1. Ministerial Responsibility

As was noted in earlier chapters, the executive branch of the government exercises a considerable amount of control over the legislative branch, while paradoxically the parliamentary system is premised on the legislative branch controlling the executive. The linchpin in the system is the concept of "ministerial responsibility" which began to crystallize in the middle of the nineteenth century. Ministerial responsibility has traditionally been explained as being legal and political, and collective and individual.[233]

Legal responsibility of a Minister involves the simple proposition that no person is above the law. In the conduct of the government's business and in the fulfilment of his responsibilities, the Minister must act in accordance with the statute and common law.

Political responsibility refers to the fact that the government of the day must retain the support of the majority of the House of Commons. In this sense, the government is politically responsible for the broader policies it follows, and to a lesser extent, for each individual act of administration. It has been said that when the Cabinet loses the confidence of the House, either the House must get a new Cabinet or the Cabinet must get itself a new House.[234]

Collective responsibility of the Cabinet is closely tied to its need to retain the confidence of the House. In order to effectively retain control of the machinery of government, Members of the government must maintain unanimity outside Cabinet meetings, regardless of what goes on in them. Each Minister must support the decisions arrived at by the majority, and will stand or fall with them on that policy regardless of any opposition or reservations expressed during its formation. In this sense, the Cabinet is collectively responsible for the policy of the government even if it is based largely on the recommendations of only one of their number, and its Members fall together if that policy does not receive the support of the House.

Individual responsibility of the Minister centres on his role as the head of a government department. Each Minister is accountable to the House for all policy decisions made in the department, and must also answer for every act of maladministration that occurs. If the Minister was personally involved in the decision, he or she may be forced to resign; if the mistake was made by a subordinate, the Minister must still answer to Parliament, but it will usually be sufficient to explain what corrective or disciplinary action has been taken.[235] The individual responsibility of the Minister means that the House deals only with the Minister, not directly with the public service, in respect of the administration of the department.

An important corollary of the concept of individual ministerial responsibility is that the public service must remain anonymous.[236] If the Minister is to remain responsible he cannot be allowed to identify the official who was actually responsible for the decision or act being questioned. The Minister is allowed to take credit for every correct decision in the department, but in return he shields his subordinates from criticism in the House.

In recent years, the reliance on ministerial responsibility to keep the government accountable has been increasingly attacked, primarily on the basis of two premises: firstly, that Parliament has insufficient information and sanctions to hold the Ministers responsible, and secondly, that the Ministers have insufficient information and control to hold the public service responsible. In recognition of the pressing demands on Ministers' time, the Royal Commission on Financial Management and Accountability recommended a system of direct accountability for Deputy Ministers on matters of administration.[237] While the Ministers would remain completely responsible for policy, they would no longer be primarily responsible for certain specified duties assigned to the Deputy Minister. Also gone would be the anonymity of the upper echelons of the public service. These recommendations, if implemented, would require changes both in the nature of ministerial responsibility and in the attitudes of the public service.

Whatever the weaknesses in the concept of ministerial responsibility, it seems clear that Parliament will continue to rely on the Cabinet to exercise day to day control over government administration. This creates problems when one is considering the relationship to the rest of government of an administrative agency that has been given a degree of independence by statute. While most statutes creating an agency name a "designated minister", such agencies are not a part of the conventional departmental system of government, and the Minister seldom, if ever, has any control over their day to day operations. It does not seem appropriate that the Minister be held responsible for the acts of such an agency, both in fairness to the Minister and from the perspective of retaining effective control over the agency. If the Minister has no legal power to act there is not much he can do to correct or prevent errors in administration. Also missing in the case of the agencies is the traditional anonymity of the public service; when an agency acts it does so in its own name, not in that of the Minister, and everyone is aware of the real source of the decision. Ministerial responsibility should only exist where there is ministerial control. Since this control is frequently absent in respect of administrative agencies, with them the House is often denied one of its traditional points of contact with the rest of government.

While it is true that the designated Minister and the Cabinet seldom have control over the day to day operations of administrative agencies, there are several instances where the executive does have a form of

control over the policies they apply. In these cases there is no reason why ministerial responsibility should not apply as it does in every other case where the executive holds real power. In such situations, the Minister or Cabinet can, through the concept of ministerial responsibility, act as a point of contact between Parliament and agencies. Some examples of where this occurs will be discussed next.

A part of the role of the designated Ministers has already been encountered. They are responsible for fielding questions in the House relating to the agencies they represent, and carry information to and from the House about these agencies. The nature of the contact between the House and agencies through parliamentary questions was discussed earlier in this chapter. Also discussed briefly was the role of the Minister in bringing the agency's Estimates before Parliament. This section will conclude with a discussion of the third major contact the agencies have through the designated Minister: the preparation and tabling of reports to Parliament.

2. Ministerial Control of Administrative Agencies

To this point the conclusion has been reached that ministerial responsibility should exist where the Minister or Cabinet has effective legal control over the actor in the system. A logical extension of this is that the responsibility should only be as wide as the actual control that exists. In this regard useful distinctions have been drawn between types of political control based on whether they are positive or negative, and active or passive.

> Positive-negative refers to whether politically accountable authorities can substitute their own decisions for regulatory decisions or whether they are limited to rejecting such decisions. Active-passive refers to political power to initiate a review of regulatory decisions. This power is an active one if politically accountable authorities can review it at their own discretion; it is passive if the review is dependent on an appeal from an interested party.[238]

The significance here is that if the power is positive the Minister is responsible for the actual decision rendered, and if negative, only for the rejection of the original decision. If the power is active the Minister is responsible for inaction, but if it is passive, only where an appeal is brought. Political control can take the form of general control and management, the right to issue directives, power over regulations and the power to hear appeals. Examples of each type will be briefly noted.

A few administrative agencies are so completely under the control of the Cabinet that it is hard to distinguish their position from that of a

government department. It will be recalled that the NPA is under the "management and direction" of the Minister.[239] The National Film Board is "(s)ubject to the direction and control of the Minister".[240] In these situations there is no reason why the Minister should not be fully responsible for all the work of the agency. This in turn means, as was noted in the debate on the creation of the NPA,[241] that Parliament is in constant touch with the agency through the traditional devices used to enforce ministerial responsibility.

Parliament has a similar degree of control and contact when the administrative agency only recommends, and it is the Cabinet that finally makes the decision. The FIRA fits this model. Under its Act FIRA is to "advise and assist the Minister" in the adminstration of the Act. In the end it is the Governor in Council who really decides whether a particular investment is likely to be of significant benefit to Canada.[242] A similar situation arises when the agency may decide a certain matter, but it is subject to the approval of the Cabinet. The NEB, for example, may revoke or suspend certain licences "with the approval of the Governor in Council".[243] The amount of control, and therefore the level of responsibility in the Cabinet, will vary according to whether the Cabinet can control applications to an agency, to whether it can only accept or reject a recommendation of the agency, or can vary any decision recommended by the agency.

A further method of keeping the agencies' decisions in line with government policy is through a power to issue binding directives. The right of the Governor in Council to issue directives to the CRTC respecting classes of applicants who may not hold broadcasting licences is a good example.[244] In other cases, the authority to issue directives is a general one, and is not limited to a specific purpose.[245] This gives the executive a considerable amount of power over the agency.

Earlier in this chapter it was noted that regulation-making powers are often subject to executive control. In the example cited, that of the CTC, the Governor in Council could vary or rescind any regulation made by the Commission.[246] Other statutes require that the Cabinet approve the regulations before they are effective,[247] and some provide that the Governor in Council may make the regulations but only on the recommendation of the agency involved.[248] Each situation involves a different degree of Cabinet accountability to Parliament.

The final type of political control over agencies is through appeals of specific decisions of the agency to a Minister or the Governor in Council. Again there is wide variety in the provisions in use. In some cases the Cabinet can vary the decision that has been made.[249] In others, it can only be referred back to the agency for reconsideration.[250] Sometimes the

Cabinet can act on its own initiative,[251] but at other times the review process must be set in motion by one of the parties to the decision.[252]

This sketch of the type of executive control that exists over federal administrative agencies is complete neither in the number of agencies included nor in the variations of control in use.[253] Its purpose is to point out that administrative agencies are not always as independent of the executive as might be thought, and that in some cases they are not independent at all. In all the situations listed Parliament can indirectly supervise the work of the agencies concerned by scrutinizing the Cabinet as it vetoes, reviews or directs agency action. While these powers may detract from the independence of administrative agencies, they do have the advantage of bringing their work under the supervision of Parliament through traditional ministerial responsibility. This is an important though often latent point of contact between Parliament and agencies.

3. Reports to Parliament

(a) *The Reporting Requirement*

As can be seen from Table II (p. 90) most administrative agencies are under a statutory duty to prepare "statements" or "reports" (the distinction is obscure), and even those which are not, often in fact prepare such documents. In addition to the required reports the agencies may at times prepare reports, on their own initiative. For example, in 1978 the CRTC prepared a report looking back over its first ten years of operation in the field of broadcasting.[254] Agency reports are included in this section on "contacts through the Minister" because in most cases the statute requires that the report be "submitted to" him or "transmitted to" him. As Table II (p. 90) shows, the Minister is then almost invariably required to table the report in the House. In the case of the CTC the report is actually made to the Governor in Council through the Minister and is then tabled.

The provision that the report be to the Minister seems to be a mere formality. Ministers have no control over its preparation (with the exception of the few cases where the Minister can require that a report be produced), and are certainly not seen as being responsible in any way for its content. Communications between Parliament and the public service have traditionally been through the Minister, and this practice seems to be no more than an extension of that custom. Most agency Chairmen took the view that the report was in fact a report to Parliament, and it was prepared with that audience in mind. In some cases they were treated as reports to the general public: "to Parliament for public consumption."

TABLE II

REPORTS AND STATEMENTS OF ADMINISTRATIVE AGENCIES

Agency	Statutes	Annual Report	Tabled*	Irregular Report	Tabled
Anti-dumping Tribunal	R.S.C. 1970, c. A-15, s. 32, as am. by R.S.C. 1970, c. 1 (2nd Supp.), s. 8	Statement relating to the activities of the Tribunal	Yes	–	
Atomic Energy Control Board[1]	R.S.C. 1970, c. A-19, subs. 20(1)	Report of its affairs and operations	Yes	subs. 20(2), as the Minister may require	No[2]
Canada Council	R.S.C. 1970, c. C-2, s. 23	Report of all proceedings under this Act	Yes	–	
Canada Employment and Immigration Commission	S.C. 1976-77, c. 54, s. 14(3)	Report on its activities	Yes	–	
Canada Labour Relations Board	R.S.C. 1970, c. L-1, s. 210 as en. by S.C. 1972, c. 18, s. 1	Report on its activities	Yes	–	

* "Tabled" included "laid before Parliament" and "submitted to Parliament". The language in the Acts is not uniform.

[1] Bill C-14 would repeal the *Atomic Energy Control Act* and replace the Board with a Nuclear Control Board. Subsection 59(1) of the Bill would replace the "report . . . of its affairs and operations" with a "report on activities".

[2] In practice, these reports involve day to day business, and the Board's position is that subs. 20(2) does not require them to be tabled.

Agency	Statutes	Annual Report	Tabled	Irregular Report	Tabled
Canadian Film Development Corporation	R.S.C. 1970, c. C-8, s. 20	Statement . . . relating to the activities of the Corporation	Yes	–	
Canadian Radio-television and Telecommunications Commission	R.S.C. 1970, c. B-11, s. 31	Report on its activities	Yes	–	
Canadian Transport Commission	R.S.C. 1970, c. N-17, s. 28	See Table III (p. 97)	Yes[1]	–	
Canadian Human Rights Commission	S.C. 1976-77; c. 33, s. 47	See Table III (p. 97)	Yes	subs. 47(2) The Commission makes special reports on its own initiative when a matter is too urgent to be left to the next annual report	Yes
	s. 60 (Privacy Commissioner)	There is provision for reports on an annual basis, "and at such other times as are appropriate". See also Table III.	Yes	–	

[1] Subsection 28(1) requires that the Minister submit the report first to the Governor in Council. Subsection 28(2) requires that it go to Parliament afterwards.

Agency	Statutes	Annual Report	Tabled	Irregular Report	Tabled
Canadian Pension Commission	R.S.C. 1970, c. P-7, subs. 4(2)	No		As the Minister may require	Yes[4]
Economic Council of Canada	R.S.C. 1970, c. E-1, subs. 21(1)	Statement relating to the activities of the Council	Yes	subs. 21(2) The Council shall prepare an annual review. subs. 21(3) The Council may produce other reports as it sees fit.	No
Immigration Appeal Board	R.S.C. 1976-77, c. 52, s. 69	Report of the operations of the Board	Yes	–	
International Boundary Commission	R.S.C. 1970, c. I-19	No		In practice, reports on particular problems are made to the Minister of External Affairs	No
International Development Research Centre	R.S.C. 1970, c. 21 (1st Supp.), s. 22	Report on its activities	Yes	–	
International Joint Commission	R.S.C. 1970, c. I-20	No		–	

[4] Subsection 4(2) allows the Minister to decide which of these reports shall be included in the annual report of the Department to Parliament.

Agency	Statutes	Annual Report	Tabled	Irregular Report	Tabled
Law Reform Commission of Canada	R.S.C. 1970, c. 23 (1st Supp.), s. 17	Report on its activities	Yes	ss. 16, 18 If the Minister approves a programme of studies prepared by the Commission, he must lay it before Parliament. He must also indicate to Parliament whether he has refused to approve any programme.	Yes
Medical Research Council of Canada	R.S.C. 1970, c. M-9, s. 17	Report on its activities	Yes	–	
National Energy Board	R.S.C. 1970, c. N-6, s. 91	Report on its activities	Yes	–	
National Parole Board	R.S.C. 1970, c. P-2	No[5]		–	
Natural Sciences and Engineering Research Council	S.C. 1976-77, c. 24, s. 41	Report on its activities	Yes	–	
Pension Appeals Board	R.S.C. 1970, c. C-5	No[6]	–	–	

[5] In practice, the report of the Department of the Solicitor General includes a section on the Parole Board.

[6] In practice, part of the Canada Pension Plan report includes a section on the Pension Appeal Board activities.

Agency	Statutes	Annual Report	Tabled	Irregular Report	Tabled
Public Service Staff Relations Board	R.S.C. 1970, c. P-35, s. 115	Report on the administration of this Act	Yes	–	
Restrictive Trade Practices Commission	R.S.C. 1970, c. C-23, s. 49	Report of the proceedings under this Act	Yes	–	
Science Council of Canada	R.S.C. 1970, c. S-5, s. 19	Report on its activities	Yes	–	
Social Sciences and Humanities Research Council	R.S.C. 1976-77, c. 24, s. 21	Report on its activities	Yes	–	
Status of Women, Office of the Co-ordinator	O.I.C. P.C. 1976-781	Report on its activities	Yes	As deemed necessary by the Council	No
Tariff Board	R.S.C. 1970, c. T-1, s. 6	No		Reports on a case-by-case basis. Whenever the Board makes a report a copy of it plus a copy of the evidence must be laid before Parliament by the Minister.	
Tax Review Board	S.C. 1970-71-72, c. 11, s. 17	Statement relating to the activities of the Board	Yes	–	
War Veterans Allowance Board	R.S.C. 1970, c. W-5	No[7]	–	The Chairman reports to the Minister on a monthly basis	No

[7] In practice, the annual report of the Department of Veteran Affairs includes a section on the War Veterans Allowance Board.

As has been noted the report must usually be "laid before", "tabled in", or "submitted to", the House by the Minister. These terms seem to be synonymous. Documents are laid before the House either by depositing them with the Clerk of the House on any day the House is sitting, or by the Minister stating in the House that he intends to table them. Every Member is entitled to a copy of tabled documents, which are all listed in the daily *Votes and Proceedings*.[255]

Tabling a report means nothing more than that each Member gets a copy. There is no automatic provision for referring them to the committees of the House for discussion, and there is also no time set aside in the House for their debate. Some Private Members' bills have attempted to change this.[256] Automatic and permanent referral has been rejected by the government, apparently out of a fear that to do so would slow down the passage of government business through the committees.[257] The result is that the vast majority of reports are never formally discussed at all.

In all seven of the administrative agencies contacted,[258] the reports were actually prepared by the senior staff, usually under the supervision of the Chairman. Agency members did not generally play a large role in drafting the report: in some agencies they are asked to suggest things that might be included, in others they are asked to comment on a draft, and in a few they just "get a copy". At the CTC each modal committee prepares its part of the report. A draft is then prepared and goes to the Commission for discussion, although it was said that at this stage there are few additional comments made. No other agency reported anything approaching a formal debate of the report by its members.

It is difficult to assess the meaning of this lack of involvement of agency members in the preparation of reports. It perhaps just indicates the innocuous nature of their content. One might conclude that the reports are not regarded as a particularly important communication from the agency — in contrast, one would certainly be surprised to hear that reasons in a major decision had been released without being discussed by the agency members. If reports were more subjective and expositive of the thinking of the agency, and less statistical, they would be more informative and more vibrant documents. In that case agency members would not only be forced to play a greater role in their composition, they would also be more interested in debating their content before they were released.

The interest shown in reports no doubt depends to some extent on perceptions of the extent to which they are read. Members of Parliament are deluged with paper, and none claimed that all reports were read. To some extent the Members become specialized, and they read reports that are of particular interest to them. Most develop an ability to skim them and identify the key parts. But despite the lack of time to reflect on, and

digest reports. Members indicated that they did want reports to continue to be available.

(b) *The Content of Reports*

There is at present no provision for a standard format for reports of administrative agencies, nor is there any requirement that certain basic information be included. This is another area where Private Members have unsuccessfully tried to bring about changes.[259] As can be seen from Table III (p. 97), a handful of statutes give the Ministers the authority to prescribe the form or content of an agency report, but none of these powers has ever been exercised. This probably indicates no more than that Ministers and their advisers do not need to rely on the reports of agencies because they have other and better sources of information. Table III (p. 97) also lists the few statutes that set out what shall or shall not be included in a particular report. Other than these few provisions, which mostly require inclusion of basic financial data, administrative agencies are on their own to do as they please with their reports. It is instructive to examine a few reports and see what they have done.

The recent reports of the NEB have all followed exactly the same format. This is to be encouraged because it makes for easy comparisons from year to year. Some of the information, for example that on "functions and responsibilities", does not change much, but unfortunately authors of the reports have felt obliged in places to say the same thing in slightly different words every year. This means that real changes are obscured by mere changes in wording.

NEB reports outline its basic mandate and internal organization. Also provided is a great deal of factual and statistical data about the energy industry. This includes overall data on things such as supply and demand for energy and existing oil and gas reserves, as well as a detailed picture of the activities of each part of the energy sector during the year. In fact the reports give the overall impression that they are reports of industry activity, not of Board activity. The activities and work of the NEB seem to be incidental to the other data supplied. The report does include a summary of important hearings and litigation, but the emphasis here is on the what, not the why. For example, in one report we are told that Manitoba Hydro has been allowed to export a certain amount of power, but there is no indication of the principles applied to reach this decision nor of the goals to be achieved by approving the application.[260] In the end one is left with no conception of the Board's long-term goals, how it interprets its mandate, and the meaning it gives to phrases such as "public interest", "reasonably foreseeable requirements" and "all matters that

TABLE III

PROVISIONS FOR THE CONTENT OF REPORTS

Agency	Statute	Power in Minister to prescribe form and/or content of report	Has Minister prescribed	Statute prescribes content of report
Atomic Energy Control Board	R.S.C. 1970, c. A-19, s. 20	In such form as the Minister may prescribe	No	–
Canada Council	R.S.C. 1970, c. C-2, s. 23	–		Financial statements plus the Auditor General's report must be included
Canadian Employment and Immigration Commission	S.C. 1976-77, c. 54, subs. 14(3)	In such form and including such information relating to the operations of the Commission . . . as the Minister may direct	No	–
Canadian Film Development Corporation	R.S.C. 1970, c. C-8, s. 20	In such form as the Minister may prescribe	No	Financial statements plus the Auditor General's report must be included
Canadian Human Rights Commission	S.C. 1976-77, c. 33, subs. 47(1)	–		May include recommendations on human rights which the Commission considers appropriate to include in the report

Agency	Statute	Power in Minister to prescribe form and/or content of report	Has Minister prescribed	Statute prescribes content of report
	s. 60 (Privacy) Commissioner)	–		The report must not include any information which might prejudice national security, or which was obtained on a confidential basis
Canadian Pension Commission	R.S.C. 1970, c. P-7 subs. 4(2)	Such reports . . . as the Minister may direct and such of those reports as the Minister may determine shall be included in the annual report of the Department	N/A	–
Canadian Radio-television and Telecommunications Commission	R.S.C. 1970, c. B-11 s. 31	In such form as the Minister may direct	No	–
Canadian Transport Commission	R.S.C. 1970, c. N-17, s. 28	–		The report must show applications to the Commission and summaries of its findings, on any matter which it has investigated on its own motion or at the request of the Minister; and any other matters related to transport which are in the public interest

Agency	Statute	Power in Minister to prescribe form and/or content of report	Has Minister prescribed	Statute prescribes content of report
Economic Council of Canada	R.S.C. 1970, c. E-1 s. 21	–		Financial statements and Auditor General's report must be included
International Development Research Centre	R.S.C. 1970, c. 21 (1st Supp.), s. 22	–		Financial statements and Auditor General's report must be included
Law Reform Commission of Canada	R.S.C. 1970, c. 23 (1st Supp.), s. 17	In such form and containing such information with respect to any studies or other activities undertaken or directed by it as the Minister may direct	No	–
Medical Research Council	R.S.C. 1970, c. M-9, s. 17	–		Financial statements and the Auditor General's report must be included
Natural Sciences and Engineering Research Council	S.C. 1976-77, c. 24, s. 41	–		Financial statements and the Auditor General's report must be included
Science Council of Canada	R.S.C. 1970, c. S-5 s. 19	–		Financial statements and the Auditor General's report must be included

Agency	Statute	Power in Minister to prescribe form and/or content of report	Has Minister prescribed	Statute prescribes content of report
Social Sciences and Humanities Research Council	S.C. 1976-77, c. 24, s. 21	–		Financial statements and the Auditor General's report must be included
Tariff Board	R.S.C. 1970, c. T-1, s. 6	–		The information obtained during the proceedings must be submitted to Parliament, except confidential information within the meaning of the Act

appear relevant". In short, the report is a factual report, not a report on policies and interpretations designed to act as a basis for accountability to Parliament.

The CRTC has also made use of a standard format although it departed from it in its latest report, probably because its special ten-year report on broadcasting was issued at the same time. The CRTC report also gives a great deal of information about the regulated industry. Lengthy narratives, statistics and charts are given on the number of stations in operation, the applications heard, broadcast coverage in Canada, and industry finances. The letter of transmittal with the 1977-78 report correctly identified its focus:

> The report in hand summarizes the Commission's public business — hearings, applications, decisions — and describes the Canadian broadcasting and telecommunications systems regulated by the CRTC, as well as the Commission's internal operations, structure, administration, and finances.[261]

It too is a "what" report, not a "why" report.

The reports of the CRTC are a little more satisfying in their exposition of Commission policy, but they are somewhat spotty. For example, the special ten-year report sets out a section on "major policies" relating to radio, but does not do the same for television. Attempts are made in places to describe the policies of the CRTC by providing interpretive summaries of new regulations and major decisions. But there is no attempt to relate the work and decisions of the Commission to the statutory policies it is to pursue. For example, section 3 of the *Broadcasting Act* sets out that the Canadian broadcasting system should, *inter alia*, provide "varied and comprehensive" programming, be "effectively owned and controlled by Canadians", and protect "the right to freedom of expression". While the section is set out *verbatim* in the special ten-year report,[262] there is no discussion of how the CRTC interprets these objectives, nor of their long-term plans to achieve them. Furthermore, none of the discussion on regulations and policies is related to objectives; there is no indication of what particular objective a particular rule is designed to further. One other criticism (and one that also applies to the NEB report) is that there is no glossary of technical terms. The CRTC apparently expects the average Member of Parliament to know all about "foreground programming", "simulcasting", "slide announcements" and "low-power drop-in frequencies".

These are just two of the regulatory agencies, but their reports seem to be representative. Other administrative agencies that are largely adjudicative, such as the TRB or the Anti-dumping Tribunal, do not, of course, have the same policy-making power as the CRTC or the NEB. They are largely confined to an application of their statutes to particular cases. It is perhaps to be expected that their reports would be limited to explaining

themselves and setting out a few statistics on their case-load. Yet even here there is room for adventure. For example, the report of the TRB is written by the Chairman in the first person, and does not hesitate to point out sections of the *Income Tax Act* that are leading to "anomalies and seemingly iniquitous results".[263]

To summarize, it appears that many administrative agencies have interpreted the word "report" to mean "convey facts about" rather than "account to". There is undoubtedly a need for the comprehensive factual and statistical data now included in reports, and this information may even be desired by Parliament. The Chairman of one agency, himself a former Member of Parliament, stated that their reports contain a lot of statistics because "the MP's love them." This is certainly confirmed by the type of questions that are put on the *Order Paper*. The reports, however, are not now a suitable base for a debate of the goals and policies of the agency as perceived by agency members. They are therefore not particularly useful as a means of maintaining the accountability of agencies to Parliament.

D. Miscellaneous Contacts

At this stage most of the major points of contact between the House and the administrative agencies have been covered: contacts through the House, through committees and through Ministers. In this final section a few existing miscellaneous contacts are outlined. They can be broadly divided into three types. Firstly, there are individual contacts, those where the Member of Parliament comes face to face with the agency as an individual Member. Next, there are institutional contacts, those where the interaction between the agencies and the House is through an institution created by Parliament. Finally, there are some "other contacts" that defy classification. This part of the paper strays from its strict description of the Canadian situation by including a few contacts that exist in other jurisdictions but not in Canada. This will serve to point out possible gaps in the contacts between the House and administrative agencies.

1. Individual Contacts

Much of the individual Members' work goes on "behind the curtains" as they deal with constituents' problems and other local issues. At times this work brings them into contact with administrative agencies as they

attempt to intervene on behalf of an aggrieved citizen, or provide input for a decision to be made by an agency. Most of the agency Chairmen interviewed reported this type of contact.

Agency attitude to individual Member contacts varies widely. The WVAB receives a number of letters from Members. These are usually sent to the Minister, but are referred by his staff when it is clear that the problem is under the Board's jurisdiction. The letters will normally be on behalf of a constituent who has not received an allowance for which he applied. The Board does not stand on formalities, and will often regard such a letter as the initiation of an appeal by the aggrieved veteran. Such contacts are found by the Board to be useful, and reasoned arguments by the Members on particular cases are welcomed.

The CPC receives "thousands" of letters from MP's during the early stages of the application process. Generally they ask the Commission "to do what it can" for the applicant, and seem designed more to impress the constituent than to assist or influence the Commission. However, where the letter contains new information, it will be taken into account. If the applicant is not satisfied with the decision reached at the "paper stage", he can appeal to an Entitlement Board which will hold a hearing. Members of Parliament have appeared at these hearings perhaps half a dozen times over the last five years.

In marked contrast to the approach of the WVAB and the CPC is that of the IAB. It too receives a number of letters on behalf of individuals, but because the Board has the powers of a superior court of record it feels these letters are inappropriate. A system has been instituted whereby the staff of the IAB intercept and reply to any such letters without them ever coming to the attention of the Board members. Any third party who seeks to intervene is referred to the applicant or his counsel, and is told that the Board only receives evidence in open court under oath. Members have on occasion appeared at the hearings of the Board. Some of these Members are lawyers and may have been appearing in a professional capacity, but there have been a few cases where Members without legal training have appeared for constituents.

The hearings of large regulatory commissions are of a different nature, as they do not involve individual constituents to the same extent as those just discussed. The NEB, because of the nature of its work, very seldom if ever hears from individual MP's. On the other hand it is very unusual if the local Member does not appear at a CRTC hearing concerning broadcasting in the riding. Notices of such meetings are sent to the Members, and procedures have been put in place to accommodate them: at the hearings the MP's speak first, to be followed by local elected officials and then the applicants. At these hearings the Member will usually confine his

presentation to broadcasting in general, and will be careful not to favour one applicant over another.

The CTC also hears from Members of Parliament, often on local matters such as rail service, but also on national issues. No special procedures are in place, but the rules are flexible enough that Members can usually be accommodated. Letters from MP's are generally placed on file, and would not come to the attention of the Commissioners or influence the decision taken.

Individual contacts of this type would appear to be a useful device, especially in the case of those agencies dealing with individual applicants. There is, however, the danger that such contacts, being off the record, could be used to compromise the independence of the agency. Such occurrences are rare, but they do happen. Mr. Solomon, the Chairman of the CPC, indicates that letters have been received, which if sent to a court of law could have resulted in the author being cited for contempt. As well, in the past eight years there have been two instances where MP's wrote implying that if certain decisions were not made the Commissioners need not expect reappointment. The CRTC has occasionally had to return a letter when a decision had already been reserved and it was felt to be inappropriate to have it on file.

Probably the only sure solution to this problem is to use a full court model as the IAB does. This, however, has its own weaknesses. The inherent drawbacks of this type of involvement fortunately restrain the Members. As Mr. Thompson of the WVAB pointed out, if the Members could get an allowance for everyone they wanted to, they would be responsible for everyone in the riding who did not get one. Most Chairmen felt that independence was really a state of mind of the agency members, and thought the best solution was to leave the system as it is and deal with the problem cases as they arise.

The second common type of "individual contact" arises when the MP is himself the applicant. This may occur when a test case is brought to settle a point, or where the Member lends his name to an appeal that is being launched to the Cabinet. For example, in 1978 Mr. Don Mazankowski (P.C.-Vegreville) was involved in the appeal of two rail decisions of the CTC to the Governor in Council.[264] Mr. Ian Watson (Lib.-Laprairie) became involved in 1977 in a rail decision concerning passenger service in Québec.[265] None of these petitions was successful. Contacts of this type between Members and agencies are rare.

2. Institutional Contacts

There are a few institutions that have been set up by Parliament and that are in a position to act as an indirect point of contact between Parliament and administrative agencies. Some of these institutions have already been discussed. One of the most important ones is the Auditor General's Office, which brings to the attention of the House any improper use of funds by an agency that is discovered. Another is the CHRC, which would investigate a complaint against an agency as it would one against any other part of government. There have also been a number of Royal Commissions that performed this function. This section will briefly discuss the role of one more institution presently in place, and two other institutional models not now in use in Canada.

The LRCC was created in 1971,

> . . . to study and keep under review on a continuing and systematic basis the statutes and other laws comprising the laws of Canada with a view to making recommendations for their improvement, modernization and reform . . .[266]

The Commission is from time to time to report its recommendations to the Minister of Justice, who is to table them in the House. Soon after its creation the Minister of Justice asked the Commission to undertake research into "the broader problems associated with procedures before administrative tribunals". Faced with a paucity of information on the actual workings of the federal administrative process, the Commission undertook a programme of studies of the procedures followed by a number of administrative agencies. These agency studies were complemented by topical Study Papers, such as this one, on various issues that arise with respect to the administrative agencies. From this research base the Commission has been able to arrive at some tentative conclusions on the need for reform in this area which are to be found in its Working Paper No. 25 on *Independent Administrative Agencies*.[267] When the cycle is completed by the publication of a report or reports to Parliament, there will be in existence a comprehensive plan for reform in this area. This type of scrutiny cannot possibly be undertaken by the House itself, and the LRCC is therefore a useful device through which Parliament can keep abreast of the larger problems raised by administrative agencies.

One type of institutional contact not in place at the federal level in Canada is the office of ombudsman. Members of Parliament spend much time dealing with matters on behalf of constituents, which could be dealt with by such an office. Mr. Fairweather, Chief Commissioner of the CHRC and a former MP, reports that the Commission receives numerous requests for assistance from Members. Unfortunately, about three-quarters of these requests concern matters not within the Commission's jurisdiction. Those which arise out of dealings with the federal public sector, including federal administrative agencies, could be properly dealt with by an ombudsman.

The existence of such an institution would relieve some of the pressure on Members of Parliament, either by providing them with quick answers, or by giving the Members a place to which they could refer constituents with problems. It would also be another connection between Parliament and administrative agencies.

Another type of institution used in other jurisdictions is an "agency on agencies". Examples are the British Council on Tribunals, the Administrative Conference of the United States, and the Australian Administrative Review Council.[268] These are an important part of their respective administrative systems. There is a need for continuous expert surveillance of the technical aspects of administrative agencies such as the uniformity and merit of procedures used by agencies, the place of new agencies in the existing system, and the drafting of agency legislation. There is no reason why Parliament need concern itself with these more technical matters, and indeed it has neither the time nor the expertise to do so. By assigning the responsibility to an independent body, Parliament can ensure that these tasks are being done, while leaving itself free to deal with the more substantive issues of policy.

3. Other Contacts

This chapter concludes with some odds and ends: appointments, common memberships, reasons for decisions, freedom of information, and sunset laws.

Most statutes provide for the appointment of agency members by the Governor in Council, meaning that the effective power is in the hands of the Minister concerned, or the Prime Minister. Parliament has little input into the appointments process, which over the long run can be used to influence the direction of an agency. At most, Members can criticize appointments once they are made. There are at present seven statutes which provide that agency members can only be removed by a joint address of both Houses.[269] The Lambert Commission recommended that, in order to protect their independence, this be made the general rule for regulatory agencies.[270] While it does protect the agency from executive interference, such a power of removal is also the ultimate form of accountability, though due to its drastic nature it is rarely used. It does, however, present at least a theoretical point of contact between Parliament and administrative agencies.

In Canada the vesting of the right to make agency appointments in the executive has meant that it is not uncommon for Members of Parliament to be appointed to administrative agencies when this is politically expedient. For example, there are at present five former Members of Parliament

on the CPC, two on the CTC (including the President), one on the NEB, and one (the Chief Commissioner) on the CHRC. The value of this "common membership" as a point of contact is hard to measure, but it may serve to make the agencies more aware of the problems facing MP's. There does not seem to have been any movement in the other direction. A former Chairman of the CRTC was appointed to the Cabinet, but he resigned shortly after failing in his attempt to gain a seat through a by-election.

The value of having written reasons for decisions of administrative agencies is well known. A right of appeal is often meaningless without them. But reasons are also a good way of keeping track of the work of an agency: how it interprets its statutory mandate, the way it exercises its discretionary powers, and the priority it gives to various incompatible goals. Reasons are especially valuable in the case of the more judicial agencies, such as the IAB, where it is felt inappropriate for agency members to be accountable through devices such as House committees. An obligation on the part of the agency to produce written reasons can therefore serve as a valuable contact between agencies and politicians.

Several jurisdictions, most notably the United States, have enacted laws that give the public the right to have access to government documents. The resulting increase in the availability of information on the public sector is of great value to anyone who deals with the government; the more interest in government, the greater the value. Since Members of Parliament deal more with the government than most, they could expect to benefit more from such a right than the average person. A formalized, institutionalized method of obtaining information such as a freedom of information law would create would be another significant point of contact with the agencies. Related to freedom of information statutes are the new "sunshine" laws, which require administrative authorities to conduct more of their business in public.

The final point of contact to be noted is also one not generally in use in Canada: sunset laws. Such laws provide for a limited life span for the agency. If at the end of this time the agency is not renewed by the legislature it automatically ceases to exist. At present such provisions only exist for a few agencies whose mandates are limited by their nature, for example the AIB and the NPA. The Lambert Commission recommended sunset laws for statutory spending programmes (those which do not need to be approved each year during the Estimates process), but not for administrative agencies.[271] Proponents of sunset laws point to the automatic review of agency mandates that must occur under these laws, and the desirability of having the agencies periodically justify their existence. Opponents regard sunset laws as too much of a blunt instrument, as they sweep in agencies whose existence is unchallenged. There is also the fear that pressures on legislative timetables will turn the renewal process into a

formality. The experience with the *Bank Act* confirms this latter suspicion. It is customary for this Act to be reviewed every ten years, and when this was last done it was stipulated the Act would remain in force until July of 1977.[272] This deadline was extended three times without the new bill being debated; finally, after a further extension, the new Act was adopted in November of 1980.[273] The original provision has therefore been ineffective in forcing review of the statute, because House time has been allocated to the items with the highest priority in the minds of the government of the day.

CHAPTER FIVE

Parliament and Administrative Agencies

Thus far, this Study Paper has examined the constitutional context in which administrative agencies and Parliament operate, and has described the interaction that occurs between these two institutions. It is the purpose of this final chapter to draw together some of the observations and conclusions made so far, and to recommend some changes that will strengthen the relationship between Parliament and administrative agencies. This will be done under five headings. In the first section some of the underlying assumptions of this paper will be reiterated. In this part the paper will also return to the seven aspects of administrative agencies which were identified at the end of Chapter Three as being suitable targets of Parliament's attention, and summarize the existing practice in regard to each one. The next three sections identify, outline, and make recommendations on, the three key issues that arise out of the existence of administrative agencies in a parliamentary democracy: firstly, the status of agencies in the system; secondly, the communications between Parliament and agencies; and thirdly, the structures and procedures needed to support the relationship between the agencies and Parliament. The final portion of the chapter will, by way of recapitulation, return again to the seven tasks identified at the end of Chapter Three and outline how each would be performed under the suggested régime.

A. The Present Position

1. Observations and Assumptions

The parliamentary democracy presently in operation in Canada is based on a model established before the recent proliferation of administrative agencies. The theory and conventions underlying this system of government accordingly contain no neat pigeon-hole for these agencies. The recommendations in this study are based, however, on the assumption

that the administrative agency is a development within, and not a departure from, parliamentary democracy. Accordingly, there is no concern here with constitutional changes to the basic framework of government as it presently exists. This means that any recommendations must be practical given the system in which they are to be implemented, and must also be sensitive to the many traditions and conventions that permeate parliamentary government.

It is also important to keep in mind the realities of the system. During a time of majority government, the policies of the government cannot be changed without its consent or acquiescence; at most, they can be slowed down. During times of minority government, the policies of the executive are a little more susceptible to pressure, but in the end the Opposition can only defeat a government motion when it is prepared to fight an election. The result is that there is little point in giving Parliament a veto or affirmative power over a particular item, because in the end the government will decide the motion's fate. If the government is willing to have change, it can see that change occurs; if it is not willing, there will be no change and the sanction is ineffective. The fact is that the real power of Parliament is in its ability to air issues through public debate in the House of Commons. It is therefore necessary that procedures be put into effect to ensure that important issues will in fact be debated.

The concept of ministerial responsibility has been the subject of a good deal of scorn and scepticism. It is, and will remain, however, a fundamental part of parliamentary government.[271] Consequently, the Members of the Cabinet will remain the chief contacts between the House and the public service, and can be expected to resist any changes that may undermine their position in this regard. In addition, they will remain the proper target of parliamentary attack on any aspect of government operations and policy. The extent of the responsibility of the executive should be related to the real power it possesses, and where an administrative agency is not really an independent actor in a particular aspect of its work, the executive should not be allowed to disclaim this responsibility Where the Cabinet or the Minister cannot control the agency, they are not accountable for its decisions, but they should be expected to be aware of what the agency is doing, and to state whether those actions are in accordance with government policy. They must then be prepared to defend that policy.

The proper and legitimate role of the executive is to govern. The proper and legitimate role of the House of Commons is to scrutinize the executive. This study proceeds on the assumption that there is nothing inherently evil about executive power even though it, like any other type of power, is subject to abuse. The government of the day is elected to govern, and they are under an obligation to use the powers that have been given to them to do so. All this is to be done under the watchful eye of

Parliament. Just as the Cabinet can expect to be allowed to do its job, so Parliament can expect to be provided with the resources, opportunities, and procedures it needs to do its own. It follows that the executive cannot legitimately deny Parliament anything that it reasonably needs to remain an effective and vigorous scrutineer of the government.[275]

Administrative agencies are a part of the public sector, and as such Parliament's role as scrutineer includes them. The House has a right to maintain contact with the agencies, and to review in the appropriate manner their activities, just as it reviews the activities of the rest of government. It follows that some link should exist between the House and agencies to provide the necessary interaction. Since Parliament is their creator, financier and legitimizer, administrative agencies also have a considerable interest in the existence of strong bonds between themselves and the House.

One restriction on the role that Parliament can play is the sheer size of the task it faces. The House obviously cannot do everything, for if it could, there would be no need for the Cabinet. But even within its role as scrutineer there is a limit on what can be done; certainly Parliament cannot check up on every decision made by every administrative agency. There is therefore a need to set priorities and a need for the House to decide what it will deal with itself, what it will leave to other centres of responsibility, and what can safely be left undone. Related to this problem is the scarcity of time in the House itself. The government has a justifiable claim to most of the time in the House set aside for dealing with government business. In recommending changes one must be careful not to entrench so many things in the timetable of the Commons that government motions are brought to a standstill.

Finally some of the limitations in making recommendations in this area must be noted. Some aspects of the House's work are by nature unstructured and undisciplined, and must continue to be so. An example is the debate of legislation in the House. Such debates are an important device in the scrutiny of new legislation, but it is not meaningful to say that the Members should spend more time discussing a particular issue when a new agency is created even though this would lead to greater accountability in the system as a whole. As was noted earlier, MP's must remain free to deal with those issues which they feel are important.[276] A related constraint is that even though Parliament can be given the tools (in the form of information and procedures) to render an accounting from the agencies, it is up to Members to use them. The changes in attitude that may be needed are also not susceptible to recommendations for reform, and the most that can be done is to convince MP's through reasoned argument that particular topics are worthy of discussion.

It is a premise of this study that there is a danger in assuming the existence of a typical administrative agency or a "system" of agencies.

Federal agencies perform many different roles, and no two of them are exactly the same. As we pointed out earlier, this creates a danger that solutions will be proposed as if they are of universal applicability, when in fact the diversity of agencies may call for a range of solutions.[277] This calls for recommendations based on broader principles with qualifications for exceptional cases, and for an awareness of the diversity that will have to be dealt with when reforms are actually implemented.

2. Elements of Accountability

At the end of Chapter Three it was concluded that Parliament's main role is as the scrutineer, auditor or critic of the public sector. In exploring this role in relation to the administrative agencies, seven different aspects of accountability were identified.[278] Having examined the points of contact between Parliament and administrative agencies in the last chapter, it is useful at this point to return to these seven elements of accountability to outline briefly how each is dealt with at the present time.

(a) *Structure*

The first item for review is the overall structure and integrity of the system. This includes the organization of existing agencies, the place of new agencies, and the relationship between the agencies and other parts of government. Covered are such issues as the uniformity of legislation and the suitability of the agency model to perform the task at hand. This type of review is presently undertaken largely through debate on, and clause by clause study of, bills creating new agencies or altering existing ones, a process which is unsatisfactory for several reasons.[279] First of all, statutes affecting the agencies do not come before the House with any regularity, and as a result there is no continuous or routine examination of any particular agency. Secondly, a bill dealing with one agency is not a good basis for a debate on the overall system presently in place. Furthermore, Parliament is prevented from systematically scrutinizing new agencies and their place in the existing system because of the fact that a number of administrative agencies are created by Order in Council, out of the reach of Parliament.[280] Finally, as was noted above a great deal of time does not seem to be spent on these issues in the House, even in the case of bills like the telecommunications bill whose primary purpose was a rationalization of the jurisdiction of two agencies.[281] In fact the only observed reference to the place of a new agency in the existing structure came during the debate on the NPA bill, which it will be recalled created an entirely new and parallel system of regulation.[282] Even here there was no

sustained comment on these issues. The organization of the public sector is to a large extent a matter of executive prerogative. While this does not hold true in respect of administrative agencies created by statute, it would appear that the present system relies heavily on the executive branch to provide for an orderly system of agencies with proper links to the rest of government.[283] Parliamentary scrutiny of this function of the executive is presently weak.[284]

(b) *Mandate*

Second on the list of items to be reviewed is the mandate given to the agency, which should be examined for clarity, inherent contradictions and compliance with the wishes of Parliament. This too is primarily done during the debate on bills. Since it is the substance of any measure that receives the greatest attention, the compliance of an agency's mandate with the wishes of Parliament is usually thoroughly debated. The best example of this occurred when the CTC was given a mandate to promote an "adequate" as well as an "efficient and economic" transportation system.[285] This example, however, also shows up an area of weakness, for this addition created an inherent contradiction in the goals of the CTC. Setting clear and detailed goals for the agency is an important factor in agency accountability. It is a necessary premise of any system of accountability that there be pre-set standards against which performance can be measured. If those standards are vague, contradictory or absent, a latent policy-making and priority-setting power falls to the agency. The present system allows for review of the substance, clarity and consistency of the initial agency mandate (though the opportunity may not always be used to the fullest), but it does not provide a mechanism for periodic review and updating of that mandate.[286]

(c) *Policy*

Thirdly, policy developed by the agency should be closely monitored (as should any policy directive given to the agency by the executive), particularly the interpretation by the agency of its mandate and jurisdiction. At present there is no formal forum for the review of agency policy. In part it occurs through the Question Period in the House, and on miscellaneous debates such as those under Standing Order 26.[287] This primarily takes the form of reaction to particular decisions. As was noted earlier, annual reports of the agencies do not lead to much scrutiny of policy, both because of the content of the reports and because they are not discussed in the House or in committee.[288] The primary review of agency policy presently occurs when Chairmen make appearances during the Estimates process.[289] As this procedure is not designed for policy review the scrutiny that takes place is ineffective and incomplete, and there is no

systematic comparison between policy made and the agency's statutory mandate. Overall, Parliament has a good "brushfire" capacity, in that it can respond quickly to isolated high profile issues, but it has no capacity to conduct a broad review of agency policy.

(d) *Delegated Legislative Powers*

The fourth matter to be reviewed is the scope and exercise of delegated legislative powers. At present the scope of such powers is controlled by debate of the bills that grant them.[290] Their exercise could be subject to review for substance and form. Review of substance is at present nonexistent, with the exception of the handful of statutes that provide for an affirmative or negative resolution of Parliament.[291] There is also nonparliamentary review on isolated topics such as compliance with the *Bill of Rights* and the *Human Rights Act*.[292] On the other hand review of the form of delegated legislation is the one area where a systematic method of review is in place. As was noted the work of the Standing Joint Committee on Regulations and other Statutory Instruments is subject to some limitations, but it still represents a superior system of review when compared to the review of any other aspect of the work of administrative agencies.[293] This said, one can perhaps criticize Parliament's priorities in this regard. Review of form and *vires* would seem to be activities that can adequately be done by other institutions, such as the public service or the courts. Some of the other criteria used by the Joint Committee, such as those on imposition of penalties and retroactive effect, could be adequately dealt with by a general provision that no general regulation-making power authorizes these things. Parliament should perhaps devote its energies to the review of the substance of delegated legislation, including therein one or two of the criteria presently applied by the Joint Committee such as "unusual or unexpected use of powers" and "unduly trespasses on the rights of the subject."

(e) *Discretionary Powers*

Discretionary powers should also be subject to review for their scope and exercise. Again, the question of scope can be raised during debate on the statute granting the discretion, but as was noted earlier Members do not seem to be particularly concerned with, or sensitive to, the granting of wide discretionary powers to administrative agencies.[294] Review of the exercise of these discretions is also rather haphazard. Occasionally such things are touched on during the Estimates process, but there is nothing approaching a systematic review of the consistency and appropriateness of their exercise. Agency reports are also not particularly helpful. Review of discretionary powers is perhaps weaker than review of any other aspect of the work of administrative agencies.

(f) *Finance*

The sixth item is financial control, and there are well established procedures in place to provide this. The Estimates debates in committee are designed to review initial spending proposals, although as was noted they are not currently used for that purpose.[295] Post-spending review is carried out by the Auditor General and the Public Accounts Committee, and seems to be well in hand.[296] The financial process is a more formalized one because of the need to seek funds from Parliament each year. It is not without its faults, and in this respect reference should once again be made to the many recommendations of the Lambert Royal Commission on Financial Management and Accountability.

(g) *Individual Cases*

The seventh and final subject for review is the disposition of individual cases. This presents difficulties, for in most cases it would be inappropriate to expect the agency to justify a particular decision to the House. Parliament's interest here is not so much in accountability as in being aware of how powers are actually being exercised and jurisdiction actually being interpreted. Its remedy is not to call the agency to task, but to amend the statute or to prod the executive into action. While most agencies issue reasons for their decisions, and many annual reports contain outlines of them, there is at present no routine method of bringing the results of individual cases to Parliament, nor is there any procedure for their scrutiny or debate. It is probably through complaints from constituents that MP's receive the most contact concerning decisions, and this does serve to identify problem areas. Such problems can be resolved by individual action on the part of Members, during Question Period, and during the Estimates process when the Chairmen are present. There is, however, no special institution or procedure set up to perform this function.

(h) *Conclusion*

This review of the seven aspects of the work of administrative agencies that should be subject to scrutiny by Parliament reveals that there is much room for improvement. The rest of the chapter will examine the three key issues that arise here, and propose changes that would improve the system.

B. A Question of Status

That unwritten part of our constitution which provides for the relationship between Ministers of the Crown, Parliament, the public service and the courts is largely a product of the last century. It evolved at a time

when administrative agencies did not play a major role in government, and it does not contain a clear provision for them in the system. No form of government that is based on convention and practice can exist without political theory, yet our political science has yet to resolve the question of the status of administrative agencies in a parliamentary democracy. There is no general agreement on the type of interaction that should occur between agencies and the centres of political power, and their relationship with the courts has become hopelessly entangled with concepts of "jurisdiction". Also unresolved is the problem presented by the competing objectives of maintaining the independence of agencies while keeping them accountable for their decisions.

In Chapter Two it was pointed out that an important attribute of administrative agencies is their ability to act as an insulator between government and the function being performed.[297] Thus, they are used when impartiality is needed in arbitrations, adjudications, determination making or the exercise of discretions, where the input of other groups is desired, and where there is no place for party politics and favouritism. These things are accomplished by granting the agency a degree of independence, and by relaxing the traditional governmental controls over it. Maintaining the independence of agencies from the executive and the public service is thereafter seen as a desirable objective.

In contradistinction to the desirability of maintaining agency independence is the value the parliamentary system places on government being accountable to the elected representatives of the people. To a certain extent a gain in independence results in a loss of accountability, an inability to direct the work of the agency on a course in line with government priorities, and difficulties in co-ordinating government and agency policy. On the other hand, to increase accountability limits the flexibility of the agency, restricts its ability to apply its expertise to its work, and to a certain extent defeats the whole purpose of creating the agency in the first place. The solution is, of course, not to choose one over the other, but to strike the correct balance between the competing values.

Selecting the right balance is a difficult enough task on its own, but it is complicated by certain other factors. The first is the wide variety of roles that a particular agency may play. It is highly possible that the level of accountability needed for one role will be incompatible with the degree of independence called for by another. Secondly, the diversity that exists among administrative agencies means that the proper balance for one agency is unlikely to be appropriate for another. As a result, a separate solution will have to be developed for each one. It is not possible, and perhaps misleading, to treat administrative agencies as a unitary fourth branch of government for the purposes of defining their relations to the other three branches.[298]

Relations between the traditional three branches are fairly simple. Parliament, the legislative branch, is responsible to the people through the electoral process. The executive branch is responsible to Parliament through the concept of ministerial responsibility. The judicial branch is not responsible to either of the other two because of its need for independence, but is restrained by judicial traditions and discipline, appeal procedures, its inability to deal with matters other than those brought to it, the limitations of dealing with issues on a case-by-case basis, and the ability of the legislature to change the law. Thus accountability is the hallmark of the executive as independence is of the judiciary. Using the relationship of these two branches of government to Parliament as the model for the relationship between Parliament and administrative agencies has two advantages: it allows one to deal with known quantities, and the solutions suggested will be in accordance with our political traditions. It is not, however, a complete answer. First of all, it does not deal with the relationship between Parliament and those agencies with legislative powers. Secondly, there remains the problem of those agencies which exercise functions traditionally performed by more than one branch of government. Finally, it does not take into account the position of agencies that are not subject to some of the limitations which the executive and the courts have on their power.

In strictly logical terms accountability to Parliament can be direct, indirect or non-existent. Direct accountability would involve a relationship with Parliament without the intervention of any other institution. This type of accountability is rare, existing with only a few special institutions such as the Auditor General's office. In the course of Chapter Four it will have been noticed how few direct contacts there are between the agencies and Parliament, the appearances of agency Chairmen before committees being the only significant one. Most of the contacts are indirect, and are made through the Minister. As was noted above, the Cabinet has long been the point of contact between Parliament and the public service,[209] and indeed the creation of direct links would be seen by some as a further weakening of ministerial responsibility. The absence of accountability to Parliament is not a rejection of the principles of parliamentary government. The courts are not accountable in this sense, though as was noted above, they are subject to other restrictions.

To this point it will have been realized that the question of the status of administrative agencies consists of two related issues: the proper relationship between the agencies and the rest of government, and the appropriate degree of independence for agencies. While neither of these issues permits of a simple solution it is recommended that the problem should be approached on the following basis. Firstly, and speaking most generally, the relationship between an agency and the rest of government must be dealt with specifically in the statute that establishes the agency. To fail to do so implies either that the issue is not important or that it is adequately

dealt with by political conventions, neither of which is true. Approaching the problem from the perspective of each individual agency also deals with the diversity that exists among administrative agencies. A corollary of this recommendation is that use should not be made of vague formulas such as "court of record" to describe the status and relationships of an agency, for they are insufficiently precise.

Secondly, an agency should not be given incompatible roles to perform. Parliamentary government has always worked on the assumption that certain functions should be separated, for example, that no person should be simultaneously legislator, prosecutor and judge, and that no person should be a judge in his own cause. While one advantage of the agencies has been their ability to mix functions performed by other branches of government, this should not be carried too far. Where one role requires considerable independence and another calls for a degree of accountability, consideration should be given to using a two-tiered system if a method of separating the functions within one agency cannot be developed.

Thirdly, when a new agency is created, each role that it is to play should be identified, and the statute should spell out clearly the degree of accountability (or independence) that will exist in respect of that function. This will again require that relationships with the other parts of government be clearly set out. Paying attention to each role which the agency must perform will help to point out any incompatibilities. It will also prevent an over-emphasis on one particular role, or one model of agency, leading to a statute that defines relationships appropriate to that role, but not for others which the agency must undertake. In setting out the accountability and independence of the agency the statute should specify where the real power lies. If the agency is merely to advise or recommend, with the real powers of decision making being in the Cabinet, that should be made clear. Neither a degree of independence for the agency nor executive power over the agency is inherently improper if proper controls are in place and relations are well defined. The real danger lies in non-independence in the agency coupled with a lack of responsibility on the part of the executive.

Fourthly, in accordance with the idea that parliamentary government is responsible government, no agency should be accorded more independence than is needed for it to fulfil its mandate. Wherever possible government should be responsible to Parliament. Where accountability to Parliament would be inappropriate, it must be ensured that other limitations such as those applied to the courts are in effect. These might include appeals to a court or to another administrative agency, or very specific guidelines set out in the statute.

Fifthly, and finally, where an agency should be accountable to Parliament, that accountability should be indirect. This in effect means that the

Cabinet will have the primary responsibility for supervising the agency, with the Ministers then being responsible to Parliament for their actions or inaction. Putting responsibility on the executive will require that the Cabinet or the Minister has control over the agency on appropriate issues through suitable mechanisms. Parliament's relationship with administrative agencies will be more by way of influence than by actual control.

The conclusion that agency status should be dealt with on an agency-by-agency basis requires that recommendations in this section be quite general. No one régime of accountability can be recommended for all agencies. The applicability of the five principles just recommended can, however, be demonstrated in respect of some of the roles commonly performed by administrative agencies. When dealt with in isolation few of these roles present really difficult questions about the appropriate degree of accountability or independence. An assistant agency can have the same degree of independence as the branch of government it is assisting. Advisory agencies do not present problems of accountability because there is always the final sanction of refusing to accept the advice. The application of expertise is not a problem unless combined with another role, such as policy making. The independence of purely adjudicative or arbitral agencies is obviously necessary, but care must be taken to ensure that other limitations (such as those operating on the courts) are in place. At the other end of the spectrum, policy-making and rule-making agencies are obvious candidates for a degree of accountability to elected officials.[300]

When roles are combined, which is the more common situation, the problems become more difficult. For example, determination-making or discretion-exercising agencies usually combine some policy-making ability (for a discretion implies an absence of strict rules) with an adjudication or determination of individual cases. While the policy applied must be responsive to government input, a certain degree of independence is needed to protect individual applicants. Large regulatory agencies usually present this type of problem because they combine rule-making, policy-making, and adjudicative functions.

The CRTC illustrates the difficulties that can arise. Under the *Broadcasting Act* the CRTC is required to administer certain aspects of Canadian broadcasting. The Act sets out the broad goals that are to be aimed for, but not the detail as to how they are to be achieved. Involved in this task is the making of a number of policy decisions about *inter alia*, Canadian ownership, programme content, and advertising policy. These are matters in which the government can expect to have a say. On the other hand sensitivity about freedom of the press and the need to decide individual cases fairly require that politicians not be too actively involved in the work

of the Commission. Similar problems arise with the granting of discretionary allowances by the WVAB and the admittance of immigrants on compassionate grounds by the IAB. In both cases the need to deal fairly with individuals conflicts to some extent with the government's legitimate interest in levels of spending and the flow of immigrants.

If a pattern emerges from all this it is that elected officials should have the right to lay down the broader policies and priorities for the agencies to apply, but once that is done the agency should be allowed to operate without interference. To accomplish this it is recommended that policy input be provided by statutory provisions, by policy directives to the agency from the Cabinet, and by executive control over delegated legislation created by the agencies. All of these methods involve accountability to Parliament, and the appropriate one will vary from agency to agency. For example, standards for adjudication might better be established by statute or in regulations than by policy directives. Once this policy input is made the executive should step back. There should be no directive power in individual cases, no power to grant individual exemptions from the provisions of regulations, and no appeals to the Cabinet from the decisions of the agency. Furthermore, the agency should be able to decide individual cases in its own name, and should not just recommend decisions to the Minister or the Governor in Council. In some cases a power to suspend decisions while the Cabinet develops a policy may be desirable or necessary. If a decision is made contrary to government policy, the solution is to amend the statute or to issue a further and more specific directive to the agency, not to, in effect, change the law retrospectively in respect of individual cases. Parliament's role in such a system would be to scrutinize the agency's interpretation of its statutory mandate, oversee the executive's use of its powers, and supervise the agency's interpretation of any policy input it receives.

To summarize, it is recommended that the relationship between each administrative agency and the rest of government be set out clearly in its statute. Each role that an agency is to play should be identified, and the proper degree of accountability or independence for each specified. Roles that are fundamentally incompatible should not be given to the same agency. The agency should not be granted greater independence than necessary, and where accountability to Parliament is appropriate it should operate through the Cabinet. As a general rule the government of the day should be able to determine the policies applied by the agency, but this should be done through prior input and not by altering decisions taken by the agency or by interfering with particular applications of the policy. The exact mechanisms needed to accomplish this will vary with the circumstances and the agency.

C. Communication and Information

One central issue in the relationship between Parliament and the administrative agencies is the flow of information between them. Parliament cannot perform properly without adequate data on the agencies, because the scrutiny process is exceptionally vulnerable to gaps in information. It is not possible to hold an institution accountable without knowledge of what it is doing. The primary weapon of Parliament is to subject issues to public debate, and such debate is not possible if the underlying facts are not available in a readily usable form.

Information gathering seems to be a particular preoccupation with Members of Parliament. Questions that essentially ask for the existing state of the law, for the content of regulations and for facts about the agency's work are very common during committee meetings on the Estimates.[301] In the legislative debates studied, Members took a consistent interest in the duty of new agencies to report, the requirement that important documents be tabled, and in ensuring that regulations would go before House committees.[302] This can be taken to reflect an awareness on the part of the Members that without this basic information their task will be much more difficult. The use by the Opposition of Question Period, which is in form an information-gathering device, shows how important the airing of information is in the accountability process.

Many Members of Parliament complain about the presumption of secrecy that seems to prevail in government. No doubt some information must be kept from general circulation, but there is a great deal that the public, and especially Parliament, should have a right to see. This is especially true in respect of administrative agencies, which must agree to a certain openness in exchange for the degree of independence which they are allowed. To illustrate this, the judiciary is not subject to political control, but in return it makes its decisions in open court, court records are available for public scrutiny, and written reasons are often issued for decisions. If the agencies want court-like independence they must live with court-like openness. Freedom of information legislation would of course go a long way towards solving this problem, and movements in this direction are to be encouraged. Any such legislation should be drafted to include administrative agencies.

Another problem with government information is its volume. It is ironic that there is at the same time too much and not enough information. Members of Parliament receive mountains of paper each session, yet they still lack much of the information they need to do their jobs. The key is to supply them with the proper information in a usable form.

Communication and information flow between Parliament and administrative agencies should be based on three principles. The first is availability. The information needed by Parliament to keep agencies accountable must be available to it. This information should be in a form suitable for use by Parliament, which should not have to make do with information produced for other purposes or users. The second principle is that Parliament should have an opportunity to examine the information. This is the working step in the process. It involves the discussion of the information (probably in committee) and the chance to ask questions about, seek clarification of, and otherwise interpret, the data supplied. The third and final principle is that Parliament should have an opportunity to air publicly what has been discovered. This step, which properly occurs in the House, is the final link in the accountability process and involves the use of Parliament's primary sanction, public debate, in its scrutiny of agency activity. The operation of the first of these three principles will now be outlined as it relates to five types of communication and information: questions, executive directives, statutory instruments, reasons, and reports. In the next section of this chapter the structures and procedures needed to support the information process (especially the examination and airing of information) will be expanded on.

The oral Question Period is probably lost as an information-gathering device. It is now primarily used at the third stage of the information process: public debate. Oral questions are not suited for detailed answers in any event, and a promise to investigate and answer at a later date is weakened by the fact that there is no formal process for those answers to be brought back to the House. Furthermore, since there are no members of administrative agencies in the House, oral questions are more useful when directed at the Minister or his department than at the agencies. The solution here lies in the greater use of written questions. These are a very useful device because they allow the MP to get precisely the information he wants, because they permit the asking of more detailed questions, and because there is a formal system of printing the answers in Hansard. The present practice of sending relevant questions to administrative agencies for the preparation of answers is satisfactory, and no changes are recommended. There remains the problem of Ministers refusing to answer particular questions that are submitted to them. The only cure for this, other than the present one of using public pressure, may be a general freedom of information law, which in most cases would eliminate the incentive not to reveal things in the House.

The vesting in the Cabinet of the right to control administrative agencies creates informational problems because of the secrecy that has traditionally enshrouded Cabinet proceedings. (Any freedom of information legislation is bound to contain an exception for Cabinet documents.) However, where the executive has been empowered to issue directives or veto rules made by an agency, such secrecy should not apply. Any such

power is quasi-legislative for it amounts to expanding on, or interpreting the statutory mandate of the agency. Because there should be no "secret law", any exercise of this type of power should be in writing and open. It is therefore recommended that policy directives be given in, and changes to agency rules and regulations be made through, formal documents tabled in the House. Such documents should not only explain what has been done, but should outline the government's reasons for the action which has been taken.

Earlier in this chapter it was recommended that the Cabinet not be involved in appeals of individual cases or in approving decisions recommended by an agency. Both of these types of power are presently in use, and until the necessary reforms are introduced their exercise should also be by a document (containing reasons) which can be tabled in the House.

As was noted during the discussion on the work of the Standing Joint Committee on Regulations and other Statutory Instruments, there are several annoying problems which limit the work of that committee.[303] One of these was the simple fact that there was no procedure for bringing all statutory instruments to the attention of the Joint Committee. To remedy this it is recommended that the law be changed to provide that one copy of every statutory instrument, other than those withheld from public scrutiny for security and like reasons, be sent to the Committee automatically. As well there should be a mechanism for determining whether a particular document is a statutory instrument within the definition in the *Statutory Instruments Act*. This would cover manuals, guidelines and other departmental directives. Finally, it is recommended that any order made by the Governor in Council exempting a regulation or class of regulations from publication be tabled and automatically referred to the Joint Committee.

The present practice on statutory instruments along with the changes just recommended would meet the first principle of availability of information. The automatic reference of the instruments to the Joint Committee meets the second principle of examination of the information made available on statutory instruments at least in so far as the form and *vires* of the instruments is concerned. In order to achieve the same thing as far as their substance goes, it is recommended that the Joint Committee have the power to refer a statutory instrument to one of the topical committees of the House for further examination.

Reasons for decisions are an important way of monitoring the work of administrative agencies. This is especially so where an agency is quasi-judicial, making traditional accountability techniques (such as appearances of the Chairmen before committees) inappropriate. By having its staff read the agencies' reasons, Parliament can remain aware of their work and how they interpret their mandate without interfering with their independence. For this reason it is suggested that as a general rule agencies be required

to give written reasons for their decisions. Furthermore, summaries or head-notes of important cases should be prepared, especially if these cases change the policies of the agency or are likely to be used as precedents. These summaries of leading cases should be included in an appendix to the annual report of the agency.

Agency reports to Parliament have the potential of being the most valuable form of communication between the administrative agency and Parliament. At present annual reports are largely "what" reports, not "why" reports, and they sometimes convey more information about the agency's clientele than the agency itself. Reports are now treated as documents whose primary purpose is to convey facts and other information.[304] It is recommended that it be made clear that the purpose of reports is to set out the work of the agency in sufficient detail and in such a form that they can be used as the basis of keeping the agency accountable to Parliament. Towards this end agency members should take a more active role in the preparation of reports. Their content should be determined at meetings of the agency at which its mandate, goals and programmes are fully reviewed. Members of the agency should regard the report as a document of primary importance in helping to maintain a strong relationship with Parliament.

In order to highlight the report of the agency to Parliament, while still supplying the valuable statistical data presently contained therein, the report should be physically divided into two parts: the actual report and several appendices. The actual report should do several things. It should first of all identify the mandate of the agency, and set out any objectives specified for the agency in the statute. It should then contain a discussion by the members of the agency on how they interpret those objectives, especially where they are stated in vague or contradictory terms. This exposition should reveal the philosophy the agency brings to its task, and explain how it perceives its place in the environment in which it operates. Next the agency should set out its goals, being especially careful to relate them to the statutory mandate, and then should outline the plans and programmes it has in place to achieve each goal. Also included should be a summary of the major policy-making, rule-making and decision-making activities of the year, and how each served to further the goals of the agency. The basis on which any discretionary powers are exercised should also be outlined. The failures as well as the successes of the agency, along with any problems it foresees should be included. Such a report will be much more useful to Parliament, and it will also be good for the agency to the extent that it forces its members to step back each year and see where they are going.

Contained in the appendices, and separated from the body of the report to keep from overwhelming it, should be some or all of the following factual information:

1. A short outline of the structure of the agency, clearly identifying any changes from the previous year.

2. The activity of the agency, in the form of facts and statistics on its work-load, disposition of applications or appeals, and so forth.

3. An interpretive summary of any delegated legislative or rule-making activity that occurred during the year. There should also be a notation of any statutory amendments.

4. Summaries, in table form if appropriate, of the disposition of cases during the year, with brief notes on the most important ones.

5. Information on the activity of the industry the agency deals with or the environment in which it operates, if this information is thought desirable.

6. A glossary of technical terms used in the report or in the decisions of the agency.

It will be noted that it is not suggested that the annual report contain any financial data on the agency. This is because it is further recommended that this type of information be set out in a separate document to be presented to Parliament at the time the agency's Estimates are being considered. Wherever possible all information supplied to Parliament should be presented in the same format as in the previous year, using the same wording if there have been no changes.

All the items just suggested for inclusion in the report and its appendices will of course only be applicable in the case of the most complex agencies. Others with smaller policy-making roles will naturally have shorter reports. For example, a largely adjudicative agency might limit its report to its interpretation of certain key sections of the statute, how it exercises any discretionary powers it has been given, and what key decisions it has made in the past year. In order to deal with the diversity among agencies the following two suggestions are made. Firstly, the statute setting up an agency should specify not only that it must report, but what the report should contain. In setting this list the draftsman should select the appropriate items from those just noted. Secondly, the statute should specify that in addition to the items listed the report should contain those things recommended for inclusion by the committee of the House that usually considers the agency's report. This provision would replace those unused ones, which presently give the Minister the power to prescribe the content of reports.[305] It would also reinforce the idea that the report is an accounting to Parliament, and would help ensure that the report contains those things in which Parliament is most interested.

The substantial changes that have been suggested in the annual reports of agencies are designed to turn them into important tools in maintaining agency accountability to Parliament. A further recommendation that they

all be tabled will fulfil the first principle on which the information flow should be based: that relevant information be available to Parliament. Many of the other recommendations in this section concerning the tabling of various documents are designed to achieve the same thing. In the next section procedures and structures will be recommended to ensure that the other two principles on which the information flow should be based are also respected.

D. Structures and Procedures

Maintaining a proper relationship between Parliament and administrative agencies will require more than a clear definition of the agency's status and the availability of relevant information. Also needed will be structures and procedures to support that relationship. It is the purpose of this section to present some suggestions in this area.

The central forum of Parliament will continue to be the House of Commons, and it is primarily to the House that agencies must remain accountable. It is therefore of first importance that the House not be cut off from agencies, and that it have the tools it needs to make its relationship with agencies a meaningful one. In this regard it is recommended that new administrative agencies not be created by Order in Council or other methods that put them out of the reach of Parliament. This recommendation would not apply when the agency is for some reason set up by Order in Council but its existence is later confirmed by statute, as happened with the Interim Anti-Inflation Board.

1. Committees of the House

While accountability must in the end be to the House of Commons, the time of the House itself is limited. As the House has other important business to conduct, where possible the House should deal with agencies through some other forum than the floor of the House itself. The use of an arena with fewer time pressures will also help ensure that a more complete accounting takes place. In this regard it is recommended that the primary relationship between the House and the administrative agencies be through the committees of the House.[306] Specifically, it is suggested that the House develop specialized and expert committees that can be balanced against specialized and expert government departments and specialized and expert

administrative agencies. The floor of the House itself would continue to be used for "brushfires": those high profile and important issues of the day that merit being brought up during the ordinary business of the House.

If committees are to become the primary means of the House for maintaining agency accountability, some changes will be needed in the way they operate. First of all their mandates must be expanded. In the parliamentary system it is probably inappropriate for the committees of the House to take on a life of their own and to venture forth wholesale into the arena of policy formation. This would undercut the role of the executive. However, as was noted above the House is entitled to perform fully its role as the scrutineer of government, and the committees of the House can justifiably demand a sufficient mandate to enable them to do so. It is therefore recommended that the mandate of the committees be drafted so as to give them general supervision over that part of government with which they are concerned. This can best be accomplished by a general statement of their power to conduct a continuous and general review, followed by a list of the departments, administrative agencies and Crown corporations that are to fall under their scrutiny.[307]

In order to support this enlarged mandate one other thing is needed. In the previous section of this paper it was argued that a healthy information flow requires three things: availability, examination, and airing of information. In that section the automatic tabling of a number of documents was suggested to accomplish the first of these. In order to accomplish the second, examination, and in order to enable the committees to fulfil their new mandates, it is now recommended that all these documents be automatically and permanently referred to the relevant committee. This would include directives, alterations in rules, and disposition of appeals (until abolished) by the Cabinet, agency reports, and statutory instruments referred to the topical committees from the Joint Committee. This will make the House committees the workshops of the information and review processes. Automatic referral will ensure that the performance by the House of its supervisory role will not be dependent on the will of the executive, and will ensure that there are no gaps in the review that takes place.

Turning the committees into expert and specialized institutions to be balanced against expert and specialized departments and agencies will require that they have a staff to provide professional assistance. This staff should not be designed to advise committee members on matters of policy. As was pointed out in Chapter Four such an arrangement would become unworkable given the partisan nature of the committees, and policy development is better left to the research staff of the various parties.[308] What is needed for the committees is a type of secretariat of moderate size. Its function would be to gather all tabled material that is automatically referred to the committee and compile, review and summarize the data. This would

include reading the reports, reasons and regulations of the various administrative agencies. The secretariat would then point out interesting areas, changes from previous years and other matters of which Members should be aware. The staff of the secretariat should have some expertise in the area the committee deals with in order to be able to interpret technical data for the Members, and should make use of the additional expertise in the Research Branch of the Library when appropriate. Such a secretariat would be of great assistance in providing direction and continuity to the committees of the House.

Improvements can also be made to the procedures used by committees. It has been suggested that they would function better with a more neutral Chairman but this is probably not possible given the partisan nature of Parliament itself. A more practical reform, that of developing a degree of expertise in the committees, will require stability in membership. To accomplish this it is recommended that the size of committees be reduced, and that frequent changes in membership be stopped.[309] To make this latter recommendation practical, no vote should be taken in a committee before forty-eight hours of notice of the vote has been given. This will enable the government to protect its majority on the committees. Furthermore, in order to enhance the discussion that takes place, groups of members of a committee should have the option of pooling their speaking time so that one of their number can conduct a sustained inquiry into a particular matter under discussion.

The work of standing committees in relation to administrative agencies should be conducted in three parts. The first part would occur in the spring and involve the consideration of the Estimates. This review would centre on three things: the Estimates, the report on financial matters in support of the Estimates recommended in the last section, and the appearance before the committee of a representative of the agency. While the granting of funds can never be completely separated from issues of policy, this part should be primarily a discussion of financial matters, and should not be allowed to dissolve into a general question and answer period or debate on policy issues.[310] Enforcement of the rules of relevancy and discipline on the part of the Members will be needed to accomplish this change. The new procedure on Estimates would have several advantages. The Estimates would now actually be discussed in committee. With all the extraneous matter removed the committee would probably be able to meet the May 31 deadline, reducing the significance of that cut-off date. Finally, policy debate could be shifted to a more suitable occasion.

The second part of agency review would occur in the fall when the committees are not busy with the Estimates, and would revolve around the annual report of the agency. These reports should be timed to come out in late summer, and under the changes proposed here they would automatically be referred to a committee. Representatives of the agency

would appear before the committee for the second time during the year to discuss the report and the work of the agency generally. It would be at this time that the policy debate and question and answer period that currently takes place on Estimates would be conducted. Since the discussion would be based on a more suitable document, the report, it should prove more satisfying for all concerned.

The third part of agency review would occur at various times throughout the year. It would consist of a discussion of regulations, directives, and other tabled matter relating to the agencies under the committee's jurisdiction. These would be screened by the secretariat as they arrived, and would be referred, along with any comments, to the committee for debate.

The final matter of a general nature to be considered is the sanction to be granted to committees. From time to time the committees will disagree with particular decisions, regulations or directives which have been made, and a method is needed to convey their opinions to the House and the government. This will also be needed to satisfy the third principle governing the information flow: that there be a chance to air matters that are discovered during the examination of information. It is envisioned that the traditional methods of the House — Question Period, motions under Standing Orders 26 and 43, adjournment debates, and debate on Supply Days — will continue to be the primary methods used by the Members to raise issues of concern to them. However, there should be a more formal method of bringing the decisions of the committees before the House.

In providing for the disposition of committee recommendations two things must be kept in mind. First of all, the House is already very busy and a great deal of its time is committed to various types of routine business. Reducing further the time for the consideration of government business should be avoided if possible, if only because doing so would prompt the government to use its majority to prevent committees from reporting at all. Secondly, the practicalities of parliamentary government mean that the government will only rarely be defeated in the House. The proper goal is therefore to have matters aired and debated rather than voted on. Provisions such as that in the *National Parks Act* which provide for votes without debate should accordingly be avoided,[311] and the taking of votes generally de-emphasized.

To account for these factors the following procedure for dealing with committee decisions is recommended. Committees should raise any matters by way of reports to the House.[312] When a report is received complaining of a particular regulation, directive or other matter related to agency activity, the government should have ninety days to do one of three things. First of all, they could implement the changes recommended. Secondly, they could explain the position of the government by way of a statement

made under Standing Order 15(s) and tabled in the House. Thirdly, they could arrange for some House time, say three hours, to be made available for debate of the issue raised. If any one of these three things is done the matter will end. By this stage at the very least the issue will have been raised in the House, and the government will have been forced to take a stand. However, if nothing is done within ninety days, either the Standing Orders should provide for an automatic debate, or the regulation or directive should become invalid. The appropriate sanction will vary depending on the particular issue; invalidity, for example, would be more suitable for challenged statutory instruments.

On a more specific level something should be said about the Standing Joint Committee on Regulations and other Statutory Instruments. Many of the changes proposed here have already been implemented in respect of this committee. However, it appeared from the earlier discussion on the Joint Committee that there are numerous technical problems holding back the work it is to do.[313] Many of these are so capricious and arbitrary that they cannot be supported no matter what view one takes of the proper scope of legislative review of delegated legislation. It is accordingly recommended that the *Statutory Instruments Act* be redrafted to correct its more obvious imperfections.

The growth of government and increasing pressures on the time of the House mean that Parliament will have to rely increasingly on its committees. The recommendations made in this section will set up a committee system capable of meeting the demands on it. Real results, however, are dependent on the Members of Parliament being prepared to adopt the attitudes and do the work needed to make the system effective. Undoubtedly Parliament will continue to rely on a small number of Members who take a vigorous interest in a particular issue or in the work of a particular agency. If the suggested procedures only assist these Members, or make this type of involvement sufficiently satisfying to attract a few other Members, they will have been successful.

2. Alternate Centres of Responsibility

While the committees of the House should be the primary contact between Parliament and administrative agencies, they will not be able to do all that is required. There are finite limits on the time that Members can spend in committee, and committees must also reserve time to deal with government business. Furthermore, there are some matters which are worthy of attention but which are of a technical or routine nature not suitable for the direct involvement of Parliament. Some of these matters

involve things in which the committees of the House cannot be expected to develop an expertise. In recognition of these limitations of Parliament, it is recommended that responsibility for some matters be delegated to other centres of responsibility.

In the last chapter the distinction between functional committees (which, like the Joint Committee, perform a single function over the whole range of government) and topical committees (which perform many functions in respect of one subject area) was outlined.[314] The problem with functional committees is the danger that they will be overwhelmed by work, and their inability to develop an expertise in all the subjects they will deal with. Topical committees, on the other hand, allow the development of expertise, but they do not provide an overview of the entire environment in which they operate. Thus while a topical committee is well suited to dealing with the work of a particular administrative agency, it is not designed to see how that agency fits in with other agencies, or how the system of agencies as a whole is operating. The Lambert Commission noted an analogous problem: because the Estimates are examined on a department-by-department basis by individual topical committees the House never comes to grips with the overall level of government expenditures. The solution to this type of problem is to put in place an institution that can perform the overall review needed, and recommend necessary reforms.

There are other things that would probably be better dealt with outside Parliament itself. One is the general uniformity of statutes creating agencies and setting out their powers, structures, and procedures. Where an agency has the power to set down procedural rules, those rules should be examined to ensure that they provide for a basic level of procedural fairness. The relationship of new agencies to existing parts of government also should be subject to careful review at some stage of the process. The review of the form and *vires* of statutory instruments might also be done outside Parliament.

One or several alternate centres of responsibility could perform these tasks. A new institution similar to the British Council on Tribunals could be resorted to, or the problem might be handled by redefining the role of existing centres of responsibility such as the Privy Council Office or the Department of Justice. The alternatives in this regard have been the subject of extensive discussion in another Study Paper prepared for the LRCC under the title *Council on Administration*.[315]

3. Sunset Laws

Much discussed in recent years have been the so-called sunset laws. This type of provision, which is not in general use in Canada, provides that an administrative agency ceases to exist at the end of a fixed period of

time unless its mandate is renewed by the legislature. The idea is that this will ensure that the agency's terms of reference will be updated periodically, and that agencies which have outlived their usefulness will be disbanded.

The major advantage of a sunset law is that it prevents the situation where an agency with a low profile continues only because no one has stopped to assess its role in the light of changed times. It is primarily a method of "red-flagging" an agency on a particular date in the future. To some extent sunset laws also overcome the hurdle of finding time in the House for a general debate on the work of an agency. If the government supports the continued existence of the agency it must make time available for debate of a renewal motion.

Sunset laws also have a number of disadvantages. First of all, they are a bit of a blunt instrument, sweeping in all sorts of agencies, the existence of which is not under serious challenge. They also bind future Parliaments, because those Houses will have to spend time on the renewal of agencies whether they have more important things to do or not. Issues can change rapidly, and each Parliament should be allowed to set its own priorities. That this will occur in any event is shown by the experience with the *Bank Act*.[316]

While sunset laws would provide a means of allocating House time to this particular issue, there is no evidence that the existence of spent administrative agencies is an issue of such importance that it deserves this special treatment. In one sense the Estimates process provides an annual "sunset" for any government programme, for the Members could at any time decide to cut off its funding. Furthermore, the proposed annual discussion of the agency's report would be just as effective a method of examining the mandate of the agency to see if it needs updating. It is submitted that these other procedures provide a suitable alternative procedure for the periodic review of an agency's mandate, and it is recommended that sunset laws not be put into general use.

E. Recapitulation

This concluding chapter opened with a survey of how Parliament presently reviews the seven aspects of administrative agencies identified in Chapter Three as being worthy of its attention. Having made some recommendations in this regard it will now return to these seven items and outline how they would be handled with these proposals in place.

First on the list is the overall structure and integrity of the system, the organization of existing agencies, the place of new agencies and the relationship between the agencies and the other parts of government. Under the proposed system no new agencies would be set up by Order in Council, so they would all be before Parliament at their creation. The House would still handle these issues during debates on bills creating new agencies, but under the new system primary responsibility in this area would be in one of the alternate centres of responsibility.

The second item is the mandate of the agency, its consistency and compliance with the wishes of Parliament. No major changes are proposed specifically for this function, but it is to be hoped that expertise developed in committees and the work of the secretariat would result in a more scientific approach to the agency mandate as set out in the statute.

Policy developed by the agency would be subject to much more thorough review under the new régime. The restructured reports would emphasize any policy making done by the agency, and the fall committee meetings at which the reports are to be discussed would provide an opportunity for debate and feedback on policy by the committee members. Tabling and automatic referrals of executive policy directives would ensure their scrutiny. The committee secretariat would also be of great assistance during the review of agency policy.

The fourth item is the scope and exercise of rule-making powers. Here the recommendation is that the standing committees would examine the scope of any regulation-making power in a bill. A system of conveying all statutory instruments to the Joint Committee would be in place. That Committee would examine the instruments for form and *vires*, and would refer them to the relevant topical committee for review of their substance.

The scope of discretionary powers would continue to be examined during debate on the bills granting those powers. The way in which discretions are exercised would be set out in the annual report, and would be subject to review at the fall meeting called to discuss the report.

Financial control would still be through review of the Estimates. However, with the policy review process now shifted to the annual fall meeting with the agency, the Estimates process could now actually be used to examine the Estimates. In doing this committees would be assisted by the new financial report to be prepared by the agency to supplement the Estimates. No changes are proposed in the role of the Public Accounts Committee.

The seventh and final aspect of the scrutiny of the work of administrative agencies is the monitoring of their decisions. This would be made possible by agencies issuing reasons for many of their decisions, and by

the secretariat reviewing those reasons and drawing any key decisions to the committee's attention. Furthermore, a summary of key cases would be contained in the annual report. Parliament would not attempt to hold agencies accountable for individual decisions, but rather would attempt to identify areas in need of statutory changes or policy directives.

The recommendations made in this paper, when taken collectively, set out a comprehensive plan for the accountability of administrative agencies to Parliament. All the suggestions made are designed to be in accordance with the conventions of a parliamentary democracy and to be practical enough for incorporation into the existing political system. If implemented they should provide for an appropriate relationship between Parliament and administrative agencies.

Summary of Author's Recommendations

1. Status of Agencies

(a) A statute creating an administrative agency should specifically set out the relationship it is to have with the rest of government. (pp. 117-118)

(b) An agency should not be given incompatible roles to perform. (p. 118)

(c) The roles to be played by an agency should be clearly identified in the statute creating it, and the appropriate degree of independence or accountability needed for that role should be set out. (p. 118)

(d) An agency should not be granted greater independence than is needed for it to fulfil its mandate. (p. 118)

(e) Accountability of an agency to Parliament should be indirect. (pp. 86-87, 117, 118)

(f) The government should have the power to specify the broader policies to be followed by agencies, but once this is done the Cabinet should have no involvement with the application of policy to individual cases. (p. 120)

2. Communication and Information

(a) The movement towards freedom of information laws should be encouraged, and any such statute should include administrative agencies in its ambit. (pp. 107, 121)

(b) The information flow between administrative agencies and Parliament should be based on three principles: that information be available, that there be an opportunity to examine the information, and that there be an opportunity to air publicly issues disclosed by the information. (p. 122)

(c) The practice of sending written questions to the agencies for answers should be continued. (p. 122)

(d) When the Cabinet issues a policy directive to an agency or vetos an agency regulation it should do so in a document that sets out the reasons for the action, and that document should be tabled in Parliament. (pp. 122-123)

(e) Political appeals should be abolished, but until this is done the reasons for the disposition of all appeals should be tabled in Parliament. (p. 123)

(f) All statutory instruments should automatically be sent to the Standing Joint Committee on Regulations and other Statutory Instruments. A mechanism should be established to determine if a particular document falls within the Committee's jurisdiction. (pp. 78, 79-80, 123)

(g) Orders exempting regulations from publication should be tabled in Parliament and referred to the Joint Committee. (pp. 80-81, 123)

(h) The Joint Committee should have the power to refer statutory instruments to the other committees of the House in order that their substance be reviewed. (pp. 78, 123)

(i) As a general rule agencies should be required to give written reasons for their decisions. Summaries of leading cases should be included in an appendix to the annual report of the agency. (pp. 123-124)

(j) Annual reports to Parliament should be prepared by all agencies and tabled. (pp. 125-126)

(k) In addition to the annual report, the agencies should prepare a financial report to supplement the information in the Estimates. (p. 125)

(l) The basic content of the annual report should be specified by statute, and the committees of the House should be consulted in regard to other things that might be included. (pp. 96-102, 125)

(m) The annual report should be a document of accountability, and should be prepared with the active involvement of members of the agency. (pp. 95, 124)

(n) The annual report should identify the mandate and goals of the agency, set out how they are interpreted, outline the philosophy of the agency, and describe the plans it has to achieve its goals. It should also outline the major activities of the agency during the year and explain how they will help to achieve the agency's objectives. (pp. 96-102, 124-125)

(o) With allowances being made for the nature of each agency, appendices to the annual report should contain information on the structure of the agency, its activities during the year, a summary of statutory or regulatory activity during the year, information on the agency's case-load, information on the industry the agency deals with, and a glossary of technical terms. (pp. 124-125)

3. Structures and Procedures

(a) Administrative agencies should not be created by Orders in Council or by other extra-parliamentary methods. (p. 126)

(b) The House of Commons should deal with administrative agencies primarily through its committees. (pp. 60-61, 126)

(c) The House committees should be given a general mandate to scrutinize certain named departments, agencies and Crown corporations. (pp. 54-55, 127)

(d) Documents relating to the work of administrative agencies which are required to be tabled in Parliament should be automatically and permanently referred to the relevant topical committee. (pp. 60, 127)

(e) Each committee should have a secretariat to assist it with its work. (pp. 58-59, 127-128)

(f) The size of committees should be reduced and their membership stabilized. Votes in committee should only be taken after forty-eight hours of notice has been given. (pp. 55-56, 128)

(g) Groups of Members should have the option of pooling their speaking time. (pp. 64-65, 128)

(h) Parliamentary review of administrative agencies should occur in three stages: during the spring as a part of the Estimates process, in the fall during discussion of the annual report, and throughout the year as and when relevant documents that are tabled are referred to the committees. (pp. 72-73, 128-129)

(i) When a committee reports to the House the Cabinet should have ninety days to accept the recommendation made, table reasons why the report is rejected, or provide time in the House to debate the report. If this is not done the Standing Orders should provide for an automatic debate, or alternatively the directive or regulation being reported on should cease to have legal effect. (pp. 129-130)

(j) The *Statutory Instruments Act* should be redrafted. (pp. 79-80, 130)

(k) Alternate institutions should be used to oversee the system of administrative agencies, to review agency procedural rules and to perform other related functions. (pp. 40-41, 130-131)

(l) General use should not be made of sunset laws. (pp. 107-108, 131-132)

Endnotes

1. The following comment by Professor W. A. Robson [quoted in R. E. Wraith and P. G. Hutchesson, *Administrative Tribunals* (London: George Allen & Unwin, 1973), p. 197] could easily have been made in Canada:

   > At no time has Parliament or the Government or individual Ministers discussed the principles which should inform a system of administrative justice. The number and variety of tribunals have grown continually but they have remained strictly *ad hoc*. Neither Parliament nor the government has felt able to rise to the height of a general proposition on this vital subject. In consequence while we have a multitude of administrative tribunals we have not evolved a coherent system of administrative justice.

2. Royal Commission on Financial Management and Accountability, *Final Report* (Ottawa: Supply and Services, 1979), p. 282 (hereinafter referred to as the Lambert Commission Report).

3. J. E. Hodgetts, *The Canadian Public Service* (Toronto: University of Toronto Press, 1973), p. 139.

4. P. Silcox, "The Proliferation of Boards and Commissions", in *Agenda 1970: Proposals for a Creative Politics*, T. Lloyd and J. T. McLeod, eds. (Toronto: University of Toronto Press, 1968), p. 118.

5. See *infra*, p. 34.

6. For this and other procedural reforms, see A. R. Lucas and T. Bell, *The National Energy Board: Policy, Procedure and Practice* (Ottawa: LRCC, 1977), p. 61; H. N. Janisch, *The Regulatory Process of the Canadian Transport Commission* (Ottawa: LRCC, 1978), pp. 49-52.

7. W. A. Robson, *Justice and Administrative Law* (London: MacMillan, 1928), p. 278.

8. H. Mitchell, "To Commission — or Not to Commission", 5 *Can. Pub. Adm.* 253 (1962), pp. 255-258.

9. *Economic Council of Canada Act*, R.S.C. 1970, c. E-1, subs. 4(2).

10. I. Hunter and I. Kelly, *The Immigration Appeal Board* (Ottawa: LRCC, 1976), p. 76, n. 22.

11. Robson, *supra*, note 7, pp. 268-274.

12. See the discussion *infra*, pp. 105-106.

13. *Canadian Human Rights Act*, S.C. 1976-77, c. 33, s. 37 and subs. 40(5).

14. K. C. Davis, *Discretionary Justice* (Urbana: University of Illinois Press, 1971), p. 25.

15. CTC study, *supra*, note 6, p. 102.

16. Lambert Commission Report, *supra*, note 2, p. 314.

17. R.S.C. 1970, c. N-17, s. 3.

18. M. H. Bernstein, *Regulating Business by Independent Commission* (Princeton, N.J.: Princeton University Press, 1955), p. 128.

19. H. N. Janisch, "The Role of the Independent Regulatory Agency in Canada", 27 *U.N.B.L.J.* 83 (1978), p. 112.

20. For a general discussion, see K. Lysyk, "Comment", 47 *Can. Bar Rev.* 271 (1969).

21. A. Abel, "The *Dramatis Personae* of Administrative Law", 10 *Osgoode H.L.J.* 61 (1972), p. 75.

22. F. W. Anderson in "To Commission — or Not to Commission", *supra*, note 8, p. 266.

23. Janisch, *supra*, note 19, pp. 92-94.

24. R. Schultz, "Regulatory Agencies in the Canadian Political System", in *Public Administration in Canada: Selected Readings*, 3d ed., Kernaghan, ed. (Toronto: Methuen, 1977), p. 336.

25. The LRCC, in Chapter Two of its Working Paper 25, *Independent Administrative Agencies* (1980), has outlined a method of classifying the agencies into eight groups: regulatory agencies, regulative agencies, administrative tribunals, benefaction agencies, agencies determining status, granting agencies, research bodies and advisory bodies. Even within these categories there exists a wide diversity as to the roles played.

26. See e.g., Laskin C.J.C. in *Committee for Justice and Liberty et al. v. National Energy Board et al.* [1978] 1 S.C.R. 369 (C. A.), p. 385.

27. F. W. Maitland, "The Shallows and Silences of Real Life", in *Collected Papers*, vol. 1, H. A. L. Fisher, ed. (Cambridge: C.U.P., 1911), p. 478.

28. For a good review of the debate that has raged over the powers and role of Parliament see R. Butt, *The Power of Parliament* (London: Constable and Co., 1967), Chapter 1.

29. "A House of two or three hundred members which wanders where it pleases will undoubtedly be able to do a lot of wandering, but it will not accomplish much more; and if it is to perform its functions as a useful part of the government, it must be willing to place some limits on its freedom and submit to direction." R. MacGregor Dawson, *The Government of Canada*, 5th ed., rev. by N. Ward (Toronto: University of Toronto Press, 1970), p. 365.

30. "The only meanings of Parliamentary control worth considering, and worth the House spending much of its time on, are those which do *not* threaten the Parliamentary defeat of a Government, but which help to keep it responsive to the underlying currents and the more important drifts of public opinion . . . Defeating the Government or having the whips withdrawn represent, like calling in the police, the breakdown, not the assertion, of normal control." B. Crick, *The Reform of Parliament* (London: Weidenfeld and Nicolson, 1964), pp. 76-77. See also Dawson, *supra*, note 29, p. 366.

31. See *infra*, pp. 73-74.

32. Lambert Commission Report, *supra*, note 2, p. 285.

33. *Regina v. Criminal Injuries Compensation Board, ex p. Lain* [1967] 2 Q.B. 864, pp. 881-883. But see H. W. R. Wade, *Administrative Law*, 4th ed. (Oxford: Clarendon Press, 1977), p. 204.

34. *International Boundary Waters Treaty Act*, R.S.C. 1970, c. I-20; *International Boundary Commission Act*, R.S.C. 1970, c. I-19.

35. P.C. 1973-1239 of May 25, 1973.

36. P.C. 1975-2429 of Oct. 14, 1975.

37. The Advisory Council was created by Order in Council P.C. 1976-781 "on the recommendation of the Minister of National Health and Welfare, pursuant to National Health and Welfare Vote 65 of *Appropriation Act No. 3, 1976*". The Vote reads in part, "Status of Women — Program expenditures, the grants listed in the Estimates, authority to establish the Advisory Council on the Status of Women and to appoint the members thereof in accordance with terms and conditions prescribed by the Governor in Council . . ."

38. R.S.C. 1970, c. P-34.

39. Bill C-33, 2nd Sess., 30th Parliament, s. 3.1.

40. Lambert Commission Report, *supra*, note 2, pp. 314-315.

41. Wraith and Hutchesson, *supra*, note 1, p. 224.

42. N. Ward, *The Public Purse* (Toronto: University of Toronto Press, 1962), p. 3.

43. This is not true of all the Crown corporations.

44. See the discussion *infra*, pp. 47-48.

45. On supply procedure generally, see *infra*, pp. 61-64.

46. Though the Estimates have come to be used for this purpose: see *infra*, pp. 70-73.

47. L. Cutler and D. Johnson, "Regulation and the Political Process", 84 *Yale L.J.* 1395 (1975), p. 1401.

48. "Citizens have substantive rights only in relation to the general policies and laws approved by the elected representatives of the people. All the procedural safeguards in the world will not persuade a person who has come into conflict with a semi-independent agency that he has been fairly treated unless he sees the relationship of policies which the elected representatives of the people have prescribed for the agency." Silcox, *supra*, note 4, p. 130.

49. Janisch, *supra*, note 19, p. 104, citing Bernstein, *supra*, note 18, pp. 268, 284. See also Cutler and Johnson, *supra*, note 47, p. 1408.

50. See *supra*, pp. 21-22.

51. R. J. Van Loon and M. S. Whittington, *The Canadian Political System* (Toronto: McGraw-Hill, 1971), p. 360.

52. Ibid., pp. 341-342.

53. See *supra*, pp. 16-17.

54. See *supra*, p. 22.

55. See the discussion *infra*, pp. 47-48.

56. The 30th Parliament existed between the general elections of July 8, 1974 and May 22, 1979.

57. Two dozen substantive matters resulted in about three dozen separate bills due to re-introductions in subsequent sessions.

58. Federal Transport Commission of Inquiry Bill, C-226, 1st Sess., 30th Parliament; C-220, 2nd Sess., (on 2nd reading see House of Commons *Debates*, April 1, 1977, 4581-4); C-313, 3d Sess.; C-344, 4th Sess. An Act to provide for the establishment of an authority to conserve for public use all abandoned rail lines in Canada, Bill C-341, 1st Sess. Senior Citizens Commission Bill, C-218, 3d Sess. (debated January 27, 1978: House of Commons *Debates*, 2330-7); C-230, 4th Sess.

59. Bills C-204 and C-332, 1st Sess., 30th Parliament; C-344, 2nd Sess.; C-345, 3d Sess. See also the motions under S.O. 43 on October 24, 1975 and December 4, 1975.

60. An Act to provide for the elimination of inactive and overlapping Federal programs and agencies by requiring Parliamentary review every five years, Bill C-296, 2nd Sess., 30th Parliament; C-226, 3d Sess.

61. Annual Reports Bill, C-455, 4th Sess., 30th Parliament, (see House of Commons *Debates*, December 21, 1978, 2347). Official Languages Act Amendment Bill, C-340, 1st Sess.; C-233, 2nd Sess. Broadcasting Act Amendment Bill, C-467, 3d Sess.; C-223, 4th Sess. Public Reports Cost Control Bill, C-201, 3d Sess.; C-268, 4th Sess., (see House of Commons *Debates*, November 1, 1977, 531-6). Inquiries Bill, C-206, 1st Sess.; C-326, 2nd Sess., (see House of Commons *Debates*, October 31, 1974, 924-31).

62. Broadcasting Act Amendment Bill, C-353, 1st Sess., 30th Parliament. Transportation Act Amendment Bill, C-349, 3d Sess.; C-201, 4th Sess., (see also House of Commons *Debates*, November 2, 1978, 742-9).

63. Farm Products Marketing Agencies Bill, C-313, 1st Sess., 30th Parliament. Harbour Commission Amendment Bill, C-323, 1st Sess.; C-314, 2nd Sess.; C-242, 3d Sess. Canadian Radio-television and Telecommunications Commission Amendment Bill, C-225, 4th Sess. Transport Act Amendment Bill, C-361, 4th Sess. Energy Board Act Amendment Bill, C-366, 4th Sess. Atomic Energy Control Act Amendment Bill, C-416, 4th Sess. Wheat Board Act Amendment Bill, C-417, 4th Sess. Energy Board Act Amendment Bill, C-289, 1st Sess.

64. The full text of the case studies is available in the library of the Law Reform Commission. This presentation is limited to the outlines of the sample chosen, the methodology, and the conclusions reached.

65. The Prices and Incomes Commission, the Food Prices Review Board, the Interim Anti-Inflation Board, the Anti-Inflation Board, the Administrator of the Anti-Inflation Act, the Anti-Inflation Appeal Tribunal, the Centre for the Study of Inflation and Productivity, and the National Commission on Inflation.

66. S.C. 1974-75-76, c. 75.

67. S.C. 1977-78, c. 20.

68. House of Commons *Debates*, February 13, 1978, 2799; February 14, 2864.

69. S.C. 1974-75-76, c. 49.

70. See *infra*, pp. 130 *et seq.*

71. House of Commons *Debates*, October 17, 1975, 8314, 8317; October 20, 8353, 8374; October 24, 8530, 8535; February 13, 1978, 2798; February 14, 2841; February 20, 3023; February 21, 3064-67.

72. Ibid., October 24, 1975, 8533-5; October 22, 8466-7; March 4, 1975, 3779, 3783. Minutes of the Standing Committee of the House of Commons on Finance, Trade and Economic Affairs, November 20, 1975, 72:50, 72:62; October 31, 63:20.

73. See the discussion *infra*, pp. 74-84, especially p. 84.

74. See e.g., House of Commons *Debates*, April 10, 1973, 3144; October 20, 1975, 8372; February 20, 1978, 3023. Minutes of the Standing Committee of the House of Commons on Finance, Trade and Economic Affairs, November 7, 1975, 67:1 *et seq*. Minutes of the Special Committee on a Northern Gas Pipeline, February 27, 1978, 1:80, 83.

75. See *infra*, pp. 121-126.

76. See e.g., House of Commons *Debates*, April 10, 1973, 3145 (findings to be public); March 2, 1977, 3566-7 (independence from executive); October 24, 1975, 8529-30 (natural justice); February 18, 1976, 11046-8; February 19, 11114 (appeals). Minutes of the Standing Committee of the House of Commons on Finance, Trade and Economic Affairs, October 30, 1975, 62:68.

77. House of Commons *Debates*, March 18, 1976, 11912-3, 11928.

78. Minutes of the Special Committee on a Northern Gas Pipeline, February 28, 1978, 2:62; March 2, 4:30, 42, 57, 80; March 7, 6:44; March 8, 7:5; March 9, 8:58; March 15, 11:51.

79. House of Commons *Debates*, April 21, 1975, 5041; Minutes of the Standing Committee of the House of Commons on Broadcasting, Films and Assistance to the Arts, April 8, 1975, 14:9-12.

80. House of Commons *Debates*, February 13, 1978, 2799; February 14, 2864.

81. Ibid., April 10, 1973, 3145, 3149, 3160; April 17, 3391.

82. See *supra*, p. 25.

83. P.C. 1969-1249 of June 19, 1969; P.C. 1973-1239 of March 25, 1973; P.C. 1975-2429 of October 14, 1975; P.C. 1979-635 of March 2, 1979; and see the letter of March 15, 1978 from the Prime Minister to Dr. Ostry setting up the Centre for the Study of Inflation and Productivity under the *Economic Council of Canada Act*, R.S.C. 1970, c. E-1, s. 10.

84. *Anti-Inflation Act*, S.C. 1974-75-76, c. 75, subs. 12(1) and 20(2).

85. See *supra*, p. 33.

86. R. Schultz, assisted by S. Armstrong and A. Robinson, *Regulatory Agencies and Accountability*, a study prepared for the Lambert Royal Commission on Financial Management and Accountability in May, 1978, pp. 54-71.

87. This bill was also the subject of another study. See T. A. Hockin, "The Advance of Standing Committees in Canada's House of Commons: 1965 to 1970", 13 *Can. Pub. Adm.* 185 (1970), pp. 200-201.

88. See CTC study, *supra*, note 6, pp. 14-15.

89. See, generally, *Beauchesne's Rules and Forms of the House of Commons of Canada*, 5th ed. by A. Fraser, G. A. Birch, W. F. Dawson (Toronto: Carswell, 1978), pp. 129-34.

90. See House of Commons *Debates*, March 13, 1974, 471; March 10, 1976, 11675; December 6, 1978, 1854; September 5, 1973, 6249.

91. *Beauchesne's*, *supra*, note 89, pp. 129-131.

92. "S.**335.** Members are expected to refrain from discussing matters that are before the courts or tribunals which are courts of record. The purpose of this sub-judice convention is to protect the parties in a case awaiting or undergoing trial and persons who stand to be affected by the outcome of a judicial inquiry. It is a voluntary restraint imposed by the House upon itself in the interest of justice and fair play.

"S.**338.**(1) Matters before a royal commission are not subject to the convention. *Journals*, May 2, 1966, pp. 491-3.

(2) When an appeal is taken to the Governor-in-Council, it cannot be considered sub-judice while the appeal is pending because the Governor-in-Council then acts in an administrative and not a judicial capacity, and therefore such matters may be debated in the House of Commons. *Journals*, April 17, 1923, pp. 268-70." Ibid., pp. 118-119.

93. But see House of Commons *Debates*, October 20, 1976, 267.

94. See e.g., ibid., June 27, 1973, 5121; November 27, 1974, 1717; March 7, 1975, 3881; November 18, 9188; February 25, 1976, 11240; May 13, 13473.

95. See e.g., ibid., December 20, 1973, 8930; April 5, 1976, 12438-9; May 11, 1977, 5514. Compare ibid., March 12, 1976, 11771.

96. House of Commons *Journals*, April 29, 1977, 720-29; and see House of Commons *Debates*, February 10, 1976, 10797-804.

97. See CTC study, *supra*, note 6, pp. 105-106.

98. Other research has shown that Ministers answer about 70% of questions put to them. On 16% responsibility is declined, on 9% there is a promise to investigate, on 6% the Minister declines to answer, and 2% of questions are referred to the agency. See Schultz, *supra*, note 86, p. 82.

99. The questions were searched through the Quic/Law computer program which covers oral and written questions from January, 1973 to the present. Questions concerning the CRTC covered both the "old" and the "new" agency.

100. "I maintain continual contacts with the members of the CRTC and I transmit to them representations submitted to me by honourable members." House of Commons *Debates*, May 10, 1973, 3614. See also ibid., March 31, 1976, 12321; May 12, 13437; May 13, 13473.

101. See e.g., ibid., May 13, 1976, 13473; May 4, 1977, 5279; July 4, 7248; February 2, 1978, 2466.

102. Ibid., July 14, 1975, 7527; May 11, 1977, 5514.

103. Ibid., November 18, 1975, 9188; March 31, 1976, 12321; May 7, 13278; November 1, 624-5; March 7, 1977, 3706-7; March 24, 4280-1.

104. Ibid., February 21, 1973, 1517-18; April 11, 3202; May 9, 3574.

105. *Beauchesne's*, *supra*, note 89.

106. E.g., House of Commons *Debates*, November 20, 1974, 1484; October 10, 1978, 6980.

107. Ibid., November 19, 1973, 7900; May 9, 1977, 5407; October 10, 1978, 7048;

December 4, 1744. These questions perhaps violated the rule that a questioner may not ask for a legal opinion: *Beauchesne's*, *supra*, note 89, pp. 132-133.

108. House of Commons *Debates*, March 21, 1973, 2447; September 5, 6248; May 1, 1974, 1927; May 8, 2141.

109. Ibid., June 18, 1973, 4830-31; October 17, 6947.

110. Ibid., June 9, 1977, 6476-7.

111. Ibid., January 22, 1975, 2480-1.

112. Ibid., April 8, 1975, 4603.

113. See e.g., ibid., December 19, 1973, 8897; October 30, 1974, 872; February 17, 1975, 3257.

114. Schultz, *supra*, note 86, pp. 72-87. This study examined all oral and written questions asked between 1973 and June 1977 concerning the CRTC, the CTC, the NEB, the AIB, the FIRA, and the RTPC. Questions were classified into six groups: internal, appointments, adjudicative powers (decisions or recommendations), policy (status of the agency, broad policy, research, or duties and procedures), appeals, and ministerial action.

115. House of Commons *Debates*, November 14, 1975, 9072-99; February 27, 1979, 3636-66.

116. Ibid., March 22, 1977, 4210-42.

117. Ibid., June 1, 1976, 14036-66.

118. *Beauchesne's*, *supra*, note 89, pp. 145-146.

119. Ibid., pp. 91-93, 308-310.

120. House of Commons *Debates*, April 2, 1973, 2807-8.

121. Ibid., 2850.

122. Ibid., 2850-4.

123. Ibid., 2870-1.

124. Ibid., 2877-97.

125. Ibid., April 6, 1973, 3036-7.

126. Ibid., June 27, 1973, 5101-2.

127. *Beauchesne's*, *supra*, note 89, pp. 134-135, 315-316.

128. For a summary of these changes see House of Commons *Debates*, March 7, 1973, 1999-2000.

129. See the views of K. Bryden, a former Ontario M.P.P., "Executive and legislature in Ontario: a case study on governmental reform", 18 *Can. Pub. Adm.* 235 (1975), p. 252 and C. E. S. Franks, "The Dilemma of the Standing Committees of the Canadian House of Commons", 4 *Can. J. Pol. Sc.* 461 (1971), p. 476. See also House of Commons *Debates*, March 7, 1973, 2000.

130. A. Macleod, "The Reform of the Standing Committees of the Quebec National Assembly: A Preliminary Assessment", 8 *Can. J. Pol. Sc.* 22 (1975), p. 22.

131. See *supra*, pp. 38-39.

132. See *infra*, pp. 61-74.

133. See the discussion *infra*, pp. 54-55.

134. The standing committees were, at the time of writing: Agriculture (30 members); Broadcasting, Films and Assistance to the Arts (20); External Affairs and National Defence (30); Finance, Trade and Economic Affairs (20); Fisheries and Forestry (20); Health, Welfare and Social Affairs (20); Indian Affairs and Northern Development (20); Justice and Legal Affairs (20); Labour, Manpower and Immigration (20); Management and Members' Services (12); Miscellaneous Estimates (20); Miscellaneous Private Bills and Standing Orders (20); National Resources and Public Works (20); Northern Pipelines (15); Privileges and Elections (20); Procedure and Organization (12); Public Accounts (20); Regional Development (20); Transport and Communications (20); and Veterans Affairs (20).

135. See *infra*, pp. 74-80.

136. See *infra*, p. 131.

137. S.O. 65(8).

138. R. Jackson and M. Atkinson, *The Canadian Legislative System* (Toronto: Macmillan, 1974), p. 116.

139. For discussion of possible reforms to the committee system see House of Commons *Debates*, March 7, 1973, 1999-2000, 2009; March 9, 2071-77; June 2, 1975, 6362; December 1, 1976, 1571 *et seq.*; and the Lambert Commission Report *supra*, note 2, chapter 22.

140. S.O. 65(1) (q), (t).

141. S.C. 1970-71-72, c. 38, s. 26. See also *Election Expenses Act*, S.C. 1973-74, c. 51, s. 4; An Act to Amend the National Parks Act, S.C. 1974, c. 11, s. 2; *Petroleum Administration Act*, S.C. 1977-78, c. 24, s. 2; *Petroleum Corporations Monitoring Act*, S.C. 1977-78, c. 39, s. 14; *Representation Commissioner Act*, R.S.C. 1970, c. R-6, s. 14; *Representation Act, 1974*, S.C. 1974-75-76, c. 13, s. 7; *Statute Revision Act*, S.C. 1974-75-76, c. 20, s. 7.

142. See e.g., K. Bradshaw and D. Pring, *Parliament and Congress* (London: Constable, 1972), chapter 5.

143. There is some indication that Party lines can break down in a committee that approaches policy formation with a sense of collegiality. See Hockin, *supra*, note 87, pp. 197-198 and the same author's *Government in Canada* (Toronto: Norton, 1976), pp. 189-190, 197-198.

144. House of Commons Special Committee on Procedure, *Third Report*, 1968, par. 12.

145. *Beauchesne's*, *supra*, note 89, pp. 191, 332.

146. House of Commons *Debates*, February 3, 1976, 10592, 10597; February 6, 10720-22.

147. Franks, *supra*, note 129, pp. 465-466, 470. Frequent changes have provoked references to "roving goon squads" on the part of government Members. See House of Commons *Debates*, October 15, 1970, 156; September 17, 1973, 6629.

148. Jackson and Atkinson, *supra*, note 138, p. 126.

149. Peter C. Dobell, "Committee Staff — What Else is Needed?" (paper prepared for the Conference on Legislative Studies in Canada, 1979, held at Simon Fraser University in February 1979), p. 14. An idea of what this means in terms of continuity of membership and potential for the develop-

ment of expertise in individual Members, can be obtained by looking at the membership of three committees during the 30th Parliament. Membership as recorded in the *Debates* each Wednesday was examined on five dates at approximately one year intervals, subject to the House being in session. In the case of the Standing Committee on Broadcasting, Films and Assistance to the Arts, only eight of the twenty Members who were appointed in October, 1974, were still members about one year later. This figure of about eight original members remained fairly constant through to November, 1978, but unfortunately it was not always the same eight; changes continued to be made. By the end of Parliament only four of the original members remained, and only two of these had been members for the whole time. During this same period the Committee had four chairmen and four vice-chairmen, with only one of the new chairmen being a promoted vice-chairman.

The Standing Committee on Transport and Communications had a similar experience. The initial twenty members had dropped to eight within one year, and by 1977 this number had fallen to five. At the end of the Parliament there were again only four original members left, only two of whom had had uninterrupted memberships. This Committee, however, had the advantage of having the same chairman throughout the period, with only minor disruptions in the vice-chairmanship.

The Standing Committee on Veterans Affairs experienced a greater stability in membership. Of the twenty original members, sixteen remained after one year, and fourteen after two. The Committee stabilized at about eleven original members from 1977 to 1979. However, even in this committee there were only eight members with continuous membership. Three changes occurred in the chair, and there were four vice-chairmen, but the fact that the new chairmen had been vice-chairmen before their appointment helped maintain a degree of stability in the Committee's leadership. If the experience of these three committees is representative, and there is no reason to believe it is not, it would appear that instability of membership is a major obstacle to improving the committee system as a whole.

150. House of Commons *Debates*, March 9, 1973, 2076-7; April 2, 1976, 12430; March 29, 1977, 4441-3; Lambert Commission Report, *supra*, note 2, p. 389.

151. Franks, *supra*, note 129, p. 466.

152. Dobell, *supra*, note 149, pp. 7-12; Hockin, *supra*, note 87, pp. 197-198.

153. See "Parliament — Recommendations for Change", statement prepared by the Business Council on National Issues (April, 1979), p. 6; Jackson and Atkinson, *supra*, note 138, pp. 185-186; Dobell, *supra*, note 149, pp. 4-5; Lambert Commission Report, *supra*, note 2, p. 400.

154. Franks, *supra*, note 129, p. 468; Hockin, *supra*, note 87, p. 197.

155. Franks, ibid., p. 469; P. Laundy, "Comment", 5 *Can. J. Pol. Sc.* 437 (1972), in reply to Professor Franks' article.

156. See House of Commons *Debates*, December 1, 1976, 1575. The two persons who now assist the Joint Committee on Statutory Instruments at one time did so through the Research Branch.

157. See also Dobell, *supra*, note 149, p. 20.

158. Ibid., p. 18.

159. "It is true that in situations where a committee already had an order of reference permitting it to meet, the opposition can succeed in getting an investigation underway and even derive some political benefit. The recent

Public Accounts inquiry into Atomic Energy of Canada is a case in point. In such cases, however, the government uses its majority to limit the damage. In all such situations, the staff, under the direction of the majority, would be inhibited from developing material to feed the investigation. This would be true no matter how large and efficient the staff was." Ibid., pp. 3-4.

160. Franks, *supra*, note 129, p. 473.

161. See *infra*, pp. 61-73.

162. See *supra*, pp. 21-22.

163. See also the Lambert Commission Report, *supra*, note 2, pp. 313-314.

164. Ibid., p. 94.

165. Ibid., pp. 97, 100.

166. The CRTC, the CTC, the NEB, the CPC, the WVAB, the IAB, and the CHRC.

167. Minutes of the Standing Committee on Broadcasting, Films and Assistance to the Arts, March 29, 1977, Issue no. 13.

168. One speaker posed a brief question about the organizational chart that was attached to the opening statement prepared by the Chairman of the CRTC. This question had to do with regional offices and staffing, and was the only comment or question relating to the statement. During the entire meeting not one speaker made a reference to the Estimates. Three used the shot-gun approach of covering as many topics as possible in their ten minutes. The other six decided to spend all their time on one topic. The only sustained pursuit of one subject occurred when the fifth, sixth, and to some extent the seventh speaker discussed the proper degree of regulation needed in the industry.

169. Minutes of the Standing Committee on Broadcasting, Films and Assistance to the Arts, March 29, 1977. 13:22-3.

170. Ibid., November 29, 1977, 3:39-42.

171. Ibid., April 20, 1979, Issue no. 14. Parliament was dissolved for the 1979 election before the 1979-80 Estimates could be considered.

172. Minutes of the Standing Committee on Veterans Affairs, May 10, 1977, Issue no. 3.

173. Ibid., 3A:12-17, 19-23.

174. Ibid., May 10, 1978, 1:13.

175. Minutes of the Standing Committee on Labour, Manpower and Immigration, May 4, 1972, 6:4-26.

176. Ibid., 6:22. For a discussion of the *sub judice* convention, see *supra*, pp. 41-42.

177. Ibid., June 16, 1977, 37:3.

178. Ibid., May 17, 1973, 9:13.

179. Ibid., May 8, 1975, 16:16-17.

180. Schultz, *supra*, note 86, pp. 88-110. This study covered the years from 1968 to 1977.

181. For an example, see the accounts of the CRTC in the 1978 Public Accounts, 2:3-7.

182. *Auditor General Act*, S.C. 1976-77, c. 34, s. 5.

183. *First Report* of the Standing Committee on Public Accounts, February 27, 1978.

184. *Report of the Auditor General of Canada to the House of Commons for the Year Ending March 31, 1977* (Ottawa: Supply and Services, 1977), pp. 226-227.

185. Special Committee on Statutory Instruments, *Third Report* (Ottawa: Queen's Printer, 1969), p. 4 (hereinafter, "MacGuigan Report"). D. Foulkes, *Introduction to Administrative Law*, 4th ed. (London: Butterworths, 1976), pp. 27-32.

186. MacGuigan Report, *supra*, note 185, p. 5.

187. S.C. 1950, c. 50.

188. *Regulations Made under the Regulations Act*, P.C. 1954-1787. MacGuigan Report, *supra*, note 185, pp. 7-9.

189. J. R. Mallory, "Parliamentary Scrutiny of Delegated Legislation in Canada: A Large Step Forward and a Small Step Back", [1972] *Public Law* 30, p. 32.

190. MacGuigan Report, *supra*, note 185, pp. 90-93.

191. S.C. 1970-71-72, c. 38, in force January 1, 1972.

192. Ibid., s. 27.

193. Mallory, *supra*, note 189, pp. 36-38.

194. Standing Joint Committee on Regulations and other Statutory Instruments, *Second Report*, 4th Sess., 30th Parliament (Ottawa: Supply and Services, 1979). See also the Minutes of the Proceedings of the Joint Committee, November 14, 1978, 1:4-6. Examples of the application of these criteria can be found in the Committee's *Second Report*, 2nd Sess., 30th Parliament (Ottawa: Supply and Services, 1977), pp. 4-12.

195. Standing Joint Committee on Regulations and other Statutory Instruments, *Second Report*, 2nd Sess., 30th Parliament (Ottawa: Supply and Services, 1977), p. 3.

196. For example, the *Broadcasting Licence Fee Regulations*, C.R.C., c. 373, as made by the CRTC in 1977 provided that in the case of late payment of a licence fee, there would be payable an additional fee equal to 1½ per cent times the number of months the original fee was late. Counsel for the Committee identified this regulation as possibly being *ultra vires* (criterion 1) or as imposing an unauthorized penalty (criterion 11). When asked, the CRTC took the position that this charge was an "additional fee" and not a surcharge for late payment. Counsel then advised the Committee of his view that "the inference that it is surcharge or penalty is inescapable", and that he could not locate a statute authorizing it. The Committee agreed that the charge could not properly be considered an additional fee, and instructed counsel to write to the CRTC setting out its reasons for taking this position and inviting a reply. The CRTC maintained its stand, arguing that the regulation was authorized by the *Broadcasting Act* and was properly within its discretion. Since the CRTC seemed unwilling to alter its view, and since the Committee had encountered other examples of the same thing, it was resolved to report the matter to the House. Minutes of the Proceedings of the Standing Joint Committee on Regulations and other Statutory Instruments, February 22, 1979, 10:32-39.

197. Ibid., 10:57-60.

198. *Second Report* of the Joint Committee, *supra*, note 195.

199. See *infra*, p. 127.

200. S.C. 1970-71-72, c. 38, s. 26.

201. *Second Report* of the Joint Committee, *supra*, note 195, pp. 14-15.

202. Ibid., p. 39.

203. MacGuigan Report, *supra*, note 185, pp. 82-88; and see H. McIntosh, "Controls on Federal Subordinate Legislation", 35 *Sask. L.R.* 63 (1970), pp. 65-66.

204. J. L. Mallory, "Parliamentary Scrutiny of Statutory Instruments in Canada: A Proposal", 4 *Ottawa L.R.* 296 (1970-71), pp. 302-330.

205. Cf. *infra*, p. 82.

206. *Second Report* of the Joint Committee, *supra*, note 195, p. 15.

207. Ibid., p. 43.

208. MacGuigan Report, *supra*, note 185, p. vii.

209. *Statutory Instruments Act*, S.C. 1970-71-72, c. 38, ss. 11, 12.

210. Ibid., s. 27.

211. R.S.C. 1970, c. B-11, subs. 16(2).

212. *Federal Court Act*, R.S.C. 1970, c. 10 (2nd Supp.), subs. 46(4); *Copyright Act*, R.S.C. 1970, c. C-30, subs. 15(6); *Canada Business Corporations Act*, S.C. 1974-75-76, c. 33, subs. 254(2); *Environmental Contaminants Act*, S.C. 1974-75-76, c. 72, subs. 6(2); *Fisheries Act*, R.S.C. 1970, c. F-14, subs. 33.1(2); *Grain Futures Act*, R.S.C. 1970, c. G-17, subs. 8(3), (4); *Motor Vehicle Safety Act*, R.S.C. 1970, c. 26 (1st Supp.), s. 9; *Motor Vehicle Tire Safety Act*, S.C. 1974-75-76, c. 96, s. 9; *Radiation Emitting Devices Act*, R.S.C. 1970, c. 34 (1st Supp.), s. 11; *Territorial Lands Act*, R.S.C. 1970, c. T-6, s. 19.1; *Weights and Measures Act*, R.S.C. 1970, c. W-7, s. 10 as am. by S.C. 1970-71-72, c. 36; *Consumer Packaging and Labelling Act*, S.C. 1970-71-72, c. 41, s. 19.

213. MacGuigan Report, *supra*, note 185, pp. 43-44.

214. In most cases the process is started by ten MP's or Senators signing a Notice of Motion praying for revocation. Both the *Old Age Security Act*, R.S.C. 1970, c. O-6, s. 22 as am. by S.C. 1976-77, c. 9, s. 13, and the *James Bay and Northern Quebec Native Claims Settlement Act*, S.C. 1976-77, c. 32, subs. 5(2), require the signatures of fifty MP's or twenty Senators.

215. *National Energy Board Act*, R.S.C. 1970, c. N-6, subs. 87(4); *War Measures Act*, R.S.C. 1970, c. W-2, s. 60; *Old Age Security Act*, *supra*, note 214, s. 22 as amended; *James Bay and Northern Quebec Native Claims Settlement Act*, *supra*, note 214, subs. 5(6).

216. *Petroleum Administration Act*, S.C. 1974-75-76, c. 47, ss. 35, 52; *Maintenance of Railway Operation Act*, S.C. 1966-67, c. 50, s. 11 (unconsolidated).

217. *Atlantic Region Freight Assistance Act*, R.S.C. 1970, c. A-18, subs. 5(4), (5).

218. *Defence Production Act*, R.S.C. 1970, c. D-2, subs. 27(2), as am. by R.S.C. 1970, c. 29 (2nd Supp.), s. 2.

219. S.C. 1970-71-72, c. 47, subs. 7(3), 13(4) and 21(3).

220. *Interpretation Act*, R.S.C. 1970, c. I-23, s. 28, as am. by R.S.C. 1970, c. 29 (2nd Supp.), subs. 1(3).

221. *United Nations Act*, R.S.C. 1970, c. U-3, s. 4; *Hazardous Products Act*, R.S.C. 1970, c. H-3, subs. 8(4).

222. *Export Act*, R.S.C. 1970, c. E-16, s. 5.

223. R.S.C. 1970, c. C-41, subs. 4(4).

224. *Employment and Immigration Reorganization Act*, S.C. 1976-77, c. 54, subs. 30(2).

225. *Anti-Inflation Act*, S.C. 1974-75-76, c. 75, subs. 46(4).

226. *National Parks Act*, 1970 R.S.C., c. N-13, s. 3.1, enacted by S.C. 1974, c. 11, s. 2.

227. P.C. 1974-2487 of November 12, 1974.

228. S.C. 1970-71-72, c. 38, par. 3(2)(*c*). See also *supra*, note 194.

229. S.C. 1976-77, c. 33, par. 22(1)(*f*).

230. R.S.C. 1970, c. N-17.

231. Lambert Commission Report, *supra*, note 2, p. 315; MacGuigan Report, *supra*, note 185, p. 34.

232. See *infra*, pp. 130-131.

233. See T. M. Denton, *Ministerial Responsibility* (Ottawa, 1977), study paper prepared for the Lambert Royal Commission on Financial Management and Accountability; E. C. S. Wade and A. W. Bradley, *Constitutional Law*, 8th ed. (London: Longman, 1970), pp. 86-92; B. M. Snedden, "Ministerial Responsibility in Modern Parliamentary Government", *Record of the Third Commonwealth and Empire Law Conference*, ed. by R. A. Woodman (Sydney: The Law Book Company, 1966). The Conference was held at Sydney, Australia, August 25-September 1, 1965.

234. Dawson, *supra*, note 29, p. 172.

235. "Resignation or dismissal may be the punishment for personal misconduct. What of cases where the Minister is not personally involved? The Minister is responsible, the saying goes, for every stamp stuck on an envelope. Responsible, yes, in the sense that he may have to answer to and explain *to* Parliament, but not absolutely responsible in the sense that he has to answer *for* (is liable to censure for) everything done under his administration . . . no one would dream of suggesting that the Postmaster-General should resign because a postal clerk misappropriated mail while on the job.

"The reality is that there is no absolute vicarious liability on the part of the Minister for the 'sins' of his subordinates. If the Minister is free from personal fault and could not by reasonable diligence in controlling his department have prevented the mistake, there is no compulsion to resign." Snedden, *supra*, note 233, p. 8.

236. See *Stopforth v. Goyer* (1978) 20 O.R. (2d) 262, 272-273 (H.C.).

237. Lambert Commission Report, *supra*, note 2, p. 374.

238. Schultz, *supra*, note 24, pp. 338-339.

239. *Supra*, note 67.

240. *National Film Act*, R.S.C. 1970, c. N-7, s. 10.

241. Minutes of the Special Committee on a Northern Gas Pipeline, March 2, 1978, 4:55; and see March 9, 1978, 8:7.

242. *Foreign Investment Review Act*, S.C. 1973-74, c. 46, ss. 7 and 12.

243. *National Energy Board Act*, R.S.C. 1970, c. N-6, s. 47.

244. *Broadcasting Act*, R.S.C. 1970, c. B-11, s. 22.

245. E.g., *Atomic Energy Control Act*, R.S.C. 1970, c. A-19, s. 7. The Lambert Commission thought such a power should be universal: Lambert Commission Report, *supra*, note 2, p. 316.

246. *National Transportation Act*, R.S.C. 1970, c. N-17, s. 64.

247. E.g., *Atomic Energy Control Act*, R.S.C. 1970, c. A-19, s. 9.

248. E.g., *Canadian Human Rights Act*, S.C. 1976-77, c. 33, s. 23.

249. E.g., *National Transportation Act*, R.S.C. 1970, c. N-17, s. 64.

250. E.g., *Broadcasting Act*, R.S.C. 1970, c. B-11, s. 23.

251. E.g., *National Transportation Act*, R.S.C. 1970, c. N-17, s. 64.

252. E.g., ibid., s. 25.

253. A more complete inventory may be found in L. Vandervort, *Political Control of Independent Administrative Agencies* (Ottawa: L.R.C.C., 1979), Appendix A, and A. Leadbeater, *Supervision with Independence in the Federal Administrative Process*, (1979), Appendices B and D (on file at the LRCC).

254. Canadian Radio-television and Telecommunications Commission, *Special Report on Broadcasting in Canada — 1968-78* (Ottawa: Supply and Services, 1979).

255. S.O. 41.

256. Official Languages Act Amendment Bill and Broadcasting Act Amendment Bill, *supra*, note 61.

257. "**Mr. Trudeau:** Mr. Speaker, I believe I have dealt with this question before, simply by responding that automatic referrals would put a burden on the committees and that perhaps members of parliament themselves would find it took time from them to which they might spend going into other matters, such as departmental estimates, in detail. The House leader on this side in specific cases, perhaps like that of the CBC, would be prepared to discuss with the opposition House leaders the conduct of business in committees, which would permit this committee to start such a report; but the hon. member for Fundy-Royal knows that in the past two or three weeks we have had many suggestions for referral of all kinds of annual reports, and my answer was that obviously we cannot refer them all, otherwise the committees will not have time to do their other business."

    House of Commons *Debates*, July 25, 1977, 7948. See the recommendations of the Lambert Commission in this regard: Lambert Commission Report, *supra*, note 2, p. 324.

258. See *supra*, note 166.

259. Annual Reports Bill, *supra*, note 61.

260. National Energy Board, *Annual Report, 1977* (Ottawa: Supply and Services, 1978), p. 10.

261. Canadian Radio-television and Telecommunications Commission, *Annual Report, 1977-78* (Ottawa: Supply and Services, 1978), p. v.

262. *Supra*, note 254, pp. 4-6.

263. Tax Review Board, *Seventh Annual Report (1977)* (Ottawa: Supply and Services, 1978), p. 3.

264. See P.C. 1978-1993 of June 15, 1978 and P.C. 1978-2351 of July 20, 1978.

265. See P.C. 1977-2353 of August 16, 1977.

266. *Law Reform Commission Act*, R.S.C. 1970, c. 23 (1st Supp.), s. 11.

267. See *supra*, note 25.

268. See generally Wraith and Hutchesson, *supra*, note 1, chapter 8; B. Schwartz and H. W. R. Wade, *Legal Control of Government* (Oxford: Clarendon Press, 1972), chapter 7; A. Leadbeater *Council on Administration* (Ottawa: LRCC, 1980), Chapter Two.

269. *Canadian Human Rights Act*, S.C. 1976-77, c. 33, subs. 21(4); *National Energy Board Act*, R.S.C. 1970, c. N-6, subs. 3(2) as am. by R.S.C. 1970, c. 27 (1st Supp.), s. 2; *Law Reform Commission Act*, R.S.C. 1970, c. 23 (1st Supp.), subs. 4(4) (only those Commissioners who are in receipt of a salary under the *Judges Act* are removable on joint address); *Public Service Employment Act*, R.S.C. 1970, c. P-32, subs. 3(2); *Representation Commissioner Act*, R.S.C. 1970, c. R-6, subs. 4(1); *Tax Review Board Act*, S.C. 1970-71-72, c. 11, subs. 3(2). See also the *Canada Pension Plan*, R.S.C. 1970, c. C-5, subs. 85(2) as am. by S.C. 1974-75-76, c. 4, s. 42, which indicates that all of the members of the Board are to be Superior Court judges but is silent as to the conditions of removal. If their functions on the Board are similar enough to those of Superior Court judges, it may be that the provisions of section 99 of the *British North America Act* would have to be respected. Cf. the *Pension Act*, R.S.C. 1970, c. P-7, subs. 3(8), which indicates that all Commissioners are removable for cause. Subsection 3(5) clearly contemplates that a Superior Court judge may be a Commissioner.

270. Lambert Commission Report, *supra*, note 2, p. 321.

271. Ibid., p. 102.

272. *Bank Act*, R.S.C. 1970, c. B-1, s. 6.

273. See S.C. 1976-77, c. 16, s. 1; S.C. 1977-78, c. 10, s. 1; S.C. 1978-79, c. 18, s. 1; S.C. 1980, c. 12, s. 1. See *Bank and Banking Law Revision Act, 1980*, S.C. 1980, c. 40.

274. On ministerial responsibility generally, see *supra*, pp. 85-87.

275. See the discussion *supra*, pp. 21-23.

276. *Supra*, p. 35 *et seq*.

277. See Chapter Two, *supra*, especially the discussion pp. 7-8.

278. *Supra*, pp. 28-29.

279. *Supra*, pp. 37-38, 60-61.

280. *Supra*, pp. 23-24, 37.

281. *Supra*, p. 37.

282. *Supra*, pp. 34-35.

283. *Supra*, p. 25.

284. *Supra*, pp. 37, 40-41.
285. *Supra*, p. 39.
286. *Supra*, pp. 32, 60.
287. *Supra*, pp. 41, 43-44.
288. *Supra*, pp. 95, 102.
289. *Supra*, pp. 61-73, especially 71.
290. *Supra*, p. 35.
291. *Supra*, p. 82.
292. *Supra*, p. 83.
293. *Supra*, pp. 74-80, 84.
294. *Supra*, p. 38.
295. *Supra*, pp. 70-73.
296. *Supra*, pp. 73-74.
297. *Supra*, pp. 18-19.
298. See, generally, *supra*, pp. 7-8.
299. *Supra*, pp. 85-87.
300. *Supra*, pp. 15-17.
301. *Supra*, pp. 70-71.
302. *Supra*, p. 36.
303. *Supra*, pp. 77-80.
304. See the discussion on annual reports, *supra*, pp. 89-102.
305. See Table III, *supra*, p. 97.
306. For a discussion of the committee system as it presently exists, see *supra*, pp. 59-61.
307. Ibid.
308. *Supra*, pp. 58-59.
309. For examples of current practice, see *supra*, pp. 55-56.
310. As occurs at present: see *supra*, p. 71.
311. *Supra*, pp. 82-83.
312. For the present status of committee reports, see *supra*, pp. 53-54.
313. *Supra*, pp. 77-80.
314. *Supra*, p. 53.
315. *Supra*, note 268.
316. *Supra*, pp. 107-108.