
PART ONE

BACKGROUND

INTRODUCTION

At one of the consultations conducted by the Advisory Committee of this Commission before the preparation of this Report, a participant gave us a short paper that repeated several times, in bold capital letters, the phrase “Where were the parliamentarians?” It was a fair question, one that identified a key failure in the management of the Sponsorship Program: the failure of Parliament to fulfill its traditional and historic role as watchdog of spending by the executive branch of the Government. The failure was due to two factors: the invisibility, for all practical purposes, of the Sponsorship Program from the usual procedure for advance parliamentary approval of spending; and the imbalance that has developed between the power of the executive branch of the Government (represented in this case by the Prime Minister’s Office) and parliamentary institutions such as the Public Accounts Committee, which should be holding the executive to account for its administration of the public purse.

The Commission has given this second Report the title *Restoring Accountability*. As readers will see, the recommendations aim to restore accountability by rebalancing the relationship between the Government and Parliament, and by achieving greater transparency in the operation of government.

The Commission's Second Mandate

The *Fact Finding Report* released by the Commission on November 1, 2005 confirms the findings of the Auditor General's Report delivered two years earlier. It shows that the Sponsorship Program, initiated by the Government in the spring of 1996, had been seriously mismanaged. It also shows that there had been a breakdown in the assignment of accountability and responsibility for these failures.

The Commission's second mandate (Appendix A: Terms of Reference) is to make recommendations, based on the factual findings of its first Report, on a series of issues, including "the respective responsibilities and accountabilities of ministers and public servants as recommended by the Auditor General of Canada," on whistleblowing, on access to information legislation, and on the "adequacy of the current accountability framework with respect to Crown Corporations." The Commission is also asked to make recommendations "to prevent mismanagement of sponsorship programs or advertising activities in the future, taking into account the initiatives announced by the Government of Canada on February 10, 2004."

The present Report is concerned exclusively with the Commission's second mandate. It constitutes an ambitious agenda. The Commission is asked to make recommendations with respect to fundamental issues confronting contemporary government in Western society, issues such as transparency, accountability, the relationship between politicians and public servants, and the responsibilities that should be assigned to Parliament and to parliamentarians, the front-line guardians of the public interest.

Seeking the Views of Canadians

In addressing these issues, the Commission has been able to draw on the accumulated wisdom and experience of many persons. An Advisory Committee composed of prominent Canadians with broad experience in public policy (Appendix B) guided the Commission's research program and identified key issues for review (Appendix C). It sponsored 17 studies by leading scholars and practitioners on issues identified in the Commission's mandate. The Commission welcomed written submissions from groups, interested individuals, and government departments and agencies (Appendix D), and a special website was set up to register the views of citizens, who were invited to make comments and suggestions either on the website or in writing. Canadians responded with enthusiasm. The number of "hits" in answer to the questions posted on the website, and the quality of the suggestions made, exceeded expectations. A sample of this feedback is found in chapter 3.

The Commission's Advisory Committee held roundtable discussions in five Canadian cities with leading experts and persons experienced in government and public administration at various levels (Appendix E). They proved to be extremely helpful in generating suggestions and in pointing to potential pitfalls in shaping recommendations. All in all, the consultations produced valuable contributions that have assisted me in the preparation of this Report. Many of the persons who took part in these initiatives will be able to see evidence of their participation in the pages that follow.

The Need for Greater Accountability

Testimony heard at the public hearings during the inquiry phase permitted the Commission to ask a number of questions and to reach several conclusions. One of the most significant conclusions is that no one came forward to accept responsibility for the management or, more accurately, mismanagement of the Sponsorship initiatives. How is it,

the Commission asked itself, that Canada has, in theory, a system of responsible government, though no one is, in fact, prepared to accept responsibility when things go wrong? Ministers pointed their fingers at public servants, as did the exempt political staff in both the Prime Minister's Office (PMO) and the ministerial offices. Public servants, in turn, pointed their fingers at politicians and their staff, and sometimes at each other. On the face of it, it is tempting to conclude that the doctrine of ministerial responsibility has become a process of mutual deniability. This explains the present Report's underlying themes: assigning and clarifying responsibility, and restoring accountability in government. I have become convinced that clearer accountability, both inside government and between Government and Parliament, is an essential reform that can be accomplished only by rebalancing the relationship between Government and Parliament and by clarifying the relationship between public servants and the executive. Parliament's capacity to exercise its traditional roles of watchdog of the public purse and guardian of the public interest will have to be reinforced.

A few key conclusions need to be emphasized immediately. First, many Canadians told the Commission during the roundtable discussions, on the Commission's website, and in written submissions that more red tape and more regulations than exist at present should not be recommended. We should not equate accountability with increased controls and oversight. Second, several of the experts consulted stressed that Ministers and public servants prefer to focus on policy or management issues than on past failures or on new sanctions. Considering what happened in implementing the Sponsorship Program, we can appreciate why they want to look to the future rather than dwell on past performance. Policy and management are prospective, while accountability is retrospective. The focus on future changes and reforms as a means of pursuing the public interest should not obscure the fact that the public and parliamentarians, especially those in the Opposition,

want to emphasize the accountability of government for things that have gone wrong. Both points of view are valid.

Improving Accountability to Parliament

One of the most notable features of the Commission's *Fact Finding Report* is the almost total absence of any participation by Parliament or parliamentarians in the supervision of the Sponsorship Program and the advertising activities of the Government before the year 2000, when evidence of mismanagement began to appear publicly. The Sponsorship Program was initiated by the PMO, though the Department of Public Works and Government Services Canada (PWGSC) was to implement and administer it. Accordingly, the Prime Minister should have been accountable to Parliament for the public monies disbursed to finance the Program, which were, in its early years, under his control, and the Minister of PWGSC should have been accountable to Parliament for any failures in the Program's administration. Nevertheless, virtually no questions were put to either of them concerning what proved to be gross mismanagement of the Program for more than four years after its inception in February 1996.

Parliament failed to exercise its traditional role as watchdog of the public purse for two reasons. First, it was not informed of the Government's intention to fund sponsorships. For the first three years they were financed from a special reserve over which the Prime Minister had sole discretion, without Parliament having an opportunity to examine the expenditure. After that time, the monies were not adequately identified as being related to sponsorships in the Estimates leading to the appropriation of funds to PWGSC for that purpose. Second, public servants who might otherwise have brought administrative irregularities to light were obviously reluctant to raise questions about the administration of the Program because it was seen as a high priority of the all-powerful PMO.

These two factors, a general lack of transparency about government spending, and a reluctance by the public service to call attention to irregularities because of the increased concentration of political power in the PMO, are weaknesses in the present-day system of Canadian government. They have tended to appreciate in recent decades, leading to a reduction and a distortion of ministerial responsibility and accountability, compared with the way those concepts were defined historically. The deterioration of ministerial responsibility is directly related to a corresponding diminution of the role of Parliament as a counter-balance to the power of the executive in Canadian government.

One message has been continually emphasized in the consultations conducted by the Commission: there is a need to rebalance the relationship between Parliament and the Government. The capacity of Parliament to hold the Government to account needs to be restored and strengthened. This message was heard during the Phase 1 hearings, and it was repeated during consultations with the Advisory Committee and in the various research studies produced for the Commission. If the present Report succeeds in launching a public debate that leads to a rebalancing between Parliament and Government, the Commission, for that reason alone, may be considered a success.

A reinforcement of the traditional role of parliamentarians would tend to restore public trust and the confidence that Canadians should have in their political and administrative institutions. That confidence is currently at a low ebb. It would contribute to a renewal of the self-esteem and sense of worth that should be felt by Members of Parliament. It would also restore the public's respect for them.

Defining Accountability

The Commission launched its public consultation phase with the release of a discussion paper that sought input and comment on different issues. In this context it defined accountability as “the requirement to

explain and accept responsibility for carrying out an assigned mandate in light of agreed upon expectations.”

In spite of this definition and others, many people feel that there is a disconnect between how officials in Ottawa view accountability in government and how other Canadians view it. The Commission has heard, time and again, the opinion of Ottawa-based officials. It generally follows this line:

Accountability is neither about who is to blame nor about who will or will not accept responsibility for things gone wrong. It is not about why it is sometimes difficult for members of Parliament to figure out, in a particular case, who is responsible for a particular decision or for a particular course of action. The real question that should matter to parliamentarians is who is responsible before Parliament?¹

The view from other Canadians, expressed on the Commission’s website and at the roundtable consultations, focuses on the need to pinpoint who is responsible when things go wrong, and who is to blame. One respondent from Manitoba to the website wrote:

There should be real consequences to public officials being caught mismanaging public funds, such as job loss, pension loss (definitely no nice severance package) and even prison time. At present, they are given a slap on the wrist and allowed to continue on as before.

There is a remarkable lack of uniformity in the abstract definitions of responsibility, answerability and accountability offered by the Government, by career officials and by academics. A cynic would say that each definition depends on the interests of the person proposing it or the particular circumstances under which the definition is required. Elected and career officials are left to try to make sense of these concepts in practice, and this ambiguity can make life difficult for those working in government. Clear and simple definitions are needed.

Changing the Culture

The vast majority of public servants try, in good faith, to do their jobs properly and effectively, and the Canadian government system consists of solid political institutions with a long and distinguished history of public service. The Sponsorship Program involved only a tiny proportion of the annual expenditures of the Government. Its mishandling was an aberration. The majority of the expenditures of the federal government are well handled, and citizens usually get value for money from them. The success of Canadian political and administrative institutions depends in large part on those who are willing to serve the public and to make those institutions perform as they should. The Commission hopes that this Report will assist public servants in providing, in the public interest, better management of the affairs of state, and that this improvement will, in turn, strengthen the bonds between Canadians and their federal Government. It is not the Commission's intention to recommend radical solutions, a transformation of our parliamentary system, or a complete overhaul of the doctrine of ministerial responsibility. Rather, we propose to clarify that concept and, where mismanagement has occurred, to strengthen the capacity of those charged with holding people to account to do their job.

The problems in the administration of the Sponsorship initiatives were disturbing for two reasons: they revealed a breakdown of ethical standards, and they continued for so long without being stopped. However, more regulations and oversight agencies will not provide solutions to these problems. Managers must continue to have the responsibility for managing, but they should be more accountable for the use of their powers. The manner in which they are held accountable must give Canadians the assurance that the public service is meeting the standards required in modern administration. These must include both probity and political neutrality.

The *Fact Finding Report* describes in detail an administrative and political culture surrounding the Sponsorship initiatives which tolerated and even encouraged the contracting practices that led to abuse. That culture will have to change, but the transformation will not occur simply by hoping for it. A political or administrative culture is the product of the standards, values and perceptions of the participants, along with the forces and pressures on them from their working environment. The culture will not change until the attitudes of the participants change, and that will require a change in the environment.

The administrative culture that permitted the Sponsorship abuses will be improved only if there are strong motivations for Deputy Ministers, senior officials, and heads of agencies and Crown Corporations to put more emphasis on efficiency and probity in financial administration and on the willingness to accept responsibility. To make that happen, an environment must be created in which heads of the Government's administrative apparatus take seriously the responsibility they hold for management. They must know that they will be held accountable for any deficiency in their stewardship of the public purse. An enhanced role for Parliament and parliamentary committees in supervising and enforcing accountability for financial administration, including the accountability of senior bureaucrats, must be affirmed if this environment is to become a reality.

Parliament assigns powers and resources through statutes. It has a right and a duty to satisfy itself and the people of Canada, to whom Parliament is accountable, that each Minister and Deputy Minister uses these powers and resources as Parliament intended. Clear assignment of responsibility, coupled with effective and public accountability, should lead to changes in the administrative culture. If Ministers, Deputy Ministers, senior officials and heads of agencies and Crown Corporations are aware that greater transparency means they will be held accountable in a public and an effective way, and if the role of Parliament in enforcing

such accountability is strengthened, a change in the administrative culture should, in time, result, leading in the long run to a diminished need for central controls and regulations.

Outline of the Report

This Report has four parts. Part One outlines the reforms introduced by the Government since this Commission was established on February 10, 2004, and the suggestions the Commission heard from Canadians about what they felt should be done.

Part Two deals with accountability. It describes the fundamental constitutional, legal and administrative bases for the responsibilities and accountabilities of Ministers and senior public servants. It examines the capacity of Parliament to hold the Government to account for its policies, programs and spending, along with the need for change. It deals with matters of public service management and the need to assign responsibility and accountability more clearly. It reviews as well the role of the Prime Minister's Office, the Privy Council Office, and the Clerk of the Privy Council, who also acts as Secretary to the Cabinet. It also considers the role of Deputy Ministers.

Part Three deals with more specific issues, including the future management of advertising and sponsorship activities as well as lobbying. It assesses measures to improve transparency, including legislative initiatives pertaining to access to information, whistleblowing, sanctions related to failure to fulfill financial administration obligations, and appointments to the boards of Crown Corporations. And it also examines recent changes to the internal audit framework.

Part Four presents the Commission's consolidated recommendations, which are also found throughout the Report. They are designed to rebalance the relationship between Parliament and the Government, better assign responsibility and strengthen accountability in the public interest.

Endnote to Chapter 1

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- ¹ Testimony of James R. Mitchell, Canada, Senate, Proceedings of the Standing Senate Committee on National Finance, Issue No. 28 (September 28, 2005), p. 7.

