

THE RESPONSIBILITIES AND ACCOUNTABILITIES OF DEPUTY MINISTERS

This chapter examines the responsibilities and accountabilities of the most senior public servants, the Deputy Ministers. Deputy Ministers are the managers of the departments of government. Under their Ministers, they direct the administration of financial and human resources. They advise the Minister on policy issues and on reforms to administration. Together they form a community that must work as a team to coordinate and direct the work of government. Most policy initiatives cross-cut several departments and demand coordination of policy-making in several departments. Deputy Ministers have extensive management and other responsibilities.

As the managers of departments, Deputy Ministers are responsible for the work and actions of the public servants under them. It is their job

to ensure that departmental administration meets established standards. Not only their Ministers but Parliament as well must be assured that Deputy Ministers fulfill their responsibilities as departmental managers.

The Statutory Responsibilities of Deputy Ministers

The statutory responsibilities of Deputy Ministers originate from two different sources. First are their responsibilities under the *Interpretation Act* and other departmental acts which permit Deputy Ministers to act in the name of Ministers for all powers possessed by Ministers, except the power to make regulations. There is no question that, for the exercise of these powers, Deputy Ministers act under the authority delegated by their particular Minister, and they are ultimately accountable to those Ministers for the use of these powers. Ministers are, in turn, accountable to Parliament for what was done, whether the Minister or the Deputy Minister actually made the decision.

Second, Deputy Ministers possess powers in their own right under the *Financial Administration Act* and other statutes. They also possess powers delegated to them by the Treasury Board and the Public Service Commission. These powers belong to Deputy Ministers alone. The Treasury Board lists these “specific powers” assigned to Deputy Ministers without reference to their Ministers:

[T]he *Financial Administration Act* confers directly on Deputy Ministers responsibility for the prudent management of resources allocated to their department, in compliance with certain Treasury Board policies, regulations, standards, and periodic audits. Responsibility relating to personnel management, including appointment, employer-employee relations, and the organization of the department, are assigned to Deputy Ministers directly by a number of acts, including the *Public Service Employment Act*, or are delegated to them by the Public Service Commission of Canada. Finally, the *Official Languages Act* confers a number of authorities on the Treasury

Board and provides for the delegation of its powers to Deputy Ministers. Ministers cannot provide specific direction to Deputy Ministers on activities in these areas, but they may provide general direction, given their overall authority for the management and direction of the department.³

The Canadian Government has stated that the powers that Deputy Ministers hold in their own right are extensive:

[D]eputy ministers are responsible for financial regularity and probity; economy, efficiency and effectiveness; financial and management systems for departmental programs and public property.⁴

Who Are “Senior Public Servants”?

The mandate of the Commission of Inquiry refers to the responsibilities and accountabilities of “public servants” in general. Hundreds of thousands of public servants work for the Government of Canada, but, in this Report, the Commission has concentrated on the responsibilities and accountabilities of the most senior public servants, who are the Deputy Ministers and other public service heads of departments and agencies. These officials crucially link the political sphere of Ministers with the administrative sphere of the public service. They are the managers of departments and agencies who have been assigned management responsibilities directly by statute and by delegation. The terms used in the *Financial Administration Act* to identify the occupants of these positions include “deputy head,” “chief executive officer,” and “other person charged with the administration of a service.” The purpose of this section is to better define who is meant when the Report uses the term “senior public servants.”

The number of departmental Deputy Ministers varies as the number of departments rises and falls, but there are normally about 25 of them. At the same time, many senior public servants of Deputy Minister

rank do not possess statutory powers in their own right. This absence of statutory or delegated powers means that the recommendations of the Commission regarding the responsibilities and accountabilities of Deputy Ministers do not pertain to these officers.

The executive of the Government includes many agencies that are not designated as departments. Special Operating Agencies (SOAs), such as the Passport Office, are parts of departments and are not established by special legislation; they operate under tailor-made, written understandings with their parent department. Departmental service organizations such as the Meteorological Service of Canada have some degree of administrative autonomy but, like SOAs, are established without special legislation. Legislated service agencies, such as the Canadian Food Inspection Agency, Parks Canada, and the Canada Customs and Revenue Agency, have status under specific statutes. Agencies in all these categories possess varying degrees of autonomy from their host department.

These agencies operate under the broad umbrella of a department. The department itself has a Deputy Minister, who should be accountable before the Public Accounts Committee for his or her responsibilities. However, to the extent that powers are explicitly delegated to the Chief Executive Officers of these agencies, they should be deemed to be senior public servants and persons accountable for the exercise of those powers before the Public Accounts Committee.

Certain departments are more of an administrative umbrella than a single united hierarchical organization. For example, Public Safety and Emergency Preparedness Canada (formerly the Department of the Solicitor General) has six agencies within it: the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Canada Border Services Agency, the Canada Firearms Centre, Correctional Service Canada, and the National Parole Board. Each of these agencies, and the department itself, has an administrative head who holds powers

in his or her own right. Accordingly, this one department would have seven officers who should be considered as senior public servants, with status equivalent to that of Deputy Ministers in terms of statutory powers and accountability before the Public Accounts Committee.

Crown Corporations are legally distinct organizations that enjoy a large measure of autonomy from Ministers and departments. Most Crown Corporations and government-funded foundations are subject to audit by the Auditor General, under amendments to the *Financial Administration Act* passed by Parliament in 2005.⁵ Their Chief Executive Officers should be accountable before the Public Accounts Committee for those matters audited by the Auditor General.

To sum up, the comments and recommendations made by the Commission concerning Deputy Ministers should be taken to apply equally to senior public servants, as defined in this chapter, to the extent that they possess statutory powers and responsibilities in their own right. The same comments and recommendations also apply to the Chief Executive Officers of Crown Corporations for those matters subject to audit by the Auditor General.

The Powers of Deputy Ministers

Before 1931, the Canadian Auditor General was responsible for the executive function of issuing cheques. This arrangement was neither effective in preventing abuse nor in permitting the Auditor General to serve as an effective external auditor on behalf of Parliament. Overspending of Votes and unauthorized expenditures occurred regularly, and the Public Accounts Committee showed little interest in improving the system.⁶ When R.B. Bennett became Prime Minister in 1930, he held the position of Minister of Finance as well. In his efforts to solve the critical problems brought on by the Depression, he found that, with the chaotic practices then existing, he could not determine the financial position of the Government.

In 1931, under Prime Minister Bennett's direction, Parliament passed the *Consolidated Revenue and Audit Act*.⁷ This legislation imposed a highly centralized system for controlling expenditures. The Comptroller of the Treasury, an officer within the Department of Finance, became responsible for authorizing all expenditures. This system endured for over 35 years. Though it succeeded in preventing some forms of maladministration, it did not provide good management because it took responsibility for day-to-day financial administration away from departments and gave it to a central agency.

When the Royal Commission on Government Organization (Glassco Commission) examined the organization and management of government in the early 1960s, it found that departmental management and, in particular, the Deputy Ministers did not have the powers needed to manage their departments effectively.⁸ Key elements of financial administration belonged to the Comptroller of the Treasury, while responsibility for most human resources management belonged to another central agency, the Civil Service Commission. The Glassco Commission concluded in 1962 that the powerful role of central agencies weakened the sense of responsibility for management within departments. Every evidence of weakness in departments led to more central controls, weakening departmental management even further:

By divesting departments of the authority essential to the effective management of their own affairs, the system tended to weaken their sense of responsibility. Each new evidence of irresponsibility within departments seemed to confirm the wisdom of existing controls and to suggest the need for more.⁹

Accountability had disappeared and been replaced by a system of controls. The theme of the Glassco Commission became "Let the managers manage!" It proposed strengthening the role of the Treasury Board as the central management agency of government and giving

Deputy Ministers the powers and responsibilities they needed to be the effective managers of their departments. The Treasury Board argued before this present Inquiry that the Glassco Commission proposed a reassertion of ministerial authority,¹⁰ but that is not correct. The Glassco Commission's recommendations were directed to Deputy Ministers, whom they saw as the managers of departments.

In 1966, to implement the recommendations of the Glassco Commission, the Treasury Board was taken out of the Department of Finance and, through amendments to the *Financial Administration Act*, became a separate agency with its own Minister and Deputy Minister (the President and Secretary, respectively, of the Treasury Board).¹¹ In 1969 a further set of legislative amendments abolished the position of Comptroller of the Treasury and gave the responsibilities that had previously belonged to the Comptroller to Deputy Ministers.

The 1969 amendments to the *Financial Administration Act* clearly assigned powers to Deputy Ministers. These amendments implemented the recommendations of the Glassco Commission that Deputy Ministers and other heads of agencies, as the most senior public servants, be the responsible and accountable managers in government.

It has taken longer to dismantle the central controls over human resources that had resided in the Civil Service Commission. The advent of collective bargaining, in which the Treasury Board acted as the employer, took some powers away from the Civil Service Commission. Further changes in 1967, when the Civil Service Commission became the Public Service Commission, strengthened the role of the Treasury Board and delegated powers in human resources management to Deputy Ministers. Under the *Public Service Modernization Act*, the Public Service Commission would have completely divested itself of management powers by the end of 2005.¹² Responsibility for human resources management has been assigned to Deputy Ministers, and the

role of the Public Service Commission will be to oversee human resources management and to ensure that the principles of merit, neutrality and non-partisanship are observed in departments and agencies. Like the reforms to financial administration, these changes in human resources management give Deputy Ministers the responsibility for departmental management. The Public Service Commission is not, itself, part of the public service. It is an independent agency, overseeing the principles of merit and neutrality in the public service on behalf of Parliament.

In the pre-Glassco era, the Comptroller of the Treasury enjoyed a measure of independence from the Government. Though a civil servant and of Deputy Minister rank, the Comptroller was appointed by the Governor in Council to hold office during good behaviour and could be removed from office only by the Governor in Council, and then only for cause. If removed from office, the Order in Council and other documents relating to his or her dismissal had to be laid before Parliament.

When the 1969 reforms transferred management powers to Deputy Ministers and abolished the position of the Comptroller, there was no intention that these powers become the responsibility of Ministers or that Ministers be accountable for their use. The reforms were specifically intended to strengthen the management role of Deputy Ministers, not to create a management role for Ministers, and to give Deputy Ministers, as the departmental managers, the powers and responsibilities that had previously belonged to the Comptroller of the Treasury. Deputy Ministers were expected to exercise the same diligence and standards as the Comptroller had and to be personally responsible and accountable as the managers of their departments.

Disagreement about the Accountability of Deputy Ministers before the Public Accounts Committee

Whatever the intentions of the Glassco Commission and the Government, it was soon obvious that eliminating the position of the Comptroller of the Treasury and assigning responsibility to the Deputy Ministers had not ensured good financial administration. In 1976 the Auditor General concluded that financial management and control in the federal government was inadequate. “Parliament—and indeed the Government—has lost, or is close to losing, effective control of the public purse,” the Auditor General reported.¹³

In response, the Government appointed a Royal Commission on Financial Management and Accountability, chaired by Allen Lambert. In 1978, before the Lambert Commission reported, the Government established a new Office of the Comptroller General of the Treasury, in response to a recommendation by the Auditor General. The new Comptroller General did not have the same responsibilities for controlling expenditures as his predecessor. The Office’s function was to report to the Treasury Board on general financial management issues such as program evaluation and internal audit, and to strengthen the competence of financial officers in departments.

At the level of central agencies, the Lambert Commission recommended in 1979 that the Government strengthen its oversight of financial management in departments by making the Treasury Board a “Board of Management” to provide a single focus for the central management of the federal government.¹⁴

At the departmental level, the Lambert Commission found that “the present quality of management in government falls short of acceptable standards” and a “state of confusion and diffusion of accountability” with respect to administration.¹⁵ It concluded that the management performance of Deputy Ministers needed to be strengthened in order

to improve the efficiency and effectiveness of departmental administration: “accountability for departmental management must be focused in deputy heads.”¹⁶ Deputy Ministers were “not regularly held accountable in a systematic or coherent way for program management and departmental administration.”¹⁷ The Lambert Commission concluded that there was “no overriding reason why deputies should not be held accountable for their management. Indeed Deputy Ministers *want* to be held accountable.”¹⁸

The Lambert Commission was concerned that the division of responsibility and accountability between Minister and Deputy was not clear. In interviews with Deputy Ministers, it had found that the Deputies deferred to the Ministers as the holders of responsibility for departmental management, while the Ministers pointed the finger at the Deputies. It was a situation of “mutual plausible deniability” that had to change. The change proposed by the Commission was to assign the responsibility for management to Deputy Ministers, and for Deputy Ministers to be accountable for their exercise of this responsibility both within government and before parliamentary committees. The Commission recommended that Deputy Ministers should:

. . . be liable to be called to account directly for their assigned and delegated responsibilities before the parliamentary committee most directly concerned with administrative performance, the Public Accounts Committee.¹⁹

The Lambert Commission believed that this proposed accountability of Deputy Ministers before the Public Accounts Committee would, “by replacing myth with reality,” both eliminate the confusion about accountability for administration and strengthen ministerial responsibility.²⁰ In making this recommendation, the Commission did not propose that Deputy Ministers be accountable to the Public Accounts Committee in any way that would allow the Committee to punish, reward

or instruct them. It simply wanted Deputy Ministers, as the holders of extensive management powers, to appear before the Committee in their own right to explain and defend actions they had taken under their own responsibilities.²¹

The Government of the day rejected this proposal and made a distinction between the “accountability” of Ministers to Parliament and the “answerability” of Deputy Ministers, and argued that only Ministers could be accountable to Parliament. Before parliamentary committees, Deputy Ministers could answer only on behalf of their Ministers. Ever since, the Government has continued to insist that although Parliament enacts the statutory obligations of Deputy Ministers in certain areas, that fact does not give rise to an accountability relationship between Deputy Ministers and Parliament. Ministers are “accountable for the exercise of authority by the Deputy Minister, whether the authority is delegated by the Minister or assigned directly to the Deputy Minister by statute. While responsibilities can, and indeed often must, be delegated, accountability cannot.”²² The Government has never explained how this conclusion, that accountability for responsibilities cannot be delegated, supports its contention that Ministers must be accountable for the Deputy Ministers’ statutory and other responsibilities that they, not the Ministers, possess.

In 1985 the Special Committee on Reform of the House of Commons concluded that “the doctrine of ministerial accountability [for everything that goes on in a department] undermines the potential for genuine accountability on the part of the person that ought to be accountable—the senior officer of the department,” the Deputy Minister.²³

In her November 2003 report to Parliament, the Auditor General discussed the question of the respective responsibilities and accountabilities of Ministers. She noted that the Canadian Council of Public Accounts Committees, in its *Guidelines for Public Accounts*

Committees, stated: “Public Accounts Committees should hold public servants accountable for their performance of the administrative duties and implementation activities which have been delegated to them. It is appropriate that these people be held accountable for their decisions and actions. It is not acceptable for them to be able to use the principle of ministerial responsibility when they are asked to account for their decisions and actions.”²⁴ The Auditor General concluded that there was a need to resolve the “ambiguities” in the documents produced by the Government, and she suggested that “Parliament may wish to consider reviewing [the] *Guide for Ministers and Ministers of State* and *Guidance for Deputy Ministers*.”²⁵

In 2005, at the end of its investigation into the Sponsorship issue, the Public Accounts Committee, like the Auditor General, found ambiguities in the Government’s position. The Committee had not been able to determine who, Minister or Deputy Minister, had the duty of ensuring that administration of the Sponsorship Program met acceptable standards:

Ambiguities in the doctrine [of ministerial responsibility], perhaps tolerable in the past, are now contributing to a situation in which those with responsibility are able to avoid accountability, as the Sponsorship Program has so clearly and so sadly demonstrated. What is needed, therefore, is not the wholesale abandonment of the doctrine of ministerial accountability. Instead, the doctrine needs to be reaffirmed and its interpretation and practice refined and clarified to assure its continuing relevance and utility to our system of government.²⁶

The Committee recommended that, to clarify responsibility and accountability, “Deputy Ministers be held to account for the performance of their duties and for their exercise of statutory authorities before the House of Commons Standing Committee on Public Accounts.”²⁷

The Government rejected the Public Accounts Committee's recommendation and the conclusion reached by both the Auditor General and the Committee that there is ambiguity in the accountabilities of Deputy Ministers. It argued:

[T]here is no ambiguity with regard to the assignment of accountability—ministers are responsible for and accountable to Parliament for the overall management and direction of their departments, whether pertaining to policy or administration and whether actions are taken by ministers personally or by unelected officials under ministers' authority or under authorities vested in them directly.²⁸

Nor, according to the Government, is there ambiguity in the accountability of Deputy Ministers:

Deputy Ministers are accountable to their ministers (and ultimately, through the Clerk of the Privy Council, to the Prime Minister). . . . Even when senior officials support the accountability of ministers by providing information publicly, such as when appearing before parliamentary committees, they do so on behalf of their ministers.²⁹

Deputy Ministers, the Government concluded, "do not have direct accountability to Parliament."³⁰

Despite the Government's objections to the Public Accounts Committee's proposals, in November 2005 the House of Commons approved a motion of concurrence in the 10th report of the Public Accounts Committee. In June 2005 the Senate Committee on National Finance began an investigation into the respective responsibilities and accountabilities of Ministers and senior public servants. Though the Committee had not reported by the time Parliament was dissolved in November 2005, a majority of witnesses before the Committee had supported Deputy Minister accountability before the Public Accounts Committee.

By 2005 the issue had been simmering for 30 years, and it appeared in 2004 in the mandate of the present Commission. The Government continues to maintain that there is no problem or ambiguity in the accountability of Deputy Ministers. Its recommendations for improvement, as embodied in its submissions to Parliament and the present Commission of Inquiry,³¹ maintain that the problems require a technical fix of the internal government mechanisms for controlling financial administration, not a rethinking of the fundamental questions of the respective accountability of Ministers and senior public servants to Parliament.

Deputy Ministerial Responsibility and Accountability

The role of Parliament was not part of the Glassco Commission's mandate and did not enter into its discussions of reforms. The mandate of the Lambert Commission required it to examine accountability to Parliament, which it did, but the Government ignored its recommendation that Deputy Ministers should be made accountable before the Public Accounts Committee for their management responsibilities. By then, the late 1970s, the Public Accounts Committee was more active and vigilant than it had been a decade earlier. After the Lambert Report, the Government entrenched its views that Deputy Ministers are accountable only internally to their Ministers, the Prime Minister, and the Clerk of the Privy Council and that all accountability to Parliament, even for matters for which Deputy Ministers have responsibility, must be through their Ministers.

The Government at the time put forth two arguments for its view. First, it insisted that “*formal* and *direct* accountability of officials to Parliament for administrative matters would divide the responsibility of ministers.”³² This statement was interpreted to mean that the Lambert Commission had recommended that the Public Accounts Committee should have the power to reward, punish and instruct Deputy Ministers. But that,

as discussed above, is not what the Lambert Commission recommended or even intended; it simply proposed that Deputy Ministers should appear before the Public Accounts Committee as holders of powers in their own right, not on behalf of their Ministers.

Second, the Government claimed that the division between administration and policy required by the Lambert Commission recommendation was “artificial” and would “require the establishment of firm practices governing the sorts of questions for which ministers as distinct from officials would be answerable.”³³ Clear demarcation of the boundary between the responsibilities and accountabilities of Ministers and Deputy Ministers, of course, was precisely what the Lambert Commission found to be essential for good financial administration. Parliament, the Government claimed, “prefers not to recognize the informal division between the answerability of ministers and officials for the very reasons that ministers are constitutionally responsible and that the extent of their answerability is defined by political circumstance.”³⁴

The Government had not asked Parliament what it preferred when it made this claim. On two subsequent occasions Parliament has stated its preference, in the report of the Special Committee on Reform of the House of Commons in 1985 and in the 10th report of the Public Accounts Committee in 2005. Both committees expressed a strong desire on the part of Members of Parliament from all parties to have a clear division between the respective responsibilities and accountabilities of Ministers and Deputy Ministers before the Public Accounts Committee.

Since then, the Government has produced other arguments against the proposed reform to deputy ministerial responsibility and accountability. Recently it has argued that all processes for accountability to Parliament involve “partisan politics. Parliament and its processes are inherently *political*.”³⁵ Accordingly, because all accountability to Parliament is

partisan and political, Ministers, as the political heads of departments, must be the only persons accountable before parliamentary committees. This argument might well express the Government's views on what accountability to Parliament should be, but it does not accurately reflect either constitutional principles or the current reality of accountability to Parliament. Partisanship is only one aspect of parliamentary behaviour and accountability to Parliament. It is far from being universally present in parliamentary committees.

The Government has explained its views on accountability to Parliament by making a distinction between the *accountability* of Ministers to Parliament and the *answerability* of public servants. Its claim that Ministers are accountable for the exercise of authority by Deputy Ministers contradicts its own definitions of responsibility, accountability and answerability. According to these definitions, persons can be accountable only for matters for which they hold responsibility. If that holds true, then Ministers cannot be accountable for matters for which Deputy Ministers, not Ministers, have statutory and other authority. Nor can Deputy Ministers be answerable on behalf of Ministers for these matters, because the Ministers do not hold the powers and responsibility. The only role Deputy Ministers can play before the Public Accounts Committee, on matters for which they hold the responsibility in their own right, is one of accountability.

At one of its roundtables, this Commission was informed that a former Clerk of the Privy Council expressed to the Treasury Board a concern over the contradiction between the Government's definitions of responsibility, accountability and answerability and its views on deputy ministerial and ministerial accountability. A Treasury Board official told him that a Minister's responsibilities under departmental acts "trump" the Deputy Minister's responsibilities under the *Financial Administration Act*. In the same vein, the Treasury Board has recently stated:

The authority and duty to act can be assigned to public servants, but accountability in the political or constitutional sense cannot. Deputy Ministers are accountable for these actions on a day-to-day basis, primarily to their ministers and, through the Clerk, to the Prime Minister—not to Parliament. The statutory basis for this is the *Interpretation Act*, which, drawing on the departmental legislation, states that deputies may exercise the authority of their Minister except to make regulation. This statutory interpretation makes explicit the legal accountability of deputies to their ministers, which is implicit in the departmental statutes.³⁶

The Commission suggests that this argument is not sustainable. No legal principle permits one law to have precedence over another unless a statute clearly says so. Ministers cannot be held accountable for actions performed by Deputy Ministers under their own powers any more than Ministers can be held accountable for the actions that independent boards, commissions and corporations take under powers they possess in their own right.

The statutory and other responsibilities assigned specifically to Deputy Ministers belong to them personally. Deputy Ministers cannot delegate these responsibilities upward to Ministers, anymore than they can delegate them to subordinates. Their accountability attaches to the Deputy Minister, and to the Deputy Minister alone.

The Government's view that Deputy Ministers have no accountability relationship with Parliament and that Ministers are accountable for all actions taken by Deputy Ministers under their own powers confuses relationships that are clear in statutes. Its approach does not permit Deputy Ministers, as senior public servants and the managers of government departments, to be accountable before the Public Accounts Committee as the holders of statutory responsibility.

Recommendation 4: In order to clear up the confusion over the respective responsibilities and accountabilities of Ministers and public servants, the Government should modify its policies and publications to explicitly acknowledge and declare that Deputy Ministers and senior public servants who have statutory responsibility are accountable in their own right for their statutory and delegated responsibilities before the Public Accounts Committee.

Ground Rules for Appearances of Deputy Ministers before Parliamentary Committees

Some of the ground rules for the appearance of Deputy Ministers before parliamentary committees are well established. Deputy Ministers are public servants and do not appear before parliamentary committees as politicians. As public servants, they do not enter into partisan issues and discussions, and the current rules governing the appearance of Deputy Ministers before parliamentary committees make this distinction abundantly clear. They appear before parliamentary committees to answer questions and provide information on behalf of their Ministers.³⁷ They may be required to explain departmental policies by providing detailed information. They do not defend or criticize policies or decisions of the Government but simply inform. They do not debate matters of political controversy and do not discuss confidential advice given to Ministers, whether on policy or administration. They do not present their own views on political or other questions.

These ground rules would remain in force whether a Deputy Minister before a parliamentary committee is discussing matters that are the responsibility of the Minister or of the Deputy. Adoption of the Commission's recommendation that Deputy Ministers appear before the Public Accounts Committee in their own right would mean that they would be entitled to offer the information necessary to defend their actions, as long as providing such information does not breach the

limits of confidentiality. Little will change here, apart from the significant fact that both the Public Accounts Committee and the Deputy Minister will know that the Committee is interrogating the person who holds the responsibility and is accountable in his or her own right, and not answering on behalf of another person, the Minister.

The Commission assumes that the Treasury Board and the Public Accounts Committee will be able to work together cooperatively to prepare the ground rules for the appearance of Deputy Ministers and senior public servants before the Public Accounts Committee.

Disagreements between Ministers and Deputy Ministers

The ground rules are less clear on two other matters: first, the procedure to be followed when a Minister and Deputy Minister disagree over a proposed course of action; and, second, the scope of the powers and responsibilities that Deputy Ministers hold in their own right.

On the first, the procedure to be followed when Deputies and Ministers disagree, several options have been proposed. The Public Accounts Committee recommended that when Deputy Ministers are in disagreement with their Ministers regarding administration and operation of their departments:

1. The Deputy Minister must inform the Minister if he or she has objections to a course of action proposed by the Minister.
2. If the Minister still wishes to proceed, the Deputy Minister must set out his or her objections to the course of action in a letter to the Minister stating the reasons for the objections and the Deputy Minister's duty to notify both the Auditor General of Canada and the Comptroller General of Canada.

3. If the Minister still wishes to proceed, he or she must instruct the Deputy Minister in writing to do so.
4. If instructions to proceed are received in writing, the Deputy Minister must send copies of the relevant correspondence to both the Auditor General of Canada and Comptroller General of Canada.³⁸

This proposed procedure mirrors that followed in Britain.

The Treasury Board favours a different process. It proposes that when Deputy and Minister cannot agree on a course of action in financial matters, the dispute should be referred to the Treasury Board, which would then render a decision. To ensure transparency and openness, the documents related to the decision would be forwarded to the Auditor General.³⁹ This procedure would ensure that Ministers can have the last word and bear the responsibility.

A 2005 study by Peter Aucoin and Mark D. Jarvis concludes that the Government's attempts to distinguish between the accountability of Ministers and the answerability of Deputy Ministers has created confusion, and that it should be accepted that Deputy Ministers are accountable in parliamentary committees. They argue that no mechanism for ministerial overruling of Deputy Ministers is needed, and that Canada should not adopt the British practice of requiring written instructions from the Minister, as recommended by the Public Accounts Committee:

This procedure in Canada would invariably establish distrust between a Minister and a deputy, and would reduce the capacity for collaboration in the direction and management of a department. . . . In any event, when faced with proposed transactions that fall within the deputy's authorities and responsibilities, but which the deputy does not want to approve, the deputy, in our view, should either

inform his or her Minister that she or he will not approve them or accept personal responsibility and accountability before a parliamentary committee. A Deputy Minister must be able and willing to draw the line at what goes beyond good public administration. They should not be allowed to escape responsibility by sending the Public Accounts Committee and the Auditor General a card proclaiming that “the devil made me do it.”⁴⁰

Unlike the Public Accounts Committee and the Treasury Board, Aucoin and Jarvis do not believe that an overruling process is necessary. They feel that the statutory duties of Deputy Ministers are clear and explicit and that situations would not arise where a Minister would be justified in overruling a Deputy.

Whatever procedure is chosen to resolve disagreements between Ministers and Deputy Ministers, it must respect the three fundamental constitutional principles of the supremacy of Parliament, the rule of law, and ministerial responsibility. The resolution must satisfy the interests and duties of both government and Parliament. Parliament and government share ownership of the doctrine of ministerial responsibility.

The Commission is of the view that a formal process is needed to resolve disagreements when a Deputy Minister believes that a course of action proposed by a Minister conflicts with his or her statutory responsibilities. These conflicts will inevitably occur. The intent of statutory provisions is not always clear and can become a matter of dispute. Alternatively, a Minister’s and the Cabinet’s concern for the general public and national interest can require a course of action which, at the level of the department, does not meet standards such as economy or efficiency. Two principles must be recognized and observed in the process for resolving disagreements between Ministers and Deputies. First, the process must recognize the principle of ministerial responsibility. Second, the process must not compel Deputy Ministers to take

responsibility and be accountable for actions they have objected to and which they believe force them or their departments to break established rules or defy statutes. The Minister must have the right to make the final decision, but only through a process that safeguards the Deputy Minister's duty to obey statutes and established rules.

The Government states that such a process already exists:

[D]isagreements arise between Ministers and their Deputy Minister that are not readily resolvable simply in terms of legality... . In a few cases, the dispute may be resolved with the help of the Clerk of the Privy Council or the Prime Minister and his or her senior advisers. If the Deputy Minister does not concur with the final outcome, he or she has the option of resigning, rather than implementing the decision of the Minister.⁴¹

The Commission is not satisfied that this process is a fair or acceptable solution to the problem. First, it assumes that the resolution of the difficulty proposed by the Clerk, or seeming to come from the Clerk, will meet the requirements of the law and of ethical standards. This, the Commission found in its investigations into the Sponsorship Program, can be a questionable assumption, as is the assumption that Deputy Ministers will opt to take advantage of this process. Second, it implies that the Clerk or the Prime Minister would give appropriate instructions directly to the Deputy Minister, though Deputy Ministers serve and act under departmental Ministers. Senior advisors in the Prime Minister's Office might wish to give advice to Deputy Ministers, but this should be advice, not instructions. Third, the only choice it offers to Deputy Ministers who feel they have been given an improper instruction is to acquiesce or resign. The Commission does not believe that either option offered to Deputy Ministers, risking violation of statutory or ethical duties or committing professional suicide, is appropriate for ensuring probity.

Nothing should prevent Deputy Ministers from discussing matters of concern with the Clerk of the Privy Council or the Secretary of the Treasury Board when they have concerns over a course of action proposed by a Minister. Nor should anything discourage Ministers from discussing matters of contention with their ministerial colleagues, the Clerk of the Privy Council and even the Prime Minister.⁴² In most instances, these discussions will lead to a resolution of the difficulty which is acceptable to both sides. If not, it is the duty of the Deputy Minister to follow the clear instructions of the Minister.

In extreme situations when a dispute has not been resolved and the Deputy Minister is compelled to implement a decision of the Minister with which the Deputy disagrees on legal or ethical grounds, the Commission is of the opinion that the Deputy should be entitled to record the disagreement by forwarding the correspondence and documentation relating to the dispute to the Comptroller General at the Treasury Board Secretariat, to be available for examination by the Office of the Auditor General in the course of its audit work.

Recommendation 5: The Government should establish a formal process by which a Minister is able to overrule a Deputy Minister's objection to a proposed course of action in an area of jurisdiction over which the Deputy Minister possesses statutory or delegated powers. The decision of the Minister should be recorded in correspondence to be transmitted by the Deputy Minister concerned to the Comptroller General in the Treasury Board Secretariat, and be available there for examination by the Office of the Auditor General.

Renewed Emphasis on Administrative Responsibilities

The Lambert Commission found that the road to career advancement for aspiring public servants is in the policy advisory field and that many Deputy Ministers believe that administrative ability is not given sufficient consideration in making appointments.⁴³ Deputy Ministers ranked management responsibilities third or lower in their priorities, after supporting their Ministers and ensuring that their departments were responsive to the policy thrusts of the Government. The Lambert Commission concluded that the preoccupation with policy and the resulting lack of emphasis on management had permitted the quality of departmental management to fall short of acceptable standards.

Professor Jacques Bourgault's study for this Commission shows that this attitude has not changed in the 26 years since the Lambert Commission reported its findings.⁴⁴ The Lambert Commission found that management skills did not appear to be ranked highly either by Deputy Ministers or by those who appoint and evaluate them. Policies are regarded as a cooperative community effort at the deputy ministerial level, and Deputy Ministers tend to devote more time and attention to them than to departmental management.

It has already been said that a change in administrative culture is needed to ensure that management in the Government of Canada reaches acceptable standards. Administrative culture is not something that changes by itself or by hoping or commanding that it change. For the culture of the public service to change so that regularity, propriety and good management in general are given a higher priority, the public service, and particularly those who are its administrative heads, must give management skills a higher priority. Making Deputy Ministers publicly accountable for their management before the Public Accounts Committee will encourage them to place a higher priority on the task of managing. Their enhanced concern with good management will, in turn, encourage the public servants below them to pay more attention to good management.

Accountability, the Lambert Commission observed, “is the fundamental prerequisite for preventing the abuse of delegated power and for ensuring, instead, that power is directed toward the achievement of broadly accepted national goals with the greatest possible degree of efficiency, effectiveness, probity, and prudence.”⁴⁵ This conclusion describes the kind of problems found in the Sponsorship Program as accurately as it describes the situation a quarter of a century earlier. The solution remains the same: to persuade the managers to focus on good management.

Tenure in Office

Many observers have expressed concern over Deputy Ministers’ brief tenure in office. The Lambert Commission found in June 1978 that the median time Deputy Ministers had served in the office they currently held was one and a half years.⁴⁶ It considered this term to be far too brief and recommended that, on appointment, “a deputy head be expected to serve in his department for a period of three to five years.”⁴⁷

Ten years later a study by Gordon Osbaldeston, a former Clerk of the Privy Council, found that the average tenure in 1987 was two years; slightly over 10 percent of Deputy Ministers had served more than three years with their department.⁴⁸ Mr. Osbaldeston concluded:

Deputy Ministers often do not know their departments as well as they should . . . [They] seldom have in-depth knowledge of a department when they are appointed, and they do not stay much longer than ministers. Thus, it is more and more difficult for them to provide the necessary leadership and direction to departments.⁴⁹

He recommended that the federal government should “establish a target of three years as the minimum tenure of a Deputy Minister in a department.”⁵⁰ Similarly, in 2005, the Public Accounts Committee recommended that “the Government endeavour to retain Deputy Ministers in their positions for periods of at least three years.”⁵¹

This Commission repeats these concerns. Our research studies indicate that the tenure in office of Deputy Ministers is low compared with that of their equivalents in other advanced countries.⁵² Nevertheless, the Government dismissed the recommendation of the Public Accounts Committee on this point:

The appointment of Deputy Ministers is based on the operational and policy needs of the Government. The length of a Deputy Minister's term in a position in no way diminishes his or her accountability and responsibility. Deputy Ministers typically have significant depth and breadth of experience and expertise, and they remain accountable for the performance of their departments regardless of the duration of their assignment. However, the Government does make best efforts for Deputy Ministers to remain in position for a number of years to ensure stability and continuity for the organization. A review of deputy ministerial assignments over the last ten years indicates that Deputy Ministers have served on average almost 3.5 years per assignment during that time.⁵³

In a subsequent document, however, the Treasury Board recognized that persons consulted in its study of the responsibilities and accountabilities of Ministers and senior officials had

expressed concern about the tenure of senior officials. Although the average tenure for a Deputy Minister is three and a half years, many serve less, raising questions as to whether that is sufficient time to see major management initiatives through to a conclusion. In this context, questions were raised about the core competencies expected of Deputy Ministers and whether adequate emphasis was placed on management and administration in their selection. Maintaining, throughout the appointment process and at all levels, the non-partisan, professional standing of all public servants, particularly Deputy Ministers, was deemed to be of utmost importance.⁵⁴

The Commission is of the opinion that three-and-a-half years is too short a time for a Deputy Minister to fully understand the programs, policies and administration of a department; to take effective control of its management; and to see innovations through to completion—in other words, to live with the consequences of his or her decisions. This same problem of too-brief tenure in office exists as well at the level of Assistant Deputy Minister.

Recommendation 6: The Government should adopt as a policy that Deputy Ministers and senior public servants are appointed to their positions for a minimum of three years, with the expectation that a standard appointment would normally have a duration of at least five years. In cases where it is deemed necessary to derogate from this policy, the Government should be required to explain publicly the reason for such a derogation. The Government should take the steps to apply the same policy to Assistant Deputy Ministers.

Endnotes to Chapter 5

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- ¹ RSC 1985, c. I-21.
 - ² RSC 1985, c. F-11.
 - ³ Treasury Board, *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, Report to Parliament, 2005, p. 29. See also note 51 at p. 41.
 - ⁴ Canada, Treasury Board of Canada Secretariat, *Government Response to the Tenth Report of the Standing Committee on Public Accounts*, 17 August 2005.
 - ⁵ See *An Act to amend the Financial Administration Act, the Canada School of Public Service Act and the Official Languages Act*, SC 2005, c. 15.
 - ⁶ This description of the evolution of the responsibilities of Deputy Ministers draws on the Treasury Board's history of the evolution of financial management in the Government of Canada: Exhibit P-10, Part II.
 - ⁷ *Ibid.*, para. 10-11
 - ⁸ Canada, Royal Commission on Government Organization, *Report*, 5 vols. (Ottawa: Queen's Printer, 1962).
 - ⁹ *Ibid.*, vol. 1, p. 44.
 - ¹⁰ Exhibit P-10, para. 14.
 - ¹¹ *Ibid.*, para. 13-16
 - ¹² SC 2003, c. 22.
 - ¹³ Canada, *Report of the Auditor General of Canada to the House of Commons for the Fiscal Year Ended 31 March, 1976* (Ottawa: Minister of Supply and Services, 1976), p. 10.
 - ¹⁴ Canada, Royal Commission on Financial Management & Accountability, *Final Report* (Ottawa: Minister of Supply and Services, 1979), pp. 111-50.
 - ¹⁵ *Ibid.*, pp. 178 and 189.
 - ¹⁶ *Ibid.*, p. 181.
 - ¹⁷ *Ibid.*, p. 189.
 - ¹⁸ *Ibid.*, p. 188 (emphasis in original).
 - ¹⁹ *Ibid.*, p. 189.
 - ²⁰ *Ibid.*, p. 57.
 - ²¹ This discussion of the Lambert Commission's recommendation draws on interviews with J.E. Hodgetts, one of the Commissioners on the Commission.
 - ²² Treasury Board of Canada Secretariat, *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, p. 12.
 - ²³ Canada, Special Committee on Reform of the House of Commons, *Report*, June 1985, p. 21.
 - ²⁴ Quoted in Canada, Office of the Auditor General, *Report of the Auditor General of Canada to the House of Commons, November 2003: Accountability and Ethics in Government*, para. 2.40 [chapter 2].
 - ²⁵ *Ibid.*, para. 2.45 [chapter 2].

- ²⁶ Canada, House of Commons Standing Committee on Public Accounts, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*, 10th Report, 38th Parliament, 1st Session, May 2005, under heading “Conclusions and Recommendations”.
- ²⁷ *Ibid.*, recommendation 2 under heading “Conclusions and Recommendations”.
- ²⁸ Canada, Treasury Board of Canada Secretariat, *Government Response to the Tenth Report of the Standing Committee on Public Accounts* 17 August 2005.
- ²⁹ *Ibid.*
- ³⁰ *Ibid.*
- ³¹ Treasury Board of Canada Secretariat, *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, and *Management in the Government of Canada: A Commitment to Continuous Improvement*, October 2005.
- ³² Privy Council Office, *Responsibility in the Constitution*, under heading “Accounting Officers” (emphasis in original).
- ³³ *Ibid.*
- ³⁴ *Ibid.*
- ³⁵ Treasury Board of Canada Secretariat, *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, p. 4.
- ³⁶ *Ibid.*, pp. 23-24.
- ³⁷ The role of Deputy Ministers before parliamentary committees is well covered in Canada, Privy Council Office, *Guidance for Deputy Ministers* (2003).
- ³⁸ House of Commons Standing Committee on Public Accounts, *Governance in the Public Service of Canada*, under heading “Conclusions and Recommendations.”
- ³⁹ Canada, House of Commons Standing Committee on Public Accounts, *Evidence*, no. 051, 1st Session, 38th Parliament, 25 October 2005, pp. 4 and 12.
- ⁴⁰ Peter Aucoin and Mark D. Jarvis, *Modernizing Government Accountability: A Framework for Reform* (Ottawa: Canada School of Public Service, 2005), p. 80.
- ⁴¹ This quotation is from the *Final Submissions of the Attorney General of Canada* to the Commission: Exhibit P-474 (GG), paras. 80-81.
- ⁴² The importance of these discussions is emphasized in the study by James Ross Hurley, “Responsibility, Accountability and the Role of Deputy Ministers in the Government of Canada,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. III, under heading “Mechanisms for Political and Professional Financial Accountability.”
- ⁴³ Royal Commission on Financial Management & Accountability, *Final Report*, pp. 177 and 447-92.
- ⁴⁴ Jacques Bourgault, “The Deputy Minister’s Role in the Government of Canada, His Responsibility and His Accountability,” Commission of Inquiry into the Sponsorship Program and Advertising Activities, Research Studies, vol. I.
- ⁴⁵ Royal Commission on Financial Management & Accountability, *Final Report*, p. 21.
- ⁴⁶ *Ibid.*, p. 193
- ⁴⁷ *Ibid.*, p. 194.
- ⁴⁸ Gordon Osbaldeston, *Keeping Deputy Ministers Accountable* (Toronto: McGraw-Hill Ryerson, 1989), pp. 140-46.
- ⁴⁹ *Ibid.*, p. 167.
- ⁵⁰ *Ibid.*, p. 177.

- ⁵¹ House of Commons Standing Committee on Public Accounts, *Governance in the Public Service of Canada*, under heading “Conclusions and Recommendations”.
- ⁵² Bourgault, “The Deputy Minister’s Role in the Government of Canada,” Peter Aucoin, “The Staffing and Evaluation of Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform,” Commission of Inquiry into Sponsorship Program and Advertising Activities, Research Studies, vol. I; C.E.S. Franks, “The Respective Responsibilities and Accountabilities of Ministers and Public Servants: A Study of the British Accounting Officer System and Its Relevance for Canada,” Research Studies, vol. III.
- ⁵³ Treasury Board of Canada Secretariat, *Government Response to the Tenth Report of the Standing Committee on Public Account*, 17 August 2005.
- ⁵⁴ Treasury Board of Canada Secretariat, *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials*, p. 42.