Responsibility, Accountability, and the Sponsorship Affair

by C.E.S. Franks

On February 10, 2004, Auditor General Sheila Fraser released the much anticipated results of her audit of the advertising and sponsorship program run by the federal Public Works Department. She found that $100 million was paid to a variety of communications agencies in the form of fees and commissions and said the program was basically designed to generate commissions for these companies rather than to produce any benefit for Canadians. The same day Prime Minister Paul Martin called for a public inquiry, to be headed by Justice John Gomery, into how the sponsorship program was handled. The Public Accounts Committee of the House of Commons, chaired by John Williams, began several weeks of hearings on the Auditor General's Report. One of the last witnesses to appear before the Public Accounts Committee before Parliament was dissolved for an election tried to look at some accountability lesson to be drawn from the experience and suggested how such problems could be avoided in the future.

The investigation by the Public Accounts Committee into the sponsorship affair was successful and useful, although perhaps in an unexpected way. It identified the crucial factor that allows such problems to happen. Not one of the many witnesses who came before the committee, neither ex-ministers nor public servants, stated, "yes, managing this program was my responsibility, and I am responsible and accountable for what went wrong with it."

Ours is a system of responsible government. Constitutionally, someone must be responsible and accountable to Parliament for what the government does or fails to do, but no witness before the committee has accepted that the problems were his or her responsibility. Ministerial or any other sort of responsibility has been missing. The breakdown of responsibility and accountability disclosed by the investigation of the public accounts committee shows that something is seriously wrong with the way the principle of responsibility is construed and practised in Canada.

Responsibility must be allocated to identifiable persons before they can be held accountable. In our parliamentary system responsibility, for the most part, is assigned to the Ministers of the Crown, but in an enormous and complex system like that of the Government of Canada there must be exceptions to the general rules, and the doctrine of ministerial responsibility has exceptions where responsibility is assigned to persons other than ministers. The Canadian Privy Council Office has, in various documents, given its interpretation of how ministerial responsibility should work in practice and what exceptions there are to the strict doctrine that the minister is responsible for all actions of public servants. Appreciation of these exceptions is crucial to under-

C.E.S. Franks is Professor Emeritus of Political Science at Queen's University. This is an edited version of a presentation to the Public Accounts Committee of the House of Commons on May 6, 2004.

standing the frustrations and difficulties encountered by the Public Accounts Committee.

The Privy Council Office's version of ministerial responsibility also has weaknesses. These weaknesses allowed the system to go so drastically wrong for so long in this sponsorship affair. Understanding both exceptions and weaknesses identifies what needs to be done to ensure that in the future these sorts of problems do not arise, or at least are detected sooner.

First, according to the Privy Council Office, only the minister who currently holds the post is responsible and accountable to Parliament. A previous minister is not responsible and cannot be held accountable or answerable by Parliament or its committees for what went on during his or her tenure. That is why previous incumbents of ministerial posts have appeared before the public accounts committee as private individuals rather than in an official capacity.

Second, Privy Council Office doctrine states that current ministers are answerable in Parliament for actions taken during the tenure of previous incumbents of the office. To be answerable means a weaker sort of relationship than to be accountable.

Third, the doctrine states that ministers are required to answer to Parliament by providing information on the use of powers by non-departmental agencies assigned to the agencies by statute. For exercise of these statutory powers the heads of these agencies are responsible not to ministers, but through ministers to Parliament.

Fourth, according to the doctrine, deputy ministers are only answerable, not accountable, before parliamentary committees. Deputy ministers are accountable to their ministers, to the Prime Minister, and to the Treasury Board, but not to Parliament or its committees. The responsibilities assigned exclusively to deputy ministers by the *Financial Administration Act* include crucial ones relating to maintaining accounts and ensuring prudence and probity in financial transactions. These powers are not assigned to the ministers. In effect, it appears that while ministers are not responsible and accountable to Parliament for the exercise of powers assigned by statute to non-departmental agencies, they are responsible and accountable for the exercise of statutory powers assigned to deputy ministers.

Fifth, when errors or wrongdoings are committed by officials, the doctrine states that ministers are responsible for promptly taking the necessary remedial steps and for providing assurances to Parliament that appropriate corrective action has been taken. The requirements of ministerial responsibility are met when ministers answer to this effect in Parliament.

> ***The Privy Council Office interpretation means that no minister, present or previous, is accountable to Parliament for problems stemming from the tenure of a previous minister.***

Responsibility and accountability belong to the office and its current holder. Nor are ministers accountable, rather than answerable, when public servants misbehave. More important in the sponsorship affair is that deputy ministers are accountable only within the government, to minister, Prime Minister, and Treasury Board, but not to Parliament, for the crucial management functions assigned to them alone by statute. It also appears, though the Privy Council Office does not explicitly state so, that it considers that the principle that responsibility belongs to the office and not to the person applies to deputy ministers as well as ministers.

Since both deputy ministers and ministers change office frequently in Canada, the responsible person interrogated by the public accounts committee is rarely the deputy minister who held the position when the contentious actions occurred. Ministers also change office frequently, making their accountability into answerability, as has happened in the sponsorship affair, by the time the problem comes to the attention of Parliament.

This Privy Council Office interpretation of the doctrine of ministerial responsibility accurately describes the way various witnesses have construed their responsibilities and accountabilities to the public accounts committee. Deputy ministers, regardless of their statutory responsibilities, did what the ministers and the Prime Minister's Office told them to do. Previous ministerial incumbents are not responsible or accountable, and the present minister has satisfied his responsibility by ensuring that the problems have been corrected. No one is responsible or accountable for the problems. The system worked as described by the Privy Council Office.

The public accounts committee now faces the question of whether it considers this to be an adequate description of what ministerial and deputy ministerial responsibility and accountability of government to Parliament ought to be. If the committee believes it to be adequate, its work is completed, and all that remains is for the judicial inquiry to make its study of what went wrong and for the police to investigate possible criminal activities. But if the committee does not believe this is satisfactory, it has an additional task: to find a better way of handling these crucial relationships between Parliament, ministers, and public servants.

A Better Way

Britain has a quite different approach towards responsibility and accountability to Parliament for administration and the use of funds. In Britain the permanent secretaries or heads of department, equivalent to our deputy ministers, are designated as accounting officers and have full and personal responsibility for the transactions in the account, including matters of prudence, probity, legality, and value for money, unless they have been explicitly overruled in writing by their minister. This responsibility of the accounting officers is personal and remains with them, even when they change office or retire. Either the minister is responsible or the deputy is, not both, not neither. Establishing the accounting officer approach and ensuring that it works in practice has been the central concern of the public accounts committee in Britain for over a century.

The accounting officer approach was recommended for Canada by the Lambert commission on financial management and accountability, but this recommendation was rejected by the government. The government's rejection was based in part on a misunderstanding of the British practice. Other persons have argued against the accounting officer approach because it is "unconstitutional" and goes against the principles of the Westminster style of parliamentary government. I find it difficult to understand how a practice that has existed in the British Parliament at Westminster for over 100 years can be unconstitutional or go against the principles of the Westminster model.

Another argument offered against adoption is that the present arrangements in Canada work well most of the time. This is true, but when the present arrangements do not work well, as they did not in the sponsorship affair, the consequences can be horrendous and destructive to the entire system of parliamentary cabinet government, including public trust and confidence in the neutrality of the public service.

Another argument used by the Privy Council Office against the accounting officer approach is that:

> Formal and direct accountability of officials to Parliament for administrative matters would divide the responsibility of ministers.... Responsibility shared tends to be responsibility shirked.... Parliament prefers not to recognize the informal division between the answerability of officials and of ministers...and the attempt to identify discrete areas of official accountability to Parliament would likely result in the further blurring of lines of accountability, weakening the ability of the House to hold the minister responsible when it chooses for matters falling under his or her authority.[1]

The Public Accounts Committee might not agree with the Privy Council on these points. The committee is entitled to, and should, express its views.

The committee might conclude that the government's interpretations and practice, not Parliament's wishes, have led to the scandals and the obfuscation of lines of responsibility and accountability found by the committee in the sponsorship affair. It might conclude that the Privy Council Office's interpretation of responsibility and accountability in our parliamentary system contains far too many gaps, ambiguities, and contradictions and that the system does not work to the satisfaction of Parliament or the people of Canada.

I do not believe that responsibility and accountability could be much more shirked or the division of responsibility between ministers and deputy ministers much more confused and blurred than the committee has proven them to be in the sponsorship affair. If Canada adopted the accounting officer approach, then at least the public accounts committee and Canadians in general would know who was responsible and who should be held accountable. That, to put it mildly, would be a great improvement.

Notes

1. Canada, Privy Council Office, *Responsibility in the Constitution*, 1977, reprinted in 1993, pp. 77-78.