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**MINISTERIAL STAFF:  
THE LIFE AND TIMES OF PARLIAMENT'S  
STATUTORY ORPHANS**

*Liane E. Benoit*

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## 1 Where to Start

### 1.1

#### Introduction

Of the many footfalls 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,”<sup>1</sup> recent investigations by the Public Accounts Committee and the Commission of Inquiry into the Sponsorship Program and Advertising Activities, hereafter referred to as the “Sponsorship Inquiry”, suggest that this group of ministerial advisors can, and often do, exert a substantial degree of influence on the development, and in some cases, administration, of public policy in Canada. Further, it is evident from the current and historic record that these powers can and are, on occasion, open to abuse. Though unelected, often uneducated in the theory and operation of the machinery of government and regularly devoid of professional qualifications relevant to the ministries with which they are involved, these individuals, by virtue of their political relationship with the party in power and/or the minister they serve, are well placed to influence both the bounce and bobble of bureaucratic-political interface and the pace and progress of public policy in Canada.

### 1.2

#### Scope

This paper will explore the current role and function of ministerial exempt staff, their relationship to the bureaucracy, their Ministers and external stakeholders. It will examine the formal or informal checks

and balances, if any, that exist within the system to ensure that these duties are carried out in an appropriate and ethical manner commensurate with the guidelines published by the Treasury Board Secretariat (TBS) and the Privy Council Office (PCO) and all other applicable codes and legislation. Recent and historic “scandals” such as the affairs of Rivard and Al Mashat, and more recently, Judy Sgro and Tim Murphy will also be explored as emblematic of the misadventures of political staffers and the impact that their actions, inactions or wrongdoings can effect on political fortunes in Canada.

Of particular relevance to the work of the Sponsorship Inquiry is an examination of the careers of former Public Works and Government Services (PWGS) Minister Alfonso Gagliano’s Chief of Staff, Pierre Tremblay, and his Special Assistant, Isabelle Roy. Their appointments directly into the PWGS department tasked with the sponsorship program’s administration, a program in which both had direct political involvement, raises questions regarding the potential for abuse inherent in the exemption rule that allows political staff priority access to employment within the federal government after three years of political service. Why did those responsible for maintaining the integrity of this system not prevent appointments that, while arguably within the rules governing such transitions, clearly failed the “sniff test” at every level? Resurrected by these events is the long-standing debate over the propriety of this “exemption” from the merit-based competition process required of other aspiring civil servants. To what extent does this practice lead to the politicization of the bureaucracy? Denis Saint-Martin’s paper “L’Affair Groupaction: un cas de politisation de la Fonction publique federale?” offers some observations on this subject and his thesis will be examined against the opinions of other political observers.

The broad number of issues raised by an examination of the role of exempt staff required that a degree of triage be exercised in determining what aspects of the function would be explored. Consequently, the paper

remains a general overview and may not do justice to all potential subjects or questions suggested by the topic. Two areas that I have strategically avoided, each being worthy of a lengthy dissertation in their own right, are the workings of the exempt staff in the Prime Minister's Office (as distinct from those in other ministerial offices) and a detailed exploration of each of the specific functions within a minister's office—again fodder for future in-depth exploration and an area largely overlooked in the academic literature, with the exception of a few useful, albeit dated, examinations of the role of Executive Assistants/Chiefs of Staff. More universal and pressing issues, suggested by the terms of reference for this paper, will, I hope, be adequately and constructively addressed.

### 1.3

#### Legacy of the Dorion Report

The first comprehensive assessment of the role of the minister's staff shares with this paper a common provenance, that greatest of all academic catalysts, the political scandal. On November 24, 1964, Chief Justice Frederic Dorion of the Superior Court of Quebec was appointed to a Special Public Inquiry to investigate allegations raised in the House of Commons regarding the impropriety of actions taken by ministerial staff in the Pearson administration. In what became widely known as the "Rivard Affair", it was alleged that the Executive Assistants to the Ministers of Immigration and Justice had used bribery and intimidation in an attempt to block the extradition to the U.S. of an alleged heroin smuggler by the name of Lucien Rivard, a man believed to have close ties to the Quebec wing of the Liberal party.<sup>2</sup>

Similarities between the political fallout of this historic scandal and current events arising from the Sponsorship Inquiry were highlighted in the spring of 2005 in an article by historian Peter C. Newman:

In the brooding winter of 1964...Ottawa was shaken by a series of allegations and revelations of corruption in high places that

involved stunning parallels to the scandal currently rocking the Martin government. Then, as now, a ...Prime Minister who headed a minority government found his party accused of crimes and misdemeanours that robbed him of the moral right to rule. Then, as now, the U-turn ethics of its Quebec wing appeared to condemn the Liberal party to the ashcan of history. Then as now, a judicial inquiry was held to examine the dirty laundry...<sup>3</sup>

What Newman stopped short of pointing out is that then, as now, the activities of exempt staff may turn out to have played a pivotal role in the events in question and that then, as now, the aura of their involvement has raised questions over the appropriate role and function of this relatively unexamined and unfettered level of government machinery. While at the time of this writing, the Sponsorship Inquiry has yet to draw its conclusions, the final report of Justice Dorion presented a scathing indictment of the conduct of the exempt staff members involved, as well as the political masters that shielded them, resulting in the resignation of the Minister of Justice and the eventual conviction of his former Executive Assistant.

## 2 Theoretic Underpinnings and a Brief Evolutionary History of the Statutory Orphans

### 2.1

#### Mallory's Musings: An Early Perspective

In the wake of the revelations of the Rivard Affair, Professor J. R. Mallory observed that among the Dorion Report's many contributions, it served to "illuminate certain facets of government which have hitherto escaped the attention of scholars."<sup>4</sup> In redressing this oversight, it was his assessment that, contrary to what some scholars had lauded as the Canadian constitutional system's success in developing a "clear-cut dividing line drawn between the politician and the administrator,"<sup>5</sup> there was, in fact, embedded within the machinery of government in

Canada, “an intermediate class of persons in the Minister’s Office, who are political rather than bureaucratic in their functions, appointed rather than elected, and who operate in an area which strict constitutional theory does not recognize as existing.”<sup>6</sup> The presence of this emerging group of operatives in the Minister’s lair was, in Mallory’s estimation, inappropriate to the Westminster model of democracy.

It is clearly undesirable that a considerable number of persons not a part of the civil service should be interposed between a Minister and his department. They lack the training and professional standards of the public service: it may even be the peculiar nature of the appointment means they escape the security screening which is an unpleasant accompaniment of most candidatures for responsible posts in the public service. Not only do these functionaries wield great power because they control access to the Minister and can speak in his name, but they may wield this power with ludicrous ineptitude and in ways that are clearly tainted with political motives.<sup>7</sup>

There was, he feared, “a danger inherent in having such untrained people, lacking the career motives and professional standards of the civil service, in positions of both influence and power.”<sup>8</sup> In his opinion, the duties to be performed by those in a Minister’s office should be strictly limited to the writing of the Minister’s speeches, the preparation and distribution of press releases and “such mundane matters as supporting the Minister’s public image by cultivating the goodwill of the press gallery...<sup>9</sup> He also conceded the need for a gatekeeper “to act as a buffer between a busy Minister and his constituents and political followers.”<sup>10</sup> Beyond that, any role played by the Minister’s staff, particularly with respect to policy or program development, was an inappropriate incursion into the realm rightly held by the public service.

## 2.2

### Recollections of the Pearson Era Exempt Staff

Mallory's concern over the newly founded and unfettered influence being wielded by ministers' advisors in the 1960s is given credence by the recollections of former ministerial staff of that day. A recent interview with Harold (Sonny) Gordon,<sup>11</sup> Executive Assistant (EA) to the late Maurice Sauvé, former Minister for Forestry and Rural Development, corroborates many of Mallory's observations on the evolving role of ministerial staff and identifies this Pearson administration as the political era that cast the mould for the contemporary political office. Gordon's profile at the time was not unlike many one might find on the Hill today. His hiring was informal, the result of a word-of-mouth tip from a friend, Peter White, who was vacating the post at that time. Gordon has no recollection of having received any specific training or written instruction of any kind regarding what he could or could not do in his new job. As a young urban Montrealer trailing a fresh off-the-press law degree, his practical expertise in matters related to the forestry industry or rural development was virtually non-existent. Nonetheless, at the age of 27, Gordon felt he "ostensibly, had the authority to represent the Minister" and to speak on his behalf with the public servants with whom he regularly met. Apropos to Mallory's concern over the lax security clearance given political staff at the time, Gordon remembers being active in the job, with access to all the most confidential and politically sensitive documents of the day, at least six to eight weeks prior to receiving any security check.

The variety of duties Gordon undertook as EA ran a broad gamut from speechwriting, to representing the Minister's office on departmental committees, organizing trips and accompanying the Minister on those travels, dealing with the press and certainly "putting in a good word" for constituents with the appropriate people when the need arose. In his words, he "knew what the Minister wanted done" and went about

doing it. His relationship with Maurice Sauvé was quite informal, with meetings taking place at 8:00 a.m. three or four times a week to bring Sauvé up to date on what was happening within the department, his riding or the corridors of Parliament and to receive any instructions the Minister might have for him. According to Gordon, the exempt staff was “a little club” that met on a weekly basis, socialized together, and generally co-operated in ensuring the smooth running of the political machine. “Some could be trusted,” recalls Gordon, “and some couldn’t.”

This Pearson government saw, for perhaps the first time in Canada, the emergence of the EAs as a political force in their own right. These were highly partisan, passionate young men, infused with the rebellious spirit of the times, anxious to champion the most progressive of the social policies, and in some cases, as the Rivard Affair demonstrated, willing to do whatever it took to ensure the electoral success of the Liberal party. Those days, Gordon recalls, were a “heady experience” with many of his EA colleagues such as Bill Leigh, Bill Neville and Duncan Edwards becoming high profile personalities on Parliament Hill in their own right. It was not uncommon for political staff to take a lead role in many of the governments most controversial and innovative policy initiatives, among them such memorable programs as the unification of the armed forces and the creation of the Company of Young Canadians. So established had many of these young politicians become on the Ottawa scene that it was occasionally the EAs, rather than their Ministers, who would make announcements to the press and be the focus of media scrums. Jerry Yanover, another 1960s political staffer and one who has continued to work in Liberal Ministers’ offices to this day, likewise recalls the lofty profile that the EAs in the Pearson administration had assumed. “Pearson aides had become major characters in their own right,” said Yanover, “they were “celebrities” and many politicians and officials wanted to rein them in.”<sup>12</sup>



## 2.3

### A Break with the Past

The high profile characteristic of this cohort of Pearson era exempt staff was in many ways a departure from the traditional role that had been played by Ministers' staff up to that time. Mitchell Sharp, a former senior public servant and prominent Cabinet Minister in successive Liberal governments, recalls that in his days as a bureaucrat in the 1940s and 50s, the Minister's staff were quite limited.

Ilsley<sup>13</sup> was content with a secretary and assistant secretary and a messenger, Abbott<sup>14</sup> had a male executive assistant and as well as secretarial staff and a messenger, Howe had a male executive assistant, a couple of secretaries and a messenger. Even Prime Ministers King and St. Laurent had only a handful of people in their offices, nearly all of whom (like Pickersgill, who served both King and St. Laurent) had originally been selected by the Public Service Commission for departmental jobs. In those days, there were no constituency offices or constituency staff paid by the government.<sup>15</sup>

As a deputy minister in the 1940s, Sharp does not remember exempt staff playing any role in the ministerial-mandarin relationship: "...the ministers I served dealt directly with their deputy ministers and other senior civil servants. Politically appointed ministerial assistants did not intervene between Ilsley, Abbott, Howe, Churchill and me in the decision-making process..."<sup>16</sup> Professor J. R. Mallory had also noted this departure from the traditionally held and largely benign role of earlier ministerial staff, his contempt for the emergence of a more politically active and policy-driven exempt staff barely concealed when he wrote:

Within the last decade or so the Minister's private office has been inflated beyond recognition. The old and honourable title of "private secretary", which no longer seems to convey an appropriate image,

has been replaced by the term “executive assistant”. The public treasury now supports an office establishment, which includes special assistants and administrative assistants, whose various duties include speech-writing, improving the Minister’s contacts with the press gallery, and keeping the Minister in the public eye and sufficiently responsive to the politically importunate. Ministers have even maintained offices in their constituencies, staffed by this new kind of public servant.<sup>17</sup>

## 2.4

### Emerging Perspectives: The New Ministerial Office

This opinion of Mallory’s that the increased involvement of the Minister’s staff in the machinery of government represented an abrogation of democratic government had its critics, among them, Paul Tellier, a man who would later become the Clerk of the Privy Council and himself an exempt staffer in the 1960s. In a paper published a year after Mallory’s, Tellier argued that rather than an incursion into the territory rightly held by the public service, political staff served an important and necessary function, one that should continue to be enhanced rather than curtailed as Mallory’s writings suggested. According to Tellier, the policy capacity of a Minister’s staff should evolve along the lines of the American model, affording Ministers the benefit and assistance of loyal collaborators whom they had personally chosen from outside of the public service and whose allegiance would be to them alone. These assistants would help reduce the Minister’s ever-increasing workload and provide a perspective on policy options that would be independent of that offered up by the bureaucracy. To fulfill these roles to their best advantage, he suggested that Ministers should look to the best and brightest in the country’s universities, research labs, industries and media and select individuals based on their technical expertise in the policy areas preoccupying their respective ministries rather than relying on partisan political affiliation.<sup>18</sup> In an adage reminiscent of the times, he

warned that these advisory positions should not be trusted to anyone over the age of 40. As Tellier, himself in his twenties at the time, explained, “Ce plafond de quarante ans pourra sembler arbitraire à certains mais la nature humaine étant ce qu'elle est, après cet âge il semble plus difficile à la plupart des individus de ramer à contre-courant et de remettre systématiquement en question l'ordre établi.”<sup>19</sup> The dynamic created between these two levels of policy input, young and innovative on the one hand, seasoned and bureaucratic on the other, would offer Ministers a more robust set of options than might otherwise be served up by what was increasingly viewed as a powerful and self-serving bureaucracy. This in turn would lead to better and more informed political decision-making and therefore better governance.

Donald Savoie's observations on this period in his book *Breaking the Bargain* seem to add credence to Tellier's point on the growing need for ministers to balance the power of the bureaucracy with more objective and independent advice. Writes Savoie, “Indeed, by the 1970s, many politicians and their advisors claimed that permanent public servants were running governments and that their apparent deference to politicians was pure pretense.”<sup>20</sup> The genesis of this development and the aura of mistrust it engendered, Savoie explains, lay in the expansion and proliferation of policy areas in which government now found itself involved. “As formulating public policy and making government decisions became more complex, political masters ... became more dependent on the advice of expert or career public servants. As they became more dependent on public servants, they probably became suspicious of their growing influence. Some politicians began in effect to look at the public service as a kind of entrenched aristocracy within a democracy.”<sup>21</sup>

The experience of Ministers in Great Britain certainly presented a cautionary tale of what can happen should Cabinet be subjugated to a dominant and self-serving public service. The popular television series,

“Yes, Minister”, which one former Deputy Minister admitted was used in the training of aspiring Canadian mandarins,<sup>22</sup> clearly demonstrates the pattern that can be entrenched when Cabinet Ministers find themselves wholly dependent on the bureaucracy for policy advice. In his book, *Whitehall*, Peter Hennessy recounts what he finds to be “the best description”<sup>23</sup> of the British situation, as described by Lord Annan:

The mandarins are the permanent secretaries who are at the head of each Ministry. The spies are the young civil servants who are the private secretaries to the Cabinet Ministers. Every meeting a minister has is attended by his private secretary, who logs it; every conversation he makes on the phone is recorded; every appointment he makes in Whitehall is monitored. If a Secretary of State starts to throw his weight about, or adopts a policy the civil servants regard as dangerous, the warning bells ring, and in an emergency the top civil servant of all, the Secretary to the Cabinet, will intervene with the Prime Minister. If a Minister brings a political advisor into his ministry and the advisor does not toe the line, the mandarins cut off his information: he will appear at a meeting and discover that his rivals possess certain important memoranda that mysteriously have never reached his desk. He therefore appears to be badly briefed and loses credibility. Each Tuesday morning before the mandarins meet in the Cabinet Offices (in fact, its Wednesday Morning) they are briefed by their spies to hear what is cooking. If you try to bend a Minister’s ear in his office, what you say will be round the Civil Service within forty-eight hours: the only way is to catch him at dinner in the evening when his attendant nurse from the mental clinic, his private secretary, is no longer observing his patient.<sup>24</sup>

While the Canadian experience may never have achieved these spectacular heights of bureaucratic control, there was nonetheless a sense in the 1970s and 80s that increasingly, Ministers were becoming nothing

more than a rubber stamp on the bureaucracy's policy ambitions. The growing size and complexity of public administration during this period and the increasing demands placed on a Minister's time precluded the intimate, collegial relationships that had characterized political-bureaucratic interface in the early days of government in Canada, and Ministers were feeling increasingly alienated and emasculated by the sophistication of the policy process being carried out below them. As a Minister in the Trudeau Government revealed, "I found it very difficult to communicate, to seek out advice when I needed it. I felt the ritual of the paper work—the chain of command—made it virtually impossible to get the kind of information I needed when I needed it and I felt very helpless."<sup>25</sup> No wonder then, the emergence of a more robust exempt staff: young, energetic operatives immediately present and available to provide an external, politically-informed response to a Minister's need for information and to act as their proxy when need arose. Confidantes, advisors, comrades-in-arms in the political battles to get and retain power, these politically passionate staffers were the ones that were there at the Minister's side come the day's end, the ones who shared in the everyday frustrations, pressures, strategies, crises and victories that were the lifeblood of Parliament, and not surprisingly, the mandarins eyed them with not a little resentment and suspicion.

It was therefore not surprising that official Ottawa began to resound with the grumblings of senior officials displeased by this new layer of authority being wedged between themselves and the Minister and resentful of the second opinions being rendered on the policy recommendations forwarded by the department for ministerial approval. Many, like Mallory, were suspicious of the capacity of political staff to provide the Minister with sound policy advice. Research by Donald Savoie in the mid 1980s seemed to substantiate the feelings of many in the bureaucracy that the majority of these young political operatives had neither the experience or education nor expertise to match the seasoned, technical, high level advice being offered up by the bureaucracy:

The survey revealed that two ministerial assistants had obtained two university degrees, eleven had one degree and seven had no university degree... Ten of the twenty assistants surveyed had either no work experience or had worked in another minister's office... If one views educational background and work experience as important criteria in assessing the competence of employees, as does the Canadian public service, then the competence of ministers' staff is lacking... It is an exception to see anyone qualifying for middle level positions in policy, planning or research units in the federal public service without having a postgraduate degree. In addition, before qualifying for these positions, officials usually have several years work experience to their credit... Even at junior levels in policy and research units, officials only qualify for permanent positions provided they have reached a certain educational level...<sup>26</sup>

Whatever the legitimacy of their concerns over the youth and competence of ministerial assistants, the negative reaction of the public service to this incursion into their traditional sphere of influence followed a pattern of classic political theory that dates back to the days of Max Weber.<sup>27</sup> As Weber explained in his day, "the bureaucracy, out of pure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups. Bureaucracy naturally welcomes a poorly informed and hence a powerless parliament."<sup>28</sup>

And thus the stage was set for a dynamic of bureaucratic/exempt staff interface that has been played out in various scenes in Ottawa ever since, a battle of two opposing philosophies framed on the one hand by Mallory, the champion of the emasculated Westminster model of the ministerial office, and Tellier on the other, whose approach would see Ministers bulwarked by a hand-picked cadre of young operatives ready and willing to ensure that the machinery of government marches to the tune of the democratically elected drummer.

## 2.5

### Reining In the Assistants

The first round, as Jerry Yanover tells it, went to Michael Pitfield, Clerk of the Privy Council to Prime Minister Trudeau. Feeling that too long a stint on the Hill lay at the source of the growing influence of political staff, he recommended to Prime Minister Trudeau that the government intentionally stop raising the salaries of exempt staff—at the time about \$15,000 a year, roughly equivalent to that of a high school principal—in an effort to discourage these young assistants from staying around too long. “Come in, learn and get out,” Yanover recalls being told, “here are the doors this will open for you after.”<sup>29</sup>

Perhaps spooked by the Rivard affair and wary themselves of the dominant profile achieved by some of the Pearson era staff, the Trudeau government acquiesced, even as the increasing demands on a Minister's time and the growing sophistication of government and media during the 70s and 80s conspired to support an exponential increase in the number of exempt staff required to support the Ministers. The \$78,000 annual budget allotted Ministers in 1968 ballooned to \$175,000 ten years later,<sup>30</sup> albeit now divided among 10 to 12 exempt staff and often supplemented by departmental people seconded to the Minister's office. Ironically, while the low wages may have encouraged some to cut short their time on the Hill, it also ensured that Ministers in the Trudeau cabinet were unable to follow through on Tellier's concept and compete with the private sector for the best and brightest professional talent available to enhance their in-house policy capacity.

Good people did come to the Hill in the 70s and 80s, but in general, the staffs consisted of recent and highly partisan graduates cutting their teeth in the world of *realpolitik* and slightly punch drunk with their newly found authority. Then as now, they were playing a game in which there were few set rules, high political stakes and virtually no safety net. The

“club” atmosphere recalled by Sonny Gordon in the 60s was still very much in evidence and enhanced by both the advent of women into this cadre of political advisors—about half were women by the late 70s<sup>31</sup>—and the institution of such events as “Wonderful Wednesdays,” a weekly booze and food fest hosted in the Railway Room on Parliament Hill by a rotation of Cabinet Ministers. The Press Club on Wellington Street provided an alternate watering hole other nights of the week, and many staffers regularly migrated across the street after 6:00 p.m. to have a few drinks, carry on business or rub elbows with the press. Bonded by their strong partisan loyalty and affiliations, they were each other’s family, heady with their own good fortune, awed by the charisma of their political leader, and for some, alternately drunk on booze and power.<sup>32</sup>

## 2.6

### Up Where They Belong—A New Vision of Exempt Staff

The sweeping victory of the Mulroney Government in 1984 heralded a substantial change in the culture and trappings of political staff. If politicians’ fear of the power of the bureaucracy in the 1970s and early 80s had tipped the balance in favour of a stronger political office, those suspicions reached new heights with the arrival of the Tory government. They were concerned, as one former Mulroney-era Special Assistant recalls, that the new government might find itself “in office but not in power.” Two factors fuelled the new government’s heightened distrust of the public service: one, the length of time the bureaucracy had served only a Liberal government; and two, the fact that Brian Mulroney had never sat at a Cabinet table and would therefore be more vulnerable to the direction given by his bureaucratic advisors. The incoming Prime Minister was encouraged by his top political strategists to bolster his Ministers with strong political staff, senior people who would be able to stand up to the mandarins “eye-to-eye and belly-button to belly-button.”<sup>33</sup> As Hugh Segal, a former Mulroney Chief of Staff recalls, “Mazankowski, Tom D’Aquino and others decided that enhancing the



political staff was the best way to countervail an ossified public service.”<sup>34</sup> The pay scale for ministerial staff was bolstered significantly and the title of “Executive Assistant” changed to “Chief of Staff” as a clear message to the bureaucracy that a new wind was sweeping through the political corridors. As Donald Savoie explains, “Mulroney’s decision had one purpose—to check permanent officials’ influence on policy. The Chief of Staff was an Assistant Deputy Minister and, according to government press releases, an ‘official in the American style.’”<sup>35</sup>

Loretta O’Connor, in her 1990 study of the role of chiefs of staff, described this new position as follows:

The chief of staff is, first and foremost, the senior political advisor to the minister. He or she is also the director of operations and controller for the minister’s office. The chief of staff must provide leadership and coherence to the operations of the minister’s office, and should bring sound knowledge to both governmental decision-making and the policy process. A key role of the chief of staff is to ensure that ministerial directives are carried out within the department. In this way, the chief of staff assists in increasing ministerial control and accountability.<sup>36</sup>

If resentment over the increasing presence and prominence of ministerial staff was cause for bureaucratic concern during the Liberal era, the changes suggested by the new Mulroney administration quickly ratcheted up that apprehension by several notches. Former Deputy Minister Arthur Kroeger recalls the insecurity excited by the announcement of the new structure: “When Mulroney arrived there was lots of fear in the bureaucracy over the increased power of the Chief of Staff displacing the DMs.”<sup>37</sup> Indeed, as Donald Savoie recounts, the furor was such that Prime Minister Mulroney had to resist pressure from his advisors to move further towards an American style ministerial office. He quotes one senior Mulroney Minister admitting at the time that “. . . this kind

of thinking so upsets the bureaucrats that he (Mulroney) feels he cannot go much further than he has. Appointing chiefs of staff was seen in many quarters as a revolutionary act—no, an act of high treason.”<sup>38</sup>

And who were these new staffers hired to stare down the bureaucracy? Savoie recounts that the “transition team had put together a list of potential candidates for ministers to pick from as they were appointed.”<sup>39</sup> And while no doubt legitimate attempts were made, particularly through the significant increase in pay, to attract a more seasoned and professional group of individuals, the reality as one former PCO mandarin recalls was, “there were traces of the old style with Mulroney...old constituency war horses would show up on a Minister’s staff straight out of the riding. They played a variety of roles and had a variety of backgrounds...”<sup>40</sup>

To its credit, the new regime made a solid attempt to set its ministerial assistants on the right path. One former Deputy Minister recalls, “Mulroney had them all up to the staff college in Cornwall and had a combination of ex-politicians like Dalton Camp and some senior DMs to talk to them—kind of a three day weekend about six weeks after the election. They had a whole curriculum explaining all the theory of how things should work.”<sup>41</sup> Did this orientation have the desired effect? Not according to this observer: “The problem was they were still in the euphoria of winning and the little darlings weren’t listening—nobody was listening. They came back and were still acting like little puppies going around chewing on everything and peeing on the carpet to identify their turf...”

Another former Deputy, Arthur Kroeger, offers perhaps the best summary of the impact of the change imposed by the creation of this new exalted chief of staff position. Looking back at that period with the benefit of hindsight, he concludes that, in the end, “the real difference between a Trudeau EA and a Mulroney Chief of Staff was about \$15,000.”

## 2.7

### Everything Old Is New Again: The Chrétien - Martin Years

Not surprisingly, the return of the Chrétien Liberals in early 1993 saw a reversion, at least in title and remuneration, to the spirit of the Trudeau years. The senior position in the Minister's office, save the Prime Minister's, was once again "Executive Assistant." Salaries were again curtailed. Tony Macerollo, an Executive Assistant of that time, admits that when it came to working with the new exempt staff, by that time, "the bureaucracy was accustomed to the structure and style of the Mulroney years. They were relieved to see less (minister's) staff, but they had more work under the Chrétien administration. Some functions were returned to the bureaucracy."<sup>42</sup> Likewise, Savoie's investigations reveal that very little in the role of exempt staff changed as a result of the reversion.

Executive Assistants to Chrétien's ministers have not enjoyed the same salary levels as had the chiefs of staff in Mulroney's government, but like their predecessors, they challenged the views of the career officials. My consultations with career officials in Ottawa suggest that relations between ministerial—exempt staff and career officials changed after Chrétien came to power, but only at the margins. Some Executive Assistants, like some chiefs of staff worked well with career officials, while others did not. Most tried to influence policy decisions; some were successful, some not.<sup>43</sup>

With the retirement of Prime Minister Chrétien in 2004, a change in the name of the senior exempt staff was again used to signal the advent of a new regime by the incoming Martin administration. Today, "Chiefs of Staff" once more head up ministerial offices and their status has been elevated to the level of an ADM (EX-04) with a maximum salary level of \$147,300 a year, a difference of \$32,000 compared to the ancien régime. The pay increase brought the usual cries of derision from

opposition MPs, who noted that increase now meant senior ministerial aides would be earning \$12,000 more than members of Parliament. Responding to the criticism with a rationale recycled from the Mulroney era, Fisheries Minister Gerald Reagan said the raises would help him and other Ministers appoint more capable senior staff as ministerial aides.<sup>44</sup> Mario Lague, a spokesperson for the PMO, further explained the salary increase by noting that ministerial staff would now be expected to pay much more attention to the work of Committees under the Martin government and that Ministers' offices "are being asked to do much more, dealing with parliamentary secretaries, dealing with parliamentarians ... the whole role is enhanced..."<sup>45</sup>

### 3 Contemporary Perspective: Issues of Today's Statutory Orphans

It is useful to recall at the outset of any discussion of ministerial personnel today that we are examining a role that, as Mallory astutely reminds us, "operates in an area which strict constitutional theory does not recognize as existing."<sup>46</sup> It is within, and arguably, because of the vacuum created by this "absence of definitive constitutional theory"<sup>47</sup> that exempt staff have, over time, 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 what degree of influence or power they can legitimately wield. Being neither fish nor fowl, this "intermediate class of persons"<sup>48</sup> freefalls between the cracks in the rules governing both sides of the political/bureaucratic divide; exempt, on the one hand, from the conventions and statutes that control the activities of civil servants but likewise unimpeded on the other by the oaths and obligations of ministerial responsibility and accountability to which their elected masters are bound. With no manuals, few mentors, and little margin for error, these young political operatives enter a kind of Alice-in-Wonderland existence that provides them few signposts to provide proper direction down the often-divergent paths of governmental propriety and political expediency.

### 3.1

#### Hiring—An Unconventional Exercise

The hiring of staff for a Minister's office remains today, as it has traditionally been, a somewhat mysterious confluence of political patronage, personal contact, old-fashioned nepotism and serendipity. That this occurs in such exalted political circles is perhaps not surprising given that a newly minted Cabinet Minister, many still in shock from their own ascension into Cabinet,<sup>49</sup> might look long and hard for a list of required qualifications to guide them in determining the profile of an appropriate candidate for their personal staff. The only piece of binding legislation governing the hiring of exempt staff is found in Section 39(1) of the *Public Service Employment Act*, which states simply: "A Minister may appoint his Executive Assistant and other persons required in his office."<sup>50</sup> Treasury Board continues to set aside budgets for the hiring of ministerial staff, currently pegged at \$828,000 per year, with an additional \$480,000 for the secondment of departmental personnel. Ministers of State are allotted \$305,000 for personal staff and \$190,000 for departmental secondments respectively.<sup>51</sup> Effective July 2004, Cabinet Ministers are authorized to pay their chiefs of staff, as mentioned earlier, at an EX-04 level of up to \$147,300 annually (equivalent to that of an Assistant Deputy Minister), their senior policy advisors, directors of communications and directors of Parliamentary affairs at an EX-02 level to a maximum of \$114,500, policy advisors at an AS-8 level of up to \$87,370, senior special assistants at an AS-07 level of \$82,196, and special assistants in communications, parliamentary affairs and at the regional desks at an AS-05 level of up to \$66,287. Secretaries of State are eligible to offer their chiefs of staff a somewhat more modest EX-02 level salary of up to \$114,500, senior special assistants an AS-07 equivalent up to \$82,196 and special assistants as AS-05s at up to \$66,287.<sup>52</sup> Exact salaries are determined at the Minister's discretion and can be set at any level up to the maximum established for each position. It should also be noted that exempt staff, once hired, enjoy

all of the same benefits as public service employees with regard to health, dental, unemployment and disability insurance, pension plans, annual leave, sick leave and death benefits.

So how do the “little darlings” find their way to Parliament Hill? While one Liberal EA admitted to getting his start as a constituency assistant through an advertisement posted on a university employment board,<sup>53</sup> the staffing of Ministers’ offices, as noted above, is rarely carried out in so conventional a manner. Political loyalty and partisan affiliation being key criteria for the job, ministerial staff are often recruited from the youth wing of the party and university political clubs (often referred to as “Growing Grits” or “Tiny Tories”), organizations specifically designed to attract and groom the young party faithful, many of whom volunteer their time and considerable energies at leadership conventions and election time. If the campaign is successful, shoulders are tapped, corridor references confirmed and positions filled.

Although seasoned political experts will always advise Ministers against “hiring your campaign manager,” every new regime inevitably arrives with a few of these loyalists in tow. Some of the challenges they face in moving into government are summed up well in the following critique:

The problem with having campaign people come into the government is they remain to be tested on their ability to govern. Those who work in campaigns think in a short time span, see the world in black and white, and have a sense of attack. While fit for campaigning, these qualities are not necessarily what you want to emphasize in governing... when you govern, you have to figure out how to build a coalition and work with others because, in fact, in our system power is so widely distributed and fragmented that that’s the only way you can effectively govern. Those are not necessarily the same set of skills that get illuminated during the course of an election.<sup>54</sup>

In addition to these former campaign allies, the number of daughters, sons, nieces, nephews and cousins of members of Parliament, their friends or their financial supporters who have turned up over the years to cut their teeth as exempt staff on Parliament Hill cannot be discounted. While many of these are competent and qualified individuals—John Crosbie attributes the highly successful Canadian initiative to create the G-8 to his former Chief of Staff and cousin, Bill Crosbie—many have only nepotism to recommend them. Some well-connected political families can almost boast a dynasty. As one media consultant who has been a Hill observer for the past thirty years commented, “I can’t ever remember a Liberal government when there hasn’t been a (Winnipeg) Richardson working on the Hill.”<sup>55</sup>

Indeed, a stint in a Minister’s office is often considered advisable, if not *de rigueur* for certain young members of the Canadian Establishment, a sort of real world finishing school designed to teach how power works prior to the pursuit of their real life ambitions. Alternatively, a job in a Minister’s office may also serve as a social lever for those “not to the Manor born.” As a 1994 study of Chiefs of Staff by Micheline Plasse noted, “. . .it is interesting nonetheless to study on the basis of the ‘father’s occupation’ the extent to which Ministers’ offices are an entry point for raising one’s social standing. . .” The data shows that nearly half the Chiefs of Staff have ties to the world of business, finance or economics. The others come from blue-collar backgrounds, from commerce, or from the “liberal” professions. The representation of working and agricultural classes (6 of 20) demonstrates again a certain degree of democratization and accessibility for those coming from the lower classes.<sup>56</sup>

Another of the more common means of access to work in a Minister’s office is through acquaintance with those already there. Current staffers will often know when openings arise and advise their friends of the opportunity and conversely, the Minister of their friends. Jerry Yanover

recalls, “there was one instance when a bright fellow was brought in from Oxford. It turned out the office needed a French assistant shortly thereafter, and this fellow said he had a classmate at Oxford who was interested in politics. That fellow’s name: Pierre Pettigrew.”

As Pettigrew’s career attests, seasoned exempt staff does provide a ready pool of political candidates, but the converse is also true. Defeated candidates are often “rewarded” with a political appointment to a Minister’s staff—albeit as somewhat of a consolation prize. In this way, the Minister’s office serves a dual purpose. In addition to political support for the incumbent, it operates as a holding tank for future candidates, keeping them close to the centre, feeling “wanted” and readily primed and available for recycling in the next election. Defeated Quebec candidates have the added ability of speaking French and knowledge of the political complexion of that province and are often the answer to filling a difficult staff position, especially for Ministers from unilingual Anglophone ridings.<sup>57</sup> As former EA Fred Drummie notes, “Look into any Minister’s office and you will inevitably find a defeated candidate covering off the Quebec desk as the regional special assistant.”

Although the hiring of ministerial staff may deviate from standard human resource practices, many Ministers do, according to one source, undertake a solid round of interviews in an effort to establish among their staff the right balance of regional coverage, expertise, gender, ethnicity and language.<sup>58</sup> The application of such rigour becomes increasingly possible the further into a government’s mandate one goes, when the Minister’s political debts have, to some degree, been paid off, the incompetents weeded out and the Chief of Staff more established and familiar with staffing requirements.

With the advent of the more generous salaries introduced by the Mulroney government in the 1980s, Ministers are now occasionally able to attract more specialized and experienced talent. Several Prime Ministers and Ministers have plumbed the depths of the parliamentary



press pool in an effort to ensure that their public image is entrusted into the hands of an experienced scribe. Where once a foray into the partisan world would have ended a journalist's career, it is not unheard of nowadays for some to return to their former profession after a stint on the Hill, their political neutrality exchanged for the greater insight and experience acquired on the "inside".

Similarly, Ministers offices are now replete with departmental personnel, individuals seconded from the bureaucracy to act as a liaison and conduit between the department and the ministerial office. As one former PCO mandarin observed, "there has been an exempt staff trend of pulling people into the ministerial office from the departments and sending them back down. It used to be that if you did that, your public service career would be over—once you crossed that line you couldn't come back. What's devolved is that we have not maintained as clear a distinction as there used to be."<sup>59</sup> While critics argue that this practise, over time, will inevitably lead to an incremental politicization of the bureaucracy, the thought being that like virginity, political neutrality can never be fully restored, others are convinced that such cross-pollination is beneficial and can lead to a better-informed and small "p" politically-astute bureaucracy. Whatever the merits of the debate, there is unquestionably more tolerance today for some degree of moving back and forth between the partisan and non-partisan worlds of the Minister's office and the public service, media or private sector. As to whether this constitutes a positive trend or an abrogation of professional ethics, it does ensure that Ministers might be advised and served by a somewhat more worldly and seasoned cadre of assistants. As one Deputy Minister commented, "Finally, we'll have someone who won't lose the Minister's papers, who will be competent, who will have sufficient experience, who will be more intelligent, and with whom we can finally speak as adults. . ."<sup>60</sup>

There is also more recent evidence of a slightly different career pattern emerging on the Hill than would have been observed twenty years ago. More and more, candidates for the top posts of Chief of Staff and the

directors of policy, communications and parliamentary affairs are being recruited from among those who have already gained some Hill experience working in either a private member's office or in a Liberal or Conservative caucus research branch. This trend acknowledges both the increased importance and responsibilities that are now vested in these senior exempt staff positions as well as the availability of more seasoned personnel thanks to the expanded budgets offered to Members of Parliament and research bureaus.<sup>61</sup> It has also been noted that the task of finding seasoned staff becomes progressively easier the deeper one goes into the government's mandate, when promotion from within an office presents a logical solution to ensuring the top jobs are filled by knowledgeable and experienced people:

...after several years in power, ministers have a pool of potential candidates in their offices. Internal recruitment has certain advantages: avoiding crises of succession, appointing a more experienced candidate, rewarding a candidate with a better understanding of the workings of government and the government apparatus itself, and above all, appointing an individual with whom the minister has already worked. The period of adaptation and adjustment... will consequently be reduced.<sup>62</sup>

A more recent phenomena in the quest for experienced chiefs and directors is the secondment of senior or retired managers from the public service to fill these top posts, as was the case with Scott Brison and Doug Young in their respective choices of chiefs of staff and Barbara McDougall's appointment of Scott Mullen as her Director of Communications back in the Mulroney era. Beyond that, at least two Ministers in the Martin government, Joe Volpe and Ken Dryden, looked to a senior member of the volunteer sector to take over the top posts in their offices—the non-governmental organization sector being one where current exempt staff wages are competitive with those of top managers in the field.

Yet despite all the efforts and enticements made to recruit more experienced and competent personnel to these highly demanding and responsible positions, a survey of recent incumbents seems to indicate that the average age and experience of Hill workers has not increased in lockstep with the enhancements of either salary or the level of public service equivalency being offered. Many are still recruited directly out of university, and although today they might extend their term beyond the average of “slightly more than two years,”<sup>63</sup> noted by Blair Williams back in the mid-80s, most spend that additional time hop scotching their way up the ministerial staff hierarchy, lighting on each position for a year or two at best. While no doubt this emerging practise of a career progression within the ministerial office results in a more seasoned and by extension, competent, level of senior exempt staff, it also leads to a very high rate of turnover, with all of the performance implications associated with that mobility. On the other hand, as one former Deputy Minister pointed out, “the turnover of exempt staff continually brings in new enthusiasms. There is a happy period between the exuberant incompetence and the jaded cynicism that eventually takes over, and it is that period in between that you want to maximize.”

At the end of the day, there is good reason why Ministers' offices are still staffed by the young. It is a reality divorced from both financial enticements and any need for the fearlessness required to challenge the system as identified by Tellier back in the 1960s. The simple fact is that ministerial aides are often required to work twelve hour days, sometimes seven days a week. They must be available to their Minister or, in the case of communications assistants, the media, at all hours of the day and night. They require tremendous energy, stamina and focus to cope with the often crisis-driven pace of the office, and their first priorities must be their job and their Minister. In other words, their job is their life. For all of these reasons, it is best if the incumbents come to the job with the vigour of youth and no competing pressures. Family life

is rarely compatible with the hours required and stress imposed on political advisors as more than one dissolved marriage can attest. For many, the network of colleagues serves as both family and friends, leaving little time or energy for relationships beyond that group. More than one thirty-something has emerged from the frenetic existence of a Minister's office wondering how to "get a life." While some older staff do manage to maintain a precarious balance between work and family commitments, there is rarely the time or energy available to adequately satisfy the demands of both, and many seasoned staffers are conspicuously single or, if not, eventually find themselves that way again. Work in a Minister's office therefore remains largely a privilege of youth, a time when fierce political idealism, physical stamina, and personal independence are all available in sufficient quantities to satisfy the long hours and depth of commitment demanded by life on the Hill.

## 3.2

### The "Right" Staff: PMO Scrutiny

While the convention of ministerial discretion in the hiring of exempt staff remains enshrined in the wording of the *Public Service Employment Act*, the Prime Minister's Office (PMO) continues to have a hand in ensuring that candidates appointed to Ministers' offices carry the appropriate pedigree. As one seasoned exempt staffer explains, "the PMO has a concern that Ministers not hire unsatisfactory or inexperienced workers or ethical louts and that the appointments are politically appropriate." He concedes, however, that this PMO oversight can sometimes take on a vindictive twist, with victorious loyalists in the PMO using their authority to obstruct the hiring of their bosses' rival supporters.

This oversight by the PMO of ministerial staff appointments, while perhaps more structured and acknowledged today than in the past, is not a new phenomenon. One long time Hill observer confirmed that attempts by the PMO to have some tacit control over the hiring of exempt

staff likely goes back to the days of Pearson and his main advisor, Tom Kent, and that Jim Coutts would certainly have kept an eye on hiring under Trudeau. This insider admitted that although such scrutiny does not necessarily ensure competence or prevent the hiring of party cronies, “It does nonetheless assure the PMO that the cronies that are hired will be *their cronies*.”

The 1984 victory of the Mulroney government saw, perhaps, the most concerted effort of a recent administration to exert control over who would be appointed to their Ministers’ staff. In light of the prominent and enhanced role they had envisioned for their newly-minted “Chiefs of Staff” and their now legendary distrust of the public service, there was much at stake in who they would choose to shoulder these elevated responsibilities. Those efforts, as Bernard Roy, former Chief of Staff to Prime Minister Mulroney, recalls, met with varying degrees of success:

At first, The Prime Minister’s Office wanted to ensure that no appointments would be made without the PMO being informed and agreeing. The PMO was quite insistent that the rule be observed in the beginning of the government’s mandate, but afterward it was not consistently followed... One trick savoured by some of the ministers was to mention, en passant, to the Prime Minister after question period, for instance, that he had appointed his chief of staff. That was one way to circumvent the system...<sup>64</sup>

While perhaps not as respected in practise to the extent that was intended, M. Roy defends the need for some central control by the PMO over ministerial appointments. “The PMO had good reason to set that rule: to be able to exchange our mutual views about the appointment of individuals and to give our opinion about them. It was a question of central coordination. ... We also wanted to avoid situations where the minister would hire someone only because he felt politically indebted. This type of situation is fairly common.”<sup>65</sup>

Several Liberal observers seem to echo M. Roy's sentiments, recalling the number of Ministers on their side of the House who have felt obliged to hire their former campaign managers as their EAs out of a sense of loyalty and political obligation. When these party workers arrive from the constituency, they inevitably find themselves in well over their heads, leading to unhappy outcomes for both the EA and the Minister. Tony Macerollo, EA to former Industry Minister John Manley, recalls that at the beginning of the Chrétien regime, the PMO tried to exert some control on the appointment of senior personnel, with a dual veto system imposed on the appointment of EAs and held jointly by the Minister and the PMO. In his opinion, the system worked well in that, by and large, no big mistakes were made. The only Minister to resign in that first mandate was Michel Dupuis, the Minister of Canadian Heritage. His EA was the first one to go, Macerollo remembers, escorted out of the building by security under mysterious circumstances sometime around 1994.<sup>66</sup>

The Chrétien regime also saw the return of some Trudeau era staffers after a hiatus of a decade or more out of office. According to Macerollo, many of them struggled with the job and most lasted only a year or two. His observation was that the culture on the Hill had changed too dramatically for their comfort. There was a new openness and transparency in government that these Trudeau era veterans were unused to and included the *Access to Information* legislation that had come into effect since they had last worked the Hill. Even the role of the beloved and much patronized Press Club had changed. It came as a surprise to them that “nobody went there to drink and leak stuff to the press any more”.

### 3.3

#### Letting Go

If the hiring of exempt staff appears as a generally subjective and unregulated practise, the formal provision for the termination of their employment is equally brief: *The Public Service Employment Act* states:

39(2) A person who is employed in the office of a Minister ceases to be so employed thirty days after the person holding the position of such Minister ceases to hold that position.<sup>67</sup>

As this section clearly suggests, whatever the benefits there may be in serving in a Minister's office, job security is not among them. The jobs of ministerial staff can evaporate overnight should their Minister be shuffled out of the Cabinet or lose their seat in a federal election or by-election. What the Act fails to make clear however, is that the discretion given to Ministers in hiring also means that exempt staff can be fired at any time, with or without cause. Should staff members feel that they have been wrongly dismissed, there exists no appeal process, nor is there a union behind them to take up their cause. Ron Hallman, a former EA in the Chrétien administration, argues that any exemptions or privileges that ministerial staff might enjoy are more than outweighed by the employment rights and job security they forego when they accept these political positions. "A Minister's staff can be fired completely without cause at any time", he says, "nowhere else in the country can you do that."

While some Ministers have been notorious for firing staff as a result of a bad day in Question Period and other staff have been shown the door for such offences as padding expenses or sexual harassment, more commonly it is political misfortune—an electoral defeat or, more rarely, the resignation or defection of a Minister—that accounts for a premature departure. Whatever the circumstances, Ministers have the authority to pay the departing staff member a severance package equivalent to up to six months pay. Particularly in the case of electoral defeat, Ministers will often use their contacts and influence to ensure that their personal staff members all have a soft landing into appropriate positions elsewhere. While the increased size of today's staffs may make this convention more difficult to respect than in years gone by, it is still considered a reasonable expectation for the Minister's closest allies in

return for the long hours and personal loyalty that has been rendered the incumbent during their days in power.

### 3.4

#### Role and Attributes of Ministerial Staff

PCO's *Governing Responsibly: A Guide for Ministers and Ministers of State* (2004) describes the role of the Minister's office as follows:

The purpose of establishing a Minister's office 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. Consequently, they contribute a particular expertise or point of view that the Public Service cannot provide.<sup>68</sup>

This PCO directive makes it clear that ministerial staff members are hired, first and foremost, for their political acumen. Since the 1960s, where the EA carried out a wide diversity of functions related to "advice and support" primarily by himself, the scope and range of these political duties have expanded considerably resulting in a larger, more specialized and hierarchical office structure. The ministerial office of today contains a Chief of Staff and Directors of Policy, Communications and Legislative Affairs respectively, each supported by one or more Specials Assistants, several Regional Assistants, and a Constituency Assistant housed in the riding.

Treasury Board, in its own *Guidelines for Ministers' Offices*, has developed an outline of duties attached to each of these positions. For example, it has determined that the Chief of Staff (EX-04):

- Is the most senior political advisor to the minister;
- Is responsible for the overall management of the minister's office, including managing the office budget and staff;



- Is responsible for developing and implementing strategic plans in order to assist in delivering the Department's and Minister's mandate;
- Is responsible, on behalf of the Minister, for liaising with Senior Departmental Officials in order to ensure a positive working relationship between the Minister and the public service;
- Must ensure that the Minister is properly briefed and advised on all issues that relate to the Government's mandate and the Department's objectives; and,
- Must liaise, on behalf of the Minister, with the Prime Minister's Office and other Ministers' Chiefs of Staff in order to address government-wide issues.<sup>69</sup>

Similar descriptions can be found for each Director and Special Assistant position. Within the context of their disciplines, each is directed to "advise and brief the Minister...consult with PMO...cooperate with other Ministerial offices" and, of course, "liaise with senior department officials".

It is interesting to note that there is no explicit expectation or suggestion in the Treasury Board directive that contact between the ministerial staff and the department be conducted primarily through the Deputy Minister, as is suggested by the Privy Council guidelines. Whether this omission was intentional, accepting that contact with public servants would flow naturally from these prescribed functions at whatever level of contact was the most appropriate, or was omitted simply as being understood to occur through the Deputy Minister in deference to the Privy Council directive, is unclear. In day-to-day practice, this question may be moot. Discussions with former exempt staff regarding the utility of these profiles seem to indicate that as a point of reference, the Treasury Board descriptions, while perhaps useful as a general guideline to the structure of a Minister's office, were given only cursory attention, if any at all, by Ministers and their staff. Nonetheless, in

instances such as the Sponsorship Inquiry, where the determination of wrongdoing requires the existence of a consistent set of rules and conventions against which to judge the propriety and regularity of any actions taken by ministerial staff in their relations with public servants, and given the economy of formal direction that exists on this subject, it would be advantageous if Treasury Board could spell out its guidance on this matter so as not to, by inference, create any confusion in the message being sent to the practitioners.

With the ever-increasing demands on the time and energies of members of the Cabinet, there is no question that the existence of political staff makes life for a Minister bearable. “The ministerial staff is essential,” says Arthur Kroeger. “The Minister is an institution with various activities and responsibilities. You can’t go running to the Minister with every issue, so there is a need for the staff to act as proxy.” The Honourable John Crosbie describes the pressure put on a Minister as “unbelievable. You spend about 32 hours a week sitting on your arse in Cabinet or Committee meetings, Question Period and other types of meetings. You couldn’t be everywhere so you need able assistants.”<sup>70</sup> He cites the staff’s primary obligation and a Minister’s first concern as the need to know of anything that might be happening in Parliament or the riding that could affect either the Minister’s or the government’s chances of re-election.

This overriding exigency, reminiscent of the ageless axiom that a democratic government’s first priority is to get re-elected, is, for better or worse, what motivates ministerial staff to do much of what they do. They must view the machinations of 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 PMO and PCO and above all, protect their Minister and government from any action or issue that might adversely affect their chances of re-election.

Evidence suggests that ministerial staff carry out these functions with a wide range of competencies, egos, ignorance, ineptitude and talent. Each office and administration forges its own unique culture, rivalries, alliances and “personality”. The range of amateurism to professionalism varies widely, and despite the many revisions in titles and salaries of exempt staff over the past few decades, the consensus appears to be that not much has changed in terms of their behaviour. Most peg the ratio of “good” staff to “bad” at about 50:50 or at best 60:40. Many reflected Arthur Kroeger’s sentiment that, “when you get good ministerial staff, they are jewels,” but all had seen many instances where ministerial staff had, both individually and collectively, acted badly, and sometimes, corruptly. Almost all sources identified the importance of having the Minister and Chief of Staff set an appropriate tone in the office, although many admitted this leadership was, in many cases, sorely lacking. As former DM Harry Swain explained, “Education and leadership are essential. If the Minister or PMO assert the eternal verities and are clear in their expectations in terms of output and process, and if that is reinforced by the department and deputy, if they correct when things go astray and make rules that are easily amenable to a modest amount of direction, then it is not a system that is easily broken. . .”

What is the character profile of the ideal ministerial assistant? While the answer to this question may vary according to the personality and responsibilities of the Minister, there are a few qualities in ministerial aides that have been identified as being universally desirable. “What you really want in ministerial staff is judgement,” says Arthur Kroeger. “Judgement is like electricity. It’s hard to define but very evident when it fails. Good judgement is key.” Another former bureaucrat pointed to “energy, intelligence, discretion, recognition of the constitutional roles that folks play and a willingness to play by the rules. . . the suppression of their own ego to let the Minister shine. . . There are some very good individuals; others are venal, incompetent and dishonest.” Former EA,

Ron Hallman, recalls advice from Alex Himmelfarb, the Clerk of the Privy Council, that served him well during his time on the Hill. The key, according to Himmelfarb, was for staff to provide “fearless advice and loyal implementation.” The need for loyalty in staff members goes without saying, but former Chiefs of Staff also point to confidence and courage as two necessary attributes. Situations often arise where the best advice is to tell the Minister or the PMO that “no, that is not possible.” In the absence of those qualities, advisors are not likely to have the fortitude to stand up to their political masters. By contrast, “excitability” in these roles was never perceived as an asset. In its annual survey of top ministerial aids entitled, “Terrific Twenty-five Staffers on the Hill”, *The Hill Times* identifies knowledge, influence, and discretion as being among the most valued attributes of exempt staff, along with competence in “spin control” and access.<sup>71</sup>

Almost without exception, those interviewed for this study felt that there was a direct correlation between the strength of a Minister and the strength of his or her staff. Almost inevitably, I was told, if the Minister is unsure of his or her objectives within the department, has no sense of direction or judgement and is fearful of making decisions—if he or she, as one former EA put it, “goes into a crouch and becomes defensive in front of intelligent people,” then it bodes badly for the calibre of his or her staff. These Ministers inevitably surround themselves with individuals who are weak, unfocused and egotistical. Their staff tend to be demanding and rude, yelling at officials and being overly assertive in their dealings with the bureaucracy. Officials characterized these advisors as “Hitler Youth,” “pit bulls” and “bullies,” with the blame for their poor behaviour squarely directed at the weakness and lack of leadership among their Chiefs of Staff or Ministers. Rarely, it seems, will an incompetent Minister agree to take on a strong and experienced Chief of Staff. “I have an informal rule for this;” said one former Deputy Minister, “first-rate Ministers have first-rate Chiefs of Staff and second-

rate Ministers have fourth-rate Chiefs of Staff...<sup>72</sup> A less common but still occasionally apparent situation is where the Minister becomes distrustful, antagonistic or estranged from his or her own political advisors. Such situations can become so poisonous as to make the Minister's office almost completely dysfunctional and usually call for the intervention of the PMO to try to contain the damage. Occasionally, as one former Deputy recounts, the PMO itself can itself create an atmosphere of distrust within the ministerial office:

If you are in a department where the minister mistrusts the chief of staff because the chief of staff was given the mandate to control the minister and was appointed by the Prime Minister's Office, the whole thing could be dangerous. I experienced this type of situation and had to defend a minister against his chief of staff.<sup>73</sup>

In addition to any discord that may on occasion arise between the Minister and staff, some ministerial offices degenerate into factions, with dissention arising over personal loyalties or jealousies, linguistic or philosophical differences and ethics. The competing pressures of political expediency and government regularity can often result in significant moral dilemmas for political staff, many of whom are too young and inexperienced to deal appropriately with this level of ethical crisis. Incidents can range in scope from low level corruption, such as the submission of false or "padded" expense claims and the inappropriate use of the signature machine, to staff being asked to look the other way, or direct public servants to do so, with regard to important politically-charged matters, such as immigration certificates and program funding, as recent events can attest. In his report on the conflict of interest allegations in 2005 levelled at former Immigration Minister Judy Sgro, Ethics Commissioner Brian Shapiro identified the discord apparent in the Minister's office as being one of the key factors in the breakdown of regularity in the allocation of Ministerial certificates. Writes Shapiro:

... there were serious tensions among the members of the Minister's staff. It appears—the evidence is not entirely clear—that there were two “camps”: staff perceived to be associated with Ian Laird, then Chief of Staff to the Minister, and those who were more closely identified with Ihor Wons, one of the Minister's policy advisors, who was on a leave of absence during the election campaign itself. These tensions certainly pre-dated the campaign, but their consequence during the campaign was a staff divided and not inclined, therefore, to be either as cooperative with each other or as helpful to and careful of the Minister as they might otherwise have been. The decision made following the campaign to dismiss virtually the entire staff speaks volumes as to what must have been occurring in the previous weeks and months.

As a cautionary tale writ large, there can be no better example than the “Sgro Affair” to illustrate the dynamics of a ministerial office gone wrong. As this incident clearly illustrates, the integrity, honesty, and professionalism of the Minister, Chief of Staff and senior advisors play a significant role in setting the appropriate approach and level of professionalism. Some staff succeed beautifully, others seem to revel in “controlling the cookie jar” to the detriment of both the principles of good governance and their Minister's political fortunes.

### 3.5

#### Dancing with the Little Darlings: Bureaucratic/Exempt Staff Relations

It quickly became apparent during my research that when it comes to determining the tenor of bureaucratic/exempt staff relationships, there are clearly no absolutes. The day-to-day reality of ministerial-departmental interface seems to fall somewhere on a broad continuum between a well choreographed “pas-à-deux” and two ferrets fighting in a bag. Some Minister's offices have good relations with their department, some have not; some Deputy Ministers and Chiefs of

Staff share a mutual respect, some do not; some offices recognize and abide by the conventions meant to govern the bureaucratic/political relationship, and some do not. The origins of this variability are both institutional and historic, and despite decades of practical experience and ongoing tinkering with titles, the fundamental dynamic between the two sides appears to have changed very little over time. “There is always an inherent tension between a Minister’s office and the department,” says Arthur Kroeger. “The stereotype of the relationship between the ministerial staff and the department is not far off: the departmental staff see the ministerial aids as energetic and ambitious in a job that exceeds their judgement, experience and manners; staff sees the bureaucracy as old, plodding and obstructionist.”<sup>74</sup>

There are also institutional imperatives that influence this exempt staff/departmental dynamic. Professor C.E.S. Frank’s observations on this subject point to the inherent and often conflicting imperatives that drive the bureaucratic versus the political persona as being a primary determinant of this relationship:

The interests and concerns of ministers and the staff of ministers’ offices are not necessarily the same as those of the public service. The public service is, or ought to be, concerned with propriety and regularity, with the need to observe rules, and to operate within the statutes that form the legal framework for program and financial administration. Ministers’ office staff are concerned with responding to day-to-day pressures, which are often of an idiosyncratic and individualistic nature. Rules can be less important than observed needs and wants to those operating in the political rather than the bureaucratic realm.<sup>75</sup>

Viewed from this perspective, the clash of values, pressures and cultures—rigid and structured on the one hand, immediate and politically driven on the other—provide the perfect context for a

dynamic and volatile relationship. Add to that theoretical background the personal chemistry and ideological predispositions of the individuals involved, particularly the Minister, Deputy Minister, and Chief of Staff, and one begins to see an endless set of possible combinations and permeations within that dynamic. As a rule however, if the working relationship among these three is cordial, mutually supportive, respectful and complicit, any problems emerging further down the pecking order can be addressed and corrected with relative ease. If not, the fireworks begin.

Not surprisingly, the greatest tensions between the department and ministerial staff often arise at the start of a new administration. As former DM Harry Swain explains:

It is normal for a new government to be highly suspicious of the civil service—the first six months can be tough. There is a lack of trust from the political side and the civil service has to work harder to demonstrate their loyalty to the government of the day. . . . David Dingwall’s conversation with Guité where he said ‘you didn’t rat on them, you likely won’t rat on us’ recognizes one of the basic values of civil service: loyalty to the current administration. It means they do not share notes from the previous administration with the new government. It means the PCO note takers and those that do the MCs (Memoranda to Cabinet) are always in possession of information that is not available to the new government.

At the dawn of a new administration, there is also the intoxicating afterglow of political victory still burning in the veins of many newly appointed staffers. Inevitably, they arrive in Ottawa with an idealistic and sometimes overwhelming sense of mission and purpose as well as an often disproportionate sense of entitlement and omnipotence vis-à-vis the public service. A former Deputy Minister recalls the advent of one new administration “...there was a kind of illusion among political staff that they were very powerful, that they had come to save the nation and the government. With the passing of time, all that



diminished...” And indeed, reality appears to temper even the most ardent crusaders.<sup>76</sup> According to Hugh Segal, former Chief of Staff to Prime Minister Mulroney, “you have about three months to decide if you are going to work with the public service or against them, and if you decide to work against them, they will kill you... you must bring the public service on side (at the start)... In a four year electoral cycle, you don’t have enough time to turn them around.” Segal identifies the role of the departmental assistants, those assigned to the Minister’s office by the department and selected with great care and judgement by the deputy minister, as key to bridging the divide between the department and the ministerial staff, especially in the early, precarious days of a new administration. “They know how all the internal systems operate—if you have an interesting idea they will say, ‘that’s great’ but here are three statutory reasons why you can’t do it that way. Now here’s how we can do it honourably.”<sup>77</sup>

To this day, the role of ministerial staff in policy development continues to be the burr in the saddle of political/bureaucratic relations. Despite decades of discussion surrounding the legitimate role of political advisors in the policy process, the old ideological chasm remains as intransigent as it was in the debate between Mallory and Tellier. Witness the comment of one former Deputy Minister:

The role of the ministerial assistant should centre around the relationship with the caucus, the constituency and the Minister’s personal schedule; when they stick to that kind of knitting there is no problem. The difficulties arise when they start to act like Leo the 10<sup>th</sup>, “God has given us the papacy, now let us enjoy it.” They want to be policy hounds and think they know all about it, and usually the intellectual apparatus is an ideological disposition—Christian, free market, union—and on that basis, they try to influence departmental policy. Not with the Deputy Minister—they’d get their head bitten off. They try to find and cultivate mid to low level civil servants and start getting backstairs routes to information and influence.

This perspective stands in stark contrast to the policy role defined for these advisors in the Treasury Board Secretariat's guidelines. According to the government, a senior policy advisor:

- is responsible, in collaboration with the Department, for overseeing policy development on behalf of the Minister;
- is also responsible for advising and briefing the Minister on all relevant policy issues;
- needs to work closely with the Prime Minister's Office and other Ministers offices in order to coordinate the development of policies and programs within the Government;
- must ensure that policy development within the Minister's responsibilities are consistent with the broad policy goals of the Government, as laid out in key documents such as the Speech from the Throne and the Budget; and,
- should work closely with key stakeholders in order to inform and/or consult on important policy initiatives within the Minister's purview.<sup>78</sup>

Clearly from this description, Treasury Board perceives policy development to be a collaborative responsibility, with the Minister's office taking an active, if not principal role in the process. As Donald Savoie observed in *Breaking the Bargain*, this engagement of ministerial staff in the policy process is far from a new development. "From the early 1980s on, most politicians have made it clear, time and again, that they want doers and fixers in government, not thinkers, and that they and their partisan advisors would deal with policy."<sup>79</sup> It is however apparent that, to some degree, this perspective continues to hit a bureaucratic blind spot. 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, if not dangerous, consequences for the Canadian public.

This ideological divide is not the only institutional obstacle to smooth relations between political staff and the bureaucracy. As was noted earlier by J. R. Mallory, significant disparities in age, education, level of experience and technical expertise between ministerial staff and departmental personnel can result in an uneven and sometimes rancorous relationship. The impact of this disparity is exacerbated by the simple fact that it is the younger, often less experienced, political advisors who come to the process bearing the weight of ministerial authority and who, despite their often lesser qualifications, are in a position to exert greater influence by virtue of their proximity and access to the Minister. In other words, the ministerial aides are seen to wield a level of influence over policy that is inversely proportional to their qualifications and abilities. Like a symphony orchestra forced to follow the baton of an amateur conductor, the public servants I spoke too appeared intensely resentful of this uneven relationship. Interestingly, the most virulent comments tended to arise from those lowest in the departmental policy hierarchy where, unlike the Deputy Minister or other senior officials, the opportunity to circumvent the ministerial staff and communicate directly with the political level on policy initiatives was largely beyond their reach. I was told of meetings convened with no other purpose than to determine a strategy to circumvent the ignorance of the ministerial staff and ensure departmental policy or proposals rose to the top largely unadulterated. While here I must caution that this resentment and inequity in age, expertise and experience between departmental and political policy advisors was not universal, it did nonetheless emerge as a recurrent theme in discussions of ministerial staff/departmental relations.

That is not to say that public servants today do not recognize some value in the presence of political staff. The doctrine of political neutrality dictates that departments do not include political considerations in their briefs to Ministers. Should a policy issue become the focus of a political maelstrom, the ministerial staff now provide a welcome layer of asbestos

between departmental officials and the flames of that controversy. As Donald Savoie points out:

The presence of ministerial staff is more tolerated in government operations than it was twenty-five years ago. *Access to Information* legislation and the media have made government operations and programs more sensitive to politics and political direction. . . . they (public servants) agree that matters that have become issues of partisan controversy are not appropriate for formal briefings and they welcome any opportunity to isolate themselves from the partisan political process. In any event, in many instances it is better for them to have exempt staffers brief the PMO than to do it themselves.<sup>80</sup>

Indeed, if a messenger need be shot, the public service seems only too willing to serve up the Minister's staff and avoid the fallout of both the Minister's wrath and the media scrutiny.

Essential to this exercise of discerning which side, political or bureaucratic, speaks to what, however, is some common definition shared between the Minister's office and the department as to what exactly constitutes the "political". At first blush, such a delineation would appear to be obvious. In practice apparently, this is not always the case. Former EA Tony Macerollo emphasized the need and value of Chiefs of Staff and Deputies arriving at some common understanding of where this line should be drawn. Simple assumptions of what each side expects to fall on either side of the line cannot be made. Like good fences and good neighbours, a clear delineation of the turf at the outset of a mandate can make for a more harmonious and cordial political-bureaucratic relationship and provide a necessary and critical point of reference should either side begin to transgress the boundaries. In the absence of such a common understanding, important items can "fall between the cracks" when a crisis hits.

When the system works, it can be a thing of beauty. One former official at PCO offered the following simple, hypothetical example of how the “marriage” of departmental and political advice might work in harmony to create a viable and politically sensitive outcome: the Department of National Defence comes forward with a suggestion that much needed financial resources could be found by closing the Goose Bay military base in Labrador, their analysis having indicated that it currently makes no fiscal or operational sense to keep it open. The political staff say, “Wait! That will throw 20,000 people out of work in an already depressed area. We appreciate the revenue it would release, but we would never get our member re-elected in that region if this were to go forward.” In the ensuing discussions, a consensus is reached by both sides and ratified by the Minister not to close the base until an alternative source of employment can be found to replace the anticipated job loss. The decision recognizes the futility of keeping the base open but prevents the potentially disastrous political fallout of a sudden announcement.<sup>81</sup> Likewise, political staff can play an important role in informing the Minister on matters such as the level of support that is needed on key parliamentary committees to push through a recommended departmental action, if the public opinion polls are running against it, or if it conflicts with any other government priorities or programs. They can liaise with the offices of other Ministers who might be implicated by the action and ensure that both PMO and PCO are supportive. Chiefs of Staff repeatedly pointed out the need for senior political staff to be able to “marry” the departmental advice with the political in order to provide their Ministers with recommendations for action that respond appropriately to both. If this can be accomplished through a waltz rather than a war, so much the better.

### 3.6

#### Thou Shalt Not Give “Direction”

The principle governing the relationship between ministerial staff and public servants is very clearly, if somewhat cryptically, spelled out in the PCO document, *Governing Responsibly: A Guide for Ministers and Minister of State (2004)*. In that document, the PCO states that, “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.”<sup>82</sup> Similar instruction to the bureaucracy appears in the Deputy Minister’s guide prepared by the same office.

While a masterpiece of succinctness and simplicity, this statement appears surprisingly minimalist given the complex and diverse range of relationships and circumstances it is meant to govern. It, in effect, casts the ministerial advisor in somewhat of the role of “glorified messenger” between the Minister and the department, a two-way conduit of information and instruction devoid of authority, personality or influence in its own right. It offers no distinction in the tenor of ministerial staff authority vis-à-vis the department whether it be the Chief of Staff or the most junior special assistant, but then again, how could it advise otherwise? In its determination of the appropriate boundaries of the exempt staff direction, the PCO has no point of constitutional or theoretical reference. It has therefore come to the very logical conclusion that ministerial staff, having no direct constitutional authority with regard to the public service, can wield none.

How this edict plays out in practise is another matter. Can it be workable? Is it respected? On the basis of my research, I was tempted to report the answer to be a resounding “no,” but upon further consultation, the more accurate response appears to be far more complicated than that. One has only to broach the subject with public

servants to be plied with anecdote after anecdote that reveal examples, large and small, where ministerial staff have, on their own authority, given instruction to the department. These range from relatively minor instances where changes were ordered to the wording of a document, to demands for revisions to a funding formula negotiated by public servants with the provinces, to, as evidence at the Sponsorship Inquiry suggests, direct “input” into the selection of recipients for the government’s largesse. One official recounted that when a former ministerial aide joined her departmental staff, she had to continually coach her on how to work with people. “She was just so used to telling people what she wanted and expecting it to happen,” said the official.

Such abuse of the rules is not always the case. In fact, in many well-run offices, Minister’s directions are recorded at meetings, along with the name of the aide tasked with their delivery, and the action tracked thereafter. Some offices have policies in place that ensure that any information requested by political staff from the department must be returned to the office in the form of a memo addressed to the Minister with the name of the aide who made the request on it. The Chief of Staff or senior advisors will review the departmental memos and either redirect them to the appropriate aides or forward them to the Minister’s attention. In this way any frivolous, spurious or inappropriate requests of the department are discouraged or quickly detected. Such professionalism serves as an exemplary counterpoint to the offices where Ministerial staff are “all over the department,” but it is difficult to determine just how many offices enforce such strict discipline. The bulk of conversations seem to suggest that many ministerial staff seem to adopt a fairly liberal interpretation of the rule, sometimes through practical necessity, sometimes based on a close trust relationship and understanding of the Minister’s political agenda and the “direction” that would naturally flow from that, other times out of an overly generous interpretation of their role as “proxy”. One former Special Assistant

admitted that he and his colleagues were pretty loose with the term, “the Minister wants,” when it came to their dealings with the department and that, in many cases, only the broad strokes behind such instruction had been issued by the Minister.<sup>83</sup> In this, as with many other matters within the ministerial office, the personality and managerial capacity of the Minister and Chief of Staff, as well as their own understanding and respect for this political/departmental convention, play a significant role in the degree to which “direction” is, or is not, given.

The complicity of the department can also play into this equation. Both parties must be privy to the transgression to allow the convention to be broken. While Deputy Ministers and other senior officials I spoke to seemed to be quite resilient to any inappropriate “suggestions” or directions from ministerial staff, many lower level public servants felt it was rarely in their professional interest to ignore the input of the ministerial office. In fact, semantics seem to play a leading role in the theatre of ministerial staff direction. As testimony at the Sponsorship Inquiry clearly demonstrated, ministerial staff does not need to issue explicit orders for departments to understand their intentions. Repeatedly, Jean Marc Bard, Chief of Staff to former Minister Alfonso Gagliano, argued that he and his staff had never offered more than “suggestions” to departmental personnel over the choice of sponsorship events or advertising agencies. Mme Huguette Tremblay, the official in Mr. Guité’s office on the receiving end of these “suggestions”, testified that she never viewed these as anything other than directives. Hence both parties were privy to the deception, a wink-nod relationship that allows the ministerial staff to protest their adherence to the letter of the “no direction” guideline, while “sinning in their hearts” against the spirit of the protocol.

While it may seem naïve to think that ministerial staff “input” to the department would ever be taken as anything other than “excellent advice” by department officials, there are others who contend that under normal circumstances, in its day-to-day interactions, the



bureaucracy is not so easily compromised. “Hogwash,” said one former EA when asked if bureaucrats feel obliged to follow ministerial staff direction. In this former staffer’s opinion, the PCO guideline provides clear instruction to departments that they do not need to take direction from ministerial staff. Bureaucrats, he said, have to get over their fear of saying “no” and any perceived “loss of face” that might result from such a refusal. The system can only work, he suggests, if rules such as this are respected and everybody operates in a spirit of transparency. In one of the more astute observations that I was offered during the course of my interviews, this former Chrétien-era EA explained what he felt was the basis for much of the departmental complicity. “Sometimes,” he said, “bullies win not because they can beat you up, but because they sound like they can beat you up.”

### 3.7

#### Is Direction Needed?

While opinions may be divided on what amount of ongoing ministerial staff/departmental interaction constitutes “direction”, there is nonetheless a practical case that must be explored in defence of that practice. If we are to accept that a Minister’s time is limited and must be reserved for only the most important and significant meetings and decisions, and that it is essential to the timely and efficient workings of government that Ministerial aides, especially the Chiefs of Staff and directors, serve, in effect, as “proxies” for the Minister, then it must be assumed that there will be decisions at a micro-management level that must be taken by those proxies and that those proxies do, *de facto*, have the authority, in the Minister’s name, to make them. It is both impractical and impossible that every issue that arises from the department be taken to the Minister. Such an imperative would grind the machinery of government to a halt and tax the energy and ability of even the most robust minister beyond endurance. The ministerial staff therefore becomes the end point for all but the most important decisions. By definition, some degree of “direction” would flow from there.

This necessity appears self-evident to many who have served in that system. Citing a Minister's regular absences on government business and often lack of availability to deal with urgent matters, former EA, Fred Drummie, pointed to the practical need for public servants to recognize that, "any decision taken by the Chief of Staff is the same as a decision taken by the Minister. The Chief of Staff is the Minister's alter ego and that must be understood". Micheline Plasse's study of Chiefs of Staff in 1990 seems to have drawn a similar conclusion: "...the chiefs of staff seem to be an extension of their respective ministers rather than entities distinct from their ministers..."<sup>84</sup> There is however, a degree of subjectivity that must be exercised when determining the degree of authority that Chiefs or other ministerial staff can legitimately wield. To exercise this proxy effectively, the staff member must have—and be seen to have—the complete confidence of the Minister. They in turn, to the best of their ability, must ensure that their decisions accurately reflect the intentions of both the Minister and government. Should they not and that confidence be lost or the delegated authority abused, then dismissal of the exempt staff member serves as the ultimate consequence.

Unfortunately, it is in the realm of accountability that this very practical "proxy" approach to governance from the ministerial office hits a glitch. The Privy Council guide clearly states, "Ministers are personally responsible for the conduct and operation of their office."<sup>85</sup> While ministerial staff operates in the above scenario as "proxy" for the Minister under an assumed authority from the Minister, Ministers cannot legally transfer their authority except through legislation. Any authority exercised by ministerial staff is therefore presumed rather than real. It follows logically that in the event of wrongdoing arising out of ministerial staff direction, Parliament would hold the Minister directly accountable. This works effectively as long as Ministers are willing to accept this as legitimate. As several incidents that will be explored later in this study have indicated, Ministers appear to feel no such obligation.

The result is that the ministerial office has become a sinkhole of accountability. The dismissal of the guilty staffer does nothing to satisfy the constitutional requirement to legally hold some party under its jurisdiction to account. It is an issue with significant implications, as several aspects of the Sponsorship Inquiry have indicated and, given the existing and growing power of Chiefs of Staff and the PMO, might be worthy of an investigation beyond the scope possible within this study.

### 3.8

#### “Normally” through the Deputy Minister

The Privy Council guideline regarding exempt staff/departmental interaction states that ministerial staff’s requests for information or the delivery of instructions should take place “normally through the Deputy Minister”. While the evidence suggests that in a well run department, the Deputy Minister and senior officials are “kept in the loop” by subordinates when their energies are being engaged or directed by the Minister’s office, here again the PCO guideline appears to be honoured more in the breach than in the practice. In his testimony before the Sponsorship Inquiry, the current Clerk of the Privy Council, Alex Himmelfarb, seems to reflect the general acceptance and legitimacy of this broader range of interactions, in spite of the fact that it contradicts the spirit of his department’s own directive. “There is a huge amount of flexibility in our system about who interacts with whom,” testified Mr. Himmelfarb, “and we don’t have walls to stop it. In fact, in many cases it is encouraged for logistical reasons, for other reasons...”<sup>86</sup>

The “other reasons” most often cited for this hierarchical bypass are expediency, efficiency and geography. Given the often crisis-driven tempo of a Minister’s office, the need for information and the delivery of instruction from the Minister’s office often occur in an atmosphere of urgency. Staff, spurred on by the aura of impending political crisis or a Minister’s order to “get it done!”, pick up the phone and contact the

appropriate official directly. Other direct contact evolves quite naturally. Ministerial advisors often participate in interdepartmental or departmental meetings. Personal contacts are made and working relationships established. Staff involved in meetings or events outside the capital will inevitably come into contact with regional members of the department. Here too, professional relationships are established and continue once the advisor has returned to Ottawa. From a purely practical perspective, even on the best of days, the time and energy that would be required to sanction each of these numerous contacts through the Deputy Minister, as suggested by the PCO guideline, would all but paralyze the system. Being impractical, it is largely ignored. For the most part, these “below stairs” relationships are constructive, efficient and—assuming the departmental officials keep superiors apprised of any major developments, concerns or demands—innocuous. As long as all sides stick to their respective roles, the system, by and large, bumps along with an acceptable degree of efficacy, efficiency and propriety.

Except, of course, when it doesn't. As testimony at the Sponsorship Inquiry suggests, some of these direct relationships between officials and political staff can result in events veering precariously off the path of propriety. The existence of direct bureaucratic-political alliances such as developed between Chuck Guité, the Minister's office and the PMO can result, either by design or default, in there being only cursory involvement by the Deputy Minister and effectively removes one of the crucial “checks” in the system. When a forensic analysis of events ensues, the existence of these diverse channels of communication can significantly blur the lines of blame and accountability. It can result in those responsible for ensuring the propriety and regularity of the system, specifically the Deputy Minister under the *Financial Administration Act* and the *Public Service Employment Act*, either being unaware of what is going on or stepping back and deferring to the political level.

The testimony of Ranald Quail, the Deputy Minister of Public Works

and Government Services at the time of irregularities in the Sponsorship Program, suggests just such a deferral. Mr. Quail, who should have, by convention, been highly uncomfortable with internal audit reports that suggested a disturbing amount of irregularity in the administration of the Sponsorship Program, a program he was aware was being managed with a great deal of political “input” and of priority and interest to the PMO, stated that he never informed the Clerk or sought his advice with regard to this file. The PCO document, *Guidance for Deputy Ministers*, makes it very clear as to the appropriate course of action open to a Deputy Minister in the event of such concerns:

...If a disagreement affecting the operations of the department cannot be resolved between the Minister and the Deputy Minister, the Deputy Minister will want to discuss the matter with the Clerk of the Privy Council.

A Minister may also choose to discuss a concern with the Clerk of the Privy Council before seeking the consideration of the Prime Minister. Ultimately a matter which results in an apparently irreconcilable difference becomes a matter for resolution by the Prime Minister, with advice from the Clerk. Deputy Ministers should also consult the Clerk in cases where problems have occurred in the management of the department or the Minister's portfolio, and which may have an impact on the Ministry's ability as a collectivity to maintain the confidence of the House of Commons and move forward its legislative or policy agenda. In such instances, the Deputy Minister may also want to consult the Secretary of the Treasury Board.<sup>87</sup>

While this convention could not be articulated more clearly in the guidelines, in practice it may be assumed, especially with regard to highly political files, that Deputy Ministers might rather seek advice from more politically-informed sources, that is to say, senior members of the

PMO. This would not be an unprecedented action. It is a commonly recognized and respected practice in Ottawa that Ministers regularly consult and seek the advice of senior members of the PMO, especially the Prime Minister's Chief of Staff, on any number of controversial or politically sensitive issues. This represents a logical and appropriate progression of consultation within the political branch of government. It does however raise the spectre of a similar line of consultation being pursued by senior departmental officials. If Ranald Quail did not take his concerns to the Clerk, was direction perhaps sought and received at the political level instead?

Regardless of what occurred in this instance, the possibility that exempt staff in the PMO might play an advisory role to Deputy Ministers in the event of concerns over departmental irregularities on politically sensitive files raises some troubling issues. The significance is twofold: first, it suggests a by-pass of the Clerk, that is to say, it ignores the long-established convention that sees matters filter up through the bureaucracy from the Deputy Minister to the Clerk before they reach the senior executive level. In this hypothetical scenario, that political/bureaucratic interface would deviate from that path and "go political" at an earlier stage. The Clerk, in his prescribed role as Father Confessor to the Deputy Ministers, is effectively cut out of the loop. This departure from convention would represent a serious abrogation of the well-established lines of public service authority, but would not be a totally unreasonable option in the world of *realpolitik*. Secondly, this option would frustrate the normal lines of accountability. It would also obscure the lines of "blame-ability" and vest in the political staff a decision-making authority for which they, in their own right (unlike the Clerk or the Prime Minister) cannot be held politically or legally accountable. In such a scenario, if the Deputy seeks no further advice and the matter becomes the subject of a scandal, it is the Deputy, not the PMO staffer to whom he turned, who would be held ultimately

responsible. Such would not be the case were the Clerk or the Prime Minister consulted.

### 3.9

#### Indirect Direction and Other Forms of Folly

In addition to any explicit or euphemistic “direction” that exempt staff may give to department officials, public servants point to a number of mechanisms that allow Minister’s staff to influence or control the activities of the department. Significant power can be exercised simply by their control of the timing and flow of information to the Minister. Decisions to delay, bury, promote or “reinterpret” information emanating from the department can all have a significant impact on policy outcomes. Unquestionably, some of the involvement of exempt staff models the theory and results in more politically astute and intellectually robust decisions and policy outcomes. The real danger, however, lies, according to one senior government official, when exempt staff allows political considerations to outweigh the science: “The Minister’s staff gets to interpret the information and content that the bureaucrats provide...Information filters up and back down and you wonder if it ever gets seen by the Minister. Stupid Ministers tend to have stupid staff and because they don’t want to be threatened (by the expertise of the public servants), major policy ends up being developed in an intellectual vacuum.”

The ability of a Minister’s staff, especially the Chief of Staff, to influence or “direct” the department simply through their access and proximity to the Minister cannot be discounted. They are the ones who decide which files warrant priority, triage memos from the department and choose which documents the minister will see; they provide briefings and advice prior to and following meetings and are there at the end of the day to sit for an informal chat or debrief the Minister on the latest political and departmental gossip. There is no question that the staff, and especially the Chief and senior directors, have the power and

opportunity to influence the Minister and that this, in turn, might impact on how departmental recommendations are received. The degree of competence and expertise with which they exercise these powers of selection, filtration and triage, and by extension, the direction of political or departmental affairs, can have a profound impact on policy outcomes. They can also lead to political disaster.

The incredible volume of information, e-mail, correspondence and memos arriving at a Minister's door or bubbling up from within the department requires that the exempt staff exercise a degree of discretion in the selection of which items should be brought to the Minister's attention. This "triage" has several objectives, the most obvious being that it reduces the volume of material that a Minister must read and attend to. Having separated the wheat from the chaff, those items of lesser importance can be redirected to members of the staff or department who might more appropriately address them, leaving only the most critical issues to be brought to the Minister's attention. Secondly, this practice "protects" the Minister from seeing information of a politically controversial nature and offers them the protection of "plausible deniability" should they be asked "when they knew" on the floor of the House of Commons. While a verbal briefing might alert a Minister to a potentially explosive situation, there would be no tangible proof in the records of the matter ever having been brought to his or her attention.

Obviously, the political judgement of the staff member undertaking this triage is critical to ensuring that the right items are either brought to the Minister's attention, or not. An example of the fallout, or perhaps effectiveness, of this practice was recently noted at the public inquiry headed by Justice Dennis O'Connor into the detention and alleged torture in a Syrian prison of Canadian Maher Arar. The Inquiry attempted to establish whether then-Foreign Affairs Minister Bill Graham was aware at the time that this imprisonment of a Canadian citizen in Syria might result in Mr. Arar being subject to torture. A newspaper account of the



testimony reveals that this information, although offered up by the department, never reached the Minister:

Mr. Pardy (the Director General of Consular Affairs) has also said he suspected that Mr. Arar was being tortured early in his detention and has testified he told officials in then-Foreign Affairs Minister Bill Graham's office. The news apparently did not make it to Mr. Graham or his senior policy advisor Robert Fry, both of whom have told the inquiry they had been unaware of possible torture at the time.<sup>88</sup>

Given the temper of the times and the fact that Mr. Arar was under suspicion by authorities at the Canadian Security Intelligence Service for having possible ties to the Islamic extremist group Al Qaeda, those in the Minister's office confronted with this unsettling information would face a difficult decision. Should the Minister be informed and advised to intervene in order to protect a Canadian citizen from torture? What if the Minister intervened and Mr. Arar did, in fact, turn out to have terrorist connections? Perhaps better to leave the Minister, at least in any traceable sense, ignorant of the matter rather than risk taking any action for which he might be held politically liable. Years later, the matter now the subject of a public inquiry, the Minister is quite comfortable in absolving himself of any blame or accountability for what was or was not done simply because the trail of information concerning Mr. Arar's torture ended before he received it. In hindsight, he can argue that had he known, he would have intervened, but without the necessary information, how could he have been expected to act?

This ability of Ministers to deny responsibility or accountability in matters where their staff either choose not to inform them as a strategically political protective measure, or where their advisors, through ignorance, incompetence or lack of judgement, fail to inform them because they did not recognize the significance of the information, raises important and serious questions about the current integrity of our

system of accountability. If Ministers cannot be held responsible or accountable for the actions (or inactions) of their staff, then who can be? As we have noted earlier, the minister's staff carry no constitutional accountability in their own right. If orphaned by their Minister in the face of controversy, this intermediary group of advisors becomes a quagmire in the due diligence process of government accountability, with the department on the one side arguing that they have fulfilled their moral and statutory responsibility by informing the minister's office of the matter and the minister on the other, arguing that he or she was not informed and therefore cannot be held accountable.

The use of this doctrine of "plausible deniability" as an effective strategy to avoid or deflect political fallout from a matter directly under a Minister's purview was wielded most effectively in the early days of the Mulroney administration during an incident known as the Al-Mashat affair. Briefly, Mohammed Al-Mashat was a former Iraqi ambassador to Washington and a familiar media spokesperson for his country during the lead up to the first Iraqi Gulf War. Very shortly after being recalled to Baghdad in 1991, he and his wife had entered Canada as landed immigrants in the retirement class. The ensuing public furor over the arrival of a man so closely tied to the Iraqi dictatorship raised a political maelstrom. The government responded by declaring that the immigration process for Mr. Al-Mashat had all taken place completely at an administrative level within Immigration and External Affairs and that Joe Clark, the Minister of External Affairs at the time, could not be held responsible for what was obviously a highly sensitive and political decision because he was not made aware of the application. The government held two individuals responsible for this administrative blunder: a high ranking senior official in External Affairs, Raymond Chrétien, and Mr. Clark's Chief of Staff, Mr. David Daubney. While several issues were raised vis-à-vis the government's deflection of responsibility for the matter on to a career official, thus circumventing the doctrine

of ministerial responsibility which holds a Minister responsible for all actions taken by his or her department, it is with the government's reaction to the role played by Mr. Clark's Chief of Staff that this paper is concerned.

In a nutshell, Mr. Daubney failed to inform his Minister of the matter. He argued that although Raymond Chrétien and the departmental assistant had in fact forwarded the information to his attention, they had failed to properly highlight the item with a marker, which was the signal that this item was worthy of special attention. Secondly, he reported that the policy review system that he had implemented in the Minister's office shortly after his arrival was designed to detect such important matters. For reasons he could not explain, the system was not followed. Further, he felt that even if he had seen the memo, it was unreasonable to expect him to know the name of every former Iraqi ambassador and that this was not his area of expertise (albeit if his Treasury Board job description is to be believed he was the Minister's top political advisor on issues of foreign affairs). As it turned out, Mr. Daubney had actually read the crucial memo but subsequently lost it.<sup>89</sup>

Sharon Sutherland, in her insightful examination of this matter, illustrates several issues of relevance to this current study. Firstly, she questions the validity of governments' and Ministers' use of the fallibility of the political staff and their "failure to inform" as an excuse to deflect their own responsibility or accountability. Secondly, she raises the issue of the appropriateness of the Standing Committees of Parliament to question officials, both departmental and ministerial, with regard to alleged wrongdoing as a substitute for ministerial answerability. She points out that in this purely political public forum, these officials and advisors have no standing and therefore no rights or protection. (Though political staff may be seen more rightly to be political, they too remain without rights or protection before a parliamentary committee.) And finally, she identifies the danger posed by the abdication of Ministers of their

direct responsibility and accountability for the actions or inactions of their staff. As has been noted earlier in this study, this statutory limbo in the face of this ministerial “dis-ownership”, while perhaps serving a political purpose with regard to the assessment of blame for wrongdoing, creates a serious conundrum of political and regulatory accountability. Concludes Sutherland:

Mr. Daubney’s testimony contains at least one very valuable lesson. It points out the intrinsic implausibility of the conception of the job of political aide as being both separable from the minister, yet still a political position... In a system of responsible government, either the chief of staff job must be fully owned by the minister as part of his or her own political personality, or it must be part of the administrative complement of merit or career officials. The chief of staff job cannot be a political force in its own right because there is no way to control the quality of performance.<sup>90</sup>

### 3.10

#### Code of Ethics and Other Oversight—Who’s Policing the Orphans?

While scandals such as Rivard and Al-Mashat represent very high profile incidents in the annals of exempt staff folly, such visibility with regard to ministerial staff wrongdoing tends to be the exception rather than the rule. More commonly, once errors of judgement, breaches of ethics or outright mischief are discovered, the guilty party is quietly reprimanded or if necessary, dismissed without further fanfare, an action that can be exercised, as we have earlier noted, at the Minister’s discretion. Many a potential scandal has been strategically avoided by such an abrupt termination, the complicit silence of the offending party (happy to have avoided either legal consequences or the political and media frenzy) and the ability of senior departmental officials to bury or undo the damage before journalists or opposition catch wind of the incident.<sup>91</sup>

More recently, standards of conduct for public office holders, including exempt staff, have been formalized by the Liberal government with the stated intention of providing an external, more transparent and objective mechanism for policing breaches in conflict of interest and other ethical transgressions. In 1994, the Chrétien administration introduced legislation under the *Parliament of Canada Act* (hereafter referred to as “the Act”) to create the position of “Ethics Counsellor” and upgraded the *Conflict of Interest and Post-Employment Code for Public Office Holders* (hereafter referred to as “the Code”) to fulfill the Prime Minister’s obligation under the Act to establish “ethical principles, rules and obligations for public office holders.”<sup>92</sup> The Code is not a statute; rather it was created, and can be amended at any time, by the executive power vested in the Prime Minister. It is nonetheless law, as was confirmed by a 2004 Supreme Court decision where the Court awarded standing and ruled on challenges filed against the then-serving Ethics Counsellor Harold Wilson by Democracy Watch, a Canadian public advocacy group concerned with corporate and government accountability.<sup>93</sup>

According to the Code, exempt staff members are explicitly identified as part of its constituency where it defines “public office holder” to include “a person, other than a public servant, who works on behalf of a Minister of the Crown or a Minister of State.”<sup>94</sup> The Code was amended and re-issued in 2003 and in May 2004, revisions to the *Parliament of Canada Act* came into force creating the position of “Ethics Commissioner” as a replacement for the much disparaged “Ethics Counsellor”. Later in October of that same year, further revisions to the Code were introduced which, according to a document published by the Privy Council Office, “serve to strengthen the Code, reflect certain administrative practices of the office of the Ethics Commissioner and where, appropriate, harmonize its provisions with the Conflict of Interest Code for Members of the House of Commons” as well cover “numerous housekeeping changes.”<sup>95</sup>

On the face of it, the Code marks a significant step forward in formalizing the standards of conduct expected of ministerial staff and in protecting the public from ethical abuses and conflict of interest in their involvement with the affairs of state. It represents one of the few documents to explicitly lay out a set of identifiable and comprehensive expectations of ministerial staff. But is it working? Does it, in practice, provide the sort of mechanisms that will protect the public interest, encourage ethical behaviour and guard against conflict of interest?

Recent events in the spring of 2005 offer some insightful observations into its efficacy. A case in point involves complaints filed with the Ethics Commissioner by the New Democratic Party concerning allegations of wrongdoing by Tim Murphy, the Chief of Staff to Prime Minister Paul Martin. The complaints related to suggestions of ethical impropriety in a secretly-taped conversation between Mr. Murphy and Conservative MP Germant Grewal regarding potential rewards that Mr. Grewal and his wife, also a Conservative Member of Parliament, might receive in return for their defection to the Liberal party days before the House was to decide on a critical vote of confidence. Also at question was a comment by Mr. Murphy that seemed to suggest he could influence the outcome of an ongoing investigation by the Ethics Commissioner into outstanding allegations registered against Mr. Grewal on an unrelated matter.

The Ethics Commissioner, Bernard Shapiro, initially responded to the NDP complaints by refusing to investigate on the grounds that while exempt staff are included in the definition of “public office holders” as defined by both the Code and the Act, the *Parliament of Canada Act* stipulates that his investigations are to be limited to complaints levied against elected officials, specifically Ministers of the Crown, Ministers of State and Parliamentary Secretaries. In his estimation, this provision precludes him from ruling on the activities of unelected officials such as ministerial advisors.

This decision in the Murphy case echoed a similar position Mr. Shapiro had adopted earlier in the year with regard to complaints levied against Ihors Wans, Policy Advisor and later Chief of Staff to former Immigration Minister Judy Sgro. In this case, the Ethics Commissioner had likewise used this interpretation of his mandate to restrict his final rulings exclusively to complaints filed against the Minister. In the Murphy case, Shapiro resisted further calls by the NDP to investigate Mr. Murphy's boss, Prime Minister Paul Martin, stating in a letter to NDPYvon Godin on June 16, 2005 that he did not "believe there is any need to formally widen the inquiry that I have agreed to undertake to ensure that all active participants in the events under scrutiny be considered."<sup>96</sup> Opposition members were quick to respond. Said NDP Pat Martin:

Either Mr. Shapiro doesn't understand or is deliberately avoiding the very legitimate question...which is if you can't investigate Tim Murphy, who is the agent of the Prime Minister, he is the eyes, hands and ears and he's the extension of the Prime Minister...he [Mr. Shapiro] should investigate how ethical was it for the Prime Minister—or his agents—to be soliciting the cooperation of another [opposition] MP to alter his vote.<sup>97</sup>

Democracy Watch, a public interest group committed to democratic reform, government accountability and corporate responsibility, was likewise quick to point out the conundrum inherent in the Commissioner's ruling:

It is true the Ethics Commissioner is only required by the Act to investigate Ministers of the Crown, ministers of state and parliamentary secretaries and rule publicly when a member of the Senate or House of Commons files a complaint backed by evidence (under section 72.08). However, the Code also applies to ministerial staff, and the Ethics Commissioner is clearly the only person who can rule on Code violations by ministerial staff and if he does not do so he is failing to uphold his legal duties as administrator of the Code.<sup>98</sup>

At the time of the completion of this study, the office of the Ethics Commissioner confirmed that there was no investigation of Tim Murphy under way<sup>99</sup> although a formal inquiry was being pursued with regard to the actions of the elected individuals involved, Health Minister Dosanjh and Mr. Grewal. While Mr. Murphy will no doubt be contacted as a witness in the inquiry, a determination on his own ethics in this matter was left to the court of public opinion. At the time of the incident, academics, lawyers and pundits were tellingly divided over whether the Chief of Staff's negotiations were an appropriate or inappropriate part of his job. University of Ottawa Law Professor Edward Ratushny, commenting on whether such "explorations" might contravene Section 119 of the Criminal Code that deals with bribery and influence peddling, was quick to dismiss any suggestion of serious impropriety. "I think it would be a stretch to call this a criminal offence. I think you need some kind of financial benefit, a direct financial benefit being involved, and I mean, let's face it, this kind of horse-trading goes on all the time in politics."<sup>100</sup> His colleague, Law Professor David Mitchell, held a less generous view of events, "This is an issue of, again, a significant erosion in confidence in the institutions of governance of our country. The mere fact that these conversations have occurred is worrisome."<sup>101</sup>

There are also other significant fault lines in the Code with regard to the oversight of ministerial staff. The recent 2004 amendments introduced by the current administration and described as "housekeeping," have created another tantalizing loophole vis-à-vis the scope of the Commissioner's reach. Exempted from all but the most global ethical principles enshrined in Section I of the Code are:

1(b) Part-time ministerial appointees who are persons other than public servants who work on average fewer than fifteen hours a week on behalf of a minister of the Crown or a minister of state, including persons working on a contractual or voluntary basis, and part-time Governor in Council appointees, who are not appointed on



a full-time basis and are not in receipt of an annual salary or benefits from the appointment, are subject only to the Principles set out in Part I and such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible.<sup>102</sup>

In other words, all persons who volunteer their time or who are hired by a Minister on contract to act as political or policy advisors for less than, *on average*, fifteen hours a week are exempted from all of the conflict of interest and declaration provisions found in Sections II and III of the Code.

That a good number of the political confidants and close political allies that represent this cadre of part-time, volunteer or contractual staffers today make their living in those other hours of the week as lobbyists or consultants trying to influence the same government they, on occasion, are hired or invited to advise makes the addition of this amendment a curious and somewhat unsettling development. Media attention was particularly drawn to this practice of private consultants or lobbyists working both sides of the door during the 2003 transition of the Martin administration and is typified by this article entitled, "Top Martin Advisors likely to wield power from the outside", where journalist Anne Dawson of the *Ottawa Citizen* wrote:

Perhaps the most interesting feature of Paul Martin's Prime Minister's Office will be that two of his top lieutenants are not expected to be part of it. David Herle, a principle partner at Earnscliffe Strategy Group and Terrie O'Leary, former executive assistant to Mr. Martin when he was Finance Minister and most recently Canada's representative to the World Bank, will likely wield their tremendous influence from outside the PMO. The two have been a couple for close to 20 years and have, in that time, made it their top priority to make Mr. Martin Prime Minister of

Canada... As a key partner at the lucrative Earnscliffe firm, Mr. Herle would take a significant pay cut to take a job with the PMO... Elly Alboim, a former CBC-TV Ottawa bureau chief and another Earnscliffe partner who has worked extensively with Mr. Martin in preparing budgets, is in the same category and, while he is expected to play an instrumental role in the new government, he is expected to so from Earnscliffe.<sup>103</sup>

Despite their “tremendous influence”, as the Code now stands, these part-time advisors—providing they work no more than roughly two days a week for a Minister or Prime Minister—are exempt from the conflict of interest and disclosure laws intentionally designed to police such ethical conundrums as are created by consultants working both sides of the fence. At the time of the amendment, when questioned at a press conference regarding the impetus behind it, the then Ethics Counsellor, Harold Wilson, responded by saying that this was simply a formalization of a rule of thumb that he had used all along with regard to ministerial staff.<sup>104</sup>

There is an even more obtuse and untraceable practice that has recently emerged with regard to outside ministerial advisors, perhaps best illustrated by the relationship between Belinda Stronach and one of the Partners in the prominent lobby firm Prospectus Associates, Mark Entwistle. As an acknowledged advisor to Belinda Stronach both before and after her abdication from the Tories to the Liberal Cabinet, Mr. Entwistle is reported to continue to provide assistance to the Minister from outside her ministerial office, but unlike other contracted advisors, his consulting fees are paid personally by Minister Stronach. An excerpt from *The Hill Times*, written at the time of Ms. Stronach’s transition, confirms both the private nature of their arrangement as well as the level of political advice that is being provided to the Minister by Mr. Entwistle.

As for Mark Entwistle, Ms. Stronach's former top advisor who did not work in her Parliamentary office on the Hill, but advised her on political and communications issues and was paid out of her own pocket, is also not likely to work in the Human Resources Minister (sic) and Democratic Renewal Stronach's ministerial office. He, however, will keep his role as an advisor by staying out of the ministerial office. Mr. Entwistle is also expected to play a key role in setting up Ms. Stronach's ministerial office... Mr. Entwistle was one of the few people who knew before Tuesday that Ms. Stronach was crossing the floor to join the Liberal government. He was also part of a small group of individuals who went over to 24 Sussex Drive on Monday, May 17, to have dinner with the Prime Minister.<sup>105</sup>

As a private arrangement, it can be assumed that the parameters of Mr. Entwistle's contract and the number of hours he is employed are not a matter of the public record and one presumes, untraceable by the Ethics Commissioner. While not necessarily a conflict of interest, the advent of "private" ministerial staff creates yet another layer of "intermediary persons" to the already nebulous category that has traditionally existed on Parliament Hill—this one even more far removed from the scrutiny and accountability of Parliament and less accessible to oversight of any kind than regular full-time or even part-time ministerial and prime ministerial advisors.

Some individuals interviewed for this study felt that the growing practice of private consultants and lobbyists being hired by Ministers or the Prime Minister in a professional political advisory capacity on a part-time basis to be potentially more scandalous and dangerous to the integrity of government than anything that might be revealed in the sponsorship scandal. They point to the potential dangers in government policy, including such major initiatives as the Speech from the Throne and the Budget, being formulated, at least in part, outside of the traditional policy process. Among the potential sources of abuse they

identify are not only the exemption of these part-time staff from the conflict of interest and disclosure provisions of the Code, but the fact that briefings, documents, drafts and minutes of meetings generated by these contractual staffers remain largely outside of the official government archives, and therefore the institutional memory, of government. They are also well beyond the reach of any *Access to Information* legislation.<sup>106</sup> This practice can come to represent an alternate, parallel policy process even more ungoverned, off-the-record, and unscrutinized than the workings of the regular ministerial office and runs contrary to the values of transparency, openness and accountability that are intended to regulate the policy process. Interestingly, one former Chief of Staff admitted that many departments, recognizing this new trend, had themselves hired the lobby firm employed on a part-time basis to assist the former Finance Minister in the development of his budget. The hope was that by currying the favour of these part-time advisors, these departments would gain an upper hand in the fierce competition to get programs and priorities included in the final budget document.

Whatever the concerns raised over the ethical dangers posed by part-time ministerial staff, the fact remains that there are serious deficiencies in the Code's ability to act as an effective mechanism to govern even full-time ministerial staff behaviour. The Commissioner has no power to sanction. Section 23 of the code under "Failure to Comply" clearly indicates that any action beyond investigation and ruling reverts to discretion of the political level:

(23) Where the Ethics Commissioner advises that a public office holder is not in compliance with the Code, the public office holder is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of employment.<sup>107</sup>

But as the Tim Murphy issue seems to clearly indicate, the Commissioner himself seems unwilling, and admits to being constitutionally incapable, of pursuing investigations directed specifically at the activities of ministerial staff. One can only conclude based on such evidence that as an effective instrument of ethical oversight with regard to ministerial staff, the Code, as it now stands, is severely flawed.

### 3.11

#### “Exempting” the Minister’s Staff

Of all the “exemptions” to the *Public Service Employment Act* (PSEA) given to Minister’s staff—exemptions principally related to their hiring, firing and pursuit of partisan activities—by far the most controversial is the one that affords priority access into the public service for senior members of a Minister’s staff who have served for three consecutive years or more. Specifically, the Treasury Board *Guidelines for Ministers’ Offices* states that:

Persons with a Ministers’ 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. . .and except for employees who are entitled to Leave of Absence priority under section 30 of the Act. The entitlement is for one year from the date the person ceases to be employed in the office of a Minister but ceases on appointment to the Public Service. . .<sup>108</sup>

This 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 (i.e., a Chief of Staff would be eligible to become an Assistant Deputy Minister, both positions being at an EX-04 level). This opportunity remains available to them for up to one year after they leave the Ministerial office. Civil servants who might

leave their posts to work as exempt staff are also afforded this priority access. In either case, once entitlement has been confirmed, in that the Public Service Commission is satisfied that the candidate has served a Minister for the required period of time or was a public servant immediately prior to their appointment to the Minister's office, that individual can be hired without undergoing the usual merit-based competition required of all other applicants for government positions. It should also be noted that it is not required that this consecutive service be with the same Minister and that a leave-of-absence to work on a election campaign is not considered an interruption in employment, although the time of the leave is not included in the required three-year period.

If the exempt staff member applying to the public service is below the Executive level category, once their entitlement is confirmed, he or she will be put on a priority list circulated to departments. They are thereby eligible for direct appointment into any position for which they are qualified, third in line in priority behind a department's surplus employees or regular employees returning from leaves of absence. More commonly, however, exempt staffers will have already identified an open position and made arrangements directly with the appropriate managers. This direct application to a desired position is both permitted and encouraged by the PSC rules where they state.

In addition to participating in the PSC's priority inventory and being referred, persons with a Ministers' Staff priority, like all priority persons, may also apply directly on their own to be considered for any job they see advertised or are otherwise aware of being staffed... Departments are obliged to appoint the priority person in advance of others, if they are qualified to perform the duties, just as if the person had referred by the PSC.<sup>109</sup>

The process for appointment becomes a bit more complex when an executive level (EX-01 or higher) member of a Minister's staff—a

group now comprised of all Chiefs of Staff as well as directors of communications, legislative affairs and policy—applies for priority placement. Currently, prospective EX applicants must undergo an “assessment of readiness,”<sup>110</sup> an evaluation that utilizes a series of standard assessment tools used by the PSC to determine managerial aptitude. These include a one-day simulation exercise known as SELEX developed by the Personnel Psychology Centre of the PSC; an interview with a board constituted to assess competencies and work experience; a structured reference check; and an official languages proficiency test for those interested in positions in bilingual regions.<sup>111</sup> Once that screening is successfully completed, the staff member’s application is sent to the Executive Programs Directorate who “reviews its inventory of priority persons who are EX-ready and recommends to the Commission, following consultation with the department involved, the appointment of any such persons who appear suitable for the position. If accepted, the Commission would appoint the person. As of January 2000, the Commission also requires that the Deputy Minister of the department sign an attestation form at the time of the approval.”<sup>112</sup> The new *Public Service Modernization Act* passed in 2003 with various provisions coming into force throughout 2005 delegates further hiring authority and other powers to the Deputy Ministers.<sup>113</sup>

Given the close working relationship between Deputy Ministers and senior ministerial staff, it is not surprising that competent senior advisors who appear to have a vocation for public administration are identified and welcomed into the bureaucratic fold. Likewise, those whose accession to the departments might not be considered an asset also become known. With the greater authority being granted to Deputy Ministers with regard to the hiring of public servants, it is unclear whether Ministers retain any of their previous influence over these matters. While the new legislation is very clear in its emphasis on ridding the public service hiring process of any vestige of political interference, there are those who see the evolution of this discretion from the Minister to the

Deputy Minister as somewhat of an aberration of the democratic system. Former Cabinet Minister John Crosbie, saw nothing wrong in a politician having the ability to exercise the power of political patronage in “the best sense of its use.” He argues that patronage still exists in these appointments, but that now it is the unelected Deputy Ministers who control the gates to hiring within the public service and who wield that power, as did their political masters before them, to favour those that they know and like. However, unlike politicians, it may be argued, the Deputy Ministers have not been elected by the people to do so.

### 3.12

#### The Exemption: Crucible or Curse?

The original rationale behind the inclusion of this significant perquisite of priority access to the public service for members of a Minister’s staff was first articulated in the academic literature by J. R. Mallory, who despite his obvious reservations about the increasing role of Ministers’ staff, appears supportive of this “special recognition:”<sup>114</sup>

No doubt the reason for this curious provision is the recognition that an able man, brought to Ottawa to operate near the centre of power, must have some reasonable expectation of a career if he is to take the risk of moving to the capital. Ministers are transient beings, and it is asking much of a young man to tie his career to a politician with an uncertain future. So the Minister’s office has become a backdoor to the public service, untouched by the merit system. That this provision is not wholly bad is attested by the quality of a number of the able civil servants who have found in it the beginning of a long career in the public service.<sup>115</sup>

This historic rationale is in many ways as true today as it was in the 1960s. Given the lack of job security offered by these positions, the employment rights that incumbents forego and the depth of commitment required



by the job, there remains a perceived need for some incentive or reward to be offered to those who tough it out for lengthy periods in “the belly of the beast.” Many, including Professor Mallory in the 1960s and more recently, others such as Arthur Kroeger, point to the number of excellent public servants who began as ministerial staff and have gone on to very senior and distinguished careers within the departments.

Proponents of this exemption argue that the public service would be foolish to discourage the entry of these individuals into the departments after years of service at the highest levels of power. Treating them as neophytes and insisting that they undergo what might be seen as a demeaning competition process to confirm their competence after years of exalted service might represent a significant deterrent. Their merit has, in effect, been confirmed by the longevity of their service in the Minister’s office. In other words, having already been employed on the “inside” for a significant period of time, there is little logic in forcing these assistants to come knocking at the doors of the system. Some question what actually constitutes “merit” in the context of competition for government employment. As one former EA points out, the “merit” concept has been debated for decades in public administration circles all the way back to Whitehall. He points out that these ministerial appointments are not the only ones to escape the formal public service competition process, citing senior appointments to the Privy Council Office, Treasury Board and in many cases, Finance, that are rarely subject to merit-based competition.

Critics, on the other hand, beg to differ. Their objections are based on the perceived elitism of such an entitlement as well as concerns over any potential politicization of the bureaucracy that it might encourage. They argue that if the skills and experience gained in a Minister’s office are such a valuable asset, these qualifications will be recognized and work to the advantage of the candidate within the merit-based competition process. They contend that exempt staff with a genuine affinity for public

service will still be identified and hired, but that they will come to their new positions fully screened and vetted and with the greater legitimacy and respect born of fair competition. The aura of privilege and patronage suggested by the exemption, they argue, while perhaps acceptable in the 1950s, is no longer consistent with the values of openness, transparency and fairness prevalent in the public service today.

There is also an historic perspective to be considered in this critique. The public service exemption for ministerial staff was created at a time when a Minister's staff comprised only 3 to five people; most of whom played a clerical role, and whose impact on the political impartiality of the public service would be negligible. Loretta O'Connor's research seems to bear this out. She writes: "Prior to 1950, a Minister was only permitted five staff exempted from the provisions of the *Civil Service Act*. They included the private secretary/executive assistant, two stenographers, one messenger and the Minister's personal secretary."<sup>116</sup>

By contrast, the dictates of the *Public Service Employment Act* today preclude the granting of an exemption to clerical personnel on the minister's staff, instead reserving the privilege for only the most senior political levels within the Minister's office. The Act stipulates that:

Persons with an entitlement under subsection 39(4) of the PSEA are to be appointed to a position in the Public Service "at least equivalent to a private secretary to a deputy head", for which, in the opinion of the Commission, the person is qualified. Thus, in order to qualify for the entitlement under this subsection, the PSC not only looks at time served in the Minister's office, but also at the duties performed and the reporting relationship to the Minister. Persons who do not work at a senior level, whose duties are predominantly administrative or constituency-related, or who have little contact with the Minister are not considered by the PSC to have a priority entitlement.<sup>117</sup>

This exclusion of the more subordinate and administrative elements of a Minister's staff coupled with the sheer number of those in recent cohorts eligible for priority placement no doubt gives greater force to suspicions that this "back door" might serve as a vehicle for partisan bias entering into the senior ranks of the bureaucracy. Indeed a 2002 report commissioned by the Canadian Centre for Management Development (CCMD) that examined this issue of exempt staff priority recommended that this exemption be abolished.

### 3.13

#### Practical Applications: Who Is Exercising the Exemption?

Whatever the theoretical arguments over the merit of this political staff exemption, it is interesting to note that for ministerial staff, it represents far less of an enticement than might be expected. Rather than the coveted reward it was meant to bestow, today a career in the public service appears for many to be very much an option of last resort.<sup>118</sup> The opportunity to enter the public service takes more the form of employment insurance in case some more exciting or lucrative opportunity outside of government fails to materialize at the appropriate moment. It is also seen as a reasonable option for those wanting to get on to "the mommy track" or for others who are genuinely disillusioned with the hothouse of partisan politics. Some, it must be said, have a genuine desire to pursue a career in public administration.

As illustrated by the chart below, statistics compiled by the Public Service Commission confirm that only a small percentage, roughly eight percent or an average of 26 individuals out of the more than 300 exempt staff currently employed are actually appointed into the public service in any given year.

## Ministers' Staffs Priority Activity: A Numerical / Historical Overview

FISCAL YEAR	NUMBER OF REQUESTS		REGISTRATIONS/ACTIVITY IN PRIORITY SYSTEM		
	Recieved	Entitled	New	Appointed	Expired
2004/05 (election—minority govt)	40	35	34	35	20
2003/04 (Chrétien to Martin)	89	73	64	35	5
2002/03	59	53	24	26	3
2001/02	62	52	52	24	4
2000/01 (re-election—Lib)	44	38	24	22	6
1999/00	35	31	26	17	2
1998/99	37	33	20	20	7

This trend clearly demonstrates that the prevailing exempt staff culture favours an after-life in the private sector. Some return to academia, some resume their professions as lawyers, journalists or communications consultants but more and more, a career as a lobbyist or government relations specialist is seen as the most natural and coveted professional progression for political staff. These are positions where ex-exempt staff feel they can best leverage the contacts and experience they have gained on the Hill into a high paying, high flying career and at the same time continue their close involvement with their partisan allies.<sup>119</sup> Explains one veteran of the lobby game, “Many political staff that join lobby firms

see it as an extension of their social life. You'll see them in the bars—they're each other's family. . . . Their first call is always to the minister's staffer to ask 'do you know what's happening on this file?'"<sup>120</sup> Lobby firms allow, and even encourage, their staff to remain actively involved in the partisan political process, a practise that has been viewed with some suspicion by the media and public, but is nonetheless legally condoned and as we have seen earlier, accommodated within the conflict of interest regulations governing former ministerial staff. In other words, the wall between the minister's office and the lobby world remains quite porous. The threat of a spring election in 1995 elicited the following subtitle in *The Hill Times*, "Majority of lobbyists self-admitted politics junkies, many firms offer flexible scheduling to allow associates to go out on the hustings." A paragraph in the article goes on to state:

Many firms will be also looking at how to arrange work schedules during the election itself, in order to allow staff and associates to take part in the various local and national campaigns that will be underway once the writ is dropped.<sup>121</sup>

Lobbying therefore serves as a logical "next step" in a political advisor's career, removing them either permanently or temporarily from the pressures and demands of the Minister's office, but allowing them to leverage their political contacts and expertise in an environment that both encourages and values such assets.

And what of potential conflict of interest? The one year "cooling off" period imposed on ministerial staff by the *Conflict of Interest and Post-employment Code for Public Office Holders*, a provision which is meant to impose a 12-month period of abstention from involvement in any file with which they have had contact in their role in the Minister's office, again serves up some questionable provisions with regard to exempt staff. The first is identified at the very beginning of the "Post-employment Compliance Measures" where under "Interpretation" it states:

(24)...for the purposes of this part,” public office holder” refers to the same positions subject to Part II, as set out in sections 4, with the exception that ministerial staff and other public office holders as defined under paragraph (b) of the definition of “public office holder” under subsection 4(1) must be designated by their Minister for this Part to apply.

From this provision, we are to understand that a Minister must first take proactive measures to designate their political advisors as eligible under this Section of the post-employment provisions. Should such steps be taken, the Code goes on to stipulate that staff advise the Commissioner and/or their Minister in the event that they accept an outside offer of employment as well as other conditions essentially restricting for a period of one year their involvement with anyone or any file with which they have had contact in their official capacity.<sup>122</sup> In practice, this post-employment Code can be virtually ignored as it has never been actively policed.<sup>123</sup> Complaints against exempt staff infractions of the Code, as noted earlier, are not currently pursued. Even if they were, once an advisor has exited the ministerial office, the doctrine of ministerial responsibility for staff wrongdoing becomes all the more tenuous in terms of redress. One has to seriously question what sanction a Minister or the Prime Minister could possibly employ once the aide is no longer an employee of the government. “Discharge or termination of employment” holds little threat to someone who has already left the system. While some of the larger firms note the dates and ensure voluntary compliance,<sup>124</sup> given the lax enforcement and the unlikelihood of investigation or sanction, most discreetly ignore the restrictions.

By contrast, those staff that choose to become departmental employees are well aware that any ongoing contact and camaraderie with their former political allies would be viewed as inappropriate. Further, such close ties to the political level can become a source of suspicion and resentment with their superiors. To accept a public service appointment

essentially removes them from the social and professional sphere in which they formerly operated, plucking them from the privileged and elitist position they occupied close to the levers of power and depositing them down into the bowels of a bureaucracy that will show them no further deference. Small wonder then, that many exempt staff prefer to move to a career where they can preserve, and even exploit their former network and be recognized and admired for their political access, rather than to a career where they have to operate in denial of it.

The public service exemption represents a welcome and respectable option for those with a genuine interest in civil service but to most, it is a safety net, a viable alternative to unemployment if no private sector work can be found or alternatively, a safe place to park their careers while they shift their focus to family and take advantage of the generous parental and other benefits on offer. Among those ex-ministerial staff that choose the departmental route, few if any, it appears, enter the bureaucracy with a missionary zeal to bend the public service to their political ends; those that succeed best in an after-life in the public service do so because they are able to disassociate their political past from their bureaucratic present, keeping only the skills and judgement that they have honed in their years on the Hill and transforming that expertise into patterns that conform with the expectations of a political neutral public service.

### 3.14

#### Dubious Exemptions: The Case of Pierre Tremblay and Isabelle Roy

And then there are the exceptions that illuminate with glaring clarity the danger represented by the existence of priority access for ministerial staff into the public service. In examining the entrails of two dubious appointments made under this provision in 1999, it is important to note that since that time, several measures have been implemented that

might have served to impede such appointments. It is beyond the scope of this paper to speculate as to whether they, like the checks that were in place at the time of these events, might also have succumbed to the unique confluence of political events, pressures and personalities that resulted in the confirmation of these dubious appointments; suffice to say that the system that condoned these questionable transitions from the political to the departmental realm has, at least at the executive (EX) level, undergone substantial changes since that time. The provisions that allow ministerial staff priority access to the public service, as we know, have not.

One other fact remains relevant to this discussion: it is that one of the main subjects in this matter is now deceased. Pierre Tremblay passed away in August of 2005 shortly before the Inquiry began its examination of witnesses, and he was therefore unable to offer his version of events. My interviews with some of his former colleagues as well as with Jean-Claude Demers,<sup>125</sup> the author of the “Demers Report” who interviewed him in the context of his investigations, indicate that Pierre Tremblay was a man of many attributes as well as failings. He was described as “intelligent, competent” and “no fool” but also as a man who indulged in personal excess and revelled in his “control of the cookie jar.” By all accounts, he was highly partisan and fiercely loyal to his political masters and had cultivated a reputation of “instant response” to the wishes and direction of the PMO. His former boss, Alfonso Gagliano, while describing him as an “impatient”<sup>126</sup> man, lauded his organizational skills, remembering him as a “computer freak”<sup>127</sup> well known for his penchant for detailed list making. This description of his organizational and record-keeping skills seems strangely at odds with the testimony of his colleague, Isabelle Roy, where she recalls Mr. Tremblay instructing her not to keep any evidence surrounding sponsorship files,<sup>128</sup> as well as the conclusion of the Demers Report panel which stated that the 19 sponsorship files handled by Mr. Tremblay in his capacity as Director



General at CCSB “constitute very serious negligence that calls for commensurate disciplinary action.”<sup>129</sup> It is, however, the fact and process of their appointments, rather than the details of their performance, that is of primary interest to this study.

Isabelle Roy's profile in many respects mirrors that of the classic ministerial aide. The daughter of a Quebec Member of Parliament, she no doubt grew up in a partisan milieu but typical of many children of politicians, never exhibited much interest in politics, instead pursuing her post-secondary studies in business. That lack of interest notwithstanding, following her graduation from the University of Ottawa with a degree in Commerce, Isabelle began a summer job in the office of another francophone Member of Parliament, Eugene Bellemare. Although not explicit in her testimony, it is likely that the position was arranged for her through her father as a favour from an obliging colleague. Once on the Hill, Roy would inevitably come into contact with many familiar faces and friends of her father's, among them, Pierre Tremblay. Tremblay was also a recent graduate of the University of Ottawa, having completed a Doctorate in Psychology and had been hired in the early 90s to work for then Whip, Jean-Pierre Gauthier. According to one former colleague, the purpose of his first job was to observe caucus members during meetings and, using his expertise in psychology, identify the informal leaders in the group. These individuals would then be the focus of special attention by the Whip in an effort to utilize their natural leadership skills to influence other members of caucus.

It was through Pierre Tremblay that Isabelle Roy, at the end of her 1994 summer job, learned of an opening in the Whip's office. After a meeting with Tremblay, she was hired as the Special Assistant responsible for the Minister's appointment book. Tremblay's career by this time was in lockstep with Alfonso Gagliano's. Having first worked for him when Gagliano served as Whip, Tremblay then followed him to the office of Deputy House Leader. When rumours began circulating in 1996 that

Gagliano was in line for a ministry appointment, Roy let her friend Pierre Tremblay know that she was looking for a new challenge and would be happy to again join Gagliano's staff. With Gagliano's accession to the Labour portfolio, Roy was duly appointed by the Minister's new Executive Assistant, Pierre Tremblay, as the Special Assistant responsible for office management. One year later, when Minister Gagliano was shuffled to replace Diane Marleau as Minister of Public Works and Government Services, Tremblay and Roy moved with him.

The pattern of relationships illustrated by these two careers is not atypical of many of those found on Parliament Hill—that is to say, exempt staff members are hired through family connections or political acquaintances; friendships and alliances are forged and mentorship relationships established. Fierce two-way loyalties among Ministers and their staff are common in the intense and high-powered atmosphere that pervades the Hill, and while loyalty is in many ways an essential ingredient to the smooth operations of the ministerial office, it can also lead to a certain element of blind trust.

Testimony at the Sponsorship Inquiry indicates that it was not long after Isabelle Roy arrived in Gagliano's office that she was entrusted by Pierre Tremblay as the sole custodian of the sponsorship files and that her involvement in it was largely administrative. Her testimony indicates that she had a direct and positive working relationship with the PWGSC employees working for Mr. Guité, and that she never raised any concerns over the manner in which the program was being administered. Nor did she question or object to Pierre Tremblay's request that all records related to the sponsorship program remain outside of the standard DOMUS system that catalogued and tracked all other ministerial and departmental documents. His instruction not to keep evidence of any recommendations or decisions made within the Minister's office was apparently accepted by Roy as reasonable given the politically-sensitive nature of the file.

Interestingly, she also confirmed in her testimony that by not inputting sponsorship requests and related documents into the standard DOMUS system, it allowed the Minister's office to bypass the oversight of the Deputy Minister. Ranald Quail's office could therefore not monitor the process surrounding any of the decisions or input into the program made by the Minister's staff, and presumably was left to rely only on the reports supplied by Tremblay, Guité or the Minister with regard to the allocation of these substantial amounts of public funds.

This minimalist tendency with regard to record keeping is not restricted to this one sponsorship program incident and in fact is becoming a very common and disturbing trend in many ministerial offices and government departments. It is almost entirely a result of the *Access to Information* legislation which lays open to public or political scrutiny much of the information that transpires between a ministerial office and a department. It has spawned the use of purge-able "sticky notes" and other disposable means to record important decisions, comments or instructions, a whole range of creative efforts to circumvent the normal paper management and archival processes, and a minimalist approach to the use of agendas or minutes to record the details of meetings. Not only are these measures intended to frustrate the objective of the *Access to Information Act* with regard to openness and transparency, they also ensure that no paper trail exists to later substantiate or refute verbal recollections. In other words, the written institutional memory is effectively silenced. In the case of the Sponsorship Program, there appears to be little doubt that the efforts to "leave no trace" were done with a direct intent to bypass the regular archival processes, the systematic oversight of the Deputy Minister and any forensic analysis that might later be undertaken with regard to the program.

On January 22, 1999, Pierre Tremblay applied through the appropriate PSC channels for approval to move from his position in the Minister's office to the Communications Coordination Services Branch (CCSB).

We now know that this request was made in order to facilitate a smooth transition orchestrated “in-house” between Tremblay and Chuck Guité, who was expected to retire as head of the Sponsorship program in the following months. Pierre Tremblay’s appointment as Director General, Strategic Communications Coordination was confirmed February 17, 1999 at the Ex-02 level. The steps undertaken to approve this appointment, according to a Statement of Evidence submitted to the Inquiry by the PSC were as follows:

- January 22, 1999—PSC receives a request from PWGSC to appoint Mr. Pierre Tremblay as a legislative priority to the position of Director General, Strategic Communications Coordination;
- January 22, 1999—confirmation given by PSC that Mr. Tremblay meets the 3 years service requirement to qualify for exemption from competition under subsection 39(4) of the PSEA;
- January 28, 1999—PSC approves a resourcing strategy to appoint Mr. Tremblay as Mr. Guité’s replacement, subject to an interview and standard “EX” competency test;
- February 12, 1999—Mr. Tremblay undergoes a standard simulation exercise designed to determine managerial competency at the EX level. The overall result was “Quite effective”;
- February 12, 1999—Mr. Tremblay is interviewed by a board consisting of Chuck Guité, a representative from PCO and a PSC resourcing consultant. Their conclusion was that Mr. Tremblay was qualified to be appointed to the position; and,
- February 17, 1999—Mr. Tremblay is appointed.<sup>130</sup>

In April of that year, Isabelle Roy, as she had done so often in her career in the past, followed Pierre Tremblay. She too, exercised her exempt staff priority access to leave the Minister’s office and move to CCSB to work on the Sponsorship Program from the departmental side. Her

appointment, being below the EX level, required only that PSC confirm her eligibility for the exemption, in other words, ascertain that she had been employed in a ministerial office at a sufficiently senior capacity for three years, and that Pierre Tremblay as Director General of the program agree to her hiring. The two colleagues were thereby once again re-united, this time on the other side of the political/bureaucratic divide.

A number of serious issues surrounding this priority access for exempt staff are raised obviously by these appointments. One presumes that the more rigorous approval process that was established at that time to scrutinize the appointment of EX-level exempt staff into the public service was designed to ensure that those entering these positions from a Minister's office would, in fact, have the managerial skills, expertise and capacity to undertake the work involved, that they are not simply "louts" that the Minister is trying to offload onto the bureaucracy. The findings of the 2000 internal audit, which identify serious problems in the administration of the Sponsorship Program under Tremblay's leadership, raises questions about the true ability of that assessment system to accurately determine managerial competency. It is known that at the time of this assessment Mr. Tremblay suffered from an alcohol addiction. His penchant for long lunches at the Press Club or other Ottawa establishments was well known in official circles.<sup>131</sup> In fact, Ms. Roy testified at the Inquiry that when she joined Mr. Tremblay at CCSB a few months after his appointment, she was left to manage the administration of the program largely on her own due to Mr. Tremblay's consistent absences in the afternoons due to his drinking problem.<sup>132</sup> How is it that this addiction was not detected during the psychological evaluation process? Was proper due diligence exercised by the PSC in exploring his career history and references or was the assessment process so flawed as to allow such a serious health issue, one unquestionably germane to the issue of responsible management, to go undetected?

Some clue as to the apparent negligence that must have played a role in this particular evaluation is indicated by a letter that was circulated by the PSC to the Heads of Departmental Personnel one year after this appointment, dated January 19, 2000. In referring to this document in its statement of evidence to the Inquiry, the PSC states:

...Prior to that time (before January 19, 2000) if there was a specific position for which a department wanted to consider an individual with a ministerial priority entitlement, a selection board was convened for that specific position...except that, while the simulation exercise was required, reference checks were not systematically done when one or more of the selection board members had sufficient and favourable knowledge of the individual performance history.<sup>133</sup>

In the case of Pierre Tremblay, his close friend and departmental counterpart Chuck Guité, served as the Department Representative on that selection board and no doubt vouched for his character and competence. It can be assumed by the outcome that no further reference checks were undertaken and that his appointment was made solely on the strength of Mr. Guité's recommendation.

Competencies aside, it may also be presumed that, at the time, there was in place some form of systemic "check" on the appointment of ministerial staff with priority entitlement to a particular function to ensure that it would not constitute any form of politicization of that program or department—that someone with the authority to intervene sniffs the air in these cases to ensure that there is no hint of political-departmental collusion in the appointment. In this instance, any safeguards that were in place to that effect clearly failed. While it is known that officials at the time were "uncomfortable" with Pierre Tremblay's appointment, not only was it approved, the process was accomplished with what can only be seen as uncharacteristic speed and efficiency. The

whole adjudication from Mr. Tremblay's first official inquiry regarding his eligibility on January 22, 1999 to the confirmation of his appointment on February 19 of that year was accomplished in less than four weeks. Why did the "discomfort" not translate into action?

The answer may again lie in the fact that Mr. Tremblay had succeeded in all the structural tests and interviews that might have given the PSC solid grounds to refuse the appointment. In the absence of that rationale, there are no specific regulations that would restrict exempt staff from moving into departments or programs with which they were involved at a political level. In fact, as noted earlier, the identification of an appropriate position by the candidate is tacitly encouraged by the legislation, and it can be presumed that the majority of their contacts would be within the department associated with their ministry. There remains nothing other than the discretionary powers of the Commissioners of the PSC to act as a brake on questionable political appointments, and in this case, they clearly failed to exercise that discretion.

The Commissioners were not the only ones who had the authority to block this appointment. The PCO document *Guidance for Deputy Ministers* states:

Responsibilities relating to personnel management in the public service, including appointment, employer/employee relations, and the organization of departments, are assigned to the deputy head directly rather than through the Minister. Both the Treasury Board and the Public Service Commission delegate authorities related to human resources management to Deputy Ministers directly.<sup>134</sup>

Such authority raises the question of why Ranald Quail, who as a longstanding colleague of Mr. Tremblay's must have been aware of both his close political affiliation with the management of the Sponsorship Program and his medical and lifestyle challenges, would have approved his appointment as Mr. Guité's designated successor? Did he simply accept

the PSC's assessment of Mr. Tremblay's competence and rubber stamp his approval? Was he instructed by either his Minister or a member of the PMO, who he was aware had a significant interest in this program, to approve this succession? If he was acting at the request of either his Minister or the PMO and was uncomfortable with the optics of this transition, why did he not take his concerns to the Clerk? Or did he simply see no obvious or significant reason to restrict or obstruct this appointment? And finally, did the reunification of Isabelle Roy with Mr. Tremblay on the departmental side of the Sponsorship Program only three months after Mr. Tremblay's appointment not again raise any concerns in the Deputy Minister's mind over the potential politicization of this program's management?

In contemplating the factors that may have influenced Ranald Quail's actions at the time, one former senior mandarin offered the following explanation: "Look—as Deputy Minister, you have a part of your department that has been a political brothel for decades. How much of your virginity are you going to give up trying to straighten it out?" This former Deputy suspects that Ranald Quail felt he had little choice but to consent to Pierre Tremblay's succession to Charles Guité. "Are you going to put in a Sunday school teacher as the official to run the brothel? You might as well have someone there who is already in it." Having said that, he suspects that Ranald Quail must now dreadfully regret having stood aside back then and his decision not to consult with the Clerk with regard to both these appointments and the irregularities that were coming to light at that time with regard to the Sponsorship Program.

### 3.15

#### The Sponsorship Scandal: Partisan and Structural Politicization

There is another theory on the motivations that allowed so many reasonable and responsible people to "step back" and if not condone, then at least look the other way, when it came to events surrounding



the sponsorship scandal. In his paper entitled, “L’Affair Groupaction: un cas de politisation de la Fonction publique fédérale?”<sup>135</sup> Denis Saint-Martin suggests that the sponsorship scandal illustrates two separate types of politicization within the public service. The first is demonstrated by the appointment of Pierre Tremblay into the post at Communications Canada, an appointment, he notes, made possible through the exemption found in Section 39 of the PSEA. This represents a relatively classic case of partisan-style politicization where an individual close to the party in power is integrated into the permanent ranks of the public service in order to influence the administration in favour of a political agenda.

The second form of politicization is characterized by the words and actions of Charles Guité. It is what Professor Saint-Martin describes as a structural bias and represents a more subtle and complex phenomenon. It embodies the notion that the public service is not politically neutral in the face of threats to the federal order: that when it was faced with the potential dissolution of the country as indicated by the close results of the 1995 referendum, there were those who felt justified in contravening the rules in so much as it was being done in the interest of preserving the state. In other words, they felt that the ends, did, in fact, justify the means. While Saint-Martin does not see this as a legitimate excuse for what occurred in the sponsorship scandal, he does believe it provides a context that explains why so many in the public service were willing to step back and ignore obvious breaches in contracting procedures and why others felt legitimate in breaking them in the first place.

In his critique of the partisan politicization made possible through the ministerial staff exemption, Mr. Saint-Martin recounts many of the traditional objections raised by those opposed to this rule: that ministerial assistants are by nature partisan operatives and are unable to achieve the level of political neutrality required of public servants; that their appointment through this “backdoor” amounts to a political

patronage and is offensive to the principles of openness, transparency, and merit meant to govern appointments within the public service; that this form of politicization by the party in power can be used as an instrument of political control to influence the behaviour of administrators inasmuch as the appointed managers share a political ideology and solidarity with the government in power.

In the case of Pierre Tremblay, Mr. Saint-Martin concludes that the exemption rule served to fulfil this latter objective, that is to say, that Mr. Tremblay was appointed to ensure the availability of an administrator who shared with the elected government a solidarity and ideology and through whom the political arm of government could impose its control on the activities of the department. In this specific case, through the appointment of Mr. Tremblay, the government was assured that it would be “business as usual” at the Sponsorship Program and that no “Sunday school teacher” would accede to the post and upset the status quo that had been established during the Guité administration.

Structural politicization follows a slightly different and more subtle route within the bureaucracy. It is manifest in an ideological persuasion that sees as the bureaucracy’s ultimate objective the preservation of the Canadian state. Saint-Martin traces the provenance of this form of politicization to the efforts by the Trudeau administration to create a modern and bilingual public service as a means to forge greater social cohesion and national unity in Canada. Saint-Martin argues that this move to bilingualism as a measure to fight the separatist cause has served to enshrine as part of the “institutional genetic code”<sup>136</sup> of the public service the obligation to promote and defend national unity. He suggests that this imperative is at odds with the principle of political neutrality that demands public servants have no such political disposition and argues as proof of its existence the fact that when a situation such as the Quebec referendum arises, the public service is not neutral to its outcome. Rather, it is institutionally predisposed to fight against such

threats and as such, the bureaucrats who espouse these values are “politicized”. While Saint-Martin concedes that this type of polarization is qualitatively different from that of partisan politicization where individuals within the bureaucracy might be aligned with party A or B, he nonetheless argues that this does constitute an adherence to a certain type of political regime and, as such, represents an abrogation of political neutrality.

In his thesis of structural politicization, Professor Saint-Martin is quick to point out that this in and of itself was not the cause of the mismanagement within the Sponsorship Program. It does, however, serve to explain why, at a certain moment in time, a public servant would be willing to transgress the rules of regularity and probity in order to fight against those who he or she perceives to be a threat to the regime that they feel obligated to defend. This explanation also illustrates the importance of a point made earlier in this study by Tony Macerollo when he identified the importance of political staff and the department actually defining what they mean by the term “political” in an effort to draw a clear distinction in the respective roles of the two sides. While political advice of a strictly partisan nature is easy to determine (i.e., we do not control that Committee; cancel that and we might lose our seat in the next election, etc.), it is much harder to draw the line and respect the roles when the issue revolves around a much broader and more pervasive political objective such as fighting the separatist cause.

One is reminded by Saint-Martin’s observations of the rationalization given by Chuck Guité in his testimony both before the Public Accounts Committee and at the Sponsorship Inquiry when he repeatedly reiterated that this was “a war” they were fighting at that time. If rules got broken and lines crossed, it was done in support of a greater cause. Any negative repercussions that might have occurred were merely collateral damage, their significance greatly outweighed by the importance of winning the larger fight. When the sponsorship scandal is assessed within this

context, the willingness of so many to “step back” and not interfere in relationships, activities and appointments that were clearly in contravention of the standard rules of government propriety becomes slightly more understandable.

## 4 What Can Be Learned?

### 4.1

#### Observations and Conclusions

Perhaps the most honest conclusion that can be drawn following a somewhat exhaustive review of the role of exempt staff in contemporary Canadian government is that there are no absolute truths to be found in the analysis of any aspect of the role and practice of this function, only shades of truth. If my sources are correct, roughly half the time these supporting political roles are carried out in a competent and capable fashion; the incumbents act appropriately with respect to long-standing, if somewhat ill-defined, conventions, and exercise sound and constructive political judgment in the execution of their duties and their relationships with the department. The other half of the time, they don't. Likewise, there remains no absolute consensus, in theory or in practice, either within or outside of government, as to what constitutes the appropriate role of exempt staff in the policy development process. After decades of various attempts by the political centre to wrest control of policy from the bureaucracy, there are still those who maintain that the active involvement of exempt staff in this capacity is illegitimate, inappropriate and sometimes dangerous. Proponents, on the other hand, persist in their belief that an independent policy capacity in the Minister's office is the politician's best defence against the power of an obstinate and self-interested bureaucracy—that democracy demands this direction from its elected representatives; that the political tail should indeed wag the departmental dog.

Perhaps of even greater importance is the question of what constitutes appropriate “political input” into the management of government

programs. Should the Minister and his or her staff or members of the PMO be key players in determining the allocation of program funding, make “suggestions” or have direct relationships with companies vying for government contracts? Is “putting in a good word” with the department an appropriate political activity or undue influence? There is a line to be crossed but little consensus, it appears, on the exact location of that line.

To the issue of whether political staff give, or attempt to give, direction to departmental officials, one can only conclude that 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”. Likewise, the various semantics that are used by ministerial advisors to code their wishes in language more consistent with the PCO guideline, as testimony at the Sponsorship Inquiry attests, does not take away from the fact that these “suggestions”, “opinions” and “input” are often intended as instruction and understood by departmental officials to be so. Having said this, I found nothing in my conversations to indicate that the majority of these interactions or “directions” were commonly intended for corrupt purposes or that they substantively misrepresented the general wishes of the Minister. 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 regularity and sound financial management as well as creative in their 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 by the Sponsorship Program appears to be an aberration, rather than the rule. As Harry Swain noted, “the system largely works in a creaky sort of way.”

Having said this, there is no question that the rules governing the relationship between ministerial or PMO staff and the public service are woefully inadequate to the practical realities of the modern day political office. There is often good reason for ministerial staff, in their capacity as proxies for their Minister, to make decisions and give direction related to matters too menial to warrant the Minister's personal attention. The existing guideline does not take into account the growing authority of the Chiefs of Staff, nor the tremendous power wielded by senior PMO officials. It has yet to come to grips with the considerable and growing sphere of influence and involvement of exempt staff in the machinery of modern day government and reconcile that with the relative dearth of oversight brought to bear on their activities. Neither has the black hole of accountability they represent been adequately addressed. The growing tendency of Ministers to deny any responsibility or ministerial accountability for the actions of their exempt staff, as has been evidenced by the Al-Mashat, Sponsorship and Sgro scandals, leaves this "intermediary class of person" as a virtual sinkhole in the regulatory system. Either Ministers must be brought to recognize their responsibility—to "own" the actions of their staff in their capacity as their "proxies"—or political staff must be found some constitutional role and protection that would allow them to take ownership and be accountable for their actions in their own right. Certainly the former appears to be the least complicated way forward.

The question of the appropriateness of the ministerial staff exemption that affords seasoned political advisors priority access into the public service remains a difficult one. On balance, I would say that few of those I interviewed felt this did, in fact, pose a serious threat to the political neutrality of the bureaucracy, although some were vehemently opposed to the elitism and sense of entitlement this privilege represents. Although it was recognized that the potential for abuse within this system can exist if Deputy Ministers or other delegated authorities within the

departments and the PSC do not exercise due diligence with regard to senior appointments, for the most part, there seemed to be limited passion for the abolition of this practice.

Nonetheless, I do find Denis Saint-Martin's thesis on this subject somewhat compelling, particularly with regard to his thoughts on how a "structural bias" within the public service, one that holds the defence of national unity as an overriding priority, could have played a significant role in the complicity of public servants in the wrongdoings associated with the sponsorship scandal. It represents one of the more plausible explanations as to why so many within PWGSC and elsewhere in the bureaucracy chose to "step back" in the face of such obvious financial irregularity and questionable public service appointments. While it raises serious and legitimate questions with regard to the larger "political" neutrality of the public service, what is important to this discussion is not that the ministerial staff exemption exists, but that this structural bias within the public service might have allowed that privilege to be abused—that the "checks" supposedly built into the system at the PSC and senior departmental levels not only did not work, but failed on several critical counts. Had Mr. Tremblay and Isabelle Roy applied for their respective positions without the exemption and participated in the regular competitive process, might the system still have accommodated their entry? My suspicion is that the answer to that question would be "yes."

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, has proven to be in both construction and practice, completely ineffective. The current Ethics Commissioner's interpretation of his mandate with regard to his inability to investigate complaints against exempt staff as well as his unwillingness to proactively police the conflict of interest provisions of the Code renders this legislation useless as an instrument of either prevention or sanction with regard to ethical abuse. The recent amendment to the Code that

authorizes the exemption of part-time ministerial aides from the all but the first section of the Code represents a further diminishment of its effectiveness. While I was reminded by one prominent lobbyist of Minister Carolyn Bennett’s motto to “never attribute to conspiracy what can be accomplished through chaos” with regard to any subversive intentions on the part of the current administration to protect political supporters and allies through this amendment, it does nonetheless appear to effectively remove from even the admittedly ineffectual supervision of the Ethics Commissioner any jurisdiction over the growing number of political operatives who divide their professional time between advising Ministers of the Crown and lobbying them. In addition, the apparently growing practice by Ministers of using “private” part-time political staff paid for by the public purse (or worse, their own resources) and operating largely outside of the conventional boundaries of the ministerial office looms as one more issue ripe for further exploration.

## 4.2

### A Possible Way Forward

It is painfully obvious from many perspectives—theoretical, practical, institutional, constitutional, moral, academic and historic—that the role of ministerial staff continues to languish in a somewhat indefinable netherland. It can claim legitimacy neither as a descendant of Westminster theory nor as a whelp of the Canadian constitution, and as a result, convention has to a large degree dictated the terms of its practice. The doctrine of ministerial accountability, which should by rights provide a constitutional backstop to the role, can be, as we have seen, a fickle and somewhat malleable commodity. To further complicate matters, the role is collectively and individually undergoing constant reincarnation. Not only do incoming regimes regularly try to impose new titles, authorities, duties and, occasionally, constraints on the role, most incumbents arrive with no floor plan in hand and forge their own



approach to the management of their duties based on a combination of energy, instinct, innovation and desperation. No comprehensive manual exists for a new administration on the appropriate workings of a ministerial office. It is a wheel that is subject to constant re-invention and yet, as our research has indicated, the path of the circle remains surprisingly constant.

In flailing about for plausible recommendations appropriate to this largely ungoverned and possibly ungovernable phalanx of statutory orphans, one is reminded that the idiosyncratic and culturally variable nature of Ministers' offices and government administrations makes it difficult and in some ways, undesirable, to cast in stone any prescription. However, a few points are clear:

- some consensus must be reached with regard to the accountability of Ministers for the actions of their political staff; the doctrine of ministerial responsibility either has to be fully recognized and accepted by Ministers vis-à-vis the actions or inactions of their staff or some new mechanism of accountability needs to be created to address the deep abyss into which this issue has repeatedly fallen since the 1980s;
- a more robust body of non-partisan research on the actual day-to-day workings of the ministerial office and PMO should be assembled as a resource for political parties in their efforts to provide guidance to 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;
- 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 should be harmonized to ensure a consistent set of rules applies to all advisors afforded privileged access to the affairs of state; greater scrutiny

of incoming and outgoing staff with regard to pre- or post-employment lobbying activities must be imposed and compliance enforced with appropriate oversight and sanction;

- an examination of the PCO's *Guidelines for Ministers and Deputy Ministers* and the Treasury Board's *Guidelines for Ministers* should be undertaken with regard to the policy role of ministerial staff to determine which, if any, of the provisions in the two documents might require philosophical and/or technical reconciliation; and,
- upon confirmation of their hiring, exempt staff should be required to undergo a one day seminar or similar exercise delivered by Treasury Board that would include in its curriculum the *Access to Information Act* and the *Conflict of Interest and Post-employment Code for Public Office Holders*, as well as an overview of any other rules, regulations or policies related to ministerial-departmental authority, the management of ministerial documents and correspondence, archives, financial regulations, use of the signature machine, leaves-of-absence for political campaigns, etc., by which political advisors are bound in the performance of their professional duties. This "certification" would ensure, at the very minimum, universal exposure to these rules, policies and conventions, if not necessarily compliance with them.

Other jurisdictions in the Commonwealth, including Scotland, New Zealand and the UK, have grappled with many of the same type of incidents and issues as Canada with regard to political advisors, and most have set in place a far more comprehensive set of policies and guidelines for ministerial staff than are to be found here. Currently, the UK is considering recommendations put forth in a Report by the Committee on Standards in Public Life that proposes a much more statutory approach to regulating political advisors. Their recommendations include the creation of a separate category of public servant to distinguish this group as distinct and separate from regular public servants. Further, the report recommends setting out in primary legislation, the parameters

of the adviser/civil service relationship, amendments to the Ministerial Code governing the accountability of Ministers for the management and discipline of their staff, contracting practices for advisers and requirements for unpaid advisers to follow the UK “Code of Conduct for Special Advisers.” Although the evolution of independent political advisers is a relatively new phenomenon in Britain compared with Canada—ministerial staff at Whitehall having normally been drawn from the permanent Civil Service—it is evident that they are currently far more advanced in their thinking on this issue. A “Code of Conduct for Special Advisers” has already been developed to address the specific circumstances of this unique group of ministerial operatives. The absence of such direct guidance and oversight in Canada seems to suggest a lack of political will, or perhaps political opportunity, to define through any regulatory or legislative means the role of these ministerial appointees, and thus, they remain as statutory orphans in an otherwise highly regulated and scrutinized system. Needless to say, the Sponsorship Inquiry might offer just such an occasion—the politically correct moment to enshrine in statutory law a clear and comprehensive set of standards for political staff drawn from all of the disparate guidelines, codes and conventions that currently exist and supported by the appropriate mechanisms for reporting, oversight and sanction. Such legislation would no doubt help bridge the chasm in the bureaucratic/political divide into which ministerial staff regularly slip and clarify for all involved any inconsistencies that currently exist with regard to the rules and accountabilities by which these individuals are governed.

While legislation would certainly bring focus to these issues, there are other means by which the role of political advisor could be constructively influenced. Practitioners I interviewed from both sides of the ministerial staff door were unanimous in their support for any efforts that could be made to improve the calibre of ministerial staff and ensure that upon hiring, these advisors were offered a consistent level of orientation and

professional training commensurate with the serious level of responsibilities that they hold.

In searching for possible precedents to support such recommendations, the most appropriate and relevant model I have uncovered to date is an American initiative entitled, “The White House Interview Program”. This enterprise is primarily funded by a non-partisan charitable foundation, the Pew Charitable Trusts, and is designed to collect comprehensive and comparable information on the role of White House staff going back six administrations. This significant task is being accomplished through interviews with 75 former political staff members and supplemented by materials from presidential libraries and other secondary sources. I was struck by the logic of their approach: “Rather, than tell the new group how they should organize the White House, we will provide them with information on how it has been done in the past, and then describe the outcomes.”<sup>137</sup> Upon election, transition teams can access this non-partisan “institutional memory” and use that body of research to determine job descriptions, management models and best practices that are most appropriate to their needs. Over time, the existence of this data will also encourage political parties and research bureaus, academic institutes and public policy think tanks to accrue a valuable bank of analysis and insight into this important function.

The “White House Interview Program” appears to be an eminently reasonable and useful approach for supporting a function that, by its nature, has little institutional memory. The depth of historic research, dating back six administrations, and the non-partisan nature of the program’s sponsor ensures that the information collected will be available and accessible to any incoming political administration, regardless of partisan stripe. Through the collection of a broad range of political anecdotes and personal observations, the research itself becomes the “mentor”. It avoids the rigid “prescriptive-ness” that might be found in a manual or policy generated by a central agency—

documents likely to be held in suspicion or rejected by new incumbents as a either the creation of their predecessors or the wishful thinking of a self-interested bureaucracy. Rather it allows each incoming administration to draw their own conclusions from their review and analysis of the historic records and to customize their approach to the role based on the successes and failures of previous incumbents.

The research gathered for the White House program has been authored by leading White House academics into a series of “Reports” that reveal a remarkable candidness in addressing some of the critical questions surrounding life in political office. An example of some of the headings found in Chapter 1, Report No. 6 entitled, “The White House World—Start Up, Organization and the Pressures of Work Life” illustrates the scope of these investigations:

#### **Forces Working Against a Smooth Transition into the White House**

- It takes Time to Appreciate the Place of Staff
- The White House as an Artificial Construct
- Discovering Knowledgeable Insiders
- Coming In Tired
- Early Mistakes Cost Valuable Energy

A similar project undertaken in Canada, possibly under the patronage of the Treasury Board (suggested by one former Deputy Minister as being politically neutral in the sense that “all parties hate it equally”) or, more preferably, some notably non-partisan charitable foundation or think-tank, would serve as a remarkable reference tool for incoming political staff and bureaucrats alike. The patterns of “best practices” that would no doubt emerge spontaneously from this research would greatly assist new Chiefs of Staff in establishing administrative policies and practices

based on sound research rather than, as some admitted, a complete sense of desperation. While not an answer to the many questions raised over issues of authority, direction, accountability and departmental relations, it would help to illuminate the way forward based on the lessons of past practice and afford ministerial staff some body of reference upon which to both model their conduct and avoid the mistakes of their predecessors. It would separate the “urban myths” that circulate on the Hill from the more valuable truisms, and at the very least ensure that every new Chief of Staff knows from Day 1 why it is essential to clear their in-box each day before leaving the office.

Would a Canadian Parliamentary Interview Project answer all the issues related to ministerial staff raised by the Sponsorship Inquiry? The answer, regrettably, is no. At best it would serve as a comprehensive and useful first step in describing the social history of political staff as a parliamentary construct. It would capture and consolidate the institutional memory of those who have served in these roles and filter that experience through a non-partisan prism. It would further identify gaps, inconsistencies, legislative loopholes and systemic fault lines that encourage ministerial staff misconduct and, more importantly, capture the wisdom and hindsight of those who have succeeded best in the role. The project would serve to mentor, to mold, to instruct and to warn ministerial staff in the practice of their political craft.

An evaluation of 50:50 or even 60:40 “good to bad” is not an acceptable standard of performance for a role as important to the affairs of state as that of ministerial aide. But it 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 departmental counterparts and the tremendous pressures, both political and personal, that come to bear upon them in

this role. It is an experience like no other, but one that deserves to be scrutinized, professionalized and recorded for the benefit and education of those that follow. Perhaps in the knowing of their history, some ministerial aides will not be condemned, as the well-worn maxim warns, to repeat it.

## Endnotes

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- <sup>1</sup> For the purpose of this paper, the terms “exempt” staff, political staff and minister’s or ministerial staff will be used interchangeably.
  - <sup>2</sup> J. R. Mallory, “The Minister’s Office Staff: An Unreformed Part of the Public Service,” *Canadian Public Administration*, 10, No 1 (1967): p. 25.
  - <sup>3</sup> Peter C. Newman, “We’ve seen this before,” *MacLean’s Magazine*, April 27, 2005.
  - <sup>4</sup> Mallory, “The Minister’s Office Staff:” p. 26.
  - <sup>5</sup> J.E. Hodgetts, “The Civil Service and Policy Formation,” cited in Mallory, “The Minister’s Office Staff:” p. 25.
  - <sup>6</sup> Mallory, “The Minister’s Office Staff:” p. 25, and in Donald Savoie, “The Minister’s staff: The Need for Reform,” *Canadian Public Administration*, no.4, (Winter 1983).
  - <sup>7</sup> *Ibid.*
  - <sup>8</sup> *Ibid.*
  - <sup>9</sup> *Ibid.*
  - <sup>10</sup> *Ibid.*
  - <sup>11</sup> Based on conversation with Sonny Gordon, Thursday June 9, 2005, Montreal, Quebec.
  - <sup>12</sup> Based on conversation with Jerry Yanover, June 20, 2005, Ottawa.
  - <sup>13</sup> Minister of Finance 1939 - 1946.
  - <sup>14</sup> Minister of Finance 1946 - 1948.
  - <sup>15</sup> Mitchell Sharp, *Which Reminds Me – A Memoir*, (Toronto: The University of Toronto Press), p. 112.
  - <sup>16</sup> *Ibid.*
  - <sup>17</sup> Mallory, “The Minister’s Office Staff:” p. 27.
  - <sup>18</sup> Paul Tellier, “pour une réforme des cabinets de ministres fédéraux,” *Canadian Public Administration*, 11, no.4 (Winter, 1968): p. 423.
  - <sup>19</sup> *Ibid.*, p. 423.
  - <sup>20</sup> Donald Savoie, *Breaking the Bargain*, (Toronto: The University of Toronto Press, 2003), p. 7.
  - <sup>21</sup> *Ibid.*, p. 22.
  - <sup>22</sup> Telephone conversation with Harry Swain, Retired Deputy Minister, June 3, 2005.
  - <sup>23</sup> Peter Hennessy, *Whitehall*, (London; Fontana Press, 1989), pp.511-2, quoted in C.E.S. Franks, unpublished paper on Minister’s Office Staff, April 24, 2005.
  - <sup>24</sup> *Ibid.*
  - <sup>25</sup> Quoted in Thomas A. Hockin, “Government in Canada”, 1977 in Donald Savoie, “The Minister’s Staff: The Need for Reform,” *Canadian Public Administration* 26, no.4, (1983), p. 519.
  - <sup>26</sup> Savoie, “The Minister’s Office: The Need for Reform,” p. 514.
  - <sup>27</sup> For a more detailed discussion see Donald Savoie, *Breaking the Bargain* p. 44.
  - <sup>28</sup> Quoted in Savoie, p. 44.



- <sup>29</sup> Conversation with Jerry Yanover, June 20, 2005, Ottawa.
- <sup>30</sup> Blair Williams, "The Para-political Bureaucracy," in *Parliament, Policy and Representation*, Kenneth Kernaghan et al, (Methuen, 1980), p. 219.
- <sup>31</sup> *Ibid.*, p. 220.
- <sup>32</sup> Based on the author's personal recollections.
- <sup>33</sup> Quote from Jean Luc Pepin during Question Period, 1993.
- <sup>34</sup> Conversation with Hugh Segal, Kingston, May 23, 2005.
- <sup>35</sup> PMO press release quoted in Savoie, *Breaking the Bargain*, p. 124.
- <sup>36</sup> Loretta J. O'Connor, "Chief of Staff," *Policy Options*, 12, 3, (April, 1991), p. 24.
- <sup>37</sup> Conversation with former Deputy Minister Arthur Kroeger, May 2, 2005, Ottawa.
- <sup>38</sup> Savoie, *Breaking the Bargain*, p. 124.
- <sup>39</sup> *Ibid.*, p. 124.
- <sup>40</sup> Conversation with former senior member of the Privy Council Office, June 13, 2005, Ottawa.
- <sup>41</sup> Telephone conversation with a former Deputy Minister, June 3, 2005.
- <sup>42</sup> Conversation with Tony Macerollo, Ottawa, June 13, 2005.
- <sup>43</sup> Savoie, *Breaking the Bargain*, p. 127.
- <sup>44</sup> Amy Smith, "Nova Scotia MPs Slam Aides Pay Hikes", *Halifax Chronicle Herald*, January 2004.
- <sup>45</sup> *Ibid.*
- <sup>46</sup> Mallory, "The Minister's Office Staff," p. 25.
- <sup>47</sup> *Ibid.*, p. 25.
- <sup>48</sup> *Ibid.*, p. 25.
- <sup>49</sup> Arthur Kroeger recalls one new minister that was completely incapacitated for a period of ten days following his appointment to Cabinet.
- <sup>50</sup> Public Service Employment Act, Section 39 (1) (R.S.C., 1985).
- <sup>51</sup> Treasury Board of Canada, *Guidelines for Minister's Offices*, Appendix C (2003). By comparison, Minister's staff budgets in 1968 were \$78,000, in 1975, \$130,000, in 1981, \$230,000, and in 1991, after budget cuts, approximately \$400,000. See Loretta J. O'Connor, "Chief of Staff", p. 23. This budgetary expansion reflects increases in both the size of ministerial staff (from one Executive Assistant plus clerical support to anywhere from 8 to 15 or more executive level staff and far less clerical support) as well as significant increases in salary range.
- <sup>52</sup> *bid.*, Appendix B (2003).
- <sup>53</sup> Conversation with former Executive Assistant Ron Hallman, Ottawa, June 15, 2005.
- <sup>54</sup> Martha Joynt Kumar, "The White House World," *The White House 2001 Project*, December 12, 2000, at <http://whitehouse2001.org>
- <sup>55</sup> Conversation with an Ottawa-based media consultant, June 1, 2005.
- <sup>56</sup> Micheline Plasse, "Ministerial Chiefs of Staff in the Federal Government in 1990," Canadian Centre for Management Development, April 1994.
- <sup>57</sup> Telephone conversation with former senior bureaucrat and former Executive Assistant to Transport Minister Doug Young, Fred Drummie, St. Stephen, New Brunswick, August 2005.
- <sup>58</sup> Conversation with Jerry Yanover.
- <sup>59</sup> Conversation with former senior PCO official, June 13, 2005, Ottawa.

- <sup>60</sup> Quoted in Plasse, “Ministerial Chiefs of Staff,” p. 34.
- <sup>61</sup> Conversation with Jerry Yanover.
- <sup>62</sup> Plasse, “Ministerial Chiefs of Staff in the Federal Government in 1990,” p. 25.
- <sup>63</sup> Blair Williams, “The Para-political Bureaucracy,” p. 221
- <sup>64</sup> Plasse, “Ministerial Chiefs of Staff in the Federal Government in 1990,” p. 25.
- <sup>65</sup> *Ibid.*, p. 26.
- <sup>66</sup> Conversation with Tony Macerollo, June 13, 2005, Ottawa.
- <sup>67</sup> *Public Service Employment Act*, 1985, Section 39.
- <sup>68</sup> Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, (2004), p. 33.
- <sup>69</sup> Treasury Board Secretariat, *Guidelines for Ministers’ Offices*, (2003), Appendix A, “Exempt Staff Position Structure.”
- <sup>70</sup> Conversation with the Hon. John Crosbie, St. John’s, July 15, 2005.
- <sup>71</sup> “Fifth Annual Terrific Twenty-five Staffer Survey,” *The Hill Times*, April 25, 2005, p. 25.
- <sup>72</sup> Quoted in Plasse, “Ministerial Chiefs of Staff,” p. 46.
- <sup>73</sup> Plasse, “Ministerial Chiefs of Staff,” p. 27.
- <sup>74</sup> Conversation with Arthur Kroeger.
- <sup>75</sup> Professor C.E.S. Franks, “Minister’s Office Staff,” unpublished paper, April 24, 2005, p. 2.
- <sup>76</sup> Plasse, “Ministerial Chiefs of Staff,” p. 34.
- <sup>77</sup> Conversation with Hugh Segal.
- <sup>78</sup> Treasury Board of Canada, *Guidelines for Minister’s Offices*, Appendix A.
- <sup>79</sup> Donald Savoie, *Breaking the Bargain*, p. 129.
- <sup>80</sup> Savoie, *Breaking the Bargain*, p. 198.
- <sup>81</sup> Conversation with former PCO official.
- <sup>82</sup> Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, (2004), p. 33.
- <sup>83</sup> Telephone conversation with former Special Assistant, Mulroney Government, September 6, 2005.
- <sup>84</sup> Plasse, “Ministerial Chiefs of Staff,” p. 37.
- <sup>85</sup> Privy Council Office, *Governing Responsibly: A Guide for Ministers and Ministers of State*, (2004), p. 33.
- <sup>86</sup> Testimony of Alex Himmelfarb to the Inquiry into the Sponsorship Program and Advertising and activities, p. 1843.
- <sup>87</sup> Privy Council Office, *Guidance for Deputy Ministers* (2003), p. 17.
- <sup>88</sup> Neco Cockburn, “Judge rejects Mounties’ plea to tell the whole story on Arar,” *Ottawa Citizen*, June 2005, p. 3.
- <sup>89</sup> Details based on S.L. Sutherland, “The Al-Mashat Affair: Administrative Accountability in Parliamentary Institutions,” *Canadian Public Administration*, 34, no. 4, pp. 573-603.
- <sup>90</sup> *Ibid.*, p. 592.
- <sup>91</sup> Based on conversations with former Deputy Ministers and exempt staff.
- <sup>92</sup> *Parliament of Canada Act*, sub-section 72.07(a) May 2004.
- <sup>93</sup> Telephone conversation with Duff Conacher, Democracy Watch, September 29, 2005.
- <sup>94</sup> *Conflict of Interest and Post-Employment Code for Public Office Holders*, (2004), sub-section 4(1).

- <sup>95</sup> Privy Council Office, "Backgrounder - Conflict of Interest and Post-employment Code for Public Office Holders," at www.pco-bcp.gc.ca. Undated document.
- <sup>96</sup> Standing Committee on Access to Information, "Privacy and Ethics—Evidence", 28 June, 2005.
- <sup>97</sup> F. Abbas Rana, "P.M.'s chief of staff should answer questions about tapes: Proctor," *The Hill Times*, June 20, 2005, p. 15.
- <sup>98</sup> Democracy Watch News Release, "Ethics Commissioner Must Rule on PMO Staffer, Fails to Fulfill Legal Duties by Refusing To Do So," June 7, 2005.
- <sup>99</sup> Telephone conversation with Scott Rothwell, Office of the Ethics Commissioner, September 28, 2005.
- <sup>100</sup> Comments made by Edward Ratushny, Law Professor, University of Ottawa on "The National," June 2, 2005.
- <sup>101</sup> Comments made by University of Ottawa law professor David Mitchell on "The National". June 2, 2005.
- <sup>102</sup> *Conflict of Interest and Post-employment Code for Public Office Holders*, (2004), Section I, 3(b) p. 10.
- <sup>103</sup> Anne Dawson, "Top Martin advisors likely to wield power from the outside," *Ottawa Citizen*, November 12, 2003, at www.canada.com News.
- <sup>104</sup> Telephone conversation with Duff Conacher, September 29, 2005.
- <sup>105</sup> F. Abbas Rana, "Stronach moves to Libs, loses at least two top political aides," *The Hill Times*, May 23, 2005, www.the.hill.times.ca.
- <sup>106</sup> Although correspondence between minister and staff are exempt from the *Access to Information Act*, most other Documentation related to policy development within department would be available.
- <sup>107</sup> *Conflict of Interest and Post-employment Code for Public Office Holders*, (2004), Section 23, p. 20.
- <sup>108</sup> Treasury Board of Canada Secretariat, *Guidelines for Ministers' Offices*, (2003), Appendix E—Information on the Minister's Staff Priority—The Public Service Commission of Canada.
- <sup>109</sup> *Ibid.*, p. 7.
- <sup>110</sup> *Ibid.*, p. 6.
- <sup>111</sup> *Ibid.*
- <sup>112</sup> *Ibid.*
- <sup>113</sup> *Public Service Modernization Act*, (2003).
- <sup>114</sup> Mallory, "The Minister's Office Staff," p. 27.
- <sup>115</sup> *Ibid.*
- <sup>116</sup> O'Connor, "Chief of Staff," p. 23.
- <sup>117</sup> Statement of Evidence, Commission of the Inquiry into the Sponsorship Program and Advertising Activities, "Priority for Minister's Staff under the *Public Service Employment Act*," (R.S.C. 1985 c.p.33) p. 1.
- <sup>118</sup> F. Abbas Rana, "Ministerial political staffers 'worry about their future'," *The Hill Times*, April 25, 2005, p. 30.
- <sup>119</sup> Conversation with senior Ottawa lobbyist, Ottawa.
- <sup>120</sup> *Ibid.*
- <sup>121</sup> Kady O'Grady, "Lobbyists buzzing about spring election", *The Hill Times*, Monday, April 25, 2005, p. 21.
- <sup>122</sup> See Part III, "Post-employment Compliance," *Conflict of Interest and Post-employment Code for Public Office Holders*, (2004), for a full discussion of these provisions.
- <sup>123</sup> The reason why the Ethics Commissioner does not police exempt staff infractions of the Code is examined at greater length further in the study.

<sup>124</sup> Conversation with a senior lobbyist.

<sup>125</sup> Conversation with Jean Claude Demers, Aylmer, June 16, 2005.

<sup>126</sup> Paco Francoli, "Tremblay dies weeks before being called to Gomery Inquiry" *The Hill Times*, August 29, 2005, p. 1.

<sup>127</sup> Ibid.

<sup>128</sup> Testimony of Isabelle Roy, Commission of Inquiry into the Sponsorship Program and Advertising Activities, Tuesday October 19, 2004.

<sup>129</sup> Op cit.

<sup>130</sup> Based on Public Service Commission, Statement of Evidence, "Appointment of Mr. Pierre Tremblay under Subsection 39(4) of the *Public Service Employment Act*" (R.S.C., 1985, c.P-33).

<sup>131</sup> Based on conversations with former associates and colleagues of Mr. Tremblay, Ottawa, June, 2005.

<sup>132</sup> Testimony of Isabelle Roy to the Commission of Inquiry into the Sponsorship Program and Advertising Activities, Tuesday, October 19, 2004, Volume 24 (OE), pp. 41-42.

<sup>133</sup> Public Service Commission, Statement of Evidence—Procedures for the Appointment of Ministerial Priority to an Executive Level Position under the Public Service Employment Act (R.S.C. 1985,c.P-33). May, 2005, p. 2.

<sup>134</sup> Privy Council Office, *Guidance for Deputy Ministers*, (2003), p. 10.

<sup>135</sup> Denis Saint-Martin, "L'affaire Groupaction : un cas de politisation de la Fonction publique federale?", *Canadian Public Administration*, 46, 4 (Winter/2003) p. 450-470.

<sup>136</sup> Ibid., p. 461.

<sup>137</sup> White House Interview Program, "Who We Are" at <http://whitehouse> 2001.org.