W. Rhodes, *Interpreting British Governance* (New York: Routledge, 2003), p. 84.
- ⁵⁵ *Ibid.*, pp. 130-32.
- ⁵⁶ Brazier, *Constitutional Practice*, pp. 180-81, 184.
- ⁵⁷ See House of Commons Information Office, “Statutory Instruments: Fact Sheet L7, Legislative Series,” revised June, 2005, p. 10.
- ⁵⁸ Orders granted at Privy Council are available on the Privy Council Office site, without the discussion.
- ⁵⁹ Baroness Amos, born in Guyana in 1954, is the first Black woman to sit in the British Cabinet, and the second Black person to do so. She is one of three Black peers in the House of Lords. She was appointed a life peer by the Labour Government in 1997, serving first as Government Whip in the Lords and as a member of a European Union Subcommittee on social affairs. When Clare Short resigned in early 2003 to protest the Prime Minister’s approach to the Iraq war, Baroness Amos was appointed Secretary of State for International Development and took a seat in Cabinet. Less than six months later, the then-Leader of the House of Lords died suddenly, and Baroness Amos was appointed to this post. Her background is in local government and social services and social justice.
- ⁶⁰ See chapter 4, “Fragmented Government,” in Peter Aucoin, *The New Public Management—Canada in Comparative Perspective* (Montreal, IRPP, 1995). See <http://newsvote.bbc.co.uk> and search on “Baroness Amos.”
- ⁶¹ Government of Canada, *Public Service 2000: The Renewal of the Public Service of Canada* (December 1990), p. 4.
- ⁶² *Ibid.*, p. 34. This reduction came from costs for accommodation, supplies and travel (\$6.4 billion), for administration of the personnel function (\$2 billion), and from the public service payroll (\$10 billion).
- ⁶³ Government of Canada, *Public Service 2000: Second Annual Report to the Prime Minister on the Public Service of Canada* (March 25, 1994), p. 3. See also John Fryer, *First Report: Advisory Committee on Labour Management Relations*, 2000, paragraph 1.3, “The Public Service at a Crossroads.”
- ⁶⁴ PS 2000 recommended reducing the 72 occupational groups and 106 subgroups to 23 and 8, respectively, as well as negotiating consolidation of the 78 bargaining units and more than 840 pay rates and 70,000 rules for pay and allowances. Canada, *Annual Report of the Auditor General 1996, The Reform of the Classification and Job Evaluation in the Public Service*, chapter 5, paragraph 5.7.
- ⁶⁵ *Public Service 2000: Second Annual Report*, pp. 8-9.
- ⁶⁶ *Ibid.*, p. 2.
- ⁶⁷ It could be argued that there is a need for a corporate level communication to address a phenomenon that Franks identified in 1987. The largest number of public servants, he says, see Parliament as a distant and unimportant control, C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), pp. 233-34.

- ⁶⁸ On the other hand, at least two of our Treasury Board secretaries, both respected intellectuals, have written on the Secretariat and many other topics. I have in mind Al Johnson and Ian Clark.
- ⁶⁹ Gordon Robertson, "The Changing Role of the Privy Council Office," *Canadian Public Administration*, 14 (winter 1971): 487-508.
- ⁷⁰ Paul Tellier, "L'évolution du rôle du Bureau du Conseil privé et du secrétaire du Cabinet," *Administration publique du Canada* 15 (été 1972) : 377-82.
- ⁷¹ Michael Pitfield, "The Shape of Government in the 1980s: Techniques and Instruments for Policy Formulation at the Federal Level," *Canadian Public Administration*, 19 (spring 1976): 8-20.
- ⁷² Robertson, "The Changing Role": 500.
- ⁷³ *Ibid.*, 506.
- ⁷⁴ *Ibid.*, 507.
- ⁷⁵ Pitfield, "The Shape of Government": 11. The NPM goal to improve the capacity of politicians to control the shape and direction of policy and its implementation is laudable. In fact, one can judge the various institutional forms developed to give the population some control over policy against this criterion.
- ⁷⁶ *Ibid.*, pp. 13-14. Denis Smith is a critic of the belief that social indicators and systems theory could replace the judgmental elements embedded in management in government as expressed by Thomas D'Aquino in his article, "The Prime Minister's Office: Catalyst or Cabal?" *Canadian Public Administration* 17 (spring 1974): 555-79. Smith cites D'Aquino's claim that in the Trudeau PMO from 1968 to 1972, "scientifically based political analysis came to supplement raw political intuition." Smith responds that "the outward evidence is that the process failed badly from 1968 to 1972, and he provides a list of examples. Smith's conclusion on D'Aquino's faith in systems theory is worth repeating: "[T]he paper has a certain tone of technocratic and managerial utopianism, vintage Trudeau '68-'72, which implies that politics is above all a matter of technique. Mr. D'Aquino perhaps aims at a system in stable equilibrium without great disruptive tensions. But a democratic political system cannot be a 'system' in that sense." Denis Smith, "Comments on 'The Prime Minister's Office: Catalyst or Cabal?'" *Canadian Public Administration* 17 (spring 1974): 82-84.
- ⁷⁷ Charlotte Gray, "The Fixer," *Saturday Night* (December 1985): 13-14, 16-17.
- ⁷⁸ Christina McCall-Newman, "Michael Pitfield and the Politics of Mismanagement," *Saturday Night* (October 1982): 24-44.
- ⁷⁹ Michel Vastel, "Miss Canada fait le grand ménage," *L'Actualité* (1er novembre 1994): 28-35.
- ⁸⁰ S.L. Sutherland, "Bossing Democracy: The Value-for-Money Audit and the Electorate's Loss of Political Power to the Auditor General," in *Rationality in Public Policy: Retrospect and Prospect, A Tribute to Douglas G. Hartle* (Canadian Tax Paper no. 104), ed. Richard M. Bird, Michael J. Trebilcock and Thomas A. Wilson (Toronto: Canadian Tax Foundation, 1999). Canadians are not alone in having implemented systems based on the idea that it is possible to measure results, or in loosening control without a technique to keep track of what is happening, but we have been slower than others in working to strengthen controls other than by attempts to assess results or (strategic) outcomes. J.R. Nethercote reports as early as 1989 on the "apologia" of the Finance Department secretary Michael Keating, who admitted in a debate that "measures of performance can in most cases only be an aid to judgment" and that managerialist changes there had "run ahead of progress in implementing external accountability requirements." See Nethercote's "The Rhetorical Tactics of Managerialism," *Australian Journal of Public Administration* 48 (December 1989): 364. The British have placed emphasis on targets—amelioration of defined problems—instead of results measurement or, its successor in federal Canada, "strategic outcomes." Targets are obviously much more immediate and measurable in comparison to strategic outcomes, now in fact largely handled in reports by extremely long narratives and descriptions. The resort to narrative clarifies the scope of the mistake made by the OAG and TBS in persisting under their "results" and "outcomes" policies.
- ⁸¹ McCall-Newman, "Michael Pitfield": 31.

- ⁸² Ibid., 34. Most of these ideas were coming forward from business applications where “policy” had a completely different meaning. Certainly they are the forerunners of the New Public Management.
- ⁸³ Gray, “The Fixer”: 14.
- ⁸⁴ Ibid.
- ⁸⁵ Ibid., 13.
- ⁸⁶ Ibid., 13-17.
- ⁸⁷ Government of Canada, *Public Service 2000: Renewal*, preface.
- ⁸⁸ Vastel, “Miss Canada”: 28-30.
- ⁸⁹ Ibid., 35.
- ⁹⁰ Ibid.
- ⁹¹ Sir Richard Wilson, “Portrait of a Profession Revisited,” *Public Administration* 81, 2 (2003): 367.
- ⁹² See Savoie, *Governing from the Centre*, pp. 121, 132-33, where he explains the “fixer” role as one of managing issues the Prime Minister finds sensitive, and managing both visible errors and invisible problems.
- ⁹³ Richard Mulgan, “On Ministerial Resignations (and the Lack Thereof),” *Australian Journal of Public Administration* 61, 1 (2002): 124. Mulgan explores the “many hands” problem in attributing blame.
- ⁹⁴ The Gomery Inquiry did not examine OAG personnel, including the audit team for PWGSC, about why they had overlooked the management of the sponsorship unit despite whistle-blowing in 1996 and troubling internal audit reports after that.
- ⁹⁵ David Taras, “The Mass Media and Political Crisis: Reporting Canada’s Constitutional Struggles,” *Canadian Journal of Communications*, 18, 2 (1993): 23. I used the online version (<http://info.wlu.ca/~wwwpress/jrls/cjc/BackIssues/18.2/taras.html>), so page references are approximate.
- ⁹⁶ Ibid., 3.
- ⁹⁷ It is worth remembering that “empowerment” rhetoric, which boils down to putting ends before means, was explicitly endorsed by the Auditor General of the day. See Ian D. Clark, “Distant Reflections on Public Service Reform in the 1990s,” in *Public Service Reform: Progress, Setbacks and Challenges* (Ottawa: Office of the Auditor General, February 2001).
- ⁹⁸ See S.L. Sutherland, “Biggest Scandal in Canadian History: HRDC Audit Starts Probity War,” *Critical Perspectives in Accounting*, 14 (2003): 187-224.
- ⁹⁹ The AG completed the audit of the three Groupaction contracts, referred her results to the RCMP, began her study of sponsorship and a government-wide audit of advertising, and completed the last task in November 2003.
- ¹⁰⁰ Mark Bevir and R.A.W. Rhodes, *Interpreting British Governance* (London: Routledge, 2003), p. 30.
- ¹⁰¹ Ibid., p. 82, citing Christopher Hood, “A Public Management for All Seasons?” *Public Administration*, 69: 3-19.
- ¹⁰² It was also felt that the Clerk could have given more public support for modern comptrollership and the new expenditure management system. In fact, there are single references in two annual reports (5th and 11th).
- ¹⁰³ For example, the first of PCO’s desired strategic outcomes is as follows: “The policy and program agenda of the Government of Canada are well coordinated and the Government is well structured to respond efficiently to the needs of Canadians” (*Privy Council Office, Report on Plans and Priorities, 2005-2006*). It would be impossible to apply evidence to disprove such a strategic outcome, short of some series of management catastrophes perhaps a hundred times more serious than the sponsorship events. On the other hand, the second goal dignified as a strategic outcome is that “[s]ubjects that need investigation or further study are handled independently from the Government.” Achieving this outcome involves only administrative decisions and resources.

- ¹⁰⁴ See, for example, Christopher Hood et al., "Regulation in Government: Has It Increased, Is It Increasing, Should It Be Diminished?" *Public Administration*, 78, 2 (2000): 283-304.
- ¹⁰⁵ David Cooper and Ken Ogata, "New Public Management Reforms in Canada: Success and Failure?" *Critical Perspectives on Accounting*, 14 (2003): 1. Cooper and Ogata are citing Christopher Pollit and G. Bouckaert, *Public Management Reform: A Comparative Analysis* (Oxford: Oxford University Press, 2000), p. 214.
- ¹⁰⁶ Cooper and Ogata, "New Public Management": 32-35.
- ¹⁰⁷ For example, Paul du Gay (ed.), *The Values of Bureaucracy* (Oxford: Oxford University Press, 2005). See also Matthew Flinders, *The Politics of Accountability in the Modern State* (Aldershot: Ashgate, 2001).
- ¹⁰⁸ Gordon Osbaldeston, *Keeping Deputy Ministers Accountable* (London, Ontario: National Centre for Management Research and Development, School of Business Administration, University of Western Ontario, 1988). Figure 4-2 on page 83 of this study puts the Minister and the Deputy Minister at the centre of a diagram in which no fewer than 20 classes of actors have their word to say, limiting the Minister and Deputy in their policy agenda.
- ¹⁰⁹ Mulgan, "On Ministerial Resignations (and the Lack Thereof)": 124.
- ¹¹⁰ *Ibid.*, 125, 126.
- ¹¹¹ Charles Polidano, "Why Bureaucrats Can't Always Do What Ministers Want: Multiple Accountabilities in Westminster Democracies," *Public Policy and Administration* 13 (spring 1998): 35-50.
- ¹¹² Gyorgy Gajduscek, "Bureaucracy: Is It Efficient? Is It Not? Is That the Question? Uncertainty Reduction, an Ignored Element of Bureaucratic Rationality," *Administration and Society* 34, 6 (January 2003): 700-701.
- ¹¹³ See, for example, the discussion on the civil service provided by Directgov at <http://www.directgov.uk> (Guide to Government/Central Government and the Civil Service/Government Departments)
- ¹¹⁴ The Prime Minister targeted the Lord Chancellor ostensibly because he is, and in Brazier's words, "a denial of the doctrine of separation of powers." The Lord Chancellor was and is a Minister. Before the changes he was Speaker of the House of Lords and head of the judiciary, and he sat as a judge in the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council. See Brazier, *Ministers of the Crown*, p. 4. The result of amendments in the House of Lords boiled down to saving the title, which will be used alongside Minister for Constitutional Affairs, and divesting all of the functions except for ministerial duties connected with the new organization.
- ¹¹⁵ Patrick Wintour and Clare Dyer, "Reshuffle Ends Job of Lord Chancellor: Blair Takes on Mantle of Radical Reformer as He Abolished 1,400-year-old Constitutional Role at a Stroke," *Guardian Weekly* (June 19-25, 2003): 8.
- ¹¹⁶ Robertson, "The Changing Role," 501.
- ¹¹⁷ David Hill of Cabinet Office's Propriety and Ethics Team, communication of September 22, 2003, in reply to my inquiry of September 3. Mr. Hill attached a scanned copy of the 1997 order, and explained that under the order, "the legal definition of a special adviser is a post where the holder is appointed by a Minister 'for the purpose only of providing advice to any Minister, and for a period which cannot extend beyond the end of an Administration.' The effect of the 1997 order is to remove the restriction confining the three posts in No. 10 to the 'provision of advice,' which thus enables them to exercise executive powers."
- ¹¹⁸ Great Britain, *Ninth Report of the Committee on Standards in Public Life* (chair: Sir Nigel Wicks), "Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service" (April 2000, Cm 5775, Wicks, chapter 7, "Special Advisers," webversion).
- ¹¹⁹ *Committee on Standards in Public Life*, "Changes to the Law on Special Advisers" (PN170, 19 July 2005), and "Revision of the Code of Conduct for Special Advisers" (PN171, 21 July 2005).

- ¹²⁰ *Ninth Report on Standards in Public Life*, chapter 6, "The Permanent Civil Service," subsection entitled, "Working Relationships: The Principal Private Secretary." The recommendation that principal private secretaries should continue to be permanent civil servants is preceded by the statement: "It is especially important that it is a politically impartial civil servant who has the responsibility for ensuring that the Minister has the full range of governmental advice affecting his or her duties."
- ¹²¹ Earlier this year, a British pharmaceuticals industrialist donated £50,000 to the Labour Party, was subsequently made a Lord in the Prime Minister's Honours List, and then made a second donation of the same amount. His firm was then awarded a huge untendered contract. See Michael White, "On May 1 Paul Drayson Was Given a Peerage. On June 17 He Gave Labour a £50,000 Cheque," *Guardian*, August 25, 2004, <http://politics.guardian.co.uk> (search "archives" on "Paul Drayson"). The *Guardian Weekly* reported in its issue of August 26 to September 1, 2005, that recently released documents reveal that the British Ministry of Defence had awarded the biggest nuclear construction project in Europe to the company DML, part owned by Halliburton, in the face of warnings and objections by MOD officials. Officials concluded in their assessment that DML failed eight of 10 criteria of competence for the project. The contract was awarded in the 1990s, costs have now doubled to almost a thousand million pounds, and the contract will run at least another five years. *The Guardian Weekly*, "Halliburton Just Keeps Raking It In": 12.
- ¹²² The sponsorship frauds are not even particularly large; they are important because of the potential political connections. See Hugh Winsor, "When the Crime Has No Punishment," *Globe and Mail*, May 30, 2005: A4. Winsor notes, among other frauds in which senior management has taken little interest in unravelling the mechanisms and publicizing them as lessons, that of a \$58,000-a-year employee of the Department of National Defence who took more than \$100 million from a single computer services contract.
- ¹²³ Franks, "Head of the Public/Civil Service," p. 21. Parenthetically, it is interesting that a minority government whose very existence has been hotly contested in the House of Commons since the release of the AG's commissioned audit report on Sponsorship in March 2002 can muster the power and confidence for these major reforms. The fact may well speak to the lack of interest of the Opposition parties in management policy as public policy.
- ¹²⁴ *Ibid.*, p. 19.
- ¹²⁵ Sharon Sutherland, "Braybrooke on Decision Making for Public Policy: Precautionary, Fair, Feasible and Ameliorative," in *Engaged Philosophy: Essays in Honour of David Braybrooke*, ed. Susan Sherwin and Peter Schotch (Toronto: University of Toronto Press, 2005), chapter 6.
- ¹²⁶ For more on the Committee, see <http://www.public-standards.gov.uk/default.htm>
- ¹²⁷ For example, see *Corruption, Character and Conduct: Essays on Canadian Government Ethics*, ed. John W. Langford and Allan Tupper (Toronto: Oxford University Press, 1993).

