

THE GOMERY COMMISSION REPORT, PHASE 2 – AN OVERVIEW

**Brian R. O’Neal
Alex Smith
Jack Stilborn, Acting Principal
Political and Social Affairs Division**

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INTRODUCTION

This paper provides a recommendation-by-recommendation summary of the key arguments developed in the Phase 2 (February 2006) report of the Commission of Inquiry Into the Sponsorship Program and Advertising Activities (the Gomery Commission).

The Phase 2 report, *Restoring Accountability: Recommendations*, fulfils the second element of a two-part mandate given to the Commission. It provides recommendations based upon the factual findings that the Commission set out in its Phase 1 report (November 2005). The focus of the recommendations is on preventing mismanagement of federal government sponsorship programs and advertising activities in the future.

Chapters 1-3 of the report do not contain recommendations, and are not directly reflected below. They provide introductory comments and background information that has been integrated into the comments on individual recommendations.

CHAPTER 4: PARLIAMENT AND GOVERNMENT

A. Increased Funding for Parliamentary Committees (Recommendation 1)

To redress the imbalance between the resources available to the Government and those available to parliamentary committees and their members, the Government should substantially increase funding for parliamentary committees.

(Report, p. 61)

Parliamentary committees can, in theory, make a central contribution to Parliament's effectiveness in holding governments accountable for what they do with taxpayers' money. Each year, committees receive the spending estimates from the departments within their mandates, along with explanatory reports and performance information. Their role is to subject these to detailed scrutiny, before reporting back to the House.

Concerns about the effectiveness of Parliament in examining government programs and discharging its financial accountability role have been expressed for decades. Most recently, a 2003 committee report lamented that “committees continue to provide relatively cursory attention to the main spending estimates and explanatory reports,” and MPs interviewed for a Commission research study confirmed this finding.

The Commission argues that strengthened staff support for committees is a key ingredient for improved effectiveness. MPs do not have the time (and sometimes the specialized skills) for detailed financial scrutiny. Estimates are less than transparent (for example, the Sponsorship Program was never clearly identified in the estimates that applied to it). MPs sit on two or three committees, and juggle committee work and a multitude of competing demands, many of which provide a more immediate sense of accomplishment. The Commission thus commends an existing government commitment to provide committees with increased resources for staff, and identifies two forms of needed support. These are: (1) expanded Library of Parliament research staff for committees (the recent hiring of three analysts with estimates-related experience is noted as a first step), and (2) increased committee resources to hire experts on programs or management and accountability issues.

B. A Public Service Charter (Recommendation 2)

The Government should adopt legislation to entrench into law a Public Service Charter.

(Report, p. 67)

In administering the funds authorized by Parliament according to the instructions of ministers, the public service has multiple and sometimes conflicting masters. It is responsible: to ministers, to future governments, to Parliament, to the public, and for adhering to legal obligations. For example, while it is responsible for carrying out the direction of ministers, it has a responsibility to oppose such instructions if they are in contravention of the law.

Although specific responsibilities of certain individual public servants are spelled out in existing legislation, the Commission argues that a broader affirmation, in law, of the distinctive identity of the public service is needed. This statement could affirm the central importance of impartiality, neutrality, non-partisanship and adherence to the rule of law. According to the Commission, a central problem at the root of the sponsorship scandal was that

public servants reflected a culture (and government policy) that places central emphasis on obedience to superiors and final accountability to ministers. This erodes a sense of personal responsibility, among public servants, for their administrative actions.

In the view of the Commission, a legislated Public Service Charter would send public servants and the broader public a clear message affirming political support for core public service values. It would also provide a stronger basis for ensuring compliance, by giving the courts a role in resolving disputes and interpreting principles. The Commission concludes that the existing *Values and Ethics Code for the Public Service*, at upwards of 5,000 words, is both too vague and too long, and needs to be replaced with a simple, enforceable, statement of essential values and principles.

C. Increased Funding Directed to the Public Accounts Committee (Recommendation 3)

To enable the Public Accounts Committee to perform its responsibilities more effectively, the Government should increase its funding substantially to provide the Committee with its own research personnel, legal and administrative staff, and experts as needed.

(Report, p. 80)

The Commission argues that the Public Accounts Committee is Parliament's administrative accountability committee. It examines government spending to confirm that it reflects the purposes authorized by Parliament, that programs are efficient and effective, and that practices of financial administration are sound. Reports of the Auditor General frequently provide the starting point for these studies.

In line with its broader belief that administration should be disentangled from politics and insulated from political interference, the Commission argues that administrative accountability requires a non-partisan approach focused strictly on the administration and management of government finances, not policy issues.

The existing Public Accounts Committee is credited with having worked in a non-partisan manner on issues such as the accountability of deputy ministers, but became highly partisan during its investigation of the Sponsorship Program. In addition to recommendations proposed elsewhere in its report (Recommendations 7 and 8), the Commission argues that expanded staff resources would enhance the ability of the members to fulfil the distinctive, frequently technical, demands created by its special role.

CHAPTER 5: THE RESPONSIBILITIES AND ACCOUNTABILITIES OF DEPUTY MINISTERS

A. Accountability of Deputy Ministers (Recommendation 4)

In order to clear up the confusion over the respective responsibilities and accountabilities of Ministers and public servants, the Government should modify its policies and publications to explicitly acknowledge and declare that Deputy Ministers and senior public servants who have statutory responsibility are accountable in their own right for their statutory and delegated responsibilities before the Public Accounts Committee.

(Report, p. 100)

As managers of government departments, deputy ministers possess a number of management powers in their own right through statute and delegation. However, concerns over accountability for financial management led to several high-profile reports over the past 30 years, including a unanimous Public Accounts Committee report in 2005, which all called for increased accountability of deputy ministers before parliamentary committees.

The Government has steadfastly maintained that all accountability to Parliament, even for matters for which deputy ministers have responsibility in their own right, must be through ministers. The Government has argued that making senior officials accountable to Parliament would divide the responsibility of ministers, require an artificial separation between the responsibilities of deputy ministers and ministers, and expose deputy ministers to partisan politics.

In response, the Commission argues that accountability should be linked to responsibility. If certain powers have been specifically assigned to deputy ministers through statute, then ministers cannot be accountable for those powers.

According to the Commission, the Government's recommendations for improvement constitute a technical fix to the mechanisms for controlling financial administration, rather than a fundamental rethinking of accountability to Parliament. The Commission believes that Parliament has an interest in knowing whether ministers have interfered in areas of administration where responsibility belongs to public servants and whether public servants perform their work in accordance with prescribed standards, including probity, economy and efficiency.

Also, a study for the Commission found that deputy ministers are preoccupied with policy and do not give sufficient consideration to management. The Commission believes that making deputy ministers publicly accountable for management before the Public Accounts Committee would encourage deputies to place a higher priority on good management.

B. Disagreements Between Ministers and Deputy Ministers (Recommendation 5)

The Government should establish a formal process by which a Minister is able to overrule a Deputy Minister's objection to a proposed course of action in an area of jurisdiction over which the Deputy Minister possesses statutory or delegated powers. The decision of the Minister should be recorded in correspondence to be transmitted by the Deputy Minister concerned to the Comptroller General in the Treasury Board Secretariat, and be available there for examination by the Office of the Auditor General.

(Report, p. 105)

Disagreements between a minister and the deputy minister over a proposed course of action inevitably arise from time to time. In cases of unresolved disagreement, the Government suggests that the dispute should be resolved with the help of the Clerk of the Privy Council or the Prime Minister and his senior advisors. For financial matters, the dispute should be referred to the Treasury Board.

The Commission is not satisfied with this process for several reasons. This process assumes that the resolution proposed by the Clerk would meet the requirements of law and ethical standards and that deputy ministers will take advantage of this process, both of which assumptions proved to be questionable in the case of the Sponsorship Program. Also, the only choice it offers to deputy ministers who feel that they have been given an improper instruction is to acquiesce or resign.

The Commission believes that in cases where the deputy minister is compelled to implement a decision of the minister in an area of jurisdiction over which the deputy minister possesses statutory or delegated powers and the deputy disagrees with the decision on the basis of legal or ethical grounds, the deputy should be entitled to record this disagreement in correspondence. This process would allow the minister the right to make the final decision and not compel deputy ministers to take responsibility and be accountable for actions to which they have objected.

As the Commission acknowledges, some people believe that this process could undermine the important trust relationship between the minister and deputy minister. However, a similar process already exists, without obvious problems, in the United Kingdom.

C. Tenure of Deputy Ministers (Recommendation 6)

The Government should adopt as a policy that Deputy Ministers and senior public servants are appointed to their positions for a minimum of three years, with the expectation that a standard appointment would normally have a duration of at least five years. In cases where it is deemed necessary to derogate from this policy, the Government should be required to explain publicly the reason for such a derogation. The Government should take the steps to apply the same policy to Assistant Deputy Ministers.

(Report, p. 109)

The Commission notes that many observers, including the Public Accounts Committee in 2005, have expressed concern over the brevity of deputy ministers' tenure in office. A recent review by the Treasury Board indicated that over the past ten years the average tenure for a deputy minister was three and a half years. A study for the Commission indicates that this is low compared to other advanced countries.

The Commission believes that such a brief tenure does not give a deputy minister sufficient time to fully understand the programs, policies, and administration of a department, as well as take effective control of management. More time is needed to see major management initiatives through to their conclusion.

CHAPTER 6: STRENGTHENING THE CHAIN OF ACCOUNTABILITY

A. Stable Membership on the Public Accounts Committee (Recommendation 7)

The members of the Public Accounts Committee should be appointed with the expectation that they will serve on the Committee for the duration of a Parliament.

(Report, p. 118)

The Treasury Board, deputy ministers, the Public Accounts Committee, and the Auditor General are key links in the "chain of accountability," and they must work together cooperatively to ensure sound administration and financial management in government.

While the Commission found that the Office of the Auditor General is a strong link in the chain, it found that the Treasury Board (and its Secretariat) needs to improve oversight of departmental implementation of its policies, and punish non-compliance. For their part, deputy ministers need to put more emphasis on their management responsibilities, and be encouraged to do so.

In order to play its role effectively, the Public Accounts Committee must avoid overt partisanship, in part to reflect the need for financial management in government to be conducted free of partisan influence. In particular, the Committee must be able to question deputy ministers and senior officials in a non-partisan manner. To foster this kind of approach and to make sure its members have the necessary skills and experience, the Commission recommends that they stay with the Committee throughout the duration of an entire Parliament.

**B. Deputy Ministers and Senior Officials – Not Ministers –
Should Appear as Witnesses Before the Public Accounts Committee
(Recommendation 8)**

The Public Accounts Committee should ensure that Deputy Ministers, other heads of agencies and senior officials are the witnesses called to testify before it. As a general principle, Ministers should not be witnesses before the Committee.

(Report, p. 119)

The appearance of ministers as witnesses before committees tends to emphasize the political dimension of the issues under consideration. In order to avoid turning financial management and other administrative subjects into partisan issues, only deputy ministers and other senior officials ought to appear before the Public Accounts Committee. This recommendation complements the Commission's fourth recommendation, which calls for deputy ministers to be accountable before the Committee for their statutory and other delegated authorities.⁽¹⁾

(1) The conventional practice of the Public Accounts Committee is to call deputy ministers, senior departmental officials, and officials from the Office of the Auditor General as witnesses. The Commission may have made Recommendation 8 to emphasize its belief that the Committee should concentrate on the responsibilities of deputy ministers and keep partisanship to a minimum.

CHAPTER 7: THE PRIME MINISTER, MINISTERS AND THEIR EXEMPT STAFF

A. There Should Be Greater Transparency, Control, and Accountability With Regard to the Use of Special Reserves (Recommendation 9)

Special reserves should be managed by a central agency experienced in administrative procedures, such as the Treasury Board or the Department of Finance. The Government should be required at least once a year to table a report in the House of Commons on the status of each reserve, the criteria employed in funding decisions and the use of the funds.

(Report, p. 132)

The Commission pays particular attention to the Prime Minister's ability to establish reserve funds, which were used to finance the Sponsorship initiative in its early phase. Reserve fund financing meant that no criteria were attached to guide the administration of the program and that Parliament received no information about its goals and performance. The flexibility that reserve funds offer has a drawback in that they can be used for partly political, rather than purely administrative, purposes. These considerations led the Commission to recommend that conditions be established that will ensure that reserve funds are used for non-partisan purposes, and that Parliament is aware of the funds' existence and has sufficient information to hold the Government to account for their use and the results they produce.

B. Ministerial Exempt Staff Should Not Receive Preferential Treatment When Applying for Positions in the Public Service (Recommendation 10)

The Government should remove the provision in the law and in its policies that enables exempt staff members to be appointed to a position in the public service without competition after having served in a Minister's office for three years.

(Report, p. 138)

The Prime Minister and ministers are able to hire political staff to assist them in their work. While these employees are paid with public funds, they are not subject to public service rules and their role is vaguely defined. In general, they provide political support to their ministers. While ministers employ a handful of exempt staff, there are approximately one hundred working in the Prime Minister's Office (PMO), which serves as a source of political advice and planning for the Prime Minister. Because of the positions they hold, exempt staff and particularly those in the PMO wield a considerable amount of power.

A number of exempt staff were involved in the direction of the Sponsorship Program, and one – Pierre Tremblay – moved from Minister Gagliano’s office (where he was responsible for the Sponsorship Program) to the Department of Public Works and Government Services, where he became the director of the unit that managed the Sponsorship Program. He was able to do this by virtue of a clause in the *Public Service Employment Act* that gives ministerial exempt staff preference in public service hiring. This raises concerns about politicization of the upper ranks of the public service and the extent of their practical knowledge of how government works. These concerns give rise to the Commission’s Recommendation 10, and lead directly to its Recommendation 11.

C. The Authority Exercised by Exempt Staff Should Be Codified and They Should Receive Instruction on How Government Functions (Recommendation 11)

The Government should prepare and adopt a Code of Conduct for Exempt Staff that includes provisions stating that exempt staff have no authority to give direction to public servants and that Ministers are fully responsible and accountable for the actions of exempt staff. On confirmation of their hiring, all exempt staff should be required to attend a training program to learn the most important aspects of public administration.

(Report, p. 139)

The role and behaviour of exempt staff are largely unregulated. Although these staff interact frequently with public servants on their ministers’ behalf to convey instructions and are forbidden to issue orders on their own initiative, this facet of their roles is ill-defined. Public servants may not always be aware that exempt staff may only communicate ministerial direction, not give it themselves. Furthermore, it appears that many exempt staff lack understanding of the way the public service functions or the rules and policies under which it operates. Any ambiguity could give rise to abuse and should be avoided by making clear to exempt staff (including part-time advisors and consultants) and public servants alike the limits of their authority. Exempt staff must also have a basic familiarity with government in order to inform their work on behalf of their ministers, especially when it involves interaction with the public service. These impressions, and the recommendation that they gave rise to, were bolstered by evidence that showed that exempt staff were closely involved in the management of the Sponsorship Program.

CHAPTER 8: THE PRIVY COUNCIL OFFICE AND THE CLERK

A. Deputy Ministers Should Be Appointed on the Basis of a Transparent, Competitive Process (Recommendation 12)

The Government of Canada should adopt an open and competitive process for the selection of Deputy Ministers, similar to the model used in Alberta.

(Report, p. 151)

Based on the research done for it, the Commission asserts that the appointment process no longer adequately serves the purpose of safeguarding the neutrality of the public service. Appointees, in effect, are beholden to the Prime Minister who appointed them, and the Clerk who advised him/her to do so. According to this reasoning, the appointment process may compromise an appointee's ability to concentrate on what is good for his or her department, since appointees may "feel a greater sense of loyalty to [the Prime Minister and the Clerk] than to the Ministers with whom they have to work on a daily basis" (Report, p. 149). As a remedy, the Commission recommends that the system of open, transparent competitions for deputy ministers used in Alberta be adopted. This system includes consultation with ministers (they are not involved at the federal level). Candidates are interviewed by a panel that includes individuals from outside government, and two or three names are presented to the relevant minister, who presents his/her choice to Cabinet. The Premier retains veto power over appointments, but so far this power has not been exercised.

B. The Clerk of the Privy Council Should Become Secretary to the Cabinet Responsible for Representing the Public Service (Recommendation 13)

The functions and titles of the Clerk of the Privy Council should be redefined, by legislation if necessary. The title of this official should be "Secretary to the Cabinet," and his or her main role should be to represent the public service to the Prime Minister and the Cabinet. The designations "Clerk of the Privy Council" and "Deputy Minister to the Prime Minister" should be abolished. The Privy Council Office should be renamed the "Cabinet Secretariat." The Secretary of the Treasury Board should assume the title and function of "Head of the Public Service."

(Report, p. 152)

The Clerk and the Privy Council are roughly the equivalent (on the administrative side of government) to the Prime Minister and the Prime Minister's Office. The Clerk, supported by the Privy Council Office (PCO), is both formal head of the public service and the Prime Minister's deputy minister. As such, the Clerk has a pivotal role to play in organizing the business of Cabinet, the provision of policy advice, leadership and direction of the public service, and in advising the Prime Minister on the appointment and promotion of senior public servants (including deputy ministers).

The role and power of the Clerk have expanded greatly since the position was first created at the time of Confederation. In 1940, the role and title of Secretary to the Cabinet was added to that of the Clerk in the first step of that expansion; now, the Clerk oversees a staff of 1,100 specialized officials (in the PCO) and functions as head of the Public Service of Canada, forming a bridge between the bureaucracy and the Prime Minister. As the Commission observes, the Clerk "sits at the apex of the bureaucratic hierarchy." The combination of the Prime Minister and the Clerk is without doubt the most formidable collaboration in the federal government.

The Commission singles out the appointment process for deputy ministers as both a principal source of the Clerk's authority and a cause for concern because of its closed, non-competitive nature.

Some of the roles currently performed by the Clerk may place him/her in a conflict of interest. For example, the Clerk is expected to represent both the Prime Minister to the public service and the public service to the Prime Minister. On occasion, the two roles can come into a conflict that can be resolved only when one is relinquished in deference to the other. Given the power of the Prime Minister, it is likely that his or her preferences will far outweigh any of the administrative advice given by the Clerk. During its inquiry, the Commission was presented with evidence that illustrated this when it learned that the Clerk's cautions to the Prime Minister regarding the administration of the Sponsorship initiative in its early phase were ignored.

The Commission's solution to problems of this kind was to recommend that the current roles and title of the Clerk of the Privy Council be clarified and reassigned. The Clerk would become Secretary to the Cabinet with a clear responsibility to represent the interests and views of the public service, while the deputy minister (Secretary) in charge of the Treasury Board Secretariat would assume the role of head of the public service.

CHAPTER 9: ADVERTISING, SPONSORSHIP INITIATIVES AND LOBBYING

A. A Narrower Official Definition of Advertising (Recommendation 14)

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

(Report, p. 161)

The Commission provides only one recommendation concerning advertising. It is proposed in the course of a discussion of measures introduced by the previous government in response to the problems of mismanagement, waste and the misuse of taxpayers’ money identified in the 2003 Report of the Auditor General on the Sponsorship Program, and the Commission’s Phase 1 *Fact Finding Report*. The measures reviewed are wide-ranging, including a new communications policy (with sponsorship-related provisions), mandatory audit and value-for-money evaluations for all advertising campaigns, specialized training for procurement officers, and strengthened government-wide audit and financial control functions.

The overall assessment of the Commission is that these measures are “comprehensive, and may well be a success” (Report, p. 163). However, “for greater certainty,” a number of additional measures are suggested, including:

- periodic audits by the Office of the Comptroller General (OCG) and the Office of the Auditor General (OAG) to monitor results;
- consideration of departmental and system-wide evaluations of the impacts of the new advertising regime;
- enhanced advertising-related training for procurement officers and public servants in related audit, planning and administration functions;
- comprehensive policy and administrative guidelines for sponsorships, should the federal government decide to resume involvement in such activities;
- consideration of possible measures that could include mandatory annual departmental audits of advertising programs and processes for an initial period, a comprehensive audit by the OCG of government advertising initiatives in 2006-2007 or 2007-2008 to ensure broad policy objectives are being met, and independent assessments of success, based on departmental and stakeholder views; and

- continued attention to the effectiveness of accountability processes where rules are broken, and to ensuring that all participants in the public sector are aware that rules are grounded on known and accepted values and norms.

In addition, the Commission also expresses concern that the role of the PCO in managing government advertising may not distance this activity adequately from partisan political interests, given the close relationship between the PCO and the PMO. The Commission suggests that the Office of the Comptroller General, located within the Treasury Board Secretariat, could provide a more neutral and independent location for the advertising management function, if the resulting workloads could be accommodated. An alternative model raised for consideration is that of Ontario, where greater distance is achieved by requiring Auditor General review of most advertising contracts, prohibiting partisan content, and requiring that specific public interest criteria be met (advertising deemed unsuitable cannot be used).

With respect to its recommendation, the Commission argues that advertising needs to be clearly distinguished from a range of related functions and services so that it can be subjected to more rigorous management, and competitions can be limited to firms with the required technical expertise. This leads the Commission to recommend a more precise official definition of advertising that would differentiate it from activities such as sponsorships, promotional activities, marketing, special events management, and other communications services.

B. Overseeing Lobbying (Recommendation 15)

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

(Report, p. 174)

The Commission's *Fact Finding Report* concluded that certain individuals had acted as lobbyists for advertising firms, and had influenced the awarding of contracts, even though they were not registered according to requirements of the *Lobbyists Registration Act*. As well, at least one former public servant may have breached "cooling-off" requirements of post-employment policy.

The Commission argues that enforcement of existing legislation and policy, including important requirements that could ensure public knowledge of lobbying activity, has been weak. As a result, the Commission advocates that the independence of the Registrar of Lobbyists be increased, by making this official report to Parliament rather than a Cabinet Minister, and argues that parliamentary oversight would ensure the increased resources that are needed for effective enforcement of the Act.

CHAPTER 10: TRANSPARENCY AND BETTER MANAGEMENT

A. Mandatory Record Keeping (Recommendation 16)

The Government should adopt legislation requiring public servants to document decisions and recommendations, and making it an offence to fail to do so or to destroy documentation recording government decisions, or the advice and deliberations leading up to decisions.

(Report, p. 181)

The Government made a commitment to improve transparency and introduced various measures and policies with regard to disclosure, reporting and audit. The Commission, for the most part, supports these steps.

The Commission believes that there is a link between increased transparency and better management and accountability. However, it also believes that there is a need for a change of culture within the federal government, because evidence during the first phase of the inquiry led the Commission to believe that the Government did not always respect the spirit and intent of existing access to information legislation, and sometimes deliberately avoided creating potentially sensitive records.

The Commission agrees with the Information Commissioner that there is a need for mandatory record keeping in government. Creating a "paper trail" would make it possible to reconstruct the evolution of spending policies and programs, support the continuity of government decision-making, and allow for independent audit and review.

While there are valid arguments for secrecy in certain areas, such as matters of national security, the Commission believes that in other cases the public is entitled to know what options were considered before a decision was made. It also notes, however, that if the public service is to operate with greater transparency, the public and the media need to moderate their criticism of errors made in good faith.

The Commission also supports a number of amendments to the *Access to Information Act* proposed by the Information Commissioner. These include amendments to:

- place a “good faith” obligation on institutions to make reasonable efforts to assist information seekers;
- increase the number of government institutions covered by the Act to include some that are currently exempted;
- put the onus on departments to show that the disclosure of records would be injurious;
- create a public record of all documents disclosed under the Act;
- limit the Government’s authority to extend the initial 30-day response period to instances of necessity; and
- broaden the Information Commissioner’s powers to initiate complaints.

B. Sanctions Under the *Financial Administration Act* (Recommendation 17)

The Financial Administration Act should be amended to add a new section stipulating that deliberate violation of section 34 of the Act by an employee of the federal government is grounds for dismissal without compensation.

(Report, p. 188)

During the Commission’s inquiry, it became evident that some public servants did not comply with their obligations under the *Financial Administration Act*. The Commission believes that proper administration of public funds is of utmost importance and that public servants should be fully accountable for their actions in this regard. If individuals in the private sector failed to meet their financial responsibilities, they would be summarily dismissed. Consequently, the legislation should include strong incentives to comply with section 34, which requires that evidence should be provided that all work has been performed by a government contractor before payment is made.

C. Appointments to Crown Corporations (Recommendation 18)

The Chief Executive Officer of a Crown Corporation should be appointed, evaluated from time to time, and, if deemed advisable, dismissed by the Board of Directors of that corporation. Initial appointments to the Board of Directors of a Crown Corporation should be made by the Government on the basis of merit. Thereafter, the remaining directors should be responsible for filling any vacancies on a corporation's board.

(Report, p. 190)

In February 2005, the Treasury Board announced a series of reforms to the governance of Crown corporations. The Commission supports those reforms. However, it believes that it is necessary also to ensure that appointments to management posts are free of political influence. Political appointments put the integrity of the appointments process in doubt and are often in contradiction to the merit principle. The persons best qualified to appoint or remove the corporation's chief executive are the board of directors, which is familiar with the corporation's operations and needs.

The Commission notes that the United Kingdom has created an Office of the Commission for Public Appointments, which regulates, monitors, reports and advises on appointments made by the U.K. government to the boards of around 1,100 national and regional public bodies.

D. Whistleblower Legislation

The Commission commends Parliament for recently passing whistleblower legislation (the *Public Servants Disclosure Protection Act*), but the Commission is concerned that the legislation might not have the desired effect. While the Commission does not make specific recommendations on whistleblower legislation, it does suggest a number of improvements, as follows:

- the definition of persons authorized to make disclosures should be broadened to include anyone working on behalf of the Government;
- the list of “wrongdoings” that can be disclosed should be an open list;
- the list of actions that are forbidden “reprisals” should be an open list;

- if a whistleblower makes a complaint alleging a reprisal, the burden should be on the employer to show that the actions were not a reprisal;
- there should be an explicit deadline for all chief executives to establish internal procedures for managing disclosures; and
- amendments made by the new legislation to the *Access to Information Act* and to the *Privacy Act* should be revoked as unjustified.

E. Internal Audit

The Commission believes that the internal audit function is an important element of transparency. It commends the reform efforts introduced by the previous President of the Treasury Board, including an enhanced role for the Office of the Comptroller General and greater independence for the internal audit function through the use of departmental Chief Financial Officers and external audit committees. The Commission raises the question of whether the package of reforms might add too many rules. The Auditor General pointed out that the problem with the Sponsorship Program was not the lack of rules, but that some people simply did not follow the rules already in place.

CONCLUDING REMARKS

Reflecting the Commission's mandate, the recommendations of the Phase 2 report are broadly directed to providing remedies for systemic problems identified in the course of the Commission's investigation of the Sponsorship Program, namely:

- “partisan political involvement in the administration of the Sponsorship Program;”
- “insufficient oversight by senior public servants;”
- “deliberate actions taken to avoid compliance with federal legislation and policies;”
- “a culture of entitlement among political officials and public servants involved with Sponsorship initiatives;” and
- “the refusal of Ministers, senior officials in the Prime Minister's Office and public servants to acknowledge any responsibility for the mismanagement that had occurred.” (Report, p. 197)

The central theme of the Commission's response to these problems is the belief that "rebalancing the relationship between Parliament and the Government" is needed, in order to strengthen accountability within government. A key aspect of this rebalancing is the assignment of clearer accountabilities to politicians and public servants. According to the Commission, this is necessary to enable Parliament to hold the Government, individual ministers and their departments, to account, in part by reviewing the Government's proposed spending plans more effectively.

The immediate impact of most of the recommendations is on political officials and the public service. Only the recommendation of enhanced support for committees and those relating to the Public Accounts Committee are specifically directed at Parliament. However, especially when considered together, the Commission's recommendations have significant broader implications for Parliament. They imply a new priority for the House of Commons' traditional role as an accountability chamber. Both the recommendations specific to Parliament and others, notably the recommendations concerning a distinct deputy-ministerial accountability, imply that all committees and parliamentarians will be spending more time reviewing relatively technical administrative and management issues for which deputy ministers are responsible (and, perhaps, correspondingly less time on legislative activities, or other traditional committee activities such as lengthy policy studies).

The impacts of the Commission's recommendations remain prospective, at the time of writing this paper. Although a number of the recommendations are similar to parts of the election platform of the new Government, it remains up to the Government to decide whether or not they will be adopted. This also applies to the final Commission recommendation: that the Government report to Parliament by February 2008, detailing how it has responded to the Commission's recommendations.