Not My Fault:
Ministerial Responsibility and the Sponsorship Scandal

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Abstract

This thesis will examine the improper contracting practices engaged in by Canada's federal government during the late 1990s and into the new millennium, most of which occurred within the Department of Public Works and Government Services Canada (PWGSC) and have collectively become known as the "sponsorship scandal". It will be argued that these events were caused by a breakdown or erosion in adherence to the doctrine of ministerial responsibility. Furthermore it will be argued that the proper response to this incident is an attitudinal shift towards a greater respect for this doctrine, and that recent proposals, such as those put forth by Justice John Gomery's report and those found in the new *Federal Accountability Act*, to address this situation through more formal changes are misguided.

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Introduction

One of the quickest and most effective ways for a government to lose the confidence and trust of its citizens is to mishandle their money. For several years in the late 1990s and into the new millennium, Canada's Liberal government engaged in the gross misuse of millions of taxpayers' dollars. Under the guise of promoting federalism in Quebec, the "sponsorship program" distributed excessively lucrative advertising contracts to firms run by or connected to friends of the Liberal Party. This shameful affair is most commonly known as the "sponsorship scandal".

The impetus for the sponsorship program was the recurring thorn in the side of the federal government since before Confederation, Quebec nationalism. On October 30, 1995, the Quebec population voted "no" in a province-wide referendum asking whether the provincial government should enter negotiations with the federal government to formulate a sovereignty arrangement for Quebec. The federalist camp won the vote by the slimmest of margins, taking 50.6 percent of the vote to the "yes" side's 49.4 percent.¹ While the proponents of a united Canada, most notably the federal government, were pleased and relieved that Quebec had decided to remain part of the country, the narrow margin by which the "no" side had emerged victorious was a troubling sign that the referendum result did not signify that all was well on the national unity front. In addition to the narrow victory, federalists were also troubled by the pledge of Lucien Bouchard, Quebec's new sovereigntist Premier, to hold another referendum as soon as "winning conditions" were present.²

Having clearly been told that Quebec was just barely still in favour of remaining a Canadian province and that it had not done enough during the referendum campaign, the

federal government, led by Prime Minister Jean Chrétien, believed that it was necessary to build more of a Canadian, as opposed to a purely Quebecois, identity among the citizenry of Quebec. To do this, Chrétien and his government sought to increase the profile of the federal government in Quebec. Chrétien would later explain, “I was determined that there would be no winning conditions for the proponents of separation. I had a personal commitment as a Canadian to the country I love and a duty as prime minister to keep it united. I was not prepared to be guilty of inaction.”³

The government’s initiatives to this end were undertaken as part of what became known as the sponsorship program, run out of the department of Public Works and Government Services Canada (PWGSC) along with the Prime Minister’s Office (PMO). What followed over the next several years would be the egregious and deliberate mishandling of public money, part of what Peter MacKay, then an opposition member of parliament, would term “the biggest financial scandal in the history of this country.”⁴

This thesis will examine the events of the sponsorship scandal in an attempt to determine how such a dubious scam was allowed to go on for so long, and to evaluate proposed measures designed to prevent similar events from occurring in the future. Some of the initiatives undertaken by the government since the scandal will be analyzed, as will be *The Report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities*, more commonly referred to as the Gomery Report. This publication documented the findings of the public inquiry into the sponsorship program conducted by Justice John Gomery.

It will be argued that it was a breakdown or erosion in the respect for and adherence to the doctrine of ministerial responsibility that allowed the scandal to occur

and to continue for so long. The ministers associated with the sponsorship program, including the prime minister himself, did not fulfill the duties bestowed upon them by this important constitutional principle, one of the most fundamental elements of Canada's system of responsible government. Even after the scandal became public knowledge, all of the political actors involved claimed to have known nothing about the misuse of the public funds, and all had a plentiful supply of reasons why it was not their fault.

Significant portions of this thesis will be devoted to evaluating the conclusions reached by the Gomery Report. It will be argued that although Gomery claimed to have a strong respect for the doctrine of ministerial responsibility and its importance to responsible government, his findings indicated that he did not fully understand the concept and did not take it as seriously as he would have his readers believe. Furthermore, the phase of his report in which he recommended changes to avoid a similar event in the future was quite misguided. He relied far too heavily on formal changes, many of which would not strengthen Canada's accountability regime and would actually have negative effects on the process of government in Canada.

The argument here is that the sponsorship scandal was caused by improper and unscrupulous behaviour by certain individuals in key positions in the Liberal Party and the civil service, and thus should not be seen as a call for drastic and sweeping changes to Canada's accountability regime or process of government. A breakdown within the Liberal Party in the adherence to the concept of ministerial responsibility was instrumental in allowing the sponsorship scandal to operate undetected for so many years, and it will therefore be argued that a stricter adherence to this important doctrine is the major change that should result from this unfortunate event. Such a shift in the attitude of

the Canadian government, as opposed to more formal or radical changes in government practices, would sharply reduce the likelihood of another debacle similar to the sponsorship scandal. However, it should be remembered that inappropriate or illegal behaviour by politicians and civil servants is impossible to totally prevent using rules and protocols. The most important lesson that should be learned from the sponsorship scandal is that when corrupt or dishonest individuals are put in positions of authority or power, the potential for disastrous scandal is great and cannot be mitigated by formal mechanisms.

ENDNOTES TO "INTRODUCTION"

¹ Centre for Research and Information Canada, "Quebec 1995: The Second Referendum".

<http://www.cric.ca/en_html/guide/referendum/referendum1995.html>

² Testimony of Jean Chrétien before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), p. 12502.

<<http://www.gomery.ca/documents/transcripts/en/2005/03/20053410586.pdf>>

³ *Ibid.*, pp. 12502-12503.

⁴ Peter MacKay, statement at member of parliament panel discussion at Carleton University, November 1, 2005.

The Events in Question

This section will describe the decisions and events that constituted the sponsorship scandal. To be properly dealt with, this incident must be understood in the context of the history of government advertising, which is an increasingly pervasive force in Canadian politics.

The Advertising Practices of the Federal Government

For many years, the federal government has been the most active advertiser in the country.¹ As author Jonathan Rose has explained, this could have potentially destructive consequences for Canadian democracy. In Rose's words:

If one of the assumptions of a democratic polity relies on an informed electorate, this latest trend [towards increasingly frequent engagement in advertisement by the government] may be worrisome, as such an approach to politics discourages reflective thought... the federal government in Canada is using advertising increasingly to 'sell' its message to the Canadian public. In doing so, it is relying less on traditional channels of dissemination such as members of parliament or various media.²

In a related development, Rose identified a trend towards the hiring of private advertising agencies to handle the work of government advertising.³ He stated that this may also be an undesirable shift since private firms tend not to grasp the extreme importance of a democratic government's communication with its citizenry. Rose explained, "Advertising agencies uncritically use the same techniques to sell perfume, policies, or platforms. The effect of this is a debasement of the political process and a denigration of our political vocabulary."⁴

If the trends towards more frequent government advertising and a heavier reliance on private firms are troubling on their own, it follows logically that it would be truly

disastrous for the government to engage in advertising activities or contracting practices which are underhanded or dishonest. However, unsettling though it may be, it has been well-documented that the parties who form governments in Canada have a long history of granting advertising contracts to firms that they consider to be political or personal allies. Often this is done to reward agencies for their work on a leadership or election campaign, which firms will commonly handle on a volunteer basis with the hopes of securing more lucrative contracts if the party they assist forms the government.⁵ As Rose put it, “The most significant difference between advertisers in the private sector and those in government is the patronage function of government advertising.”⁶ The links between political parties and advertising firms in Canada has also been noted by Prime Minister Pierre Trudeau’s former personal secretary, Jim Coutts, who once stated, “There are Liberal agencies and Tory agencies. That’s the way advertising works in Canada.”⁷

This tendency can be traced back to at least 1917. After its election victory of that year, Sir Robert Borden’s government awarded its publicity campaign to the same agency which had pitched its *Military Service Act* to the electorate prior to the vote.⁸ Borden’s was not the only Conservative administration to engage in preferential hiring of advertising agencies. During John Diefenbaker’s time in office, much government promotion was handled by McKim Advertising, which employed a senior partner who was, probably not coincidentally, the national director of the Progressive Conservative Party.⁹

While the Tories are obviously not above this type of practice, it is the Liberal Party which has been the most willing to grant advertising contracts in the interest of rewarding or recruiting political benefactors and allies. As Rose noted, “Because of the

length of time it spent in power this century, the Liberal Party was able to develop and fortify its ties with a handful of advertising firms.”¹⁰

In 1940, during Canada’s World War II effort, Harry Cockfield acted as the chairman of the Liberal government’s drive to sell war bonds. As a result, his advertising firm, Cockfield Brown, was a major recipient of advertising for these bonds, and subsequently handled the marketing for the Liberal election campaigns of 1949 and 1953.¹¹ In fact, during the 1940s the link between the Liberal Party and Cockfield Brown was actually formalized into an agreement which declared that the agency would be the “party’s single national agency on a continuing basis.”¹² By the 1960s, advertisers from Cockfield Brown were actually receiving political appointments to the Senate and Canada’s American embassy.¹³

Cockfield Brown probably represents the best example of the Liberal tendency to hire advertising firms based on political connections, but it is hardly the only one. As Jeffrey Simpson has noted, throughout the World War II era, numerous companies were hired to promote the Liberal Party, and all understood that “the implicit assumption remained that if firms refused to contribute *post facto*, they could all but forget about another contract.”¹⁴

The Liberals also began well-documented relationships in the 1950s with agencies such as MacLaren and Vickers & Benson.¹⁵ As will be discussed shortly, the latter has remained connected to the party and was actually one of the firms implicated in the sponsorship scandal. An excellent example of this Liberal tendency can be seen in the 1972 creation of Red Leaf Communications, a consortium of advertising firms that volunteers its services to the Liberal Party during every election campaign.¹⁶ This means

that the Liberals have a lasting and formalized relationship with a number of politically friendly advertising agencies.

This background on government advertising has demonstrated that while definitely an especially egregious transgression, the sponsorship scandal was not the first instance of the federal government engaging in preferential hiring of advertising companies. In fact, while it was in operation, this program appeared to simply be one more case of the government hiring preferred agencies to advertise itself. Only later was it realized that it was unusually devious and wasteful.

Another trend noted by Rose regarding government advertising was the increasing centralization in the advertising strategies of the federal government.¹⁷ Writing in 2000, just before the sponsorship scandal became public knowledge, he explained that while policy is made in departments and central agencies, advertising decisions emanated almost entirely from Public Works and Government Services Canada. He referred to PWGSC as “the lead department controlling virtually all government advertising.”¹⁸

Rose was almost prescient in describing how the activities of PWGSC remained, to a significant degree, ignored and unchecked. He wrote, “The power of the department of PWGSC in this regard seems to be largely unexplored by students of government. For example, few, if any, major public administration texts outlining the powers of government departments for example, mention the advertising power of PWGSC.”¹⁹ It is quite unlikely that this omission on the part of academia will persist now that an event such as the sponsorship scandal has taken place.

In 1998, a merger of two of PWGSC’s branches formed the Communication Coordination Services Branch (CCSB), which became responsible for the coordination

and allocation of government advertising contracts.²⁰ For much of the duration of the sponsorship program, this group was nominally responsible for selecting the agencies which would receive government contracts. Rose described the process that was supposed to take place, explaining that, “A small committee of six... judges the ability of advertising agencies ensuring that there is an arm’s length relationship in the appointment of advertising agencies, thus avoiding charges of patronage.”²¹ CCSB employed a very clear list of criteria that were supposed to be considered in awarding contracts. This list, which, as it turned out, was often wholly ignored, included a potential advertiser’s capability, comprehension, sensitivity, service, compatibility, and overall impression.²² In a statement that appears quite laughable in hindsight, a former chair of the cabinet communications committee once stated that the goal of these criteria was to “make the process more transparent.”²³ The following account of the events associated with the sponsorship scandal will demonstrate that transparency was the last thing on the minds of many of the relevant decision-makers, and the process described above was not at all respected in awarding government contracts.

The Creation of the Sponsorship Program

Though the sponsorship program would not be officially created until 1997, its earliest beginnings can be traced back to the fiscal year 1994-1995, when the Advertising and Public Opinion Research Sector (APORS, the precursor to CCSB) of PWGSC, managed by Joseph Charles (Chuck) Guité, subsidized certain heavily publicized automobile races, in exchange receiving the right to prominently display advertisements for various federal government departments and agencies at these events.²⁴ About \$2

million was spent from the branch's normal operating budget on these "special programs". In 1995-1996, the branch engaged in similar sponsorships, raising spending on these initiatives to \$22 million. "At this time," in the words of Justice John Gomery's report, "the objective was to give publicity to certain government programs... in addition to an intention to advertise the federal programs and presence in general."²⁵

When the aforementioned 1995 referendum resulted in such a narrow victory for the "no" side, the cabinet held a special meeting on February 1 and 2, 1996.²⁶ At this meeting, the cabinet decided that the federal government had to be made more visible in the province of Quebec. To do this, the government would engage in advertising and displays at community, cultural, and sporting events.

Parliament was not informed about the new program, and even the minister of PWGSC at the time, Diane Marleau, was provided little detail regarding its operation.²⁷ At the request of the prime minister, the program was directed by his chief of staff, Jean Pelletier, in collaboration with APORS, led by Chuck Guité. Pelletier and Guité would remain the key decision-makers until June 1997, when Alfonso Gagliano became minister of PWGSC and gradually assumed Pelletier's role. Due to his branch's lack of personnel with the necessary specific training and expertise in this area, Guité decided to contract with advertising and communication agencies that were asked to manage and administer the sponsorships to which the federal government had agreed. In Gomery's words:

In effect, the advertising and communication agencies were engaged to act on behalf of the government of Canada to organize and manage these sponsorships and to see to it that the government received the publicity and visibility for which it was paying. In exchange for their services, these agencies would receive remuneration in the form of commissions and fees paid for what were referred to as production costs.²⁸

It is the subject of this last sentence, the remuneration received by the advertising and communications agencies, which led to one of the more egregious financial scandals ever witnessed in Canada. APORS, and later CCSB, used very suspect methods (which will be discussed shortly) of selecting which agencies would receive sponsorship contracts, and greatly overpaid them for their services, abusing millions of taxpayers' dollars. As stated by Auditor General Sheila Fraser's 2003 report, which brought the sponsorship scandal to the public's attention:

Those responsible for managing the program broke the government's own rules in the way they selected communications agencies and awarded contracts to them... Documentation was very poor and there was little evidence of analysis to support the expenditure of more than \$250 million. Over \$100 million of that was paid to communications agencies as production fees and commissions... Oversight mechanisms and essential controls at Public Works and Government Services Canada failed to detect, prevent, or report violations.²⁹

Several problems plagued the sponsorship program from its inception. The 2003 auditor general's report succinctly detailed the principal reasons why the program turned into such a scandalous disaster, and why it was not detected for such a long period of time.

First, there was the small number of people involved in its delivery.³⁰ As has been mentioned, parliament was not informed, thus removing an important potential accountability mechanism. Also, even staff within APORS/CCSB testified that they were not informed of the objectives of the program and were given no decision-making authority. All key decisions were made by APORS/CCSB's executive director, Chuck Guité, in consultation with Jean Pelletier or Alfonso Gagliano. The miniscule number of people with knowledge and involvement in the sponsorship program allowed for secrecy and thus facilitated the mishandling of public money for several years. As stated by

Fraser, “These procedures violate two fundamental principles of internal control: segregation of duties and appropriate oversight.”³¹

The sponsorship program was also the target of a laughably weak control environment.³² Very significantly, when the program was created, no written guidelines were issued regarding the criteria for selecting agencies or the amounts that could be appropriately paid for sponsorship contracts. This lack of written instruction gave Guité the free hand he needed to operate according to the devious wishes of his political superiors, since he was permitted to make decisions regarding the recipients of sponsorships, and their amounts, in an ad hoc manner. In Fraser’s words, “Written guidelines can be a key tool for delivering any program consistently, fairly, and transparently: they can provide clear criteria for eligibility, set out the conditions attached to financial support, and in this case, provide guidance on levels of sponsorship.”³³ The lack of such guidelines was probably a deliberate attempt to lessen the likelihood of detection of the questionable practices occurring as part of the sponsorship program.

A sample of the examples of the inappropriate use of public funds will demonstrate the lack of regard for the sanctity of government rules and procedures that existed within the Liberal Party during the era of the sponsorship scandal. Certainly Justice Gomery was correct in referring to the episode as “a story of greed, venality and misconduct.”³⁴

Payments From the Federal Government to Crown Corporations

The 2003 auditor general's report detailed the questionable transfers of funds from CCSB to several crown corporations including the Business Development Bank of Canada, the Canada Mortgage and Housing Corporation, the Canadian Tourism Commission, Old Port of Montreal Corporation Inc., the National Arts Centre Corporation, National Capital Commission, and VIA Rail Canada Inc.³⁵ Fraser's audit discovered that many of the transfers by CCSB to crown entities were made through communications agencies, who were paid commissions to move the money. This was a deviation from standard government practice, according to which funds are usually transferred directly between government entities. Fraser asserted that none of the agencies were selected properly, and in many cases there was little evidence that the government received acceptable value for the money it transferred. In addition, the exact services provided by these agencies in return for the commissions they received were not made clear to the auditor general. She stated, "Communications agencies were paid significant commissions by CCSB to simply deliver cheques to the corporations."³⁶

Fraser's report quoted the Treasury Board's policy on transfers to crown corporations:

Where a department is considering a grant, contribution, or other transfer payment to a crown corporation . . . , there must be prior consultation with the Treasury Board Secretariat . . . to ensure that a grant, contribution or other transfer payment is not, and does not become, a substitute for financing a corporation's operating or capital requirements.³⁷

This requirement of consultation was not followed. As a result, the problem which it was designed to avoid is exactly what occurred in the case of many of these transfers.

As Fraser explained, some payments were indeed subsidies paid to crown corporations to cover their normal operating costs.³⁸

Fraser summarized her concern at the egregious lack of respect for government rules and procedures demonstrated by the transfers from CCSB to certain crown corporations:

What is particularly disturbing about these sponsorship payments is that each involved a number of transactions with a number of companies, sometimes using false invoices and contracts or no written contracts at all. These arrangements appear designed to provide commissions to communications agencies, while hiding the source of funds and the true nature of the transactions.³⁹

Groupaction Marketing Inc.

The federal government's sponsorship at the 1998 Grand Prix du Canada automobile race was handled by Groupaction Marketing Inc.⁴⁰ The initial deal was for a \$700 000 sponsorship, a \$105 500 commission, and \$50 000 in production costs. When Groupaction gradually increased its request for tickets to the event from 74 to 230, the promoters refused to supply such a high number of complimentary tickets, which would have cost \$264 000. To rectify this situation, CCSB raised Groupaction's fees. The sponsorship amount was increased to \$900 000 and the production costs were raised to \$114 000, hence a total increase that was equal to the cost of the tickets desired by Groupaction. There is no evidence to indicate that this increase was for any reason other than to help Groupaction pay for tickets that the promoter would not supply on a complimentary basis.

Groupaction was also guilty of perhaps the most brazen violation of government contracting practices, engaging in outright bribery to secure contracts.⁴¹ In 2001 at Frank Restaurant in Montreal's Little Italy, Jean Brault, the president of Groupaction Marketing, sat down with Liberal fundraiser Giuseppe (Joe) Morselli. The two were waiting for Liberal Party organizer Beryl Wajzman. According to Brault's testimony before the Gomery Commission, he agreed to pay Wajzman a monthly salary in exchange for "special consideration" on federal contracts. Brault claimed to have left the table before Wajzman's arrival, leaving behind an envelope containing \$5000 in cash. When Brault returned, the envelope was gone and the three men enjoyed a casual meal. This incident, referred to by Joe Friesen of *The Globe and Mail* as "one of the great intrigues of Canadian politics" represents a clear indication of the attitude that existed within the Liberal Party that it was above the rules.⁴² Not only did the party agree to dispense contracts based on a flagrant act of bribery, but those who engaged in this transgression proceeded to dine with each other as if nothing out of the ordinary had occurred.

Lafleur Communication and Gosselin Communication

The Lafleur Communication Agency was involved in numerous underhanded sponsorship contracts. Significantly, it appears likely that the agency's president, Jean Lafleur, was a personal acquaintance of Jean Pelletier. Although Pelletier attempted to deny this in his testimony, Justice Gomery believed that Lafleur was probably being truthful in testifying that he and Pelletier had met socially several times.⁴³

One of many examples of inappropriate contracts between PWGSC and the Lafleur Agency was the Montreal Expos sponsorship contract, which Lafleur handled

from 1995-1997.⁴⁴ Despite an ample commission paid to Lafleur, the agency also charged PWGSC outlandish fees for the hourly wages of its employees. The Gomery Commission could find no explanation as to why the originally agreed-upon commission fee could not cover the work done by Lafleur employees, and, importantly, found no evidence of PWGSC having questioned or challenged Lafleur's hourly invoicing.

Lafleur Communication did a lot of work for PWGSC and sometimes subcontracted this work to other agencies.⁴⁵ In subcontracting, the agency was required to seek competing bids, but never did so. The justification offered was that Lafleur was operating under an urgent timeframe. This was accepted by Guité, although Justice Gomery could find no evidence of urgency.

One of the agencies to which Lafleur often subcontracted was the Gosselin Communication Agency.⁴⁶ For example, Gosselin managed a \$125 000 sponsorship for the city of Ste-Hyacinthe's 250th anniversary celebration. It was later discovered that Gosselin had engaged in significant overbilling. Gosselin had billed PWGSC for 94 hours of work on the part of its team manager, who later admitted to having worked only 17 to 20 hours on the project. Gomery concluded that the Ste-Hyacinthe project alone had cost the government \$53 000 in unjustifiable billing for hourly wages.

When the Gosselin agency required a promotional item, it purchased them from the Centre de Placement de Professionnels en Communications, Inc. (CPPC), a company owned by the wife of Gosselin's president.⁴⁷ CPPC charged a 22 percent markup on clothing and a 96 percent markup on other promotional items. Similarly, Lafleur Communication purchased its promotional items from Publicité Désert, which charged an average markup of 100 percent. All of these surplus charges were paid by PWGSC,

which would also pay Lafleur or Gosselin a commission on top of the costs of the items themselves.

Gosselin also participated in the very suspect Bluenose sponsorship, during which a reconstruction of the famous ship visited ports along the St. Lawrence River.⁴⁸ Gosselin handled parts of this sponsorship on behalf of the Lafleur agency. Again, Gosselin charged huge fees for hourly wages. Many of these hourly fees were charged for work purportedly done by Gosselin's president himself, Gilles-Andre Gosselin. Gosselin essentially claimed that he personally took over the entire Bluenose file and worked on it exclusively for 13-18 hours a day from June to August 1997.

This was not the only abuse associated with the Bluenose sponsorship.⁴⁹ When PWGSC ordered 1014 copies of lithographs for a total of \$202 800 from a company called Bluenose Trust, they were sent directly to Guité at PWGSC. Nonetheless, Lafleur was paid a 15 percent commission amounting to \$30 420. It seems that this money was paid to the Lafleur agency simply for receiving and paying the invoice from Bluenose Trust, and then sending an invoice to PWGSC. Certainly this was not the best purpose for which that public money could have been used.

The above evidence indicates that Lafleur Communication and Gosselin Communication are both prime examples of the problems that led to the sponsorship scandal. Both companies benefited greatly from the willingness of those associated with the sponsorship program to pay lavishly excessive sums to companies with links to the Liberal Party.

“Unforeseen Events”

A number of relatively small projects were documented by CCSB as “unforeseen events”.⁵⁰ All were sponsorships of events in Alfonso Gagliano’s constituency or in the region of Quebec known as “la Maurice”, in which Jean Chrétien’s riding is located. Many of these projects were known to be the “pet projects” of Jacques Corriveau, a very close friend of Chrétien’s who was at one time an influential member of the Quebec wing of the Liberal Party. Gomery believed these projects to be flagrant violations of government rules. He explained:

...the uses to which the ‘unforeseen events’ file was put illustrate why guidelines and criteria are essential to the administration of a program if the government genuinely wants to obtain value that corresponds to the reason for making money available in the first place... In the absence of criteria for access to the program, the availability of discretionary funding was an almost irresistible temptation to politicians and to persons well connected to the party in power who sought to obtain public funds for purposes and projects that they considered to be desirable or advantageous.⁵¹

An example of a project included in the “unforeseen events” file was a plaque erected in San Martino, Italy naming the town square “Plaza Canada”.⁵² \$6000 was paid to the promoters of the project, the result of which was unveiled during a visit by Gagliano to San Martino. Within CCSB, it was acknowledged at the time that this sponsorship had nothing to do with Canadian unity, and the invoicing was concealed in another contract so that it would not appear on the public record. Mario Parent, a one-time CCSB employee who was working for the Gosselin Communication Agency (which handled several sponsorship files) recalled in his testimony to the Gomery Commission that he received instructions from a member of the CCSB staff, who had received them from Minister Gagliano, to hide the San Martino plaque project. He testified that he was

told “that there wouldn’t be a contract and that it shouldn’t be written down anywhere.”⁵³

Furthermore, the following exchange occurred between Parent and the commission’s

associate legal counsel Guy Cournoyer:

MR. PARENT: ...it was also said that it wasn’t – it wasn’t a sponsorship, so there was to be no wordmark, absolutely no Canada wordmark.

MR. COURNOYER: There wasn’t to be any trace of it, and the Canada wordmark was not to be used?

MR. PARENT: That’s right.⁵⁴

Another misuse of taxpayers’ money that occurred under the guise of the sponsorship program and was classified as an “unforeseen event” took place as a result of a series of contracts between PWGSC and Vickers & Benson to finance television programs that aired in China extolling Canadian interests and values.⁵⁵ The productions began in 1996 and continued for several years. The total cost was approximately \$10 million, and Justice Gomery stated that he believed that the Prime Minister’s Office intervened in favour of the funding. Gomery was understandably skeptical that this project was intended to accomplish the stated goals of the sponsorship program. In his words, “It is most unlikely that the broadcasting of a series of television programs in China contributed in any way to considerations of national unity in Canada.”⁵⁶ It is clear that while this program may have been started with pure intentions, the Liberal government eventually developed the belief that it could do as it pleased with the money it collected from its taxpayers, and that ambiguous classifications such as “unforeseen events” would prevent detection of its transgressions.

Other Misconduct Associated with the Sponsorship Scandal

The above examples represent a sample of the inappropriate uses of public funds that were engaged in by the Canadian government under the guise of promoting national unity. This list is by no means exhaustive. For instance, the sponsorship contracts entered into by the advertising and communications agencies owned by Paul Coffin and Claude Boulay have not been discussed, and Jacques Corriveau's role has not received detailed attention.⁵⁷

While the actions of these men were certainly not insignificant to the scandal, a lengthy examination of all examples of the government's inappropriate spending is not necessary for this thesis' argument, which deals with ministerial responsibility. This section was designed to provide an adequate understanding of the types of transgressions that occurred, and the lack of regard for government rules displayed by certain prominent members of the Liberal organization. The following sections will analyze the principle of ministerial responsibility and will look at the actions of those political actors who did not properly fulfill the obligations bestowed upon them by this important doctrine.

ENDNOTES TO "THE EVENTS IN QUESTION"

- ¹ Jonathan Rose, Making "Pictures in Our Heads": Government Advertising in Canada. (Westport, Connecticut: Praeger Publishing Group, Inc., 2000), p. 82.
- ² Ibid., p. 2.
- ³ Ibid., p. 79.
- ⁴ Ibid., p. 80.
- ⁵ Ibid., pp. 89-90.
- ⁶ Ibid., pp. 89-90.
- ⁷ David Taras, The Newsmakers: The Media's Influence on Canadian Politics. (Toronto: Nelson Canada, 1990), p. 203.
- ⁸ Rose, op. cit., p. 88.
- ⁹ Ibid., p. 90.
- ¹⁰ Ibid., pp. 89-90.
- ¹¹ Ibid., p. 90.
- ¹² Reg Whitaker, The Government Party: Organizing and Financing the Liberal Party of Canada 1930-58. (Toronto: University of Toronto Press, 1977), p. 228.
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The Doctrine of Ministerial Responsibility

Prior to examining the sponsorship scandal itself, it is worthwhile to look at the doctrine of ministerial responsibility so that it can then be applied to the events in question. Ministerial responsibility, the idea that the minister assigned to a government department is responsible for the decisions and actions of those who work within it, is one of the most important concepts in Canadian governance. This doctrine is central to the notion of responsible government, which, in the words of Jonathan Malloy and Scott Miller, “means that prime ministers and cabinets have the authority to govern, but are then responsible to parliament and ultimately the electorate for the exercise of that authority.”¹ If a government cannot maintain the confidence of parliament, it must resign and face the electorate.²

Ministerial responsibility, along with the related – but not synonymous – concept of ministerial accountability, flows from responsible government and includes both a collective and an individual aspect.³ Ministers are collectively responsible for the overall body of cabinet and therefore do not reveal cabinet secrets or publicly castigate their cabinet colleagues. At the same time, ministers are individually responsible for their own actions and the actions of the officials within their portfolios. This latter aspect is the most relevant to the issue at hand.

While there has been considerable debate regarding the exact definition of this doctrine, a solid definition has been provided by Peter Aucoin and Mark Jarvis, who wrote:

As part of the ongoing accountability of the government, each individual minister is... expected to be responsible and accountable in and to the House [of Commons], especially by the opposition. This is referred to as ‘ministerial responsibility’. The House requires ministers to render

accounts, especially when things go wrong in their spheres of responsibility. Ministers must account for how they and their officials use ministerial authority in carrying out their statutorily assigned responsibilities.⁴

Aucoin and Jarvis went on to explain exactly what is encompassed within ministerial responsibility. They stated that the doctrine includes three dimensions, which they referred to as authority, responsibility, and accountability.⁵ They wrote:

First, the minister is the chief executive of a department, the person in charge of the officials, the one with the statutory authority to take action so that the purposes of the law are realized. Second, the minister has been assigned the duties or obligations that are also set forth in statutes. And, third, the minister must provide an account and may be held to account for his or her actions, or the actions of officials, whether or not the minister had knowledge of these actions.⁶

Ministerial responsibility is of the utmost importance to Canada's system of responsible government. The centrality and necessity of this doctrine has been expressed by some of Canada's most influential political figures. Prime Minister William Lyon Mackenzie King once wrote in his diary, "In my own mind, I have no doubt of the wisdom and necessity of holding to the time-honoured doctrine of ministerial responsibility in all that relates to the Crown."⁷ King wrote at another point, "It is impossible to carry on government properly unless full ministerial responsibility and obligation is observed."⁸ Similarly, another of Canada's prime ministers, Joe Clark, once stated in the House of Commons, "...if we destroy the principle of ministerial responsibility, we destroy the system of government which we have in this country."⁹

In addition to parliamentarians themselves, the doctrine of ministerial responsibility has been articulated by many of Canada's most authoritative political scholars. J.R. Mallory has stated, "All formal acts of government officials are done on the authority and in the name of the minister. Accordingly, any act by an official of the

public service, within the scope of his duties, is one for which the minister must assume responsibility.”¹⁰ Along the same lines, in the words of C.E.S. Franks, “Nothing could be simpler than the theory of parliamentary accountability. Its essence is ministerial responsibility, which means that each minister is responsible to parliament for the conduct of his department. The act of every civil servant is by convention regarded as the act of his minister.”¹¹

Practical Limits to the Doctrine of Ministerial Responsibility

Some have suggested that in more contemporary times, government has grown too large to reasonably expect cabinet ministers to know of and be held responsible for all decisions made within their departments. For example, R. Macgregor Dawson has written, “With the enormous growth in government activities in recent decades, another view of ministerial responsibility has appeared which holds, at its simplest, that modern government is too complex for a minister to be held responsible for every minute detail under his jurisdiction.”¹² A similar opinion was expressed by the 1985 Report of the Special Committee on the Reform of the House of Commons (often referred to as the McGrath Report), which explained, “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.”¹³

While it is certainly valid to suggest that a minister cannot be aware of literally all of the goings-on within his or her department at all times, the Canadian government has made it clear, at least in its rhetoric, that it still espouses this important doctrine. A 1993

government publication entitled *Responsibility in the Constitution* stated, “The individual responsibility of the minister requires that he or she be personally responsible for the activities carried out under his or her authority. This concept is fundamental to the long struggle to impose responsibility on the exercise of power.”¹⁴ Even more recently, in a 2004 government publication called *Governing Responsibly: A Guide for Ministers and Ministers of State*, the Canadian federal government asserted, “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 minister had prior knowledge.”¹⁵ It is clear that, at least in its rhetorical statements, the government maintains its commitment to holding its ministers responsible for the decisions made by all those within their departments.

There is clearly a contradiction between the notion that a minister must be responsible for all of his or her department’s activities and the reality that he or she cannot possibly be aware of all of them. This tension has led to a great deal of debate, both within parliament and in academic circles, over the exact nature of the doctrine of ministerial responsibility. While it remains widely agreed that the doctrine cannot be discarded entirely, some advocate holding ministers more rigidly accountable for the actions of their department’s officials, while others are more willing to absolve ministers of blame for mistakes that were not directly their fault.

The argument here is that a fairly acceptable compromise can be found between these two camps. Since a minister cannot be realistically expected to know of all goings-on within a department, it is conceivable that inappropriate or corrupt actions may take place without his or her knowledge. If this is the case, the minister should not

automatically be blamed. However, the minister has a duty to thoroughly investigate any potential wrongdoing within the department at the earliest sign of even moderately inappropriate conduct. If it is discovered after the fact that the minister was not entirely diligent in investigating and attempting to rectify the situation, then that minister must be held accountable for any mistakes or misconduct that have occurred within the department. This application of the doctrine of ministerial responsibility was well-articulated in the House of Commons in 1909 by Sir Robert Borden, who would soon become prime minister:

A minister of the Crown is responsible... for the minutest details of the administration in his department; he is politically responsible, but he does not know anything at all about them. When anything goes wrong in his department, he is responsible therefore to parliament; and if he comes to parliament and points out that he entrusted the duty to an official in the ordinary course of good faith, that he had been selected for his capacity, and ability, and integrity, and the moment that man has gone wrong the minister had investigated the matter to the full and punished the man either by degradation or dismissal, he has done his duty to the public.¹⁶

Governing Responsibly: A Guide for Ministers and Ministers of State, the aforementioned 2004 government publication, offered a similar view of the practical application of this doctrine. It stated, “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.”¹⁷

Some may choose to believe that the growth of government departments in both size and complexity has absolved ministers of their responsibility for the decisions of their departmental employees. If anything, however, this expansion has increased the amount of scrutiny to which a minister must subject his or her officials. Since ministers

cannot be directly involved in or even aware of all actions carried out by public servants as they occur, they must be more diligent than ministers of previous eras in reviewing and evaluating the administration of their departments. As the 1993 government publication

Responsibility in the Constitution put it:

As the number of officials increased, the importance of ministerial responsibility grew proportionately. Today more than ever the actions of civil (or as we now call them public) servants are numerous and often far-reaching in their effect, and the presence of a minister charged with responsibility personally to answer for their actions is essential if constitutional responsibility is to be maintained.¹⁸

Clarifying the Meaning of the Doctrine

The doctrine of ministerial responsibility, along with the Canadian government's entire accountability regime, has been the target of much criticism since well before the sponsorship scandal. As Jonathan Malloy and Scott Miller put it, "Some suggest the doctrine of ministerial accountability is marred beyond redemption, and incapable of addressing problems of administration within a modern and complex government."¹⁹

Part of the reason that this important doctrine has come under fire is the lack of understanding that exists regarding what it truly means. According to Malloy and Miller, "The terms ministerial accountability, ministerial responsibility, and ministerial answerability are often used interchangeably and/or with slightly different shades of meaning, leading to general confusion and disagreement over their meaning and significance."²⁰

It is important to clarify the differences between these terms, which, while certainly inter-related, refer to different aspects of the requirements bestowed upon ministers. Malloy and Miller elucidated this confusion, stating:

...we understand *responsibility* to be the provision of authority to a person or organization, while the requirement of *accountability* is to render an account for the use or misuse of that same authority. In other words, a minister is given *responsibility* for a portfolio. He or she then is *accountable* for how they exercise that responsibility. And an important part of that accountability is *answering* questions about their area of responsibility.²¹ (emphasis in original)

This thesis will focus predominantly on the first of these aspects, ministerial responsibility. This is because it was the successive ministers of the relevant department who had been provided the authority to act to prevent or halt incidents such as the sponsorship scandal. That being said, the principles of ministerial accountability and answerability are relevant as well, since there was a marked refusal on the part of all involved to hold themselves accountable or provide any answers regarding what had gone wrong.

Respect for all three of these aspects is of vital importance to a minister's ability to provide proper stewardship of his or her department. This thesis' subsequent examination of the sponsorship scandal will show that a breakdown in any of the three, let alone all of them, can lead to disastrous mismanagement, be it deliberate or well-intentioned.

An important question that must be addressed is what the consequences should be for a minister who does not properly exercise his or her responsibility.²² That is to say, how should a minister be punished if something goes wrong within the department on his or her watch? Some commentators – most notably opposition parties in parliament – argue that such an occurrence calls for the immediate resignation of the minister in question. This, however, is not the common practice, and the same opposition parties

who demand resignations seem to abandon this principle if and when they are elected to govern.

In fact, resignations by ministers for mistakes made within their departments are exceedingly rare. According to a 1991 article by Sharon Sutherland, no Canadian ministers have been forced to resign due to outrage in the House of Commons for errors made by their departmental officials.²³ Nor, she asserted, does the doctrine require such resignations. In her words, "...resignations should be for egregious personal wrong-headedness and lack of fairness or even-handedness in the fullest context of departmental business. That is, one does not expect to see ministers resign for maladministration by officials."²⁴

The extreme rarity of resignations leaves unanswered the question of the appropriate punishment for failure to uphold ministerial responsibility. As Malloy and Miller pointed out, this is where the concept of ministerial accountability becomes quite relevant. The two authors explained:

While *accountability* involves taking some blame for what has happened, it is not always the same as being punished for it. Ministers must *account* for what goes on in their portfolios... they must answer questions in parliament and elsewhere about what happened, and what they are going to do about it... The focal point gives the media, opposition and general public a place to direct questions and criticisms, and a source to expect answers from.²⁵ (emphasis in original)

This demonstrates that even if ministers are not subjected to formal punishment, there is still a deterrent to mismanagement in the form of the obligation to publicly provide an account of what went wrong. This public humiliation would presumably affect the minister's future career, both in terms of electoral prospects and subsequent cabinet appointments. Clearly the doctrine of ministerial responsibility does not need to

incorporate the threat of forced resignation in order to remain a formidable and useful accountability mechanism. What is absolutely required, however, is that ministers not be permitted to wriggle out of their accountability through denial and deliberate lack of knowledge. In the words of Malloy and Miller, “Ministers cannot throw up their hands, say they were not involved, and leave it at that.”²⁶ When the sponsorship scandal is examined, it will become apparent that this is exactly what a number of ministers, including the prime minister himself, attempted to do.

The Importance of the Deputy Minister

In order to maintain adherence to the doctrine of ministerial responsibility as the size and complexity of government departments has grown, the role of the deputy minister has necessarily become much more important. Since ministers are unable to have first-hand knowledge of all actions taken within the department, they must rely heavily on their deputies to keep them abreast of important developments. The bigger or more complex a department becomes, the more a minister must rely on his or her deputy to aid in the scrutiny required by the doctrine of ministerial responsibility. As stated by the government in the aforementioned 1993 document *Responsibility in the Constitution*, “The roles of deputy ministers are complex, but they must ultimately unravel to support the responsibilities of ministers, and, as with ministers, the roles of deputies that reflect the individual responsibilities of ministers form the bedrock of responsibility and hence accountability in the system.”²⁷

The deputy minister plays a very prominent role, often more so than the minister, in the allocation of departmental resources.²⁸ This will emerge as extremely important

when the sponsorship scandal is discussed specifically. In many departments, the deputy minister has better access to information resources than the minister.²⁹ This is the case because cabinet ministers do not necessarily have any previous training or expertise in the field, and are also charged with a variety of other duties aside from running their department. In Reg Whitaker's words, "Ministers, after all, are also MPs and party politicians who spend much of their time giving speeches, traveling, attending political functions, and other activities quite remote from the business of their ministerial portfolios."³⁰

Therefore it is often the deputy minister who is better-equipped to understand the most minute technical intricacies and complexities of how the department works, and hence how the department's resources can be best utilized. Thus the management of resources often is handled by the deputy as opposed to the minister. *Responsibility in the Constitution* articulated this very important aspect of the deputy minister's job:

Important as are their policy advisory and co-ordinating functions, deputies have a special responsibility for the management of resources, and here in practice they act almost entirely in the place of their ministers. In supporting their minister's individual responsibility by managing departmental resources to produce policies and programs, the deputies observe management standards that have been prescribed by ministers collectively and which are judged essential to the unity of the ministry... The requirement that ministers manage their departments in accordance with centrally prescribed standards and practices imposes a particular obligation on deputies to ensure that this aspect of their minister's collective responsibility is adequately supported... The management of the department and the observance of centrally prescribed management standards must in practice fall almost exclusively on the deputy minister, even though in law the minister is responsible.³¹

It is clear that the government considers the deputy minister to occupy a position of great importance to the day-to-day functioning of its departments. Misconduct or a

lack of diligence on the part of the deputy minister is likely to lead to disastrous consequences for his or her department.

The importance of the deputy minister in aiding the minister to fulfill his or her ministerial responsibility makes it necessary that the two have a relationship characterized by trust and constant communication. If the minister and his or her deputy are not able to get along or trust each other, or if one makes decisions without informing the other, ministerial responsibility will break down in the department. In its 2004 publication entitled *Governing Responsibly: A Guide for Ministers and Ministers of State*, the government said of deputy ministers, “They are accountable on a day-to-day basis to their minister, and a co-operative relationship between the two is critical.”³² Similarly, Mallory has written, “A great degree of mutual compatibility and confidence must exist between the minister and his deputy, and if this is lacking, it may be necessary for the government to find another deputy in whom the minister has confidence.”³³ It is clear that in order to properly uphold the doctrine of ministerial responsibility, the minister and his or her deputy must work hand-in-hand, and must not keep secrets from each other regarding the actions taken within the department. As will be discussed shortly, a key reason that the sponsorship scandal was not detected in its earliest stages was a lack of trust and communication between the relevant minister and deputy minister.

A possible cause of this division is the growing tendency for politicians to deflect blame for wrongdoing away from themselves and towards civil servants.³⁴ Despite the repeated assertions of the Canadian government and some of Canada’s most authoritative political scholars regarding the importance of upholding the doctrine of ministerial responsibility, ministers have shown a growing willingness to place the responsibility for

maladministration on their departmental officials, refusing to accept any culpability on the grounds that they had no knowledge of the events in question.

The Relationship Between Politics and Administration

As has already been mentioned, it is unreasonable to expect ministers to have first-hand knowledge of literally all decisions taken within their department. Unfortunately, some ministers have chosen to interpret this generally-accepted notion as a means to automatically blame civil servants for every problem that may arise within a department. This is symptomatic of a breakdown in a “bargain” that has traditionally existed between Canada’s political establishment and its bureaucracy.³⁵ This bargain, and its recent erosion, were well-articulated in Donald Savoie’s 2003 book, *Breaking the Bargain: Public Servants, Ministers, and Parliament*.

Savoie noted that the 1982 *Constitution Act* is silent on the role of the bureaucracy.³⁶ Canada is not alone in lacking a formal expression of the relationship between politics and public administration. According to Savoie, “...the role of bureaucracy within democracy has never been properly defined. It is expected to be both independent and subordinate to elected officials and, as well, politically sensitive but not politicized. Thus the territory is fraught with uncertainty, if not pitfalls.”³⁷ Savoie went on to explain that since their roles vis-à-vis each other were not explicitly dictated to them, politicians and bureaucrats were left to their own devices to shape the way in which they would interact. He explained, “In the absence of formal rules, politicians and public servants some time ago struck a ‘bargain’, or an understanding, over their respective

duties to guide mutual relations. This traditional bargain has over the years helped shape how power is distributed and controlled in modern society.”³⁸

As Savoie outlined, the most important aspect of the bargain was the anonymity of the civil service.³⁹ Bureaucrats gave up their right to overt partisanship and agreed to obediently serve the government of the day in exchange for job security and the assurance that they would not be held publicly responsible for departmental wrongdoing. This, in theory, allows civil servants to confidently offer their best advice to politicians, who make the final decisions and are thus responsible for them. In Savoie’s words, “A permanent career and anonymity enable career officials to provide fearless advice to their political masters – to speak truth to power.”⁴⁰

This “bargain”, as Savoie termed it, is often referred to as the “politics-administration dichotomy”. Perhaps the earliest articulation of the virtue of this split came in 1887 from eventual American President Woodrow Wilson. Wilson wrote, “...administration lies outside the proper sphere of politics. Administrative questions are not political questions. Although politics sets the tasks for administration, it should not be suffered to manipulate its offices.”⁴¹ In more contemporary times, Reg Whitaker has examined the politics-administration dichotomy as it relates to the Canadian case, explaining that this theory, in its purest form, believes, “Politics is politics, and administration is administration. Politics is about setting policy, inevitably a partisan and controversial matter. Administration, on the other hand, is technical and non-partisan. There is no overlap.”⁴²

Today a rigid application of the politics-administration dichotomy is seen as unrealistic. In Whitaker’s words, “No reputable scholar of public administration and

public policy would be prepared to defend the politics-administration dichotomy, at least in its pristine form.”⁴³ It is generally accepted that there is, inevitably, some overlap between the actions of politicians and their officials. However, returning to Savoie, the line between politicians and bureaucrats has become so blurred that ministerial responsibility is being eroded. Savoie lamented the growing trend:

In brief, the traditional bargain between politicians and public servants is coming unglued, and the space that was once established to determine who is responsible for what is no longer clear. This is true virtually everywhere in Canada’s federal machinery, and the implications are far-reaching... It also appears that the doctrine of ministerial responsibility has been tossed aside when convenient. Civil servants have learned the hard way that their ministers will not necessarily protect them in times of crisis or when they find themselves embroiled in controversy... The traditional bargain between politicians and career civil servants now operates under severe stress and strain. While the bargain still applies, both sides have reverted to cheating to work around it.⁴⁴

As mentioned above, a total split between politics and administration is not practical. Yet, as Savoie explained, a complete abandonment of the politics-administration dichotomy leads to the erosion of the doctrine of ministerial responsibility. A balance must therefore be struck. In maintaining some semblance of a division between politicians and officials so as to uphold ministerial responsibility, while allowing for the inevitable amount of overlap that must occur, the office of deputy minister is vitally important, acting as the link between the two realms.

C.E.S. Franks has referred to the position of the deputy minister as “one of the most important places where the immense and powerful bureaucratic system meshes and interacts with the system of political power... a deputy minister must perform a difficult act in juggling the various pressures and interests while walking the tightrope between political and bureaucratic power.”⁴⁵ Similarly, Mallory has stated, “Deputy heads operate

at the summit of the civil service in an intimate relationship with members of the government of the day.”⁴⁶ The government has also noted the importance of the deputy minister in acting as a link between politicians and civil servants, writing in 2004, “The department reports to the minister through the deputy minister in a clear chain of command.”⁴⁷ While the minister must necessarily play an active role in upholding ministerial responsibility, it is also clear that due to the immense importance of the position of deputy minister, the doctrine cannot be upheld without a deputy who is diligent and competent, and performs his or her duties with integrity.

The Erosion of Ministerial Responsibility

The growth of government, in both size and complexity, has had significant negative effects on the doctrine of ministerial responsibility. Ministers are not adequately willing to accept responsibility for mistakes made on their watch. Geoffrey Marshall took a satirical look at ministerial responsibility in 1984, stating, “Every act of a civil servant is, legally speaking, the act of a minister (except those that are, legally speaking, his own)... As to vicarious liability for departmental subordinates, ministers have never been keen on it.”⁴⁸ The erosion of ministerial responsibility is a trend that must be stopped, because it is one of the most important aspects of responsible government. As the federal government asserted in 2004:

Ministers must act with honesty and must uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity, and impartiality of government are maintained and enhanced. Ministers, in particular, have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny.⁴⁹

This indicates that ministers can be considered the face of the government, and their conduct must meet certain expectations that citizens have for their political leaders. It is clearly not acceptable for the public to see its government's ministers constantly deflecting blame for maladministration on the grounds that they were unaware of the relevant events.

The following section will apply the doctrine of ministerial responsibility to the incidents associated with the sponsorship scandal, and will demonstrate that a breakdown in ministerial responsibility within Public Works and Government Services Canada (PWGSC) allowed the scandal to continue for so long. It will thus be argued that the best way to prevent a similar scandal from occurring in the future is to strengthen the doctrine of ministerial responsibility, placing a much stronger onus on ministers and their deputies to be highly diligent in investigating any possible wrongdoing within their departments.

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⁴⁹ Privy Council Office of Canada, Governing Responsibly: A Guide for Ministers and Ministers of State, op. cit., p. 29.

The Sponsorship Scandal and the Breakdown of Ministerial Responsibility

During the course of the events that constituted the sponsorship scandal, and especially during the Gomery Inquiry and its fallout, the politicians and deputy ministers associated with the sponsorship program made repeated efforts to deny knowledge of any wrongdoing. Perhaps worse than this, none were even willing to acknowledge that they had an obligation, under the doctrine of ministerial responsibility, to have known what was occurring within the department even if they were not intimately involved. This section will argue that the doctrine of ministerial responsibility was not revered by the ministers and deputies associated with this scandal. Even those who did not knowingly engage in improper activities were guilty of failing to diligently investigate signs of wrongdoing, which were prevalent. In fact, there is evidence that certain key figures deliberately chose to keep themselves unaware of the true nature of certain irregular practices occurring within the department. If the doctrine of ministerial responsibility had been more respected and had been taken more seriously by the ministers and deputies in question, it is likely that this egregious scandal would not have continued unabated for so long, and thus the unfortunately large amounts of taxpayers' dollars would not have been misspent.

This section will examine the actions and inactions of several key players in the sponsorship scandal. Since the argument of this thesis focuses on ministerial responsibility, it is the political figures that will be discussed. While certain public servants, most notably Chuck Guité, and members of the private sector, like Jean Brault, certainly were very guilty of playing a major role the scandal, and deserve a great deal of blame for it, a detailed analysis of their role has been deemed beyond the scope of this

thesis. It should, however, be noted that one important deputy minister will be included since the deputy minister of a department plays such a key role in upholding ministerial responsibility. Therefore, while he is not technically a political figure, he is nonetheless applicable to an argument that deals primarily with this doctrine.

The refusal to accept any blame for one's actions (or lack thereof), and thus the breakdown of ministerial responsibility, began right at the top of the Canadian government with then Prime Minister Jean Chrétien. Therefore the analysis of the erosion of respect for the doctrine will begin with him.

Jean Chrétien

During the campaign that led to his election in 1993, Jean Chrétien promised that if he was elected, the ministers in his government would accept full responsibility for things done in their departments.¹ When certain aspects of the sponsorship scandal began to become public in 2002, he sang a much different tune, choosing to assign total culpability to the civil service, validating Savoie's theory that politicians are growing increasingly willing to deflect blame in this manner.² Chrétien explained, "The cheques are not signed by the ministers. The verifications are not signed by the ministers. It's signed by the bureaucracy."³

However, when the Gomery Report was issued on November 1, 2005, it indicated that Chrétien did, in fact, bear much of the responsibility for the mismanagement of funds associated with the scandal.⁴ This section will examine Chrétien's involvement in the scheme and will argue that the Gomery Report did not go far enough in its condemnation of the former prime minister. While Gomery was correct in assigning Chrétien some

measure of blame for his failure to diligently monitor the relevant actors, he stopped short of accusing Chrétien of having had specific knowledge of the scandal as it took place, and did not even mention the possibility that he had been aware of it. The evidence provided reasonable justification for such a conclusion, or at least for public musings regarding whether it was possible.

At the outset of the sponsorship program, Chrétien decided that it would be run out of the Prime Minister's Office (PMO).⁵ When the program was created, the minister of PWGSC at the time, Diane Marleau, was really not involved in it at all. It was instead run by Chrétien's chief of staff, Jean Pelletier, as per the specific request of the prime minister. This was a very curious step taken by Chrétien. Out of all the programs being run by the various departments of the Canadian government at the time, Chrétien selected this particular program to be run out of the PMO as opposed to PWGSC, even though most of the staff involved came from the latter. The prime minister would later justify this decision by arguing that the importance of national unity necessitated an unusually prominent role for the prime minister personally. While not without validity, such an argument casts serious doubt on Chrétien's subsequent pleas of ignorance to the mispending of public money that would soon occur as part of this program. If he ensured that he was intimately involved at the outset due to the importance of the project, he needed to be aware that he could reasonably be held responsible for its future operations, and it does not logically follow that he would allow it to deteriorate as quickly and as significantly as it did if he truly saw it as a top priority of his government.

Chrétien's testimony to the Gomery Inquiry also indicated that he believed that the importance of his decision to organize the program in this manner has been

exaggerated. He testified, “Unless staff in the minister’s office, the Prime Minister’s Office, public servants, can walk in and out of each other’s offices, call each other on the phone, seek advice, consult from each other, the job of government simply does not get done.”⁶ While certainly the different elements of government must be in communication with each other on a variety of matters, this statement by Chrétien appears to be a weak attempt to divert attention away from a deviation from standard practice which left his fingerprints all over the ensuing scandal. As will be discussed below, key decisions involved in the perpetuation of the sponsorship scandal were made in secretive meetings between the prime minister’s chief of staff and Joseph Charles (Chuck) Guité, the civil servant employed by PWGSC who was most intimately involved in the sponsorship program.⁷ These meetings, under standard government procedure, should never have taken place. The above statement by Chrétien, implying that the involvement of the PMO in the sponsorship program was not out of the ordinary, seems quite suspect.

In his report, Gomery listed as one of the three main factors contributing to or causing the problems associated with the sponsorship scandal, “The unprecedented decision to direct the sponsorship program from the PMO, bypassing the departmental procedures and controls which the deputy minister of PWGSC would normally have been expected to apply and enforce.”⁸ Gomery went on to explain that by running the program out of the PMO, it was almost impossible to avoid at least the appearance that friends of the Liberal Party were being rewarded with sponsorship contracts. He argued that the bureaucracy is better-suited to determine the recipients of government contracts, stating, “It is only in that way that the government can avoid the appearance and the reality of arbitrary handouts to the governing party’s present or potential friends and supporters, for

partisan considerations.”⁹ Certainly this criticism was appropriate, since the evidence indicated that some of the money doled out under the sponsorship program was, in fact, used to reward those who supported the Liberal Party or to entice those who could potentially become Liberal supporters.

Throughout his testimony, and in media interviews after the release of the Gomery Report, Chrétien repeatedly insisted that he should not be blamed for the scandal because he was not aware of it while it was going on. Addressing the media on the day the report was issued, Chrétien stated, “I’m not going to accept the blame for something that’s not true.”¹⁰

Chrétien has remained adamant that he had no knowledge of any wrongdoing despite the fact that key decisions regarding the agencies to receive money were made in his office by his chief of staff. The agencies involved in the sponsorship scandal were often chosen in meetings between Pelletier and Guité. According to the former prime minister, he had no knowledge of any such meetings. An excerpt from the examination-in-chief of Chrétien conducted by Bernard Roy, the Gomery Commission’s lead counsel, read as follows:

MR. ROY: At that time, that is, in mid-May ‘96, did you know whether Mr. Jean Pelletier occasionally met with Mr. Guité to discuss lists of projects in preparation for the submissions that you signed with the minister of Public Works for Treasury Board?

MR. CHRÉTIEN: No. Besides, he said himself that he didn’t brief me on such matters.¹¹

Chrétien’s claim to have been unaware of these meetings seems quite difficult to believe. Pelletier was Chrétien’s most trusted advisor, and contact between the two was extremely regular. The sheer amount of time the two spent together indicates that it

would be very difficult for Pelletier to have conducted such frequent meetings with Guité without Chrétien ever having become aware of them. In Gomery's words:

The chief of staff works more closely than anyone else with the prime minister, or at least that was the case when Jean Pelletier was Prime Minister Chrétien's chief of staff... They met on a daily basis. Mr. Pelletier was among a select group of advisors and was the prime minister's closest collaborator. The evidence discloses that no one else had that kind of access.¹²

An examination of Pelletier's participation in the scandal indicates that the prime minister's chief of staff was, at least during the first few years of the sponsorship program, the key decision-maker regarding which advertising agencies received government contracts. In his testimony, Pelletier attempted to downplay his role, claiming that he only provided political advice or input regarding the advisability of a particular sponsorship or amount. Pelletier insisted:

All the administration and financial management of the sponsorship program was up to the department of Public Works, and the Prime Minister's Office had nothing to do with the administrative and financial area. We didn't choose the agencies. We didn't determine the terms and conditions. We didn't sign any contracts, and we saw none of that administration and financial paperwork. To me, it's very clear.¹³

This contradicted the testimony of Chuck Guité, who assured the Gomery Commission that Pelletier was responsible for the selection of agencies.¹⁴ Justice Gomery was clear in stating which witness he felt was most reliable. In Gomery's words, "The giving of advice or the making of suggestions by a person in the position of Mr. Pelletier was the equivalent of an order... It would be a brave public servant indeed who would dare to contradict the chief of staff of the prime minister or disregard anything that he said..."¹⁵

It is apparent that Mr. Pelletier's denial of his significant role in the selection of agencies is simply not plausible. At another point in his testimony, Pelletier cast serious doubt on Chrétien's claim to have been unaware of the abuses associated with the sponsorship scandal. Pelletier explained, "Look, the national unity file was a very special file. It was the highest-priority file among all the high-priority files, in the eyes of the prime minister personally... Mr. Chrétien wanted to retain control of that directly... he wanted to know what was going on and he wanted us to keep close tabs on it."¹⁶ Chrétien's personal emphasis on the national unity file, along with the aforementioned inextricable links between he and Pelletier, make it highly unlikely that Chrétien was as unaware of the sponsorship scandal as he claimed to be.

In addition to his close association with Pelletier, one of the most directly-involved actors in the sponsorship scandal, Chrétien must also be considered complicit due to the source of most of the funds that were doled out to the advertising agencies.¹⁷ Much of this money came from the Unity Reserve, a special fund set aside in the annual budget to be used as needed for any expense related to national unity. This reserve has existed at least since the era of Prime Minister Pierre Trudeau, and in 1991 was set at \$50 million per year by the Mulroney government. The sitting prime minister is the only individual who can authorize the use of funds from the Unity Reserve. As Justice Gomery explained, "It constituted a unique source of funds available only to the prime minister of Canada... It has always been the prerogative of the prime minister to determine the priorities to which the Unity Reserve will be allocated."¹⁸

When Jean Chrétien's Liberal government took office in 1993, one of its priorities was to balance the budget by cutting government spending.¹⁹ Merciless cutbacks were

undertaken under the name of “program review”. The budget of every department was slashed, and all reserves were eliminated, with the exception of the Unity Reserve. This decision was justified on the grounds that national unity was the government’s top priority, and thus the Unity Reserve had to be spared. Certainly this explanation seems plausible, and at the time the decision to maintain the reserve may have been made with good intentions. However, the eventual use of these funds calls into question the motivation behind the decision to keep it intact, and one must at least admit that it is an unfortunate coincidence that the only such supply of funds to survive the program review would soon be used for inappropriate purposes.

For each of the fiscal years 1996-97 and 1997-98, Jean Chrétien allocated \$17 million from the Unity Reserve to PWGSC to support the communications priorities of the government of Canada.²⁰ Furthermore, in 1996-97 he allotted \$20 million from the Unity Reserve to create the Canada Information Office, which came into being as a result of the 1996 cabinet decision to increase the federal government’s profile in Quebec.²¹

Although the Unity Reserve is used at the discretion of the prime minister, it is customary for withdrawals to be authorized by a Treasury Board submission signed only by the minister of the department charged with the proper management of the funds.²² Significantly, in the case of the \$17 million allocations, Chrétien chose to sign the submissions himself. The report of the Gomery Commission indicated that all witnesses asked about this topic agreed that the appearance of the prime minister’s signature on the document was “without precedent”.²³ He explained this decision to the Gomery Commission, stating, “I wanted to give a clear signal to ministers on the Treasury Board that this settlement of the national unity strategy, like all of the strategies, was a priority

that needed to be funded despite the fact that very few new spending initiatives were being approved...”²⁴ While Chrétien’s emphasis on the importance of national unity is admirable enough, it is highly questionable for him to claim that he had no knowledge of the sponsorship scandal when he went out of his way to put his name on the authorization for much of the funding, which came from a reserve to which only he had access. At best, he is guilty of an inexplicable failure to monitor the use of funds which were so clearly traceable back to him.

The responsibility borne by Chrétien for the sponsorship scandal was certainly not unbeknownst to him. Jocelyn Bourgon, the clerk of the Privy Council at the time, made multiple attempts to alert the prime minister that he could be held accountable for the use of the funds withdrawn from the Unity Reserve.²⁵ On December 18, 1996, Bourgon wrote the following memorandum to Chrétien:

PWGSC accessed the Unity Reserve, on your behalf, on October 21... the accountability rests with you for how the funds were spent in 1996-97 as the Unity Reserve was accessed on your behalf by PWGSC. Therefore, if questions were to be raised about the actual initiatives supported by these funds, you would need to be ready to respond to them. At issue is what support you need to fulfill your accountability.²⁶ (underlining in original)

Chrétien elected not to respond to this communication in any way.²⁷ It is unconscionable that he would later claim to have no knowledge of the exact purposes for which the funds were used. After receiving Bourgon’s memorandum, Chrétien knew that he could be held accountable for any misuse of the Unity Reserve, and thus denial of any knowledge of inappropriate spending of these funds was no longer a viable option for him. If he, in fact, was not aware of what was being done with this money, Bourgon’s message should have been an indication to him that he needed to find out immediately. This situation appears even more egregious when one considers that the concluding line

of the above memorandum constitutes an offer from Bourgon to assist Chrétien in fulfilling his responsibility for the use of the funds in question.

Despite Chrétien's inexplicable decision to ignore this first message from Bourgon, the clerk of the Privy Council dutifully tried again to impress upon the prime minister the importance of this issue and the potential ramifications of failing to deal with it. On September 30, 1997, she wrote to Chrétien:

While the minister of PWGSC is responsible for the proper administration and financial procedures in the actual disbursement of funds, the accountability rests with you for how the funds are spent when access to the Unity Reserve is approved by you for the PWGSC... it is your office which determines to which projects the monies are directed. Should questions arise in the House of Commons, for example, on the initiatives supported by these funds, you might have to respond. Hence, at issue as well is the level of support you require to fulfill your accountability."²⁸
(underlining in original)

Again Bourgon received no response.²⁹ Chrétien's refusal to acknowledge two such advisories, both of which included offers of assistance to do what was required of him, makes it appear very likely that Jean Chrétien was well aware of the inappropriate spending associated with the sponsorship scandal. There is no logical reason for him to ignore two offers to have the situation investigated for him, unless he knew that such an investigation would reveal improper practices within his government.

During his testimony before the Gomery Commission, Chrétien claimed to have no specific recollection of the messages from Bourgon, offering a weak explanation as to why they had slipped his mind:

When there is a presumption that a program is designed for sinister or corrupt partisan reasons, it is easy to draw all sorts of conclusions about ulterior motives of anyone associated with it, particularly when there are easy recollections of long-ago meetings or memos. A presumption of good faith leads to very different conclusions. For example, there has to be a recognition that people who every day for years dealt with dozens of

memos on a variety of important issues and who attended sometimes dozens of meetings every day on every conceivable subject may not have total recall about any of them. As prime minister, I received many memos from the Privy Council Office providing advice on every conceivable subject... The job of a prime minister or a minister or a chief executive officer is not to rubberstamp every memo he receives.³⁰

Chrétien's claim to have forgotten these communications is not acceptable, even if it is, in fact, true. While he is correct in stating that he should not be expected to remember every memorandum he received as prime minister, these messages from Jocelyn Bourgon were not of the same variety as the ordinary notes that undoubtedly came his way every day. Bourgon was informing him that he had a duty as prime minister that he was not currently fulfilling, and was diligently attempting to help him fulfill it. Professing to forget correspondence of this magnitude is not a sufficient explanation as to why he chose to ignore it. Chrétien's testimony did not impress Justice Gomery enough for him to absolve the former prime minister of responsibility. Gomery stated in his report, "Mr. Chrétien chose to disregard the warnings of Ms. Bourgon, and on his behalf his chief of staff assumed ministerial responsibility for the sponsorship program."³¹

Bourgon's September 1997 memorandum also mentioned PWGSC's request for \$50 million per year for each of the fiscal years 1998-1999 and 1999-2000.³² Pointing out that its request included no breakdown of the purposes for which this money would be used, Bourgon suggested that approval should not be granted until such information was made available. Despite this sound advice, Chrétien chose to give PWGSC \$35 million from the Unity Reserve for 1998-1999. For 1999-2000, he only allotted \$9 million from the Unity Reserve but PWGSC was given an operating budget of \$40 million for special programs. This operating budget remained intact until December of 2003. This means

that when Chrétien was told in late 1996 and again in 1997 that he was responsible for the use of the Unity Reserve money, he chose not to investigate how it was being spent, instead opting to increase the amount of funding granted to PWGSC from the reserve, later claiming that he had no knowledge of the ways in which these resources were being used. Certainly these are not the actions of an honest political leader who truly had no idea that taxpayer's money was being mishandled.

If the evidence mentioned thus far is not adequately indicative of Jean Chrétien's role in the sponsorship scandal, there is the curious matter of his decision to keep the sponsorship program a secret, even from members of his government. Justice Gomery wrote in his report:

Mr. Chrétien, Mr. Pelletier and Mr. Gagliano [the one-time minister of PWGSC, who will be discussed later], apparently motivated by a belief that their political adversaries in Quebec would exploit information about the sponsorship program to the disadvantage of the federalist cause, chose to keep it a secret, even from Mr. Chrétien's colleagues in the cabinet, at least to the extent that that was possible, and for as long as possible. This strategy eventually backfired, since the public tends to assume the worst when transparency in government spending is lacking.³³

There is no apparent reason for the prime minister to elect not to tell his cabinet about this initiative, other than a desire to limit the number of people who knew about the illegal scheme. As mentioned above, Chrétien himself declared that the goal of improving national unity, of which the sponsorship program was a central part, was a top priority of his government. It seems very odd that a program that was an integral part of the government's most important goal would be kept secret from the cabinet – not to mention the Canadian public – unless that program was known to be inappropriate.

The Gomery Report issued on November 1, 2005 indicated that Justice Gomery believed that former Prime Minister Jean Chrétien deserved to be held partially responsible for the events of the sponsorship scandal. Gomery asserted:

Since Mr. Chrétien chose to run the program from his own office, and to have his own exempt staff take charge of its direction, he is accountable for the defective manner in which the sponsorship program and initiatives were implemented. Mr. Pelletier, for whom Mr. Chrétien was responsible, failed to take the most elementary precautions against mismanagement... each has testified that he believed that the program would be properly administered by Mr. Guité and his organization. They did not verify this assumption even though they had created a program lacking all of the normal safeguards against maladministration. The assumption was naïve, imprudent and entirely unfounded.³⁴

Justice Gomery was correct in refusing to absolve Chrétien of wrongdoing, and in declining to believe Chrétien's plea that a lack of knowledge of the events equated to a lack of culpability. However, Gomery stopped short of stating that Chrétien did, in fact, have specific knowledge of the inappropriate practices associated with the scandal, and did not even mention the possibility. It is on this point that this thesis disagrees with Gomery's conclusions regarding Chrétien's responsibility. None of the evidentiary examples mentioned above – the central role of the PMO and Chrétien's chief of staff, the use of the Unity Reserve and Chrétien's insistence that he sign the relevant documentation, the ignored memoranda from Jocelyn Bourgon, and the decision to keep the sponsorship program a secret from the cabinet – could individually prove that Chrétien was aware of the scandal. However, when taken together and considered as part of a clear pattern, it is reasonable to conclude that it is quite possible, or even highly likely, that Jean Chrétien did have specific knowledge of the purposes for which the money he allocated to PWGSC was being used. The communication from Bourgon, and Chrétien's refusal to acknowledge it, is what truly casts doubt on his denial of any

knowledge. Chrétien was twice told that he was accountable for the use of Unity Reserve funds, was twice offered help in fulfilling this accountability, refused this assistance while allotting more money to the same recipients, and then claimed to have no knowledge of the use of the money and no recollection of the memoranda he received. It is inconceivable that a prime minister who was truly innocent of any misconduct could act in this way, especially when one considers the additional evidence presented. Therefore, while Gomery should be applauded for fairly harshly admonishing Chrétien's actions (or lack thereof) relevant to the sponsorship scandal, his report should have gone one step further and at least stated the possibility that Jean Chrétien had specific knowledge of the misspending of public money that occurred as part of this unfortunate debacle.

It must be acknowledged that if, hypothetically, Chrétien were to be charged and tried in a court of law for possessing this knowledge, he would probably be acquitted. Such an institution would be bound by the burden of proof beyond reasonable doubt, which admittedly does not quite exist in this case, since convenient explanations can be found for all of Chrétien's actions. For example, Chrétien has insisted that secrecy was required not to avoid detection of corruption, but to prevent English Canada from knowing how much federal money was being poured into Quebec. Rationalizations like this one cannot be conclusively discounted or disproved, and thus it cannot be definitively stated that he was aware of the events of the sponsorship scandal. However, it should be noted that Justice Gomery's mandate did not include the same burden of proof as a court of law.³⁵ The confluence of incriminating factors that has been outlined in this section make it very difficult to believe that the prime minister was as clueless as he has

portrayed himself . For this reason, Gomery could have reasonably stated that he was of the opinion that Chrétien was aware of the events taking place within PWGSC, or at least mentioned the possibility.

Even after the events of the sponsorship scandal became public, and the Gomery Report indicated that Chrétien should share in the blame, the former prime minister refused to accept responsibility for his mistakes. He disagreed with several of Gomery's conclusions and attacked the validity of the inquiry when he complained, "All of the witnesses that could have said a nice thing about my administration were not invited."³⁶ Lastly, in a desperate attempt to change the subject to what he saw as the less distasteful aspects of his legacy, Chrétien declared, "If I had decided to go to war with Mr. Bush, we would not be talking about [the] Gomery Report. We would be dealing with the body bags coming back to Canada..."³⁷ A month after the report was released, Chrétien went so far as to launch a court challenge against Gomery's findings. Chrétien's submission to the Federal Court of Canada alleged that certain factual findings in the report were "erroneous, perverse, capricious, and... completely contrary to uncontradicted evidence."³⁸

Chrétien's weak excuses and flimsy denials fooled few observers. CBC anchor Peter Mansbridge remarked, "A former prime minister is fighting to save a tarnished legacy."³⁹ David Mitchell of the University of Ottawa, a former member of the British Columbia legislature, said of Chrétien, "His reputation is sullied, tarnished, possibly beyond repair."⁴⁰ Jean Chrétien's frantic grasping at straws to deflect blame and absolve himself from responsibility were emblematic of the problem which led to the sponsorship scandal in the first place: the culture of the Liberal government was one that did not

involve the acceptance of responsibility or accountability for anything that went wrong. This led to a breakdown in the doctrine of ministerial responsibility, with certain key players assuming that they could skirt some of the rules and easily talk their way out of any blame should they be required to do so. While Prime Minister Jean Chrétien was the one who most flagrantly subscribed to this attitude, other members of his government seemed to share a similar lack of respect for Canada's accountability regime.

David Dingwall

David Dingwall became minister of Public Works and Government Services Canada in November 1993, upon the election of Jean Chrétien's Liberal government.⁴¹ He remained in this position until January 1996, meaning he was in charge of the portfolio as the internal framework of the sponsorship program was put in place prior to its official inception in the spring of that year.⁴² While there is no evidence to indicate that he played a direct role in the misspending of money, certainly he is guilty of allowing the conditions necessary for the scandal to take place.

The Gomery Commission established that Chuck Guité had an unorthodox amount of freedom within the department. He was not subject to the reporting requirements that a civil servant of his level would normally be. This freedom, which allowed the sponsorship scandal to continue for so long, was established on Dingwall's watch. In Gomery's words, "The independence of Mr. Guité's section and the lack of reporting on his activities to his immediate superior go back to the time when Mr. Dingwall was minister of PWGSC."⁴³

During Dingwall's testimony before the Gomery Inquiry, commission co-counsel Neil Finkelstein read a portion of Chuck Guité's job description:

This requires the incumbent to provide authoritative advice to the minister of Public Works... as the contracting authority on behalf of the government of Canada, on the quality, and cost effectiveness of the advertising and public opinion research... The minister is responsible for reviewing and approving and reporting on all expenditures related to advertising...⁴⁴

Guité's job description clearly did not include the level of freedom from reporting that he was afforded by his superiors. While Guité himself, and those within the PMO who allowed Guité to bypass his minister and deputy, certainly deserve a large portion of the blame for this anomaly, Dingwall must also be seen as responsible. Guité's freedom may have come at the request of the PMO, but there is no evidence that Dingwall protested in any way or even asked any questions regarding why a mid-level civil servant such as Chuck Guité was to be given such a long leash. In fact, in his testimony to the Gomery Commission, Dingwall claims that he was not even aware of anything unusual about Guité's performance. He testified, "We presumed that all public servants were professional, that they would report to their reporting individual, whoever that may be, whoever that supervisor may be, and that is the way in which we proceeded."⁴⁵

This is not an acceptable explanation, and demonstrates the erosion of the doctrine of ministerial responsibility that took place under Chrétien's Liberal government. The freedom exercised by Guité was not even in the realm of what was warranted by his position, and such a deviation from standard practice must be detected by the minister. Had Dingwall demonstrated that he had been monitoring the reporting requirements of his officials (even if this had taken the form of instructing a deputy or assistant deputy minister to do so), and that this monitoring had shown nothing untoward,

then perhaps he could be exonerated. Since it appears that Dingwall was not diligent in this matter, it is not reasonable for him to absolve himself of responsibility for Guité's free hand on the grounds that he was not aware of it.

Furthermore, there is the matter of a memorandum written by Warren Kinsella, Dingwall's assistant, to Ranald Quail, the deputy minister of PWGSC on November 23, 1995.⁴⁶ The memorandum indicated that the Privy Council Office and the Prime Minister's Office wished to co-ordinate government advertising initiatives under the same umbrella, and that the assignment was recommended to go to the Advertising and Public Opinion Research Sector (APORS) within PWGSC, of which Guité was the director general. This message, which Dingwall admitted that he instructed Kinsella to write, was a very unorthodox departure from standard procedures.⁴⁷ Normally, it would have been left up to the deputy minister to decide which departmental official is best-suited for which assignment. In Gomery's words, "This communication was rightly taken by Mr. Quail to be a highly inappropriate attempt by political staff to interfere in the internal administration of PWGSC, which is entirely within the jurisdiction of the deputy minister."⁴⁸

Even Dingwall himself could not justify the message sent to Quail. This is the exchange between Finkelstein and Dingwall on the subject:

MR. FINKELSTEIN: ... You would agree with me that it is not the place of the minister or the minister's staff to instruct a deputy minister to place a particular person in a particular place?

MR. DINGWALL: Correct...⁴⁹

Despite this admission, Dingwall still tried to imply that this interference was not that unusual, stating, "Ministers and deputies always have and always will discuss various staff members on each side of the ledger..."⁵⁰ This statement seemingly was an

attempt to downplay the importance of an improper intervention of the political establishment into the rightful jurisdiction of administrative officials, portraying it as an ordinary exchange between colleagues.

There is also the curious matter of the remarks made by Dingwall to Guité when the minister introduced his employee to Jacques Corriveau, the man who played a huge role in the sponsorship scandal by obtaining kickbacks for the Liberal Party from those who directly benefited from the contracts. Dingwall described Corriveau as “a very very close friend of the prime minister” and told Guité to “look after him”.⁵¹ On later occasions, Dingwall again instructed Guité to “look after this guy” or to “look after this firm”, referring to Corriveau’s business.⁵² These are certainly very odd comments from a minister who supposedly had no idea that a scandal was in the works involving the two men he was introducing to each other.

Certainly these facts do not necessarily prove that David Dingwall was directly complicit in the sponsorship scandal. The evidence presented to the Gomery Commission established that the key decisions were made by the PMO, and thus it is possible that Dingwall was simply acting according to the wishes of his superiors in granting Guité a high level of freedom and in making the unusual suggestion regarding APORS’ handling of government advertising. However, he did not strongly object to either measure, and there is no record of him even asking the PMO why such unusual steps were being taken within his department. At the very least, Dingwall was aware that something unseemly was happening, and rather than attempt to find out what it was he happily kept himself in the dark so that he could plead ignorance later. This attitude is emblematic of the

breakdown in ministerial responsibility that was instrumental in the unfolding of the sponsorship scandal.

In the final chapter of Justice Gomery's first report, he summarized whom he felt was responsible for the scandal, in which ways, and to what extent.⁵³ Oddly, Dingwall's name was not even mentioned. Omitting Dingwall from this list was an error on Gomery's part. While he likely did not directly and knowingly participate in the misspending of taxpayers' money, there were certain anomalies taking place within the department of which he was the minister, and he chose not to investigate them. His attitude was that if he avoided detailed knowledge of wrongdoing, then he could not be blamed for it. Had Gomery placed greater importance on the doctrine of ministerial responsibility, he would have censured David Dingwall for his inaction during the earliest stages of the sponsorship program.

Diane Marleau

Diane Marleau's actions relevant to the sponsorship scandal exemplify the lack of respect for the doctrine of ministerial responsibility held by the Liberal Party during this period. During her tenure as minister of PWGSC from January 1996 until June 1997, Marleau was privy to numerous undeniable indicators that something untoward was occurring within her department.⁵⁴ Since she was not one of the government's more influential cabinet ministers and knew that the orders emanated from those in positions of power well above her own, such as the PMO, Marleau chose to keep quiet. Marleau was placed in a very unenviable position by her political superiors. She knew things that she had a duty to report, and yet knew that she would be ignored and may damage her career

if she did so. For this reason, Justice Gomery chose to exonerate her of any wrongdoing.⁵⁵

While it is understandable that one would sympathize with the difficulty and complexity of the situation in which Marleau found herself, she was nonetheless obligated to come forward with her knowledge. Unsettling as it is to castigate a woman who, in a sense, can be seen as somewhat of a victim of those more powerful than her, the argument here is that similar recurrences of this incident can only be prevented through a much more strict adherence to the doctrine of ministerial responsibility. Therefore, Marleau must shoulder some of the blame for the sponsorship scandal, and Gomery's report should have concluded that she did not uphold her duty as a cabinet minister.

Beyond the responsibilities held by any minister for the goings-on within his or her department, as minister of Public Works and Government Services Canada Marleau held special responsibilities regarding the issuing of government contracts. In 1996 PWGSC was created through legislation merging the Public Works department and the Supply and Services department. Section 7 of this legislation states:

- ...the minister shall
- (a) investigate and develop services for increasing the efficiency and economy of the public service of Canada and for enhancing integrity and efficiency in the contracting process;
 - (b) acquire material and services in accordance with any applicable regulations relating to government contracts...⁵⁶

This passage bestows the minister of PWGSC with the very important duty of overseeing the process through which the government issues contracts to the private sector. During the early stages of the sponsorship program Diane Marleau failed to fulfill this task, instead taking some of her more unreliable departmental employees at their

word. Justice Gomery's report, while not mentioning Marleau specifically at this point, emphasized the importance of this aspect of the job of the minister of PWGSC:

The responsibilities specified in section 7 are of such importance to the department's function as a common service provider to all government departments that the minister of PWGSC must take an interest in the contracting process to be followed by public servants in his or her department. Because the minister bears the primary responsibility for the department, he or she is not entitled to leave administrative procedures and regulations to the sole supervision of department personnel.⁵⁷

Despite the clear instruction given to her by this legislation, Marleau was far from diligent in overseeing the contracts issued by the employees of her department. This mistake on her part appears even more inexcusable when one considers the warning signs that were evident to Marleau while she was responsible for PWGSC.

During and even prior to her 17 month tenure as minister of PWGSC, Marleau was aware that Chuck Guité was underhandedly circumventing certain important government protocols.⁵⁸ Although she later admitted that she was made very uncomfortable by this situation, she elected not to attempt to uncover the true nature of Guité's activities. Marleau felt it would be in her best interest to keep herself in the dark, ignoring the responsibility that was rightfully hers as the minister of the department.

Before arriving at PWGSC in January 1996, Marleau was the health minister for Jean Chrétien's government.⁵⁹ While in this position, Marleau had desired a change in the agency which handled the advertising needs of her department. Since Chuck Guité's group at PWGSC was in charge of all the government's advertising, Marleau had to direct her request to Guité. Justice Gomery described the curious result of Guité's search for a new advertising agency, explaining, "...a competition conducted by personnel in Mr. Guité's organization had resulted in the selection of the same agency as before. Ms.

Marleau would have greatly preferred a new agency and was disturbed and disappointed by the results of the competition.”⁶⁰ Gomery also mentioned that the experience left Marleau “uneasy and suspicious concerning his [Guité’s] manner of performing his responsibilities.”⁶¹

Marleau was made even more wary of Guité after becoming his minister at PWGSC. She soon learned of the series of meetings taking place between Guité and Jean Pelletier, the prime minister’s chief of staff. Needless to say, Marleau found this quite odd, and was further puzzled by the fact that she was not informed about what was being discussed.⁶² Marleau described her suspicions to the Gomery Commission:

I was worried that they were bypassing all department heads and the deputy minister and myself and dealing directly with the Prime Minister’s Office... I think that is perfectly fair, but I think that when that happens, and it is a direct request from the Prime Minister’s Office, the minister should always be kept informed and so should the deputy minister. In other portfolios, especially the one I had following Public Works, when this happened I was always informed of the conversations. So I was always kept in the loop. I was not informed of any conversation at Public Works at all, except for these reports.⁶³

Her natural reaction was to raise the issue with her deputy minister, Randal Quail, to see if he could shed some light on the reasons for these secretive meetings. In a response described by Gomery as “somewhat enigmatic”, Quail told Marleau to be very careful.⁶⁴ Marleau interpreted this as a warning that probing deeper into the issue could jeopardize her future career as a minister, and testified that she was “taken aback and shocked” by her deputy’s bizarre words of caution.⁶⁵ Despite her surprise, she took Quail’s words at face value and did little as a result of them. In her own words, “When you are told something like that, you back off and you say ‘Well, okay; make sure the rules are followed’ and you expect the rules to be followed, as I did...”⁶⁶ She went on to

testify that she could not recall having any further conversation with Quail regarding this matter at any point during the rest of her tenure as Public Works minister.⁶⁷ Certainly these were not the actions of a minister diligently investigating the possibility of inappropriate activity within her department. By her own admission, she was perfectly content to instruct that the rules be followed and then presume that they would be, while making no effort to confirm that this was the case.

Marleau had viewed Guité as an unseemly character even before arriving at PWGSC, and learning of his unorthodox meetings had exacerbated her suspicions. At this point, it was her duty to confront Chuck Guité regarding the nature of the meetings he was having with Jean Pelletier. Had she not received the answers she sought, disciplinary action should then have been taken against Guité and probably Quail as well for his role in hiding the meetings. The PMO probably would have intervened to instruct Marleau to stop interfering in Guité's work, but if Diane Marleau had been serious enough about the responsibility she held as the department's minister, she would have persistently continued to investigate. There is a chance that such efforts could have exposed the sponsorship scandal years before it was eventually discovered by the auditor general. Even if her investigation had proven fruitless, Marleau at least would have fulfilled the requirement under the doctrine of ministerial responsibility that she do her best to uncover any wrongdoing within her department.

Marleau chose to take the exact opposite approach. Rather than immediately dealing with Guité, she opted to deliberately avoid him. As Justice Gomery explained, "On the basis of these incidents Ms. Marleau adopted, as her policy, that she would have

no contact with Mr. Guité except through proper channels. As a matter of fact, she had no direct contact with him at all for the duration of her tenure as minister of PWGSC...”⁶⁸

This was an inexplicable and indefensible response to the problem faced by Marleau. If a minister is aware that a departmental official is engaging in questionable conduct, that official should be subjected to more rigorous scrutiny and monitoring than the department’s other employees. Severing contact so as to avoid knowledge of any wrongdoing certainly does not conform to the stipulation of the doctrine of ministerial responsibility that states that a minister can only be absolved of blame for departmental malfeasance if he or she did everything possible to investigate it and impose consequences as needed.

In fact, not only did Marleau silently steer clear of Guité and those with whom he worked on sponsorship files, but in October 1996 she actually co-signed Jean Chrétien’s aforementioned proposal to the Treasury Board to withdraw \$17 million from the Unity Reserve.⁶⁹ Marleau would probably justify this decision on the grounds that she was acting according to the wishes of the prime minister. This is somewhat understandable, but there was nothing in her testimony to indicate that Marleau asked any questions regarding the purposes for which the money would be used. During her examination before the Gomery Commission, commission associate legal counsel Guy Cournoyer asked Marleau with whom she discussed this submission. Marleau’s regrettably unsatisfying answer was, “I hate to tell you I don’t remember discussing this submission at all... I can’t shed any more light on this other than that I signed it.”⁷⁰

For a Treasury Board submission that was so unusual, it would not have been inappropriate for her to tell Chrétien that she did not feel comfortable endorsing it

without more information, and it was incumbent upon Marleau to make at least some effort to understand why these funds were coming to her department. Marleau's decision to dodge Chuck Guité was a grievous mistake, but by signing the Treasury Board submission without asking certain important questions she went one step further. With this signature, she put her name on the document that led to the misspending of exorbitant amounts of taxpayers' money.

It is unreasonable for her to claim that she fulfilled the requirements of ministerial responsibility when she did not investigate Guité's unusual meetings and signed a questionable Treasury Board submission without seeking the necessary information regarding its intentions. When speaking of Guité's group at APORS to the Gomery Commission, Marleau testified, "...I certainly kept an eye out for things that were going on or anything that came up from that shop. I was ever vigilant."⁷¹ How vigilant could she possibly have been when she had no direct contact with Guité, took no steps to investigate the unorthodox meetings despite her suspicions regarding them, and consequently remained unaware of the millions of dollars that were illegally spent by her department?

Despite these facts, Justice Gomery elected to exonerate Marleau of all blame for the abuses of the sponsorship scandal.⁷² This is probably the point on which this thesis takes the greatest issue with Gomery's findings. He wrote of the former PWGSC minister, "...she really knew very little about the reasons why funds were needed or about the subject of sponsorships in general... it was not discussed with her, and she had nothing to do with the administration of the sponsorship contracts that resulted."⁷³

Gomery was correct in stating that Marleau had no knowledge of these things. However, the commissioner was apparently willing to overlook the fact that Marleau lacked this knowledge because she deliberately avoided taking the steps that could potentially have allowed her to acquire it. In his concluding chapter summarizing who should be held accountable, Gomery was quite explicit in absolving Marleau of any wrongdoing. He explained:

According to the doctrine of ministerial responsibility as it has been expounded in some of the submissions, Diane Marleau, who was the minister of PWGSC at the time the sponsorship program was initiated in 1996, would bear ministerial responsibility for the program... I disagree with that interpretation of the doctrine. Ms. Marleau played no part in the conception and implementation of the program, other than to obligingly sign the Treasury Board submissions in question... In these circumstances, it would be unfair to assign Ms. Marleau any degree of responsibility for Mr. Guité's faults.⁷⁴

An earlier portion of Justice Gomery's report included strong rhetorical statements on the importance of the doctrine of ministerial responsibility. Gomery indicated a desire to see ministers held accountable for misconduct within the department if they did not take proper steps to prevent it. He wrote:

Most commentators say that it is not fair today to hold a minister responsible for errors or maladministration attributable to departmental officials if the minister was not aware of them. The exception occurs if it can be determined that the minister failed to ensure that appropriate systems were in place to manage the risks that led to those errors or instances of mismanagement... The establishment of proper procedures and oversight are particularly important where the discretionary expenditure of public funds is involved... If the minister fails to take these precautions, he or she cannot subsequently take refuge in the claim of being unaware of problems until they arose and became public. In other words, a minister can be reproached for inaction as much as for positive actions that lead to unfortunate results. Willful ignorance of administrative inadequacies will not suffice to disengage a minister from responsibility for failures within the department.⁷⁵

While Gomery's rhetorical commitment to upholding the doctrine of ministerial responsibility was commendable, it makes his exoneration of Diane Marleau extremely puzzling. Clearly Marleau was guilty of inaction and of willful ignorance, and did not have proper systems of oversight in place despite the fact that her department was engaging in the discretionary expenditure of public funds. According to the standard that Gomery himself expressed, Marleau should receive a great deal of criticism for her role in facilitating the unchecked continuation of the sponsorship scandal. It should also be remembered that, as mentioned above, Gomery went out of his way to highlight the special responsibility held by the minister of PWGSC for the issuing of government contracts.

As was mentioned earlier, Marleau was placed in an extremely awkward position for which there really was no easy solution. While it is understandable to view her with some degree of sympathy, the sponsorship scandal indicated a marked erosion in the doctrine of ministerial responsibility that was and is in dire need of repair. If Justice Gomery truly took ministerial responsibility as seriously as he claimed, his report would not have let Diane Marleau off the hook.

Ranald Quail

While Marleau's inaction is certainly not defensible, it should be pointed out that she could have been greatly aided in fulfilling her ministerial responsibility had she had the benefit of a diligent deputy minister. Unfortunately, Ranald Quail, who served as deputy minister of PWGSC from June 1993 until April 2001, was no more interested than

his minister in ensuring that the department issued advertising contracts in a legal and ethical manner.⁷⁶

Like Marleau, although to a lesser degree, Quail can be viewed with some measure of sympathy due to the unattractiveness of all the options he faced. Quail was forced to confront the classic middleman's dilemma of either speaking out early and risking his career, or remaining silent and hoping it would blow over.

While this certainly must not have been an easy situation to handle, Quail's response to it left much to be desired. Not only did he choose the latter of the two options expressed above, but he did very little to distance himself from the scandal as it went on. In an even more disappointing course of action, he selfishly protected his own career while passively allowing the livelihood of some of his more principled underlings, such as Allan Cutler and Marie Maltais, to be derailed due to their unwillingness to co-operate.

The first and most egregious example of Quail's culpability has already been dealt with. Upon Marleau's arrival at PWGSC, she questioned her deputy about the secretive and unusual meetings taking place between Chuck Guité and Jean Pelletier. Quail responded with an ominous warning that Marleau would be well-advised to leave the matter alone.⁷⁷ Needless to say, this was not the proper way for a deputy minister to handle such a situation. In order to adequately assist a minister in fulfilling ministerial responsibility, a deputy must be fully forthcoming with any knowledge he or she may have about even the mere possibility of misconduct within the department. In his testimony before the Gomery Commission on this subject, Quail had no answer as to why he would respond to Marleau in such a manner, and claimed that his recollection of the incident was not clear. He said, "We had a discussion on the subject. I let her know that

there were discussions between Mr. Guité and the PMO and I don't remember any other details... If she had been overly concerned, I'm sure she would have told me.”⁷⁸

Marleau's account of that conversation indicated that Quail may well have had reason to be suspicious of Guité's activities. If, as he testified, he had no such suspicions at that point, certain other events should have provided ample cause for concern. When assistant deputy minister James Stobbe became Chuck Guité's immediate superior, Quail received a telephone call from Ron Bilodeau, then the deputy clerk of the Privy Council. Calling on behalf of the PMO, Bilodeau told Quail that Stobbe asked too many questions and asked Quail for more information about Guité's new boss.⁷⁹ According to Gomery:

“...the clear inference from the call was that Mr. Stobbe's supervision and involvement were not welcome and that people in the PMO preferred him not to interfere. Mr. Stobbe learned about the call, and both he and Mr. Quail understood the message that was being communicated: Mr. Guité's direction of the sponsorship program was under the direct supervision of the PMO, and no one should intervene.”⁸⁰

If this type of reaction from the PCO and the PMO was provoked from the mere asking of questions by an assistant deputy, the deputy minister should have immediately known that something was awry, and should not have been so eager to take the PMO's advice that Guité should be left alone.

Furthermore, in 1998 and 1999 there were several irregular occurrences involving the personnel working in CCSB, Guité's group within PWGSC.⁸¹ Guité was determined to maintain the free hand with which he operated the sponsorship program, and anyone who attempted to force him to work within standard procedures was simply stripped of any involvement.

For example, in May 1998, Marie Maltais was named director general of strategic communications coordination at CCSB.⁸² Noting the unorganized way in which

sponsorship files were managed, she attempted to impose some semblance of order, scheduling training sessions and lectures by those with experience in similar projects. Guité repeatedly cancelled these presentations. Maltais could finally not take it anymore and left CCSB in January 1999.

Evelyn Marcoux and David Myer underwent similar experiences during this period.⁸³ Marcoux, supposedly Guité's second-in-command during her 18-month tenure as a CCSB employee, received very little communication and no co-operation from Guité and eventually had all of her authority taken from her because she asked too many questions. Similarly, when Myer requested that sponsorship contracts be handled the same way as any other procurement function, he was forbidden from dealing with sponsorship matters.

The internal workings of a department must be overseen by the deputy minister. The odd personnel changes experienced by Guité's branch should have raised a red flag for Ranald Quail. Repeatedly, people were brought in to CCSB, supposedly in fairly influential positions, only to quickly leave or be removed from all decision-making. Such events should have led Quail to ask Guité certain questions about the reasons for these moves. It is likely that Quail refrained from asking such questions because he was already suspicious of Guité's activities and was afraid of what he might discover. Therefore, he preferred to look the other way to preserve his own ignorance of any potential wrongdoing.

There is also the matter of Allan Cutler, the former PWGSC employee who gained national renown for his role as the "whistleblower" who finally exposed those who were involved in the scandal.⁸⁴ For more than a year prior to his making his

knowledge public, Cutler kept a journal and retained copies of documents to prove what was occurring within Guité's group. When interviewed for this thesis, Cutler stated that during that time Quail was well aware of the work he was doing to build a case. Despite this knowledge, Quail chose to ignore Cutler, and when Guité wanted to remove Cutler from his group (claiming his job had become "surplus"), Quail happily allowed it. In Allan Cutler's opinion (of which he was careful to mention he had no conclusive proof), Quail had received orders, from well above his level, to the effect that Chuck Guité was not to be bothered. Rather than ask some difficult questions as to why this odd situation should be so, Quail played along. An unforgiving Cutler stated that he was appalled that the deputy minister could so callously allow an honest man's career to be derailed, and emphatically concluded, "I have absolutely no respect for the man."⁸⁵

The Gomery Report quite correctly censured Ranald Quail for his failure to play his role as a deputy minister in ensuring that ministerial responsibility be upheld. Gomery asserted:

Although Mr. Quail could not be expected to keep track of all the activities of all the personnel in his huge department, there were many reasons why he should have given particular attention to Mr. Guité and his organization... if Mr. Quail did not take steps to inform himself of what was going on, he must accept the consequences if it is subsequently learned that irregularities were occurring... He was being bypassed, he knew he was being bypassed, and he failed to complain.⁸⁶

While Justice Gomery should be commended for strongly stating that Quail cannot be exonerated due to a lack of specific knowledge, his conclusions regarding Quail make his exoneration of Marleau even more perplexing. When reading the above explanation of why Quail must be held responsible, one cannot help but wonder why an identical criticism was not deemed by the commissioner to apply to Diane Marleau.

Nevertheless, this does not mitigate the culpability of Ranald Quail. He was well aware that normal procedures were not being followed, and his job was to bring this situation to the attention of someone who could have rectified it. Gomery was also astute to reject the notion that Quail's hands were tied because the decisions involving the sponsorship program were being made above his head. He stated, "If Mr. Quail was concerned about the possible reaction of the PMO or the minister's office if he dared to complain about their interaction with Mr. Guité, he always had recourse to the clerk of the Privy Council."⁸⁷

It is not certain that such a measure would have blown the lid off the sponsorship scandal, but at least Quail could have claimed to have tried something, as opposed to sitting idly by while his colleagues continued to mispend taxpayers' money. The deputy minister of a department has a very important duty to aid the minister in upholding his or her ministerial responsibility, and Quail failed miserably to do so. As far as Ranald Quail is concerned, this thesis argues that the Gomery Report was exactly right in assigning him a significant degree of blame for his indifference towards certain flagrant warning signs.

Alfonso Gagliano

Alfonso Gagliano took over from Diane Marleau as minister of PWGSC in June 1997.⁸⁸ From that time on Gagliano took a much more active role in the sponsorship program than either of his two predecessors, David Dingwall or Diane Marleau. Gagliano became a participant in the meetings between Guité and Jean Pelletier, gradually replacing Pelletier as the key political decision-maker who instructed Guité regarding the

recipients of sponsorship contracts.⁸⁹ Justice Gomery described Gagliano's role in these meetings as "...making suggestions and giving instructions on events, amounts and the agencies to be used in each instance."⁹⁰

In his testimony before the Gomery Commission, Gagliano attempted to downplay his role in the scandal. Firstly, he claimed that his meetings with Guité were quite infrequent. Gagliano told the commission, "I've always claimed that I met Mr. Guité, in total, on average, in total over a year, on all the files, 10 to 12 times per year, including three to four times on the sponsorships."⁹¹ This was a far cry from what Guité's testimony indicated. Guité claimed, "It is really hard to put a figure on it, but it was regular... not often that a week would go by that I would not meet with him... I would say if you take an average, it would be once a week."⁹²

As Justice Gomery noted, it is difficult to conceive of a motive for Guité to falsely increase the frequency of his meetings with the minister.⁹³ For that reason, Gomery wholeheartedly accepted Guité's version of events regarding how often he met with Gagliano. In the commissioner's own words, "...Mr. Gagliano's affirmations about the infrequency of his meetings with Mr. Guité are not believed."⁹⁴

Throughout his testimony, Gagliano remained insistent that Guité had the final say regarding the selection of agencies for sponsorship contracts. Gagliano would only admit to providing input or suggestions as to which agencies may be the best to consider. Gagliano told the commission, "The meetings with Mr. Guité and me were simply meetings for consultation. We gave input... the list came with the agencies, and I never had them changed – said, "No, take out that agency and put in the other one... I definitely never suggested an agency..."⁹⁵

Gagliano further emphasized his claim that Guité was the sole selector of advertising agencies in this exchange with lead commission counsel Bernard Roy:

MR. ROY: ...the role of... Alfonso Gagliano in this entire process was to provide input to Mr. Guité and at the end of the road, it was Mr. Guité who decided what the final list would look like; is that correct?

MR. GAGLIANO: It was his final decision.⁹⁶

Alfonso Gagliano's claims on this score are almost laughable. It is certainly difficult to picture Chuck Guité leaving a meeting with his minister at which he had been given "input" regarding the choice of agencies and then disregarding that advice. Gagliano's suggestions amounted to direct orders, and as such he deserves a large portion of the blame for the abuses of the sponsorship scandal. This certainly was Justice Gomery's interpretation of the situation. His report concluded:

Messrs. Guité and Tremblay [Pierre Tremblay, who replaced Guité after the latter's retirement in 1999] were subordinates coming to their minister for approval of what they were proposing; it necessarily follows that the person making the ultimate decision is the minister when he gives the approval, but Mr. Gagliano refuses to see the logic of this proposition.⁹⁷

There was other testimony before the Gomery Commission that also indicated that Gagliano was more involved in the scandal than he cared to admit. Isabelle Roy and Joanne Bouvier, both of whom worked as political assistants for Gagliano at PWGSC, testified that they kept an "MP log", started by Roy, which documented all of the minister's key decisions.⁹⁸ In Gomery's words, "These included decisions to amend the lists presented to him by Mr. Guité, to add events and amounts to those lists and to reverse decisions which Mr. Guité had already made."⁹⁹

Bouvier's testimony described Gagliano's role as much more active than he admitted. The following exchange between Bouvier and Pierre Fournier, Gagliano's

counsel, demonstrated that Gagliano did not allow Guité to make all final decisions on sponsorships, as he claimed:

MR. FOURNIER: And are you able say – using your notes, or from memory, as you wish, are you able to tell the commissioner if there was one time... when the minister told you, "Here is what you're going to do about that sponsorship"?

MS. BOUVIER: Yes.¹⁰⁰

Bouvier went on to describe a discussion that took place regarding the minister's participation in an appearance in Saint-Saveur, Quebec as part of a tour of the province being conducted in association with the sponsorship program.¹⁰¹ Testimony such as that provided by Roy and Bouvier proved that Gagliano had greatly misrepresented his role in the sponsorship program. Justice Gomery was not fooled. He asserted, "In spite of his protestations to the contrary, the evidence is overwhelming that Mr. Gagliano was a hands-on manager who took great interest in the sponsorship program and an active part in its direction."¹⁰²

A so-called competition that took place among advertising agencies in 2001 demonstrated Gagliano's attitude towards the contracting process associated with the sponsorship program.¹⁰³ Nine agencies made presentations to the committee that would decide which would receive standing offers from PWGSC. After the presentations had been made, the committee recommended to Gagliano that all nine be given standing offers. Gagliano approved the recommendation, despite the fact that the process bore a suspicious resemblance to a 1997 competition in which each of ten agencies making presentations were retained by PWGSC. Even if Gagliano's claim not to have been intimately involved in the scandal was believable, he was at least guilty of failing to investigate this oddity, which deviated from the government's practice of holding

legitimate competitions for advertising contracts. In Gomery's words, "Of course, a competition where everybody wins is not really a competition at all."¹⁰⁴

Regarding Gagliano, Justice Gomery's report was entirely correct. Gomery commented harshly on Gagliano's ignorance of the doctrine of ministerial responsibility. The commissioner lamented:

He refuses to accept that he was directly involved in the administration of the sponsorship program, not because it was not so, but because he is reluctant to accept responsibility for the errors committed in the course of that administration and the political interference which his decision-making constituted... he did not give the impression that he was as interested in increasing the commission's understanding of the operation of the sponsorship program as he was in seeking his own vindication.¹⁰⁵

This desire to deflect blame is exemplary of the culture that was visible within certain elements of the Liberal Party by the height of the sponsorship scandal. Certain actors in positions of power believed that they were above reproach and could not be held accountable for their actions. This naturally led to an erosion of respect for the doctrine of ministerial responsibility.

The admonition delivered by Justice Gomery was exactly what was called for, and he deserves credit for refusing to allow Alfonso Gagliano to talk his way out of the responsibility he bore as a minister. This was the type of commitment to a strong respect for ministerial responsibility that should have characterized the entirety of the Gomery Report.

Paul Martin

Throughout the sponsorship scandal, Paul Martin was Canada's finance minister. Due to this fact, many observers were quick to blame Martin for the misuse of public

money. Opposition MP Peter MacKay referred to Martin as the “CEO of the entire country” and accused him of being “willfully blind”.¹⁰⁶ However, when the Gomery Report was released on November 1, 2005, Martin was completely exonerated of any personal wrongdoing.¹⁰⁷ This was a major victory for the man who was prime minister at the time, since, in the words of the Canadian Press’ Ottawa bureau chief Rob Russo, “Things could have gone so, so badly for Paul Martin and the people around him today.”¹⁰⁸

While it may have surprised many observers, Gomery’s exoneration of Martin was quite appropriate. Though it is the finance department that determines the budget and thus allocates funds to the government’s various other departments, the finance department, and thus its minister, are not required to monitor those funds once they are distributed.¹⁰⁹ The finance minister is entitled to assume that his or her fellow cabinet ministers appointed by the prime minister will be diligent in fulfilling their ministerial responsibility, and should not be expected to chase after them to ensure that they do so. Paul Martin was one of the few witnesses before the Gomery Commission who provided self-exonerating testimony that was actually legitimate. When asked what the role of the finance minister was after funds allocated to a department were approved by parliament, Martin astutely explained:

He has no role whatsoever... once parliament has approved it, the responsibility to monitor the ongoing – to make sure that the money is well spent, to make sure that the government does what it says, rests primarily with the individual minister himself or herself. It is that minister who has the responsibility to parliament and to cabinet and to the prime minister to in fact carry through with what the legislation said it would do and to carry through in a way that is correct from a management – in a proper sense of the value of money. Treasury Board will have an overall supervisory function to make sure that government – individual government departments are doing what they said they would do with the

monies that have been allocated to them. The main responsibility is the minister's. Supervisory authority is given to Treasury Board. The minister of finance is off doing something else.¹¹⁰

Justice Gomery concurred. He too believed that it is unreasonable to hold the finance minister responsible for policing the spending of the numerous other departments that make up Canada's government. In his words:

The department of finance and its minister do not play a role in the oversight of expenditures made by other departments... Once a proposed expenditure has been approved through the presentation of the budget, his or her responsibility comes to an end... The minister of finance has no responsibility to monitor spending once it has been approved.¹¹¹

Furthermore, it should be remembered that much of the mishandled money came from the Unity Reserve, which can only be accessed by the prime minister.¹¹² Thus most of the funds were not even allocated by Paul Martin. Also, as was mentioned earlier, Jean Chrétien chose to keep the sponsorship program a secret from his cabinet colleagues.¹¹³ There is little that Paul Martin could have done to uncover the sponsorship scandal, even if his position had required him to do so. These facts led Justice Gomery to conclude:

Mr. Martin, whose role as finance minister did not involve him in the supervision of spending by the PMO or PWGSC, is entitled, like other ministers in the Quebec caucus, to be exonerated from any blame for carelessness or misconduct. Ministers are not responsible for what they do not know about the actions and decisions of the PMO or other ministers, or about the administration of departments other than their own.¹¹⁴

This is another point on which this thesis agrees with the findings of the Gomery Report. The doctrine of ministerial responsibility does not require ministers to monitor the activities of their cabinet colleagues, and the finance minister is no exception. As minister of a different department, Martin would not have been privy to the warning signs surrounding Chuck Guité and his organization. The Gomery Inquiry produced no evidence to indicate that Paul Martin knew anything about the events of the sponsorship

scandal as they were occurring, and there was no requirement for him to have investigated the ways in which PWGSC was using the funds allocated to it.

The Sponsorship Scandal, The Gomery Report, and Ministerial Responsibility

The Gomery Report purported to take the doctrine of ministerial responsibility quite seriously. It made a number of rhetorical commitments that implied that it was unacceptable for a minister to assign total blame to public servants for problems that he or she could possibly have prevented through more conscientious scrutiny. For example, Gomery's report stated:

It is... incumbent upon a minister, according to law and the relevant government policies, to work with the public service to ensure that the proper implementation of government policy is delivered through the program or activity under the minister's charge... the proposition that ministers and their political staff have no responsibility whatsoever for seeing to the proper implementation and administration of government programs and policies is an inadequate and incomplete expression of the principle of ministerial responsibility.¹¹⁵

It is unfortunate that Gomery chose not to apply this interpretation of the doctrine to certain players involved in the sponsorship scandal. David Dingwall and Diane Marleau, both of whom served as minister of PWGSC in the early stages of the sponsorship program, and Ranald Quail, who was the deputy minister for virtually the entire period in question, deliberately avoided knowledge of what was occurring, despite the fact that they perceived puzzling irregularities regarding the activities of Chuck Guité and his branch. Rather than investigate these red flags, all three chose to keep themselves in the dark, and later claimed that this absolved them of responsibility. Curiously, Gomery delivered harsh criticism to Quail but placed no blame on Dingwall or Marleau.¹¹⁶ This decision by Justice Gomery was ill-advised and demonstrated that his

commitment to the doctrine of ministerial responsibility was not as strong as his rhetoric claimed.

Gomery also erred in his analysis of Jean Chrétien's culpability.¹¹⁷ Chrétien, the prime minister throughout the era of the sponsorship program, was criticized by Gomery for his curious decisions to run the program out of the PMO, his failure to keep adequate tabs on his chief of staff, and his choice to keep it a secret from his cabinet. Gomery stopped short, however, of concluding or even hypothesizing that Chrétien may have had specific knowledge of the abuses associated with the sponsorship scandal as they were occurring. This was a mistake, since there was enough evidence to warrant at least a discussion of the possibility, if not the outright conclusion, that the prime minister had been aware of the events.

To summarize, Justice John Gomery's analysis of who was responsible for the sponsorship scandal was correct in many ways.¹¹⁸ He delivered commendably harsh criticisms of certain actors such as Ranald Quail and Alfonso Gagliano. Also, he astutely exonerated Paul Martin, whose position as finance minister did not require him to monitor the use of funds allocated to the various government departments. However, his insufficient censure of Jean Chrétien, his failure to even mention David Dingwall in his concluding section assigning responsibility, and especially his inexplicable decision to assign no blame to Diane Marleau indicated that Justice Gomery placed an inadequate amount of emphasis on adherence to the doctrine of ministerial responsibility.

The principle of ministerial responsibility is one of the most important tenets of Canada's system of responsible government. If ministers are not held accountable for the decisions made by their department, then events such as the sponsorship scandal will

forever go unpunished and will continue to repeat themselves. While it is legitimate to exonerate ministers for departmental wrongdoing if it can be shown that they could not have been reasonably expected to be aware of it, ministers must not be permitted to use this caveat as an excuse to avoid diligent attempts to prevent and/or expose such misconduct.

During the era of the sponsorship program, certain Liberal cabinet ministers (and one important deputy minister) displayed an almost scornful disregard for the notion of ministerial responsibility. Some deliberately and knowingly participated in the stealing and misspending of taxpayers' money, and others intentionally avoided investigating certain blatant warning signs that indicated the strong possibility of wrongdoing within their department. While the distastefulness of the former transgression goes without saying, it is the latter that indicates a less brazen but very problematic trend towards ignorance of the duties associated with being a minister.

The conclusion reached by this thesis, then, is that the best way to avoid another event similar to the sponsorship scandal is to strengthen the commitment to the doctrine of ministerial responsibility, and to interpret this doctrine in a somewhat more rigid manner than has become the custom. In a trend that became most notable under Chrétien's Liberals, ministers have become all too eager to refuse to accept responsibility for mistakes made within their departments on the grounds that they were unaware of them. The sponsorship scandal demonstrated that ministers will go so far as to deliberately avoid knowledge of potential misconduct so as to preserve their ability to plead ignorance later. Formal changes to the accountability mechanisms of Canada's government would probably do little to ensure that ministers take their responsibilities

more seriously. What is needed, rather, is more of an attitudinal change to the way in which individual ministers, and the government more collectively, view their tasks. The rest of this thesis will evaluate whether Canada's government is moving in this direction by examining the recommendations found in the second phase of the Gomery Report and the measures taken by the new Conservative government designed to strengthen government accountability in Canada.

ENDNOTES TO “MINISTERIAL RESPONSIBILITY AND THE SPONSORSHIP SCANDAL”

¹ Donald J. Savoie, Breaking the Bargain: Public Servants, Ministers, and Parliament. (Toronto: University of Toronto Press, 2003), p. 14.

² Ibid., p. 14.

³ The National Post, May 31, 2002.

⁴ The Commission of Inquiry into the Sponsorship Program and Advertising Activities, Who Is Responsible? Fact Finding Report. (Ottawa: Government of Canada, 2006), pp. 425-429.

<http://www.gomery.ca/en/phase1report/ffr/ff_eng_full.pdf>

⁵ Ibid., p. 12.

⁶ Testimony of Jean Chrétien before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), p. 12515.

<<http://www.gomery.ca/documents/transcripts/en/2005/03/20053410586.pdf>>

⁷ Commission of Inquiry into the Sponsorship Program and Advertising Activities, op. cit., p. 87.

⁸ Ibid., p. 425.

⁹ Ibid., p. 427.

¹⁰ Jean Chrétien on Global News, November 1, 2005.

¹¹ Testimony of Jean Chrétien, op. cit., p. 12597.

¹² Commission of Inquiry into the Sponsorship Program and Advertising Activities, op. cit., pp. 31-32.

¹³ Testimony of Jean Pelletier before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), p. 24481.

<<http://www.gomery.ca/documents/transcripts/en/2005/06/200569154314.pdf>>

¹⁴ Commission of Inquiry into the Sponsorship Program and Advertising Activities, op. cit., p. 148.

¹⁵ Ibid., p. 150.

¹⁶ Testimony of Jean Pelletier, op. cit., pp. 12393-12394

¹⁷ Commission of Inquiry into the Sponsorship Program and Advertising Activities, op. cit., pp. 88-89.

¹⁸ Ibid., pp. 88-89.

¹⁹ Ibid., pp. 64-65.

²⁰ Ibid., p. 78.

²¹ Ibid., p. 89.

²² Ibid., p. 89.

²³ Ibid., p. 94.

²⁴ Ibid., p. 90.

²⁵ Ibid., pp. 90-98.

²⁶ Ibid., p. 94.

²⁷ Ibid., p. 95.

²⁸ Ibid., p. 97.

²⁹ Ibid., p. 98.

³⁰ Testimony of Jean Chrétien, op. cit., pp. 12513-12514.

³¹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, op. cit., p. 100.

³² Ibid., pp. 97-98.

³³ Ibid., p. 430.

³⁴ Ibid., p. 428.

³⁵ Commission of Inquiry into the Sponsorship Program and Advertising Activities, op. cit., p. 2.

³⁶ Jean Chrétien on CBC News: The National, November 1, 2005.

³⁷ Jean Chrétien on Global News, November 1, 2005.

³⁸ The Ottawa Citizen, December 1, 2005.

³⁹ Peter Mansbridge on CBC News: The National, November 1, 2005.

⁴⁰ David Mitchell on CBC News: The National, November 1, 2005.

⁴¹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, op. cit., p. 445.

⁴² Ibid., p. 447.

⁴³ Ibid., p. 156.

⁴⁴ Testimony of David Dingwall before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), p. 10594.

<<http://www.gomery.ca/documents/transcripts/en/2005/02/200524153314.pdf>>

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- ⁴⁵ *Ibid.*, p. 10595.
- ⁴⁶ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, pp. 159-162.
- ⁴⁷ Testimony of David Dingwall, *op. cit.*, pp. 10599-10600.
- ⁴⁸ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 160.
- ⁴⁹ Testimony of David Dingwall, *op. cit.*, p. 10600.
- ⁵⁰ *Ibid.*, p. 10601.
- ⁵¹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 284.
- ⁵² *Ibid.*, p. 284.
- ⁵³ *Ibid.*, pp. 423-438.
- ⁵⁴ *Ibid.*, pp. 427-428.
- ⁵⁵ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 431.
- ⁵⁶ Parliament of Canada, Department of Public Works and Government Services Act. (Government of Canada, 1996)
<http://laws.justice.gc.ca/en/showdoc/cs/P-38.2/bo-ga:s_6/en#anchorbo-ga:s_6>
- ⁵⁷ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 51.
- ⁵⁸ *Ibid.*, p. 85.
- ⁵⁹ *Ibid.*, p. 85.
- ⁶⁰ *Ibid.*, p. 85.
- ⁶¹ *Ibid.*, p. 85.
- ⁶² *Ibid.*, p. 85.
- ⁶³ Testimony of Diane Marleau before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), pp. 10942-10943.
<<http://www.gomery.ca/documents/transcripts/en/2005/02/2005221370.pdf>>
- ⁶⁴ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 85.
- ⁶⁵ Testimony of Diane Marleau, *op. cit.*, pp. 10944-10945.
- ⁶⁶ *Ibid.*, p. 10945.
- ⁶⁷ *Ibid.*, p. 10945.
- ⁶⁸ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 86.
- ⁶⁹ *Ibid.*, p. 92.
- ⁷⁰ Testimony of Diane Marleau, *op. cit.*, p. 10935.
- ⁷¹ *Ibid.*, p. 10945.
- ⁷² Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 431.
- ⁷³ *Ibid.*, p. 88.
- ⁷⁴ *Ibid.*, p. 431.
- ⁷⁵ *Ibid.*, pp. 34, 39.
- ⁷⁶ *Ibid.*, pp. 445, 450.
- ⁷⁷ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 85.
- ⁷⁸ Testimony of Ranald Quail before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), p. 6866.
<<http://www.gomery.ca/documents/transcripts/fr/2005/03/200531415719.pdf>>
- ⁷⁹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 157.
- ⁸⁰ *Ibid.*, p. 157.
- ⁸¹ *Ibid.*, p. 63.
- ⁸² *Ibid.*, p. 63.
- ⁸³ *Ibid.*, p. 63.
- ⁸⁴ Interview with Allan Cutler conducted February 14, 2007.
- ⁸⁵ *Ibid.*
- ⁸⁶ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 435.
- ⁸⁷ *Ibid.*, p. 435.
- ⁸⁸ *Ibid.*, p. 428.
- ⁸⁹ *Ibid.*, p. 12.
- ⁹⁰ *Ibid.*, p. 144.
- ⁹¹ Testimony of Alfonso Gagliano before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), pp. 11621-11622.
<<http://www.gomery.ca/documents/transcripts/en/2005/02/200529124426.pdf>>

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- ⁹² Testimony of Joseph Charles Guité before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), pp. 6444-6445.
<<http://www.gomery.ca/documents/transcripts/en/2005/01/2005119104314.pdf>>
- ⁹³ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 144.
- ⁹⁴ *Ibid.*, p. 144.
- ⁹⁵ Testimony of Alfonso Gagliano, *op. cit.*, p. 11584.
- ⁹⁶ *Ibid.*, p. 11653.
- ⁹⁷ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 156.
- ⁹⁸ *Ibid.*, p. 154.
- ⁹⁹ *Ibid.*, p. 154.
- ¹⁰⁰ Testimony of Joanne Bouvier before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), p. 4155.
<<http://www.gomery.ca/documents/transcripts/en/2005/03/200534145758.pdf>>
- ¹⁰¹ *Ibid.*, pp. 4155-4156.
- ¹⁰² Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 154.
- ¹⁰³ *Ibid.*, p. 130.
- ¹⁰⁴ *Ibid.*, p. 130.
- ¹⁰⁵ *Ibid.*, p. 156.
- ¹⁰⁶ Peter MacKay, statement at member of parliament panel discussion at Carleton University, November 1, 2005.
- ¹⁰⁷ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, p. 430.
- ¹⁰⁸ Rob Russo on *CBC News: The National*, November 1, 2005.
- ¹⁰⁹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, pp. 48-50.
- ¹¹⁰ Testimony of Paul Martin before The Commission of Inquiry into the Sponsorship Program and Advertising Activities, (Government of Canada, 2006), pp. 12705-12706.
<<http://www.gomery.ca/documents/transcripts/en/2005/02/2005221143051.pdf>>
- ¹¹¹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, *op. cit.*, pp. 48-50
- ¹¹² *Ibid.*, p. 89.
- ¹¹³ *Ibid.*, p. 20.
- ¹¹⁴ *Ibid.*, p. 430.
- ¹¹⁵ *Ibid.*, p. 36.
- ¹¹⁶ *Ibid.*, pp. 423-438.
- ¹¹⁷ *Ibid.*, pp. 425-429.
- ¹¹⁸ *Ibid.*, pp. 423-438.

The Recommendations of the Gomery Report

On February 1, 2006, Justice John Gomery released the second phase of his report on the sponsorship scandal. The purpose of this second publication was to present his conclusions regarding what measures should be taken to restore accountability in Canada's government and avoid a similar occurrence in the future.¹ The 18 recommendations contained in this report provoked passionate reaction from former and current public servants, politicians, and members of the academic community.

This section will evaluate the recommendations offered by Justice Gomery in the second phase of his report. The argument presented here will concur with that put forth by numerous experts on the subject. While most of Gomery's suggestions represented desirable changes, there were a small number that would produce drastic consequences for the way Canada's government operates. Some of Gomery's recommendations can be described as overreactions to a scandal which, by his own admission, was an aberration that took place within a federal bureaucracy which he described as generally "competent and praiseworthy".²

The Gomery Report's emphasis on formal change as a remedy for the sponsorship scandal was misguided. In the words of Allan Cutler, a man eminently qualified to comment on the true causes of the scandal, "The rules that were there were sufficient if they were honoured."³

The tendency to overreact to mismanagement is nothing new for the Canadian government and public administration. In 2000, on the heels of the controversy involving the department of Human Resources, the Treasury Board imposed numerous new controls and directives on the public service, greatly compromising its efficiency.⁴ In a

2005 speech to the Ontario Federal Council, long-time deputy minister Arthur Kroeger

lamented these changes:

The number of reports that departments and agencies were required to submit to parliament came to exceed 1,000 per year, although it was widely acknowledged that hardly anyone looked at them. Officials found it increasingly burdensome to comply with the various directives... anecdotal evidence suggests that some were having to spend one-third or more of their time on “management”, to the detriment of their ability to deliver the services that their departments had been set up to provide.⁵

The government’s initial reaction to the sponsorship scandal once again demonstrated its tendency to respond to misconduct with greater quantities of official rules and procedures. In late 2005, before the second phase of Gomery’s report had even been published, the Treasury Board released a document promising 238 new measures to improve management in the federal government and committing to engage an additional 300 auditors.⁶ In the aforementioned speech, Kroeger indicated that the Treasury Board’s proposals would reward inertia in the public service and discourage any semblance of creativity. He stated: “...what is now proposed would result in a further, major bureaucratization of the federal government... instead of looking for ways to say, ‘Yes’ when a useful but unscripted proposal is put forward by a person, a business, or a charity, the instinct of officials will now be to play safe and say, ‘No.’”⁷

The adjustments proposed by the Treasury Board prior to the second phase of Gomery’s report were misguided in that they proposed major changes that would impact the public service, when it was clearly the political decision-makers who were chiefly to blame for the sponsorship scandal. As Kroeger put it, “...the measures announced are an attempt to apply a bureaucratic solution to a political problem.”⁸

These Treasury Board proposals were a preview of what was to come from the commissioner. Gomery's recommendations included ideas that would greatly hamper the ability of Canada's public service to do its job, despite the fact that it was not the driving force behind the sponsorship program. Before these suggestions are critiqued, some attention is owed to Gomery's more prudent recommendations.

The Appointment of Exempt Staff

In addition to the public servants employed by their department, a minister is assisted in performing his or her duties by a personal staff known as "exempt staff".⁹ These staff members are given this name because they are outside of the public service and are thus exempt from Public Service Commission staffing and other controls. The 2004 Privy Council Office publication entitled *Governing Responsibly: A Guide for Ministers and Ministers of State* explained that the function of exempt staff is "...to provide ministers with advisers and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the public service."¹⁰

As stated by the Treasury Board document entitled *Guidelines for Ministers' Offices*, the exempt staff of a minister can be appointed to a public service position without being subjected to the screening process that any other candidate would have to undergo. According to this document, "Persons with a minister's staff priority are entitled to be appointed without competition to any position in the public service for which they are qualified, in priority to all other persons except for surplus employees of the public service being placed within their own department..."¹¹

Justice Gomery noted the problem with this loophole. He explained, “This policy guideline allows exempt staff members to enter the public service through the back door, unburdened by the merit principle or competition.”¹² The sponsorship scandal served to illustrate the potentially disastrous consequences of this privilege granted to exempt staff members.

When Chuck Guité retired from PWGSC in 1999, Minister Alfonso Gagliano needed a replacement who would be willing, as Guité had been, to run the sponsorship program in the questionable manner in which it had been operating for several years. Gagliano found just the man he was looking for in Pierre Tremblay, formerly his executive assistant. Tremblay was appointed to Guité’s position and took over the latter’s responsibility for the sponsorship program.¹³ The ability of the minister to seamlessly replace Guité with someone with whom he was already familiar and comfortable was, presumably, a luxury that facilitated the continuation of the sponsorship scandal. Had Guité’s position been awarded to another candidate through a standard merit-based competition, Gagliano would have been forced either to bring this person on board with the dubious operations associated with the sponsorship program, or revamp the way in which the program was run in order to circumvent the new employee. Both of these options would have increased the risk of detection.

To prevent this type of hiring practice, recommendation 10 on Gomery’s list read, “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.”¹⁴ This recommendation was quite astute given the role that this proviso played in staffing the position that was so vital to the post-1999 continuance of the sponsorship scandal.

Gomery was careful to indicate that he was not suggesting that exempt staff should not be allowed to receive jobs in the public service. On the contrary, he noted that several former exempt staff members have made valuable contributions to Canada's government through subsequent careers in the public service.¹⁵ Gomery was simply suggesting that, like any other candidate, former members of a minister's exempt staff should be subject to a merit-based competition, in which they may legitimately have an advantage due to the skills and knowledge gained during their employment in the minister's office.¹⁶

The Authority of and Responsibility for Exempt Staff

This was not the only recommendation made by Gomery concerning exempt staff.

Recommendation 11 stated:

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.¹⁷

This suggestion was virtually a no-brainer when one considers the role of Jean Pelletier in the sponsorship scandal. Like any minister, the prime minister has his or her own exempt staff, of which the chief of staff is the most prominent member. In this position, Pelletier greatly overstepped his authority in becoming the principal decision-maker regarding the sponsorship program.

Exempt staff, be they employed in the office of the prime minister or any other minister, cannot be considered to be in charge of the departmental employees. *Governing Responsibly: A Guide for Ministers and Ministers of State* was very clear on this, stating, “The exempt staff do not have the authority to give direction to public servants, but they can ask for information or transmit the minister’s instructions, normally through the deputy minister.”¹⁸

The last part of this passage is very significant. The right of an exempt staff member to speak on behalf of his or her minister is subject to all manner of interpretation, and is therefore susceptible to manipulation. In a research study prepared for the Gomery Commission, Liane Benoit stated that exempt staff members “...can, and often do, exert a substantial degree of influence on the development and in some cases on the administration of public policy in Canada... It is evident from the current and historic record that these powers can be and are, on occasion, open to abuse.”¹⁹

Pelletier’s actions related to the sponsorship scandal represent a clear example of such abuse. In his meetings with Chuck Guité (notwithstanding his denials to the Gomery Commission, which were not deemed believable), he gave Guité instructions regarding the agencies that should receive sponsorship contracts.²⁰ These amounted to orders given by an exempt staff member to a public servant, a clear violation of standard government practice. Gomery’s recommendation quoted above, the adoption of a clear code of conduct banning exempt staff from issuing such orders, would certainly not guarantee that future exempt staff members would refrain from this type of violation. It would, however, make it vividly clear that the government would not tolerate such attempts to wield undue authority. It would also make it clear to public servants that if they did

receive this type of inappropriate order, it should not be obeyed and should immediately be reported.

The second important aspect of Gomery's eleventh recommendation stated that his proposed code of conduct would make it explicitly clear that ministers are to be held fully responsible for the actions of their exempt staff.²¹ Such a provision would have greatly increased the chances of the exposure of the sponsorship scandal at a much earlier stage. Prime minister Chrétien's denials of his involvement in order to absolve himself of responsibility, feeble as they were, could not have even been attempted had it been made clear that he was responsible for the actions of his chief of staff. Chrétien's role in the sponsorship scandal demonstrated that under the current system, ministers appear to believe that they can hide from the obligations conferred on them by the doctrine of ministerial responsibility by ensuring that questionable actions are done in the name of their exempt staff. Gomery's suggestion would remove this option, and thus would likely promote more strict adherence to the principle of ministerial responsibility.

Summarizing Gomery's Desirable Recommendations

These two recommendations would represent positive steps in reforming the role of exempt staff, which was manipulated during the sponsorship scandal in order to avoid detection and preserve plausible deniability among some of the most influential actors involved. The second phase of the Gomery Report contained several other recommendations to which this thesis does not object, such as recommendations 14 and 15, which deal respectively with the government's definition of advertising and its monitoring of lobbyists.²² The remainder of this section, however, will focus on those of

Gomery's suggestions which would bring with them unwanted consequences while failing to address the true root of the problem, the breakdown in ministerial responsibility. According to several experts on Canadian governance, it appears that Justice Gomery's understanding of the Canadian system of responsible government was quite flawed, and as a result he proposed a number of measures without full knowledge of the results to which they could potentially lead.

The Constitutional Identity of the Public Service

The second phase of the Gomery Report was characterized by a desire to see the assertion of a distinct and independent constitutional identity on the part of the public service. Recommendation 2 stated, "The government should adopt legislation to entrench into law a Public Service Charter."²³

Gomery went on to explain what such a charter would include, essentially arguing in favour of the total separation of officials and their political masters.²⁴ While the earlier portion of this thesis mentioned that somewhat of a move back towards the notion of a politics-administration dichotomy may be desirable, Gomery's recommendation would go much too far and would substantially hamper the government's ability to operate. When interviewed about Gomery's suggestions, University of Ottawa professor Sharon Sutherland, an expert on issues concerning the machinery of government, claimed that such a total separation of politics and administration "doesn't make sense in terms of responsible government."²⁵

According to Gomery's idea, a Public Service Charter would lessen the extent to which departmental employees are bound by the instructions of their minister or other

superiors, and generally weaken or even sever the accountability relationship that exists between officials and ministers. In Gomery's words:

The recommended Public Service Charter would... provide a standard supporting the identity and duties of the public service. A public servant could invoke the Public Service Charter as a reason for refusing to obey an improper instruction... It is not acceptable that a minister, whose interests and desires may conflict with the principles under which the public servants in his or her department must operate, should be the person to whom those same public servants are accountable.²⁶

Such a change would be quite revolutionary for Canada's system of responsible government, and represents a wholly inappropriate response to the problems evident in the sponsorship program. As has already been discussed at length, the sponsorship scandal was characterized by ministers who refused to fulfill the duties conferred on them by the doctrine of ministerial responsibility. Gomery's proposed Public Service Charter, and the full separation it would bring between the political and administrative spheres, would further erode ministerial responsibility. The message would be sent that the actions of public servants were their own, and ministers would likely be even more convinced that they could remain willfully blind to misconduct and blame it on their officials later.

Many influential and respected members of Canada's academic, political, and corporate communities objected vehemently to this recommendation, among others made by Gomery. For example, Glen Shortliffe, a former clerk of the Privy Council, was quite adamant that public servants would be given an overly free hand under Gomery's proposed new system. Shortliffe was quoted by the *Ottawa Citizen* as having said, "To put it in the bluntest of terms, public servants should not have a great deal of power independent of the ministerial leadership... and that's what he is trying to do."²⁷

This was far from the only objection among influential Canadians to this idea. 61 signatures appeared on a letter written on March 3, 2006 to Prime Minister Stephen Harper. The letter expressed grave concerns about some of Gomery's recommendations, including the one in question regarding the identity of the public service. The letter stated:

Such a system would represent a major departure from how governments function in Canada. We are opposed to increasing the powers of unelected officials at the expense of ministers. For the public service to assert a constitutional identity of its own, and not to be subject to direction by ministers in the fields of management and administration, would break the chain of accountability that today culminates with ministers. The result would be confusion as to who was accountable to parliament and for what.²⁸

The list of signatures on the letter included deans and presidents of universities, former premiers and deputy ministers, and CEOs of large companies. Also among the signatories were Senator Hugh Segal, former Deputy Prime Minister John Manley, and Jim Coutts, who acted as personal secretary to two prime ministers.

The opinion of such an authoritative group of Canadians cannot be ignored, and their astute observation regarding the problems with Gomery's recommendation on the separation of politics and administration is a legitimate cause for concern. The sponsorship scandal demonstrated a need for more strict adherence to the principle of ministerial responsibility that exists already. Gomery's recommendation would, on the contrary, produce a vague and misguided version of this important doctrine that would likely lead to a further decrease in the diligence with which ministers monitor the operations of their departments.

The Appointment of Deputy Ministers

The current practice within Canada's government is for the prime minister to appoint all deputy ministers, often based on the advice of the clerk of the Privy Council. Justice Gomery did not view this situation favourably, criticizing the fact that these appointments were made "without explanation or any kind of an open competition", and also objected to the common practice of hiring deputies from the senior ranks of the public service.²⁹ However, as Sutherland explained when interviewed, there is significant merit to this custom. Sutherland pointed out that the government of the day selects deputy ministers whose performance has been observed for years and who clearly understand what makes an efficient government department.³⁰ Sutherland referred to those civil servants who become deputies as "high-fliers" and defended the current selection process, explaining, "The only people who make it to deputy minister are the people who play well with others... people who have the right personal qualities in addition to brain power."³¹

Despite these positive qualities of the current system, Justice Gomery recommended a huge change in the way deputy ministers are selected. Recommendation 12, one of Gomery's most controversial, stated, "The government of Canada should adopt an open and competitive process for the selection of deputy ministers, similar to the model used in Alberta."³²

Gomery went on to describe this model, in which an independent board conducts a search of possible candidates and makes a recommendation to the relevant minister, with whom the final decision rests.³³ Gomery was sure that this system would be superior to that currently in use. He explained, "It introduces a much higher level of transparency

in the appointment process, encourages competent people from both inside and outside government to become candidates, casts a much wider net in the search for the best-qualified people, and strengthens the application of the merit principle.”³⁴

The commissioner certainly does a good job of portraying his proposed system as a much-needed change, but ignores certain important considerations. For example, while it is presented as an inherently good idea to search for candidates both within and outside of government, “casting a wider net” would not necessarily produce more suitable candidates. A thorough understanding of Canada’s government is a very important asset to a deputy minister, and it is unlikely that a candidate brought in from outside the government structure would possess such an awareness. In this way, senior public servants are ideally-suited for the task, and the frequency with which they receive deputy minister positions is probably based more on merit than on, in Gomery’s words, “cronyism”.³⁵ The understanding and insight required of deputies was articulated in the aforementioned letter sent to Prime Minister Harper, which pointed out, “...a deputy’s knowledge, loyalty, and engagement must extend beyond a single department to the whole of government. This concept of a deputy’s responsibility is a precondition for managing issues effectively and offering policy advice on difficult questions that cross traditional portfolio boundaries.”³⁶

Sutherland and those who signed the letter to Harper are of the opinion that the government of the day is a much more appropriate judge of which candidates are well-suited for a deputy minister position than an independent board, which, as the letter pointed out, would be “detached from the political process”.³⁷ The letter went on to say to the prime minister, “You, as the head of the government, need the ability to organize it in

ways that best respond to your objectives, and to place in the most senior positions the professionals who, in your judgment, are best able to meet the needs of a particular department and agency.”³⁸

The sponsorship scandal was aided by one deputy minister, Ranald Quail, who did not adequately play his role in helping his ministers uphold their ministerial responsibility. The failure of one person to sufficiently perform his duties should not be seen as cause to overhaul the entire system through which his position is staffed. Gomery’s report did not explain how this proposed change would lead to greater respect for ministerial responsibility, and thus did not show how it would address the real problem at the root of the sponsorship scandal. This shortcoming, in addition to the aforementioned reasons why the current system is quite under-rated, make this recommendation of Gomery’s appear highly suspect.

The Overruling of Deputy Ministers by Ministers

In the second phase of his report, Justice Gomery stated the need for a formal process through which a minister could overrule a decision made by his or her deputy.³⁹ According to this suggestion, such a measure would require a formal written instruction from the minister. Recommendation 5 read:

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.⁴⁰

Gomery also suggested that before a disagreement gets to this stage, the deputy must first write a letter to the minister stating his or her objection to the minister's proposed course of action.⁴¹ It is apparent that the commissioner's belief was that adherence to ministerial responsibility would be strengthened by the existence of ample and clear evidence regarding the true author of all important decisions emanating from government departments. In the text supporting this recommendation, he explicitly stated that any process for resolving disputes between ministers and deputies "must recognize the principle of ministerial responsibility."⁴²

In fact, this idea of Gomery's would be quite destructive to this important concept. As was dealt with in earlier portions of this thesis, the deputy minister must play a significant role in aiding his or her minister in fulfilling the duties associated with ministerial responsibility. Although officially deputies are members of the administrative sphere while ministers belong to the political realm, those who fill these positions should function largely as a team if ministerial responsibility is to be properly upheld. In the words of C.E.S. Franks, "The relationships between deputies and ministers are closer to being a two-way street between equals with differing concerns and responsibilities than a formal master-servant structure."⁴³

Gomery's suggestion would not be conducive to such a relationship. The formulation by a deputy of a written objection to a minister's orders, followed by an official rejection of this objection by the minister, the latter of which would be retained by the offices of the comptroller general and auditor general, would do serious irreparable damage to the relationship between the two. Their ability to work together and to resolve future disagreements through less formal and more co-operative means, a process which

is quite clearly more desirable, would undoubtedly be compromised. As the influential signatories of the aforementioned letter to Stephen Harper pointed out, “A system whereby officials regularly insisted on being issued written instructions would simply be unworkable because of its destructive effects on the working partnership that is indispensable to any successful relationship between a minister and a deputy.”⁴⁴

Furthermore, the knowledge that a written override would protect them from blame would potentially encourage deputies to willingly concede to questionable instructions from their political masters, as opposed to attempting to work hand in hand with the minister to find a preferable solution. As soon as a disagreement arose, the deputy would simply ensure that his or her objection was recorded in writing and then idly watch the minister’s decision be implemented. Peter Aucoin and Mark Jarvis hinted at this possibility in their 2005 publication on government accountability. The two authors opined:

...when faced with proposed transactions that fall within the deputy’s authorities and responsibilities, but which the deputy does not want to approve, the deputy, in our view, should either inform his or her minister that she or he will not approve them or accept personal responsibility and accountability... They should not be allowed to escape responsibility by sending the Public Accounts Committee and the auditor general a card proclaiming that “the devil made me do it.”⁴⁵

This recommendation made by Justice Gomery is clearly one of his less practical. While portrayed as an attempt to uphold the doctrine of ministerial responsibility, the idea of requiring ministers to overrule their deputies in writing would, in fact, be severely detrimental to it. This recommendation would not encourage the type of working relationship and teamwork that is necessary for a deputy minister to provide the needed

assistance to his or her minister in upholding the latter's duties, and thus would potentially lead to an even weaker adherence to the doctrine of ministerial responsibility.

The Role of the Clerk of the Privy Council

One of Justice Gomery's more controversial recommendations concerned the role of the clerk of the Privy Council. Currently, the clerk's role comprises three titles: secretary to cabinet, deputy minister to the prime minister, and head of the public service.⁴⁶ Gomery suggested that the latter two of these be removed, leaving only the first, and that the position be renamed accordingly. Recommendation 13 asserted:

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."⁴⁷

A significant aspect of Gomery's suggestion was the removal of the clerk's function of representing the prime minister to the public service, which the clerk does through frequent meetings with deputy ministers and assistant deputy ministers.⁴⁸ Gomery suggested that the clerk is not well-positioned to perform this task, basing his opinion on the submission of University of Toronto professor Lorne Sossin, who wrote, "Since the role of the clerk is to represent the public service to government, I would suggest it cannot also be to represent the government to the public service."⁴⁹ Sossin went on to state that such a situation was bound to cause "conflict between voices articulating constitutional and legal boundaries between political and public service spheres."⁵⁰

Many influential Canadians did not approve of such a measure. In addition to the objections of the aforementioned letter to Stephen Harper, former Clerk Glen Shortliffe said of this aspect of the clerk's job, "It is vitally important, and to assert he or she can't do this is utter nonsense."⁵¹ Furthermore, Sharon Sutherland called the recommendation "foolish" and explained, "We can't make the House of Commons more powerful by knee-capping the Privy Council Office. You can't just take power from one actor and give it to another."⁵²

Sutherland also complained that the Gomery Report misquoted the study that she prepared for it on the clerk's role. Gomery justified his recommendation in part based on Sutherland's work. He explained, "The commission accepts the opinion of one of its advisors [Sutherland is subsequently identified as this advisor] that the role of the clerk 'has been or is being politicized.'"⁵³ In fact, when this phrase was published in Sutherland's work she was merely stating the opinion of another academic, and was not presenting it as her own.⁵⁴

Had Gomery accepted the advice that Sutherland actually did present in her submission to the commission, a much less drastic and more desirable recommendation may well have made its way into his final report. Sutherland suggested a similar reworking of the clerk's title without the major change in his or her actual function. Sutherland, like Gomery, proposed naming the position "secretary to cabinet", since the current title is somewhat misleading.⁵⁵ Her work explained:

The Privy Council is the collection of all living persons who have been ministers of the Crown. The active part of the Privy Council is a committee whose quorum is four ministers that meets to pass subordinate legislation, subject to the signature of the governor general. The title, clerk of the Privy Council, implies that the clerk's main duty is to serve the

latter organization. Likewise, Privy Council Office as the cabinet office should be renamed as such.⁵⁶

Sutherland went on to point out that the clerk's other titles do not really correspond to the current reality. When interviewed for this thesis, she explained that the clerk does not really act as the head of the public service since he or she interacts only with deputy ministers or occasionally their assistant deputies.⁵⁷ The clerk does not deal with "the masses" and does not do the "heavy lifting" involved with the personnel that comprises the public service.⁵⁸ Sutherland's publication echoed this view, stating, "Given that the president of the Treasury Board now controls human resources management functions, it seems reasonable to give him or her a second title, minister for the public service... It is an obvious conclusion that the president of the Treasury Board is the effective head of the public service."⁵⁹

In addition, Sutherland advocated the abolishment of the title of deputy minister to the prime minister. She saw this moniker as frivolous, explaining in her work, "...there is a lack of restraint in brandishing the title. It seems to imply an unlimited power acquired through access to the prime minister."⁶⁰ Similarly, when interviewed, she described the use of the antiquated designation as "bragging" about the clerk's access to the prime minister, and advocated the abolishment of this "silly old title".⁶¹

The work submitted to the Gomery Commission by Sharon Sutherland, and the interview conducted with her for the purpose of this thesis, indicated that her recommendations regarding the role of the clerk of the Privy Council were largely semantic in nature, and would have brought the terminology in line with reality while not effecting drastic change in the actual function performed by he or she who fills this important position. It is unfortunate that Justice Gomery chose to manipulate

Sutherland's words to justify the suggestion of an unnecessarily large change in the clerk's role. The events associated with the sponsorship scandal did not indicate that the role of the clerk of the Privy Council was in need of sweeping substantive change, and thus this recommendation made by Justice Gomery did not address the problem at the heart of the scandal.

A Review of the Weaknesses in Gomery's Recommendations

The recommendations mentioned above demonstrated that the Gomery Report, while not without certain helpful suggestions, was in many ways an overreaction to an isolated incident, something Justice Gomery himself considered an aberration.⁶² The real cause of the breakdown in ministerial responsibility that led to the sponsorship scandal was the presence in important positions of people who were either unscrupulous or careless. While certain formal rules or procedures could lessen the likelihood of a similar reoccurrence, it is entirely impossible to totally remove the possibility of such scandals if the wrong people occupy positions of influence. Some of Justice Gomery's recommendations indicated that he was of the opinion that the occurrence of such an egregious scandal necessarily demonstrated serious shortcomings in Canada's formal accountability mechanisms. This approach was misguided. In Arthur Kroeger's words, "The sponsorship scandal has demonstrated the abuses that can take place when controls are inadequate. It does not invariably follow, however, that if some controls are good, more must be better."⁶³

To his credit, the current prime minister did not endorse several of the undesirable suggestions offered by Justice Gomery. In a letter written on December 14, 2006 in

response to the one he received from some of Canada's more influential power brokers, Stephen Harper agreed with many of their concerns regarding Gomery's recommendations. For example, Harper stated that he agreed that the substantive role of the clerk of the Privy Council should remain unchanged.⁶⁴ Also, regarding the questions of the appointment of deputy ministers and a total separation of the public service and the government, Harper wrote:

...deputy ministers should not be appointed by their ministers. I fully agree that deputy ministers support not only the individual responsibilities and accountabilities of their ministers, but also the collective responsibility and accountability of the government as a whole. I also share your view that the public service, a recognized and essential institution of government, exists to provide professional advice and operational support for the government of the day, and does not exercise authority independent of the government.⁶⁵

Despite resisting the temptation to overreact in these areas, there were other ways in which the Harper government demonstrated that it too was inclined to believe that the best way to address a problem is to throw new formal rules and procedures at it. The next section will analyze the *Federal Accountability Act*, which was passed by the Conservatives largely as a response to the sponsorship scandal. Like the Gomery recommendations, this legislation contained certain aspects which will be beneficial to the way Canada's government operates, but also included several measures which can be described as overreactions, and will probably actually make government much less efficient.

ENDNOTES TO “THE RECOMMENDATIONS OF THE GOMERY REPORT”

- ¹ The Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations. (Ottawa: Government of Canada, 2006), p. 4.
<http://www.gomery.ca/en/phase2report/recommendations/cispaa_report_full.pdf>
- ² The Commission of Inquiry into the Sponsorship Program and Advertising Activities, Who Is Responsible? Fact Finding Report. (Ottawa: Government of Canada, 2006), p. xx.
<http://www.gomery.ca/en/phase1report/ffr/ff_eng_full.pdf>
- ³ Interview with Allan Cutler conducted February 14, 2007.
- ⁴ Arthur Kroeger, speech to the Ontario Federal Council, December 8, 2005.
- ⁵ Ibid.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Ibid.
- ⁹ Privy Council Office of Canada, Governing Responsibly: A Guide for Ministers and Ministers of State. (Ottawa: Government of Canada, 2004).
<http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=guidemin/guidemin_doc_e.htm#VI.1>
- ¹⁰ Ibid.
- ¹¹ Treasury Board Secretariat of Canada, Guidelines for Ministers' Offices. (Ottawa, Government of Canada, 2005).
<http://www.tbs-sct.gc.ca/archives/hrpubs/mg-ldm/2005/gfmo_e.asp>
- ¹² Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 138.
- ¹³ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Who Is Responsible? Fact Finding Report, op. cit., p. 449.
- ¹⁴ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 202.
- ¹⁵ Ibid., p. 138.
- ¹⁶ Ibid., p. 138.
- ¹⁷ Ibid., p. 202.
- ¹⁸ Privy Council Office of Canada, op. cit.
- ¹⁹ Liane E. Benoit, “Ministerial Staff: The Life and Times of Parliament’s Statutory Orphans”, in The Commission of Inquiry into the Sponsorship Program and Advertising Activities Research Studies, Vol. 1. (Ottawa: Government of Canada, 2006), p. 146.
- ²⁰ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Who Is Responsible? Fact Finding Report, op. cit., pp. 144-146.
- ²¹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 202.
- ²² Ibid., p. 202.
- ²³ Ibid., p. 199.
- ²⁴ Ibid., pp. 62-70.
- ²⁵ Interview with S.L. Sutherland conducted February 6, 2007.
- ²⁶ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 68.
- ²⁷ The Ottawa Citizen, February 28, 2006.
- ²⁸ Arthur Kroeger et al., letter to Stephen Harper, March 3, 2006.
- ²⁹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 151.
- ³⁰ Interview with S.L. Sutherland conducted February 6, 2007.
- ³¹ Ibid.
- ³² Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 202.
- ³³ Ibid., pp. 149-150.
- ³⁴ Ibid., p. 150.

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- ³⁵ Ibid., p. 150.
- ³⁶ Letter by Kroeger et al., op. cit.
- ³⁷ Ibid.
- ³⁸ Ibid.
- ³⁹ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 200.
- ⁴⁰ Ibid., p. 200.
- ⁴¹ Ibid., p. 101.
- ⁴² Ibid., p. 103.
- ⁴³ C.E.S. Franks, The Parliament of Canada. (Toronto: University of Toronto Press, 1987), p. 233.
- ⁴⁴ Letter by Kroeger et al., op. cit.
- ⁴⁵ Peter Aucoin and Mark D. Jarvis, Modernizing Government Accountability: A Framework for Reform. (Canada School of Public Service, 2005), p. 78.
<http://www.cspc-efpc.gc.ca/Research/publications/pdfs/p131_e.pdf>
- ⁴⁶ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 146.
- ⁴⁷ Ibid., p. 202.
- ⁴⁸ Ibid., p. 152.
- ⁴⁹ Lorne Sossin, "Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implication for the Accountability of the Public Service", in The Commission of Inquiry into the Sponsorship Program and Advertising Activities Research Studies, Vol. 2. (Ottawa: Government of Canada, 2006), p. 55.
- ⁵⁰ Ibid., pp. 55-56.
- ⁵¹ The Ottawa Citizen, February 28, 2006.
- ⁵² Ibid.
- ⁵³ Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations, op. cit., p. 151.
- ⁵⁴ Interview with S.L. Sutherland conducted February 6, 2007.
- ⁵⁵ Ibid.
- ⁵⁶ S.L. Sutherland, "The Role of the Clerk of the Privy Council", in The Commission of Inquiry into the Sponsorship Program and Advertising Activities Research Studies, Vol. 3. (Ottawa: Government of Canada, 2006), p. 98.
- ⁵⁷ Interview with S.L. Sutherland conducted February 6, 2007.
- ⁵⁸ Ibid.
- ⁵⁹ Sutherland, "The Role of the Clerk of the Privy Council", op. cit., pp. 93-94.
- ⁶⁰ Ibid., p. 97.
- ⁶¹ Interview with S.L. Sutherland conducted February 6, 2007.
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- ⁶³ Speech by Kroeger, op. cit.
- ⁶⁴ Stephen Harper, Response to the letter from Kroeger et al., December 14, 2006.
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- ⁶⁵ Ibid.

The Conservative Government's *Federal Accountability Act*

Throughout the election campaign which culminated with the January 23, 2006 vote, one of the top priorities stressed by Stephen Harper and his victorious Conservative Party was the strengthening of government accountability and the prevention of the occurrence of an event similar to the sponsorship scandal. The very non-confidence motion introduced by Harper that sparked the election campaign emphasized this issue, stating, "The House condemns the government for its arrogance... and for its culture of entitlement, corruption, scandal, and gross abuse of public funds for political purposes and, consequently, the government no longer has the confidence of the House."¹

Not surprisingly, a major feature of the Conservatives' platform was legislation designed to hold government more accountable for its actions. Their first piece of legislation, introduced in the House of Commons on April 11, 2006 and given royal assent on December 12 of the same year, was titled the *Federal Accountability Act*. The prime minister vowed that this bill would "change the way business is done in Ottawa forever."² While this statement is likely correct, the changes may not all be as positive as Harper promised.

The Increased Scrutiny Provided by Officers of Parliament

Many experts have criticized the *Federal Accountability Act* for a variety of reasons. A common complaint is that it will heighten inefficiency by making the operations of departments too cumbersome. University of Manitoba professor Paul Thomas provided this analysis, suggesting that the *Act* relied too heavily on formal change due to lingering public distrust of government caused by the sponsorship scandal:

...the [*Accountability Act*] goes too far in the direction of trying to ensure integrity, ethical behaviour, and trustworthiness on the basis of rules, procedures and oversight bodies. The act reflects and reinforces the prevailing lack of trust in public office holders, both elected politicians and appointed public servants. The evidence that wrongdoing is rampant is missing but the *Act* plays to the public mood of cynicism.³

In his evaluation Thomas referred to oversight bodies. These were also the target of criticism from Sharon Sutherland. The *Act* created a number of new officers of parliament, and strengthened the authority of others.⁴ The new positions included a privacy commissioner, a parliamentary budget officer, and a director of public prosecutions.⁵ When interviewed for this thesis, Sutherland pointed out that since none of these officers are attached to parliamentary committees, they do not have accountability relationships statutorily established between them and the House of Commons.⁶ In an earlier interview with the *Ottawa Citizen* she indicated concern over the creation of an “ethics industry” in which unelected officers of parliament would take over the scrutiny of government that should be performed by its elected members.⁷

An example of this can be seen in the newly-created director of public prosecutions.⁸ This independent public prosecutor, who was given jurisdiction over some drug charges, crimes involving federal statutes, and a new fraud charge involving the misuse of public funds, took much of the authority of the federal justice department. This means that Canada’s chief prosecutor is now an appointed bureaucrat rather than the minister of justice, an elected official. While Sutherland did not mention this position specifically, certainly it can be seen as an example justifying her concern over the shifting of power from elected parliamentarians to unelected parliamentary watchdogs.

Sutherland also expressed concern about new powers granted to the conflict of interest and ethics commissioner.⁹ He or she who fills this post now receives “powers of

summary conviction”. This entitles the commissioner to hand out major prison sentences. Sutherland stated that this was problematic because it could potentially draw the courts into the fray if disagreements arose regarding the commissioner’s sentences. As a result, Sutherland explained, “courts will adjudicate the relationship between the legislature and the executive.”¹⁰ She went on to refer to this as a “worrisome development.”¹¹

Experts were also worried that the increased scrutiny provided by the *Accountability Act* would decrease creativity and efficacy among civil servants terrified of reprisals for even the slightest deviation from standard practice. Canada’s government goes to great lengths to ensure that it hires qualified people with valuable skills, education, and intelligence. Unwarranted formal procedures and regulations serve to hamper their ability to put these virtues into action. As explained by *Ottawa Citizen* writer Kathryn May, “... the more monitors and oversight, the more public servants clamour for rules to ensure they play it safe. It all spells inertia and could all but kill creativity and innovation.”¹²

Similarly, Paul Thomas criticized the government’s obsession with saddling the public service with excessive rules. He explained, “Some level of mistrust or at least skepticism towards powerful actors and institutions is necessary but you can stifle creativity, responsiveness, and prudent risk-taking by building up too many accountability rules. The result of the full implementation of the *Act* could be too much checking and not enough doing.”¹³

According to Sharon Sutherland, more time was clearly needed to craft the *Federal Accountability Act* into a more useful piece of legislation. In a process which she referred to as “atrocious”, the New Democratic Party jumped on board to give the

Conservatives the majority needed to push the bill through prematurely.¹⁴ This gives a great deal of credence to Paul Thomas' suggestion that the *Act* was designed largely to score points with a Canadian public for which accountability was the current flavour of the week.¹⁵ Sutherland summarized her feelings on the *Act*, lamenting, "I don't think that anybody in the House of Commons really got a handle on how revolutionary the *Federal Accountability Act* is to a system like ours."¹⁶

The heavy scrutiny by unelected appointees imposed on the government by the *Accountability Act* will not serve to alleviate the true problem at the heart of the sponsorship scandal, a breakdown in ministerial responsibility. In fact, if anything the power held by unelected officers of parliament may serve to send the message to ministers that there are other people out there to protect against corruption, and thus they do not have to concern themselves with ensuring that they engage in careful oversight themselves. Even worse, ministers may be tempted to take advantage of this situation by using the parliamentary watchdogs as scapegoats if things do go wrong within their departments. The *Federal Accountability Act* demonstrates that although the governing party changed following the sponsorship scandal, a new focus on ministerial responsibility did not come with the new government.

The Deputy Minister as the "Accounting Officer" of the Department

Proof of the above statement by Sharon Sutherland regarding the lack of appreciation for the extent to which the *Federal Accountability Act* will revolutionize Canada's system of government is perhaps best provided by the designation of deputy ministers as the "accounting officers" of their departments.¹⁷ As Conservative member of

parliament Pierre Poilievre explained when interviewed for this thesis, while ministers remain responsible for all political decisions, it is now the deputy ministers who must be held responsible for administrative decisions within their departments.¹⁸ This represents a major change in Canada's accountability regime, since it radically alters the concept of ministerial responsibility, one of the fundamental principles of responsible government.

The accounting officer concept stems from the theory that there must be a clear separation between politics and administration, as was recommended to the Gomery Commission by Lorne Sossin.¹⁹ The idea of designating deputy ministers in this way, based on the British tradition, has been tossed around in academic circles in Canada for some time. In 1987, C.E.S. Franks wrote, "The time is overdue for the theory and formal structure of responsibility and accountability to come to terms with the practice, and for a clear distinction to be made between the political responsibility of ministers and the administrative responsibility of deputies."²⁰

The problems with the idea, ironically, can be illustrated with other portions of Franks' same work. Firstly, the accounting officer concept simply does not fit with Canada's system of responsible government, of which a vital element is the fusion of the legislative and executive branches. This refers to the fact that ministers are also elected members of the House of Commons, and thus can be held accountable in the House for their actions. In Franks' words:

The cabinet, with its members being both ministers of government and members of parliament, was the link between the two [branches], and parliamentary control consisted of two key phases: first, the assigning of responsibility and authority through statutes and appropriation; and second, accountability through scrutiny in the House and its committees.²¹

The accounting officer concept would drastically alter this tradition, since deputies are not elected members of parliament. In addition to the lack of compatibility with responsible government, this change would revolutionize the task of deputy ministers, who currently act as a bridge between the political and administrative spheres. As Franks explained:

The position of the deputy minister is one of the most important places where the immense and powerful bureaucratic system meshes and interacts with the system of political power... In both responsibilities and accountability no sharp distinction is made between the deputy minister's role in administration and his role in policy, and for the most part there is more overlap than separation between the roles.²²

With the sharp separation that will be produced by the accounting officer designation, it will be extremely difficult for deputy ministers to effectively bridge the gap between politics and administration. At worst, an adversarial relationship, as opposed to a co-operative one, may develop between ministers and their deputies if the latter feels that the political decisions of the former are causing administrative problems. Under the previous system of ministerial responsibility, such problems would be worked out through a joint effort between the two. This may still be possible under the system imposed by the *Federal Accountability Act*, but it is difficult to predict for sure.

The Conservative press release regarding the passing of this legislation stated that the accounting officer designation would be phased in "within the framework of ministerial responsibility."²³ The truth is, the government cannot conclusively foresee the potentially revolutionary impact that this change will have on the doctrine of ministerial responsibility. For this reason, the implementation of the designation of deputy ministers as accounting officers can be seen as a gross overreaction to a scandal that was most decidedly an aberration and not part of a recurring pattern.

Whistleblower Protection

Soon after Allan Cutler presented PWGSC's internal audit division with the incriminating evidence he had been gathering over the previous year, Chuck Guité declared Cutler's position "surplus" and removed his employee from his group within the department.²⁴ Were it not for the compassion of another director within PWGSC who gave him a new position, Cutler's career with the government would have been over.²⁵ When interviewed Cutler stated that his career as a public servant suffered irreparable damage and that he still has not received financial restoration commensurate with what he believed his losses to be, and almost certainly never will.²⁶

The decision to "blow the whistle" on inappropriate conduct within one's place of employment is an immeasurably difficult one.²⁷ Currently, Allan Cutler is self-employed in the private sector, working as a consultant and speaker on issues such as procurement, ethics, and, most notably, whistleblowing. Cutler provides advice and guidance to those who are currently engaged in whistleblowing, or are considering such an action. He recalled several stories of whistleblowers who could not move on from the experience and talked about it 15 to 20 years later. Health problems and divorce were among the problems which some whistleblowers attributed to their experience in trying to expose wrongdoing.

In order to acknowledge the importance of whistleblowers in holding government officials accountable for their actions, the *Federal Accountability Act* included greater protection for whistleblowers in the form of amendments to the *Public Servants Disclosure Protection Act*. Certain important steps were taken to make the decision to come forth with incriminating information somewhat easier. For instance, confidentiality

was guaranteed to whistleblowers. The *Public Servants Disclosure Protection Act* now reads:

11. (1) Each chief executive must:
 (a) ... protect the identity of persons involved in the disclosure process, including that of persons making disclosures, witnesses and persons alleged to be responsible for wrongdoings...²⁸

Also, quite importantly, the new *Act* emphatically protects whistleblowers from reprisal and gives them recourse if they think they are being punished for their decision to come forth. According to the amended legislation:

19. No person shall take any reprisal against a public servant or direct that one be taken against a public servant...
 19.1 (1) A public servant or a former public servant who has reasonable grounds for believing that a reprisal has been taken against him or her may file with the [privacy] commissioner a complaint in a form acceptable to the [privacy] commissioner...²⁹

These are certainly significant improvements, and the Conservatives were eager to stress the triumph that this legislation represented for them. “This is real and meaningful protection for whistleblowers who can have full confidence that if they step forward and expose wrongdoing they will be protected from reprisal,” said Treasury Board president John Baird.³⁰

However, somewhat ironically, while other parts of the Conservatives’ new legislation displayed an excessive penchant for formal rules, this was one area in which more were needed. Allan Cutler, the government’s most high-profile whistleblower, in explaining that the *Accountability Act* did not go far enough, stated that he “didn’t give it a ringing endorsement, but gave it a conditional pass.”³¹

According to Cutler, a large number of people within PWGSC would have seen certain clues, some of which he described as “obvious”, that something inappropriate was

occurring.³² In his words, “The clues were all over the place and nobody complained.”³³ He stated that the reason so many people were reluctant to come forth was “convenience”.³⁴ Blindly following instructions without objection was simply the easiest thing to do. Legislation protecting whistleblowers must attempt to change this situation in order to make it less tumultuous for someone to expose wrongdoing within the government.

An example of the *Act*’s shortcomings can be seen in its offer to supply a maximum of \$3000 for the whistleblower’s legal fees.³⁵ Cutler estimated that this amount would pay for the services of a competent lawyer with an adequate understanding of the issues associated with whistleblowing for less than two days. Meanwhile, the accused manager can be provided with up to \$25 000 for his or her legal fees.

Furthermore, the rules surrounding the reporting of reprisals can mitigate against whistleblowers.³⁶ The *Act* stipulates that the complaint must be filed within 60 days of the reprisal, or at a later time subject to the approval of the privacy commissioner. Therefore, depending on the attitude of the commissioner, a whistleblower could lose the reparations to which he or she is legally entitled based on a technicality regarding the timeframe of the complaint. Lastly, complaints can only be filed regarding reprisals that took place after February of 2004. This leaves those who suffered damage to their careers as a result of their strong ethics prior to this date still wanting for the restoration they deserve.

Strong protection for those willing to expose wrongdoing within government departments would do a great deal to promote the upholding of ministerial responsibility. If ministers, and the deputies who aid them in fulfilling their tasks, were aware that their

officials could expose corruption without fear of reprisal, it would surely encourage them to be diligent in ensuring that the operations of their departments were well-monitored. In Allan Cutler's words, "You want to keep people honest, let people report them without being afraid."³⁷

The *Federal Accountability Act*, while creating certain new measures to remove some of the stress from the decision to blow the whistle on one's superiors or co-workers within a government department, did not do enough to give these principled public servants the protection they need. For a piece of legislation that, in general, relied too heavily on formal accountability mechanisms and official changes, this was one area in which it unfortunately fell far short.

A Review of the Shortcomings of The Federal Accountability Act

Stephen Harper's new Conservative government championed its first legislative initiative, the *Federal Accountability Act*, as a truly monumental accomplishment. Their promotion of the *Act* claimed that it was a "big win" for public servants, as historically significant as the 1918 creation of the Public Service Commission that curtailed patronage and advanced merit-based hiring.³⁸ Poilievre called the *Act* "historic" and claimed, "Millions of people voted for this promise, and they got what they paid for."³⁹

This puffery masked some very important weaknesses in this legislation. The one area in need of substantial reform, Canada's whistleblower protection, received an inadequate amount, while the bulk of the *Act* demonstrated an obsession with scrutiny and formal rules, most of which were uncalled for and will not necessarily produce their desired results. In Paul Thomas' words, "Codes of conduct and values statements for the

public service - when combined with education and continuous dialogue - can do more than layers of rules and procedures to enhance integrity in government and to restore public trust in government.”⁴⁰

The *Act* established several new officers of parliament and expanded the power of others, potentially leading to the wielding of excessive power by unelected appointees. It appears quite likely that this legislation was pushed through at an accelerated pace to pacify a Canadian public that was angry over the sponsorship scandal and wanted to see its government do something regarding accountability. Unfortunately, in its haste to satisfy this urge, the Conservatives produced an *Act* that will probably cause more problems than it will solve. Furthermore, and most importantly, the *Federal Accountability Act* did little to address the problem of the erosion of respect for and adherence to the doctrine of ministerial responsibility, the very problem that this thesis has emphasized from the outset was the chief cause of the sponsorship scandal.

ENDNOTES TO "THE CONSERVATIVE GOVERNMENT'S *FEDERAL ACCOUNTABILITY ACT*"

- ¹ The Ottawa Citizen, November 24, 2005.
- ² The Ottawa Citizen, April 12, 2006.
- ³ Email correspondence with Paul Thomas, February 6, 2007.
- ⁴ The Ottawa Citizen, April 12, 2006.
- ⁵ Ibid.
- ⁶ Interview with S.L. Sutherland conducted February 6, 2007.
- ⁷ The Ottawa Citizen, April 12, 2006.
- ⁸ Ibid.
- ⁹ Interview with S.L. Sutherland conducted February 6, 2007.
- ¹⁰ Ibid.
- ¹¹ Ibid.
- ¹² The Ottawa Citizen, April 12, 2006.
- ¹³ Email correspondence with Paul Thomas, February 6, 2007.
- ¹⁴ Interview with S.L. Sutherland conducted February 6, 2007.
- ¹⁵ Email correspondence with Paul Thomas, February 6, 2007.
- ¹⁶ Interview with S.L. Sutherland conducted February 6, 2007.
- ¹⁷ Parliament of Canada, The Federal Accountability Act. (Government of Canada, 2006).
<<http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=2614169&file=4>>
- ¹⁸ Interview with Pierre Poilievre conducted February 19, 2007.
- ¹⁹ Lorne Sossin, "Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implication for the Accountability of the Public Service", in The Commission of Inquiry into the Sponsorship Program and Advertising Activities Research Studies, Vol. 2. (Ottawa: Government of Canada, 2006), pp. 25-72.
- ²⁰ C.E.S. Franks, The Parliament of Canada. (Toronto: University of Toronto Press, 1987), p. 247.
- ²¹ Ibid., p. 227.
- ²² Ibid., p. 233.
- ²³ Government of Canada, "Federal Accountability Act Becomes Law", December 12, 2006.
<http://www.tbs-sct.gc.ca/media/nr-cp/2006/1212_e.asp>
- ²⁴ The Commission of Inquiry into the Sponsorship Program and Advertising Activities, Who Is Responsible? Fact Finding Report. (Ottawa: Government of Canada, 2006), p. 202.
<http://www.gomery.ca/en/phase1report/ffr/ff_eng_full.pdf>
- ²⁵ Interview with Allan Cutler conducted February 14, 2007.
- ²⁶ Ibid.
- ²⁷ Ibid.
- ²⁸ Parliament of Canada, The Federal Accountability Act, *op. cit.*
- ²⁹ Ibid.
- ³⁰ The Ottawa Citizen, April 12, 2006.
- ³¹ Interview with Allan Cutler conducted February 14, 2007.
- ³² Ibid.
- ³³ Ibid.
- ³⁴ Ibid.
- ³⁵ Ibid.
- ³⁶ Ibid.
- ³⁷ Ibid.
- ³⁸ The Ottawa Citizen, April 12, 2006.
- ³⁹ Interview with Pierre Poilievre conducted February 19, 2007.
- ⁴⁰ Email correspondence with Paul Thomas, February 6, 2007.

Conclusion

The concept of ministerial responsibility is of vital importance to Canadian governance. This doctrine makes it clear that cabinet ministers, those parliamentarians deemed by the prime minister to be the most capable of effectively running a department, must shoulder the burden of ensuring that mismanagement and corruption are not present in their departments. The doctrine states that a minister can be considered responsible for wrongdoing within his or her department unless the errors occurred without the minister's knowledge, and despite his or her best efforts to prevent or address it.

The sponsorship scandal demonstrated that the doctrine of ministerial responsibility is not revered by cabinet ministers to the extent that it should be. Successive ministers of PWGSC, far from ensuring that proper mechanisms were in place to prevent misconduct, actually ignored blatant warning signs that inappropriate activity was occurring on their watch. In addition, the deputy minister of PWGSC did not adequately perform the extremely important role that deputies must play in working hand-in-hand with their minister to uphold the doctrine of ministerial responsibility. Perhaps most distressingly, the prime minister himself displayed surprising disregard for the responsibility he bore as the head of the government. It has been argued here that there is a strong possibility that he was fully aware of the events associated with the sponsorship scandal. He was certainly guilty, at the very least, of ignoring the warnings of the clerk of the Privy Council who told him that he was not fulfilling his ministerial responsibility, and also allowing his chief of staff to operate unchecked while running the scandal. When this many government officials in positions of power do not take their ministerial responsibility seriously, the results can be disastrous.

Even after the sponsorship scandal became public knowledge, all those involved immediately resorted to desperate pointing of fingers and deflecting of blame. A lengthy and expensive inquiry was needed to investigate who was responsible and what had gone wrong. Aside from the benefit of prevention, a more strict interpretation of and a stronger adherence to the doctrine of ministerial responsibility would make it more evident where the blame should lie if and when improper practices are discovered within the government. Ministers must be robbed of the ability to deliberately keep themselves in the dark when they have reason to believe that mischief may be underfoot in their department. If wrongdoing is discovered, it should be incumbent upon the minister to demonstrate how he or she, in conjunction with the deputy minister, had endeavoured to prevent such problems. The reactions of the principal political actors in the sponsorship scandal, which were characterized by an across-the-board denial of any culpability, illustrated that the current practice among ministers is to stubbornly deny knowledge of anything untoward with the confidence that such an approach will guarantee impunity. In order to avoid a similar reoccurrence, this situation must change. The threat of consequences such as public censure or removal from cabinet must encourage ministers to diligently investigate any possible misconduct, as opposed to hiding behind their intentional lack of knowledge.

Significant portions of this thesis have been devoted to evaluating both phases of the report published by Justice John Gomery, the first of which outlined who was responsible, and the second of which explained the commissioner's recommendations as to what should be done to correct the problems that allowed the sponsorship scandal to take place. Unfortunately, both phases of his report demonstrated little understanding of

the doctrine of ministerial responsibility, and thus did not suggest measures that would meaningfully bolster it. It appears that Justice Gomery may not have been an advisable choice to lead an inquiry into this matter. As Sharon Sutherland pointed out, "...the judge that the government of Prime Minister Paul Martin chose to lead the inquiry was the first to acknowledge that he lacked understanding of responsible government, political institutions, and public law."¹ This inadequate understanding showed in certain important shortcomings in both phases of the Gomery Report.

In the first phase, Gomery put forth his opinion of who was responsible for the sponsorship scandal. Gomery admirably delivered harsh admonishments to one-time PWGSC Minister Alfonso Gagliano and Deputy Minister Ranald Quail, but was much too lenient regarding certain other actors.² He criticized certain inactions on the part of Prime Minister Jean Chrétien but did not acknowledge that he may have had specific knowledge of the events, and, most significantly as far as ministerial responsibility is concerned, he assigned no blame to former PWGSC Ministers David Dingwall or Diane Marleau.³ These two ministers had noticed certain flagrant warning signs that something was awry within Chuck Guité's group at PWGSC, and both chose not to investigate, instead preserving their ability to plead ignorance later. Regrettably, Justice Gomery chose to accept their claims and exonerate them, tacitly condoning the haphazard approach to ministerial responsibility which has apparently become the norm.

Gomery's lack of expertise regarding Canadian governance was even more evident in the second phase of his report. While some of his recommendations represented desirable changes, some were cause for serious concern. Among Gomery's questionable ideas were a major change to the role of the clerk of the Privy Council, a

shift in the appointment of deputy ministers, a separate constitutional identity for the government and the public service, and a new process through which ministers must overrule their deputies in writing.⁴ In Sutherland's words, "...in the recommendations stage, Mr. Justice John Gomery and his advisors attempted an astonishingly wide reform of the federal representative institutions, putting at risk central lines of control of responsible government."⁵

Gomery's recommendations showed that he believed formal changes to be the only way to mitigate against a repeat performance of the sponsorship scandal. A similar inclination was displayed by Stephen Harper's government when it passed its first piece of legislation, the *Federal Accountability Act*. This bill subjects the government to the scrutiny of numerous new unelected officers of parliament, making the machinery of government less efficient and more cumbersome while taking authority out of the hands of the people's elected representatives. Meanwhile, the *Act* does not go far enough in the area of whistleblower protection, the one area in which formal change was most needed.

This approach illustrated by the Gomery recommendations and the *Federal Accountability Act* was quite misguided. The sponsorship scandal was caused by people refusing to obey rules that already existed, most notably ministers failing to uphold the duties bestowed upon them by ministerial responsibility. When interviewed for this thesis, Allan Cutler said of formal rule changes, "They can never replace a culture of ethics, which frankly doesn't exist."⁶

Cutler went on to describe a hypothetical situation which, in his opinion, epitomized the culture found within Canada's government today.⁷ He described a set of circumstances in which two managers were employed at the same level in the same

department. If one frequently engaged in brazenly illegal or inappropriate conduct but achieved more results than the other, who always played by the rules, Cutler asserted that it would be the former employee who would be rewarded with career advancements, even if his or her superior was fully aware of the methods used to attain the desired results. This ethos must clearly be reversed, and it is the ministers, the stewards of the government's departments, who must revere the principle of ministerial responsibility and take the lead role in making it clear that corruption and misconduct will not be tolerated.

Allan Cutler and experts such as Arthur Kroeger, Paul Thomas, and Sharon Sutherland do not believe that layers of new formal rules will effect the kind of change needed to produce a culture of ethics in Canada's government. Such a change can only be produced by a strong and unwavering commitment from political leaders, starting with the prime minister and also coming from each minister within his or her cabinet, to a strict adherence to the doctrine of ministerial responsibility. Its erosion is what led to the disaster that was the sponsorship scandal, and its restoration is the only way to avoid a similar occurrence in the future.

ENDNOTES TO "CONCLUSION"

¹ S.L. Sutherland, "Gomery: Prequel and Sequel", in Revue Gouvernance, Vol. 3, Issue 1 (May 2006), p. 1.

² The Commission of Inquiry into the Sponsorship Program and Advertising Activities, Who Is Responsible? Fact Finding Report. (Ottawa: Government of Canada, 2006), pp. 429, 432-435.
<http://www.gomery.ca/en/phase1report/ffr/ff_eng_full.pdf>

³ Ibid., pp. 423-438.

⁴ The Commission of Inquiry into the Sponsorship Program and Advertising Activities, Restoring Accountability: Recommendations. (Ottawa: Government of Canada, 2006), pp. 199-204.
<http://www.gomery.ca/en/phase2report/recommendations/cispaa_report_full.pdf>

⁵ Sutherland, op. cit., p. 1.

⁶ Interview with Allan Cutler conducted February 14, 2007.

⁷ Ibid.

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