
INTRODUCTION

Donald Savoie

In the fall of 2004, Justice Gomery invited me to join the Commission of Inquiry into the Sponsorship Program and Advertising Activities as its Director of Research for phase II of the Commission's work, or what commonly became known as the recommendation phase. He laid out an important challenge for the research program by asking: "Do you know what makes a good judge?" I did not know the answer, as my puzzled look surely revealed, and he quickly replied: "Two good lawyers in front of the judge representing both sides of the case in a very competent manner." To be sure, the point was not lost on me: Justice Gomery was prepared to consider any issue, so long as the research program was able to provide a solid case for both sides. At no point did Justice Gomery indicate a bias on any question, a preconceived notion or the suggestion that the research program should consider any issue, or look at it from a given perspective. This approach also guided his participation at all the Advisory Committee meetings and at roundtable discussions held in five regions between August and October 2005.

I took careful note of the Commission's mandate and its terms of reference. The terms of reference called on Justice Gomery to make recommendations, "based on the factual findings" from phase I, "to prevent mismanagement of sponsorship programs or advertising activities." It listed a number of specific issues to review and asked for "a report on the respective responsibilities and accountabilities of ministers and public servants."

I monitored the testimony from witnesses who appeared before Justice Gomery, in both the Ottawa and the Montreal sessions. I also produced a paper designed to identify the key issues for the Commission to consider. I met regularly with Justice Gomery to review the issues and the Commission's research program as it was being planned. He asked early on that I take into account what the government was doing to reform its management activities and to review the various documents being tabled by the President of the Treasury Board, so the Commission would not try to reinvent the wheel. He noted, for example, that the Treasury Board had produced a solid document on the governance of Crown corporations. He made the point that, rather than start from scratch, we should offer a critique of the document and compare its findings with developments in this area in other countries.

The Commission's research program was the product of many hands. In particular, I want to single out the work of Ned Franks, Professor Emeritus at Queen's University and one of Canada's leading students of Parliament. He helped with every facet of the research program, from identifying issues to study, to recommending scholars and practitioners.

The Commission's Advisory Committee also provided important advice and support to the research program. The Commission was able to attract an impressive list of Canadians to serve on the Committee, led by chairman Raymond Garneau, a leading business person from Quebec, a former Minister of Finance in Quebec and a former Member of

Parliament in Ottawa. Other members included Roch Bolduc, a former Senator and former senior public servant with the Quebec Government; Professor Carolle Simard, from the Department of Political Science and Public Administration at the Université du Québec à Montréal; Bevis Dewar, a former Deputy Minister of Defence and head of the Canadian Centre for Management Development, recently renamed the Canada School of the Public Service; the Honourable John Fraser, a former federal Cabinet minister and former Speaker of the House of Commons; Constance Glube, a former Chief Justice of Nova Scotia; Ted Hodgetts, Professor Emeritus at Queen's University and a member of the Royal Commission on Financial Management and Accountability (Lambert Commission) and editorial director for the Royal Commission on Government Organization (Glassco Commission); and Sheila-Marie Cook, a former official with the federal government and the Commission's Executive Director and Secretary. I acted as Secretary to the Advisory Committee.

I can hardly overstate the importance of the work of the Advisory Committee in designing and overseeing the Commission's research program. I benefited greatly from the wise counsel members provided to me both individually and collectively, from their insights and their necessary words of caution. They were generous with their time and their patience. They read the various research papers and provided advice on how to make use of their findings in shaping the phase II report.

At its most general level, the Commission's research program examined how Parliament relates to the Canadian Government and to public servants, and vice versa; how best to promote transparency in government; and the role of key political and administrative actors in government. The papers produced for the Commission promote various perspectives, and at times conflicting ones. This diversity was by design. The papers also offer different methodologies. We were fortunate in being able to attract leading scholars in their fields to produce these

research papers for the Commission. We also turned to practitioners for papers dealing with exempt staff, internal audit, and advertising and sponsorship issues.

The papers deal with all the issues Justice Gomery was asked to address. They look at the respective roles of Parliament, ministers and senior public servants; the appointment process for deputy ministers and the evaluation process for them; access to information; and legislation for whistle-blowing and lobbying.

The Papers

“Parliament and Financial Accountability,” by Peter Dobell and Martin Ulrich of the Parliamentary Centre, reports on Parliament’s financial oversight role. It reminds readers that Parliament is the source of legitimacy for the Government’s spending decisions. The focus of the paper is on the mechanics and possible incentives of Parliament’s handling of financial authorization and review. It notes that the assignment of responsibility for the review of the Estimates to various parliamentary committees is meant to provide opportunities for detailed scrutiny of these Estimates. Open scrutiny can lead to improved understanding of program expenditures and of their inherent financial risks. Recognizing Parliament’s limited success in reviewing plans, departmental budgets and performance reports, the paper offers proposals for improving this financial oversight.

Interviews with parliamentarians suggest that they feel they have a good understanding of aggregate revenues and expenditures as well as deficits, surpluses and debts. Although they are not aware of the details of government transactions, they consider that the *Financial Administration Act* and the guidelines, procedures and requirements are sufficient to maintain financial integrity. However, they acknowledge that they do not pay much attention to departmental Estimates and, as a result, have only a weak idea of what level of resources is expended to achieve

program results. Parliamentarians admit with regret that if they carried out a vigorous examination of plans, departmental budgets and performance reports, they should be able to identify at an early stage those programs that are susceptible to the misuse of public resources. They could also convey to Ministers and officials that Parliament is paying attention to financial management.

Apart from the heavy demands on the time of parliamentarians, the limited success of parliamentary committees in carrying out their financial oversight responsibilities owes much to their members' lack of technical expertise in analyzing effectively the very complex financial information contained in the Estimates. To overcome this major deficiency, Dobell and Ulrich propose the establishment of a strong financial analysis service reporting to Parliament.

The limited success of committees is also related to the lack of incentives for parliamentarians to devote time to financial oversight. With that in mind, Dobell and Ulrich recommend adopting a procedure that would make it possible for a committee to request an hour's debate in the House with the responsible Minister, if the committee's report recommending the modification of a program and related expenditure plans has been rejected. Such exposure in the House is likely to attract media attention.

The authors also point to the desirability of some arrangement for modifying vote structures. In support of their proposal, they state that, had the cost of the gun-control program been reported separately rather than being included in the vote providing for the administrative cost of the entire Department of Justice, the actual cost of the program would have been evident, leading to a debate at a much earlier stage.

Dobell and Ulrich note that, had the accounting officer system been in place at the time of the Sponsorship Program, "it would have been necessary to document variances from standard procedures, including

those relating to involvement of the Ministers and their staff.” Finally, they suggest that a review of the appointment of all senior government officials by parliamentary committees could sensitize nominees to parliamentary requirements, including their responsibility for financial stewardship.

“The Standing Committee on Public Accounts,” by **Jonathan Malloy**, makes the case that the effectiveness of the House of Commons Committee on Public Accounts is limited by its structure, human resources and procedural constraints, and by the parliamentary and political systems in which it operates. One of the Committee’s major weaknesses is rapid membership turnover, leading to a lack of continuity, experience and expertise. In addition, MPs and potential Committee members do not have sufficient incentives to be interested in accountability issues, compared with other demands on their time, except when these issues emerge to secure a high profile in the media.

Malloy explains that the Public Accounts Committee has the mandate to take a retrospective look at government activities in terms of expenditures and financial management. It relies on the work of the Auditor General of Canada, who reports to Parliament through the Committee, providing a forum for discussion of the Auditor General’s reports. Chaired by an Opposition member, it can also generate its own reports on some matters separate from those considered by the Auditor General, but it has only a small research capability to do so.

The Committee’s purpose is to hold the Government accountable for its spending decisions and management of public funds. It provides the opportunity for the questioning of ministers and officials, and creates a degree of transparency that is not otherwise available. It is able to draw public attention to matters of public concern, and it is believed to help prevent financial mismanagement through its public exposure of mistakes or possible wrong-doing. Indeed, much of the Committee’s influence is believed to stem from this public scrutiny of inappropriate behaviour.

Malloy points out that parliamentary committees lack clear ground rules about the treatment of public servants as witnesses. Public servants are not always free to speak, and they risk criticism for saying either too much or too little. There is also the potential that, in the overall political conflict, they will become caught in the crossfire between committee members.

The author suggests that one possible solution is to adopt the British practice of having senior public servants assume a separate and additional role of responsibility for financial affairs in their departments. The Deputy Minister would assume a second title, Accounting Officer, assigned by Treasury Board, and, in that capacity, would report fully on the financial performance of the department directly to Parliament. This responsibility, Malloy argues, would alleviate the current confusion about accountability through the Minister.

He also suggests that the Committee should deal differently with macro matters, such as the Sponsorship Program, which provoke partisanship, and micro matters, such as non-controversial administrative topics, which entail no partisan conflicts or acrimony. The news media coverage of the Committee's work is provoked, for the most part, by the degree of controversy arising in the hearings, and there is little media attention to the Committee's ensuing report.

Malloy addresses the Public Accounts Committee's role and its relevance in the investigation of the Sponsorship Program. The 2004 hearings served as a public forum and source of information following the release of the Auditor General's report. He suggests, however, that the Committee's inquiry was ineffective, relatively shallow in dealing with the issues, and highly partisan in its treatment of the disclosed information. But, given the constraints under which it currently labours, it is unlikely that the Committee could have done much better.

Malloy makes four recommendations. The Public Accounts Committee must have a stable and experienced membership, one that requires the

political parties to commit to specific assignments and to help build up this expertise. Members of Parliament must take a greater interest in accountability issues. The Committee should have more permanent staff, to enable it to carry out independent research and to question experts on a professional, non-partisan basis. And, finally, Canada should adopt some variation of the British system of accounting officers in each department.

“Clarifying the Doctrine of Ministerial Responsibility As It Applies to the Government and Parliament of Canada,” by **David E. Smith**, describes the constitutional doctrine of ministerial responsibility as the hinge of Parliamentary Cabinet government based on the Westminster model. He explains that there is general agreement in the literature that, where ministerial errors occur, information (and not heads) is what is required. But who provides the explanation, and to whom? In the traditional model, it is the Minister answering in Parliament. Still, problems arise with this model, including the limits to ministerial authority. Deputy ministers, for example, have administrative authority conferred directly on them by statute, such as in the *Financial Administrative Act*. A further limitation is that only incumbent ministers may answer questions in Parliament, because only they have authority to act.

If deputy ministers who have specific authority are accountable to a minister (or to the Prime Minister under whose prerogative they are appointed) but not to Parliament, and if (as in the second instance) ministers can claim not to be personally accountable to Parliament for the exercise of that authority, is there not an accountability deficit? And, if so, Smith asks, how do we remedy it?

Smith writes that ministerial responsibility has been described as a fact, not a code—an important distinction. Ministerial responsibility is an evolving concept whose application, often in moments of high political

drama, can never, in the absence of a particular set of facts, be fully anticipated. In addition, a country's political and administrative culture can, and do, influence the interpretation of the concept.

The four political systems—Canada, Australia, New Zealand and Britain—sharing the Westminster model illustrate differences as well as similarities. For instance, the accounting officer concept exists in Britain, but not in the other three countries. A number of arguments have been put forward for adopting the accounting officer model in Canada. However, critics, particularly the Privy Council Office, maintain that its introduction would compromise the practice of ministerial responsibility by dividing (and thus depreciating) accountability between ministers in the House and deputy ministers before committees. Some have argued for a made-in-Canada response: the deputy minister should either say no to a ministerial suggestion he or she finds inappropriate or should agree, and, once agreed, should accept the responsibility that accompanies that course of action before a parliamentary committee.

Smith explains that deputy ministers are appointed and dismissed by the Prime Minister as one of the special prerogatives of that office. As with ministers, the Prime Minister's control over senior departmental officers underlines, first, the Prime Minister's importance and, second, the significance of the ministry as a collective entity. The authority of the deputy minister derives from the *Interpretation Act*. This Act states that a deputy may exercise the power of a minister of the Crown, except for any authority to make a regulation. But deputy ministers are more than alter egos of their ministers. *The Financial Administration Act* gives broad statutory power to deputy ministers in financial management. Deputy ministers also have responsibilities under other statutes, including the *Public Service Act* and the *Official Languages Act*.

Smith points out that, accounting officers in Britain notwithstanding, the doctrine of ministerial responsibility in the four Westminster-based

systems is substantially similar. The difference between Canada and the other three countries is that, in those systems, there is a more vigorous theoretical debate about the doctrine than is found in Canada. Arguments for a statutory-based, rather than convention-based, doctrine are increasingly heard, especially in Britain. He concludes with several recommendations: that a parliamentary resolution be passed to define the convention of individual ministerial responsibility; that parliamentary protocol be adopted to specify the powers of Parliament and its committees in the implementation of the doctrine of individual ministerial responsibility; and that the British model of accounting officer be introduced for an experimental period.

“Ministerial Staff: The Life and Times of Parliament’s Statutory Orphans,” by **Liane E. Benoit**, states that, of the many sounds heard echoing through Ottawa’s corridors of power, those that often hit hardest but bear the least scrutiny belong to an elite group of young, ambitious and politically loyal operatives hired to support and advise the ministers of the Crown. Collectively known as “exempt staff,” they are an “intermediate class of persons” that has become part of the Canadian machinery of government, yet has not been recognized by constitutional theory. Though not elected and often devoid of professional qualifications relevant to the ministries in which they are involved, these advisors can exert a substantial degree of influence on the development and administration of public policy in Canada. They are also well placed to influence the interaction between the bureaucracy and the politicians.

Benoit’s paper explores the current role and function of ministerial exempt staff, as well as their relationship to the bureaucracy, their ministers and the external stakeholders. It examines the checks and balances that exist within the system to ensure that their duties are carried out in an appropriate and ethical manner commensurate with published guidelines, applicable codes and relevant legislation.

In her analysis of the issues currently surrounding exempt staff, Benoit maintains that the exempt staff group has operated at the apex of power, with very little by way of law or convention to govern their activities, inform their relationships with other levels of government, or determine the degree of influence or power they can legitimately wield. As a group, ministerial staff fall between the cracks in the rules governing both sides of the political/bureaucratic divide, exempt from the conventions and statutes that control the activities of public servants but likewise unimpeded by the oaths and obligations of ministerial responsibility and accountability to which their elected masters are bound. Exempt staff must view government through a political prism, act as the minister's eyes and ears, manage the flow of paper, e-mail and access to information requests, respond to constituents, cooperate with the PMO and PCO, and, above all, protect their minister and the government from any action or issue that might adversely affect their chances of re-election.

Political loyalty and partisan affiliation are the key criteria for the job, although Benoit reports that many ministers try to establish the right balance of regional coverage, expertise, gender, ethnicity and language. Work in a minister's office remains largely a privilege of youth—when fierce political idealism, physical stamina and personal independence are all available to satisfy the long hours and depth of commitment demanded by life on the Hill. Section 39 of the *Public Service Employment Act* is the only piece of binding legislation governing the staffing of exempt staff. Some members of the exempt staff argue that any privileges they enjoy are more than outweighed by the absence of employment rights and job security. The jobs of ministerial staff can evaporate overnight should a minister be shuffled out of the Cabinet or lose the seat in an election. The Act explicitly specifies that exempt staff cease to be employed 30 days after such an event, but it fails to make clear that exempt staff can be fired at any time, with or without cause. Staff

members who feel they have been wrongly dismissed have neither an appeal process nor a union behind them for support.

The role of ministerial staff in policy development can be a source of contention in political/bureaucratic relations. Departments, particularly those dealing with mandates of a highly technical nature, remain convinced that the role of ministerial staff should be restricted to that of political weathervane and that their “interference” in the policy development process can result in serious negative consequences for the Canadian public.

Accountability becomes a serious issue when exempt staff assume the role of proxy for the minister. It is impossible for every issue that arises from the department to be taken to the minister. According to Benoit, the ministerial staff can become the end point for all but the most important decisions. The Privy Council guide clearly states that “ministers are personally responsible for the conduct and operation of their office” and that ministers cannot legally transfer their authority except through legislation. The ability of ministers to deny responsibility in matters where their staff either choose not to inform them, as a strategically political protective measure, or fail to inform them, because they did not recognize the significance of the information, raises serious questions about the current integrity of our system of accountability. It is important to remember that the minister’s staff carry no constitutional accountability in their own right.

Benoit challenges the effectiveness of the *Conflict of Interest and Post-employment Code for Public Office Holders* as a public safeguard against conflict of interest or unethical behaviour on the part of exempt staff. The Ethics Commissioner’s interpretation of his mandate has left him unwilling to police the conflict-of-interest provisions with respect to exempt staff. As well, a recent amendment to the Code that authorizes the exemption of part-time ministerial aides from all but the first section of the Code

represents a further diminishment of its effectiveness. These part-time staff members are often drawn from the lobbyist community, operate largely outside the conventional boundaries of the ministerial office and, on occasion, are paid directly and privately by the minister.

The most controversial of the “exemptions” to the *Public Service Employment Act* is the one that affords priority access into the public service for exempt staff who have been employed in a minister’s office for a minimum of three years. This access has been criticized as posing a threat to the political neutrality of the bureaucracy. The exemption guarantees a ministerial staff member entry into a public service job at a level equivalent to that at which he or she was employed in the minister’s office. It is interesting to note, however, that, for ministerial staff, it now represents far less of an enticement than might be expected. Rather than the coveted reward it was meant to bestow, Benoit maintains that a career in the public service today is perceived by many to be an option of last resort. Statistics compiled by the Public Service Commission confirm that less than 10 percent of exempt staff are given priority appointments in any given year.

Benoit concludes that when political staff attempt to give direction to departmental officials, the practice is subtle, reasonably pervasive and, in many instances, a practical necessity. Much of it can arise in the context of regular collaborative interaction between the ministerial office and the department and, as such, is difficult to categorize specifically as “direction.” How direction from the minister’s office is received in the department largely depends on the personal reputation and credibility of the exempt staff in question. In the day-to-day workings of government, the bureaucracy appears to be fairly resilient to attempts by rogue political staff to circumvent the rules of sound financial management; similarly, it seems to be creative in its efforts to ensure that the wishes of the ministerial office are carried out “honourably.” In that sense, any serious impropriety and complicity on the part of

the bureaucracy noted in the Sponsorship Program appears to be an aberration rather than the rule.

Benoit draws five prescriptive conclusions. First, the doctrine of ministerial responsibility, at least when it comes to exempt staff, has to be fully recognized and accepted by ministers or some new mechanism of accountability needs to be created. Second, a more robust body of non-partisan research on the actual day-to-day workings of the ministerial office and the PMO should be assembled, as a resource for political parties as they guide ministers in the selection of appropriate candidates, in developing a minister's own knowledge of how to use exempt staff most effectively, and to assist transition teams in their orientation of new ministerial staff and the development of ongoing in-house training. Third, the current *Conflict of Interest and Post-employment Code for Public Office Holders* and the *Parliament of Canada Act* must be revisited with regard to the Ethics Commissioner's jurisdiction over ministerial staff, the regulations involving full-time and part-time staff, and pre- or post-employment lobbying activities. Fourth, PCO guidelines for ministers and deputy ministers and the Treasury Board's guidelines for ministers should be reviewed with regard to the policy role of ministerial staff and reconciled on a philosophical and technical basis. Finally, exempt staff should be required to undergo a training exercise to teach them the rules, policies and conventions related to ministerial-departmental authority, the management of ministerial documents, and such matters as correspondence, archives, and financial regulations.

Benoit concludes that a 50:50 or even a 60:40 assessment of "good to bad" is not an acceptable standard of performance for ministerial aides—a role of considerable importance to the affairs of state. But such an assessment is also not surprising, given the high degree of youth and amateurism typical of the role; the variability in the personalities and capacities of the ministers who hire them; the long-standing debate over their rightful role in the policy process; the tensions that arise due to

disparities in age, expertise and experience between them and their department counterparts; and the tremendous pressures, both political and personal, that bear upon them in this role.

“The Deputy Minister’s Role in the Government of Canada: His Responsibility and His Accountability,” by Jacques Bourgault, reports that the role of deputy ministers in the federal government has grown and become increasingly complex, with new expectations beyond legislative requirements and conventions. In his paper, Professor Bourgault addresses a number of issues, including the horizontal management status, the careers, and the responsibility and accountability of deputy ministers.

Bourgault cites significant changes in the role of deputy minister, including shorter tenures in departmental assignments and greater mobility across departments, with the result that deputy ministers have limited subject-matter experience or familiarity with their organization’s day-to-day operations or organizational culture. He also points to the recent trend for deputy ministers to deal more extensively with one another and with central agencies, requiring them to have considerably more interaction with their counterparts in other departments and agencies (now 40% of their time), and, consequently, less interaction with their departmental subordinates.

Deputy ministers have become members of a community that increasingly identifies with one another and the Government overall rather than with their departments. They serve the Government and are assigned to departments, not the reverse. As a result, they have an ultimate reporting obligation to the Prime Minister and, in effect, a reporting line to the Clerk and Secretary to the Cabinet. Where matters arise that are or may become visible in the media, deputy ministers are expected to inform the Clerk, who may decide to report the information to the Prime Minister.

Bourgault reports that the deputy minister supports the minister's accountability by preventing mistakes, identifying any that have been made as soon as possible, informing the minister of these mistakes, and taking corrective action as well as imposing any necessary sanctions. In situations where a minister or ministerial staff members are in contact with deputy ministers and departmental officials, a number of long-standing rules and conventions apply. The acid test in cases where a controversial request regarding program management is made on behalf of a minister is whether it might contravene the law. At a more operational level, requests are assessed in terms of criteria such as consistency with guidelines and departmental policies.

Given their multiple and simultaneous mandates from the Prime Minister, the Clerk, central agencies and ministers, deputy ministers may be led, Bourgault says, to act by "proprioception," or a sixth sense—an ability to instinctively decode and respond to information with appropriate strategies. He writes about their ability to have an awareness of signals and the environment in which they operate and to develop responses to anticipated demands. He implies that deputy ministers can act on the basis of what they think a minister might want, regardless of being asked to do so.

In addressing issues specifically related to the Sponsorship Inquiry, Bourgault poses hypothetical questions concerning problems that might arise from systemic causes. He suggests that, unless the problems associated with the Sponsorship Program can be attributed to "corruption, partisan politicization, blackmail, or some personal gain," some of the decisions in the process could be explained only in terms of someone operating with a sixth sense about what was expected of him or her. Bourgault warns against the adoption of new rules and controls. Instead, he recommends four measures that would not impose unnecessary red tape and costs:

- establish clearly delineated practices to formalize the conventions enabling ministers to intervene appropriately in the department's program management;
- provide a forum for any deputy minister whose dismissal was caused by taking a position on an ethical issue, avoiding irregular practices, or protecting public funds;
- give deputy ministers ultimate and exclusive responsibility for reporting to both central agencies and parliamentary committees that examine decisions respecting budget and spending allocations; and
- focus on the importance of deputy ministerial leadership and emphasize leadership characteristics in performance evaluations.

Bourgault points to the challenges for deputy ministers of reading often-obscure signals while maintaining an all-encompassing perspective in their work. While there are formal performance evaluations and extensive opportunities to share information with peers, there is no apparent professional support for deputy ministers seeking advice, interpretation and help without prejudice. By contrast, senior executives in the private sector increasingly use experienced coaches to counsel them on a confidential basis.

“The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform,” by Peter Aucoin, describes how the existing model of a professional, non-partisan public service is one that has been reformed in many ways since it was established in the early part of the 20th century. A notable missing piece in the reforms has been the staffing and management of the deputy minister cadre. The conventions respecting the staffing and management of deputy minister-level officials which once served to secure the required neutrality of the public service are no longer as secure as they once were. Aucoin proposes a set of reforms that builds on traditional Canadian and Westminster conventions while establishing a firmer base of public service independence and neutrality.

Aucoin begins by describing the basic elements of the Canadian model and argues that the existing regime is now a part of the problem. He identifies the political pressures on the public service, starting with the “New Public Governance.” He compares the Canadian experience with that of the Westminster systems of Australia, Britain and New Zealand.

The senior public servant who heads a government department or ministry under a minister is the link between the minister/Government and the professional and non-partisan public service. This official has both departmental/ministry and corporate/whole-of-government responsibilities. They are all members of the senior public service executive team and are considered to be the leadership of the professional and non-partisan public service, however they are appointed or whatever their employment status or contract.

In Canada, the authority to staff the public service is vested in the Public Service Commission, except for the two highest ranks—deputy minister and associate deputy minister—which are appointed by the Prime Minister, using the authority of the Governor in Council. The most senior deputy minister is the Clerk of the Privy Council, who is also Secretary to Cabinet and Head of the Public Service, and who serves as the Deputy Minister to the Prime Minister. The Clerk, with the assistance of the Committee of Senior Officials (COSO), leads the deputy minister community and, by convention, advises the Prime Minister on deputy minister staffing and performance evaluation.

The most recent reforms to the Canadian public service system have sought to reinforce the professional and non-partisan characteristics of the public service. The Public Service Commission is positioned at arm’s length from the deputy minister community, and the President is appointed by the Governor in Council, with the approval of Parliament, to serve a seven-year term during good behaviour. The President can be removed only on address to the House of Commons and the Senate. These

conditions clearly distinguish this position from those of deputy ministers, who are appointed and serve at the pleasure of the Prime Minister.

By convention, deputy ministers are appointed primarily but not exclusively from among the ranks of the public service. The appointment is meant to be based on merit and, notwithstanding their formal appointment by the Governor in Council and the prerogative powers of the Prime Minister, deputy ministers are deemed to be professional and non-partisan public servants. The very few exceptions to this tradition, where the Prime Minister on his or her personal initiative appoints a deputy minister from outside the public service, serve to confirm the acceptance of the convention.

The Canadian public service has traditionally given high priority to its loyalty and responsiveness to ministers. Aucoin says that responsiveness has not been viewed as the result of political pressure; nor has it been seen as undermining the neutrality of the public service. Rather, the public service leadership has independently placed a high priority on responsiveness as a core public service value because it feels that the conventions on the relative independence of deputy ministers from ministers, including the Prime Minister, were sufficiently respected to enable them to balance the values of political responsiveness and public-service neutrality.

Aucoin maintains, however, that the New Public Governance has tipped the balance too far in the direction of responsiveness. The public service leadership has become either too subservient to the Prime Minister, ministers and their political staff or their conventional independence has been eroded by the breaking of the traditional bargain between prime ministers and ministers and the public service. Aucoin argues that the independence of deputy ministers needs to be restored to secure the required balance, particularly through the strengthening of the adherence to the value of public-service neutrality.

The relatively recent emphasis on management necessarily led to reforms that would deregulate the administrative systems. In Canada, Aucoin reports, efforts were made to streamline the regulatory regimes that governed the management of financial and human resources at the departmental and operational levels of the public service. Deregulation was logically accompanied by decentralization, insofar as managers, from deputy ministers down through the departmental hierarchies, were given greater management authority in order to achieve economy, efficiency and effectiveness in the use of resources.

Aucoin questions the adequacy of the existing Canadian regime for staffing and evaluating deputy ministers to meet the requirements of a neutral public service that is asked to attain the highest standards of integrity and competence. He argues that a new staffing and management regime, independent of the Prime Minister, is needed, and he suggests that the solution lies in the institutionalization of the conventional bargain: to have the public service leadership—the deputy minister cadre, including the Clerk—staffed and managed by the public service itself, but subject to a democratic check.

The final section of Aucoin's paper makes the case that the authority to recommend the appointment of deputy ministers, including the Clerk, and the responsibility to evaluate their performance should be assigned by statute to a Deputy Minister Commission. This Commission, chaired by the Clerk, would have as members a select number of senior deputy ministers and at least two external members appointed by the Governor in Council, on recommendation by the Commission and with the approval of Parliament. This section also outlines the roles and responsibilities of the Commission, which would build on the existing system, as administered by the Clerk and assisted by the Committee of Senior Officials. The Clerk's role as Head of the Public Service would become a shared power and responsibility with the Deputy Minister Commission.

The Commission would be required to find the proper balance, in staffing the deputy minister cadre and in evaluating individual deputy ministers, between political responsiveness and non-partisan neutrality. Aucoin maintains that such an institutionalization of the process need not make the staffing and evaluation of the deputy minister cadre excessively complex, slow or inefficient.

