

## REVIEW ESSAY / SYNTHÈSE DE LECTURE

**Commission of Inquiry into  
the Sponsorship Program and  
Advertising Activities, Phase I  
Report and Phase II Report**

*Ottawa: Public Works and Government Services Canada. 2005 and 2006. Pp. (total) xxxix, 2068, appendices.*

The Phase I and II reports by the *Commission of Inquiry into the Sponsorship Program and Advertising Activities* may well prove to be a milestone in the literature on Canadian public administration comparable to the Glassco and Lambert Royal Commissions. As well, articles in the three volumes of research studies which form part of the Phase II Report are likely to be required reading for students in programs in public administration for some years. The fundamentally important and unsettling insights of this public inquiry, however, deserve to be acted upon and not just studied and admired.

The Phase I Report finds that the then former Prime Minister Jean Chrétien, his chief of staff, Jean Pelletier, the deputy minister of public works and government services Canada, Ranald Quail, a hands-on minister of public works and government services Canada (hereafter PWGSC), Alfonso Gagliano, and a middle-level entrepreneurial manager in charge of advertising in that same department, Charles (Chuck) Guité, were all responsible for allowing the sponsorship program to be run irresponsibly and without proper accountability safeguards. The Phase II Report makes eighteen substantive recommendations designed to prevent future similar abuses of the public trust. These recommendations can be divided into three categories, the most controversial of which would bring about major changes affecting the role of deputy ministers and the clerk of the Privy Council. A second set of recommendations would increase the power of Parliament and the Public Accounts Committee to promote financial accountability, and the third would introduce some important practical reforms affecting the public service, ministerial exempt staff, and crown corporations. All the recommendations are meant to clarify and improve principles and practices of democratic accountability. In what follows we provide a brief background to

the commission's establishment, a look at its key findings, a summary of its recommendations and an assessment of its significance.

### Background to the Commission

In 1999 and 2000, newspaper articles based on Access to Information requests alleged that hefty fees were being paid to advertising firms connected with the sponsorship program that had close connections to the Liberal party, and that these firms sometimes did very little work for the large amounts of money they received. Some of that money, it was alleged, ended up being donated to the Liberal party. There was a steady stream of ever more serious allegations in the media, augmented by two reports of the auditor general that were pointedly critical of the sponsorship program.

The commission's investigation was a response by the Paul Martin government to enormous public pressure, especially as a result of the publicity generated by the auditor general's reports, to get the real story as to who did what and why in the scandal that eroded the credibility of two Liberal administrations from 1999 to 2004. When the inquiry was called by then Prime Minister Martin in February 2004, the commissioner, Mr Justice John H. Gomery formerly of the Quebec Superior Court, Montreal District was given wide powers to address issues such as what happened to the funds spent and, without suggesting criminal or civil liability, to determine who was responsible for the mismanagement of the sponsorship program. The terms of reference also required Mr. Justice Gomery to make recommendations on how to prevent future mismanagement of government advertising activities.

In the preface to the commission's first report, Gomery acknowledges that he had little background in public administration, and not much knowledge of the sponsorship scandal, other than what he had gathered from following the events through the press. However, he quickly assembled a first-rate advisory committee,<sup>2</sup> and hired Donald Savoie, one of Canada's leading professors of public administration, as his director of research. Gomery, Savoie, and the advisory committee attracted an impressive array of commissioned research studies written by some of the leading academic experts in the field of public administration.<sup>3</sup>

The inquiry's reporting was divided into two categories and delivered in two stages, the first at the end of October 2005, and the second at the beginning of February 2006. The first phase deals, in the words of Commissioner Gomery, with "getting to the bottom" of what happened and the task of assigning responsibility and blame for the abuse of office and misconduct. Key figures in the commission hearings were Bernard Roy, the commission counsel, and Neil Finkelstein, co-counsel to the commission.<sup>4</sup> Public hearings were held on 136 days between September, 2004 and October, 2005.<sup>5</sup> The result is the *Who Is Responsible? Fact Finding Report*, which constitutes

one of three parts of the Phase I Report. The other two parts are an 80-page *Summary*, and a sixteen-section *Forensic Audit* that relies on a report by the Kroll forensic auditing firm.

The second phase of the report includes a reflective list of recommendations that are geared to, as the title of the report indicates, *Restoring Accountability*. This second phase report includes three volumes (1,016 pages) of important research reports by the team of commissioned scholars.<sup>6</sup>

Given the importance of the commission's findings and recommendations, it is sobering to think that the scandal might never have come to light had it not been for the coincidence of several factors. Consider some counterfactuals: had one civil servant, Allan Cutler, *not* been a persistent whistleblower from 1995 despite being demoted, had a *Globe and Mail* reporter *not* made an inquiry through the Access to Information Act in 1999 and followed it up, had the Auditor General *not* fastened on the questionable expenditures of the sponsorship program in 2002, leading to a more thorough report of November 2003 (made public in February 2004) that documented egregious mismanagement of sponsorship funds, and had Prime Minister Paul Martin *not* established a commission of inquiry in response to the auditor general's report, there would have been no commission of inquiry, and likely little change in the cozy relationships that have often existed between governments and some advertising and communications firms over the past few decades. Gomery's recommendations go far beyond tinkering with current accountability mechanisms in the federal government to tune them up. He suggests changes to the way in which deputy ministers are appointed and are accountable, as well as transferring responsibility for heading the public service from the clerk of the Privy Council to the secretary of the Treasury Board. The Gomery reports paint a deeply unsettling picture of the structure of decision-making at the intersection of political and administrative leadership, and some of the changes recommended are major ones.

### Key findings in the Phase I Report

The commission confirmed the conclusions about the sponsorship program in the Auditor General's Report of November 2003, though Gomery found that "in many cases the irregularities and mismanagement were clearly worse and more widespread than the Auditor General learned or imagined" (Phase I, *Fact Finding Report*, p. 26). The inquiry found that the federal sponsorship program had its beginnings in 1994 when the Chrétien government authorized expenditures to counter separatist sentiment in Quebec and promote national unity. After the near victory of the Yes side in the 30 October 1995 referendum on sovereignty in Quebec, the cabinet decided to augment the sponsorship program, especially in Quebec, to raise the profile of the government of Canada by displaying Canadian symbols at well-attended

public events. Sponsorships and advertising became more of a priority and resulted in increased spending ordered by key people in the Prime Minister's Office (PMO) and Public Works and Government Services Canada (PWGSC). In many cases, invoices were submitted and paid though work was never actually performed. On top of that, portions of money paid out to various communications firms found its way back into the hands of agents charging special commission fees, and from there back into the coffers of the Liberal Party of Canada in Quebec.

Gomery notes that there was a succession of audits on the sponsorship program and that they all drew attention to serious problems in its administrative practices. One, by the Ernst & Young accounting firm, was conducted in the fall of 1996, very shortly after the program started up. The audit found many instances of non-compliance with spending policies and rules. An internal audit called by PWGSC in 2000 noted that contracting processes were not adhering to Treasury Board directives and required procedures. A review (initiated by the Human Resources branch of PWGSC in late 2000) by the Kroll forensic accounting firm found that of 136 files examined, 130 were marred by non-compliance with government policies or the Financial Administration Act. Gomery found that there were no effective corrective responses to these audits. Despite these documented examples of repeated mismanagement and ethical improprieties, and even after a review committee into disciplinary action reported, no one in a senior management position within PWGSC had their careers attenuated.

The misuse of sponsorship program funds is additionally illustrated by the commission's findings about the involvement of some crown corporations in several sponsorship undertakings. For example, in 1998 a company attempting to find financing for a television series about Maurice Richard asked Charles Guité, who was the director of the advertising section of PWGSC, for sponsorship funding. Guité suggested that Via Rail be approached, and the chairman of Via's board of directors eventually agreed verbally to a \$910,000 contribution on the condition that \$750,000 would be reimbursed by the sponsorship program. Following Guité's retirement in 1999, Via Rail was reimbursed (after issuing a "false invoice") from the sponsorship program through Lafleur Communication, and Lafleur earned a commission of \$112,500 for transferring the funds. (Phase I, *Fact Finding Report*, p. 223-25) The commission found that these kinds of payments to crown corporations violated the Treasury Board policy on transfer payments, were a waste of money because crown corporations are already obliged by law to promote their federal connections, and the hefty commissions to agencies for doing little work except transferring funds is "an abuse of public funds." (Phase I, *Fact Finding Report*, p. 225)

According to Gomery, there were three main reasons for the mismanagement of the sponsorship program (Phase I, *Fact Finding Report*, p. 425). First,

the program was directed from the PMO, which meant that departmental procedures and safeguards, which the deputy minister in PWGSC normally would be expected to have maintained, were in fact bypassed. Compounding that irregularity, the deputy minister of PWGSC failed to provide the necessary oversight and procedural proprieties preventing the abuse of government spending by a middle-level manager within his own department. (Some of Gomery's key Phase II recommendations are aimed at resolving the inherent conflict between prime ministerial or ministerial directives that require a deputy minister to bend his or her accountability obligations under the law, and the deputy's duty to comply with accountability procedures required by law.) And third, there was a deliberate attempt to keep the program's operations completely secret. Two fundamental flaws were noted in the program's initiation: far too much administrative control was ceded to private sector communication agencies,<sup>7</sup> and the program began without attention to rules, guidelines and criteria and without any appropriate oversight. Both these failings opened the door to "unscrupulous persons ... error, abuse and careless administration." (Phase I, *Fact Finding Report*, p. 427.)

Gomery's conclusions could not be more damning: Canadians' trust in their government was betrayed and the problem started from the top. Former Prime Minister Chrétien and his chief of staff, Jean Pelletier, are ultimately responsible for all that happened, their ignorance of details and unauthorized wrongs notwithstanding. They, along with a directive minister of PWGSC, Alphonso Gagliano, and the department's deputy minister, permitted Guité to run a corrupt, mismanaged program. And numbers of people who might have known or should have known what was going on were reluctant or too deferential to the prime minister and his entourage to do anything about it. Although the commissioner claims Messrs Chrétien, Pelletier and Gagliano are guilty of sins of commission and omission because they were so directive of the program without insisting on proper oversight, he exonerates all other ministers of the Chrétien cabinet on the grounds that they were kept in the dark and did not know what was taking place.

### Key Recommendations in the Phase II Report

In the Phase II Report, Gomery sets out eighteen substantive recommendations for restoring accountability in the decision-making processes of government. The nineteenth calls on the government to table its responses to the recommendations within two years. The recommendations spring from Gomery's concerns about the effects of over-concentration of power in the Prime Minister's Office and the pressing need for greater transparency in the operations of the public sector. Gomery's intention was that research

studies would be produced that would provide fresh insights into the organizational problems that allowed the sponsorship scandal to develop, and he wanted clear recommendations from these studies so that he could make his own recommendations based on those from the research studies that he considered most promising.<sup>8</sup> In general, Gomery takes the advice of the writers of the research reports, and in particular, the gist (if not the letter) of the recommendations by Peter Aucoin, Lorne Sossin, and Sharon Sutherland regarding the more controversial of his recommendations regarding changes affecting deputy ministers and the clerk of the Privy Council. The research studies themselves are contextualized and summarized at the beginning of each of the three research study volumes by Donald Savoie.

We divide the recommendations into three categories: the role of deputy ministers and the clerk of the Privy Council, Parliament and the Public Accounts Committee, and the public service, exempt staff, and crown corporations.

*The role of deputy ministers and the Clerk of the Privy Council*

Gomery recommends significant changes to the relation between deputy ministers, the clerk of the Privy Council, and the cabinet. These are the most controversial of his recommendations because they represent a major shift from existing practices. First, he suggests major changes to the way in which deputy ministers are appointed,<sup>9</sup> and writes approvingly of the current Alberta practice, in which there is an open competition for deputy minister positions managed by an internal executive search group. The search committee includes several senior public servants and several people from outside government with relevant stakeholder connections. They present a short list of qualified candidates to the minister, who selects a finalist who in turn must be approved both by the premier and the cabinet (Recommendation 12). Second, he recommends that in areas where the deputy minister and other senior public servants have statutory responsibilities, they should be accountable "in their own right" to the Public Accounts Committee, rather than through the minister (Recommendation 4). Third, if a minister is determined to overrule a deputy minister (DM) in an area where the DM possesses statutory or delegated powers, the minister must do so through a written document that is sent via the DM to the comptroller general, where it would be available to the auditor general (Recommendation 5). Fourth, in order to allow DMs and assistant deputy ministers to develop sufficient expertise for their departmental duties, he recommends that these officials should normally be appointed for at least three to five years<sup>10</sup> (Recommendation 6). Finally, Gomery recommends that the role of the clerk of the Privy Council, as head of the public service and deputy minister to the prime minister, should be abolished; the headship responsibility should be transferred to the secretary of the Treasury Board. The clerk's title should be renamed

"Secretary to Cabinet," and the primary role should be to represent the public service to the government rather than the other way around (Recommendation 13).

*Parliament and the Public Accounts Committee*

Gomery recommends a substantial increase in the funding available to parliamentary committees in general to conduct research (Recommendation 1) and for the Public Accounts Committee (PAC) in particular (Recommendation 3). The PAC should have "its own research personnel, legal and administrative staff, and experts as needed." (Phase II Report, p. 200) As well, members of the PAC "should be appointed with the expectation that they will serve on the Committee for the duration of a Parliament" (Phase II Report, p. 201) so that they can develop expertise and exercise a greater degree of independence from party discipline (Recommendation 7). Consistent with the recommendations concerning the relation between DMS and ministers, and given that DMS and other senior officials generally understand the financial details of their programs better than ministers, Gomery recommends that the DMS and other senior officials should normally testify before the PAC rather than ministers (Recommendation 8). Finally, the registrar of lobbyists should report directly to Parliament regarding the application and enforcement of the Lobbyists Registration Act (Recommendation 15).<sup>11</sup>

*The public service, crown corporations, and ministerial exempt staff*

The commission's recommendations for improvements in procedures affecting the public service, ministerial exempt staff, and crown corporations, while less of a lightning rod for controversy than the first category of recommendations, are nevertheless far-reaching. Gomery is critical of the 2003 Values and Ethics Code for the Public Service because it is lengthy, vague, and unclear. He recommends a "shorter and simpler" statement of values such as "selflessness, integrity, objectivity, accountability, openness, honesty and leadership"<sup>12</sup> (Phase II Report, p. 67). This document would be put into legislation as a "Public Service Charter" (Recommendation 2). Because special reserve funds are open to abuse, such funds should be managed by a central agency rather than a department, and there should be an annual report on the status of each special reserve (Recommendation 9). The rules about procurement of advertising should be tightened up through ensuring fair and competitive procurement procedures, and by adopting an industry-standard definition of advertising so as to screen out non-experts hoping for easy contracts from political friends (Recommendation 14). The Access to Information Act should be made more robust, and decisions and recommendations should always be properly documented by public servants. The destruction of relevant records by public servants should be made an offence (Recommendation 16). Public servants who improperly sign off that

a contract has been completed when it has not should be liable to dismissal without compensation (Recommendation 17).

Regarding crown corporations, appointments to the boards should be made according to merit, and the boards should be responsible for hiring, evaluating, and firing their chief executive officers. The board directors themselves should fill future vacancies on the boards according to merit (Recommendation 18).

Weaknesses in the accountability and training of ministerial exempt staff were noted both in the Phase I, *Fact Finding Report*, and the research study by Liane Benoit.<sup>13</sup> Gomery recommends that ministerial exempt staff should be properly trained, should not be allowed to direct public servants, and should be governed by their own Code of Conduct (Recommendation 11). As well, the practice through which they can be appointed to a public service position without competition after three years in a minister's office should be discontinued (Recommendation 10).

### Assessment

The inquiry's findings are so extensive, well supported with evidence and clearly set out that it may seem unfair to raise the issue of what appears to be its decided ambivalence about the significance of the mismanagement of the sponsorship program. Gomery refers to the sponsorship fiasco as an "aberration" in the conclusion of the Phase II report, and claims that "there is no reason for the public's confidence in the integrity of our democratic institutions to be shaken" in the preface to the Phase I report. However, he also claims that the mismanagement of the sponsorship program had "subverted and betrayed" the public's trust in its government (Phase I Report: *Fact Finding Report*, p. 438). It is hard not to find Gomery's ambivalence frustrating. He addresses and answers a host of troubling issues by moving from the particular to the general, from the failings associated with the sponsorship scandal to the requirements of governing ethically and efficiently in pursuing the public's interests. However, in so doing the commission provides an assessment of the mismanagement and skulduggery involved in the Chrétien government's national unity campaign that permits two very different interpretations of the seriousness of what went wrong. Gomery states that he agrees with the new chair of Canada Post, Gordon Feeney, who says "the tone at the top of an organization defines its culture" (Phase I, *Fact Finding Report*, p. 229). The commission found that the problems of the sponsorship program began at the top, and that there was "an administrative and political culture surrounding the Sponsorship initiatives which tolerated and even encouraged the contracting practices that led to abuse" (Phase II Report, p. 11). Clearly, simply changing leaders or governments will not address the profound weaknesses of a system open to the abuse of power permitted by those determined to circumvent the



rules, and by those who are too afraid, too deferential, or lack the capacity to do anything about it.

The testimony of Chuck Guité confirmed what had been suspected for some time: advertising and communications firms had been deeply involved in helping with the national election campaigns of the Liberal and the Conservative parties, and they expected rewards in the form of easy and lucrative contracts from the government in power. The sponsorship program was merely one example of abuses that had been going on for years. During the 1993 election campaign, the Liberals promised to take action to stop these kinds of abuses, and attempted to do so in 1994 by issuing a directive that government advertising contracts would be awarded in an objective and fair way, with price being a key determinant. Guité admitted to playing a role in preventing this reform from being implemented.<sup>14</sup> One way of interpreting Gomery's apparent ambivalence is to conclude that the mismanagement uncovered by the sponsorship inquiry is indicative of a serious ethical gap regarding how the main political parties run and finance their campaigns, a problem that has infected only the parts of the public service that have come into contact with it. Outside of this nexus between political parties and the advertising and communications industry, the public service is currently relatively healthy. Nevertheless, if those determined to break the rules could so easily circumvent them in the advertising and communications area, what would prevent unscrupulous politicians or public servants from too easily circumventing the accountability rules in other areas? Gomery concludes that the current system is inadequate, and that is why he has recommended some major reforms.<sup>15</sup> According to the commissioner, "The recommendations that are found throughout this Report ... have one central purpose: to rebalance the relationship between Parliament and Government and to assign a clearer accountability to both politicians and public servants" (Phase II Report, p. 198).

The reports by the Commission of Inquiry into the Sponsorship Program and Advertising Activities can be usefully thought of as the latest in a series of important federal initiatives over the past half-century that are aimed at addressing problems in public service accountability. The first was the Glassco Report in 1962 (Royal Commission on Government Organization). Glassco's theme was to "let the managers manage"; the Glassco report recommended a loosening of what were alleged as stultifying controls of the central agencies. This was followed in 1979 by the Lambert Commission (Royal Commission on Financial Management and Accountability). The Lambert Commission, in contrast to Glassco, was alarmed by what it considered to be "a grave weakening ... in the chain of accountability." Next came the reforms suggested by the Public Service 2000 exercise in 1989. PS 2000 was a response to a malaise in the public service that seemed to arise from too much unnecessary red tape. Finally there was the La Relève exercise

starting in 1997. La Relève focused more on making the public service a more attractive place for talented, creative, and honest people to work. It helped to stimulate a volume of somewhat inflated rhetoric about the importance and commitment to responsibility and accountability in successions of governmental reports, guidelines and codes<sup>16</sup> but these initiatives have not prevented wrongdoing nor sufficiently encouraged improved ethical conduct. Rhetoric is not enough. Measures need to be taken through the law and through a reformed system of checks and balances. The current regime has been judged inadequate in the upper echelons, and requires revamping. Gomery has pointed us in the direction of repairing the current faults. The commission reports will not finally resolve the problem of how to create foolproof accountability mechanisms. The development of appropriate accountability mechanisms is always a work in progress, and the appropriate balance between management discretion and accountability is often elusive. What the Gomery Commission has done is to uncover some serious flaws in how government is conducted. The commission also provides us with what should be an enormously fruitful, if controversial, contribution to the debate about what to do next.

Former Prime Minister Martin was on record as being committed to accepting and implementing Gomery's recommendations. The campaign promise of the Stephen Harper Conservatives to enact a "Federal Accountability Act" in effect commits the new government to implementing many of the Gomery recommendations, though not the ones concerning the deputy ministers and the Privy Council Office. A month after the release of the Gomery Phase II report, a group composed of leading current or former senior public officials, business and university leaders, led by Arthur Kroeger, a former federal deputy minister, published an open letter to Prime Minister Harper that praised several of the Phase II recommendations, but condemned the ones dealing with changes to the role of the clerk of the Privy Council, the selection process for deputy ministers and their role in testifying to the Public Accounts Committee, and the recommendation that ministers be required to put in writing any orders that would require a deputy to ignore statutory duties.<sup>17</sup> It is an over-simplification, but not a misleading one, to say that the debate initiated by Kroeger about Gomery's most far-reaching recommendations appears to be a struggle between "academics" led by a judge, and "practitioners" led by the dean of retired deputy ministers. Change is never easy, and the most radical of Gomery's recommendations deserve cautious examination. Has Gomery over-reacted to a mere "aberration" in an otherwise good system of accountability?

Our view is that the changes suggested by Gomery are in general worth proceeding with.<sup>18</sup> The recommendations in the first category set out above, those relating to deputy ministers and the clerk, are criticized by Kroeger

and others (except for the extension of deputy minister terms) because they would interfere with prime ministerial prerogatives, and might result in strained relationships between ministers and deputies, or the prime minister and the "Secretary to Cabinet." The open letter by Kroeger and others states that implementation of the Gomery recommendations would give "the public service ... a constitutional identity independent of elected governments." From our perspective, that is precisely what the principle of the rule of law implies: elected governments change policy and institute their programs by changing the law, not by circumventing it, and part of the constitutional purpose of the public service is to ensure that the law, as it is written, is respected, especially by those with great power. The open letter also criticizes one part of the second set of recommendations: that deputy ministers should generally testify before the PAC rather than ministers. The letter states that in general, deputies already testify more than ministers. From our perspective, however, sometimes the testimony of deputies can be evasive, deferring to ministerial responsibility. If deputies could be held accountable for their statutory duties, their testimony might be more uniformly informative and transparent.

Although the remaining recommendations in the second category that we outlined, and the recommendations in the third set found favour in the open letter, which is an indication that they are less controversial, it may still be a challenge to have them implemented because they represent a change from the status quo and a new check on government powers. In particular, it will be difficult for any government to wean itself from using the boards of crown corporations as placements for patronage appointments. Similarly, it may prove difficult for governments to accept higher standards for ministerial exempt staff. It is therefore important that the nineteenth Gomery recommendation – a report in two years on the response to the first eighteen recommendations – is respected.

The Gomery recommendations are not a panacea, but in an age where the image of politics and of the public service needs overhauling in order to restore public confidence, too much dithering over whether Gomery has gone too far could leave the door open to future scandals, just as the Chrétien government's reluctance to tackle the advertising and communications industry in 1994 paved the way for the sponsorship scandal.

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### Notes

- 1 The Phase I Report, released in October of 2005, consists of three volumes entitled *Who Is Responsible? Summary*, *Who is Responsible?* (p. 80), *Fact Finding Report* (Pp. xxii, 685, appendi-

ces) and *Who is Responsible, Forensic Audit* (Pp. 287, appendices) In this review, references to these volumes will appear as Phase I, *Fact Finding Report*; and Phase I, *Forensic Audit*. The Phase II Report, released in February of 2006, consists of four volumes: *Restoring Accountability: Recommendations* (Pp. xii, 245, appendices) and *Restoring Accountability: Research Studies* Volumes 1 (Pp. 338, list of authors) Volume 2 (Pp. 340, list of authors) and Volume 3 (Pp. 338, list of authors). These will be referred to as Phase II Report, and Phase II Research Studies, volume 1, 2 or 3. The Commission reports are also available on the internet at <http://www.gomery.ca>.

- 2 The advisory committee was chaired by Raymond Garneau, former CEO of Industrial Alliance, and the members included J.E. Hodgetts, Donald Savoie, Hon. Roch Bolduc, Daniel Bevis Dewar, Hon. John Fraser, Hon. Constance Glube (former Chief Justice of Nova Scotia), Carole Simard, and Sheila Cook (executive director).
- 3 The authors of the research reports, presented in three volumes, are Donald Savoie, Peter Dobell, Martin Ulrich, Jonathan Malloy, David E. Smith, Liane E. Benoit, Ian Sadinsky, Thomas Gussman, James R. Hurley, Stan Corbett, Jacques Bourgault, Peter Aucoin, Lorne Sossin, Kenneth Kernaghan, Alisdair Roberts, Paul Pross, Ned Franks, Sharon Sutherland, and Guy Peters.
- 4 Bernard Roy was principal secretary to Prime Minister Brian Mulroney from 1984 to 1988, and in 2004 was a partner in the law firm, Ogilvy Renault, in Montreal. In 2004, Neil Finkelstein was a senior litigation partner in Blake, Cassels & Graydon in Toronto. In addition, the commission hired an associate counsel and five lawyers to assist with legal research. Gomery said he decided to appoint Roy as commission counsel in part to counteract allegations by prominent Conservative party politicians that Gomery was partial toward the Liberals. (See, for example, Jim Brown, "Gomery pick to 'shut up' Critics," Canadian Press, 27 December 2004.) In addition, the commission retained the Kroll Lindquist Avery forensic audit firm to conduct the forensic audit of the Sponsorship Program and to write the forensic audit report, which is one of the three volumes of the Phase I Report.
- 5 There were 172 witnesses who testified at the hearings, and the hearings resulted in 137 volumes of transcripts. Twenty-five persons were granted standing, and their lawyers were present at the hearings.
- 6 Volume I of the research studies is entitled *Parliament, Ministers and Deputy Ministers*, and includes a chapter by Peter Aucoin, "The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform." One of the chapters in Volume II, *The Public Service and Transparency*, is Lorne Sossin's "Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implications for the Accountability of the Public Service," Volume III, *Linkages, Responsibilities and Accountability*, includes Sharon Sutherland's chapter, "The Role of the Clerk of the Privy Council."
- 7 The Kroll audit found that out of a total of \$335 million paid out, over \$305 million was managed by private sector companies and personnel.
- 8 Phase II Report, Research Study Volume I, Donald Savoie, "Introduction," p. 1.
- 9 Gomery's view reflects the recommendations of Peter Aucoin's research report, "The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform," Phase II Research Studies, Volume 1, p. 297.
- 10 Our impression is that at the assistant deputy minister and deputy minister level, job mobility upwards about every two years is a sign of career progress. Having longer terms for these senior officials would promote development of greater expertise in particular policy areas, and might help to check political interference that puts pressure on senior officials to bend the law, but to implement this reform might require a culture change at the upper levels of the public service regarding the definition of career success.
- 11 At pages 171 and 173 of the Phase II report there are veiled criticisms of the ineffectiveness of both the Conflict of Interest and Post-Employment Code for Public Office Holders and

the former ethics counsellor regime in providing any checks on the excesses of the sponsorship program. There is scant comment in the two Gomery reports on the former ethics counsellor regime that involved the ethics counsellor in overseeing the Lobbyists Code of Conduct and Lobbyists Registration Act. Closer scrutiny and more transparency with respect to the activities of lobbyists and their interactions with government officials are, nevertheless, clearly of concerns to the commission.

- 12 Gomery is also supportive of strong whistle-blowing legislation.
- 13 Liane E. Benoit, "Ministerial Staff: The Life and Times of Parliament's Statutory Orphans," Phase II Research Studies, Volume 1, p. 145.
- 14 Commission of Inquiry Public Hearings Volume 108, 28 April 2005, pp. 19773-788.
- 15 In 1991 the Royal Commission on Electoral Reform and Party Financing recommended that political parties should develop their own codes of conduct to promote ethical practices within parties, and the commission even provided a template for such a code. None of the parties have adopted such a code. It is possible that had the Liberal party developed its own internal code of conduct, with appropriate educational and enforcement mechanisms, the sponsorship scandal might have been avoided. It is puzzling that Gomery does not draw attention to the need for political parties to develop their own codes of conduct.
- 16 For example, *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics*, John C. Tait, Q.C., chair, Canadian Centre for Management Development, 1996, and the 2003 Values and Ethics Code for the Public Service.
- 17 The letter was signed by a group of sixty-one with credentials in the public or private sector as impressive as the academic credentials of the researchers for the Phase II report: Tom Axworthy, Peter Barnes, Allan Blakeney, Rita Burak, Ian Clark, Tom Courchene, Jim Coutts, Tom d'Aquino, Hershell Ezrin, Yves Fortier, Huguette Labelle, Marc Lalonde, John Manley, Barbara McDougall, Desmond Morton, Gordon F. Osbaldeston, Andrew Petter, Bob Rae, Hugh Segal, Paul Tellier, and Richard Van Loon, to name a few.
- 18 Donald J. Savoie's *Breaking the Bargain: Public Servants, Ministers and Parliament* (University of Toronto Press, 2003), provides an excellent background to the debate about whether substantive changes are needed in the evolution of the principles of cabinet government and democratic accountability in Canada.