



HOUSE OF COMMONS  
CANADA

**GOVERNANCE IN THE PUBLIC SERVICE OF CANADA:  
MINISTERIAL AND DEPUTY MINISTERIAL  
ACCOUNTABILITY**

**REPORT OF THE STANDING COMMITTEE  
ON PUBLIC ACCOUNTS**

**John Williams, M.P.  
Chairman**

**May 2005**



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# **THE STANDING COMMITTEE ON PUBLIC ACCOUNTS**

has the honour to present its

## **TENTH REPORT**

Pursuant to Standing Order 108(3)(g), the Standing Committee on Public Accounts has considered governance in the public service with a focus on ministerial and deputy ministerial accountability and has agreed to report the following:



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# LIST OF RECOMMENDATIONS

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## RECOMMENDATION 1

That deputy ministers be designated as accounting officers with responsibilities similar to those held by accounting officers in the United Kingdom. Features of this arrangement must include, but not limited to, the following:

- The personal duty of signing the financial accounts described in his or her letter of appointment.
- The personal responsibility for the overall organization, management and staffing of the department and for department-wide procedures in financial and other matters.
- Ensuring that there is a high standard of financial management in the department as a whole.
- Personal responsibility for all powers and authorities either delegated or directly held.
- Ensuring that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the department.
- Ensuring that the department complies with parliamentary requirements in the control of expenditure with particular attention ensuring that funds are spent only to the extent and purposes authorized by Parliament.<sup>1</sup>
- As accounting officers, the personal responsibility of deputy ministers for negligence and wrongdoing does not diminish over time.

## RECOMMENDATION 2

That as accounting officers, deputy ministers be held to account for the performance of their duties and for their

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<sup>1</sup> Adapted from Her Majesty's Treasury, *The Responsibilities of an Accounting Officer*, London, U.K

**exercise of statutory authorities before the House of Commons Standing Committee on Public Accounts; and**

### **RECOMMENDATION 3**

**That the following procedures be adhered to when deputy ministers (as accounting officers) are in disagreement with their ministers regarding administration and operation of their departments:**

- 1. The deputy minister must inform the minister if he or she has objections to a course of action proposed by the minister.**
- 2. If the minister still wishes to proceed, the deputy minister must set out his or her objections to the course of action in a letter to the minister stating the reasons for the objections and the deputy minister's duty to notify both the Auditor General of Canada and the Comptroller General of Canada.**
- 3. If the minister still wishes to proceed, he or she, must instruct the deputy minister in writing to do so.**
- 4. If instructions to proceed are received in writing, the deputy minister must send copies of the relevant correspondence to both the Auditor General of Canada and Comptroller General of Canada.<sup>2</sup>**

### **RECOMMENDATION 4**

**That the government endeavour to retain deputy ministers in their positions for periods of at least three years; however their responsibilities are in no way diminished should their tenure be less than the recommended three years.**

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<sup>2</sup> Adapted from Ibid.

# GOVERNANCE IN THE PUBLIC SERVICE OF CANADA: MINISTERIAL AND DEPUTY MINISTERIAL ACCOUNTABILITY

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## RESPONSIBILITY

Responsibility identifies the field within which a public office holder (whether elected or unelected) can act; it is defined by the specific authority given to an office holder (by law or delegation).

*Deputy Minister Task Force on Public Service  
Values and Ethics*

Responsibility is the “authority and power to act.”

*C.E.S. Franks, Ministerial and Deputy  
Ministerial Responsibility and Accountability in  
Canada.*

Being responsible does not mean that you are required to know and control everything that is happening at all times.

*Arthur Kroeger*

## ACCOUNTABILITY

Accountability is the means of enforcing or explaining responsibility. It involves rendering an account of how responsibilities have been carried out and problems corrected and, depending on the circumstances, accepting personal consequences for problems the office holder caused or problems that could have been avoided or corrected if the office holder had acted appropriately.

*Deputy Minister Task Force on Public Service  
Values and Ethics*

A relationship in which an individual or agency is held to answer for performance that involves some delegation of authority to act.

*International Encyclopedia of Public Policy  
and Administration*

## **ANSWERABILITY**

Answerability is the duty to inform and explain, but does not include the personal consequences associated with accountability.

*Deputy Minister Task Force on Public Service  
Values and Ethics*

Answerability requires that an account be tendered by those to whom an account is due.

*Thomas S. Axworthy<sup>3</sup>*

## **AN EFFECTIVE SYSTEM OF RESPONSIBILITY AND ACCOUNTABILITY**

The three stages in an effective system of responsibility and accountability are:

1. Responsibility for duties or tasks must be assigned to specific persons,
2. These persons must be made to answer or give an account to the appropriate authorities for their use of the powers and responsibilities assigned to them,
3. There must be a process that imposes sanctions — rewards or punishment as is appropriate — on the responsible persons for their use of powers.

*C.E.S. Franks*

## **INTRODUCTION**

From February to May 2004, during its inquiry into the Sponsorship Program, a central objective of the work of the Committee was to hold government decision-makers accountable, in a public forum, for the practices that the Auditor General identified in her November 2003 report. This objective implied two major tasks. The Committee needed to explore the accuracy of the Auditor General's report, and it needed to identify the individuals responsible and hold them accountable for their decisions and actions.

Although some witnesses questioned the Auditor General's November report, primarily on matters of interpretation, none of these questions left the Committee with serious doubts concerning the accuracy of the findings of fact

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<sup>3</sup> Thomas S. Axworthy, *Addressing the Accountability Deficit: Why the Martin Minority Government Must Pay More Attention to the Three 'A's*, Policy Options/Options politiques, December 2004 – January 2005, p. 4

presented in that report. On the contrary, as testimony accumulated, the picture of the Sponsorship Program and its antecedents drawn by the Auditor General was repeatedly validated.

The second accountability challenge — identifying the individuals responsible — proved to be much more difficult. As Canadians who have observed the Committee hearings will be aware, no individual stepped forward and accepted responsibility for the decisions and actions drawn to the attention of Parliament and Canadians by the Auditor General. As the Committee was reminded by Dr. C.E.S. Franks (Professor Emeritus, Queen’s University) toward the end of its public hearings, this breakdown in the practice of responsibility has both a negative and a positive side:

... the investigation by the Public Accounts Committee into the sponsorship affairs has been successful and useful, although perhaps in an unexpected way. It has identified the crucial factor which allows such problems to happen. Not one of the many witnesses who have come before the committee, neither ex-ministers nor public servants, has stated “Yes, managing this program was my responsibility, and I am responsible and accountable for what went wrong with it.” Ours is a system of responsible government. Constitutionally, someone must be responsible and accountable to Parliament for what the government does or fails to do. ... The breakdown of responsibility and accountability disclosed by an investigation of the public accounts committee shows that something is seriously wrong with the way the principle of responsibility is construed and practiced in Canada. (43:1110)\*

The principles of accountability and responsibility reside at the core of our parliamentary system of government and the assertion that there is something “seriously wrong” with the way these principles are put into practice is of grave concern. One thing is certain: The events surrounding the Sponsorship Program have revealed the flaws in the doctrine of ministerial accountability as it has been interpreted and practiced in Canada since Confederation.

Because this testimony on ministerial accountability came at the end of the Committee’s review of the Sponsorship Program, and because the issue is both complex and highly important, the Committee determined that it would be best to focus exclusively on ministerial and deputy ministerial accountability and to state its conclusions after the release of its report on the Sponsorship Program. That report has now been tabled.<sup>4</sup>

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\* Evidence 37th Parliament, 3rd Session.

<sup>4</sup> House of Commons Standing Committee on Public Accounts, Ninth Report (38th Parliament, 1st session), tabled 7 April 2005.

The Committee received its first testimony with regard to ministerial accountability from the Clerk of the Privy Council, Mr. Alex Himelfarb, on 3 May 2004. To obtain a better understanding of the interaction between ministerial staff and public servants in the context of responsibility and accountability, the Committee spoke to two panels of witnesses. The first panel was composed of three former special assistants in the office the Hon. Alfonso Gagliano while he was Minister of Public Works and Government Services Canada: Mr. Patrick Lebrun, Ms. Joanne Bouvier, and Ms. Ghislaine Ippersiel. The Committee heard from these witnesses on 2 December 2004. The second panel was composed of former employees with the Communications Coordination Services Branch (CCSB) at Public Works and Government Services Canada: Mr. Mario Parent (former coordinator, Advertising Program) and Ms. Hugette Tremblay (former chief, Special Projects). The Committee met with this second panel on 7 December 2004. The Committee met initially with Dr. C.E.S. Franks on 6 May 2004, and met with him a second time on 14 December 2004. As well, the Committee received several written submissions from him, some of which are cited below. Lastly, the Committee met with Mr. Arthur Kroeger, a well-respected and knowledgeable former deputy minister, on 21 February 2005.

The Committee wishes to thank these witnesses for sharing their knowledge and understanding of both the principles and practice of accountability and responsibility in the Canadian system of government. The Committee is especially grateful for the generous assistance provided it by Dr. Franks, a long-time student of Canada's Parliament.

## **THE DOCTRINE OF MINISTERIAL RESPONSIBILITY**

### **A. Ministers**

When he appeared before the Committee, the Clerk of the Privy Council, Mr. Alex Himelfarb, outlined the central elements of the doctrine of ministerial responsibility as set out in Privy Council Office guidance publications.<sup>5</sup> According to this doctrine, ministers are broadly accountable to the Prime Minister and the House of Commons, on behalf of the people, for their exercise of the responsibilities assigned to them when they are appointed, including the powers and duties provided by Parliament through legislation. This doctrine is thus central to democratic accountability.

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<sup>5</sup> See especially, Canada, Privy Council Office, *Governing Responsibly — A Guide for Ministers and Ministers of State*, 2003, and Canada, Privy Council Office, *Guidance for Deputy Ministers*, PCO Web site, undated.

Within the broad area of ministerial responsibility, there is an area of personal responsibility defined by the decisions and actions of the individual minister (including decisions not to act). The confidence of the Prime Minister and the House in a minister rests essentially on the minister's discharge of these personal responsibilities, defined as follows in the publication *Governing Responsibly*:

Ministers are individually responsible to Parliament and the Prime Minister for their own actions and those of their department, including the actions of all officials under their management and direction, whether or not the Ministers had prior knowledge. In practice, when errors or wrongdoings are committed by officials under their direction, Ministers are responsible for promptly taking the necessary remedial steps and for providing assurances to Parliament that appropriate corrective action has been taken to prevent reoccurrence.

Outside the area of personal responsibility and accountability, there is an area that is often called "answerability," in which a minister is responsible for providing information and explanations to the Prime Minister and Parliament concerning matters within their assigned responsibilities for which they are not personally responsible (i.e., that do not reflect their decisions or actions). Examples include arm's length agencies, boards and commissions, all of which are often part of a minister's portfolio of responsibilities, but are structured so as to place authority for policy direction and general management directly in the hands of boards of directors or other bodies, rather than the minister.

## **B. Deputy Ministers**

The doctrine of ministerial responsibility has implications for the responsibilities of deputy ministers and other public servants. Traditionally, they have been anonymous permanent officials serving the minister of the day by providing advice and implementing ministerial direction flowing from the broad ministerial authority to manage and direct departments. As the scope and scale of government has expanded, deputy ministers have come to exercise more and more of the authority formally conferred upon ministers, either by delegation or as a result of legislation that sets out specific responsibilities and authorities.

By law, deputy ministers act under the authority and direction of ministers, but the extent of the delegation of management authority in practice is reflected in the *Interpretation Act*, subsection 24(2), which provides (subject to certain exceptions) that deputy heads may carry out administrative, legislative or judicial acts that a minister has been directed or empowered to carry out. With respect to financial management, the *Financial Administration Act* places extensive responsibilities for public funds and property within the hands of Deputy Ministers. (see below)



### C. Implications

In his first appearance before the Committee, Dr. Franks identified four implications of the doctrine of ministerial responsibility, as set out above, that provide a useful basis for understanding the accounts of their roles that were provided by current and former ministers and deputy ministers appearing before this committee during its hearings on the Sponsorship Program.

The first implication is that only the current minister exercises the responsibilities attached to a ministerial position, and is accountable for their exercise to Parliament. Previous ministers are no longer responsible, in the special sense involved in the doctrine of ministerial responsibility, and cannot be held accountable or answerable by Parliament although they may appear before a committee as private individuals. Current ministers are not accountable to Parliament either, for decisions and actions taken by previous ministers, although they remain answerable (i.e., responsible for providing information and explanations). Once a minister has departed from a portfolio, no one can be held accountable by Parliament for what was done during that minister's tenure.

In our parliamentary system, it is not possible to hold individual ministers to account. Unable to hold to account the individual who held the post of minister when bad decisions were made and inappropriate actions were taken, Parliament's only available accountability mechanism consists of withdrawal of support — confidence — from the government of which the departed minister was a part. This is a power whose exercise could only have meaning in the context of a minority government in which case it would only be selectively used, leaving those directly and indirectly responsible for minor, yet important, transgressions unaccountable. And in instances of majority government — given the strong party discipline that exists in Canada — attempts to vote lack of confidence would have no effect.

The second implication is that ministers are answerable, but not fully accountable to Parliament for what is done by non-departmental agencies and other arm's length bodies with the powers assigned to them by statute. The heads of these agencies are responsible for the exercise of these powers, and are responsible to Parliament through the minister rather than being responsible directly to the minister.

The third implication relates to the accountability of deputy ministers. According to the doctrine, deputy ministers are generally accountable to their ministers and to the Prime Minister (who appoints them). They also have a series of specific accountabilities, including accountability to the Treasury Board relating to responsibilities conferred by (among others) the *Financial Administration Act* and the *Official Languages Act*, and to the Public Service Commission for delegated

human resource authorities. They are answerable (i.e., responsible for providing information and explanations) to Parliament and its committees, but ministers remain politically accountable for the management and direction of departments including the exercise of statutory powers assigned to deputy ministers. This contrasts with the responsibility of ministers for non-departmental organizations, which is limited in parallel with the limitation of their authority over them.

The fourth implication relates to ministerial responsibility for the errors or wrongdoings of officials. Ministers are responsible for taking appropriate remedial steps in a timely way, and for providing Parliament with the information that assures it that these steps have been taken. Ministers are accountable for the actions of officials if these actions are broadly reflective of ministerial direction, and they are accountable for actions taken or not taken in relation to prevent errors or wrongdoing that could reasonably have been anticipated, but they are not directly accountable for the errors or wrongdoing of officials themselves.

Dr. Franks summarized the combined effect of the aspects of the doctrine of ministerial responsibility he had drawn to the Committee's attention as follows:

The Privy Council Office interpretation means that no minister, whether present or previous office holder, is accountable to Parliament for problems stemming from the tenure of a previous minister. Responsibility and accountability belong to the office and its current holder. Nor are ministers accountable rather than answerable when public servants misbehave. More important, in the sponsorship affair, deputy ministers are accountable only within the government to minister, prime minister and Treasury Board, but not to Parliament for the crucial management functions assigned to them alone by statute. (43:1115)\*

## **THE SPONSORSHIP PROGRAM: HOW MINISTERS AND THE DEPUTY MINISTER UNDERSTOOD THEIR RESPONSIBILITIES**

During its examination of the Sponsorship Program, the Committee gave particular consideration to the conduct of ministers of Public Works and Government Services Canada (PWGSC) the Hon. Diane Marleau and the Hon. Alfonso Gagliano, and Deputy Minister (of PWGSC) Ranald Quail. They were the decision-makers directly associated with the Sponsorship Program during the period covered by the November 2003 report of the Auditor General. However, in testimony provided to the Committee under oath and which the Committee accepts as having been given in good faith, none of these individuals accepted responsibility for the problems identified by the Auditor General.

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\* Evidence 37th Parliament, 3rd Session.

Clearly, there was a breakdown in the process of democratic accountability that the doctrine of ministerial responsibility is intended to achieve. It requires careful reflection, however, in order to determine whether the problem lies with the people whose conduct should reflect the doctrine, or the doctrine itself. Did one or more of these individuals fail to meet requirements of a doctrine that continues to be clear and reasonable, or does their conduct suggest that the doctrine is itself unclear or impractical and needs to be revised?

## **A. The Ministers**

As the doctrine of ministerial responsibility requires, ministers Marleau and Gagliano accepted responsibility for their role in providing the policy direction embodied in the Sponsorship Program, and continued to affirm their belief in the importance of government efforts to make the federal presence more visible in Quebec in the wake of the 1995 referendum.

### **1. Support for the Program**

Appearing before the Committee on 25 March 2004, Mrs. Marleau declared:

I will confirm that I did sign off on a Treasury Board submission with the Prime Minister in November 1996 to provide the moneys necessary to promote the Canadian identity. I still believe, as I did then, in the importance of ensuring that Canadians know the ongoing role the government plays in their day-to-day lives. (15:1205)\*

Mr. Gagliano also confirmed his support for the continued operation of the program, although his comments to the Committee focussed primarily on the limitations that face ministers as they exercise their responsibilities in complex portfolios and stressed that the program had been “inherited” (i.e., operational when he took office):

The objective of the program was very good. It was, yes, to keep the country united. It was a national unity strategy ... (10:1025)\*

### **2. General Direction and Management**

Given the priority attached to national unity issues during this period, and the general responsibility of ministers for providing management and direction, it is understandable that the ministers did more than provide a general green light to the

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\* Evidence 37th Parliament, 3rd Session.

department concerning the Sponsorship Program and move on to other issues. They sought to ensure that the objectives of the program were being realized.

After signing off on the Treasury Board submission that sought initial funding to establish the program, the Hon. Diane Marleau relied centrally on the delegation of authority to departmental officials. According to her testimony, she was approached by the Executive Director of the program, then Mr. Charles Guité, for direct input and instructed him to report through the departmental hierarchy. (15:1220) \* In addition, the Committee has received testimony from departmental officials indicating that during Mrs. Marleau's tenure as minister Mr. Guité was provided with political direction from the Prime Minister's Office (primarily from Mr. Pelletier), although Mrs. Marleau denied that she was aware of this relationship. (15:1225) \* Mr. Gagliano appears to have been much more closely involved with the program, according to his own summary of his role:

I can summarize my activities in relation to the Sponsorship Program thus: when told there was a problem, I tried to fix it; when not told, I was powerless. ...

More particularly, in the case of the Sponsorship Programs, what I did was as follows:

Inherit the communications program, as it had been entrusted to the Minister of Public Works on June 23, 1994 by decision of the Treasury Board and reviewed on at least two occasions by the Treasury Board; ...

Upon my arrival at the head of the Public Works department, in 1997, I reviewed and followed the recommendations of the Secretariat of the Treasury Board; these included the redirection of the procurement process within the department.

I witnessed the organization of the Communications Coordination Services Branch; this organization was made necessary by the privatization of the Canada Communication Group, leaving a number of orphan programs in various departments; it was government policy that communications be reunited under a single responsible authority.

In August 1998, I signed a submission to Treasury Board to create the position of Assistant Deputy Minister, Government of Canada, Communications Coordination Services, to assist me in my capacity of Chair of the Cabinet Committee on Communications; this submission was approved in September.

I directed an audit of the management of sponsorship at the Communications Coordination Services Branch, which resulted in the report of August 31, 2000, of which the key finding leads as follows:

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\* Evidence 37th Parliament, 3rd Session.

The selection process adopted by CCSB officials to select communications firms and distribution agencies did not comply with the spirit or letter of the rules and directives established by Treasury Board.

Following the presentation of that report, I asked the Auditor whether I should call the police but I was told that the nature of the problems was administrative, not criminal; I immediately ordered a halt to the Sponsorship Program until a new management action plan was devised and put in place.

The new management action plan was put in place at the end of 2000 or the beginning of 2001; new communications firms were chosen after a new competition had taken place and the program was started again, following Treasury Board guidelines.

In 2001, the Ethics Counsellor, whom I had asked to review the matter of some of the advertisement contracts that had been given to Groupaction and Groupe Everest, issued a report in which he concluded that I had not participated in the awarding of those contracts, but merely approved the recommendation of the selection committee to comply with the signing authority requirements.

In the same year, I combined the Canada Information Office and the Communications Coordination Services Branch in Communications Canada. I did this because I wanted to separate the people running the programs from those awarding the contracts; effectively, this was an attempt to put things back in the state in which they had been prior to 1994. (10:0930)

### **3. Operational Involvement**

In addition to providing general policy direction, a minister may undertake to discharge his or her responsibilities by becoming directly involved in individual decisions that arise within a program or activity. The absence of value-for-money based decision-making criteria and other specific sponsorship selection guidelines, noted by the Auditor General and confirmed by the testimony detailed in the Committee's Ninth Report, would have increased the likelihood of operational involvement by the minister and the minister's office. This is because a minister responding to the perceived importance of the file by seeking to provide specific operational direction would have had no basis to do so, other than by becoming involved in the consideration of individual sponsorship decisions.

Mrs. Marleau does not appear to have been involved at the operational level. However, both Mr. Gagliano and officials involved in the Sponsorship Program during his tenure as minister have testified that the minister and his office were involved in considering individual sponsorship events (although, it was claimed, not in the selection of the agencies to which the sponsorship funding was given). In Mr. Gagliano's words:

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\* Evidence 37th Parliament, 3rd Session.

In terms of directions I gave, I think I was clear yesterday — yes, directions on policy. The policy was that we had to have timely visibility. We were talking about sports events, festivals — activities that happen in a timely fashion. We were also living in a very competitive environment, because the Government of Quebec of the time didn't want us as the federal government to be anywhere in Quebec. But I only gave policy direction. Yes, we discussed events, but I never got involved in the contracting or management of the agencies — that was the bureaucrats. (11:0955) \*

A somewhat different portrait of the nature of this involvement emerged from the testimony of officials. For example, an employee during Mr. Tremblay's period as Executive Director (he succeeded Mr. Guité) told the Committee:

I remember on a few occasions Mr. Tremblay voicing his opinion in the office that the minister's office would not let us do our jobs, that they were quite frequently interfering in the day-to-day operations of the Sponsorship Program. (15:0955) \*

#### **4. The Findings of the Auditor General**

With respect to the issues uncovered by internal audits and the November 2003 report of the Auditor General, both Mrs. Marleau and Mr. Gagliano declined to accept responsibility. Both ministers made it clear that they relied, implicitly, on departmental officials to implement their policy direction according to the process requirements established within the Department and Treasury Board, as well as requirements of the *Financial Administration Act* and other legislation.

Mrs. Marleau advised the Committee as follows:

Upon my arrival at the Department of Public Works and Government Services, I made it clear to departmental officials that under my watch all protocols and rules to control expenditures and ensure transparency would be followed. Because integrity was the foundation on which I ran my departments, when I had departments, I'm proud of my record of achievements. (15:1205) \*

In the words of Mr. Gagliano:

... if you look at the cabinet documents that you have before you, there is always a mention that those moneys were supposed to be spent according to the *Financial Administration Act* and the Treasury Board guidelines. Nobody ever gave instruction to anybody not to do the things that were supposed to be done. (10:1025) \*

I was relying on the deputy minister to be watching. Really, the department is run by the deputy minister.

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\* Evidence 37th Parliament, 3rd Session.

If I can give you a very simple comparison, a minister is like the chairman of a board and the deputy minister is the CEO. (10:1200) \*

Mr. Gagliano also stressed his responsiveness to the responsibility of ministers to take action when problems are discovered: "So yes, there were problems. But when we found out there were those problems, we took immediate action, and they were corrected. That's the role of a minister. You cannot correct something you're not aware of." (10:1005) \*

## **B. The Deputy Minister**

Deputy ministers have a two-fold responsibility. First, they are generally responsible for providing advice and responding to the direction of the minister to whom they report and the Prime Minister, who is responsible for the appointment. Second, there is a range of more specific statutory responsibilities, including those outlined below.

Given that Mr. Quail, the deputy minister during the period covered by the Report of the Auditor General, reported to ministers Marleau and Gagliano, their assessments of his performance are relevant to any consideration of his exercise of his general responsibility as a deputy minister.

Mrs. Marleau provided the following assessment:

I found him to be an extremely good deputy minister, extremely capable. I have nothing but good things to say about my time working with him. That's all I can say. (15:1240) \*

I would also like to add at this point that I worked extremely well with Mr. Ran Quail throughout my term at Public Works. I have immense respect for his integrity and for his excellent capabilities as deputy minister. (15:1210) \*

Mr. Gagliano expressed a similarly positive, view:

I want to say that I had good relations with the then deputy minister. I used to meet with him regularly. (10:1035) \*

Mr. Quail did not provide extensive testimony concerning the respective responsibilities of ministers and deputy ministers, but did provide a comment that clearly reflects the deputy ministerial focus on providing advice and implementing the direction of the minister:

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\* Evidence 37th Parliament, 3rd Session.

... it is a difficult situation, that interface between ministers and deputy ministers. In this particular case, you'd give your advice to the minister, and if the minister decided he wished to proceed, you would proceed. That is the particular model. If you felt that there were issues that were outside of you and the minister and the department, I guess you could talk to the Clerk [of the Privy Council], if you wanted to. (07:1200) \*

This approach to his responsibilities was strongly reflected in his account of the origins of the Sponsorship Program, which emphasized the priority attached to action by the government, and the need to respond on an urgent basis:

As I started to say earlier, I pointed out to you the way in which we had looked at and managed the program for 99% of the department. To talk about the situation with respect to Canada Communication CCSB [Communications Co-ordination Services Branch], the submissions, as I noted, were signed by the minister and the Prime Minister. It noted the ongoing challenges that the government felt had to be addressed. (07:1055) \*

Look, the submission was signed by the minister. It was signed by the Prime Minister. It was a direction of the government that the government wanted to move this. It was an urgent situation. (07:1150) \*

While Mr. Quail did not express it in terms relating to the doctrine of ministerial and deputy ministerial responsibility, the fact that he perceived a tension between his general duty to respond to direction from the minister and more specific responsibilities relating to managerial and administrative practices was apparent in his response to questioning about the direct working relationship between Minister Gagliano and the Executive Director of the Sponsorship Program:

Obviously, this is a very difficult situation for a deputy in terms of the fact that you're working with the minister. On the one hand, you can say, "Minister, you can't talk to that particular group. You have to come through me every time you want to talk to them." I did not do that. I did not do that. The minister wanted to have these discussions. He wanted to be involved. He had a responsibility. He had signed the submissions. He had direct approval to proceed and get this done. (07:1115) \*

## **DEPUTY MINISTERS HOLD CERTAIN STATUTORY POWERS IN THEIR OWN RIGHT**

As the administrative heads of departments, deputy ministers are delegated certain powers, while they hold other powers directly in their own right. Among the most salient of these is the *Financial Administration Act* which assigns important powers directly to deputy ministers, as pointed out by Privy Council Office:

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\* Evidence 37th Parliament, 3rd Session.



[t]he FAA [*Financial Administration Act*] ... assigns to the deputy head specific responsibilities for the prudent management of allocated resources... The specific responsibilities include:

- Preparing a division of an appropriation or item included in the Estimates, at the commencement of each fiscal year, or at such times as the Treasury Board may direct (subsection 31(1));
- Ensuring by an adequate system of internal control and audit that the allotments provided in a division of allotments approved by the Treasury Board are not exceeded (subsection 31(3));
- Establishing procedures and maintaining records respecting the control of financial commitments chargeable to each appropriation or item (subsection 32(2));
- Providing the required certification to authorize any payment to be made (section 34); and
- Maintaining adequate records in relation to public property for which the department is responsible and complying with regulations of the Treasury Board governing the custody and control of public property. (section 62).<sup>6</sup>

Deputies also hold other directly assigned authorities apart from those found in the FAA. As the Privy Council Office again points out:

Responsibilities relating to personnel management in the public service, including appointment, employer/employee relations, and the organization of departments, are assigned to the deputy head directly rather than through the minister.<sup>7</sup>

Apart from these responsibilities, deputy ministers also have statutory powers in their own right under the *Official Languages Act*.

It is also worth noting that a significant number of Treasury Board policies, including the Policy on Internal Audit, assign responsibilities directly to deputy ministers. As a general rule, when the Committee recommends that Treasury Board Secretariat enforce its policies the common response is to assert that deputy ministers — not the Secretariat — bear individual responsibility within their departments for the implementation of central agency policies and guidelines.

These observations suggest the following question: how are deputy ministers held to account for the exercise of authorities that are uniquely theirs? Privy Council Office has an answer:

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<sup>6</sup> Privy Council Office, *Guidance for Deputy Ministers*, p. 7.

<sup>7</sup> *Ibid.*, p. 7.

Deputy ministers and other public servants appear before parliamentary committees *on behalf of their ministers* to answer questions or to provide information on departmental performance that Ministers could not be expected to provide personally due to the level of detail or complexity.<sup>8</sup>

Canadians who have followed the work of the Committee in investigating the Sponsorship Program will know that the Auditor General and the Committee were highly critical of the fact that the Executive Director of the Communications Co-ordination Services Branch (Mr. Guité) routinely certified contracts for payment, indicating that services had been delivered, even in the absence of any tangible proof. In performing this certification, Mr. Guité was exercising an authority under the *Financial Administration Act* (section 34) delegated to him from the deputy minister. Furthermore, the creation of the CCSB, the decision not to remove procurement from the CCSB to place it back in the main department, and the promotion of Mr. Guité to EX-level and to Assistant Deputy Minister all occurred under the authorities vested in the deputy minister — and yet, Mr. Quail testified that these actions were taken at the behest of the minister. For his part, former Minister Gagliano repeatedly took personal credit for the implementation of corrective measures and routinely assigned the blame for any mismanagement to public servants or testified that he was simply unaware of any wrongdoing because public servants failed to inform him.<sup>9</sup>

As a result of the way in which Privy Council Office interprets and applies the doctrine of ministerial accountability, however, there was confusion regarding who should bear the ultimate responsibility — and thus be held to account — for the way in which these authorities were exercised. Dr. Franks indicated, during his first appearance before the Committee that: “deputy ministers are accountable only within the government, to minister, Prime Minister, and Treasury Board, but not to Parliament, for the crucial management functions assigned to them alone by statute.” (43:1115)<sup>\*</sup> In the Committee’s view, this arrangement constitutes a major weakness in that the person who is responsible for management of departmental human and financial resources and for the exercise of related statutory authorities — the deputy minister — is not accountable to the ultimate source of those authorities and the approval of annual departmental appropriations — the Parliament of Canada.

## **OBSERVATIONS**

The Committee began its investigation of ministerial and deputy ministerial accountability by asking the following question: “Did one or more of these

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<sup>8</sup> Ibid., p. 10. Emphasis added.

<sup>9</sup> See oral evidence cited in the Committee’s Ninth Report, 38th Parliament 1st Session.

<sup>\*</sup> Evidence, 37th Parliament, 3rd Session.

individuals [in positions of authority with regard to the Sponsorship Program] fail to meet requirements of a doctrine that continues to be clear and reasonable, or does their conduct suggest that the doctrine is itself unclear or impractical and needs to be revised?" It is now time to return to that question.

Reflecting on the testimony provided to the Committee by earlier witnesses, Dr. Franks concluded that the current doctrine of ministerial responsibility (and the role of deputy ministers implicit in it) was clearly reflected, along with its deficiencies:

I might conclude that the Privy Council Office's interpretation of responsibility and accountability in our parliamentary system contains far too many gaps, ambiguities and contradictions, and that the system does not work to the satisfaction of parliament or to the people of Canada.

I do not believe that responsibility and accountability could be much more shirked, or the division of responsibility between ministers and deputy ministers much more confused and blurred that the committee has proven them to be in the sponsorship affair. (43:1120) \*

Having pointed out that the events surrounding the Sponsorship Program had exposed serious weaknesses in the current interpretation and application of ministerial and deputy-ministerial responsibility and accountability, Dr. Franks proposed a solution:

If Canada adopted the accounting officer approach [following a long-established practice in the United Kingdom], then at least the Public Accounts Committee and Canadians in general, would know who was responsible and who should be held accountable. That, to put it mildly, would be a great improvement. (43:1120) \*

Dr. Franks argued that the deficiencies in the Canadian interpretation and practice of the accountability doctrine are exacerbated by the high turnover rate among both ministers and deputies in Canada. This phenomenon impedes both the functional capacity to take responsibility and the sense of being responsible. His alternative:

A better way exists. Britain has a quite different approach towards responsibility and accountability to Parliament for administration and the use of funds. In Britain the permanent secretaries are heads of department, equivalent to our deputy ministers, are designated as accounting officers and have full and personal responsibility for the transactions in the account, including matters of prudence, probity, legality, value for money, unless they have been explicitly overruled in writing by their minister. This responsibility of the accounting officers is personal and remains with them, even when they change office or retire. Either the minister is responsible or

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\* Evidence 37th Parliament, 3rd Session.

the deputy is. Not both, not neither. Establishing the accounting officer approach and ensuring that it works in practice has been the central concern on the public accounts committee in Britain for over a century.

The accounting officer approach was recommended for Canada by the Lambert Commission on Financial Management and Accountability, but this recommendation was rejected by the government. The government's rejection in part was based on a misunderstanding of the British practice. (43:1115) \*

In the past, other observers have commented on the mismatch between the prevailing doctrine and practice of ministerial accountability and the complexities of contemporary government, and have recommended that an accounting officer approach be adopted to clarify lines of accountability and responsibility. Among the first to do so was the Royal Commission on Financial Management and Accountability in the late 1970s.

### **The Royal Commission on Financial Management and Accountability**

As Dr. Franks testified, the proposal that Canadian deputy ministers be assigned direct responsibility for the administration of their departments and be held accountable for is not a recent one. In 1979, the Royal Commission on Financial Management and Accountability (Lambert Commission) noted in its final report that,

Although deputy ministers have multiple accountabilities, deputy heads are not regularly held accountable in a systematic or coherent way for program management and departmental administration.<sup>10</sup>

To correct this weakness, the Commissioners recommended that:

[d]eputy ministers be liable to be held to account directly for their assigned and delegated responsibilities before the parliamentary committee most directly concerned with administrative performance, the Public Accounts Committee.<sup>11</sup>

The Commissioners reasoned that the doctrine of ministerial accountability was useful and vital, but that it should not provide an opportunity for those bearing direct administrative and operational responsibility to avoid being held to account for their actions:

The doctrine of ministerial accountability has a great deal to recommend it, for it identifies who has the final responsibility for decisions taken — the

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<sup>10</sup> The Royal Commission on Financial Management and Accountability, *Final Report*, March 1979, p. 189.

<sup>11</sup> *Ibid.*, p. 189.

minister, and it provides a forum in which he is publicly accountable — Parliament. Nevertheless, this valuable tool for achieving accountable government must not become an obstacle to holding to account those who carry out tasks on the basis of delegated authority — the officials of departments and agencies.<sup>12</sup>

Far from calling for the abandonment of the doctrine of ministerial accountability, the Commissioners were arguing that it be strengthened through a more precise alignment between accountability and responsibility. They wrote that their

... recommendation that accountability for administrative performance be focussed directly on the deputy heads of departments and agencies is intended to relieve ministers of some of the burden of operational detail without removing final responsibility for policy development and implementation.<sup>13</sup>

Accordingly, they made a second recommendation to accompany their first:

[t]he deputy minister as chief administrative officer account for his performance of specific delegated or assigned duties before the parliamentary committee responsible for the scrutiny of government expenditures, the Public Accounts Committee.<sup>14</sup>

If adopted, these two recommendations would have made deputy ministers accountable before the Public Accounts Committee for their assigned duties and delegations and for the administration of their departments. It is notable that the Royal Commission called for deputy ministers to be accountable *before* the Public Accounts Committee rather than *to* the Committee<sup>15</sup> and the final responsibility for policy and its implementation would remain with the minister. Neither recommendation was accepted.

## **The Special Committee on the Reform of the House of Commons**

In 1985, the issue was taken up again, this time by a House of Commons Committee, the Special Committee on the Reform of the House of Commons (McGrath Committee). The Special Committee reported that:

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<sup>12</sup> Ibid., p. 371.

<sup>13</sup> Ibid., p. 374.

<sup>14</sup> Ibid., p. 374.

<sup>15</sup> Accountability *to* someone or something denotes the ability to sanction performance, and ability that is absent in a relationship that involves accountability *before* someone or something.

The individual responsibility of ministers concerns the administration of their departments. It is no longer reasonable that a minister be accountable or responsible when, through no fault of the minister, senior officials misuse or abuse their powers.<sup>16</sup>

The notion that a minister could still enjoy the intimate knowledge of the daily workings of his or her department and thus could be held to account for operational and administrative actions may have been valid in the 19th Century but is no longer so under contemporary circumstances. As the members of the Committee argued:

The idea of a minister being responsible for everything that goes on in a department may once have been realistic, but it has long since ceased to be so. A minister cannot possibly know everything that is going on in a department. The doctrine of ministerial accountability undermines the potential for genuine accountability on the part of the person that ought to be accountable — the senior officer of the department.<sup>17</sup>

Yet 20 years later, there has been no discernable change in the way the doctrine of ministerial accountability is interpreted, and the Public Accounts Committee consequently was unable to obtain any clear acknowledgement of responsibility for the administration of the Sponsorship Program, and thus was unable to hold anyone to account.

### **The British Approach: Accounting Officers**

As is widely known, the Westminster form of parliamentary democracy originated and evolved in the United Kingdom and with it, the doctrine of ministerial accountability. This system, with its doctrines and practices, formed the model for the later stages of colonial governments in British North America, and was the model that was adopted at the time of Confederation for Canada's own system of representative government.

In the years following Confederation, the British system evolved beyond the state in which it existed and has thus developed a number of unique characteristics not mirrored in Canada.

In 1866, the *Exchequer and Audit Act* created the position of accounting officer, although the term "accounting officer" did not come into use until 1872.<sup>18</sup> As

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<sup>16</sup> Special Committee on the Reform of the House of Commons, *Report of the Special Committee on Reform of the House of Commons*, June 1985, p. 20 – 21.

<sup>17</sup> *Ibid.*, p. 21.

<sup>18</sup> C.E.S. Franks, *Not anonymous: ministerial responsibility and the British accounting officers*, Canadian Public Administration/Administration publique du Canada, Winter 1997, vol. 40, no. 4, p. 629.

a result of these measures, British permanent secretaries (deputy ministers) were designated as accounting officers for their departments. They thus became formally responsible and accountable for the financial accounts of their departments and held to account for the performance of their duties before the Public Accounts Committee.

It must be stressed that this change did not impair the doctrine of ministerial accountability. British permanent secretaries are instructed that it is incumbent upon them to combine their duties as accounting officers with their:

[d]uty to serve the Minister in charge of their department, to whom they are responsible and from whom they derive their authority. The Minister in turn is responsible to Parliament in respect of the policies, actions and conduct of the department.<sup>19</sup>

Accounting officers are personally responsible for:

The overall organisation, management and staffing of the department and for department-wide procedures, where these are appropriate, in financial and other matters. [He or she] must ensure that there is a high standard of financial management in the department as a whole; that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the department; and that financial consideration are fully taken into account in decisions on policy proposals.<sup>20</sup>

As accounting officers, permanent secretaries are held to account for performance of their duties before the Public Accounts Committee. The ultimate responsibility of the minister and the responsiveness of the public service to direction from elected officials is preserved by specifying what must happen when a minister and a permanent secretary are in disagreement:

If the minister in charge of the department is contemplating a course of action involving a transaction which the Accounting Officer considers would infringe the requirements of propriety or regularity (including where applicable the need for Treasury authority), the Accounting Officer should set out in writing his or her objections to the proposal, the reasons for those objections and his or her duty to notify the C&AG [Comptroller and Auditor General] should the advice be overruled. If the minister decides, none the less, to proceed, the Accounting Officer should seek a written instruction to take the action in question. Having received such an instruction, he or she must comply with it, but should then inform the Treasury of what has occurred, and should also communicate the papers to the C&AG without undue delay. Provided that this procedure has been followed, the PAC

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<sup>19</sup> Her Majesty's Treasury, *The Responsibilities of an Accounting Officer*, London, U.K., paragraph 2.

<sup>20</sup> *Ibid.*, paragraph 5.

[Public Accounts Committee] can be expected to recognise that the Accounting Officer bears no personal responsibility for the transaction.

If a course of action in contemplation raises an issue not of formal propriety or regularity but relating to the Accounting Officer's wider responsibilities for economy, efficiency and effectiveness ..., the Accounting Officer has the duty to draw the relevant factors to the attention of his or her minister and to advise in whatever way he or she deems appropriate ... If the Accounting Officer's advice is overruled and the proposal is one which he or she would not feel able to defend to the PAC as representing value for money, he or she should seek a written instruction before proceeding. He or she will no doubt wish to refer to the probability of a PAC investigation. He or she must then comply with the instruction, but should inform the Treasury and communicate the request for the instruction and the instruction itself to the C&AG without undue delay, as in cases of propriety or regularity.<sup>21</sup>

These measures clarify the doctrine of ministerial accountability by making a distinction between a minister's policy role and a deputy minister's [permanent secretary's] administrative role while preserving the minister's ultimate responsibility and accountability for the actions of his or her department.

A final, notable, feature of the accounting officer model is that responsibility and accountability as prescribed by the model attaches to the person — and not to the office. Thus, as Dr. Franks told the Committee, the “responsibility of the accounting officers is personal and remains with them, even when they change or retire.” (43:1115) \* In Canada, the situation is reversed; according to the prevailing interpretation of ministerial accountability, responsibility belongs with the office and not the individual. This interpretation — which is applied formally to ministerial responsibility — influences the manner in which deputy-ministerial responsibility is perceived. Combined with the rapid turnover of deputy ministers, the result, as Dr. Franks explains, has been that by the time an issue is brought to the attention of the Public Accounts Committee it is more than probable that the deputy minister who presided at the time referenced by an audit has departed leaving the Committee with no one to hold to account from what went wrong.<sup>22</sup> And this is indeed what happened in the case of both the minister and the deputy minister with regard to the Committee's investigation of the Sponsorship Program.

### **Canadian Deputy Ministers as Accounting Officers**

During its hearings on the Sponsorship Program, the Committee asked Mr. Quail what recourse was open to a deputy minister who found him or herself in

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<sup>21</sup> Ibid., paragraphs 15, 16.

\* Evidence 37th Parliament, 3rd Session.

<sup>22</sup> C.E.S. Franks, “Ministerial and Deputy Ministerial Accountability in Canada”, submission to the Public Accounts Committee of the House of Commons, 11 January 2005, esp. p. 36 – 41.



disagreement with their minister. Mr. Quail replied that under those circumstances, a deputy could approach the Clerk of the Privy Council (7:1200) — a step he later indicated that he had not taken. (42:1650) \* Asked if he had ever requested letters of direction from his minister if asked to do something he was not comfortable with, Mr. Quail answered in the negative. (7:1325) \* When he spoke to the Committee, Arthur Kroeger also brought up the possibility that a deputy minister could sort out disagreements with a minister by going to the Clerk of the Privy Council who, in turn, could take the matter to the prime minister. (21:1600) \*

While the Committee has been critical of the actions of the deputy minister concerning the Sponsorship Program, it recognizes that the available options are limited in the event of a disagreement between a deputy and a minister over operational and administrative decisions.

Deputy ministers work in a culture that places a high value on loyalty to their ministers and encourages them to be responsive to political direction. This is as it should be, but problems can arise if a minister were to instruct a deputy minister to take a course of action contrary to government administrative rules and procedures or were the minister to engage him/herself in areas of the deputy's unique statutory responsibility. While a deputy can bring disagreements with their ministers over these kinds of matters to the attention of the Clerk of the Privy Council, this would appear to be at odds with the prevailing culture.

Furthermore, were a deputy minister to approach the Clerk, there is no certainty that disputes would be resolved in a satisfactory manner. In part, this lack of certainty arises from at least two roles performed by the Clerk: as the prime minister's deputy minister and as the head of the public service — which create the potential for friction when the interests involved are dissimilar. And, as Dr. Franks observed, in the recent past the Clerk's role of "representing the political to the bureaucratic has overwhelmed representing the bureaucratic to the political." (43:1300) \*

As indicated, the possibility of requesting written direction from a minister is also available to a deputy minister who has concerns about ministerial directives. But, this option too has a drawback. As Donald Savoie recently observed:

Nothing in the past has prevented deputy ministers from requesting their ministers to put in writing instructions when propriety is in question, but there has never been formal recognition of such a responsibility.<sup>23</sup>

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\* Evidence 37th Parliament, 3rd Session.

<sup>23</sup> Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament*, University of Toronto Press, Toronto, 2003, p. 259.

Mr. Savoie adds that: "Such recognition might well have strengthened the hand of the deputy minister of Public Works and Government Services,"<sup>24</sup> in the case of the Sponsorship Program.

The Committee asked Dr. Franks what might have happened had the accounting officer mechanism been operative at the time the Sponsorship Program was in effect. Dr. Franks replied that if Canada had had the accounting officer system,

The deputy minister would have objected to the way that the ministers proposed that the Sponsorship Program would be run. If the ministers insisted on running it that way, the deputy minister would have sent a letter, and that correspondence would immediately have gone to the Treasury Board and to the Auditor General. (13:1610)

Although this response is speculative, the Committee tends to agree with Dr. Franks. Had the deputy minister of Public Works and Government Services Canada been designated an accounting officer in the manner of his U.K. equivalents, he could have:

1. Discussed with his minister any objections he had to his minister's proposed course of action concerning the Sponsorship Program.
2. Written a letter to the minister, in the event that the minister insisted on proceeding, setting forth his objections, explaining them, and informing the minister of his/her duty as accounting officer to inform the Clerk and the Auditor General if the minister chose to overrule his/her advice.
3. Received a letter from the minister directing him to proceed nevertheless.
4. Sent the relevant correspondence to the Auditor General.<sup>25</sup>

If the deputy had had this procedure available to him and had not followed it in the case of the Sponsorship Program, then the responsibility for some of the more serious contraventions of the government's rules and indeed for the disregard of key sections of the FAA would have been clearly his and he would have been held to account before the Public Accounts Committee. However, had he been able to follow the steps outlined above, the responsibility would have clearly been the minister's — or it is quite conceivable that the minister would have refrained from proposing questionable courses of action altogether and many of the abuses now associated with the Sponsorship Program might never had occurred. In either event, the Public Accounts Committee would have been able to determine, with

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<sup>24</sup> Ibid., p. 259.

<sup>25</sup> C.E.S. Franks, "Process for Handling Disagreements Between a Minister and An Accounting Officer in the U.K", 24 February 2005. A paper prepared for the House of Commons Standing Committee on Public Accounts. The steps outlined in the Committee's Report have been slightly modified from the original.

certainty, who was responsible for what went wrong with the Sponsorship Program, and to hold them to account.

Lastly, had the then deputy minister been designated an accounting officer, he would have been in a better position to manage the Department in a prudent and economical manner. In a broader sense, this would allow all deputy ministers to exercise their professional managerial skills to their fullest ability while at the same time continuing to serve their ministers. As Donald Savoie puts it, “[t]he accounting officer concept holds promise in that it can create an administrative space for career officials while respecting the doctrine of ministerial accountability.<sup>26</sup> Seen from the perspective of the public service as a whole, such an arrangement would enhance efforts to attract and retain the most able men and women to serve in government, and endow them with the flexibility they need to apply their skills to the fullest.

There are those who object to the adoption of the accounting officer concept in Canada, foremost among them, the Privy Council Office. But, as Dr. Franks testified, this objection is based on a misunderstanding of what the Lambert Commission, the McGrath Committee, and a host of others have proposed.

In response to the Lambert Commission’s recommendations, Privy Council Office concluded that:

[r]esponsibility shared tends to be responsibility shirked. *Formal and direct accountability* of officials to Parliament for administrative matters would divide the responsibility of ministers. ... Experience indicates that such distinctions [between the policy responsibilities of ministers and the administrative responsibilities of deputy ministers] are artificial and that Parliament prefers not to recognize the informal division between the answerability of officials and of ministers ...

The attempt, ..., to identify discrete areas of official accountability to Parliament would likely result in the further blurring of lines of accountability, weakening the ability of the House to hold the minister responsible when it chooses for matters falling under his or her authority.<sup>27</sup>

Privy Council’s misunderstanding has had a lasting influence, as testimony given by Mr. Kroeger shows:

A deputy minister is accountable to the minister. But, if you say that officials should be accountable *to* a parliamentary committee, you have a conflict. Is the minister the boss, or is the parliamentary committee the boss? I don’t

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<sup>26</sup> Savoie, 2003, p. 259.

<sup>27</sup> Privy Council Office, *Responsibility in the Constitution*, Ottawa, 1993, p.78 – 79. Emphasis in the original.

think many people seriously suggest that parliamentary committees could give direction to officials, but that has been suggested by the Lambert Commission and by some auditors general in the past.<sup>28</sup> (21:1545)

Under the accounting officer arrangement in the U.K., however, responsibility for administrative matters is not shared but belongs to deputy ministers unless a minister wishes to overrule his or her deputy, in which case the ultimate responsibility belongs to the minister.

Permanent secretaries are not, nor have advocates of the adoption of the accounting officer model in Canada ever proposed that deputy ministers be, directly and formally accountable *to Parliament*. As accounting officers, permanent secretaries are accountable/answerable *before* the Public Accounts Committee alone and the power to sanction that is implicit when one is accountable *to* someone is only present in the relationship that exists between permanent secretaries and their ministers. Lastly, no one has suggested that parliamentary committees give direction to officials, nor is this a characteristic of the relationship between U.K. accounting officers and the Public Accounts Committee. In the end, Mr. Kroeger's objections appear to have been based principally on his interpretation of what he thought that the Lambert Commission had recommended and he indicated that he did not have any particular reservations about the British accounting officer model. (21:1620)

## CONCLUSION AND RECOMMENDATIONS

In the submission that accompanied his testimony, Mr. Kroeger, wrote that:

The purpose of Ministerial responsibility is to preserve the authority of Ministers. The convention is a standing reminder to officials of who is in charge. It is a reminder that I would be wary of dispensing with.<sup>29</sup>

The Committee is in full agreement with Mr. Kroeger and is firm in its conviction that ministerial responsibility and the doctrine of ministerial accountability must be retained. They are cornerstones of our parliamentary government and in most respects have served Canada extremely well. It is worth recalling that the struggle for democratic government in Canada was largely a struggle to achieve responsible government, and that responsible government (of which ministerial responsibility and accountability are an integral part) is what allows Parliament — and ultimately citizens — to hold government to account for its actions.

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<sup>28</sup> Emphasis added.

<sup>29</sup> Arthur Kroeger, "Responsibility and Accountability in Government," Statement provided to the Public Accounts Committee of the House of Commons, 21 February 2005.

Nevertheless, the current interpretation of the doctrine of ministerial accountability dates from a time when government was small, and ministers knew (or ought to have known) their departments with some intimacy. These circumstances have changed, as both the Lambert Royal Commission and the authors of the McGrath Report recognized, and while the doctrine remains as valid as ever, its interpretation and practice no longer correspond with contemporary parliamentary or governmental realities.

Ambiguities in the doctrine, perhaps tolerable in the past, are now contributing to a situation in which those with responsibility are able to avoid accountability, as the Sponsorship Program has so clearly and so sadly demonstrated. What is needed, therefore, is not the wholesale abandonment of the doctrine of ministerial accountability. Instead, the doctrine needs to be reaffirmed and its interpretation and practice refined and clarified to assure its continuing relevance and utility to our system of government. The adoption of the U.K. accounting officer model would achieve these goals.

In instances that are not covered by statute law or regulation, it is sometimes necessary and desirable to exercise discretionary authority. Ministers and prime ministers must be able to do this but only in circumstances in which neither law nor regulation guides nor restrains them. As Arthur Kroeger testified:

If there's a normal way of doing things but a minister or a prime minister chooses, in the light of a situation, to do something different, they have the right to do it. Not all exercises of political discretion are bad. (21:1620)

Under an arrangement such as the one that exists in the United Kingdom, the ability of a minister to exercise political discretion has not been diminished. Indeed, the clear assignment of responsibilities affirms a minister's legitimate right to do so.

The Committee is therefore convinced that the use of an accounting officer designation for Canadian deputy ministers would strengthen — not dilute — the doctrine of ministerial accountability and would not impair ministerial authority or the ability to act. “Introducing the concept [designation of deputy ministers as accounting officers]” according to Donald Savoie:

[p]oses no difficulty, provided that accounting officers operate within the broad framework of ministerial accountability to Parliament for the policies and actions of their departments.<sup>30</sup>

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<sup>30</sup> Savoie, 2003, p. 258.

Accordingly, the Committee affirms the centrality of the doctrine of ministerial accountability and calls for its clarification and strengthening by the adoption of arrangements similar to those in place in the United Kingdom for permanent secretaries (deputy ministers).

With these requirements in mind, the Committee recommends:

### **RECOMMENDATION 1**

**That deputy ministers be designated as accounting officers with responsibilities similar to those held by accounting officers in the United Kingdom. Features of this arrangement must include, but not limited to, the following:**

- **The personal duty of signing the financial accounts described in his or her letter of appointment.**
- **The personal responsibility for the overall organization, management and staffing of the department and for department-wide procedures in financial and other matters.**
- **Ensuring that there is a high standard of financial management in the department as a whole.**
- **Personal responsibility for all powers and authorities either delegated or directly held.**
- **Ensuring that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the department.**
- **Ensuring that the department complies with parliamentary requirements in the control of expenditure with particular attention ensuring that funds are spent only to the extent and purposes authorized by Parliament.<sup>31</sup>**
- **As accounting officers, the personal responsibility of deputy ministers for negligence and wrongdoing does not diminish over time.**

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<sup>31</sup> Adapted from Her Majesty's Treasury, *The Responsibilities of an Accounting Officer*, London, U.K

## **RECOMMENDATION 2**

**That as accounting officers, deputy ministers be held to account for the performance of their duties and for their exercise of statutory authorities before the House of Commons Standing Committee on Public Accounts; and**

## **RECOMMENDATION 3**

**That the following procedures be adhered to when deputy ministers (as accounting officers) are in disagreement with their ministers regarding administration and operation of their departments:**

- 1. The deputy minister must inform the minister if he or she has objections to a course of action proposed by the minister.**
- 2. If the minister still wishes to proceed, the deputy minister must set out his or her objections to the course of action in a letter to the minister stating the reasons for the objections and the deputy minister's duty to notify both the Auditor General of Canada and the Comptroller General of Canada.**
- 3. If the minister still wishes to proceed, he or she, must instruct the deputy minister in writing to do so.**
- 4. If instructions to proceed are received in writing, the deputy minister must send copies of the relevant correspondence to both the Auditor General of Canada and Comptroller General of Canada.<sup>32</sup>**

The Committee also notes the tendency toward frequent turnovers in deputy ministerial positions, a factor that makes it difficult for incumbents to master the complexities of their departments thus complicating their capacity to be held accountable for their performance. The Committee accordingly recommends:

## **RECOMMENDATION 4**

**That the government endeavour to retain deputy ministers in their positions for periods of at least three years; however their responsibilities are in no way diminished should their tenure be less than the recommended three years.**

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<sup>32</sup> Adapted from Ibid.

Since at least the late 1970s, many have warned that the doctrine of ministerial accountability, as interpreted and practiced in Canada, had failed to keep abreast of changes to the scope and structure of modern government. As government became more complex, the ambiguities associated with the doctrine meant that it was no longer able to address new stresses placed on the system. Those warnings became fully realized and the inadequacies of the doctrine exposed by the events surrounding the Sponsorship Program.

The Standing Committee on Public Accounts was unable to establish, with certainty, exactly who bore ultimate responsibility for the mismanagement of the program — and thus who should have been held to account.

Adoption of the accounting officer model will avoid any such confusion in the future and will significantly reduce the likelihood that the kinds of behaviour associated with the Sponsorship Program will happen again. Canadians need this assurance and Parliament needs the tools that can provide it.



# APPENDIX A

## LIST OF WITNESSES

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<b>Associations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>37th Parliament, 3rd Session</b>		
<b>As Individual</b> Ranald Quail	01/03/2004	7
<b>As Individual</b> Hon. Alfonso L. Gagliano	18/03/2004 19/03/2004	10 11
<b>As Individual</b> Hon. Diane Marleau	25/03/2004	15
<b>Privy Council Office</b> Alex Himelfarb, Clerk of the Privy Council	03/05/2004	39
<b>As Individual</b> Ranald Quail	05/05/2004	42
<b>As Individuals</b> Patrick Boyer, Adjunct Professor, Department of Political Science, University of Guelph C.E.S. Franks, Professor Emeritus of Political Science, Queen's University	06/05/2004	43
<b>38th Parliament, 1st Session</b>		
<b>As Individuals</b> Joanne Bouvier, Former Special Assistant in Minister Gagliano's Office, Department of Public Works and Government Services Ghislaine Ippersiel, Former Special Assistant in Minister Gagliano's Office, Department of Public Works and Government Services Patrick Lebrun, Former Special Assistant in Minister Gagliano's Office, Department of Public Works and Government Services	02/12/2004	10
<b>As Individuals</b> Mario Parent, Former Coordinator, Advertising Program, APORS and CCSB, Department of Public Works and Government Services	07/12/2004	11

Huguette Tremblay, Former Chief, Special Projects, CCSB,  
Department of Public Works and Government Services  
Canada

**As Individual**

14/12/2004

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C.E.S. Franks, Professor Emeritus of Political Science, Queen's  
University

**As Individual**

21/02/2004

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Arthur Kroeger



# REQUEST FOR GOVERNMENT RESPONSE

In accordance with Standing Order 109, the Committee requests that the Government table a comprehensive response to the report.

A copy of the relevant *Minutes of Proceedings* (Meeting Nos. [2](#), [10](#), [11](#), [13](#), [21](#), [22](#), [31](#) and [33](#) including this report) is tabled.

Respectfully submitted,

John Williams, M.P.  
*Chair*



# MINUTES OF PROCEEDINGS

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Tuesday, May 3, 2005

*(Meeting No. 33)*

The Standing Committee on Public Accounts met in camera at 3:32 p.m. this day, in Room 269 West Block, the Chair, John Williams, presiding.

Members of the Committee present: Dean Allison, Gary Carr, David Christopherson, Brian Fitzpatrick, Sébastien Gagnon, Mark Holland, Daryl Kramp, Hon. Walt Lastewka, Hon. Shawn Murphy, John Williams and Borys Wrzesnewskyj.

Acting Members present: Mario Laframboise for Benoît Sauvageau.

In attendance: Library of Parliament: Brian O'Neal, Analyst; Marc-André Pigeon, Analyst.

Pursuant to Standing Order 108(3)(g), the Committee resumed consideration of Governance and Accountability within the Federal Public Service, with an emphasis on ministerial and deputy ministerial accountability.

The Committee resumed consideration of a draft report.

It was agreed, — That the Committee adopt the draft report as the Report to the House.

It was agreed, — That, pursuant to Standing Order 109, the Committee request that the Government table a comprehensive response to the report.

It was agreed, — That the Chair, Clerk and researchers be authorized to make such grammatical and editorial changes as may be necessary without changing the substance of the report.

It was agreed, — That the Chair present the report to the House at the earliest opportunity following the expiry of the forty-eight (48) hour revision period.

It was agreed, — That the Clerk and the analysts, in consultation with the Chair, issue a news release.

At 4:49 p.m., the Committee adjourned to the call of the Chair.

Elizabeth B. Kingston

*Clerk of the Committee*