

Office of the  
Prime Minister



Cabinet du  
Premier ministre

Ottawa, Canada K1A 0A2

June 11, 2009

Mr. Richard Wolson, Q.C.  
Lead Commission Counsel  
Commission of Inquiry into Certain Allegations Respecting  
Business and Financial Dealings Between Karlheinz Schreiber  
and the Right Honourable Brian Mulroney  
400 - 427 Laurier Avenue West  
Ottawa, ON K1R 7Y2

Professor Craig Forcese  
Director of Policy Research  
Commission of Inquiry into Certain Allegations Respecting  
Business and Financial Dealings Between Karlheinz Schreiber  
and the Right Honourable Brian Mulroney  
400 - 427 Laurier Avenue West  
Ottawa, ON K1R 7Y2

Dear Mr. Wolson and Prof. Forcese:

**Re: Response to Thomas Report**

Attached please find the response of the Prime Minister's Office to "Who Is Getting the Message? Communications at the Centre of Government," the draft research report prepared by Dr. Paul G. Thomas.

Sincerely,

A handwritten signature in dark ink, appearing to read "Guy W. Giorno".

Guy W. Giorno  
Chief of Staff



## **RESPONSE OF THE PRIME MINISTER'S OFFICE TO "WHO IS GETTING THE MESSAGE? COMMUNICATIONS AT THE CENTRE OF GOVERNMENT"**

### **Submission to the Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney in Response to the Draft Research Report (March 2009) prepared by Dr. Paul G. Thomas**

This brief, submitted on behalf of the Prime Minister's Office (PMO), responds to "Who Is Getting the Message? Communications at the Centre of Government," a draft research report prepared for the Oliphant Commission by Dr. Paul G. Thomas.<sup>1</sup> It is recognised that the Thomas Report is only a draft, prepared for discussion during the Expert Policy Forum.

Nonetheless, the draft report contains several serious inaccuracies and draws important conclusions that lack a factual foundation. It is necessary to correct the record.

#### **EXECUTIVE SUMMARY**

The Thomas Report is a heavily flawed document that contains numerous errors. It is not based on input from anyone with actual knowledge of how the current PMO works and operates.

A study of prime ministerial communication would be useful and worthwhile, but the many shortcomings of the Thomas Report hardly make it a basis on which the Commission should found recommendations.

#### **PROLOGUE: THE ROLE OF THE POLITICAL STAFF**

Any analysis of the PMO necessarily begins with a discussion of the role of the political staff.

While the Thomas Report attempts to cast doubt on it, the legitimacy of the political staff is well established. In law, this legitimacy flows from s. 128 of the *Public Service Employment Act*. In practice, the legitimacy flows from the acknowledged, unique role that the staff plays.

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<sup>1</sup> In this brief, the draft research report will be referred to as the "Thomas Report."

As the late public servant Arthur Kroeger, known as the “dean of deputy ministers,” told Prof. Liane Benoit, “The ministerial staff is essential.”<sup>2</sup>

Mark Schacter has explained the contribution of the political staff in this manner:<sup>3</sup>

If ministers and heads of government are to make wise policy decisions, they need a combination of sound technical and political advice.

...

Canada’s structures and practices for providing both forms of advice seem to work reasonably well. Ministers, as well as the Prime Minister, have a distinct (and relatively small) “political staff” operating outside of the public service, while non-partisan policy advice comes from public servants. In a minister’s case, the lead public service adviser is the deputy minister. In the Prime Minister’s case, it is the Clerk; the Prime Minister’s political advisers are located in the Prime Minister’s Office, which is distinct from the Privy Council Office.

Three lessons regarding political, as opposed to non-partisan policy advice emerge from the Canadian case. The first is that – although there will inevitably be tensions between political and non-partisan advisers – there is general recognition throughout the system that both kinds of advice are required and valuable. Indeed, senior officials say they work best when they know that the minister or Prime Minister has a capable political staff. This gives them comfort that their policy advice, is appropriately balanced by good political advice and reduces the likelihood that they will be put in the uncomfortable position of having to provide political, as well as technical guidance.

Robert Gordon Robertson, who served 12 years as Clerk of the Privy Council, made clear his respect for the role played by the political staff in the PMO: <sup>4</sup>

One other matter that must be referred to is the relationship between the Privy Council Office and the Prime Minister’s Office. It is one that calls for the greatest harmony. Given the Prime Minister’s functions as leader of a political party, leader of the government in the House of Commons, and chairman of the Cabinet, the Prime Minister’s own staff are constantly securing information, analysing and recommending on matters that relate to policies and objectives of the government.

...

It goes without saying that mutual confidence and mutual respect — and mutual understanding of the basic difference between the two roles — are the foundations of cooperation between the Prime Minister’s Office and the Privy Council Office. All have been present, in my experience, and without them the operation of government under the stresses of today would be difficult indeed.

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<sup>2</sup> Liane E. Benoit, “Ministerial Staff: The Life and Times of Parliament’s Statutory Orphans,” in Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Research Studies vol. 1 – Parliament, Ministers and Deputy Ministers* (Feb. 2006), p. 178.

<sup>3</sup> Mark Schacter with Phillip Haid, “Cabinet Decision-Making in Canada: Lessons and Practices” (Ottawa: Institute on Governance, April 1999), p. 27.

<sup>4</sup> R. Gordon Robertson, “The Changing Role of the Privy Council Office,” *Canadian Public Administration*, vol. 14, no. 4 (Winter 1971), pp. 506-7.

The Privy Council Office describes as follows the role and function of the PMO:<sup>5</sup>

The Prime Minister's Office supports the Prime Minister in carrying out the functions demanded of a head of government and of a leader of a political party and Member of Parliament. The political staff of the PMO provide advice on policy development and appointments, draft speeches and other public statements to be delivered by the Prime Minister, brief the Prime Minister on matters related to proceedings in the House of Commons and manage the relations of the Prime Minister with Ministers, with caucus and with the party in general. The PMO also plans the Prime Minister's schedule, organizes the Prime Minister's public announcements and relations with the media, processes prime ministerial correspondence and handles matters arising in the constituency of the Prime Minister.

As mentioned above, members of the political staff are appointed under s. 128 of the *Public Service Employment Act*. As Government employees, they discharge a public function, not a partisan function. The distinction between *political* activity (advancing the agenda and interests of a Minister) and *partisan* activity (supporting a political party or candidate) is clear and constantly reinforced. While the role of the political staff is, as the name implies, political, policy ensures that Government resources (including employees' time) are not used for partisan activity.

The Privy Council Office has issued the following guidance to Ministers and political staffs:<sup>6</sup>

Ministers and Ministers of State are personally responsible for the conduct and operation of their offices. They hire their own office staff, who are known as "political" or "exempt" staff. The staff are outside the official public service and are exempt from Public Service Commission staffing and other controls. They are nevertheless subject to a broad range of terms and conditions set by the Treasury Board for the government as a whole.

The purpose of establishing a Minister's or Minister of State's [*sic*] office is to provide Ministers and Ministers of State with advisers and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the public service. Consequently, they contribute a particular expertise or point of view that the public service cannot provide. Exempt staff do not have the authority to give direction to public servants, but they can ask for information or transmit the Minister's instructions, normally through the deputy minister.

Good working relations between the Minister's or Minister of State's office and the department, characterized by mutual respect, cooperation, and the sharing of information where it is relevant or needed for their respective work, are essential in assisting the Minister and deputy minister in managing departmental work. Such a relationship requires that exempt staff in the Minister's office respect the non-partisanship of public servants and not seek to engage them in work that is outside their appropriate role.

In meeting their responsibility to respect the non-partisanship of public servants, exempt staff have an obligation to inform themselves about the appropriate parameters of public service

<sup>5</sup> Canada, Privy Council Office, *The Responsibilities of the Privy Council Office* (1999), chap. II: [www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=rpco-rbcp/rpco-rbcp-eng.htm](http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=rpco-rbcp/rpco-rbcp-eng.htm)

<sup>6</sup> Canada, Privy Council Office, *Accountable Government: A Guide for Ministers and Ministers of State* (2008), chap. VI, s. 1.

conduct, including public service values and ethics, and to actively assess their own conduct and any requests they make to departmental officials in the light of those parameters. Ministers and deputy ministers should be vigilant in ensuring that the appropriate parameters of interaction between officials and exempt staff are observed.

To the extent practicable, relations between officials and exempt staff should be conducted through the deputy minister's office. The deputy minister's office should be informed about contact between exempt staff and public servants in the department.

A Minister's office may also include a limited number of public service departmental assistants. Departmental staff are public servants in the employ of their departments who are assigned to the Minister's office and who are expected to carry out their duties in a non-partisan manner. Their role is to liaise with the department as well as to provide administrative support and general assistance to the Minister on departmental or other government matters.

## **PRINCIPAL SHORTCOMINGS**

While the Thomas Report is still in draft form, its errors and shortcomings require that the record be corrected. The most significant shortcomings of the Thomas Report are the following:

1. Error
2. Irrelevant Observations
3. Unsubstantiated Observations
4. Lack of Authoritative Sources
5. Untenable Criticism of High Standards

### **1. ERROR**

The Thomas Report itself concedes (at p. 6) that, "No claim can be made that the analysis to follow is either complete or completely accurate ..."

In fact, the report contains several inaccuracies, some serious, that raise questions about the extent to which the Commission should rely on its analysis.

#### **1.1 The Political Staff *is* Subject to Rules**

Probably the most egregious error in the report is the repeated claim that the political staff is not subject to a code of conduct or other rules.

The Thomas Report claims (at p. 35) that, "There is not much, if any, training given to ministerial staff and no code of conduct to guide their behaviour." [emphasis added]

It also asserts (at p. 49): “As an extension of the prime minister in his political roles as leader of the governing party and leader of the cabinet, the PMO does not fall within the scope of the laws, rules, and administrative guidelines that apply to departments, including the PCO.”

These claims are untrue.

As a result of the action of this Government, members of the political staff are subject to the *Conflict of Interest Act*.<sup>7</sup> The *Conflict of Interest Act* replaced the *Conflict of Interest and Post-Employment Code for Public Office Holders*, to which the political staff was also subject.

All members of the political staff are “public officer holders” under the *Conflict of Interest Act* and those who work on average 15 hours or more a week are subject to additional rules as “reporting public office holders.”

The *Conflict of Interest Act*, just as the *Conflict of Interest and Post-Employment Code for Public Office Holders* which preceded it, functions as a code of conduct for public officials.

The political staff is also subject to the Treasury Board’s *Policies and Guidelines for Ministers’ Offices*, most recently updated November 2008.<sup>8</sup> The Policies and Guidelines set out in detail how Government rules (*e.g.*, rules concerning contracting) bind the political staff.

Conduct of the political staff is also addressed by the Privy Council Office in *Accountable Government: A Guide for Ministers and Ministers of State*.<sup>9</sup> In particular, the Guide sets out expectations governing the interaction between members of the political staff and their departments.

Finally, members of the political staff are subject to restrictions and rules imposed by the *Lobbying Act*.

In one important respect, the political staff is subject to greater restriction than most other Government employees. All full-time members of the political staff are subject to the *Conflict of Interest Act*. On the other hand, only a fraction of departmental employees, at the most senior echelons, is bound by the *Conflict of Interest Act*.

The Thomas Report is wrong to claim that the political staff is not subject to rules, and is also wrong to claim that Canada lags behind other countries in the development of such rules. It asserts (at p. 34) that, “Other countries, such as Australia, New Zealand, and the United

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<sup>7</sup> 2006, c. 9, s. 2

<sup>8</sup> [www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/mg-ldm/gfmo-eng.pdf](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/mg-ldm/gfmo-eng.pdf)

<sup>9</sup> [www.pco.gc.ca/index.asp?doc=ag-gr/2008/ag-gr-eng.htm&lang=eng&page=information&sub=publications](http://www.pco.gc.ca/index.asp?doc=ag-gr/2008/ag-gr-eng.htm&lang=eng&page=information&sub=publications)

Kingdom, are further along in developing legal and quasi-legal frameworks to regulate the behaviour of political staff.”

Australian scholar Anne Tiernan disagrees that Canada lags behind Australia. According to her, the reverse is true:<sup>10</sup>

Similarly, the new Canadian government has had to respond to the recommendations of the Gomery Commission. For example, it has legislated to prevent ministerial-exempt staff being appointed to public service positions without competition (Grainger & Greene 2006, p. 9). In Australia, by contrast, there has been limited attention to developing a robust governance framework for ministerial staff. [emphasis added]

Also untrue is the Thomas Report’s claim that little if any training is given to the political staff. The PMO, under the direction of the chief of staff and the director of personnel and administration, organises a number of training sessions for members of the political staff. Reporting to the PMO’s director of personnel and administration, a dedicated, full-time employee is responsible for coordinating professional development of the political staff. Ministers’ chiefs of staff are expected, within their offices, to conduct their own professional development to reinforce and expand on the PMO-initiated training.

## **1.2 The Political Staff’s Activity is Political, not Partisan**

The Thomas Report fails to appreciate the distinction between political activity and partisan activity. As discussed in the Prologue, above, the PMO is a Government office whose activity is political but not partisan.

Thus, the Thomas Report is wrong (at p. 49) to describe the PMO as a “partisan office.”

It is also wrong to ignore the distinction between political activity and partisan activity, as when it fuses (at p. 5) the two distinct concepts into a single reference to “communication for partisan political purposes.”

## **1.3 Access to Information**

The Thomas Report also claims (at p. 36) that the *Access to Information Act* has not been fundamentally amended: “Despite many calls for reform, the Act has remained unchanged in its fundamental features.”

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<sup>10</sup> Anne Tiernan, *Power Without Responsibility: Ministerial Staffers in Australian governments from Whitlam to Howard* (Sydney: University of New South Wales Press Ltd., 2007), p. 231.

In fact, the *Access to Information Act* has been amended 23 times since 1983.<sup>11</sup> Most significantly, in 2006 the *Federal Accountability Act* made extensive changes to the *Access to Information Act*.<sup>12</sup>

#### 1.4 Culture of Documentation

The Thomas Report inaccurately claims (at p. 34): “There is a cultural norm within the PMO, the former staffer observed, of putting as little as possible in writing.”

As applied to the current PMO, this statement is inaccurate. The current PMO’s processes rely heavily on documentation. They involve documented advice, documented records of Government decisions and documented follow up.

The report’s allegation is based on no one with accurate knowledge of the current PMO. On the contrary, the report’s source is an unidentified former staff member in the Chrétien PMO. Nonetheless, the report uses the present-tense to describe the source’s information. The report has no basis to state what *is* the cultural norm in the PMO, when the source’s only knowledge is what *was* the culture of a former PMO.

This error highlights the shortcomings of a research study that relies entirely on sources that lack experience in the current PMO.

#### 1.5 Other Errors and Discrepancies

Other errors in the Thomas Report include the following:

- The report claims (at p. 29) that the PCO Departmental Correspondence Unit provides support to the Deputy Prime Minister, the Minister of Intergovernmental Affairs, and the Government House Leader. In fact, there has been no Deputy Prime Minister since February 5, 2006.
- According to the report (at p. 25): “Beneath the chief of staff and principal secretary, there are seven director positions covering such areas as priorities and planning, strategy, policy, issues management, communication, touring, and personnel. There are also two press

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<sup>11</sup> R.S.C. 1985, c. 27 (1st Supp.), s. 187; R.S.C. 1985, c. 1 (3rd Supp.), s. 12; R.S.C. 1985, c. 1 (4th Supp.), s. 45(F); R.S.C. 1985, c. 31 (4th Supp.), s. 100(E); S.C. 1990, c. 3, s. 32; S.C. 1992, c. 1, ss. 143(E), 144(F); S.C. 1992, c. 21, ss. 1-5; S.C. 1999, c. 16, s. 1; S.C. 2000, c. 7, s. 21; S.C. 2001, c. 27, s. 202; S.C. 2001, c. 41, s. 87; S.C. 2002, c. 8, ss. 112-113, 182-183; S.C. 2003, c. 22, ss. 224(E), 225(E); S.C. 2004, c. 11, s. 22; S.C. 2004, c. 17, s. 16; S.C. 2005, c. 1, ss. 97, 107; S.C. 2005, c. 27, ss. 16, 22; S.C. 2005, c. 46, s. 55; S.C. 2006, c. 9, ss. 89, 109, 141-151, 152(F), 153-154, 155(F), 156-157, 159, 161-163, 221; S.C. 2006, c. 10, s. 32; S.C. 2007, c. 15, ss. 8-10, 12(F); S.C. 2008, c. 9, s. 5; S.C. 2008, c. 32, s. 26.

<sup>12</sup> S.C. 2006, c. 9, ss. 89, 109, 141-151, 152(F), 153-154, 155(F), 156-157, 159, 161-163, 221.



secretaries and a number of advisers/assistants.” This summary is not accurate. The discrepancy might seem unimportant, except that it is relevant to the weight that should be given to the report. If it does not even describe accurately the structure of the PMO, the report is hardly a sound basis on which to base recommendations.

- The research study (at p. 3) cites a newspaper article to support the claim that, “Every day in 2006, approximately three bulging bags of letters addressed to Prime Minister Martin were received. ... In total, close to two million communications were directed to the Prime Minister during 2006.” In fact, the newspaper article reported on correspondence received in 2005, not 2006.<sup>13</sup>

Such inaccuracies are relevant to the extent to which the Commission can confidently rely on the report.

## **2. IRRELEVANT OBSERVATIONS**

The Thomas Report ostensibly has a very precise focus. It concerns itself with the Canadian federal government, particularly the PMO and associated central agencies.

According to the report (at p. 3):

This study is concerned with the processing, assessment, and responses to communications involving the centre of government, particularly the prime minister and the influential central agencies that support that office.

The report continues (at p. 4):

This study focuses on the somewhat narrow but important issue of how sensitive communications are handled at the heart of executive government in and around the prime minister.

Given that the focus of the Thomas Report is the “narrow but important issue” of Canadian prime ministerial communication, many of the report’s comments and observations are extraneous and irrelevant.

### **2.1 Irrelevant (and Unfair) Criticism of PMO**

The Thomas Report makes several claims about the PMO that are both unfounded and unrelated to the ostensible focus of the study.

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<sup>13</sup> Dean Beeby, “Prime Minister’s mailbag provides a glimpse of what’s on the minds of voters,” *Telegraph-Journal* (Saint John), (January 16, 2006), A4: “Altogether, Prime Minister Paul Martin received more than two million missives from Canadians in the year leading up to the Nov. 29 [2005] election call.”

*Size*

The report claims (at p. 25) that “Canada’s PMO has been described as large compared with similar offices in other cabinet-parliamentary systems.” While this sentence seems unremarkable, the following sentence begins, “This criticism is strongest,” indicating that the comment about relative size was intended as a criticism.

No citation is provided, so it is unclear who, if anyone, has criticised Canada’s PMO as large compared to similar offices. The report offers no foundation for its claim.

Contrary to the report’s unsubstantiated assertion, a comparison by Anne Tiernan found that Australia’s political staff complement is more than twice as large as Canada’s. The size of Canada’s political staff was about average among the four Westminster systems that she observed.<sup>14</sup>

The entire remainder of the paragraph (at p. 25) consists of further unsubstantiated claims:

This criticism [*i.e.*, the unsourced claim about the PMO’s size] is strongest when the PMO is seen as more pervasive and controlling in its approach to pushing the prime minister’s agenda forward. Clearly, a PMO of 80 people, perhaps half of them in administrative roles, is no match in terms of policy expertise for line departments. The PMO does not implement programs directly, so it has to rely on others to implement its ideas.

There are no footnotes in this passage. The report offers no evidence or citations to support any of these claims. They appear to be nothing more than statements of the author’s personal opinion.

It is unclear how any of these assertions relate to the “narrow but important” issue of prime ministerial communication which is supposed to be the focus of the research study. The claims are both unsubstantiated and irrelevant to the mandate.

*Structure*

The Thomas Report (at p. 24) also criticises the PMO’s top staffing structure: “To further confuse matters, in the current PMO serving Prime Minister Harper, a chief of staff is in overall charge, but there is also a principal secretary.”

The first four words of this passage (“To further confuse matters”) are revealing of the Thomas Report’s approach and tone. They imply that the organisation of the PMO is already confusing (given that the claim is of “further” confusion), but the report contains neither evidence nor

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<sup>14</sup> Anne Tiernan, *Power Without Responsibility*, note 10, p. 26, Table 2.1. Her study examined Australia, Canada, New Zealand and the United Kingdom. The size of Canada’s staffing (201) tracks very close to the average size (194) of the four systems.

authority for the proposition that the PMO's organisation is confusing. It is also unfair to suggest that the chief of staff/principal secretary distinction is confusing. Those within the organisation understand the roles. While the Thomas Report asserts that "matters" have been confused, it does not explain what these "matters" are. Further, and perhaps most significantly, the Martin PMO simultaneously housed both a chief of staff and a principal secretary, but the report fails to mention this fact.

Thus, the report's criticism of the chief of staff - principal secretary structure is unfair. It is also irrelevant. One wonders how the author's confusion about the roles of the chief of staff and principal secretary pertains to the report's ostensible focus, prime ministerial communication.

### *Influence*

The Thomas Report also (at p. 49) alleges the existence of "concerns about the undue influence of prime ministerial advisers." Once again, the report does not provide evidence or a source to justify the claim. Nor does it identify what the concerns may be. In any event, concerns about the influence of prime ministerial advisers are not germane to the issue on which the research study supposedly is focused, namely the issue of prime ministerial communication.

## **2.2 Irrelevant (and Unfair) Criticism of the Political Staff**

In the middle of the discussion of plausible deniability (which is irrelevant to the ostensible purpose of the study), the report (at p. 18) disparages the knowledge and judgment of the political staff:

If political staffers, for example, are relatively junior, do not understand the constitutional foundations of the political system, lack deep knowledge of the machinery of government, and do not have the training or experience to judge the importance and sensitivity of communications, they may not deal with matters appropriately.

The report provides no citation to support this claim. Indeed, the report relies on no evidence about the experience, qualifications and performance of the political staff. Absent substantiation, it is unclear how such a claim is justifiable. The fact that the sentence is conditional ("if") does not lessen the problem.

Earlier (at p. 10), the report states: "Critics point to the expansion of the role of political staffs as a sign that governments do not fully trust the willingness or the capacity of the bureaucracy to implement new policy directions."

The report does not identify these critics and offers no evidence or source to justify the claim. It appears to reflect nothing but the author's personal opinion. In any event, trust in the public

service's ability service to *implement new policy* is completely irrelevant to the *management of communication*, the ostensible focus of the research study.

Criticism of using newspaper articles as sources for the report appears in section 4.3, below. While the report should not rely at all on newspaper articles, it should also be noted that the media were cited incorrectly. For example, the report (at p. 39) uses a newspaper article to claim, "that many ministerial aides probably did not know the law" governing access to information. The article in fact quoted a claim that some ministerial staff members "might not have gotten that message yet."<sup>15</sup> [emphasis added throughout]

It is a distortion to replace "some" with "many." It is a distortion to convert "might" into "probably." The Thomas Report inaccurately and unfairly twists the comment in the news article. In any event, the comment in the news article has nothing to do with the supposed purpose of the research study.

### **3. UNSUBSTANTIATED CLAIMS**

The Thomas Report makes numerous general, sometimes sweeping, assertions, without citing evidence or authority for any of the propositions. In almost every case, the statement appears to reflect nothing more than the author's personal opinion.

#### **3.1 Unsubstantiated Claims of Plausible Deniability**

The first mention of plausible deniability appears at p. 15 of the report:

This point leads into the concern that politicians, their advisers, and/or public servants may engage in the activity of plausible deniability in order to protect the reputation and standing of the prime minister, individual ministers, and the government as a whole.

This allegation is unsourced and the report offers no evidence in support. Presumably the claim reflects nothing but the author's personal opinion

At the bottom of p. 19, the report criticises the "plausible deniability" approach. While the criticism is sound, the report is attacking a straw man. No one is arguing for plausible

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<sup>15</sup> Thomas Report, footnote 45, citing Elizabeth Thompson, "Shroud of secrecy violated in Ottawa," *The Gazette* (Montreal) (Sept. 20, 2006). According to the Thomas Report, "The deputy information commissioner was quoted in the press as saying most public servants were aware that access requests are confidential, but that many ministerial aides probably did not know the law." What the article in fact stated was: "While civil servants are more aware than in the past that the names are supposed to be confidential, some of the new government's ministerial aides might not have gotten that message yet, Leadbeater said." The Thomas Report exaggerates the claim of civil servants' knowledge ("most public servants were aware" vs. "civil servants are more aware than in past"), and exaggerates the claim of the political staff's lack of knowledge ("many ministerial aides probably did not know" vs. "some ... ministerial aides might not have gotten that message").

deniability, the paper cites no authority that the Government of Canada practises plausible deniability, and in fact the ethic of the current Government is accountability, not deniability. The gratuitous commentary might lead readers to infer — wrongly — the existence of a plausible-deniability problem in the Government of Canada. The paper offers no proof that this problem exists; it offers nothing more than the author's speculation (at p. 15) about what "may" occur.

The report's subsequent discussion of plausible deniability relies entirely on American and other foreign sources, including Wikipedia and the website of a U.S. lobby group. It is unclear how the discussion is relevant to the Canadian federal government or germane to the Commission's mandate. The report makes a serious allegation about Canadian public servants that appears to be based on nothing more than Wiki-scholarship and American commentary.

### **3.2 Unsubstantiated Claim that Campaigning and Governing are Blurred**

The Thomas Report also claims, repeatedly, that the line between campaigning and governing has been blurred. How this claim relates to the paper's ostensible focus (prime ministerial communication) is unclear, but the implication of each such claim in the report is always negative. None of the claims is supported by evidence or authority.

The report claims (at p. 8), "Under these challenging conditions, political life resembles a permanent election in which campaigning and governing have become almost indistinguishable."

The author provides no source for this bald assertion. Presumably it reflects his personal opinion.

Successive offices of Prime Ministers have well understood the distinction between partisan activity and Government activity. Partisan activity is the responsibility of political parties; on the other hand, the political role is a legitimate function of the Government's political staff. The PMO rejects the assertion that the line has been inappropriately blurred, and notes that the report fails to cite any source for the proposition that campaigning and governing have become indistinguishable.

In any event, this observation is irrelevant to the "narrow but important issue" on which the paper purports to focus. Given that the allegation is gratuitous and extraneous to the research study's mandate, one wonders what purpose it serves.

Later (at p. 35), the draft report argues that: "In terms of the focus of this study, the concern about political staff is that they are potentially too zealous in their loyalty to the prime minister or their minister, and too inclined to see governing as a permanent campaign in which protecting the boss is the number one priority." [emphasis added]

Again, the paper fails to cite a source for this allegation, or any evidence to support it. The claim, “the concern ... is,” begs the question of who purportedly has raised the concern.

The report’s conclusion (at p. 45) repeats the allegation in essentially the same language: “When political life resembles a permanent election contest, campaigning and governing become almost indistinguishable.” Once again, the claim is presented without any source or supporting evidence. The report does not mention the research, if any, that backs up this conclusion.

### 3.3 Unsubstantiated Speculation

The Thomas Report makes speculative predictions that are not backed up by evidence or supporting sources.

For example, the report (at p. 11, bottom) describes the hypothetical fall out from the *Federal Accountability Act*. This description is speculative, not real; the operative verb in each sentence is “could.” The paragraph includes no citations. Clearly the unsourced description of what “could” occur as a result of the *Federal Accountability Act* reflects nothing but the author’s personal opinion.

Section 3.2, above, examined the report’s unsourced, unsubstantiated allegation (at p. 35) that staff members “are potentially too zealous in their loyalty to the prime minister or their minister ...” [emphasis added] The insertion of the word “potentially” indicates that this is nothing more than speculation on the author’s part.

### 3.4 Unsubstantiated Comments about the PMO

As will be discussed in greater detail in section 4.2, below, the Thomas Report is not based on interviews with anyone inside the current PMO. Neither evidence nor any authoritative source is offered to support the report’s description of life inside the current PMO. Nonetheless, the report does not hesitate to provide unsubstantiated descriptions of how the PMO functions. One example (at p. 48) is as follows:

Life inside the PMO is hectic, fast paced and disjointed. Confidentiality and message discipline are stressed. Politically savvy aides have learned the lessons from cases in Canada, and even more prominently from the White House case, that keeping careful records of interactions can be politically hazardous for their bosses. [emphasis added]

The report cites no sources to back up these claims, including the serious allegation in the underscored sentence.

As it relates to the current PMO, the report’s claim is false. As discussed in section 1.4, above, the current PMO grounds its processes in documented advice, documented records of

Government decisions and documented follow up. (As for the innuendo about lessons learned, the Prime Minister's current chief of staff was unaware of "the White House case" until reading the Thomas Report.) The allegation that the current PMO eschews record keeping is inaccurate, though the error is unsurprising since no one with inside knowledge of the current PMO was interviewed as part of the research study.

### **3.5 Other Unsubstantiated Claims**

The Thomas Report makes other claims without providing evidence or citing sources.

- The report (at p. 10) states that, "According to a number of informed commentators, trust relationships between ministers and the upper echelons of the public service are not as strong as they used to be, and need to be ..."

It is unclear who is among the "number of informed commentators" responsible for this observation. Instead of naming several (or any) commentators as authorities for this proposition, the author cites only himself.<sup>16</sup>

- The report also asserts (at p. 9) that: "Ministers want error-free government with no high-profile mistakes. They don't like surprises. To avoid negative stories and damage to their reputations, they want government communications specialists to practise, as much as possible, 'information control' and 'news management.'"

The report cites no source or authority for any of these claims.

## **4. LACK OF AUTHORITATIVE SOURCES**

With great respect, we note that the Thomas Report relies heavily on authorities whose commentary is irrelevant to the operation and function of the Canadian PMO.

### **4.1 Reliance on Foreign Authority**

The report's footnotes cite almost as many American/foreign academics (8) as they do Canadian scholars, excluding the author himself (11).<sup>17</sup> Roughly 10 per cent of the footnotes cite American political scientist Doris A. Graber, whose work does not address the Canadian PMO.<sup>18</sup>

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<sup>16</sup> Thomas Report, footnote 8.

<sup>17</sup> For purposes of this calculation, co-authors of a single book (*e.g.*, Craig Forcese and Aaron Freeman) are treated as a single academic authority.

<sup>18</sup> Thomas Report, footnotes 4, 10, 11, 12, 13. The main body of the report contains 51 footnotes.

None of the U.S. authorities sheds any light on “narrow but important issue” (Canadian prime ministerial communication) on which the report claims to focus.

Note that these foreign authorities are relied upon in the main body of the report, which is supposed to deal with *Canadian* prime ministerial communication. Outside the main body of the report, three appendices deal entirely with foreign experience; they examine issues in Australia, the United Kingdom and the United States.

## 4.2 Lack of Knowledge of Current PMO

While the Thomas Report purports to describe the working of the current PMO, it appears not to rely on information provided by anyone who possesses actual knowledge of the current PMO. No one from the current PMO was interviewed by the report’s author or by his research assistant.

Instead, the report relies (at p. 6) on interviews “with five former or present public officials at the national level in Canada and four at the provincial level, and with two officials from governments outside of Canada.” Valuable insight can be provided by provincial officials, international government officials and former or present federal officials not associated with the current PMO. Yet provincial and international sources are in no position to comment on operation of the Canadian PMO, and none of the federal sources can speak with authority about the *current* PMO.

As evidence of whether the PMO relies on written records, the report cites commentary by a former member of the Chrétien PMO.<sup>19</sup> It goes without saying that this individual is in no position to provide evidence about the current PMO’s operation.

Turning to academic sources, the Thomas Report cites only three authorities with direct experience at the centre of the Government of Canada: former PMO officials Marc Lalonde and Tom Axworthy, and former Clerk R. Gordon Robertson. The scholarship and expertise of these sources is unquestioned. Their commentary, however, is dated: Lalonde and Robertson wrote in 1971, while Axworthy wrote in 1988. Axworthy, Lalonde and Robertson are the Thomas Report’s **only** cited academic sources with experience at the centre of the federal Government, and their experience is from two to four decades old. A report that purports to focus on the current PMO should rely on current, relevant sources.

## 4.3 Reliance on Wikipedia and Newspaper Articles

The Thomas Report relies excessively on sources that lack authority to comment on the organisation or operation of the PMO. Among the citations are seven references to newspaper

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<sup>19</sup> Thomas Report, at p. 34.



articles,<sup>20</sup> two references to a Wikipedia page,<sup>21</sup> and reference to the online posting of an American lobby group.<sup>22</sup>

Research into the operation of the Canadian PMO should be based on sources other than newspaper articles, a U.S. lobby group, and Wikipedia.

## **5. UNTENABLE CRITICISM OF HIGH STANDARDS**

The Thomas Report also advances (p. 35) the untenable proposition that high standards are bad:

If the tone set at the top is that there must be no mistakes or problems that embarrass the prime minister, then the likelihood is greater that attempts will be made to manipulate information and lessen vulnerability by covering up problems.

This is a fatuous, unfair and inappropriate statement. The absence of a citation indicates that it is not based on evidence or any source other than the author's personal opinion.

It is absurd to assert that high standards beget cover ups. It is akin to arguing that the grading of university essays and exams is responsible for cheating and plagiarism. The report ignores the other, more obvious consequence: namely, high standards engender high performance.

Is the report implying that error-free performance is an unworthy goal? Is the report advocating lower standards? The report provides no evidence and no sources to support its claim. Quite frankly, it is ridiculous to suggest anything but that high standards serve the public interest.

## **CONCLUSION**

The Thomas Report itself acknowledges its shortcomings.

The paper itself concedes (at p. 6), "No claim can be made that the analysis to follow is either complete or completely accurate ..."

The paper's shortcomings are obvious. Its unfounded, unsourced, unsubstantiated comments about the organisation, operation and ethos of the PMO ought not to form the basis of the Commission's recommendations.

Later (at p. 34), the report adds: "Generalizing about the role of political staff within the PMO is dangerous given the limited and sketchy evidence available."

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<sup>20</sup> Thomas Report, footnotes 1, 20, 43, 45, 50.

<sup>21</sup> Thomas Report, footnotes 15, 21.

<sup>22</sup> Thomas Report, footnote 19.

We agree.

Nonetheless, despite the acknowledged “danger,” the Thomas Report generalises and draws conclusions based not only on limited and sketchy evidence — but often on no evidence.

A study of prime ministerial communication would be useful and worthwhile, but the many shortcomings of the Thomas Report hardly make it a basis on which the Commission should found recommendations.