



House of Commons
CANADA

Standing Committee on Public Accounts

PACP • NUMBER 013 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, December 14, 2004

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Chair

Mr. John Williams

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• (1540)

[English]

The Chair (Mr. John Williams (Edmonton—St. Albert, CPC)): The order of the day, pursuant to Standing Order 108(3) (g), is governance and accountability within the federal public service, with an emphasis on ministerial and deputy ministerial accountability.

Our witness today, as an individual, is Professor C.E.S. Franks, professor emeritus of political science at Queen's University.

Also pursuant to Standing Order 108(3)(g) is Public Accounts of Canada 2004, referred to the committee on October 21, 2004, and consideration of a draft report. We normally consider draft reports in camera, but we only had one last change to the very last paragraph. I think there is agreement among everybody to accept that. Am I correct? Do we agree to accept the last paragraph as amended and circulate it?

Some hon. members: Agreed.

The Chair: It's agreed.

Okay, we will go through the normal motions.

First of all, that the committee adopt the draft report as—

[Translation]

Mr. Benoît Sauvageau (Repentigny, BQ): Mr. Chairman, since we had discussed a new recommendation number one at considerable length at our last meeting — my colleagues will certainly recall this — could someone simply read it back to us?

[English]

The Chair: We don't normally go back. As I say, when we cut things off, we move forward.

One of the motions will be that the chair, clerk, and researchers be authorized to make such grammatical and editorial changes as may be necessary, without changing the substance of the report, as agreed. That's how we've normally done things in public accounts.

If we're going to open it up, I will therefore have to defer it and go in camera, as we normally do. I'm not going to do it in public.

[Translation]

Mr. Benoît Sauvageau: No, I don't want to re-open the debate. You gave us the new version of the final paragraph at the beginning of the meeting. We don't have a problem with it. However, I haven't seen the new recommendation one. I don't wish to discuss it, I just want to see it before I agree to it.

Mr. Sébastien Gagnon (Jonquière—Alma, BQ): All the more so since you were the one who was supposed to present the new version to the committee.

[English]

The Chair: Yes, Mr. Carr.

Mr. Gary Carr (Halton, Lib.): We could go on with the meeting and wrap it up quickly in camera afterwards, if you want. We tried, but it didn't work.

The Chair: Yes. I will therefore suspend this part of the meeting. We will go in camera perhaps at the end. Then we'll move to the public part of the meeting. I can't share with one person without sharing with everybody; it then opens up into debate. The agreement, of course, is always the way that we move forward. We can't go back. Those are the rules we've always played by.

We will therefore move to Professor Franks, our witness for this afternoon. We're dealing with governance. Of course, he is an eminent expert on governance in Canada, being a professor emeritus from Queen's.

You're no stranger to Parliament and to the public accounts committee. We have also always welcomed your advice and commentary. We look forward to what you have to say today.

I turn the floor over to you, Professor Franks.

Dr. C.E.S. Franks (Professor Emeritus of Political Science, Queen's University, As Individual): Thank you, Mr. Chairman.

The last time I was before the committee, in the spring, I suggested it had succeeded in doing something that was fairly important in failing to find who was responsible and accountable for the problems in the sponsorship scandal. I'm delighted that the committee has now undertaken this study of governance and accountability, because it has a good chance of dealing very usefully with that problem and winding up with something that is of great importance to the people of Canada as well as Parliament and the public accounts committee.

To the best of my knowledge, the study of governance and accountability now begun by your committee is the first such study to be undertaken by any committee of the Canadian Parliament. It's a very appropriate and necessary study and might well become the most important single piece of work ever done by the public accounts committee. In doing it, you are following an urging of the Auditor General, who found a lack of clarity in various discussions of responsibility and accountability and encouraged Parliament to look at these issues, in that "parliamentarians have an essential role to play in this process, as they may be in the best position to facilitate the next step by encouraging the government to move quickly to resolve these issues."

So far the government, and particularly the Privy Council Office, has been alone among the major institutions of government in offering views on the doctrine of ministerial responsibility. This one voice has been heard in what should be a dialogue of several voices. We are now, I hope, going to hear a voice from the public accounts committee, so Parliament, the other major player in governance with the government itself, can get involved and we'll have a genuine dialogue.

I'm only going to look at one aspect of the problem, ministerial responsibility and accountability and deputy ministerial responsibility and accountability, but I think that's where the real issues lay when the committee looked at the sponsorship program in the spring.

I shall concentrate primarily on the deputy ministers, because it seems to me that the ministerial responsibility by and large is clear except in relation to the public service, especially in that key nexus between the political side of things and the administrative side, the public service side, which is the deputy ministers or deputy heads of departments, as they're sometime called under the ministers.

I want to suggest that in looking at responsibility and accountability we have to appreciate that they're closely related concepts. They relate both to a state of being responsible and accountable and to a process accountability. Before a person can be held accountable, he or she must have responsibility—the authority and the power to act. In turn, responsibility is a hope and desire rather than a fact unless it's accompanied by processes for holding persons to account.

The three essential stages and effective system of responsibility and accountability are: one, responsibility for duties or tasks must be assigned to specific persons; two, these persons must be made to answer or to give an account to the appropriate authorities for their use of the powers and responsibilities assigned to them; and three, there must be a process that imposes sanctions, rewards, or punishment as is appropriate on the responsible persons for the use of powers and responsibilities.

In our system it's quite normal for these various stages to be performed by different persons. For example, in ministerial responsibility the Prime Minister through orders in council appoints ministers, but ministers are held accountable by the House of Commons. And ministers are not appointed or dismissed by the House, as some people think; they are appointed and dismissed by the Prime Minister. But what the House of Commons does in holding ministers to account has a great impact on the careers of ministers. Then ultimately the ministers, individually and collectively, are held

responsible and accountable by the people of Canada in elections, the same as our members of Parliament.

• (1545)

So there are at least the House of Commons, the electorate, the Prime Minister involved in that process for ministers. It's equally complicated for deputy ministers. As I say, that's where I'm going to focus, because I think that's where the committee should direct a lot of attention.

The general rule proposed by the Privy Council Office, which I think is useful most of the time, is that public servants are answerable in committees of Parliament, but they only answer on behalf of their minister. In other words, the minister has responsibility and the public servant speaks for the minister, but not as the person holding responsibility. Where this breaks down is at the level of the deputy minister.

Here I must warn the committee I'm diverging from the Privy Council Office's interpretation of deputy ministerial responsibility and accountability because I disagree with them. I just want to present a view to the committee that they can consider.

Deputy ministers serve in a special position before the public accounts committee where the issues to be considered are matters of administration, not policy. It's clear that a deputy minister only explains or describes policy on behalf of a minister. This is simply on behalf of the minister, and it's not a defence or a discussion of policy alternatives. It's simply an explanation of what exists.

But administration is different for the deputy minister. The Financial Administration Act gives broad statutory powers to deputy ministers in both financial and personnel administration. Deputy ministers also have statutory powers in their own right under other statutes, including the Public Service Employment Act and the Official Languages Act.

I won't go into detail on the provisions of the Financial Administration Act. One of the key ones is subsection 34(1), which says that no payment shall be made in respect of any part of the Public Service of Canada unless the deputy of the appropriate minister, or another person authorized by that minister, certifies that the work has been performed, the payment is according to contract, and the claim for payment is reasonable. It seems to me that covers most of the issues that were facing the committee in the sponsorship program.

I do want to point out that the deputy minister is personally assigned the responsibility for those functions under the Financial Administration Act, with the minister having a very limited power to designate another person to certify that the work has been accomplished.

Again, without going into any detail, the Financial Administration Act continues with more provisions on the financial side, but is even more explicit in the assignment of responsibility to the deputy minister in human resources management. Subsection 12(1) of the Financial Administration Act says:

The Treasury Board may authorize the deputy head of a department or the chief executive officer of any portion of the public service to exercise and perform, in such manner and subject to such terms and conditions as the Treasury Board directs, any of the powers and functions of the Treasury Board in relation to personnel management in the public service and may, from time to time as it sees fit, revise or rescind and reinstate the authority so granted

In other words, the rather large powers of the Treasury Board in personnel administration are explicitly delegated to the deputy minister, not the minister. There's no mention of the minister whatsoever in that section.

Now, I emphasize this because I think it has to be very clear that statutorily under the Financial Administration Act and other acts the deputy ministers hold powers in their own right.

In view of these provisions, the Royal Commission on Financial Management and Accountability, the Lambert commission, concluded that:

Very clearly, then, the Financial Administration Act makes the deputy head [minister] responsible for the financial management of the department and for its administration and operation. The Act does give the minister the final signing authority before payments against appropriations are made, but in practice this authority is delegated to the deputy minister and financial officers in the department....

Then we lead on to questions like how are deputy ministers held accountable for the responsibilities under these statutory provisions, and what is the role of Parliament, in particular the public accounts committee, in the processes of accountability for the powers deputy ministers hold in their own right?

• (1550)

The Privy Council Office doctrine holds that the relationship of deputy ministers to parliamentary committees is the same for the statutory powers held by deputy ministers as it is for all public servants before parliamentary committees. The deputy ministers are answerable on behalf of their ministers before parliamentary committees, including the public accounts committee. Gordon Osbaldeston, a former Clerk of the Privy Council, supported this view in his study of deputy ministers. I'll just read the last bit from the quote:

...deputy ministers believe they attend Public Accounts Committee meetings on behalf of their minister and the Government and not in their own right.

Three issues are of particular interest in Osbaldeston's description of the accountability of deputy ministers to the public accounts committee: first, he does not mention the statutory responsibilities that deputy ministers hold in their own right; second, he identifies areas in which ministers have significant influence on management practices and decisions, which are precisely the areas in which problems arose in the sponsorship program, namely, contracts and grants; third, and more important to the overall responsibility and accountability of deputy ministers to Parliament, is the deputy minister's belief that they attend public accounts committee meetings on behalf of their minister and the government, and not in their own right.

Without going into too many details, it seems to me that was the core of the problem that faced the public accounts committee. If pushed to its logical limit, this interpretation of deputy ministerial responsibility and accountability means that the deputy ministers giving testimony before the public accounts committee are only there to answer on behalf of their ministers. Their ministers can only answer on behalf of people who have statutory responsibility in their

own right. The ministers, in turn, would only be answerable if they were before the committee, because they, as ministers, do not hold the statutory responsibility. This situation is absurd, but it appears to be how the Privy Council Office views the role of the deputy minister before the public accounts committee.

This confused situation is the source of much of the ambiguity about who is responsible and accountable. It's what allowed deputy ministers and ministers alike to deny they held responsibility. Effective accountability to Parliament for financial management is not possible with this sort of obscurity about the respective roles of ministers and deputy ministers.

In the longer paper that I have submitted to the committee, I went into a discussion of the role of the British accounting officers, which is quite different. The British accounting officers very clearly hold responsibilities in their own right, and are answerable before the committee for their use of those statutory responsibilities. The ministers are not witnesses before the British public accounts committee, unless they have overruled the deputy minister in writing on these matters. When a minister does overrule a deputy, it has to be in writing, and the correspondence is submitted to the British treasury and to the comptroller and auditor general. If this correspondence does not exist, the deputy minister, who is the accounting officer in England, holds the responsibility and is accountable.

The process of being held accountable before the public accounts committee, or being answerable, in Canadian terms, has been described recently by one accounting officer in Britain as a terrifying experience.

• (1555)

The Chair: The British one is accountable?

Dr. C.E.S. Franks: The British accounting officers regard their experiences of going before the public accounts committee as terrifying—or it can be, depending, I suppose, on what they did.

I emphasize that because it's in stark contrast to the Canadian system, where it seems to me that we often do not know who actually made a decision and who should be held responsible, even in legal and constitutional terms, let alone in simply answering or holding responsibility before the committee for having made the decision.

Again, I don't want to go into detail here. I did prepare two submissions to the committee, one of which you might have, on the British system, which is so different from ours, but I think it bears very close attention. The other one discusses the problems I'm raising here in Canada, in more detail.

I do want to emphasize that the source of the difference in the role of the British accounting officers and Canadian deputy ministers before their respective public accounts committees does not lie in the statutory authority given to accounting officers in Britain. The position of accounting officer in Britain was created by the public accounts committee and the British treasury working together, with no statutory mention of accounting officers whatsoever. There still is precious little mention of them in British statutes.

In fact, Canadian deputy ministers have far more statutory powers assigned through the Financial Administration Act and other acts than do British accounting officers. Yet the Canadian government denies that the deputy ministers are answerable in their own right before this committee, whereas the British public accounts committee makes their accounting officers, the equivalent of our deputy ministers, act or serve in fear and trembling in front of their committee and to respond in their own right for their misdeeds. I have marvelled at that difference between the two systems. The statutory authority is much stronger on the Canadian side than on the British, yet the practical responsibility of a British accounting officer is much clearer, much stronger, and much more forcefully enforced through the public accounts committee's investigations and the treasury than is the accountability of the Canadian deputy ministers.

I will close by saying that there are three key issues that I think need examination before this committee in the study of governance and accountability. Issue one is the accountabilities and responsibilities of deputy ministers and their role before the public accounts committee. Issue two is the question of the internal accountability of deputy ministers, and in particular the accountability of deputy ministers to Treasury Board for financial regularity and propriety and efficiency and economy.

The British treasury has taken a very strong role over the years in getting the accounting officers to behave on the questions before this committee, of regularity and propriety, of good behaviour in financial management, and of efficiency and economy. The Canadian treasury has done very little, as far as I can see, in this area. That's perhaps not a fair comment, but I think it's worthy of attention by the committee.

Another difference worthy of attention is that the British public accounts committee finds an ally in the British treasury in ensuring financial probity and regularity. I am not aware that the Canadian public accounts committee has found the Treasury Board an ally in its investigations in trying to ensure financial probity and regularity.

One other area deserves close examination by this committee. It relates to the need to ensure that the system for financial management and accountability is improved. In this, the public accounts committee has a crucial task to perform on behalf of the Parliament and people of Canada. So far, the public accounts committee has been more effective in identifying and drawing attention to problems than in ensuring that problems get fixed.

The present study undertaken by the committee into governance and accountability gives the committee an opportunity to examine its own role and procedures in the processes of accountability. It might find there are better ways than it has used in the past for it to accomplish its essential function in holding government accountable for good financial management.

•(1600)

Thank you, Mr. Chair.

The Chair: Thank you, Professor Franks.

Your knowledge of the subject is so obvious and so much greater than ours, we're certainly glad you're here to give us what to you is an overview but to us is a significant briefing on the issue.

I understand from the clerk that we have circulated in both official languages to all members of the committee, from the Canadian Centre for Management Development, *Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change*, by Peter Aucoin, Jennifer Smith, and Geoff Dinsdale. Peter Aucoin and Jennifer Smith are professors at Dalhousie University and Geoff Dinsdale is head of governance research at CCMD. We also have *Accountability to Parliament for Financial Matters in the British System*, by Professor Franks. That is dated December 8, 2004, and is being circulated in both languages to all members for their edification.

Questions?

Mr. Kramp, please. Eight minutes.

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): Dr. Franks, I'm—

The Chair: Excuse me, Mr. Kramp.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Perhaps I'm missing something — I'd have to check with my colleagues — but the only two documents that I've received are the Library of Parliament paper and Mr. Franks paper on financial accountability to Parliament under the British system. I've not seen the other two documents you mentioned. I'm not saying that I didn't receive them, just that I haven't seen them. I can't say if the same holds true for my colleagues.

[*English*]

The Chair: The clerk advises me that they were e-mailed to your office. They're being circulated to your office. We have some additional copies here. Does everybody have a copy, or do some need additional copies? We'll have distribution provide copies to those who need them. As I say, they were distributed by e-mail to all offices before the meeting.

Mr. Kramp, please. Eight minutes.

Mr. Daryl Kramp: Thank you.

Dr. Franks, welcome.

I want to approach this from a little different perspective, certainly not the constitutional expertise, for the simple reason it's way beyond the majority of us sitting around this table. However, I'm very interested in where you see public accounts and where they might be involved in this, particularly with the relationship of the last number of years of majority governments and issues of political interference, of potential lack of neutrality even through bureaucracies, etc.

I see an opportunity here that hopefully we could seize as a committee, but we're going to need some serious direction. Responsibility, obviously, is the cornerstone of where we're going with this. Whether it's assuming responsibility or dedicating responsibility, when there's a breakdown and it doesn't work, we have a problem. Obviously, governance doesn't work, but also the public loses faith in the system. This is my biggest concern as an individual who talks, as we all do, with our electorate out there. If they don't feel government works well, they don't participate.

We have a declining voter involvement. Is it because they're losing faith in the system? Is it because they feel it doesn't matter? Is it because they feel that we really can't effect change? Is it because recommendations have come before this committee but are ignored time and time again? At some particular point somebody has to make some decisions to see whether or not we'll actually make the improvements that are necessary.

I see all of your suggestions in here, and I've only had a brief time to peruse them—my apologies. But I'm really concerned that we are in an environment in which we have allowed our whole process to be politicized over the years through various administrations. I wonder if you can shed some light. We see that the British system is different. Did our system here start in exactly the same way as the British system? Have we evolved away from the deputy minister's responsibility, or was it a clear change when it happened? Is this process...?

In other words, do you understand where I'm trying to come from on this? Could you give me a real quickie on the process? How did we become so separate?

• (1605)

Dr. C.E.S. Franks: First, the answer is that we began differently. In 1867 the public service in Canada was primarily a patronage public service of appointments by the Government of Canada. There weren't very many public servants either. There were something like 1,200 in 1867. And it has taken many, many years, decades even, to develop a non-political public service where the bulk of the public service is appointed on merit and has long-term careers. Civil servants operate on the basis of neutrality and under the responsibilities of the law and according to the rules, and by and large the Public Service of Canada does a very good job. I think we're lucky to have an excellent public service.

The problem is that 1% or 2% of expenditures are not done very well, or not done according to the rules, and they're the ones that create the outrage and get the attention.

Mr. Daryl Kramp: We heard from a number of witnesses here who felt, for various reasons, to be under some kind of duress in making their decisions. What I'm looking for, as a committee member, is to find a way to circumvent that so that these people have the latitude and the freedom to be able to exercise their responsibility without any pressure from any particular source. Does our parliamentary process allow that right now?

Dr. C.E.S. Franks: Yes, sir, and I think you put your finger on the key question. Perhaps I was using professorial circumlocution, but the whole point of saying that there are statutory responsibilities in deputy ministers and that this committee is entitled to examine how they are held accountable for financial regularity and propriety for the responsibilities they hold in their own right is your committee saying "How immune are you from pressures from the politicians? How clear is it, when you disagree with the politicians...? Yes, ministerial responsibility requires that the politicians can have their way if they want, but how clear is it that these deviations from what you consider the rules and the proper procedures and the principles of economy and efficiency are brought to the attention of the Auditor General and the public accounts committee?" In other words, what does this committee do to protect public servants when they're trying

to follow the rules and the pressures on them are to try to go another way?

That, it seems to me, is where this study of governance and accountability has to lead you.

Mr. Daryl Kramp: Don't you think that if a government of any particular persuasion seems to have a firm hand on the tiller, they're going to be very reluctant to allow any other means by which to inhibit any particular control they have? In other words, if we're suggesting that public accounts should take on an added role of responsibility, basically to see whether or not we should become more involved in the process, I think we might find a great deal of resistance from many sources.

What are your comments on that?

Dr. C.E.S. Franks: I'm sure you'll find resistance, because if you're going to change the system it requires that people change. You can't change the system and not change it. You don't want *plus ça change, plus c'est la même chose* in this sort of thing.

The problem, I think, is that the relationship between deputy ministers and ministers can get too cozy. That creates problems all the way down the system, as you've seen. I emphasize to you that the British public accounts committee, over a hundred years ago, identified that problem and forced their equivalent of deputy ministers to toe the line, to behave in the way that the rules demand.

• (1610)

Mr. Daryl Kramp: Very briefly to sum up, then, you mentioned the old carrot and stick approach, the reward versus the punishment approach. Do you see any particular direction you would suggest on this, or do you think it might take a bit of compromise and maybe a little bit of both, depending on the circumstances?

Dr. C.E.S. Franks: I think it's up to the committee, finally, to decide how far it wants to go. But it seems to me the first step might be to ask the Treasury Board how it holds deputy ministers accountable for the responsibilities they assign and what principles it uses to hold deputy ministers accountable. Then you could ask yourself if you're satisfied with that answer. If not, then you can continue. And when you have a deputy minister before this committee, you could ask that deputy minister to explain how he or she is accountable for their statutory responsibilities under the act.

The Chair: Okay, thank you very much, Mr. Kramp.

[Translation]

You have eight minutes, Mr. Sauvageau.

Mr. Benoît Sauvageau: Welcome to the committee, Mr. Franks and thank you for coming. I've carefully reviewed the document that you sent us prior to today's meeting.

I have a few questions for you concerning accounting officers and the comparison drawn between our model and the British one. I appreciate the comment you made in your opening statement to the effect that governance and accountability may well be the most important issues on the Public Accounts Committee's agenda.

I'd like you to consider the following concrete example. Let's see if our system would have been any better had we had British-style accounting officers on the job.

Deputy ministers have maintained that they were not responsible for the sponsorship scandal or that the ministers didn't consult them. If British-style accounting officers had been in place, would we have been able to get on handle on sponsorship program spending from the very beginning?

[English]

Dr. C.E.S. Franks: It's a very good question, sir. I think the right answer is that if we had the accounting officer system, the deputy minister would have objected to the way the ministers proposed that the sponsorship program would be run. If the ministers insisted on running it that way, then the deputy minister would have sent a letter in writing expressing his objections, saying he couldn't do it. The minister would have had to overrule in a letter, and that correspondence would immediately have gone to the Treasury Board and to the Auditor General.

The point of that system is that it cannot prevent the minister from getting what the minister wants, and that's perfectly right, because they ultimately are the people held accountable by the people of Canada. It does mean that the issue is exposed for discussion in the public accounts committee very quickly. The main point of a decent accountability process isn't, after all, punishing the offenders; it's to deter people from offending because they know they're going to get caught out. That's what the British system does that ours failed to do.

So the answer to your question, sir, is yes.

[Translation]

Mr. Benoît Sauvageau: Regarding this matter in particular, if the Prime Minister of Canada refuses the advice and counsel of the Clerk of the Privy Council at the time, should we not take this to mean that the Prime Minister and the Clerk of the Privy Council are above accounting officers? Do we in fact need a super accounting officer, a person a step up from regular accounting officers, to audit the Prime Minister's actions?

[English]

Dr. C.E.S. Franks: I do not believe so, sir, because the expenditures were made through the Department of Public Works, and the contracts were let through the Department of Public Works. If the deputy minister of the public works department had the personal responsibility for those expenditures and for those contracts, he or she again could say "I was acting under the instructions of my minister", if the minister had overruled in writing. Otherwise, if the accounting officer said "Yes, I will make them", without being overruled, then that deputy minister would be responsible and accountable. It could have a very bad effect on that person's career.

That is the whole purpose of the process of exposing these things early and ensuring that there is full publicity of these problem areas.

• (1615)

[Translation]

Mr. Benoît Sauvageau: I see.

Let me give you another example, then, and you can tell me who you think is responsible: the deputy minister, the minister or the Public Accounts Committee.

The Millennium Bureau of Canada was supposed to release a performance report for 2001-2002. It had undertaken to do so in its 2000-2001 report. However, the performance report was never tabled or ever made public.

Shouldn't the Public Accounts Committee, Treasury Board or someone have sounded the alarm about the Bureau's failure to report?

[English]

Dr. C.E.S. Franks: I am not familiar with that issue. As far as I know, the public accounts committee can do several things. It could invite the appropriate minister or deputy minister—my preference would be the deputy minister—to come to explain where the report is. Or it may suggest to the Auditor General that the Auditor General may inquire into that.

I cannot answer the question because I do not know the details of who promised to issue the report and who had the responsibility for doing so.

[Translation]

Mr. Benoît Sauvageau: We're talking about money, but accountability involves more than money. I realize that this is the Public Accounts Committee, but I have a question concerning official languages, because there are some similarities between the two.

Each department is required to table to Treasury Board an annual report, along with plans and initiatives undertaken in the area of official languages. Treasury Board is responsible for following up on the report's findings.

I have another example for you. Since 60 per cent of all CF positions at DND are designated bilingual, but are in fact staffed by unilingual anglophones, who slipped up in terms of follow-up, reporting and bad governance? We can be critical of the public accounting process, but lack of accountability is also widespread.

Each department tables an annual report. Even when a glaring problem comes to light — for example, 60 per cent of positions designated bilingual are staffed by unilingual anglophones — the department does nothing. Who's to blame for not following up on the report's findings? The department, the deputy minister, the Public Accounts Committee or, in this particular instance, the Official Languages Committee?

[English]

Dr. C.E.S. Franks: Sir, I have not looked closely at the provisions of the Official Languages Act. Deputy ministers hold responsibility in their own right for some aspects of official language policy within a department. I don't know the scope of that.

The deputy ministers also clearly hold responsibility for personnel administration. I read the appropriate section of the Financial Administration Act. With a little bit of research work, it can identify who is responsible. My guess is that it's the deputy minister and the questions should be addressed to the deputy minister. I'm not sure if this committee is the appropriate one to do so.

[*Translation*]

Mr. Benoît Sauvageau: I have two final questions, still on the subject of accountability. Our committee is viewed as an important House committee. How do you feel about the fact that no follow-up action is ever taken on the recommendations contained in the unanimous report that is tabled year after year? Should the committee continue to press its point, even in the face of government inaction? Should we be asking the deputy minister to tell us why he has never complied with the committee's recommendations over the past five years? Or should that be the minister's responsibility?

My last question is this: do you agree more with Alfonso Gagliano, who maintained that a minister is not responsible for his department, or with Reg Alcock, who stated the opposite?

[*English*]

Dr. C.E.S. Franks: I'll answer the last question first. I will give you an absolutely useless answer, because I think it's the only one.

There are two rules to understand about ministerial and deputy ministerial responsibility and accountability. If you can understand them, you can understand the system. Rule number one is that ministers are responsible and accountable for everything, except when they're not. Rule number two is that public servants are responsible and accountable for nothing, except when they are.

• (1620)

[*Translation*]

Mr. Benoît Sauvageau: Lovely.

[*English*]

The Chair: On that piece of wisdom—

Dr. C.E.S. Franks: Sir, can I answer the first question?

The Chair: Yes, certainly.

Dr. C.E.S. Franks: Thank you.

The first question is very important. I go into that in my discussion of the British system. Britain has an established system by which the treasury, their equivalent to the Treasury Board, responds to recommendations of the committee. In fact, the public accounts committee in Britain makes the response by the British treasury its first item of business every year.

I believe that we should establish a similar system in Canada. What we get is a response by the Auditor General, but the Auditor General is an external auditor, not part of the system. The British treasury is part of the system.

The British treasury might disagree with the public accounts committee. In fact, they've had debates sometimes that last for decades over one aspect of accountability and responsibility. Again, it seems to me that our system breaks down at that point. I think you've put your finger on a very important issue that needs to be examined.

The Chair: Merci, Monsieur Sauvageau.

That's an interesting point. We have left it up to the Auditor General to follow up on the reports that come back from the government on their responses to our reports. Maybe we should ask the ministers or the departments to come in and explain what they're going to do, with the assurance that they're going to do it. When the

Auditor General goes back and finds nothing has changed, then we really have something to go on.

Plus, I've asked our research people if they can take the legal requirements of deputy ministers and put them into a report for us. Perhaps we may want to table that in the House of Commons and send it on to the Clerk of the Privy Council to advise all deputy ministers. When they show up here, we could ask them if they're familiar with their legal responsibilities, as well as their administrative responsibilities.

There are things that we can do as a committee. I think this might be an excellent learning experience and a growing experience to make ourselves more effective.

Mr. Carr, please, eight minutes.

Mr. Gary Carr: Thank you very much, Mr. Chairman.

Thank you very much, first of all, for your presentation. I enjoyed it very much.

I want to follow up in the same vein as the chair did, and Mr. Sauvageau as well. I appreciate you talking about responsibility and accountability, and I've said this before, that we as the legislative branch need to hold the executive branch accountable, and we do that through this committee.

I don't think there need to be any changes in terms of the system, which just needs a political will for the members to hold them accountable, and that hasn't happened. I saw this in Ontario; it didn't happen. In all three parties, public accounts didn't work properly. Assuming that, and assuming that this committee takes its responsibility to say we're going to hold the executive branch accountable—and you heard a couple of the examples where things don't change....

You talked very early on, almost in your second statement, about sanctions. As I see it, the problem you have is the legislative branch. There are no sanctions. We can write a report, we can put all the words in there, but there are no real sanctions, because at the end of the day the government of the day is held accountable in the next election by either winning or losing. That's the ultimate sanction to the government.

Since you did raise the issue of sanctions, do you have any suggestions, or does Britain, where you talked about a little stronger...? Are there any types of sanctions that would be possible for a public accounts committee, the legislative branch, to be able to hold the executive branch accountable if in fact there are some circumstances where they don't agree that they've done the right thing, other than as the chairman responds, by calling the minister and the deputy minister in after the third time they haven't fixed the auditor's report and asking, what are you doing? Are there any sanctions, or is that impossible to come about?

Dr. C.E.S. Franks: I think the question you need to address there is through the Treasury Board primarily, and secondly, at the Privy Council Office. But you need to ask the Treasury Board, what do you do to hold deputy ministers accountable when they fail to obey or meet their statutory responsibilities? It seems to me that the main force of the committee is through publicizing these things in a way that encourages the government to behave properly in financial administration.

For what it's worth, the British public accounts committee in the 19th century tried to impose sanctions on accounting officers and say that if they didn't make an expenditure that was approved by law beforehand, then they were responsible for them.

The one I remember best was a British colonel getting captured by brigands in Greece and being held to ransom for £500, which was a lot of money in those days. The British ambassador to Greece paid the £500 and then charged the treasury for the £500. The public accounts committee said this expenditure wasn't authorized in the appropriations and therefore the ambassador should reimburse the treasury for the £500. The treasury didn't agree with this, and the treasury finally won out.

So the committee does not impose any sanctions of that sort. It gets its effect through the seriousness of its investigation of inappropriate behaviour by the accounting officers. This can have an immense effect on the career of accounting officers.

We have a different problem in Canada with deputy ministers, first of all because it seems to me that their main internal accountability and responsibility is to the Privy Council Office; and secondly, and this is related to the first, the average deputy minister in Canada—and I have this in the longer paper but not here—stays in office somewhere around two and a half years or less. The Treasury Board itself is on its ninth secretary in the past twenty years, which means a stay of slightly under two and a half years.

Gordon Osbaldeston, who was a former Clerk of the Privy Council, said deputy ministers think at least three years in office are required before they can do the job properly. That means most of the deputy ministers in Canada leave office before they've really learned their job. That, I think, is a matter of concern to the committee, because we have a career pattern within deputy ministers that means most deputy ministers don't stay long enough to learn their job. There, it seems to me, is the beginning of a problem, because if they aren't there long enough to live with the consequences of their actions before the committee, if they are promoted and transferred before they really have had time to manage their departments, then who are they responsible and accountable for primarily? It's certainly not the department they work for, and it's certainly not the public accounts committee.

I think we have a problem that at the very senior levels our public service has a tricky job of responding both to the politicians and to the public service. There's a risk of the politicians being colonized by the public service, but there's also a risk of the public service being colonized by the politicians. At this point, I fear this pendulum has gone toward the politicization and colonization of the very senior public servants by the politicians.

•(1625)

Mr. Gary Carr: What you said about the deputy ministers not staying in long enough to learn I guess someone could say about the ministers as well. Look at the life of a minister: you just get in there and there is probably rapid change.

Dr. C.E.S. Franks: Sir, over the last two years—

Mr. Gary Carr: I'll just ask this very quickly, if I may, and then let you respond.

My question relates to that whole issue of deputy minister and minister. I don't think anybody around here has been a minister other than my colleague Mr. Christopherson, who has been a minister in the Ontario government. I want to use the Ontario government as a bit of an example. It wasn't his government, but the Harris government.

I'm not telling tales out of school—it's public knowledge, and it was in some of the books—but immediately after the Harris government took over, the premier's office called in all the deputies and said "You report to the premier and not to the minister." What that effectively did was cut the minister off. He knew that his deputy minister didn't report to him.

So when you have accountability for ministers, the principle is that the government is accountable for what they do, and the deputy has to be accountable through the minister. If you allow the deputy to make decisions outside, how do you then hold the government of the day accountable?

Hopefully you've understood the question. Because we're running out of time, I might not have clarified it. How do you hold the government accountable if the deputy minister is allowed to freelance and do whatever he or she wants?

•(1630)

Dr. C.E.S. Franks: I don't think it's quite that simple that the deputy ministers respond to instructions from people other than their ministers. Using my example of the Treasury Board, there have been 12 ministers of the Treasury Board in the past 20 years, which means an average stay of about 1.75 years. That's not long enough either. I think this is a problem, and it's within the scope of this committee to express its concern about the impacts of this on both management and accountability.

In fact, I believe it was Osbaldeston who also found that the average time for a team of deputy ministers and ministers to remain together in the Government of Canada was one year. Again, yes, there's a problem.

The Chair: Thank you, Mr. Carr.

Mr. Christopherson, please, for eight minutes.

Mr. David Christopherson (Hamilton Centre, NDP): Thank you very much, Chair.

Thank you, Professor. I know some folks find this dry, but there are those of us who find this quite fascinating, the whole process of parliamentary procedure and how we go about the business. The people's business is fascinating for us. So, like the chair, I appreciate very much your taking the time and caring enough about this to give us your thoughts, your esteemed thoughts on this.

I don't have questions in any particular order, just some thoughts as things were unfolding.

First I'll just pick up on something one of my colleagues—it might have been Mr. Carr—was talking about, the question of whether or not we need change, which brings in the whole question of the timing and the fact that we're in a minority government, and is this the moment? We have a highly experienced chair. We have a committee that's a good mix of veterans and rookies. Maybe there's an opportunity here.

Do we need to make some changes and ought not wait to seize the moment and build on the momentum we've started here? Or indeed, are the systems and processes and checks and balances in place, but we just need the political will to make them work the way they were originally intended to work?

Dr. C.E.S. Franks: I'm not satisfied that if you accept the Privy Council Office's interpretation of ministerial and deputy ministerial responsibility you can ever have an effective system of control through the public accounts committee and of ensuring proper behaviour. So, yes, I think change is needed.

Yes, I think this committee is a key part of the process. Also, with the outrage that has been produced by the HRDC questions and the questions about the sponsorship program, I suspect that public servants themselves are getting a bit concerned about their reputations and what's happening.

I think the Gomery commission's inquiry is leading people that way. The previous work of this committee is leading that way. The Auditor General has encouraged this sort of thing. I think it's the first time in the 40-plus years that I've been looking at this issue that there is real hope for change on this score. So I encourage you as a committee to do as much as possible.

Mr. David Christopherson: Okay, thank you.

Of course, then the task is to find out what changes we should make. We'll probably seek some more advice on that, should we get to that point down the road.

I'll go on to my next thought. During the testimony of witnesses leading up to the Gomery inquest, I wasn't here, but in reviewing it, it's my sense that the deputy was pretty much saying that in the office, Mr. Guité, the head of the department, was sort of off on his own in some way.

I made the note when you commented that ministers can't easily reassign deputy minister duty to others. I would assume that would mean issues that are in their own right. What are your thoughts on that? What should have been done to ensure that didn't happen? It does sound like a deputy minister was doing exactly what you said a minister—and I'm therefore extending that to a deputy minister—can't easily do, which is to give someone else their lawful responsibilities, unless explicitly allowed to do so.

Dr. C.E.S. Franks: I found that aspect of the inquiry through this committee very confusing. In fact, I found it equally confusing paying attention to the Gomery commission. I can only offer you two answers.

One answer is that the interpretation of ministerial responsibility and deputy ministerial responsibility by the Privy Council Office

says the deputy ministerial accountability to the minister is so important that it's the minister who satisfies himself or herself that the deputy has met the statutory requirements, not Treasury Board, not the public accounts committee. I don't agree with that. I think that's one of the points that needs attacking and investigation here.

At this point, I consider that whole area so confused that it has obscured who is responsible, who is accountable. It's not only where do you assign blame, but the more important question, how do you fix the system? That's the problem.

• (1635)

Mr. David Christopherson: Right.

This is a macro-question on what you've said. I have a couple of more specific questions if I have time.

It's on the whole question of ministerial responsibility and when a minister has a responsibility by tradition to resign. That is never spelled out clearly. My concern is that if we're moving away from accountability by the minister, are we then putting it on public servants, so that they're now carrying responsibilities that were once under the cloak of ministerial responsibility?

How far do you see that going? If you're a sitting minister and something happens 5,000 kilometres away unrelated to you—you didn't get involved in the issue, but it's huge, and there was a systemic breakdown—where is that responsibility theoretically? Is it with the deputy minister, who's supposed to make sure the administration works, or with the minister, who at the end of the day is accountable for everything?

Dr. C.E.S. Franks: I addressed that a bit in my longer paper, which you do not yet have; it has not been translated. The answer is not simple. The answer is that normally ministers do not resign for errors made by public servants. There are exceptions to that. If the error made by the public servant is on the personal instructions of the minister, or if it is in accordance with a policy approved by the minister, then the minister clearly holds the responsibility and is accountable. If the error is made by the public servant against the expressed policies of the minister and without the minister's previous knowledge, then the public servant is responsible and accountable. The responsibility of the minister is to say, "Yes, I acknowledge that a mistake has been made and I've taken steps to correct it."

The tradition is, on both sides of the Atlantic, that ministers do not resign for errors made by public servants when the ministers were not previously aware of the intention to commit that act and where the act is contrary to the policies of the department.

The Chair: You have one minute.

Mr. David Christopherson: Thank you, Chair.

Let me step that out one more level. What about the deputy ministers? They're more directly responsible for the actual administration. Again, has it just become a disciplinary matter, and does it depend on whether they're following policies or are off on their own as mavericks?

Dr. C.E.S. Franks: My question in the sponsorship program is to what extent did the deputy minister make the minister aware of the problems in the way the program was being administered, and to what extent did the deputy minister not meet his obligation under the Financial Administration Act? I do not know the answer to either of those two questions. Perhaps your committee could find out.

Mr. David Christopherson: If I start another question I'll be way over time, so I thank you, Chair, and I thank you very much, Professor.

The Chair: Thank you, Mr. Christopherson.

Mr. Allison, you have eight minutes.

Mr. Dean Allison (Niagara West—Glanbrook, CPC): I'd like to go back to the question we have touched on a few times, which Mr. Christopherson also mentioned, that maybe this is a good time, given where we are with a minority Parliament, to look at areas where we could be more effective as a committee in terms of responsibility and accountability. Let's just go back to that question for a minute. I realize that in eight minutes you probably can't cover it off, but I think we're on to something here that I would like you to flesh out a little more in terms of your thoughts on how that would happen.

We understand that there has to be political will. The question is, if we can't get that—if it's not possible—then what types of things can we do to move more in that direction?

Dr. C.E.S. Franks: I can use a hunting analogy. If we call the ministers “big game” and the deputy ministers “small birds”, you have to ask which you're going for. If you go for the ministers, you're always after a political target; it's always going to become political. If you go after the deputy ministers to ensure their accountability—the small game—then you are not ultimately, you hope, dealing with political issues. What you are dealing with are administrative issues, and what you have to ensure is that in the areas of financial administration and management, the deputy ministers are following the rules as set down in the statutes and as laid out by the Treasury Board. These are issues of efficiency and economy, of value for money, of obeying the rules, of regularity in acting as good citizens, which is propriety. Those don't have the sex appeal of going after the big game: you can't really hang a duck's head on your wall the way you can a moose's or an elk's.

But I'd put another answer to you there. What happens when you go after politicians is that the other side, the government side, protects itself, and you don't succeed. In fact, the history of the public accounts committee in Canada is over a hundred years of failure, because it has always gone after scandals and hasn't succeeded. If there were ever a moment in the history of Canada when the public accounts committee could put that aside and act on the basis of consensus—I'm not saying you have to be non-partisan, because you're motivated by partisan influences as well as your desire to serve the people of Canada, or you wouldn't be here—to tie together the concerns of the governing side with protecting government and the opposition side with having a good investigation, you could wind up making the kind of investigation into these issues, of governance and of trying to insist that the system reforms itself, that's never happened before.

I hope I've answered your question there, sir.

• (1640)

Mr. Dean Allison: You have.

As we move forward as a committee, then, where once again are the teeth to make this happen? Are they just in the fact that we are unanimous, or that both sides get together and say these are the things we need to...? Where's the follow-through, at the end of the day?

Dr. C.E.S. Franks: The first thing you need to do is a good study; the second thing you need to do is a good report; and the third thing you need to do is, once you've produced your report, invite the Treasury Board officials, the Privy Council officials, the Auditor General perhaps, to comment—and other people who want to comment on that report. Then push to the next step of saying: we still believe in what we've said here; now let's see it happen.

Let me add one other thing here that perhaps I shouldn't say. That is, that you have a fairly urgent timetable, in a minority Parliament, because they normally don't last as long as majority ones.

Mr. Dean Allison: What I hear you say, and I don't want to oversimplify this, is that instead of looking at scandals, we should be looking at process.

Dr. C.E.S. Franks: It's not an either/or relation, but the issue isn't to expose atrocious behaviour by politicians or by public servants necessarily and stop there and say: “Goody! We've done it. We've expressed outrage, and the citizens of Canada have lost their faith in the government.” The point is really, it seems to me, that one of your duties as parliamentarians, on behalf of Parliament as a whole and the people of Canada, is to say “Let's fix the system so that we can get on to more useful things to discuss than scandals”, because you have a job on behalf of the people of Canada to get the right programs and policies, not deal with these rather small issues of administration that create so much attention in the press.

Mr. Dean Allison: You're saying it's a question of taking it to the next step, then, and making sure we're trying to fix the system and go to the root of the problem rather than always looking at the symptoms.

Dr. C.E.S. Franks: Yes, sir.

Mr. Dean Allison: You talked about asking the question concerning Treasury Board and deputy ministers' accountability. How, in your opinion, are the deputy ministers held accountable right now by Treasury Board?

• (1645)

Dr. C.E.S. Franks: My interest is in the Treasury Board, and I consider it the weak sister among all the players within the government in terms of the accountability of deputy ministers. I think it should be the strongest one, because it's the one of the central agencies—including departmental ministers too, for that matter—that has the same concerns as this committee about regularity and propriety, about economy and efficiency and value for money. And I think the point this committee needs to attack—or more accurately, direct its inquiry to—with the Treasury Board is how it holds deputy ministers accountable internally for these matters, because I do not know.

The Chair: One and a half minutes.

Mr. Dean Allison: You can keep going, sorry.

Dr. C.E.S. Franks: No, I could stop there, because that, it seems to me, is the main issue. The Privy Council Office's concerns are with the political issues, with the government as a whole, with policy development. The Treasury Board is concerned with good financial and personnel administration. That is where I think the focus of your inquiry has to be.

Mr. Dean Allison: So you're suggesting that, as a possibility, we should invite the Treasury Board and ask them the question of how they hold deputy ministers accountable.

Dr. C.E.S. Franks: Not just how they hold them accountable, but also how issues like the ones that arose in the sponsorship program were allowed to arise in the first place, and to go on for so long. Is there anything else like this, that you don't know about and they do know about, but just haven't told you about? The problem I see is that the internal controls broke down in that program, among others.

Mr. Dean Allison: Thanks.

The Chair: Thank you, Mr. Allison.

Mr. Holland, please, eight minutes.

Mr. Mark Holland (Ajax—Pickering, Lib.): Thank you very much, Mr. Chair.

Thank you very much, Dr. Franks. I have a couple of points, the first being more of a cautionary note. I want to make sure I understood your comments correctly, and there's no confusion.

I think Mr. Sauvageau posed the question with respect to the sponsorship affair, that if there had been deputy minister accountability, the whole affair wouldn't have happened. I certainly am not opposed to the idea of investigating accountability, or increasing it, when it comes to deputy ministers. I think that's important. But ultimately, even if that accountability is in place, if the deputy minister is not an upstanding individual who follows through on the objectives of their job properly, then one could still very much have that problem. We use the example of Britain, but Britain isn't exactly the white castle on the shiny hill. It's been very scandal-plagued itself.

So I would make just the cautionary note that we can do these things, but I can guarantee you that if one particular thing is in place, and everybody's going to behave and be fully accountable....

But that's more of a cautionary note. I don't know if you'd want to comment on that.

Dr. C.E.S. Franks: No, I accept what you say, although I do think that in Britain there is a much stronger deterrent force, in the public accounts committee, in preventing that.

You can never prevent all scandals. If people want to misbehave, they will. But you can make them aware that there are serious consequences for what they do, and they will be forced to face up to those consequences sooner rather than later, in a way that's more serious than trivial, and in public rather than in private. That's what the British public accounts committee succeeds in doing.

Mr. Mark Holland: You made a comment that I quite agree with, and that's the need to get beyond scandal and really get to the business of improving the mechanics of the various processes, to ensure that these mistakes...and again, whether it's accountability or not, or other items.

I think that is a big problem. Ultimately, there's a reason why these things are politicized. It's part of our process. There's obviously a lot to be gained out of a juicy and salacious breaking story that in some way will be seen as detrimental to the government of the day. Given that backdrop, how does one...?

You mentioned the issue of deputy ministers. I guess there's the possibility that some of this political process is inferred with regard to deputy ministers. How do you create a balance between ensuring that you have accountability and actually getting to the meat of the matter, which is how you improve it?

Second, you talk about how in England they're terrified to come before the committee. I guess that's a good thing if they did something wrong, but it's not such a good thing if they're terrified in general just because it's a highly politicized environment where they're going to get ripped to shreds, be cross-examined, and tried to be used as political tools. There's a fine balance there. How would you define that balance as being achieved?

Dr. C.E.S. Franks: First of all, the accounting officers only go before the public accounts committee when their auditor general states that they've done something wrong. In other words, it must be in the auditor general's report first. So their terror would come from acts of commission on their part.

It's very different from Canada in that the public accounts committee and the treasury in Britain insist that deputy ministers, the accounting officers, agree with the auditor general's report. By the time the report comes before the committee, there's no disagreement about it, or if there is, it's recorded along with the report. If there is disagreement, the accounting officer is at fault, not the auditor general.

Yes, members of Parliament in Britain, like members of Parliament in Canada, belong to political parties and have political motives, but the committee itself operates on the basis of consensus. There's never a minority report. Normally they agree on what they're doing, because what they're doing is preserving the public service and the standards of good financial management on behalf of the people of their country and of Parliament.

Ultimately, in the British system, just as in the Canadian, the opposition members on the committee are hoping and expecting that someday they will be in power. They want the public service to be able to serve them as effectively as it did the government before. They don't want it to be tainted with partisanship. So they take a very strong interest in making sure that the public service is protected from improper political influences.

• (1650)

Mr. Mark Holland: Perhaps you could reconcile this for me. I'm not asking you to be a champion of the Privy Council, obviously, but without the benefit of having them here to ask them their side of why they don't feel this is an appropriate direction to take, would you be so kind as to tell me, because I haven't been enlightened on this previously, why they hold the position they do? What are the arguments they're putting forward, and what is your response to those arguments?

Dr. C.E.S. Franks: I could defend them on one ground and explain it on a different one.

The one ground that I would defend them on is that with the enthusiasm of the Canadian Parliament for scandal-hunting, and the enthusiasm of the Canadian parliamentary committees for scandal-hunting, including, in the past, the public accounts committee, the government quite naturally responds by protecting itself. It protects itself by defining responsibility in a way that the ministers are able to respond to in Parliament and protect the rest of the system from assault.

The other answer, which is slightly less savoury, because I can sympathize with the first, is that we have very long-lived governments in Canada, both as parties and as prime ministers. The prime ministers in Canada stay in power, at least the long-lasting ones, much longer than British prime ministers. We tend to get a relationship that develops between the senior public service and the party in power that makes it very difficult for a new party coming in to take over the system, to trust the public servants. And it's very difficult for those in opposition to think like future ministers. That is part of our problem.

Mr. Mark Holland: I was sort of referencing this earlier, but one of the concerns I really have about giving more direct power to committees to sort of embolden their efforts to go on those scandal hunts...which sometimes yields positive results. They do find things that should be changed. However, this can quite often divert an enormous amount of attention, energy, and other resources that could have gone elsewhere.

If one gives committees that particular opportunity, how does one ensure that they don't do what has been, as you've rightfully pointed out, something of a tradition in the Canadian Parliament, which is to use all of the committee's time, energy, and resources hunting for these juicy pieces that can be held up in newspapers and what not, and for very political purposes? How does one avoid that? It is a concern. That's more of a rhetorical question than anything else.

On the second comment you made, the flip side is that in terms of members of Parliament—for instance, members like me—we in Canada have one of the highest turnover rates of any western nation. It's higher than in Italy, for example. It seems that in terms of the collective lives of individual MPs, we're not as fortunate as the prime ministers.

That's just a little notation.

Dr. C.E.S. Franks: Well, at this point we have longer-serving members of Parliament, by and large, than we've had at any time previous in Canada's history. Of course, in 1993 we had the highest turnover we've ever had, almost 70%, but it's calmed down and I'm hopeful it will remain lower.

One of the reasons for the high turnover is that in most elections between 15% and 20% of members of Parliament have chosen to leave. That's what I call voluntary retirement or “desire”, and that's higher than turnover from all three factors—defeat, desire, and death—in most parliaments, certainly more than in Britain or the United States. There is a problem.

Just to make, again, a gratuitous aside, I'll say that one of the main factors that affects members' desire to stay in office is the level of pay. If you're losing money by being in Parliament, you have less

incentive to stay than if you're not. It's a very difficult life, and I have a lot of sympathy for members of Parliament on that score.

I can very quickly and easily answer the question on the previous one, how you ensure a committee doesn't hare off after scandals when it has an important job to do. It is that the committee members must agree it's an important job and go after it.

As I say, I have more optimism about this committee on this very important study it's engaged in than I've ever had about any other committee looking at a major issue of governance in a Canadian parliamentary committee. I wish you luck.

• (1655)

The Chair: Thank you very much, Mr. Holland.

Mr. Fitzpatrick, please.

Now we're moving on to round two, so this will be five minutes.

Mr. Brian Fitzpatrick (Prince Albert, CPC): I guess part of the job here is to avoid buck-passing and to have people be responsible for their jobs.

If we make recommendations on governance to try to improve the system.... I have a number of points here I've marked down, and I'm looking for feedback on whether you would encourage us to move in that direction or not. The first one is that deputy ministers accept their statutory responsibilities and obligations unless they have been specifically overridden by the political minister. Would that be something you think we should seriously look at doing here?

Dr. C.E.S. Franks: Absolutely. I also think that clarifying both their statutory and other responsibilities is an essential step in that process.

Mr. Brian Fitzpatrick: The second one I've marked down concerns when a deputy minister does appear before this committee. We're the masters of our own destiny in this committee, so when deputy ministers have clear-cut statutory obligations or legal obligations that are imposed upon them, we should be holding the deputy ministers fully accountable at their appearances as witnesses in this committee for discharging those obligations.

Dr. C.E.S. Franks: Yes. This is the second stage of what I was saying the accountability process is. It's the stage, really, of making them answer or give an account for what they've done or failed to do. That's correct. I think they should be answering in their own right as long as they have the responsibility for that.

Mr. Brian Fitzpatrick: And then I've made a number of notes on Treasury Board here. To me, this would look like a substantial overhaul of the Treasury Board. I've marked this down here: implementing and executing recommendations and in some cases imposing sanctions on deputy ministers who have failed to discharge their legal obligations.

Dr. C.E.S. Franks: I'm not sure about the Treasury Board's ability to impose sanctions. You see, in Britain the treasury combines both the functions of the Privy Council Office and the Canadian Treasury Board.

Mr. Brian Fitzpatrick: So who should be doing that if it's not Treasury Board?

Dr. C.E.S. Franks: Ultimately the Privy Council Office should, I believe, or the Prime Minister. Certainly, I think the Treasury Board should do more insisting that deputy ministers do follow their regulations and the statutory requirements.

Mr. Brian Fitzpatrick: Dr. Franks, I practised law for 25 years in a small town environment. My advice to anybody is that when you take somebody else's money without lawful purpose and use it for yourself or for the benefit of somebody else, you're going to get yourself into a lot of problems. You might even spend some time in the crowbar hotel. But as soon as we get into this environment here, it seems to me that advice doesn't hold up. There are no sanctions, it seems to me, being imposed on people for doing those things people pay a big price for in the real world.

• (1700)

Dr. C.E.S. Franks: I raise that problem in more detail in my remarks. For example, one issue here—which you as a lawyer would appreciate, sir—is that the Privy Council Office defines personal responsibility as meaning there's a person who holds the responsibility. Personal responsibility for a lawyer means that if you sign a document as a lawyer, you are responsible for that. It doesn't matter whether you go to another law firm; it's still your responsibility; it stays with you.

Mr. Brian Fitzpatrick: You would believe that Treasury Board should be providing on an ongoing basis some clear guidelines to deputy ministers on what their responsibilities are?

Dr. C.E.S. Franks: Yes, and raking them over the coals when they fail to adhere to them.

Mr. Brian Fitzpatrick: I have one last question. I talked to a person who was a veteran of a government department here many years ago, and this goes back a long time; it would be the C.D. Howe days. My recollection of his version is that deputy ministers and people in departments were terrified of the Treasury Board in that day. Maybe back in the days of C.D. Howe we had some of the British principles in place, but this has been changed somewhere along the line.

Dr. C.E.S. Franks: It might have been C.D. Howe they were terrified of rather than the Treasury Board. You see, at that point the Treasury Board was part of the Department of Finance.

Mr. Brian Fitzpatrick: If I could, I'll make one more observation, please, Mr. Chair.

The Chair: Very quickly. I'm generous today.

Mr. Brian Fitzpatrick: Some comments were made about the British system, but they're not lily-white on that. It seems to me most of the political scandals at the ministerial level with the British are more along the lines of the Clinton-type of problem that occurred in the United States rather than major scandals of mispending of money. Maybe I'm wrong on that, but if somebody could point out to me some major scandal in my time that dealt with misuse of public moneys, please do. I'd like to know what it was.

The Chair: Mr. Franks.

Dr. C.E.S. Franks: I'll just give a very brief answer. There's no question that the minister is personally responsible and accountable for personal acts and decisions. It is very interesting to me that the

British do seem to have an enthusiasm about the private lives of their politicians that somehow the Canadian press lacks. Maybe the British are just different; I don't know.

The Chair: Mr. Murphy, please. Five minutes.

Hon. Shawn Murphy (Charlottetown, Lib.): Thank you very much, Mr. Chairman, and thank you, Dr. Franks.

I was on the committee back in April when you made your first presentation. I certainly appreciated that presentation and I appreciate this one here today. I certainly agree with the fundamental recommendation you're making here today.

I have a question, and perhaps we can go back to the British experience. We have here a situation where we have a minister who appeared to be engaged in activities with his department he should not have been engaged in. We had a deputy who, in his own words, was outside the loop as to this behaviour and didn't see his role to be part of the loop.

We have a third function that could have stopped the train from going off the rails totally, and that's the function of internal audit. We had one situation—and I lived through this back in January, February, March, April, and May—with one audit that clearly identified the situation; it said you have to distinguish the roles here. Had that been done, I think, the problem would have corrected itself. The public works department said they weren't going to do it.

My question is going to be on the British experience. I know you're not going to get into the details. If they had followed the advice of the audit...but they didn't. The second audit was done by an external auditor, and in your words, it seemed to be that the external audit was “colonized” by the senior bureaucrats in the department, so we lost both those opportunities. Now, you've obviously made an exhaustive study of this, so how is an internal audit handled in the British system, and are there any improvements from that system we could recommend that would have helped in this particular case?

Dr. C.E.S. Franks: I'm not closely familiar with the internal audit, but I can give you an answer that I think does answer your question. In Britain it's made very clear that the deputy minister can devolve internal responsibilities for audit, for administration, and for making financial transactions to other public servants. That's very clear. But that's an internal delegation of administrative responsibility, and the responsibility and accountability for the financial behaviour of the department as a whole remain with the accounting officer, regardless of that delegation.

What this would mean in Canadian terms is that if we'd had that, it wouldn't have mattered that the deputy minister had delegated powers or said somebody else was doing something; he could not have been left out of the loop. If he had been left out of the loop, then that would have been his fault and his problem and he would still have been responsible. I think it makes the internal audit a much more effective process if the person for whom the audit is being done—who is the deputy minister, the manager of the department—always has the responsibility.

•(1705)

Hon. Shawn Murphy: But in the British system, the internal audit reports to the accounting officer?

Dr. C.E.S. Franks: The internal audit is part of the financial administration of the department, which is the responsibility ultimately of the accounting officer, yes.

Hon. Shawn Murphy: I agree with you that if the deputy minister were accountable to Parliament for the operation and probity and efficiency of the department, it probably would have put a lot better controls on it. I agree with that.

But in this situation, the deputy minister would report to the Clerk of the Privy Council and the deputy minister would, by statute, be responsible for administering the department in accordance with the normal Treasury Board checks and balances in accordance with the Financial Administration Act, which the deputy minister obviously didn't do.

Do we not have a chain of accountability going up through the Clerk of the Privy Council?

Dr. C.E.S. Franks: In theory that exists.

In Britain, it would not be used by the accounting officers in their position as accounting officers for financial regularity, efficiency, propriety, etc. That's their responsibility; they are the ones who have to say "No, Minister", and the correspondence then gets passed on, bringing it to the attention of the others.

The appeal to the Clerk of the Privy Council in Britain is used rarely, and for other things.

My concern in Canada is that it again becomes part of the process of colonization of the bureaucracy by the politicians, because the head of the public service in Canada, the Clerk of the Privy Council, has two functions. He has to speak on behalf of the public service to the politicians, the Prime Minister in particular, and on behalf of the Prime Minister to the public servants. That's a very difficult balance to maintain, and I'm not convinced that we always handle it properly. I think that does affect the usefulness of that route of appeal to the Clerk of the Privy Council.

Hon. Shawn Murphy: In many respects, there was no chain back to Parliament?

Dr. C.E.S. Franks: There was no paper trail on that.

The Chair: Thank you, Mr. Murphy.

[*Translation*]

You have five minutes, Mr. Sauvageau.

Mr. Benoît Sauvageau: I apologize, Mr. Franks, if you've already answered my question. In order to put in place accounting officers, as you have suggested, we simply need to amend the legislation. Correct?

[*English*]

Dr. C.E.S. Franks: I've wrestled with that, sir. The answer I gave in my paper—which you do not yet have—is that we have more statutory provisions at present leading towards an accounting officer approach than Britain does; Britain created the position of accounting officer without recourse to statute. If we were to do it in Canada, the first requirement, I believe, would be a provision in

the Financial Administration Act saying that if minister disagrees with a deputy minister's advice and decision, the minister may overrule that deputy minister, but it must be in writing and the correspondence must be passed on to the Treasury Board and the Auditor General. That seems to be a crucial one because it clearly identifies responsibility as lying with the deputy minister, unless overruled.

The second requirement would be simply to clarify the general responsibility for financial management and propriety and regularity of the deputy ministers.

I'm not sure they're necessary, but if we wanted to do it, those would be the two requirements.

•(1710)

[*Translation*]

Mr. Benoît Sauvageau: Thank you very much.

The Chair: Thank you very much, Mr. Sauvageau.

[*English*]

I've got a couple of questions of my own, and then I think we'll wrap this up. We can then perhaps get back and deal with the notice of motion from Mr. Christopherson, and then we'll move in camera and see if we can wrap up the public accounts committee report.

Professor Franks, it seems that the government has tried to think of everything. I'm thinking back to the time when the Privacy Commissioner actually spent money that had not yet been appropriated by Parliament; in essence, his mentality was that he had gone into next year's budget, but of course it had not been appropriated by Parliament. He went about a quarter of a million dollars over. I raised a point of order in the House of Commons, thinking that it would require a supplementary estimate to legitimize and regularize this quarter-of-a-million-dollar expenditure for that particular year. But of course in response I was told there was an exemption in the Financial Administration Act that if somebody spends money that has not been appropriated by Parliament, then it's okay anyway.

We seem to run into this problem time and time again, that somebody has figured it out ahead of us. Have you any words of wisdom on this issue?

Dr. C.E.S. Franks: I can tell you, that issue has been one of the major concerns of the British public accounts committee for decades. Some time early in the 20th century, after about 50 years of looking at that, it finally managed to reduce the practice to manageable proportions.

We do have a problem in Canada. It's an appropriate area for the public accounts committee to inquire into. The main problem in Canada, as in other areas of the public accounts committee's inquiry, is follow-up. Again, you get back to what is the responsibility of the Treasury Board in this, and does it meet those responsibilities. I would suggest you direct your inquiries there.

The Chair: You mentioned that the whole objective is to motivate ministers and deputy ministers to stay within the narrow constraints of honesty and integrity rather than closing the barn door after the horse has gone. One suggestion, and this was more for ministers and does not apply to deputy ministers, is that if a deputy minister is being asked to do something by the minister that he or she considers unethical and they can't agree that it's unethical and if the deputy minister insists that in his opinion it is so, then he would be required to write to his employer, i.e., the Prime Minister, with a copy to this committee, the public accounts committee. It would say something like "Mr. Minister, I find that your proposal is such and such, and if we can't reach agreement, then it is, in my opinion, unethical."

That would be a serious motivator to the minister to think he or she should back off, because if the letter goes to the public accounts committee it will be out there in the general public domain, so perhaps he or she will leave it alone. Do you agree with these types of motivators?

Dr. C.E.S. Franks: Yes. By and large, my impression is that deputy ministers in Canada do not agree with me on this. I am puzzled by that, because I think it would make life easier if that structure existed. It would be very clear that they are following the rules and the principles of good financial management and it would be very clear, when they're not, that it's not their problem, that somebody has overruled them. They don't seem to like that. Again, I wonder why, but it seems to me it would make life easier.

The Chair: It certainly would make it more black and white for them, for sure. There's no question about that. I do agree with you, it's easier. It's a mechanism, an escape valve. If they cannot agree and the deputy minister insists that in his opinion it is not ethical, then he has something to do with it.

Dr. C.E.S. Franks: Yes, there are fairly clear cases where say you're making payments when you have no proof that the work has been accomplished. There are murky ones of value for money, and in those ones you do begin to intrude into policy and it's by no means so clear. There have been issues like that in Britain, but the really important ones have been pretty clear ones of simply following rules or following the basic honest management, not the murky ones.

The Chair: Mr. Christopherson.

• (1715)

Mr. David Christopherson: May I get a quick question in? You did say at the beginning of this session that where there was an opportunity you might afford me a couple of minutes on a second round. I only want to ask one question.

The Chair: Is there agreement that Mr. Christopherson can have a couple of minutes?

Some hon. members: Agreed.

The Chair: Mr. Christopherson.

An hon. member: In the spirit of the season.

Mr. David Christopherson: Thank you very much. I appreciate that.

In the spirit of the season.... Well, I have a gesture for you later on, before the meeting's over, to return in kind, and you'll be very appreciative that you are so generous right now. I thank you all.

I did have a chance, very quickly, to peruse the document that you tabled soon after you and I had spoken. I noticed on page 18 that you said there were three key factors that permit the British public accounts committee to maintain its importance. So once they fix it, how do they keep it that way? What feeds into it from the political side to keep it that way? You point to one. Your first point is it's composed of able and long-serving members. I am quoting directly:

It is a matter of great prestige to be appointed to the committee, and members have to wait for an opening before they are considered for appointment. Once appointed, they remain on the committee for a long time.

We have one example that I know of, in our chair, where you could say that applies, but beyond that, the majority of the committee are not only rookies to this committee but rookies to Parliament.

Do you have any thoughts on how we codify that? That's the difficulty I see.

Dr. C.E.S. Franks: There's a history behind that. If you go back to the special McGrath committee report on the reform of the House of Commons of 1985, you will see that they made a recommendation that members be appointed to serve on a committee for the life of a Parliament. That didn't last very long, only until the parties decided that if they felt like changing membership, they would, and reverted to the previous approach.

When I talk about colonization, one of the real problems of parliamentary committees like this one is that sometimes they get colonized by the parties. So it's not really a committee of members working together for a single objective or an objective they agree on, it's members from different parties with different interests competing in front of the committee. At this point, I can only direct you to the recommendations of that committee, and the question is, can we do that? That's up to the Parliament.

The Chair: Okay, thank you very much.

On that point, I've always said that there's enough accountability to be dealt with at this committee without having to worry about partisan politics. If we stay on accountability, then we can focus on what, as Professor Franks has indicated, is the role of this particular committee.

Professor Franks, I would like to thank you again for coming forward here today. We always appreciate your knowledge, your insight. You have excelled again today. We have much to think about, based on your presentation, so we thank you.

Dr. C.E.S. Franks: Thank you, sir, for giving me this opportunity. I wish you all a merry Christmas.

The Chair: We wish you and your family a merry Christmas too.

We're going to have a notice of motion by Mr. Christopherson, then we're going to suspend for a couple of minutes until we turn the cameras off, move in camera and finish off the report.

Mr. Christopherson, please.

Mr. David Christopherson: Thank you, Chair.

I seek two areas of guidance. One is which notice of motion are you referring to, the one I served last week or the one I'm about to serve today?

The Chair: The notice of motion that you served last week has been served. The other one is the new one that you are to serve today.

Mr. David Christopherson: Right. I did consult with the chair earlier. For a host of reasons, I'm prepared to stand down my notice of motion from two weeks ago until the first meeting of the new year. If that's okay with the committee, I'll stand that down.

The Chair: I'll put that on the agenda in the new year.

(Motion allowed to stand)

Mr. David Christopherson: That's your return favour, Mr. Carr. I've stood down an order of business that could have got us going like this; it's not going to happen now. Merry Christmas.

The next one, I'm not so sure—

Some voices: Oh!

The Chair: Okay, hold it.

Mr. Christopherson, please.

Mr. David Christopherson: Thank you, Chair.

If I may, I'll seek a little guidance. The notice of motion would read that the Standing Committee on Public Accounts request that the Auditor General of Canada study the Millennium Bureau of Canada and report the findings to Parliament.

If I might be allowed, Chair, I sincerely seek guidance here. People know what's going on. You also know that I'm not aware of anybody else, but certainly I've made no allegations in regard to this. It's simply a matter that questions have come up that we've been trying to answer. I honestly seek some guidance, because I understand this could take a while if we go this way.

Where we are right now, as I understand it, is that two meetings ago I asked our research people if they would take a look to see if there was an audit done by the Auditor General, or any internal audits that would give us a chance to look at this, so we could have a quick look to see if there were any concerns raised to give us cause to continue to pursue it, or does it look so clean and tight that there are no problems and we don't need to go down this road any more and we can consider the matter settled?

The report came back. There was no audit by the Auditor General and no internal audits carried out.

• (1720)

The Chair: Exactly what advice are you seeking? You're basically into a debate in support of your motion, is what you're doing.

Mr. David Christopherson: I was putting it in context for anybody who hadn't been following it in absolute detail, since there was at least one other member sitting in.

All I'm seeking is.... The minister has said that there is an audit. He used that word, I believe, in the House. It hasn't turned up yet. I understand that the committee staff are pursuing this to see if there is said audit. My concern is if there isn't.... If there is, things take care of themselves. The audit will either say there's a problem or not. If there isn't, then—

The Chair: My advice to you is that we are going on a Christmas break today and will not be back until January 31. I'm quite sure our

research department people will be able to find the report that was mentioned by the minister and have it circulated. If it has and you're satisfied, you don't need to raise the motion from the table. If you're not satisfied, you can raise the motion from the table.

You've given us a notice of motion—

Mr. David Christopherson: What if there is no report? What if there is no audit? I understand this could take a while. Could we simply call in the minister or the deputy or an appropriate person to—

The Chair: Yes, you can bring that to the steering committee. The steering committee works by consensus. If there is no consensus—i. e., they don't agree with you—you bring it to the main committee, at which time there is a vote. Then if you would want to, you could pursue a different angle.

Mr. David Christopherson: Right now, then, this will be on the table for the next meeting. In the meantime, the staff will continue to work away with the minister to try to find said audit.

The Chair: That's correct.

Okay, we've received a notice of motion.

Mr. Murphy and Mr. Holland have something to say.

Hon. Shawn Murphy: Mr. Chairman, I am seeking a point of clarification on Mr. Christopherson's first motion. I want clarification on paragraph one, and you are probably the best person to give that, Mr. Chairman. It is on the appointments, that this committee has reviewing responsibility. I've been on the committee for three years now, and I'm not aware of any. Are you aware of any, Mr. Chairman?

The Chair: There's only one, and that's the Auditor General of Canada. I understand, as Mr. Christopherson mentioned, that this is a standard motion that has been tabled at every committee. This committee only deals with one appointment, that of the Auditor General of Canada.

Hon. Shawn Murphy: So the next time the auditor came, we would be following this procedure.

The Chair: It's once in a ten-year situation, because it's a ten-year, non-renewable appointment.

Mr. Holland, and then Mr. Sauvageau.

Mr. Mark Holland: No, it's okay. I had a question that was answered earlier.

The Chair: Okay. Mr. Sauvageau.

[Translation]

Mr. Benoît Sauvageau: I'd like to ask Mr. Christopherson if he agrees, in paragraph 4...Maybe my question does not make any sense. We cannot amend the motion, but I do have a question nonetheless. Are we in fact talking about the notice of motion that is four paragraphs long?

[*English*]

The Chair: The notice of motion was given at the last meeting. The motion is not before the meeting at this point in time. Therefore, I'm going to rule these out of order. They will be dealt with in January, if Mr. Christopherson lifts his motion from the table.

I'm going to suspend for two minutes to cut off the cameras, and then hopefully we'll be able to move in camera for a few minutes to deal with the final part of the report.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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