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Prospects for Improved Accountability Following Gomery

Peter Aucoin

Eric Dennis Memorial Professor of Government & Political Science

Professor of Public Administration, Dalhousie University

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MNP
MEYERS NORRIS PENNY LLP



University of Regina
GSPP Graduate School
of Public Policy



Outline

- 1. Improved Accountability: defining the criteria**
- 2. Prospects: defining the problem**
- 3. Gomery's analysis (Volumes 1 and 2) and recommendations**
- 4. Conservatives' "Accountability Act" – platform proposals**
- 5. Conservatives in Power**
- 6. Prospects for improving Accountability?**



Improved Accountability

Accountability is a two-sided relationship:

- On the one hand: (1) those who are assigned, conferred, delegated authority/powers, “responsibility”/duties for conduct of executive and administrative functions of governance
- On the other hand: (2) those who assign, confer, delegate authority & responsibility to executive/administrative office holders

Therefore, two dimensions & interactions – providing account & holding to account:

- First group (1) provide “accounts” (reports & then answers) of their performance, actions to second group (2)
- Second group (2) “hold” first group (1) to account – scrutiny, evaluation, and, then, consequences (sanctions, discipline, dismissal)



Improved Accountability

Simple and Complex Hierarchies & Governance Structures

- **People, Parliament, PM & Ministers/Cabinet, Ministers, Deputy Ministers, Departments, Arm's Length Agencies**
- **Add in to executive: Public Service Commission, Treasury Board, & Statutory Authority to Deputy Ministers**
- **And for legislature: Independent Parliamentary officers/agencies for audit, review and investigation**



Improved Accountability

Transparency as foundation of accountability:

- Reporting necessary, but even results-based 'self-reporting' not sufficient
- Requirements for reporting + independent verification of reports/data
- Internal & External auditing and review (of powers, resources, codes)
- Access to government information + written files kept
- Whistleblower protection
- Effective scrutiny, evaluation and assessment by Parliament
- Competent and politically independent (or at least competitive) media



Improved Accountability

Accountability – Three Purposes

- 1. Control** – assumes that twofold relationship provides incentive for all those with authority/responsibility to act within law & policy (rules, regulations & procedures)
- 2. Compliance** – assurance is secured that those with authority/responsibility have complied with law and policy (“trust but verify”)
- 3. Continuous improvement** – regular process of accountability becomes a learning cycle for individuals and organizations



Improved Accountability

Please note:

- **Accountability is not everything**
 - “if it’s everything, it’s probably nothing”
- **Accountability is not rules, regulations, procedures**
 - that’s governance and management – accountability follows
- **Accountability is “naming, blaming, and shaming”**
 - the negative, but necessary, side – “stuff does happen”



Prospects: Defining the Problem

1. Public Demand for public accountability before Gomery

- **Less tolerant of partisan patronage, perks & porkbarreling**
- **Less deferential to authority: wants assurance of value for \$**
- **Sees Accountability as Transparency, Scorecards and Audit**

2. Sponsorship Scandal & Gomery process and report # 1

- **The factor in defeat of Liberal government (Blais et al.)**
- **Conservatives: Accountability Act as Priority # 1.**



Prospects: Defining the Problem

3. Scandal: Catalyst for What?

- **Aberration – a “rogue” few? Now history. It happens.**
- **Liberal Party – culture of entitlement? But now history.**
- **Tighten up management regime? Comptrollers and auditors to the rescue. Liberals and Conservatives at one.**
- **Or, systemic imbalance of power? Gomery says YES – therefore mission is “restoring accountability” – Conservatives agree (or did)**



Prospects: Defining the Problem

4. Why Imbalance of Power? The “New Public Governance”

- Concentration of power under PM & court
- Increased number/roles/influence of “political staff”
- Personal/partisan interventions in senior public-service staffing (and staffing of boards & executives of ABCs)
- Expectation of public-service enthusiasm for government agenda
- Increased political spin in government communications



Prospects: Defining the Problem

NPG: An international phenomenon: old but 'new' in intensity

- **greater transparency: access to information, audit & review agencies, parliamentary committee hearings, internet**
- **7/24 media: aggressive & competitive and with p.o. polls**
- **decline of deference to political authority & less trust**
- **increased expectations and standards**
- **fewer partisans and thus less tolerance of partisanship**



Gomery 1: What happened?

- **Broke the rules – deficient management structure and processes (PMO & PWGSC)**
- **Broke the law – program managers, advertising agencies, and Liberal Party of Canada (Quebec wing)**
- **Broke the bargain – ministers and public servants (and political staff and Crown corporations)**



Gomery 1: Analysis

“Three main factors...caused or contributed to the problems”:

- 1. “the unprecedented decision [by the Prime Minister] to direct the Sponsorship Program from the PMO, bypassing the departmental procedures and controls which the DM of PWGSC would normally have been expected to apply and enforce;”**
- 2. “the failure of the DM of PWGSC to provide oversight and administrative safeguards against the misuse of public funds;”**
- 3. “the deliberate lack of transparency on how the Program was initiated, financed and directed.”**



Gomery 1: Who's Responsible?

- **PM Chretien**
 - involved himself in “direction” of program (made himself responsible)
 - put PMO (Pelletier) in “charge”, contrary to Clerk’s advice
 - PM “personally” responsible for Pelletier’s actions (political staff)
- **Pelletier (Chief of Staff, PMO)**
 - not a public servant - no authority to direct; simply PM’s power
- **Minister Gagliano (GWPC)**
 - partisan abuse of ministerial authority: commission and omission
 - personally responsible for actions of his political staff



Gomery 1: Who's responsible?

- Other ministers: left off the hook?
 - **Minister Marleau (GWPSG) not held responsible!**
 - **Finance Minister Martin and other PQ ministers “exonerated”!**
- DM PWGSC (Ran Quail)
 - **“Abdicated his responsibility” to manage department (“ to control, direct and oversee his officials”)**
- “Black hole” in report?
 - **Clerk and PCO mentioned, especially (Deputy Clerk) in instructing DM and subordinates, but no judgement!**



Gomery 2: Analysis

Gomery 2 says - quote: “Convinced that we need:

- **to rebalance the relationship between Parliament and the Government in order**
- ✓ **to attain better accountability within government...**
- ✓ **to assign clearer accountability to both politicians and public servants”**



Gomery 2: Analysis

Gomery notes that Liberal government in 2005 took action:

- Adopted changes to crown corporation regime
- Proposed changes to FAA
- Reasserted doctrine of ministerial responsibility that denies DM accountability to/before parliamentary committees
- Reasserted 'command and control' from Treasury Board – focus on financial management controls and internal audit

Gomery accepts some, not impressed with others – red tape overkill, status quo



Gomery Recommendations

- **More \$ for parliamentary committees, especially PAC**
- **PAC MPs should serve for duration of Parliament**
- **DMs should be accountable before PAC for their assigned statutory and delegated (TB & PCS) authorities & responsibilities**
- **PAC – scrutinize DMs rather than Ministers**
- **Minister's overrule of DM in writing to Comptroller General and Auditor General**



Gomery Recommendations

- **DMs appointed by “open and competitive process” as in Alberta**
- **DMs in post for 3 years, preferably 5**
- **Secretary to TB to become “head of the public service”**
- **Public service to keep files, records, documentation**
- **FAA should include the sanction of dismissal for violations**
- **Public Service Charter as rights & obligations**



Gomery Recommendations

- **Crowns: boards hire/fire CEO, boards appoint new directors**
- **Political staff: code of conduct & no priority status to enter public service**
- **Registrar of Lobbyists – powers of investigation and prosecution**
- **Special reserves – centralized under TB or Finance**
- **Advertising to be defined to “industry standards”**



Conservatives' "Accountability Act"

Accountability mantra covers a potpourri

- **Contribution limits for parties/candidates + ban on donations/trust funds to political candidates**
- **Beef up lobbyists regime with registrar as parliamentary officer**
- **Parliament confirm appointment of parliamentary officers**
- **Establish "qualified appointments" process for ABCs**
- **No special access to public service positions for political staff**
- **Make polling & government advertising transparent/competitive**
- **Independent procurement with Procurement Auditor**



Conservatives' "Accountability Act"

- Beef up whistleblower protection
- Parliamentary budget office – parliament's economic department
- Extend mandate and increase funding of Auditor General
- Beef up ethics commissioner
- Beef up access to government information regime
- Centralize authority over internal audits – Comptroller General in charge
- Deputy ministers become "accounting officers" for accountability to PAC
- Independent director of public prosecutions



Conservatives' "Better Democracy"

- Elected Senators, then "reform" of Senate (less than Triple E?)
- Fixed Election dates
- "Free votes" for MPs, except for "budget and estimates"
- Increase "power" of Parliament & committees to review estimates and hold ministers to account
- All of above would affect balance of power between PM/Cabinet and Parliament (as Commons & Senate)



Conservatives in Power

“Accountable Government” – Guidance to Ministers 6/2/06

- **DM accountability defined in traditional manner – to minister and PM; Minister accountable to Parliament**
- **Party discipline & “free votes” – more than budget & estimates, also “priority items in government’s agenda”!**
- **Political staff deal with public service “normally” & “to the extent practicable” through DM**
- **Public Appointments Commission- for publicizing competition for posts, “merit-based requirements” & ensuring “fair process”**



Conservatives in Power

“Conflict of Interest and Post-Employment Code for Public Office Holders” 6/2/06

- **5 year ban on former office holders (ministers, political staff and bureaucrats) from acting as lobbyists**
- **Beefing up arrangements on blind trusts**
- **Reports of Ethics Commissioner final; no PM overrule**
- **Ethics Commissioners may consider complaints from public via MP**



Prospects for Improved Accountability?

Defining the Problem?

- **Both Gomery and Conservatives accept that balance of power between Government and Parliament a central issue**
- **Both Gomery and Conservatives accept that Parliament and MPs need to be less partisan and have greater resources and powers**
- **Both Gomery and Conservatives accept that transparency needs to be strengthened**
- **Both Gomery and Conservatives accept that deputy ministers must be accountable to/before Parliament**
- **Both Gomery and Conservatives accept that deputy ministers be able to demand written orders from ministers**



Prospects in Perspective

Balance of power analysis correct, but Conservatives now in power – & power has a tendency to corrupt or at least diminish reform zeal

Public demand has no constituency – anger and disgust spent on defeat of Liberals

Media treatment – cynicism diminishes catalyst for reform

Opposition – Liberals not interested in having issue on agenda, NDP & Bloc – other fish to fry?

Public service & academics – hopelessly divided, both between and among themselves, on analysis of problem & solutions



Critical Issues

- Will DM accountability before PAC, as ‘accounting officer’, lead to greater independence of DM, and thus the public service, from political management?
- Will a critical mass of MPs place a sufficiently high priority on holding ministers and deputy ministers to account to create a less partisan and party disciplined PAC?
- Or, does improved accountability require a diminution of PM powers – to hire/fire DMs, Chairs/Boards/CEOs of ABCs, select ministers, “lead” cabinet, dissolve House?



DMs as Accounting Officers

DMs already appear regularly before PAC & are held to account

- e.g. Ran Quail re sponsorship program

But, AO regime would “clarify accountability” by identifying DM’s responsibility for statutory and delegated authority/powers

1. “administrative” responsibility defined by law, not by concept (of administration versus policy) &
2. Minister required to issue written instruction to override DM’s objection to directive



DMs as Accounting Officers

With no other changes: i.e. with DMs still as subordinates of PM and PAC unreformed

- **DMs will risk possible brief discomfort before PAC rather than displeasure of PM, Clerk & peers**

With PAC reformed, but DMs still subordinate to PM

- **DMs will still not act differently, although likely will become more politicized (i.e. politically responsive)**

Only with DMs not subordinate to PM will change likely occur



Reformed PAC

**Holding Government to account – not # 1 priority of MPs,
Conservatives or Opposition – not even close!**

- **Weak tradition of non-partisan parliamentary scrutiny – not sufficiently embedded in parliamentary culture**
- **Feeble committee system: lack of interest, inexperience, inadequate resources, dysfunctional procedures**
- **Pool of interested MPs too small for critical mass**
- **Indifferent media attention**



Reformed PAC

DMs as Accounting Officers, by itself, won't reform PAC

- **DMs already appear, answer, and account “before/in/to” PAC (will anyone notice the difference?)**
- **DMs won't be intimidated into defying ministers by formality of personal accountability – won't “concentrate their minds” – careers still in hands of PM**
- **DMs won't bring PAC into relationship with Minister any more than now**



Reformed PAC

PAC performance, and thus reformed PAC, is a function of:

- **parliamentary tradition/culture – is holding government & public service to account important and a non-partisan obligation?**
- **size of House – number of MPs who are willing/able to do the hard & long work of holding government & public service to account**
- **MP career patterns – high turnover, especially resignation & defeat of ministers, produces a House of Commons with too few who have been in government, experience with public administration**
- **public service – DMs and TBS – spirit of mutual, non-partisan interest with PAC in good public administration**



Diminished PM Power

“New Public Governance” – start with PM’s power

- **DMs – become part of non-partisan, professional public service & thus be staffed and managed independently of PM**
- **DMs – independence crucial to help act responsibly for assigned & delegated powers (rather than responsively to political pressures) & account personally before PAC**
- **DMs – independence crucial to help DMs protect departmental public- service staff from political pressures**



Diminished PM Power

Gomery recommendation: Alberta model of DM staffing

- **not far enough – still appointed by minister with discretionary choice over short list (qualified but partisan?)**
- **ministers with power not an improvement – still political, personal (probably even more so!)**
- **incomplete – silent on performance management/appraisal, pay, discipline, dismissal (Alberta model has all this still under DM to Premier & Premier)**
- **Need to manage a cadre of DMs, not merely individual CAOs of department (most appointments will be internal for good reason)**



Diminished PM Power

Remove powers to appoint chairs, boards, CEOs of ABCs

- Patronage power diminished; capacity to hold out prospects of future rewards/sanctions to ministers, MPs, political staff, and (even) public servants diminished
- Partisan/personal influence (informal) over ABCs thereby also diminished
- Gomery: Board hires/fires CEO; Bd fills vacancies on Board
- Conservatives: Public Appointment Commission (set requirements for merit-based appointments – but who appoints?)
- Major Issue here is not “qualified/merit” – issue is who appoints



Diminished PM Power

Would above be sufficient for improving accountability?

Yes, but other possible reforms would make for even more dramatic improvements: (in no particular order)

- **Caucus selects which MPs will be ministers, as in Labour parties in Australia & New Zealand (PM assigns portfolios)**
- **Caucus with effective capacity to dismiss/replace PM (e.g Thatcher in UK, Hawke in Australia)**
- **Cabinet that decides collectively – not a “focus group” for PM’s court**
- **New electoral system for House of Commons that provides better stability in caucus composition – more security, more experience, more independence from top-down party discipline**



Diminished PM Power

- Elected Senate – especially elected with some means for proportional representation to make it “effective” (not under thumb of majority government)
- Fixed election dates, and then
- Fix constitutional “protocol” so that Governor General always asks Opposition Leader if new government can be formed after Government loses confidence vote in House – remove discretion of PM and GG
- All of the above would alter “balance of power”: several items in Accountability Act, which, if implemented, could lead to other parts becoming obvious ‘next steps’.
- There is only one thing we know for certain - over



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