



House of Commons  
CANADA

## Standing Committee on Public Accounts

---

PACP • NUMBER 021 • 1st SESSION • 38th PARLIAMENT

---

EVIDENCE

**Monday, February 21, 2005**

—  
**Chair**

**Mr. John Williams**

All parliamentary publications are available on the  
"Parliamentary Internet Parlementaire" at the following address:

**<http://www.parl.gc.ca>**

## Standing Committee on Public Accounts

Monday, February 21, 2005

• (1535)

[English]

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

Our witness today is, as an individual, Mr. Arthur Kroeger, who is well known in Ottawa circles.

Mr. Kroeger, before we get to you, I hope you will allow us to defer to an item of business. I had actually planned to have a steering committee meeting before we started. Because the chair ended up at the wrong address, it didn't become feasible. We've moved some of the business to the main committee here.

Monsieur Sauvageau has a motion that he gave notice of last Thursday, which I have here, that given Commissioner Gomery's decision of February 10, 2005, that contracts for public opinion research and strategic advice, chapter 5 of the November 2003 *Report of the Auditor General of Canada*, would not be examined by the Gomery commission—we can refer to pages 12,788 and 12,789 of the evidence—the standing committee undertake to investigate and report on the matter of research and advice contracts awarded.

Mr. Sauvageau, speaking to your motion.

[Translation]

**Mr. Benoît Sauvageau (Repentigny, BQ):** Mr. Chairman, you must surely recall that during the committee proceedings on the sponsorship scandal, our debates dealt with chapters 3 and 4 of the Auditor General's report. We also dealt with chapter 5 of the report, on public opinion research, on the advice concerning contracting for public opinion research and on strategic advice, some of which was verbally delivered.

In chapter 5, overall, the Auditor General seemed satisfied. There were some specific features within chapter 5 concerning Earnsccliffe and the Department of Finance, amongst others. The Auditor General had some doubts on this issue. Several months after having asked Justice Gomery if it would be possible to ask questions about chapter 5 of the Auditor General's report and after his refusal as it is not part of his mandate, I believe, since that is the case, that we should not leave the important issue of chapter 5 of the Auditor General's report pending.

Therefore, I move that the public accounts committee take up from where the Gomery Commission left off and do its own inquiry

and report on the issue. This is what I am asking your committee to do.

[English]

**The Chair:** Thank you very much, Monsieur Sauvageau. Merci beaucoup.

I don't want to drag the debate on interminably. I think perhaps one speaker per party—is that okay? Then we'll have the vote.

Mr. Holland.

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

I have a couple of comments. I don't have a problem with further investigating chapter 5, but I don't really see any great benefit in it. I think we have to be very careful. Obviously the committee's time is extraordinarily valuable.

We have a number of items—and I'll enumerate them very quickly—that we're supposed to be dealing with. We're supposed to be dealing, of course, with the issue of governance, which is the issue this committee is mostly seized with today. We also have to deal with the report on the sponsorship affair. On top of that, we have the most current Auditor General's report and the chapters that we're going to determine to investigate there.

I guess I have a great deal of concern that we would go back in time to deal with a chapter that—and I quote this from the Auditor General in her conclusion in paragraph 5.41: “For the most part, we found that the federal government was managing public opinion research in a transparent manner and with adequate controls”.

If there was something burning, an issue that this committee had to toss aside all its work to deal with and delve right into, I could agree to that; I could say that makes a good deal of sense. But this is something that the Auditor General has said is working fairly well, that they're moving in a positive direction.

So to derail our agenda, start calling in witnesses on another matter and put off all these other important issues such as governance, which I think is really at the core of the whole sponsorship issue and is something that is very worthy of this committee's time, as we'll be hearing from the witness today...

Frankly, what are we going to do? I can go back to 2001 or 2002 and find particular chapters the Auditor General was generally satisfied with and say, yes, but she had one or two questions; let's revisit that. Suddenly what we're going to find, with the enthusiasm of Mr. Anders, is that this committee will be spending all of its time going back in time dealing with chapters the Auditor General is already satisfied with and derailing the legitimate agenda that we need to deal with to get to the broader issues.

Thank you.

**The Chair:** Mr. Murphy.

**Hon. Shawn Murphy (Charlottetown, Lib.):** I have a couple of comments, Mr. Chairman, and I'm not going to speak for or against it.

I like to follow process. My first comment is, does the steering committee have a recommendation on this particular matter?

My second comment is that back in February, March, April, May of last year, I sat four days a week—you did, too—on the sponsorship thing. It was a big emergency. We had to sit twice a day. That's all I did. Then I come back here in January and it seems to have lost its.... Why are we not working on that and getting it cleaned up? How come it's lost its importance?

Mr. Chairman, what I've done here is made a quick list. We have about 20 meetings left between now and when we break for the summer. That may come as a surprise to some people. What I'd like the steering committee to do, when we have some kind of framework, is recommend what we can accomplish during those 20 meetings so that we're doing what we should be doing. I think the first thing has to be cleaning up—and I know we're working on that today—the sponsorship report. If we have time to do this, I don't really have a problem.

I'd like the steering committee to look at this in a totality. What do we have to do? What are our priorities? We have 20 meetings. What should we be doing?

• (1540)

**The Chair:** The answer to your first question, Mr. Murphy, is that, as I said, I had intended to have the steering committee at a quarter after three. I went to the wrong address, and as a result, the meeting didn't happen. It had been intended that it be on the steering committee, and I brought the motion forward to the main committee. If you feel it should be discussed in depth at a steering committee, then, of course, a motion to table would be in order.

**Hon. Shawn Murphy:** I would make a motion to table.

**The Chair:** Okay. A motion to table is not debatable. Therefore, I have to call the question to table.

All those in favour of Mr. Murphy's motion that the item be referred to the steering committee to be dealt with.

(Motion negatived)

**The Chair:** Are there any other speakers on the main motion?

Ms. Phinney.

**Ms. Beth Phinney (Hamilton Mountain, Lib.):** I'm not sitting on your committee right now; I'm just in here for this meeting. I sat on

the committee for four months last year. As Mr. Murphy explained, we were here for long, long hours.

When the Auditor General says that this particular chapter is transparent in its manner and with adequate controls, and when the judge says that since the Auditor General found it okay he doesn't see any particular problems in it, he doesn't need to cover it.... I'm just wondering how this committee would explain it to the public when they ask why we are studying something that both the Auditor General and the judge felt doesn't need to be studied any further.

**The Chair:** I'm going to wrap up the debate with closing comments by the mover, Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** I will answer Ms. Phinney directly. These are the explanations I would offer to the population. I would quite simply say that as their leader, the Prime Minister of Canada, said that he wanted to shed light on the sponsorship scandal, that is to say on chapters 3, 4 and 5, I'm granting his request. I would also say that their leader, when he was Minister of Finance, gave Earncliffe open contracts worth \$15,000 a month over more than three years. Finally, I would say that their leader has let it be understood that he had verbal agreements with Earncliffe representatives, as well as those from Ekos, which also received other contracts.

Since Mr. Gomery has told us that an inquiry on chapter 5 does not come under his mandate, and as the Prime Minister of Canada and leader of the Liberal Party has told us that he wanted to clear up this story, I am simply seizing the opportunity the Prime Minister has offered. Through this motion, I am saying that we have to respect his word, as it is unusual for him to keep it, and shed light on this entire file. This is the simple reason why I tabled this motion.

[English]

**The Chair:** Mr. Holland has asked for a very brief procedural intervention, I believe.

**Mr. Mark Holland:** Mr. Chair, if this is to pass, which it very well may, the one question I would have is that we do need to get together as a steering committee to determine what items we're going to start moving off the agenda, what we're going to start cutting and not being able to deal with as a result of dealing with this. I think the steering committee is going to have to get together and deal with the issue that Madam Phinney raised.

**The Chair:** The steering committee has to deal with the Auditor General's report. It was tabled last week. We are contemplating having one this week, if at all possible.

Okay, debate is over. I call the question.

(Motion agreed to)

• (1545)

**The Chair:** Mr. Kroeger, my apologies for the delay.

As I said, you're no stranger to Parliament Hill. You have had a long and successful career in the public service. You're also the chancellor of Carleton University, aren't you?

**Mr. Arthur Kroeger (As Individual):** I was.

**The Chair:** You have received many accolades during your career. We welcome you here to talk to us about governance.

We have moved beyond the sponsorship inquiry to how we can stop this from happening again. We are concerned about what are the appropriate responsibilities and accountability for ministers and deputy ministers at the senior level. You've been there. You know exactly how they operate. The committee is seeking wisdom as we try to write a report saying this is how we would amend it at the senior level to try to ensure this doesn't happen again.

We welcome your comments.

**Mr. Arthur Kroeger:** Thanks, Mr. Chairman.

I'm aware that the committee had invited Mr. Gordon Robertson as well as me to appear today. Mr. Robertson felt that since it was 25 years since he had left the government he probably couldn't be of as much help to the committee as he would like, but he and I had a number of conversations and I did circulate—I believe members of the committee have this—a three-page document that I prepared. Mr. Robertson asked me to tell the committee that he agrees with the content of the document, so you can take that as reflecting his views as well as mine.

The subject of accountability and responsibility, on which the committee is working, is a very complicated area. I think it is well worth spending some time trying to get your minds around it because the subject comes up with great regularity now.

In my experience in dealing with these questions, I've been struck by the way various expressions get used interchangeably when in fact they mean somewhat different things, and they give rise to some confusion about the subject of accountability and responsibility and blame and answerability, all four of which, in my view, mean somewhat different things. I'm not going to reproduce the statement at length, Mr. Chairman. The members of the committee can consult it at their leisure.

But quite briefly, as an aid to thought, it is useful to regard responsibility as meaning that you're in charge of an organization or a function. So the responsible minister is the minister responsible for a department or an area of governance. Being responsible does not mean a number of other things. It doesn't mean that you know and control everything that happens in a department. It doesn't mean that you're to blame for everything that happens, and it doesn't mean, as is sometimes suggested, that a minister should resign if officials or members of the minister's staff make a mistake.

Responsibility is independent of the size of the organization with which you are dealing. Whether it is a member of Parliament's office or a very large department of government, the principle is the same: you don't have to know everything, but you are in charge, and if something goes wrong it's your responsibility to deal with it and then to explain what remedy has been taken.

The second term that's used is accountability. If somebody puts a person in charge of an organization, that person also has to then be ready to give an account for how he or she used the powers that were given. There is a certain amount of ambiguity here, because people often talk about accountability in the very broad sense, and that's part of the way government works today. The public wants answers from ministers. They want answers from members of Parliament, from

officials, and indeed from entities in the private sector. If something goes wrong at Dow Chemical, the public demands explanations, which Dow Chemical has to provide. This is a very important function, and it is fundamental to the operations of Parliament. When people say that officials should be answerable to parliamentary committees and to Parliament, I entirely agree. I don't think Parliament can function unless it has full access to the knowledge of the public service, and probably you will be able to find ways in which you can expand the access you get to the expertise that's available in the public service.

People use the term, though, in another sense when they say that public servants should be accountable to a parliamentary committee. That carries a quite different significance, because in a strict, narrow sense of accountability you're accountable to only one entity, and that's the person who gave you the authority. A minister is accountable to the Prime Minister, who appointed him or her. A deputy minister is accountable to the minister. But if you say that officials should be accountable to a parliamentary committee, you have a conflict. Is the minister the boss, or is the parliamentary committee the boss? I don't think many people seriously suggest that parliamentary committees could give direction to officials, but that has been suggested by the Lambert commission and by some auditors general in the past, and I suggest it's important to keep a distinction between the answerability of officials and their accountability, which has always been to the minister, and the accountability of less senior people to their seniors. That's an important principle for the normal functioning of an organization.

• (1550)

But at the other end, it is very important that officials be fully answerable to parliamentary committees, and I hope you can find ways of expanding their ability to do that.

I'll stop there, Mr. Chairman, because I think I'd like to hear what the committee is most interested in.

**The Chair:** Thank you very much, Mr. Kroeger. Your report, which is available in both official languages, is deposited with the clerk and it's available for anybody who would like to receive a copy at any time. We thank you very much.

Mr. Fitzpatrick, please, eight minutes.

**Mr. Brian Fitzpatrick (Prince Albert, CPC):** I read your statement, sir. It's very concise and it's very clear and so on, but I have problems trying to fit everything in those nice little neat boxes that you've referred to.

You say responsibility has a direct connection to whoever put you in there. But this isn't a private corporation; you're part of the government, and I can't think of a department.... One of the rule books you have to go to all the time is the legislation that is passed by this Parliament, and the regulations that go with it, and so on. In my way of thinking, you're responsible to that sort of stuff too. You're not just responsible to the person who put you in there. The law says your job is to carry out that legislation, and if people aren't carrying out that legislation, it seems to me you have to go back to the place that created the legislation, which is the Parliament of Canada. It must have some say on it. That's a comment on that.

In my own view, there are a lot of different bosses in this job. As you mentioned, it's a simple thing; there's one boss you're accountable to. Would you think the deputy minister is accountable and responsible to the minister?

**Mr. Arthur Kroeger:** Yes.

**Mr. Brian Fitzpatrick:** In reality in this town, the way things run, you wouldn't think the deputy minister might be looking over the minister's shoulder and seeing what the Clerk of the Privy Council and the Prime Minister's Office might have to say about his job?

**Mr. Arthur Kroeger:** That's a consideration you always have as a deputy minister, because you were appointed by the Prime Minister and not by your minister. So if you're going to talk about accountability, the person you get your authority from as a deputy is the Prime Minister. But the Prime Minister's first expectation is that you will serve your minister, so that's really where you focus your attention.

There's no question that officials have a duty to obey the law at all times. They have a duty to conduct themselves in a proper way vis-à-vis any number of regulations. The only point I'm making is, at the end of the day, who's the final boss? Certainly the views of parliamentary committees are important and always need to be looked at very carefully, but if you get a conflict between what a parliamentary committee wants and what the minister wants, the minister's your boss, and at the end of the day the minister has the say—

• (1555)

**Mr. Brian Fitzpatrick:** My only point on that, sir, is that if a department is not carrying out its lawful duties and obligations by legislation or whatever it is, to me this committee or other committees should be able to hold that official accountable and answerable for why they're not doing the job that the law says they have to carry out.

**Mr. Arthur Kroeger:** I agree.

**Mr. Brian Fitzpatrick:** To me, to hide behind some sort of relationship with your minister is not a satisfactory answer in those situations. That's my only point in raising this.

**Mr. Arthur Kroeger:** If I can interject, I'm not talking about hiding behind the minister; I'm talking about doing what your boss tells you, and there's only one boss.

**Mr. Brian Fitzpatrick:** Let's get to that point, because without getting into the details of this, my concern is when the accepted process created in a department and the line of authority, responsibility, and so on are bypassed. The political masters, for whatever reason, decide to bypass the operation, create their own little cell or operation in there, and basically lean on everybody down the chain to close their eyes or go along with something they don't agree with. Hold your nose, or when in doubt, mumble or use baffle-gab to avoid responsibility on the whole matter.

Surely, with all your experience in the public service, you must have some ideas on how a professional public service can protect itself from that sort of interference in their department's operations. We're really looking for the answer to that question, because I think everybody is sight here....

I've read Mr. Cutler's evidence—I wasn't on the committee—and very much sympathized with him. I saw a very professional person who was put in a situation that was unacceptable to him. I don't think a public servant should have to do things that are questionable or illegal, and so on. We had the Nuremberg trials and people were told, "Just because you were given orders, that's no excuse".

What's your big recommendation on how professional public servants can be protected against this sort of meddling by political masters who ask people to do things that are very questionable?

**Mr. Arthur Kroeger:** When you get an instruction from your minister to do something that you think shouldn't happen, your duty is to point out to the minister the consequences, point out that it may be improper, and give the minister the fullest advice you can. But at the end of the day, if it's not illegal, the minister, as the person in charge of a department, has to make the final call and take responsibility for it. If the minister insists on officials taking action, as long as those actions are within the limits of the law it's usually important that officials, after providing advice and arguing the whole thing, do as they're told. If you ever get to the point where the Public Service of Canada has a separate persona from elected people, then you're into government by the unelected. You're really then investing a power—

**Mr. Brian Fitzpatrick:** I understand that. But if there's legislation that is quite clear as to what a public service is, in implementing the law and policy, there's something wrong with the political masters trying to stick their noses in that and interfere with that. There's something wrong with that process.

I want to raise one other area that is of concern to me. We have a major trial in the United States with WorldCom and Bernie Ebbers, the CEO of the company. The big issue is whether he was responsible for and had knowledge of the wrongdoing. I'm quite sure the lawyers are going to say, "The things in question are things that you ought to have known about. It's going to be a poor excuse for you to say you didn't know, because you're in an area of authority where you ought to have known what was going on". I think when the public have high-priced people or so-called competent people running operations in government, and so on, they expect a high level of competence on their part.

On this ministerial responsibility thing, you mentioned they can't know everything. But don't you think they should be held responsible for things they ought to have known about?

• (1600)

**Mr. Arthur Kroeger:** Absolutely. Whenever you get a controversial situation coming up, the judgment you have to make is on what the minister did or failed to do, in light of what the minister could reasonably be expected to have known.

If you get something at the district office at Nelson, British Columbia, the Minister of Human Resources Development probably wouldn't be expected to know it and couldn't be criticized for it, although the minister is still in charge of the department, and the minister has to tell Parliament what happened. On the other hand, if a minister takes a direct hand in something and it goes wrong, it is clearly the minister himself or herself who is at fault and has to deal with Parliament on it. But there's no question that ministers always have to give answers when situations arise.

**The Chair:** Thank you very much, Mr. Fitzpatrick.

Mr. Plamondon is next, please, huit minutes.

[Translation]

**Mr. Louis Plamondon (Bas-Richelieu—Nicolet—Bécancour):** Thank you, Mr. Chairman.

I do not know if I understood the responsibility problem correctly. I'll ask you a simple question. If, for example, a deputy minister informed his minister that the decision he has taken would result in bypassing administrative rules and not following the usual path, would this deputy minister have any legal or known remedy by which he could counter the minister's action?

**Mr. Arthur Kroeger:** That depends on the decision concerned. If the minister did not take any illegal decision, but a decision that seems irregular, the deputy minister must advise the minister of the serious consequences that may result from that. He should advise him to think carefully, but in the end, a deputy minister does not have the right to overrule the minister, if what the latter wants to do is not illegal.

We must offer advice, give all the arguments to the minister in order to clearly inform him of the repercussions. However, in the end, the minister is responsible for the department, he may make the decision and shoulder the consequences.

**Mr. Louis Plamondon:** If there has always been, not in the tradition but in the manner of governing, a very regimented way of proceeding with calls for tender, and the awarding of contracts, and, all of a sudden, the minister says that he's going to bypass this completely, it may not be illegal but it is perhaps immoral. It seems to me to not be sound government administration. It also seems to me that this is a path that could at some point lead to illegality.

Therefore, in such a case, should the deputy minister not warn the Auditor General or the public, tell them that something unusual is happening?

**Mr. Arthur Kroeger:** The usual reaction of a deputy minister would be to go and see the Clerk of the Privy Council and discuss this situation with him. Normally, the Clerk of the Privy Council would then inform the Prime Minister.

There have been disagreements between a minister and deputy minister where the deputy minister insisted that the issue was so important that the Prime Minister should settle the matter. This is very rare, but this would be the usual path to take in such a situation. If it became common practice for a deputy minister, an official, to simply go to the *Globe and Mail* and say that he did not approve of what the minister was saying, or even to go to the Auditor General, this would engender serious problems.

• (1605)

**Mr. Louis Plamondon:** The deputy minister goes to the Clerk of the Privy Council who then, as a last resort, informs the Prime Minister. If it is the Prime Minister who wants to get around the rules, what remedy exists? If the Prime Minister has decided to bypass the rules and do something dishonest or something that will lead to dishonesty, there is no further recourse: the Prime Minister can do whatever he likes, as the clerk cannot ask him to discipline himself.

**Mr. Arthur Kroeger:** There's an important distinction to be made. If the Prime Minister wants to break the law, it is illegal. In such circumstances, the deputy minister should resign. However, if the Prime Minister simply wishes to exercise a certain discretion, knowing full well what the rules state, and if he feels that it is a most unusual situation which has brought him to the conclusion that the circumstances justify such a decision, the minister and the deputy minister have the right to make that decision, so long as it is legal and so long as they assume the responsibility before the population and above all before Parliament.

However, what is very important is to make the distinction between decisions that are illegal and those that constitute the exercise of political discretion.

[English]

**The Chair:** Merci beaucoup, Monsieur Plamondon.

Mr. Holland, please, eight minutes.

**Mr. Mark Holland:** Thank you, Mr. Chair.

Thank you very much, Mr. Kroeger, for taking the time to be with us today on this important issue. I only hope that we're actually going to be able to deal with the issue of governance now that our committee is being seized with other matters.

I would make a very slight observation, with the latitude of the chair, and that is that it's frustrating when we have a couple of opposition members who come and radically change the agenda of the committee and, after having done so, quickly disappear to leave us with a particular fallout.

**The Chair:** Mr. Holland, if I can just interject, you should have been here last spring when motions were coming forward directly to the chair from all different directions, for weeks on end. Anyway, so be it. That's just the problem a chair has to deal with.

**Mr. Mark Holland:** *C'est la vie*, Mr. Chair.

I appreciate the report that was put together. Toward the end there are some salient observations about the difficulty in the area of accountability, particularly as referenced here, as decision-making is becoming increasingly complex and that complexity leads itself to making it difficult to determine which parties are involved. Often there are many parties that may be involved with particular failures.

At the end you're talking with respect to the modifications, and you say that within the constraints mentioned, modifications to the accountability system in government are worth considering. It is unlikely, however, that such modifications could do more than alleviate the basic problem, diffused responsibility, which is a feature of 21st century governance and also results in diffused accountability.

I'd be interested in your comments, because I think it's a good context for the debate we're going to be entering into, on the limits of accountability. We're talking about accountability. We want accountability. It's extremely important. I think it's important for us to also understand what those limits are in the current context.

**Mr. Arthur Kroeger:** Could you elaborate a little more about what you mean by "the limits of accountability"?

**Mr. Mark Holland:** Well, because you're saying here that you're only going to be able to alleviate the basic problem, maybe there are some issues that you're not going to be able to address. As we're starting off on this venture, full of vim and vigour and anxious to ensure that everybody is accountable, I think it's also important that we understand the limitations and the causes of those limitations.

• (1610)

**Mr. Arthur Kroeger:** It is a source of great frustration to the public and I think to parliamentarians that quite often when something goes off the rails, you try to find out why it went off the rails, and there are so many parties involved that you can't find one person to point the finger at.

In government, when you're working on a major initiative, obviously you have to talk to the Department of Finance. You usually have to deal with the Treasury Board. The Public Service Commission may have views about staffing measures that go with it. There are then a certain number of departments that interact. They each have their views. You have to balance all of this to try to arrive at some sort of consensus decision. At the end of that you have something that reflects a collectivity, but there isn't any one place where you can go to say, "They did it".

I was quite struck when I was reading a report of a survey that was done of deputy ministers quite recently by a professor at the University of Montreal, if I recall correctly. He found that 30% of a deputy minister's time is now spent on extra-departmental activities: interdepartmental discussions, consultations, and so on. It shows the degree of what is now called "horizontality", where you're cutting across departmental lines all the time and trying to work things out collectively.

It's essential, because you cannot ignore the different interested parties, but it does make it quite difficult at times to say, "That's where the decision was made".

**Mr. Mark Holland:** When this series of responsibilities, complexities, and cross-consultations are involved, how does one deal with accountability in that context? How can we ensure that there is accountability and that one can't just say that it was 10% their fault and 5% their fault and then it becomes the fault of nobody?

**Mr. Arthur Kroeger:** I think parliamentarians have to look at the collective responsibility of a government as a whole, as compared to saying it's that minister's fault or that official's fault, because so many decisions are now made in cabinet. Even then, you haven't really solved the problem, because in many of these cases you're also having to deal with a lot of external parties. If you get an issue that affects the forest industry in British Columbia, it's not just Natural Resources Canada or a few other departments that are involved; aboriginal people have interests, environmentalists have interests, the International Woodworkers of America has interests, and the provincial government has interests. You somehow have to try to take account of those as well. You can't just run roughshod over them and say this is what we're going to do; you do need to try to work these things out. But it makes it even more difficult to be able to say that a particular party was at fault when a situation went wrong.

**Mr. Mark Holland:** The challenge we will be seized with in this process is how you assign accountability. We need to understand what went wrong and to ensure that it is repaired and doesn't occur again and to have appropriate oversight mechanisms to ensure that problems don't occur in the first place. Do you think there is too much focus on trying to assign blame to one person or to find that silver bullet, as opposed to dealing with the broader issue of how we make sure problems don't happen in the first place and how we make things right going forward?

**Mr. Arthur Kroeger:** I think what parliamentary committees such as this one are going to need to do is look at what I'll call system problems, not one person who wasn't very competent, who did something wrong, who was perverse, or whatever. In the chain of events that took you from situation A to a decision about it, what were the various steps? Where are the weaknesses in the chain? Is it because the Department of Finance has so much power that it can arbitrarily veto things? Is it because the Treasury Board Secretariat is insensitive to departmental problems? If there is a recurring pattern indicating there was a flaw in the way government was functioning, that would be an important conclusion for a committee to arrive at, and probably more profitable than just putting the finger on a particular official or minister. Sometimes a parliamentary committee could look at a situation and say, "You have a gap in your machinery of government".

I could imagine that in the early 1970s, as the issue of the environment moved into public prominence, a parliamentary committee could have looked at problems that were emerging and said, "The responsibility for the environment is diffused across the government. Why don't you create a department to deal with it?" Of course, this is what was done in that particular situation. That kind of system assessment can sometimes be more profitable than simply trying to pin the blame on somebody.

• (1615)

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

Mr. Allison, for eight minutes.

**Mr. Dean Allison (Niagara West—Glanbrook, CPC):** Thank you.

Thank you for being here today.

In reading your fourth paragraph, I concur with what you're saying:

If you are the Minister in charge of a department, then you have an obligation to oversee and direct what it does. When problems develop, you must find out the causes, explain to Parliament what happened, and cause corrective action to be taken. What responsibility does not mean is that you are required to know and control everything that is happening at all times.

I think that makes sense. How can you always know what's going on?

In the context of that, though, as we look at what happened in the spring in terms of sponsorship, a former Minister of Public Works, a former deputy minister, and pretty much everyone who was involved with the program came before us, and not one person accepted responsibility for what went wrong. What do we do to prevent a situation like this occurring again?



**Mr. Arthur Kroeger:** I don't know if there is an automatic way of doing that.

As I understand the sponsorship affair, it had its origins in a certain sense of crisis. After the referendum of 1995, urgent decisions were taken at the highest level to deal with the kinds of threats that had emerged, and some unusual arrangements were put in place. You can't just say, well, you should never depart from established ways of doing things. If you get an unusual situation, sometimes you have to have an unusual response.

It does appear as though there was a problem with system oversight in what happened in the sponsorship affair. I only have a newspaper reader's knowledge of it. Somewhere, and much sooner, it should have been spotted that a number of things were happening that should not be happening, and corrective action should have been taken. Viewing it all from the outside, it seems to me that this didn't happen because of the unusual situation and the unusual response to it, which created unorthodox channels and unorthodox ways of doing things, which then gave rise to what has received so much attention in recent months.

**Mr. Dean Allison:** I guess what you're saying is that there was a case built that the circumstances were unusual and that rules didn't then need to be followed. There were extenuating circumstances, meaning that responsibility wasn't important because of what was going on.

**Mr. Arthur Kroeger:** I do think there was a sense of a need for urgent action. Nobody ever said, "We'll just forget about the Financial Administration Act". Mr. Chrétien, I believe, testified in front of Justice Gomery that his submission to the Treasury Board explicitly said that he expected that the normal procedures and rules would be observed. Somehow they got pushed out by the sense of urgency. In retrospect, nobody would have wanted that to happen, but I think it did arise because of the unusual nature of the situation.

That whole area of advertising, publicity, and polling has always been handled in government in a somewhat different way from normal contracting. In this case, it was carried to an extreme.

•(1620)

**Mr. Dean Allison:** The executive director reported directly to the former minister. Is that kind of relationship common?

**Mr. Arthur Kroeger:** Not at all. You can do it.

If you're a deputy minister, you don't want to create a bottleneck in saying, "Nothing is going to go near the minister unless it comes through me and my office". What you normally establish is to say, "Look, it's fine for some of the other senior officials to have direct dealings with the minister's office, and sometimes with the minister, but I always want my office to know what's going on". That's the important thing, so you can track what's happening and so that if things start to go wrong you can take corrective action. It's not necessarily a bad thing for an ADM to deal with a minister on a particular issue if the ADM is extremely expert—perhaps on a scientific matter, for example. But you always want to keep an eye on what is happening to make sure it does stay within the bounds of what is normal and proper.

**Mr. Dean Allison:** Do you think deputy ministers should appear before a committee such as ours to be held accountable?

**Mr. Arthur Kroeger:** Yes, although I'd like to use the term "answerable", if I can make the distinction. It is an important distinction that we were discussing earlier.

The short answer is that it is essential for parliamentary committees to have full access to officials and to be able to ask them questions on almost any subject. Officials obviously know when something strays into an area they can't talk about.

I made my first appearance in front of a parliamentary committee over 30 years ago, before I was a deputy minister. My impression today is that, as in the past, officials get called a lot and get asked questions on a wide range of subjects. I think that's highly desirable—and essential.

**The Chair:** Mr. Fitzpatrick, please.

**Mr. Brian Fitzpatrick:** You mentioned prime ministerial discretion or ministerial discretion in going off and creating their own operations and programs. Maybe I went to a poor law school, but I always thought you had to have a basis in law for some action and so on. If the Prime Minister's Office or a minister decides out of the blue that they're going to spend new money and create a special unit or operation, it seems to me that there's a serious question. If there isn't legislation or some statute to support that, some red lights should be going off in somebody's head about something along that line.

I just raise that because it seems elementary to me. We live in a system where everything is based on the rule of law, which means you just can't go ahead and do things in a vacuum and carry out whatever you want to do. It doesn't work that way.

I do have a very pointed question on this issue. Suppose a deputy minister finds himself in a very uncomfortable position because the commands he's getting from his boss are ones he really has concerns about in terms of the lawfulness of what is being asked and so on. Professor Franks was in here and explained how the British handle that problem. Basically, if he feels strongly enough, the deputy minister has a formal mechanism that protects his position and puts the matter into the political minister's arena, where the political minister, in writing, has to then assume responsibility, accountability, and answerability to all three of these areas. That seems to be an immensely good recommendation or principle in the British system, and this country should be looking at it.

What's your take on that, sir?

**Mr. Arthur Kroeger:** I'll divide my answer into two parts.

First of all, I want to make it clear that throughout this discussion I've always made a distinction between what's illegal and what is an exercise of discretion. When an action is illegal, obviously it cannot happen. You don't do it. That's the kind of situation you take to the Prime Minister, and the Prime Minister has to rule on it.

Of course there has to be a basis in law. There has to be an appropriation act if money is going to be spent. All of those things apply. The only distinction I would make is found in a situation that is black and white, it's out, you can't have it. The distinction I would make is that if there's not a Governor in Council regulation, if there's not a law, if there's a normal way of doing things but a minister or a prime minister chooses, in the light of a situation, to do something different, at the end of the day they have the right to do it. Not all exercises of political discretion are bad.

The point I was making about officials is that if you actually reach the point where an official can say to a minister that he doesn't agree with something and is not going to do it even though it's legal, then you're getting into government by the unelected. It is fundamental, it seems to me, to keep authority concentrated in the hands of the elected people, who then are accountable to Parliament for what they decided and what they did or didn't do.

On the question about the British accounting officer model, it's all right, I don't have any particular reservations, but there are all sorts of other ways of dealing with the same kind of situation. In Canada, if you are having real trouble with your minister not on matters that are illegal—that's pretty straightforward—but because your minister wants to do something that's completely contrary to government policy or because your minister wants to do something that is going to cause the government serious embarrassment, in a situation like that a deputy would have a talk with the Clerk of the Privy Council. If the clerk was fully informed, the clerk could make a judgment, the clerk could talk to the Prime Minister about it, and the Prime Minister could make a judgment about it. As long as it's not illegal, as long as it doesn't contravene a regulation or a law, if it is a normal exercise of political discretion, then at the end of the day the Prime Minister or the minister has the right to make the decision and to be held accountable for it. It's their job, they're the ones who make the decision, and they have to answer for it.

• (1625)

**The Chair:** Thank you, Mr. Fitzpatrick.

On that point, Mr. Kroeger, it's not a clear division between illegal and discretionary. There are also things like ethical practices in there as well that are kind of snuck in the middle there. If a deputy minister has been asked to do something that he considers to be unethical, albeit a political discretion by the minister and not illegal, that really puts him in an awkward spot. This is the type of thing we have to deal with.

**Mr. Arthur Kroeger:** That's the more common situation, and it's one of the most difficult to deal with because you have to respect the prerogatives of people who got themselves elected when you didn't.

That being said, I said a minute ago it isn't just a question of whether it's illegal. If it's something that's contrary to government policy, if it's going to cause embarrassment, or if you think it's unethical, you go to the clerk. If the Prime Minister ends up ruling that we're still going to do it, then the choices you're left are either to say okay, you're the boss and I'll do it, or to resign. Those are the only two choices you have left in a situation like that.

And you can resign, but you do have to respect the prerogatives of people who hold an office to which you were not elected.

**The Chair:** Mr. Lastewka, please, for eight minutes.

**Hon. Walt Lastewka (St. Catharines, Lib.):** Thank you very much, Mr. Chairman.

Thank you very much, Mr. Kroeger, for being with us today to help us through this governance maze.

At one time, when I was involved with a firm you mentioned on page 2, I had on my desk a little tag that said "Responsibility, accountability, honest, sincere, fair, and firm".

I'm not sure we do have an understanding between deputy ministers and ministers on what should and shouldn't be done as far as their responsibilities and accountabilities are concerned. A government comes in, it has so many deputy ministers, and the ministers start working with the deputy ministers. I have a feeling that there are many interpretations of responsibility and accountability, whilst in a corporation it's spelled out a little bit more clearly. I can appreciate that one is government and one is private, but it would seem to me that in government it has to be even clearer than in the private sector because so much can go off the rails.

I'm concerned that the responsibilities and accountabilities of deputy ministers and ministers are not clear. Where do the deputy ministers and the ministers get their guidance or cross-check that they are following their responsibilities and accountability in their positions? Does it fall back to the Clerk of the Privy Council?

• (1630)

**Mr. Arthur Kroeger:** Not always; it depends.

Let me make a starting observation about the difference between the private sector and the public sector. My impression of the private sector is that they have the great advantage of being able to delegate more fully. You can say to the vice-president responsible for Atlantic Canada, that's your job; those are the results I expect you to get; do it. In government the problem is that almost any kind of situation can end up in front of a parliamentary committee and could end up being raised in question period. As a result, delegation can never be quite as simple and straightforward as someone saying, "That's your job; do it". You have to think about what the Atlantic caucus' view about it is and what the provincial government is thinking about it. There are all sorts of things you have to take into account, which makes it rather more complicated.

As to the second part of the question, where you get your guidance, it depends on the issue, but in the really serious cases it is the clerk or the Prime Minister.

There are all sorts of other ways, such as the Treasury Board. The Financial Administration Act lays down pretty clearly a number of aspects of how things are supposed to work. If you're in doubt, as an official you go and you talk to the Treasury Board Secretariat. Your minister might have a word with the President of the Treasury Board as well. Sometimes the Minister of Justice is the source of your guidance or maybe the Ethics Commissioner.

There are a number of points around government, and it's usually prudent to touch base at a number of these places when issues of some importance are in play, because if something goes wrong, it's too late. There isn't any one place in government where you can get guidance on everything, but it's certainly important to be sensitive as to the different places you need to check with when an important issue is in play.

**Hon. Walt Lastewka:** Sir, on a number of occasions you have said words like "could" but not "should" or you've said "it depends". It would seem to me that if we want to improve the governance of the government in total, then we must be much clearer on responsibilities and accountabilities. I have a hard time accepting any deputy minister excusing himself when something has happened, which happened in the sponsorship program. I don't know how that's taken care of. I don't see the accountability of individuals when they excuse themselves from something because they're busy in other areas. I believe that's happened.

**Mr. Arthur Kroeger:** Well, you can excuse yourself in a variety of ways. Being busy is not a good answer. However, that the minister decided to do it is usually a pretty good answer as long as it's within the bounds of what's permissible. Sometimes the answer is that there simply weren't enough resources available because of a recent set of budget cuts, for example. There are many situations that play on an outcome. You can explain what those factors are, and you need to explain them to the public and to a parliamentary committee.

**Hon. Walt Lastewka:** You talked about numerous departments that might have a project or a program that cuts across departmental lines. I find it very disappointing that in government we don't know how to work within a matrix when we have many programs that cut across department lines. We have much difficulty respecting the lead department in a program.

• (1635)

**Mr. Arthur Kroeger:** The way governments have to function in the 21st century is something a lot of people have puzzled over. When Madame Bourgon was Clerk of the Privy Council, she actually created a committee of deputy ministers to work on the question of how horizontality is supposed to function. How do you do it? You have 10 departments, each with an interest in a particular question. How is that supposed to work?

There have always been interdepartmental issues, and there seem to be a lot more of them now. My sense is that there is still a lot to be worked out in government on how you deal with issues that cut across a lot of departments. We haven't found our way through that one yet.

**Hon. Walt Lastewka:** I'd like to make a comment and then be put down for the next round.

I have a feeling this committee is falling into the same trap you talked about, pinning blame and looking for a 10-second clip, whilst the Auditor General made it very clear that we should be looking at procedures, practices, policies, previous audits, and the reporting of previous audits. Mr. Chairman, I have a feeling, as we have more discussion, that we as a public accounts committee have missed that.

When the Auditor General talked about a system that went wrong, we didn't go back to say, ho, there's a system that went wrong within government, so what did we find out about why it went wrong and

how did we as a public accounts committee correct it? I'd like to pursue that more in the next round if I could.

**Mr. Arthur Kroeger:** In answer to Mr. Holland's question, I might say that sometimes you can't just say it was someone's fault. Rather, there's this problem in the system; there's a weakness in the procedure. This is exactly what the Auditor General was talking about, and I agree with that completely. It seems to me that in modern governance it's a lot more complicated than trying to find somebody you can pin something on. These collective procedures are there, they're a reality, and the important thing is to assess them, see where they aren't working well, and take corrective action.

**The Chair:** Thank you very much, Mr. Lastewka.

Mr. Fitzpatrick, please.

We're now on the second round, so this is five minutes.

**Mr. Brian Fitzpatrick:** I want to pursue this hypothetically. I have to put this sort of discussion in context.

Let's assume for a minute that the Prime Minister has an emergency and he decides on a course of action and creates a special operations department within a department to deal with the emergency. Let's assume it has legislative legs to it and is lawful, and so on. The deputy minister is brought into the loop and is told, "This special operation is being set up; they'll report directly to the minister, and you don't have to worry about it". But let's say later on in the whole scenario, the deputy minister and his officials find out there are millions of dollars going out the door, and they're not following commercial practices and the rules and so on that are normally set up, and it's very difficult to determine whether anybody is getting any value. In fact, there are some serious questions about the lawfulness of this whole procedure. The deputy minister comes back to the minister with this and brings this to his attention, and the minister says, "Don't worry about it. We're handling this matter".

Under your scenario, the deputy minister has an option. It's to go off to the Clerk of the Privy Council. I would suggest, in my view of things, that would not be a career-advancing decision on the part of the deputy minister. But I'd sure like the British option, where that deputy minister could bring this issue to the minister and then have the minister, in writing—in writing—accept responsibility, accountability, and answerability for this thing. The professional civil servant would no longer become the guy that has to carry the can or part of the responsibility for something he has no control over.

To me, this British thing has a lot of merit. I don't think you should be running to the Clerk of the Privy Council; you should be able to deal with your minister on that and make him responsible for it. If he doesn't like it, he can run back to the Clerk of the Privy Council and the Prime Minister and tell them, "I guess I'll have to put this in writing". That's what I would prefer, sir.

**Mr. Arthur Kroeger:** On the question of what is career enhancing and what is not career enhancing, I can tell you that if you let a really bad situation go and you don't tell the clerk, you can be in real trouble. It's a matter of judgment, but you need to keep people in—

• (1640)

**Mr. Brian Fitzpatrick:** You could send a copy off to the Clerk of the Privy Council and the Prime Minister of the concern that you've given to your minister, to keep them in the loop.

**Mr. Arthur Kroeger:** You don't deal directly with the Prime Minister's Office. You deal within the public service, and that's with the clerk. Otherwise, if you start doing political end runs there are problems, or there can be serious problems.

On the question of getting an instruction in writing, yes, that's all right. When I was Deputy Minister of Transport we did that, because there was a program for construction of local airports, and there were no criteria for it. There was a small amount of money that could be used to fix up an airport in a remote centre, and because the Auditor General of the day was quite critical of this sort of thing and tended to blame officials, we got our minister to sign a directive. We probably did it twenty or thirty times.

I don't see a really big difference between that and simply arguing the thing out with the minister. If the minister says, look, this is the way it's going to be—

**Mr. Brian Fitzpatrick:** I would suggest if we had the British rule in the sponsorship affair, we wouldn't have been dealing with all of the officials in the department. There would have been a minister on this committee who had to answer the questions because he'd assumed full responsibility for this program, and there would be no buck-passing at that stage. The professional people in the civil service, to me, wouldn't get maligned with all this sort of commotion or taint of this whole program.

**Mr. Arthur Kroeger:** It's a legitimate point of view, but personally, I think it's useful to think about the working relationship you have between the deputy and the minister. They're dealing with each other all the time, and it's a situation in which, if you start asking for written instruction about everything, it changes the whole tone of the relationship. I know that the sponsorship question—

**Mr. Brian Fitzpatrick:** Maybe the minister would think twice about it before he tried to impose that on the department.

**Mr. Arthur Kroeger:** Yes, but a relationship between a deputy and a minister ideally is a partnership; it's not an adversarial relationship. You're not saying, "I'm not going to do that until you give it to me in writing". You're both trying to grapple with daily problems, whether it's in the Department of Agriculture, the Department of the Environment, or wherever. These are complicated things to work out, and ideally what you're doing is working cooperatively.

Now, I know that the sponsorship issue is on everybody's mind. That's not the way a normal minister and deputy relationship functions. All over this government and preceding governments you had day in, day out cooperation between the two. If you start saying, "I want instruction in writing or I'm going to send it to the Auditor General"... I mean, let me ask members of the committee, if you tried to direct a member of your own staff to do something and your staff

member said, "I want that in writing or I'm going to send it to the AG", what would you think about that person?

**The Chair:** They wouldn't be on the staff, I think, Mr. Kroeger.

Thank you, Mr. Fitzpatrick.

Mr. Murphy, please; you have five minutes.

**Hon. Shawn Murphy:** Thank you, Mr. Chairman, and thank you, Mr. Kroeger, for being here and for your presentation.

I just want to clarify something before I get started. I want to quote two sentences in your paper. On the second page there's one sentence: "In simple language, you are accountable to your boss." Then on the third page, you make the statement: "You are accountable to your boss, and it is not possible to have two bosses at the same time for the same function."

My question is about, here in Ottawa—and this is what I'm a little confused about—the whole role of deputy ministers. This may not have been the case 30 years ago, but it's my understanding that a deputy minister is appointed by the Clerk of the Privy Council, basically answers to the Clerk of the Privy Council, is moved by the Clerk of the Privy Council—demoted, or whatever—and any kind of career change is under the decision of the Clerk of the Privy Council. The minister really does not have any say as to who his or her deputy minister is. The minister has no discretionary authority as to firing the deputy minister or changing deputy ministers or disciplining deputy ministers. It seems to me, as I read your paper, that the deputy minister is accountable solely to the minister, but that's not the way the structure is aligned here in Ottawa.

Do you have any clarification on that?

• (1645)

**Mr. Arthur Kroeger:** Yes, there are several explanations I can give on that.

It's not just a technicality to say that it's not the Clerk of the Privy Council who appoints you, it's the Prime Minister. The Prime Minister does it on the advice of the clerk, but a Prime Minister can and does in many cases have his or her own views. So the decision, the appointment, is made at the hands of the Prime Minister. Equally, if you are removed or promoted, the Prime Minister has the final say about that. The clerk can say, I think we'd better move Ms. X from here to there, and the Prime Minister will listen to the explanation say, "Yes, you can do that" or "No, I don't want you to do that", but it's the Prime Minister's call.

The other thing is that the views of ministers are very seriously taken into account. There is an institution known as the Committee of Senior Officials, which every year does performance appraisals of deputy ministers. There's a whole process in which they ask the Department of Finance what they think of how the Deputy Minister of the Environment is doing his or her job, they ask the Public Service Commission, and they ask the minister, and they also ask the Treasury Board. So the minister's views are reported.

The other thing, of course, is that a minister has direct access to the Prime Minister, and if a minister is very unhappy with the deputy, the minister can certainly make the point to the PM. Whether the Prime Minister will follow that advice or not is another question, but ministers are not really dealt out of this.

**Hon. Shawn Murphy:** I hate to interrupt you. Basically, you're saying that the deputy ministers—and I can see your nuance there, that the clerk is basically the intermediary between the deputy and the Prime Minister—are answerable to the Prime Minister. In a normal organizational structure, although you make the comment that you can't have two bosses, if I'm working for somebody and that person has hired me, can fire me, and can discipline me, and the person I'm reporting to has no such function.... I know he can go to the Prime Minister, but if you're a junior minister, you can't do that.

I don't think this was the system back in the days of C.D. Howe. I see a fundamental systemic problem where you have one organization of government that hires, fires, disciplines, sets their salaries and bonuses or whatever remuneration, their letter of mandate, which will be signed by the Prime Minister or the clerk, and yet you're saying their only boss is the deputy minister. I can't square that circle.

**Mr. Arthur Kroeger:** It's an important point, and you've put your finger on a significant ambiguity. It is the case that the deputies are appointed by the Prime Minister on the advice of the clerk, and the Prime Minister is your ultimate boss. The way I would describe it is that the Prime Minister is the boss, and he says, "I want you to work continuously with the minister I'm giving you. That's where you're supposed to be concentrating your attention; that's where you get your instructions; that is the person you are supposed to work with".

It's accurate. There is a significant ambiguity there. In practice, it doesn't come into play very often.

**Hon. Shawn Murphy:** I have another question.

You talk about deputy ministers coming before parliamentary committees on the administration of the department. The recommendation that has come from other people is that deputy ministers be responsible for the administration of the department—basically, the Financial Administration Act and Treasury Board guidelines—and not for policy. They couldn't go before the Department of Indian Affairs and get policy direction from a committee of 12 MPs. That would be in total violation of the Westminster principle. But this, I understand, has been in existence in Great Britain since 1872. It's my information—I'm not an expert—that it has worked very well. Why do you see that it would not work in Canada?

**Mr. Arthur Kroeger:** What would not work?

**Hon. Shawn Murphy:** Having the deputy ministers responsible to Parliament for the administration—not the overall policy or what they're doing, or how they doing it, or malfeasance in certain departments in British Columbia or Newfoundland, but the administration of their department, following the Financial Administration Act, following the Treasury Board guidelines, which didn't happen in the sponsorship affair.

• (1650)

**Mr. Arthur Kroeger:** I think this is very much a question that has come to the fore today. It's a very interesting question, because in Canada historically we didn't distinguish management from policy or

political direction. There are a variety of reasons why that might be so. It's a pretty regionalized country, and ministers have often taken quite a bit of interest in rather local matters of administration, such as whether you're going to close the office in Gananoque or not.

I think that may be changing, and it could well be given quite an impetus in response to the sponsorship affair in the sense that it's now clear there was an unhealthy intermingling of political direction and administrative actions. It may be that one of the systemic consequences of the sponsorship affair will be a conclusion by parliamentarians and the government that you really want to create a greater separation of the functions, where the role of ministers, the role of parliamentarians is to give direction on policy matters, but where there should be less involvement in administration than has historically been the case.

I think it could be a very important trend and probably could be a useful trend, depending on how far you carry it. You're never going to be able to disentangle policy and administration altogether, because an administrative decision can quickly give rise to political controversy or, indeed, policy issues.

You can probably separate them out more than we have in Canada if you look at some of the other jurisdictions. My impression, for example, is that British members of Parliament involve themselves much less in administrative matters than has been the historic practice in Canada, and it could be an important outcome that we would do what Mr. Murphy has been talking about, which is to disentangle those.

I was quite struck by some comments made by the previous Minister of Public Works, who indeed said, look, I have been given policy direction; it's up to my officials to carry it out, and I don't need to know in detail how they're doing it. That has not always been the case.

**The Chair:** All right.

Thank you very much, Mr. Murphy.

[*Translation*]

Mr. Plamondon, you have the floor.

**Mr. Louis Plamondon:** Your last answer corresponds to my question. Instead of talking about deputy ministerial responsibilities, we should talk about what follows. In your opinion, if a minister instructs to his deputy minister to act in an unusual manner from an administrative perspective, bypass the rules, and, as in the case of the sponsorship scandal for example, to act in that way, can he, after having given this order, say he is not responsible for what happened, whereas he is the one who issued the order to bypass the rules in this way?

**Mr. Arthur Kroeger:** If a minister issues an order to not respect the rules or conventions...

**Mr. Louis Plamondon:** I am referring to a situation where the minister gives the order not to respect the rules and conventions.

**Mr. Arthur Kroeger:** Yes.

**Mr. Louis Plamondon:** Can he then say in all honesty that he is not responsible for what happened, that he only issued the orders? Is he responsible?

•(1655)

**Mr. Arthur Kroeger:** Certainly. If he ordered such a thing, obviously the responsibility rests with the minister.

**Mr. Louis Plamondon:** When I listen to the testimony of the witnesses appearing before the Gomery Commission, it seems that the only thing they are uncovering is the fact that some people have very short memories. As for the rest, nobody is responsible for anything.

If I refer to the answer that you gave me earlier, there are people who were ministers or prime minister and who had no idea what responsibilities their portfolios entailed; isn't that the case? That is a comment. It is not a question.

I have a question that is probably more relevant. Why is it that, in our system, accountability and responsibility seem to rest with the office rather than with the person? When a minister changes portfolios—and this would also apply to a deputy minister—why is he no longer responsible for what happened in the department that he just left?

Take, for example, the Department of Human Resources Development, of which Mr. Pettigrew was the minister. All of the scandals occurred when he was at the helm. However, as soon as Ms. Stewart replaced him, Minister Pettigrew was no longer accountable for his previous portfolio. He did not even have to answer questions in the House of Commons, nor was he required to give evidence, or anything else. It all became the responsibility of the new minister.

Is there not some way to ensure that the person be accountable rather than have the accountability flow from the position?

**Mr. Arthur Kroeger:** We could change the system. It could be done. At present, the minister is seen as an institution, and not as a person who is in charge of a department. It doesn't matter who the minister is, it is the person who is in the position who must answer the questions.

Other systems might be possible, but so far, no government has seen the need to make those changes. There was an exception in the case of the Department of Human Resources Development. The Clerk of the Privy Council was the former deputy minister of that department and he appeared before a parliamentary committee to answer questions. That, to my knowledge, is the only time it has happened.

We could say that Mr. Pettigrew was no longer the Minister for Human Resources Development and that, therefore, it was up to Ms. Stewart to correct the previous mistakes because she was the one who had been given that portfolio.

[*English*]

**The Chair:** Merci beaucoup, Monsieur Plamondon.

Mr. Lastewka, please, for five minutes.

**Hon. Walt Lastewka:** Thank you very much, Mr. Chairman.

I want to reflect a little bit on when you were first deputy minister and what has changed from then to now.

It would seem to me that we have a lot more movement of deputy ministers. Almost on a yearly, ongoing basis there are deputy

ministers moving and ADMs moving. We're slowly losing a lot of consistency in departments, which might mean the loss of understanding of the total responsibilities in departments. It would seem to me that there's more concern about HR progression now and what looks good on my CV, rather than the stability in the department and doing the right thing in the department.

Could you discuss movement and stability during your time as DM versus what it is today, and what were the reporting systems? Did you report to the minister or the Prime Minister? How did it work then, and how does it work now?

**Mr. Arthur Kroeger:** The problem of turnover has always been there. It's bad. Turnover creates all the problems you just referred to—instability, loss of institutional memory. People have recognized there's a problem, and for some reason it continues.

In the late 1970s, not long after I first became a deputy minister, somebody did a study and discovered that the average period the same deputy and minister worked together was 11 months, which makes no sense. At the time, people recognized that it made no sense. Efforts have been made to slow it down. My sense, actually, is that turnover is less frequent now than it was 20 years ago. I'm not saying it's good now; I agree there are serious problems with turnover, but I actually think it was worse in the late seventies and early eighties than at present.

I have to say that I've been out of the government for 12 years myself, so I'm not going to give you an exact answer on how things work today, but in other respects my impression is that relations haven't changed very much. You worked for your minister. I guess in 17 years as a deputy minister, I had maybe two conversations with the Prime Minister; and that was at his behest rather than mine, where there was a question that needed to be discussed. You work for your minister. You keep the clerk informed. The normal channel to the Prime Minister, if it warrants the Prime Minister's attention, is the clerk.

My sense is that there's actually been quite a lot of continuity in the system. It would be really difficult to depart from it. You can't have officials bypassing their minister and going to the Prime Minister all the time, and nor would any Prime Minister want that to happen, because it would make the management of the government almost impossible.

•(1700)

**Hon. Walt Lastewka:** I want to change the topic a little bit. In the internal audit system now, if an internal audit is done in an area, it's immediately posted and so forth. From my standpoint, it seems to have lost its original intent that internal audits should be an assistive management tool, whether for the director general, the ADM, or deputy minister.

Could you comment on internal audits, the way they are today and the way they were before. Have they been lost as a management tool?

**Mr. Arthur Kroeger:** They may have acquired more prominence.

The internal audit is one of the most important tools a deputy minister has at his or her disposal. That's how you find out if you've got a problem. It was because the then Deputy Minister of Human Resources Development became uneasy about what might be happening in the grants and contributions program that he asked for the internal audit. I think most deputies would say it is an indispensable instrument of management that they have.

I don't think it's become less important, but whether it's become more important, I would guess that internal audit may, if anything, because of the scrutiny that has been brought to bear on issues like sponsorship, HRD, firearms, and so forth, have moved into a more central position than it had even when I was a deputy minister.

Others would be more competent to answer that than I am.

**Hon. Walt Lastewka:** So when a deputy minister makes an organizational change, no matter how it happened, if there's an organizational change and that area does not get internal audits shortly thereafter, the responsibility should fall on the deputy minister?

**Mr. Arthur Kroeger:** Well, the deputy minister is always responsible in the sense that you're in charge of the department, and you're responsible for anything that happens—not necessarily for the blame—because it's your department.

In terms of organizational change, ordinarily you wouldn't send in your auditors for something that you had just started to do.

**Hon. Walt Lastewka:** No, but six months to a year later?

**Mr. Arthur Kroeger:** Maybe, if you thought there was a problem.

Ordinarily, the requirement for audit usually exceeds the number of resources you have, and the way these things function is that an audit committee is usually chaired by the deputy minister. Senior officials of the department are members. The Auditor General's office is always invited to have someone present when the audit committee meets.

You have a discussion with your senior officials to ask them to identify the areas that may have something going off the rails. You arrive at a view that you'd better get the auditors to have a look at it. You could do that in an area that is pretty new, just to make sure it was getting off to the right start. More commonly, you allow enough time to go by so that there is a track record you can really assess. Six months is falling a bit short. But it would depend on the circumstances, just as the Auditor General of Canada I think would not normally look at a brand new function until enough time had gone by that she could come to a considered judgment as to whether this was working well enough.

• (1705)

**The Chair:** Okay, thank you, Mr. Lastewka.

Mr. Kroeger, I have a few questions of my own.

We're dealing here, as you know, with governance, and I would like to think that we're trying to find out whether there are motivators we can develop to prevent this from happening again—change the motivators, change the results. We're not too happy with what we've seen in the public works department in the past.

We've talked about how deputy ministers are responsible to the Clerk of the Privy Council, who takes direction from the Prime Minister. Therefore the Prime Minister is very much involved presumably in the appointment process of deputy ministers. Cabinet ministers serve at the pleasure of the Prime Minister. Cabinet ministers are not really accountable to Parliament. It's the government and the Prime Minister that are accountable to Parliament. Parliament can pass a motion of non-confidence in the government, which means they're all gone, but it can't pass a motion of non-confidence on a minister; that is, that would be perceived to be the entire government. Therefore Parliament has one very big club. We don't have a bunch of smaller ones that we can use if it's a small nail we want to hit.

Government has to have the authority to govern because that's what they're supposed to do, and we in Parliament have to hold them accountable for the way they govern. That is our role. And it's this nexus of interplay of authorities, responsibilities, accountabilities, and information. When Parliament has the information—I'm talking of the sponsorship issue, for example—once Parliament was seized with the information, then the entire thing turned around and it became a question of what we can do to put this back on the rails. But until then, it was, first of all, business as usual, and then perhaps the government realized they'd better try to shut this thing down. Of course, then it all became public.

Mr. Fitzpatrick talks about the accounting officer in the U.K. I think that has some merit, because I don't want ministers to say, "Well, it's okay, it's the deputy minister's responsibility, I'm off the hook", or the deputy minister to say, "I'm only the deputy minister, so it's not my responsibility". I can see an awful lot falling through the crack of pointing the finger at somebody else. That is what we want to avoid when things are going wrong. We want to try to develop the motivator so people are motivated not to let things get off the rails.

In the case of the U.K. accounting officer, who has to get it in writing, I would like to see that letter...because this is an end result. This is like the big stick that Parliament has. The deputy minister has his final big stick of saying to the minister, "No, no, we're just not going down this road". Now, that is likely the end of the relationship, no question about it. But we wouldn't want it to happen in private so that the Prime Minister could say, "That's okay, we'll just move him off to another department, and the minister can find somebody more compliant to allow him to do it", which is perhaps, let's say, unethical, although maybe not illegal.

I would like to explore this notion that if a deputy minister is asked to do something he feels is unethical and he can't resolve it with his minister—of course, as you say, it's a cooperative relationship—he has this big stick of writing to the Prime Minister, with a copy to the public accounts committee, to say, "My minister is asking me to do something that I feel is quite unethical". I can assure you, the minute the letter comes to me or to the chair of the public accounts committee, it's not going to be a private letter. By definition, it has to be a public letter. That would say to the minister that he'd better resolve the matters with his deputy, or they're not going down this road, right?

**Mr. Arthur Kroeger:** It's kind of like a nuclear weapon.

**The Chair:** Yes, I know.

**Mr. Arthur Kroeger:** They wouldn't use it more than about once. It is such an extreme measure to say to your minister that you're going to go public, you're going to go to Parliament or you're going to *La Presse*, the *National Post*, or whatever.

• (1710)

**The Chair:** Come to Parliament, and we'll send it on to the *National Post* and *La Presse*.

**Mr. Arthur Kroeger:** There are very few organizations I can think of that could work that way day in and day out.

**The Chair:** It's a nuclear bomb, as you say. It's a last resort.

No doubt there would have been discussion, maybe even heated discussion, between the deputy and the minister, saying this is not appropriate and you can't do this, but if you insist, you know what they are required to do. The minister may go to the Prime Minister. If the Prime Minister insists that something is unethical, then the country needs to know that it's going on.

**Mr. Arthur Kroeger:** First, in terms of how unusual this is, I was a deputy minister for 17 years in six departments, but I never once received an instruction that I couldn't live with. This doesn't happen every day.

**The Chair:** That's what I'm trying to say. I wouldn't expect it to happen every day or even every year.

**Mr. Arthur Kroeger:** But if it did happen, I guess I would still be more comfortable with the Prime Minister making the final judgment on what the minister wants to do, rather than going public with it. To go public with an order that your minister has given you is at variance with that. Even in the British system.... People talk a lot about the so-called accounting officer concept. Somebody told me that the business of getting a written instruction that went to the Auditor General was used three times since the last war.

**The Chair:** I think we had Mr. Himelfarb, the current Clerk of the Privy Council, testify that, on his watch, he had been asked three times by deputy ministers to clarify an unethical request by a minister or a request by a minister that the deputy couldn't live with. Maybe it's becoming more prevalent.

**Mr. Arthur Kroeger:** I can't speak to that.

**The Chair:** I know, but my point is that if it gets out into the public domain, all of a sudden it's an issue that right now gets clamped down and fixed.

**Mr. Arthur Kroeger:** There are usually a lot of different ways to get at the same thing, including an access to information law, which turns up a lot of information now.

**The Chair:** Only if you know the question to ask. If we're in the dark, we may get a leak from somebody and will therefore file an access to information. The concept, of course, is that it again gets into the public domain and then the government sucks it in, makes amends, and gets it fixed.

As you can see, in a democracy, informing the public about things that are unethical causes the government to get it fixed right away. Therefore, in my opinion, in a democracy, one must have the nuclear weapon, the concept that you can go public on this and that you have an obligation to go public on this, as a deputy minister. I can report to the public accounts committee of Parliament, which is a public body speaking to the nation and, therefore, it is motivational.

Remember, we're talking about motivators. Motivators are far better at stopping things going off the rails than Gomery inquiries, and everything else, trying to put it back on the rails after the fact. We're talking about motivators.

**Mr. Arthur Kroeger:** It runs so contrary to the basic ethos of the whole Public Service of Canada. Loyalty to whatever government the voters send you is basic to the way you function.

**The Chair:** I know, but we've had loyalty. We've had Mr. Ranald Quail, the Deputy Minister of Public Works, say that he wasn't in the loop. That was the way it was. We had the minister saying that he wasn't giving the instructions, and the chief of staff to the Prime Minister saying that perhaps they were more involved than we were first led to believe.

Loyalty is not healthy in a closed environment. That's what democracy is all about. Democracy is about informing people and letting them make the decisions. We all know that the informed general public never liked people taking advantage of their offices, doing things unethically, doing things illegally, and so on and so forth. Therefore, if the government knows this is going to be in the public domain, and there is actually an institutionalized model for forcing it out into the public, then they're motivated to say that they're not going down that road.

• (1715)

**Mr. Arthur Kroeger:** It's a judgment call. I find it quite bothersome to think of unelected officials taking it upon themselves to go public in response to someone who has legitimate powers and who has been duly elected.

**The Chair:** I think you were saying that DMs could be accountable to a parliamentary committee, maybe even this committee. The Lambert commission said they could be accountable and answerable to this committee. There seems to be a growing recognition that deputy ministers have an obligation to speak out publicly.

I'm not one for thinking that deputy ministers are accountable to a parliamentary committee. As I said, we're an organization of accountability, not an organization of management. As you say, a committee can't give a deputy minister directions on how to do his job. That's the minister's job, because they are government. But there has to be a mechanism that motivates ministers to stay away from the unethical and the illegal, and usually in a democracy that means having a process that pushes it out into the public domain.

**Mr. Arthur Kroeger:** It is a judgment call, Mr. Chairman. I'm very uncomfortable with that idea myself, but others are quite entitled to have their own opinions on it. The whole idea of officials doing end runs around elected people leaves me uneasy.



**The Chair:** I wouldn't suggest an end run. It's when it has come to an impasse. As Mr. Fitzpatrick was saying, in the U.K. system the deputy would say, "Put it in writing and I'll do whatever you tell me, even though I disagree with it". We're basically adding another step and saying that letter would become public, and we know what would happen from that point forward. Governments around the world, as we know, do all kinds of things in secrecy that the people would never want done.

We in Canada, fortunately, are blessed with a very healthy, prosperous democracy, and prosperity comes from a healthy democracy. But there are times when we have to tweak and revisit these issues, because it didn't work in this particular instance. Maybe it's not working in other instances we're not aware of. Mr. Himelfarb said he has had three instances where deputies have gone to him and said, "Can you reconcile this issue I'm having with my minister?"

We think of Enron and WorldCom in the private sector, and there is the Sarbanes-Oxley bill, which is a big heavy club that came down on the private sector because they abused the privileges. We have to find a way here, too.

**Mr. Arthur Kroeger:** With regard to the three instances Alex Himelfarb referred to, presumably that technique was fairly effective in the sense that people went to him, he was aware of the situation, he took it up with the Prime Minister, and I would have thought the issue was probably dealt with.

**The Chair:** We don't know. Maybe the Prime Minister sided with the minister.

**Mr. Arthur Kroeger:** He might have.

I'm not sure I can shed much light on it. My own sense is that the cure might be worse than the disease. But other opinions are possible.

**The Chair:** I'm also concerned that the deputy ministers can hold the ministers to ransom. The Prime Minister and the ministers have the authority to govern the country. That is a given. They don't need to be undermined by a deputy who may have another agenda. They have to have confidence in the public service. As you pointed out, it is a balance.

I think the committee will have to wrestle with this and make some recommendations. The system didn't work. It is therefore incumbent upon Parliament, as the institution that holds government accountable, to have something to say, and I think we are going to have something to say on this issue.

We'd like to thank you very much for coming along this afternoon. Your insight and experience have been very much appreciated. We hope that you will—I'm not going to say "agree"—give us your feedback on what the committee says in due course.

• (1720)

**Mr. Arthur Kroeger:** Thank you, Mr. Chairman.

I wish the committee well in its work. It's an important undertaking.

**The Chair:** The meeting is adjourned.

---





**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**

**Also available on the Parliamentary Internet Parlementaire at the following address:  
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :  
<http://www.parl.gc.ca>**

---

**The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.**

**Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.**