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—
Chair

Mr. John Williams

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• (1110)

[English]

The Chair (Mr. John Williams (Edmonton—St. Albert, CPC)): Order.

Good morning, everybody. We're being televised.

The orders of the day, pursuant to Standing Order 108(3)(g), are the government response to the ninth report, chapters 3 to 5, of the November 2003 report of the Auditor General of Canada, and the government response to the tenth report, "Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability".

Our witnesses this morning, appearing as individuals, are Dr. C.E. S. Franks, professor emeritus of political science at Queen's University, and Mr. Lorne Sossin, associate dean, Faculty of Law, University of Toronto.

Welcome, gentlemen.

Before we get into the opening statements, I would just make an announcement that we have a delegation visiting us from the Federal Assembly and Accounting Chamber of the Russian Federation. They are with us this morning, and hopefully I will do a good job of announcing the names....

Borys, yes, you read these names into the record; you know all about this.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Mr. Boris Georgyevich Preobrazhenskiy; Mr. Anatoly Nikolaevich Medvedev; Mr. Sergey Petrovich Paraskevich; and Ms. Svetlana Genadievna Loula. They're accompanied by senior advisor David Rattray; Ivo Balinov; Varvara Andreevna Tchernogorskaya; Irina Koulatchenko; and Elena Masani.

The Chair: Why don't you say a few words of welcome in their language, please.

Mr. Borys Wrzesnewskyj: I'll say it in Ukrainian, since I don't speak Russian.

[Member speaks in Ukrainian]

[Delegate speaks in native language]

The Chair: Very good.

Mr. Lastewka is also from Ukraine, and so on and so forth.

Welcome to all, and welcome to our delegates.

Monsieur Sauvageau, s'il vous plaît; is this a point of order?

[Translation]

Mr. Benoît Sauvageau (Repentigny, BQ): I have a short question. Will the two notices of motions be debated at the end, or at the start, of the committee meeting?

[English]

The Chair: We always debate on motions at the end. Is it a notice of motion that you wish to table?

[Translation]

Mr. Benoît Sauvageau: I have another question, since this is an ongoing learning process for us. Five minutes after the last meeting, we sent the clerk a notice of motion, a copy of which I have here with me. To my way of thinking, the 48 hours' notice began right then and there.

Am I right?

[English]

The Chair: It's 48 hours from the time you table it at committee. Delivering it to the clerk is not deemed to be 48 hours' notice. You can table it here. I thought you were debating a motion already tabled. If you wish to table a motion, documents always come at the beginning of the meeting, then we have the meeting. If we have debate on issues, that is always at the end.

So if you're going to introduce and table a motion with 48 hours' notice, you can do that now.

[Translation]

Mr. Benoît Sauvageau: When we send a motion to the clerk who in turn distributes it to other members of the committee, to our way of thinking, there is no need to table the motion in committee. Last Thursday, five minutes before the meeting ended, I sent a notice of motion to the clerk, because some modifications were warranted. As far as I'm concerned — and I may be wrong about this — the 48 hours' notice began at that moment, which means that we could debate the motion at the end of today's meeting.

I'm not asking us to debate whether or not the motion is in order. I'm asking a question.

• (1115)

[English]

The Chair: No, no. Especially a year ago, when we were dealing with some rather sensitive issues—they may be coming to a head this morning, but that's by the way—we had very clear and definitive rules. Documents had to be tabled at committee, when the 48 hours' notice would commence. So giving it to the clerk is not considered sufficient.

The clerk has just shown me this from the minutes of the meeting on October 26, 2004:

That, forty-eight (48) hours' notice be given before any substantive motion is considered by the Committee; and that the notice of motion be tabled in both official languages, filed with the Clerk of the Committee and circulated to members before consideration is given.

We will circulate, officially, when you table it now, and that's the end of the debate. So you can table it now and then it will be debated on Thursday.

[*Translation*]

Mr. Benoît Sauvageau: No, Mr. Chairman. Your interpretation is exactly the same as mine. Notice must be sent to the clerk 48 hours in advance and the clerk in turn forwards the motion to committee members.

Isn't that how it works in other committees?

[*English*]

The Chair: I'm sorry, Mr. Sauvageau, I'm not going to get into a long debate. That is the way we have done this for a very long time, and we're not going to change the rules now. If you table it at the committee now, 48 hours will start now. I'm not going to get into any other debate other than you have the opportunity to table it now. If you don't, I'm going to move on.

[*Translation*]

Mr. Benoît Sauvageau: I see. I want to be certain that I understand what you're telling me, Mr. Chairman. Contrary to what is done in other committee, we must table our notice of motion in committee, rather than submit it to the clerk, as is the case in other House committees. We take a unique approach.

[*English*]

The Chair: I have never served on any other committee, and this is the way we've done it at public accounts for a long, long time.

[*Translation*]

Mr. Benoît Sauvageau: In view of that fact, Mr. Chairman, I'd like to table my notice of motion. Even though I wanted to challenge your ruling, I see that you have your mind set. Therefore, I will go ahead and table my notice of motion.

[*English*]

The Chair: Okay, fine, you may read it into the record.

[*Translation*]

Mr. Benoît Sauvageau: I'll gladly do so, since it was sent over 48 hours ago.

[*English*]

The Chair: Fine, you can read it into the record.

[*Translation*]

Mr. Benoît Sauvageau: Fine.

Pursuant to Standing Order 108(3)g) and the Public Accounts of Canada, the Standing Committee on Public Accounts requests the government table forthwith with the Committee copies of all internal and external audits (including forensic audits) pertaining to the administration of the Internationaux du sport de Montréal and to the organization committee of the XI Championnats du Monde FINA — Montréal 2005.

[*English*]

The Chair: That's been distributed in both official languages, and that will be debated on Thursday at the earliest, when the mover brings it forward.

Mr. Fitzpatrick, we already have notice of your motion, which will be at the end of this meeting.

Without further ado, we will now have our opening statements.

Mr. Franks, please, you have an opening statement.

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

I'm honoured to be here. My statement is about the government's response to the tenth report of this committee of last May, the report on ministerial and deputy ministerial accountability.

The key recommendation of that committee was that deputy ministers be held to account for the performance of their duties and for their exercise of statutory authorities before the House of Commons Standing Committee on Public Accounts. The government rejected this recommendation, first in its August response, and then, more recently, in its document "Meeting the Expectations of Canadians".

The government claims that all accountability to Parliament must be by ministers, and although deputy ministers hold statutory powers in their own right, their accountability lies solely within government, to their ministers, the Prime Minister, and the Clerk of the Privy Council. Deputy ministers, the government argues, appear before the public accounts committee to answer on behalf of their ministers, not as the responsible holders of power in their own right. In short, the government claims that there is no accountability relationship between deputy ministers and Parliament.

There is nothing in the constitutional relationships between Parliament and government that prevents deputy ministers from having an accountability relationship with Parliament or the public accounts committee. Such a relationship exists in Britain, and it also exists in Ireland, New Zealand, and Australia. The Canadian government is alone amongst the major Westminster-style democracies in its extreme adherence to the belief in exclusive ministerial responsibility and accountability to Parliament.

The Canadian government argues that all processes for accountability to Parliament involve "...partisan politics. Parliament and its processes are inherently political." Then, because all accountability to Parliament is partisan and political, ministers, as the political heads of departments, must be the only persons accountable in parliamentary forums. The government does not explain why this must hold true for Canada while it is manifestly untrue for other Westminster-style parliamentary democracies. Nor does the Canadian government explain how it reconciles the contradictions between its belief that ministers are accountable for the exercise of authority by deputy ministers with its definitions of responsibility and accountability. According to these definitions, persons can only be accountable for matters for which they hold responsibility. If this holds true, then ministers cannot be accountable for matters for which the deputy ministers, not the ministers, have statutory and other authority. Nor can deputy ministers speak on behalf of ministers for these matters, because the ministers do not hold the powers and responsibility.

Aucoin and Jarvis reject the government's distinction between the accountability of ministers before Parliament and the answerability of deputy ministers:

Those who are confused by the use of these terms, with their various meanings, should perhaps be excused for their confusion. Those who should know better have not done everything necessary to help sort things out.

Despite what the government claims, confusion in the logic underlying its position leads to confusion over responsibility and accountabilities.

The statutory and other responsibilities assigned to deputy ministers belong to the deputy ministers personally. They cannot be delegated upwards to ministers, any more than they can be delegated downwards to subordinates. Nor can accountability for these responsibilities; deputy ministers hold responsibility and are accountable for its use.

As Aucoin and Jarvis observe:

In practice, deputy ministers are already held accountable by parliamentary committees. This is as it should be, given that they have personal assigned and delegated authorities and responsibilities.

There is no possibility of clarifying the confusion found by both the public accounts committee and Justice Gomery, in their examination of the sponsorship affair, about who, deputy or minister, holds responsibility until the government's interpretation of the doctrine of ministerial responsibility observes constitutional and statutory reality and the rules of logic.

If Canada is to have effective parliamentary control of the public purse and effective accountability for financial administration, the bottom line must be that deputy ministers and other heads of agencies appear before the public accounts committee as the holders of responsibilities and powers in their own right.

The government already recognizes that:

...the responsibilities of [British] accounting officers are very similar to those of a deputy minister under the Financial Administration Act and Treasury Board policies. Similar to accounting officers, deputy ministers are responsible for financial regularity and probity; economy, efficiency and effectiveness; financial and management systems for departmental programs and public property.

● (1120)

What the government fails to accept is that these responsibilities belong to deputy ministers, not ministers, and the deputy ministers alone can answer and be held accountable to Parliament for their use.

For reform to occur, both government and Parliament must recognize that deputy ministers are accountable in their own right before the public accounts committee. A process acceptable to both government and Parliament must be established that ensures a non-partisan, effective approach to the accountability of deputy ministers before the committee.

The ground rules for this process should cover such matters as the procedures through which ministers may overrule deputy ministers; the subjects for which deputy ministers are accountable in their own right; the subjects for which deputy ministers can only answer on behalf of their ministers; the subjects on which deputy ministers cannot answer at all; and the operational definition of such principles as regularity and propriety, for which deputy ministers hold responsibility.

Despite its protestations to the contrary, the government has a distressing proclivity for instructing Parliament on how it behaves and what it must or must not do. The government does not always get it right. It states that, "all accountabilities in Canadian government flow from ministers' individual and collective accountability to Parliament". The traditional, and correct, view is that accountabilities flow from the allocation of powers and responsibilities, not from ministerial accountability.

The government claims that:

Parliament creates many statutory obligations—under the Income Tax Act, for example—but this does not give Parliament the authority to oversee compliance or to enforce the law. That is a function of the executive.

This is not correct. The Auditor General performs a compliance audit, which the public accounts committee reviews. The mandate of the Standing Joint Committee for the Scrutiny of Regulations requires it to oversee the process of making regulations and ensure that regulations comply with the law and the Charter of Human Rights and Freedoms. This committee has, and has exercised, the power to enforce compliance by initiating a process for revoking offending regulations.

The government at times seems unwilling to accept that ministerial responsibility is only one of three central doctrines related to responsibility and accountability in the Canadian parliamentary cabinet system of government. The other two are the supremacy of Parliament and the rule of law. Parliament makes the laws and Parliament is entitled to share ownership of both the principle of ministerial responsibility and what statutory provisions mean in terms of the accountability of ministers and public servants in parliamentary forums.

The Treasury Board appears to treat the public accounts committee as an adversary rather than a partner in the quest for improving financial management and accountability. This adversarial process is aided and abetted by the government's insistence that all accountability to Parliament must be by ministers: there is a direct correlation between the amount of real or suspected ministerial involvement and the amount of partisanship in Parliament and the public accounts committee.

The Treasury Board's efforts to improve financial management in government over the past 40 years have not been particularly effective. Problems in the basic requirements for regularity and propriety appear with distressing frequency. The Treasury Board and the public accounts committee have a common concern for good financial management and accountability. This common interest cannot be achieved until they regard themselves as partners rather than adversaries.

The Treasury Board and the public accounts committee need to engage in a dialogue over the terms and conditions for the accountability of deputy ministers before the committee. There are some glimmers of hope that such a dialogue might begin. Until it does, the Treasury Board will have no allies in its efforts to improve management and accountability, and Parliament will not have the means to assure the people of Canada that the financial administration of the government meets the standards demanded in a modern democracy.

Thank you, Mr. Chairman.

• (1125)

The Chair: Professor Franks, I appreciate that statement very much indeed.

Now we'll turn to the opening statement by Mr. Sossin, please.

Mr. Lorne Sossin (Associate Dean, Faculty of Law, University of Toronto, As Individual): Thank you very much. It's an honour to be invited to join you this morning.

I'm also addressing the tenth report of the committee, entitled "Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability", and the government's response to that document. My comments follow from, and elaborate on, Ned Franks' submissions to this committee.

I address these issues from the framework of Canada's constitutional system. I wanted to pay particular attention to one key area of the government's response to the tenth report. There's a long quote, and I'll just pick up on the last two sentences from it. This is where the government states that senior officers:

...are answerable to Parliament in that they have a duty to inform and explain. They do not have direct accountability to Parliament and may neither commit to a course of action (which would require a decision from ministers) nor be subjected to the personal consequences that parliamentarians may mete out.

I concur with Mr. Franks' view, expressed here today, that there are no constitutional impediments that preclude deputy ministers from being accountable directly to Parliament. Further, there are some constitutional principles that suggest such accountability may be desirable and—I would go further and say—in some cases, necessary.

There are two such principles I wish to highlight briefly this morning, and I believe these principles have special resonance today in light of the release earlier this morning of the report by Justice Gomery into the sponsorship affair.

The first principle is the constitutional convention of bureaucratic neutrality. The second principle is the rule of law, already mentioned by Mr. Franks. Both of these principles lead to independent duties owed by deputy ministers and ultimately by the Clerk of the Privy Council. These duties are owed outside the context of ministerial responsibility and are constitutional foundations of parliamentary democracy, of no less importance than ministerial responsibility. In both these settings, when deputy ministers, and ultimately the Clerk of the Privy Council, may be called before parliamentary committees to account for the conduct of public servants and/or their own conduct, they speak to Parliament as the leadership of the public service, a distinct organ of government, with a voice independent from their ministers.

I'll address each principle in turn.

The constitutional convention of bureaucratic neutrality, the first principle, is recognized throughout Canada and has been affirmed through numerous Supreme Court of Canada decisions. In those decisions, the convention is referred to as "a right of the public at large to be served by a neutral public service". The court went on to characterize the public service as an "organ of government" with its own distinct duties and responsibilities.

I'll mention parenthetically here that a number of documents have restated the view that the public service has no independent constitutional identity. I'm not sure what that means, or is intended to mean. Ministerial responsibility also appears nowhere in a constitutional text, yet it's clearly the foundation on which our parliamentary democracy is built. So I would invite anyone who has a better understanding of what the government means by that to help me out later in the discussion.

Since the public has no mechanism for ensuring the neutrality of the public service, and since in these contexts it would be inappropriate for ministers themselves to be accountable for bureaucratic neutrality—in light of the fact that it is often neutrality in relation to the partisan interests of the government that civil servants must assert—it only makes sense that Parliament would take an active oversight role in this regard. I refer you to the forthcoming amendments through the Public Service Modernization Act, which will create the Public Service Commission as an entity reporting directly to Parliament. This further elaborates a connection between the integrity of the public service and Parliament going forward.

Allegations of political interference would in the normal course be reported up through the ranks from civil servants to deputy ministers. Deputy ministers, and ultimately the Clerk of the Privy Council, are accountable for the integrity of the civil service, but to whom are they accountable? Based on my review of the constitutional convention, this accountability must extend to Parliament—which of course authorizes the powers these officials are exercising—and, through Parliament, to the people of Canada.

•(1130)

The public service must work closely with and execute the policy direction of ministers. They must also maintain, however, a measure of independence from those ministers. This independence requirement is not static; rather, it takes form along a spectrum that changes according to the setting and circumstances.

In some settings and circumstances, the best example is prosecutorial independence. This independence will be robust. In other settings and circumstances, it may be subtle. It is, however, I would contend, never absent. Parliament may look to the courts to elaborate on the scope and nature of this constitutional convention, but like other constitutional conventions—for example, ministerial responsibility—it cannot be enforced by the courts.

Turning to the second principle, the rule of law, it's well known that public servants may only exercise authority that has been conferred on them by law. They have no inherent jurisdiction. This authority, moreover, is never absolute. It is always bounded either by the scope of legislation or the scope of Crown prerogative powers.

Public servants owe a constitutional duty to uphold the rule of law, and this duty explicitly overrides a public servant's duty of loyalty to the government of the day. A duty to the Crown, in other words, is a different and higher obligation than a duty to the government of the day.

In some circumstances, the duty to uphold the rule of law will require that public servants disagree with ministerial direction. In other cases, this duty will require public servants to refuse to carry out ministerial orders. These obligations may or may not dovetail with the requirements and provisions of the new whistle-blower legislation, but notwithstanding such legislation, guardianship over the rule of law in public decision-making remains a fundamental and independent obligation of the public service.

The government's report to this committee observes that oversight over public decision-making for compliance with parliamentary direction is a matter for the executive. This point was already alluded to by Mr. Franks. I would add, of course, that the executive enjoys no exclusive accountability over any matters of the execution of public functions. Judiciary review and oversight by the judiciary always exists as a parallel form of accountability. But where Parliament has reason to investigate alleged breaches of the rule of law—for example, where there are allegations of government spending without proper authority, or allegations that spending has been carried out through extra-legal means—deputy ministers, and ultimately the Clerk of the Privy Council, also should be accountable to Parliament. For rule of law infringements or participation in improper political interference, it is no answer for the leadership of the public service, as a distinct organ of government, to respond that they were simply following ministerial direction.

That deputies may not be held personally to blame—in other words, that individuals may not be singled out for blame by this committee, which is a principle that I would agree with—is not a reason that precludes in any way the accountability of deputies to this committee. And that is another element of the government's response that I hope we'll have a chance to discuss.

In light of this analysis, and the independent constitutional duties owed by public servants to remain non-partisan and to uphold the rule of law, in my view the government's response to the tenth report fails to capture the full extent of the relationship between the public service and Parliament when it states that deputy ministers are accountable to their ministers alone.

That concludes my opening remarks. Thanks again for the opportunity to be here.

•(1135)

The Chair: Thank you, again, Mr. Sossin.

Mr. Fitzpatrick, please, eight minutes.

We're going to wrap up at about 12:45 so that we can debate Mr. Fitzpatrick's motion.

Mr. Brian Fitzpatrick (Prince Albert, CPC): Thank you very much, gentlemen.

I must confess that when I saw the government's initial response to our tenth report, I was rather dismayed with the answer. It basically said there was really no ambiguity in the issues of accountability and responsibility, and everything was quite clear.

When I read that, the first thing that struck me was, “Then why are we holding the Gomery inquiry?” I mean, we have not been able to determine from anybody in the government who was responsible, who was accountable, who made these decisions, and so on. In fact, something I'll always recall from that whole episode is the Prime Minister saying, well, it was a small group of people in the bureaucracy who were responsible for this program and accountable for it and so on. Obviously, that's not the case. With the report that's out today, there is a fairly large group of people responsible and accountable for this sponsorship scandal, and they're on the political side of the operation. They're not people in the public service. I think that's one of the clear facts that came out of Justice Gomery's report today. So at least that issue's been cleared up.

When Minister Alcock appeared last week with the Clerk of the Privy Council, they presented different arguments as to why they opposed the tenth report. And I guess that's what I'm going to focus on, the response they gave to the committee.

Mr. Himelfarb, if I understood him correctly, was saying that you can make all the rules you want, but if somebody wants to go outside the law and break the law, and not conduct themselves in an ethical matter, rules aren't going to help you. That caused me a lot of problems, because I think that's what the tenth report was trying to deal with. What does a deputy minister, a public servant who's supposed to be neutral and professional, do when the political masters are trying to get that person involved in something that they know is clearly offside? What are their options? That's the very issue that came up. So for him to make that statement without connecting it to the tenth report, I found truly, truly amazing, and it underscores....

I don't know what kind of culture we have here, but it's a culture certainly that doesn't want to address the real issues that face people in the public service.

In any event, we were told that if a deputy minister has difficulty with what the government is trying to do, what the governing party or the minister is trying to impose on him, no problem at all; he can just send the matter off to the Treasury Board, and this will be far, far better than this accounting clerk concept that we had proposed unanimously in this committee.

I'm just going to leave it at one point and ask for your response on how you view this as being a superior method of dealing with the thing. I think Justice Gomery mentioned, in his report today, the culture of intimidation that exists in Ottawa. I would suggest that when you talk about Treasury Board, and the Clerk of the Privy Council, and a lot of those positions today.... I somehow very often think of their being just political extensions of the government of the day, too, so they're not places where a professional, neutral public servant would be excited about knocking on the door for assistance.

I would like to know what each of you gentlemen would have to say about Mr. Alcock's proposal that he has something that's even superior to the British system; he's got this Treasury Board concept.

● (1140)

Dr. C.E.S. Franks: Perhaps I should begin, since I'm partly at fault for the proposal of the accounting officer, as I'd mentioned it previously before the committee.

The Glassco commission, in the early 1960s, recommended that the control over the public purse, the actual spending of money, and management in general, be delegated, given, to the deputy ministers. They said, "Let the managers manage". In 1969 the reforms to the Financial Administration Act took the powers away from the comptroller of the treasury and gave them to deputy ministers. They explicitly gave what had belonged to a very powerful central officer of government to the deputy ministers, on the assumption that they would use those powers.

In 1979 the Lambert commission reported, and they found that deputy ministers did not manage. They came up with a slogan one step further than "Let the managers manage"; they said, "Make the managers manage".

In 1989, Gordon Osbaldeston, a former Clerk of the Privy Council, reported on the deputy ministers and said that their management role was one of their weaker ones, and that supervision or accountability to the Treasury Board was one of the weakest parts of the whole control effort.

We are now, in 2005, looking at the same problem, that the statutes give responsibilities to deputy ministers, as does delegation from the Treasury Board, and the deputy ministers have not fulfilled their obligations under the statutes and the delegated authorities.

One of the themes in my paper is, why doesn't that happen? The answer, I would put to you, is that the Treasury Board has tried to do it on its own, without the help of the public accounts committee.

The Chair: If I could interject, we've got about a minute and a half left. If Professor Sossin is going to make a comment too, we'll have to be kind of brief.

Dr. C.E.S. Franks: I'll stop right after this.

The point I'm trying to make is that without the support of the public accounts committee, I don't think the Treasury Board can do

the job it needs to do in controlling deputy ministers and ensuring that they behave properly. Without the support of this committee, I can't believe deputy ministers can enforce accountability, and that can only happen if the deputy ministers are directly and personally responsible when they come before this committee.

Thank you, sir.

The Chair: Thank you, Professor Franks.

Professor Sossin, a brief response.

Mr. Lorne Sossin: Very brief.

Again, I share many of the views with Mr. Franks on the accounting officer front, but I would agree with one of Mr. Himelfarb's comments, which is that more rules in and of themselves won't make much of a difference. It's the rule of law culture that has to be the catalyst for both the development of those rules and, obviously, the compliance with them.

I think that rule of law culture is unlikely to come from the executive itself, and I think the other measures, be it going to the courts or going to the Public Service Commission, all tend to be complaint-driven. I think it falls to Parliament and to this committee to be a driving force in inculcating that culture. I think following the second of Justice Gomery's reports will be a singular moment in Canadian history for the development of that culture and a singular mandate for this committee to play its role in ensuring that it's a driving force in that regard.

● (1145)

The Chair: Thank you very much.

Thank you, Mr. Fitzpatrick.

Monsieur Sauvageau, s'il vous plaît, huit minutes.

[Translation]

Mr. Benoît Sauvageau: Thank you and welcome.

I hope you won't be offended if I ask you to keep your answers short, since we have only eight minutes.

In light of what you've seen over the past two or three years, the fact that accounting practices have supposedly been tightened up and Treasury Board's recent announcement, do you think it would be possible to see the likes of the sponsorship scandal today?

[English]

Dr. C.E.S. Franks: I'll give a very brief answer: not today, but, unless something fundamental changes, it could happen tomorrow. The change has to be something beyond simple internal reorganization of government and the technical fix within government.

Mr. Lorne Sossin: For my part, the key moment that I would like to believe would play out differently—but I think we're in doubt—is the moment when the Clerk of the Privy Council indicated that accountability would rest with the Prime Minister. I think there was an opportunity to investigate what the lawful basis for the fund would be, what the measures that were in place to ensure the integrity of the civil service in implementing that fund would be. A whole series of questions on, again, the role of the public service I think would be answered today, and I hope would be asked today, but I think we don't have confidence that would be the case in light of the reforms we've seen to date.

[*Translation*]

Mr. Benoît Sauvageau: For the benefit of our committee and of the two of you who are accounting experts, I think it would be very interesting to study a chapter of the Gomery Report entitled “Structure, Responsibility and Lines of Accountability in the Federal Government”. The chapter discusses the role, responsibility and accountability of ministers and public servants, the Prime Minister's Office, and so on.

It's all well and good to have marvellous plans on paper and to have the President of the Treasury Board come here to explain broad theories to us, if we don't follow through on things, then we could see a repeat of this scandal.

I haven't read the Gomery report in its entirety, but I would like to read an excerpt and ask your opinion. Justice Gomery has this to say:

I have been able to identify three main factors that caused or contributed to the problems described in the Report of the Auditor General.

He continues:

The unprecedented decision to direct the Sponsorship Program from the PMO, bypassing the departmental procedures and controls which the Deputy Minister of PWGSC would normally have been expected to apply and enforce;

The Chair: On which page would I find that quote?

Mr. Benoît Sauvageau: I'm quoting from page 73 of the English version, volume one.

What this means is that even if the mechanisms in place are clear and inflexible, even if a minister or the Prime Minister's Office decides to disregard these mechanisms, it matters little what rules the President of the Treasury Board, the Public Accounts Committee and the Auditor General will have put in place. It will come down to a political decision. Would you agree?

[*English*]

Mr. Lorne Sossin: Just to respond quickly to that, I think it has been an axiom of government in Canada since its inception that politicians and ministers cannot create self-executing policies or funds. In other words, it is always the case that only with the active cooperation and work and effort of the public service can the government implement any plan, even a fund that appears to operate under the radar screen. It doesn't operate by itself. We see in the report that it actually operated with an active hand on the part of several officials, and I believe it's there, in addition to here, that the oversight and deterrence can emerge to prevent another scandal of this nature.

Dr. C.E.S. Franks: I'll give a very brief answer as well. The rules were in place: the people who have the responsibility for ensuring that the rules were observed were the senior public servants, and they

did not follow that responsibility. For whatever reasons they didn't, they simply didn't, and there was no procedure in place through which they could say, formally, I cannot accept this ministerial direction, Mr. Minister, you must take the responsibility. So we're left with this blurred confusion that we found.

• (1150)

[*Translation*]

Mr. Benoît Sauvageau: You spoke of expanding the role of the Public Accounts Committee. We should also talk about the government's response to the committee's ninth report on chapters 3, 4 and 5 of the Auditor General's report.

I'd like to discuss partisanship and non partisanship, and an expanded role for the Public Accounts Committee, particularly when the media is reporting a rumour to the effect certain program funds may have been misappropriated, for instance in the case of the Canadian Unity Council and the Internationaux du sport de Montréal.

Do you think the committee would be justified in asking to see the internal and external audit reports on these matters, in order to work with the departments and programs in question and...

[*English*]

The Chair: Mr. Sauvageau, the committee has the right and the authority to ask for any documents from government that it so desires, including, as we found out a little while back, cabinet minutes, cabinet documents. Therefore, I think your question, “Do we have the authority”, is a little bit superfluous. But if they wish to answer, they may.

[*Translation*]

Mr. Benoît Sauvageau: You interrupted me a little too soon, Mr. Chairman.

You said we should endeavour to act in a non-partisan manner in this committee. I think that even the government party should support this proposal to take a more in-depth look at the various internal audit reports.

In your view, would this be one way of expanding the role of the Public Accounts Committee?

[*English*]

Dr. C.E.S. Franks: Mr. Chairman, I think the answer there is that, with rare exceptions, every member of Parliament around this table, and every member of Parliament generally, is a party member. There's nothing the matter with being party members. That's good; that's the motivation; that's why we have an opposition member chairing this committee. The point is that together you have a job to do on behalf of Parliament.

The point I made in my paper, and I think it's absolutely crucial, is that the more something smells of ministerial involvement or is obviously ministerial, the more likely the committee is to be partisan. One of the problems with this claim that the ministers are accountable to Parliament is that it makes everything partisan.

I tremble when I see, in one of the government documents, the statement that they're going to improve management by having more ministers go before more committees to talk about management. The ministers aren't the managers, the deputy ministers are, and they should be the ones who are here. I think that's the beginning of the problem right there.

The Chair: Professor Sossin.

Mr. Lorne Sossin: I would just add that the areas I was highlighting in my opening statements—the oversight for the non-partisan integrity of the public service and the rule of law—are clearly areas where there would be no appropriate partisanship on the committee while investigating. In other words, those are roles of guardianship and stewardship for Parliament and for this committee.

I think in those areas, if one saw partisanship in the questioning or in the report, it would be a concern, and I wouldn't expect that there would be in light of the shared and kindred concerns that every member of the committee brings to issues like the constitutional duties of government officials.

The Chair: Thank you very much.

Merci, Monsieur Sauvageau.

Mr. Murphy, please, eight minutes.

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

To Mr. Franks, we've lived this for the last year and a half of our lives, and I guess we're looking for simplicity. It's a very complex, complicated area, and one that you're so knowledgeable on. Certainly we accepted your recommendation and we made it part of our recommendation that deputy ministers are accountable to Parliament.

When we look back, it was so simple in the sponsorship thing. Mr. Quail was the deputy minister. He came before the committee and said he wasn't responsible because he wasn't in the loop. But the way I look at it, it was his job to create the loop and be in the loop that he created.

When you look at it—and I agree that they should be accountable to Parliament, and they should be the ones to appear before this committee—in this particular case, didn't Mr. Quail have an option? He wasn't hired by the executive of government, he wasn't hired by the Prime Minister's Office, he wasn't hired by the Minister of Public Works and Government Services, he was hired—and generally supervised, to a certain extent—by the Clerk of the Privy Council. When he got this problem, wasn't the option available to him just to get on the phone and call the clerk, Mel Cappe at the time, and explain, “I have a problem here”?

• (1155)

Dr. C.E.S. Franks: That's one of the mysteries in this whole thing. My interpretation, which is a purely gratuitous one, is that it was so clear that the directions were coming from the very highest levels, he didn't see that as a useful option.

I think the problem is that deputy ministers generally belong to a deputy ministerial community that looks more at the centre of power as their real bosses than they do the laws or Parliament, or than they consider their responsibilities as managers of departments. I think

that has to change, and it can only change through something along the lines that this committee has recommended.

Hon. Shawn Murphy: Wasn't there an onus in the machinery of government, through the Clerk of the Privy Council, to explain to the deputy ministers involved in the machinery of government that if there was a problem with the administration of government, with the Financial Administration Act, Treasury Board controls, and if for some reason the deputy couldn't fulfill his or her statutory mandate....? Wasn't there an obligation for the clerk to explain to the deputies that they should go back to him?

Dr. C.E.S. Franks: Deputy ministers generally, and the clerk in particular, look two ways. One, they have to speak on behalf of the public service to government, and two, they have to speak on behalf of government to the public service. I believe our system at present overweights speaking on behalf of the government to the public service and underweights speaking on behalf of the public service—and, in that sense, the Financial Administration Act and the rules and regulations—to government. I think we have a problem there.

Hon. Shawn Murphy: Dealing with this whole concept of accountability that we have through the Standing Committee on Public Accounts—we've made the recommendation, and the executive has rejected it—in your view, in all your years of experience, whose job is it to create the chains of accountability? Is it the executive or is it Parliament?

Dr. C.E.S. Franks: You have a job here in this committee, sir, and that job is to say to the government, fine, we made a report, and you flatly rejected it with no serious discussion. Now we're going to tell you what we think, taking into account these views you presented to us, and you've got to give us a good reason for objecting to them or we have to reach an accommodation.

My preference would be to reach an accommodation, and that requires a dialogue that has not really yet begun.

Hon. Shawn Murphy: But to take this discussion one step further, we can write another report and explain why we made this recommendation, but where can we take it? What step do we take it beyond that?

Dr. C.E.S. Franks: You could see if you couldn't get, say, a motion before Parliament to concur in your tenth report, or a version of same. If the House of Commons agreed to it, that would have the force of requiring the government to do as told.

I hope it wouldn't come to that. As I say, I think the Treasury Board should look at this committee as an ally, a partner, in trying to ensure financial probity, not as an adversary.

Hon. Shawn Murphy: On an unrelated topic, one of the biggest problems I see—and I've been on this committee three or four years...and I'll get each of you to comment, if I may. In dealing with these issues that do come up from time to time, I think we all have to bear in mind that government is a... And this is a fairly major problem, but when you get an administration that handles \$180 billion a year, there will always be problems. The Royal Bank has problems, Imperial Oil has problems, and we're going to have problems.

The biggest problem with the public administration that I see is the inability of the deputy ministers or the Clerk of Privy Council to discipline anyone who was involved in any of these problems. There was no one administratively disciplined under the sponsorship scandal. I've never seen any instance of anyone coming before this committee in my four years that has testified that this person was actually disciplined.

This is one of the inherent problems with the administration, that there's a failure there. I would like your comment on that problem—or problem as I see it.

• (1200)

Mr. Lorne Sossin: I as well think there is a problem, but I'm not sure that's a problem this committee can be the driving force in solving. In other words, to see the accountability in terms of who was demoted, who was fired, what heads rolled within a department I think does risk bringing a level of scrutiny to individual officials that is probably not a healthy form of accountability for a parliamentary committee to take up.

What I would say in cases where, for example, there were directions that were improper and they were followed—and that, by definition, means that following those directions was improper—then this committee I think is right to focus on who was in authority in that department. That's why I think the focus is properly on deputies and the clerk, improperly on ministers giving the direction. What happens below that level I think is a serious matter. It's a matter for the Public Service Commission, it's a matter for other independent oversight bodies that are not government controlled, but I don't think it would be the core of this committee's function.

The Chair: You have one minute left.

Hon. Shawn Murphy: Just for clarification, I didn't intend to suggest that we are going to get into that; I'm just suggesting that from an overall scheme of things, the ability does not seem to be there. No, I agree with you, we're not going to get into that aspect of things.

Mr. Lorne Sossin: I agree it is a concern that one would lack confidence in the process if one didn't see it at the end of the day.

Dr. C.E.S. Franks: I'll make a very brief comment. Last week a document on reforms to the Financial Administration Act was submitted to the committee. There's a statement in there that there has never been a court case about failure to observe the requirements of the Financial Administration Act. I'm not saying there should be, but the point of that document is to suggest changes so there would be some sanctions and more effective means of imposing blame when it's deserved.

The Chair: Thank you, Mr. Murphy.

On that point, Professor Franks, the Financial Administration Act does not include any penalties at this point in time for failure to implement or abide by the act. Am I correct in saying that?

Dr. C.E.S. Franks: I believe that's correct, sir.

The Chair: Mr. Christopherson, please, eight minutes.

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

Gentlemen, thank you very much. Believe it or not, for some of us this stuff is actually quite fascinating. That probably speaks more to us than the subject matter, because it is pretty dry, but it matters in so many ways.

I want to begin with what I think is a fairly simple question, but it creates a lot of confusion.

In your presentation, Professor Franks, you talked about accountability and answerability. I'd like to just revisit that fundamental issue and bring up the extract that you quoted from:

Those who are confused by the use of these terms, with their various meanings, should perhaps be excused for their confusion. Those who should know better have not done everything necessary to help sort things out.

Then you say: Despite what the government claims, confusion in the logic underlying its position leads to confusion over responsibility and accountabilities.

Just in very plain language, the difference between accountability and answerability...?

Dr. C.E.S. Franks: The government creates definitions of them, that accountability involves the capacity to assign blame, involves the responsibility to act, etc., and answerability simply involves giving an answer. The problem is that when you start looking at how they apply them to the answerability and accountability of ministers and deputy ministers, it all falls apart. Ministers can't be accountable for things where deputy ministers have the responsibility, and deputy ministers can't answer for ministers where ministers don't have the responsibility. But the government claims they can.

My view on this is that they're very loose words, they mean different things in England than they do now, they mean different things in different government documents. They should...I was going to say "bloody well", but...well, I've said it now. They should just drop the distinction, drop the effort, because it doesn't work. They should look at what the role is of deputy ministers and heads of agencies in front of this committee. It doesn't matter whether they're answerable or accountable, it doesn't matter whether they're accountable to or accountable before; the point is they should be responding to questions, as the holder of power in their own right, defending what they've done or failed to do.

Mr. Lorne Sossin: I would suggest as well that the definition of accountability given by the government is unduly narrow, even as to how most people would understand the term. For example, I think most people understand accountability as being called to account, being called to justify, and, if one can't justify, being called on to do something about it. There is nothing in that interpretation of accountability that would preclude a deputy from coming before this committee, not just to explain and inform but also to justify, and, if unable to justify, to be asked what corrective action could be taken—again, on matters within the deputy's purview. None of this goes to policy direction or any of the matters for which, I believe all of us would agree, ministerial accountability and responsibility are paramount.

But in these other fields, I don't see any connection between an inability to direct deputies, an inability to sanction deputies, in an explicit way, with precluding having accountability come from this committee directly to deputies, and vice versa.

• (1205)

Mr. David Christopherson: Let me ask you this. Under the current laws we have, and some of it is back to convention, if a deputy were in front of this committee right now, under the existing structure, and said, "I can't really speak to that, it's the minister's area of responsibility", where is the committee at that point? Under current law, where are we with that kind of an answer, where we believe there is not just answerability required here but accountability?

Dr. C.E.S. Franks: The answer is that the deputy minister can explain policy and that's it. He can't say this policy is great or this policy is awful, here are other policy options the government considered and didn't accept, here are new policies that might be better. They can't say that—and they don't—before a public accounts committee. I'm sure your chairman would rule you out of order if you did that.

The challenge that faces this committee is to define clearly the areas in which deputy ministers have responsibility. They're fairly extensive areas in management. They cover regularity and propriety, economy, efficiency, and human resources management, and yet, at this point, the government says, "Oh, no, no, the deputy minister isn't here to speak in his own right, as the holder of those powers, he's talking on behalf of the ministers". But the ministers don't have those powers.

The acts that do give the ministers power, the departmental acts and the implementation acts, cannot trump the deputy ministers' responsibilities under the Financial Administration Act. There's no legal principle that allows one law to trump another in that way. In some places, the government has claimed that's it, but that doesn't meet legal standards.

Mr. Lorne Sossin: I would add one other point, and I'd be interested in the chairman's view on whether this would be a proper question under the current model—

Mr. David Christopherson: That's where I was going to go next, yes.

Mr. Lorne Sossin: If a deputy were to come here and indicate the decisions that were made, if someone around this table were to ask, "Did you form a view that those ministerial directions were proper and lawful?", presumably the answer would be "Yes". If you were to follow up and ask, "What was the basis for that conclusion, and what investigation, legal advice, other steps were taken to ensure that the ministerial direction was proper and lawful?", that seems to me to be an entirely appropriate line of questioning of a deputy in her or his own capacity. The answer could never be, "That's for the minister to say", if the question is, "On what basis was the ministerial direction lawful and appropriate?"

So that's where I think there is a way in to direct accountability, because, even under the current strictures, it's a constitutional duty.

Mr. David Christopherson: Thank you.

I was going to ask the chair, too, in that regard, as Professor Franks suggested, if one of us pushed in that area, would you feel obliged, under the current laws, to merely say, "You cannot ask that", which is what gets us into chasing our tails?

The Chair: I think the issue is that ministers deal with policy and deputy ministers deal with administration and implementation of these policies. The question I think you're trying to get around is that if the deputy felt that the direction was unethical, I think a question to the deputy minister on whether he felt it was unethical would be a legitimate question.

The question of whether he thought the policy was good, bad, or indifferent is a subtle difference but may not be a legitimate question. But if he felt it was unethical, then he, by virtue of his responsibilities, would have to say so. In the tenth report of the public accounts committee, we tried to set up a clear system of documentation, that if the deputy felt it was unethical, by virtue of the process, it would go to the Auditor General and the Comptroller General. If the Auditor General and the Comptroller General thought it was unethical too, they would be reporting to Parliament after due deliberation and consideration. So we thought we had a good balance of discretion and so on.

I stopped the clock while I was answering that.

• (1210)

Mr. David Christopherson: I appreciate that, Chair, thank you.

My only difficulty with this is that where it's a big issue of ethics and whether or not there is wrongdoing, fair enough, but in the more mundane matters, where you're dealing with a policy that's not a headline issue, it's not a question of ethics or borderline criminality but more a matter of being able to ask the deputy why they chose a certain direction in terms of their implementation....

For instance, when we ask, "Why did you set it up this way, why didn't you set it up a different way?", it's right at that moment that we get our own version of the iron curtain dropped, and we can't get an answer. It seems to me what we need to be able to do is puncture through that and have them justify why they made administrative decisions in their lawful area of responsibility.

Dr. C.E.S. Franks: Presumably your starting point would be a report from the Auditor General. Presumably the report from the Auditor General would say, "This is where these decisions or these actions failed", on the standards they use for audit. The standards in the audit are fairly explicit in the act. They involve compliance with statutes, with rules, with regulations, and they involve looking at economy and efficiency, and effectiveness where there should be measures for effectiveness but they're lacking. On those bases, you are perfectly entitled to ask any witness any question relevant to the Auditor General's report and to those principles and standards.

Where it comes differently, where the questions would be ruled out of order, would be if the deputy minister said, "That was a decision of the minister, in his right as policy", or, "I was overruled by the minister on this, and now he has to answer; I won't".

Mr. David Christopherson: Oh, I'd love to be here that day.

Thank you, Chair, and thank you, gentlemen.

The Chair: On that point, again, the tenth report wanted to try to create a process where these things would be brought out in the open within a reasonable period of time rather than waiting three, four, five, six years later, when somebody happens to kind of spill the beans in an informal way. So we thought the tenth report was very good, and I know that I personally was disappointed that it was rejected by the government.

Mr. Kramp, please, eight minutes.

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): I have a couple of questions, thank you, Mr. Chair.

Welcome to both of you learned individuals.

I'm concerned with Treasury Board's approach to this entire process that we have been through. They've basically thumbed their noses at the recommendations of this committee. It appears they're just doing an end run. They're saying, "Well, no, we don't accept that. We have every answer; therefore, it doesn't really matter what you've suggested, we're doing it this way".

Do you get that same kind of feeling?

Dr. C.E.S. Franks: The short answer? Yes.

Mr. Daryl Kramp: Then if we collectively come to that conclusion, if we do that, then where do we go from here? As you suggested, a dialogue, or a level of communication with Treasury Board, certainly, and a proper relationship would be advantageous. Personally, I can't believe this hasn't taken place. The recommendation went in to Treasury Board, and to our senior levels of government, and instead of having a level of communication and/or a dialogue, and/or a discussion, and points, counterpoints, and an opportunity for this committee to be able to massage a direction, they basically said, really, we just refuse to accept your recommendation.

Is that not really an affront to our process? What purpose does this committee serve?

Dr. C.E.S. Franks: If I were a lawyer like my learned friend, I would say, at that point, "Well you might ask".

If you look at it in terms of human behaviour, the Privy Council Office since 1977 has been proclaiming this doctrine that ministers are accountable for everything before Parliament, and deputy ministers and other public servants accountable for nothing. What you have done, in that sense, is offered a heresy. You have said, "No, the deputy ministers should be accountable before Parliament". The same thing was said by Lambert, and the government totally rejected it. And now they've just done what they've done before.

•(1215)

Mr. Daryl Kramp: It just seems to be so rational, your argument, our argument, the committee's argument. Why is the government then just saying no? Is it strictly because of power, control? Are they afraid of losing the magic wand? What are they afraid of? Why are they not doing this?

Dr. C.E.S. Franks: Well, I talked to Professor Hodgetts, the sole surviving commissioner from the Lambert commission, about this. He said that the system we found on the Lambert commission was convenient for deputy ministers and ministers because they could indulge in mutual plausible deniability. They could always say, "We didn't do it, somebody else did it".

So far, a parliamentary committee has not questioned or attacked the government on this very doubtful constitutional principle. This committee has, and I think the government hasn't yet realized that Parliament itself is entitled to say, "Here is how we interpret the doctrine of ministerial responsibility and accountability to Parliament, and you do what we say; we're the sovereign, supreme body, not you".

And you've now said it, so you've begun.

Mr. Daryl Kramp: There are so many other, I suppose, opportunities and/or happenings. Ministers come, ministers go. We have a situation where a minister is responsible, but all of a sudden that minister has moved out and another minister has moved in. They say, "Well, I wasn't there, I have no responsibility". All of a sudden it doesn't come back to the deputy who actually should be responsible. It's a way of passing the buck and basically not taking blame and/or credit for the file. It just doesn't work.

Dr. C.E.S. Franks: There is nobody from outside who has looked at the rapid turnover of ministers, and particularly deputy ministers, who hasn't said there is something wrong with it. What you wind up with is ministerial musical chairs, not ministerial responsibility.

Mr. Lorne Sossin: I think just building on that, it becomes a cruel irony then to hear the government use the rapid turnover of deputies as a rationale for why Canadian culture, political and bureaucratic, couldn't accommodate the accounting officer model, because there isn't a longevity of service. I think that's not a credible position.

But I do think, if your question began with how do we get out of this box, the point at which you get out of the box is likely going to be in the weeks following the second report of Mr. Justice Gomery. In other words, I think there are a few moments that come along where the political will is created for governments to do things that aren't in their perceived interests to do. I think this is not in their perceived interests to do, and I think that moment will be a very difficult one for them to publicly reject doing it.

But again, as a lawyer, I am not a very good political observer, so it should be taken with that caution.

Mr. Daryl Kramp: Just as a quick observation, bringing back this whole sponsorship situation, obviously we have a situation where, had we had the deputy ministerial responsibilities intact, quite obviously this sponsorship could have been avoided. Are you in concurrence with that perception?

Dr. C.E.S. Franks: Yes indeed.

Mr. Daryl Kramp: If that is an obvious answer, then certainly, to deny the existence and/or the creation of that ministerial position and the responsibility that goes through with it, the government is abdicating their responsibilities, and they're going to possibly perpetuate another potential sponsorship and/or another potential....

Once again, I can't believe our government is that Machiavellian or power-hungry that they would simply say, well, we're going to do this strictly for our own particular purposes. However, my goodness, we have a system that is not operating effectively, and the proposals that this committee has put forward do address that. To have them rejected, without even a reason, without even an explanation back to this committee, I find absolutely appalling.

•(1220)

Dr. C.E.S. Franks: Mr. Kramp, I think it was in 2003 that Prime Minister Chrétien said the government should move towards the British accounting officer approach. He faced a revolt amongst his deputy ministers, and the proposal was dropped.

There's a lot of resistance in the system to having the clarity and exposure and the personal responsibility that the accounting officer process demands.

Mr. Daryl Kramp: But somewhere the buck has to stop. We can't always just be absolving ourselves of the responsibility and saying, eventually, if you don't like it, the electorate will make that decision on election day. Well, there's a big difference between the administration of an operation, whether it's a small business and/or a government, and the daily operation and/or the partisan interests that inevitably are coming to bear on this government and this committee. This shouldn't happen.

Mr. Lorne Sossin: I would just quickly remind everyone that there are lots of settings where public officials take on this kind of responsibility—in arm's-length tribunals, in commissions, in agencies, in all sorts of public bodies—where ministerial control, a minister coming to answer for the operations of those bodies, would be inappropriate, because ministers shouldn't know the kind of internal workings of an independent body that would be required. So it's not unknown to the system to have those deputy heads in those kinds of settings come and answer for exactly these kinds of operations.

So the argument that this be extended to within ministerial activities, when it's already arguably a robust part of the executive branch of government in this broader sense, is again just a difficult argument to make credibly, and one that, I think, if it were put to close scrutiny, wouldn't withstand it.

Mr. Daryl Kramp: Thank you for a clear, concise, and objective response.

The Chair: Thank you, Mr. Kramp.

Mr. Lastewka, please, eight minutes.

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

I'd like to first ask a few questions on the partnership between public accounts and Treasury Board that Mr. Franks commented on. I've only been on this committee for the last 18 or 19 months, but it is the most partisan standing committee in the House. From my standpoint, it's very partisan. The chair sometimes is judge and jury—

The Chair: Order. You may make comments to the witnesses, but you're not going to make comments about the chair, Mr. Lastewka.

Hon. Walt Lastewka: Okay. I'll take that back, Mr. Chair.

The Chair: Thank you.

Hon. Walt Lastewka: What I'm trying to get at is that this public accounts committee—I'm not sure about past public accounts committees—is very, very partisan. We have leaders and deputy leaders and whips coming in and out, asking questions, and preparing for question period. It's very much, "How do I get a 15- or 20-second clip so I can be in the House?", and very partisan.

On the other hand, you're recommending that it should be a partnership. I mean, we've had situations where the meetings got boycotted and the Auditor General was standing there, where you are, waiting. Eventually the meetings got dispensed with. So I want to impress upon you that it is a very partisan committee, very partisan, the most partisan of all standing committees. And yet you're suggesting that it should be a partnership.

I'd like you to kind of add to that a bit.

Dr. C.E.S. Franks: I would draw a distinction between when the committee is partisan and when it isn't. For example, the committee's inquiry into the sponsorship affair was highly partisan, there's no question about it. I believe at one point there were three or four parliamentary secretaries sitting on the government side. Those I do not construe as backbenchers, and I think the committee should be a backbench committee.

On the other hand, this committee together produced a unanimous report on its views on responsibility and accountability, and how that should be observed in witnesses before the committee, and the practise of government. I stated in my remarks, and I firmly believe it, that the more this committee sees ministerial involvement, or smells it, in what's before the committee, the more it's going to be partisan.

Now, we have a tradition in Canada of treating actual expenditures of government as party things rather than as government for the interests of the people. Patronage has a long and not entirely honourable tradition, but it's a very large one in Canadian politics. The point that's coming out of the sponsorship affair, and the response of the public to it, is a sense of outrage at what government does in these areas. There are many more little hidden corners that need to be looked at.

Now, I think what has to happen is a change in the culture of the bureaucracy, a change in the culture of the ministry, and a change in the culture of Parliament that there is no reason why this committee can't be non-partisan. It would have to be looking at things that are actions of public servants in which ministers had not had a hand, and it would have to have a concern for government for the well-being of the people of Canada.

I don't think that's insuperable, but it's a challenge.

•(1225)

Hon. Walt Lastewka: So some of your thought process would be that this committee maybe shouldn't have question period replacements, or people who come in for fifteen seconds to ask a question and are never here for the answer.

Dr. C.E.S. Franks: My fondest wish, sir, would be that this committee would have members who were appointed at the beginning of a Parliament, who stayed until the end of the Parliament, and who remained members of the committee and attended the meetings of it; that there were no substitutions; and that there weren't goon squads coming in from other parties to take over when something exciting was happening.

Hon. Walt Lastewka: I appreciate that. I think you've hit something on the nose.

The other item we got into was this deputy minister, minister, and so forth. Mr. Christopherson was into it—and he's been a minister.

It's almost at the point where we should never have a deputy minister in front of a committee without the minister, and we should never have a minister here without the deputy minister; they couldn't pass the buck.

Dr. C.E.S. Franks: I look at it quite differently; you should not have ministers, you should have deputy ministers. The focus of this committee should be that for which deputy ministers are responsible. You should ensure that they are responsible and that they are empowered and that they act properly.

When ministers make decisions, maybe it isn't this committee that should be looking at them—because these would be policy decisions, not administrative ones.

Hon. Walt Lastewka: So your recommendation is that if it's a management type of...? I want you expand on that. Why should deputy ministers be here? If it's a minister's role, then it should belong....

For example, if it's an industry committee item, it should appear in industry. If it's a foreign affairs item, it should be in foreign affairs. And public accounts should be exactly that, looking at public accounts and management.

Could you expand on that?

Dr. C.E.S. Franks: I believe this committee should be concerned with the principles expressed by the Treasury Board, actually, in its definition of the responsibilities of deputy ministers: regularity, propriety, economy, and efficiency. Those are terribly important things.

What this committee needs to do is to give the people of Canada, and Parliament itself of course, the assurance that the government is being properly run. You don't assure the people of Canada that the government is being properly run if you get into issues of, "Why do we have an air force?", or "Shouldn't we do something on the environment?" You ensure it's properly run if you say, "How well is the contracting procedure functioning within the Ministry of Defence?", or, for example, "How thoroughly is the government aware of what's being spent in aboriginal self-governments, and does it meet the objectives of the programs?", or, "Do you have the proper records?"

Hon. Walt Lastewka: Mr. Sossin, would you like to comment from the legal side?

Mr. Lorne Sossin: Sure. It's interesting, because my observation was not a legal one but one that stemmed from your first observation, on whether we'd have any concerns with this partnership idea.

I think what's come out of the tenth report but hasn't been picked up on yet is also the understanding that the capacity of the committees would have to be enlarged. In other words, if you have a greater capacity—and everyone has acknowledged the excellence of the support provided, but if you had deeper and broader support—I think that would have a direct correlation with reducing the partisanship. I think it's when you don't have that kind of capacity that you're left trying to find your 15 minutes. And if you do have that capacity, then the ability to probe, to investigate, and to feel confident in the importance of that work leads to less partisanship and more substantive results.

• (1230)

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

We're finished round one. We're now into round two, at five minutes each.

We have about 15 minutes in total—I want to wrap up at about a quarter to one—so we'll try to move through this as quickly as we can, paying attention to the time.

Mr. Fitzpatrick, please.

Mr. Brian Fitzpatrick: I don't want to get sidetracked on this partisan issue, because on the tenth report—let's be clear here—every single member of this committee supported that recommendation. We all set aside our partisan points of view and we supported that principle because we thought it was important. Sometimes we get off the track, but not on this particular issue. By and large, though, we don't get off the track; we do look at principles here.

Correct me if I'm wrong, but I interpreted your answer to the question as being that if we'd had the accounting officer concept in place, the likelihood of the sponsorship program occurring would have been very, very minimal.

Dr. C.E.S. Franks: You can never prevent wrongdoing, but you can deter, and I think there would have been very strong deterrence in force.

Mr. Brian Fitzpatrick: It's very difficult, yes. Okay.

I'm trying to figure out why in the world a government would reject this recommendation. One conclusion I can come to, and I'll just leave it at that, is that the government does not want to take away the ability to interfere in the departments. They want to leave that option open. If they put this principle in place, it almost shuts the door on political people trying to overcome the rules or the checks and balances to do what they want to do.

If that's their reason for rejecting it, that's very disturbing, because I would say it looks like a government that hasn't learned a whole lot.

Mr. Lorne Sossin: I would just come back to the view I began with, which is that, in the current model, it ought not to be open to a deputy not to address those kinds of questions. In other words, if the issue is put around political interference, clearly there cannot be a response that says, "Look to my minister to address it". That's the deputy's personal responsibility, to uphold the rule of law and the integrity of the constitutional duties.

So I think the other answer on whether this would be less likely under the accounting officer model depends a lot on this committee as well. In other words, to say that they have to be accountable is not to say that they will be—unless the committee is doing its job well and, again, has the capacity to do its job well.

Mr. Brian Fitzpatrick: There's one very quick question that I want to get off the table. Assuming we had the accounting officer concept in place, it has occurred to me that for the deputy minister to get to the point where he would put this in writing to the minister, the political minister, and send copies to the Auditor General and the Comptroller General, it would take a very, very courageous deputy minister to embark on that course of action. And the way things operate here—I'm thinking of Mr. Cutler—it may be a career-ending move by the deputy minister.

What would you say to that?

Mr. Lorne Sossin: I was just going to come back to the remarkable memo from the clerk on this program. In other words, putting things in writing to ensure that, if it's ever looked at later, it's clear that the proper steps were taken at the proper time to fulfill obligations, I don't think is something that's far-fetched. I don't think it would be all that common—I would hope—but I don't think it would undermine the cornerstones of Westminster democracy either, and I think the deterrent effect is really the value.

Just quickly, there's a new model for the Federal Court. As some of you may know, there's a chief administrator who is accountable both to the minister and to the chief justices of the Federal Court. If the chief justices give direction that differs from the ministerial direction, the chief administrator is obligated to follow the chief justices' direction, but it has to be in writing and it has to be in a report put to Parliament.

These are not uncommon features of other accountability measures where you have these sorts of concerns, and it's not like the foundations of our democratic or constitutional order have crumbled when we have gone down that direction in other settings.

Mr. Brian Fitzpatrick: I guess that's the concern; for a deputy minister, it would be very rare for him to do that, but it would seem to me that if he does that, he has to have the full backing and support of this committee. He's got to have somebody in the system who will go to bat for his being a professional, independent, neutral public servant.

So I can understand the importance that you gentlemen have emphasized about this committee, because they have to have somebody in this town they can look to as their defender.

• (1235)

The Chair: Thank you, Mr. Fitzpatrick.

Mr. Valley, please, five minutes.

Mr. Roger Valley (Kenora, Lib.): Thank you.

I have a question for Mr. Franks. Please correct me where I go wrong; you made some comments, and I was trying to write them down as quickly as I could.

I think you said something about the fact that in 2003, then Prime Minister Jean Chrétien had talked about the accounting officer proposal. One of your comments was that he felt at the time, or the insinuation was there, that they should move to the British system. I think your comment was that there was quite a bit of concern among the deputy ministers. I think you used the word "revolt".

Can you tell me a little bit about that, and what you think would happen today, considering we're two and a half years away from those statements?

Dr. C.E.S. Franks: I can't tell you what would happen today. I know that some deputy ministers support the proposal, some don't. On the other hand, it seems to me that if there ever is going to be a time in Canadian history when the system can be looked at and some effort made to change the ground rules so that we prevent this kind of almost obscene thing from happening, which damages the respect that people have for government, who trust in it so much, then this is the time. And I think it can be done.

Mr. Roger Valley: You mean it's the time because of the minority situation?

Dr. C.E.S. Franks: Well, there are two: the minority situation is one and the sponsorship affair is the second. I suppose a third is the Gomery commission's exposure of all these problems.

Mr. Roger Valley: I'm a bit curious; you mentioned a number of times, and we've all used the word...but we know it's not necessarily the case that you can be always non-partisan. I'm a backbencher—I just got here about 18 months ago—and if there's ever...

I can't see how we can be non-partisan. I know we're supposed to be, but the difficulties that are on this Hill right now, with all the attention we get in day-to-day living, and the votes, it's very hard to see where all the committees aren't partisan in some way or another.

Dr. C.E.S. Franks: Well, there's nothing the matter with committees being partisan if they're dealing with issues that are partisan in their nature—underlying the argument that this committee should agree on what it's doing. That's why I hesitate about non-partisan. You're party people, and there's nothing the matter with that. That's good. But you have a job to do of ensuring good administration in the Government of Canada that I hope the opposition would feel as strongly about as the government, because some day the opposition will be the government, and they would want to have a good public service that they can trust. I think there's a common interest there.

So the challenge facing the committee is to identify the areas in which they can have a common interest. It seems to me that the roles and responsibilities of deputy ministers, regularity and propriety, are the core of that common interest. That is indeed what was proposed by this committee in its tenth report.

Mr. Roger Valley: Finally, just to take it down to the riding level, you talked about accountability and everything else. In the ridings, many of us are having difficulties with the local boards and the volunteer groups and everything else, because accountability from our level here has been taken right down to them, at a volunteer level in the community.

Do you ever think there'll be a day when it can go too far?

Dr. C.E.S. Franks: Yes. In fact, I know people who no longer apply for grants from the Government of Canada because the paperwork involved is too constricting. They look for funding from other sources.

You see, what we've wound up with is a system that's relying on rules and regulations instead of trust. We don't have a culture of ensuring regularity and propriety of the public interest, in a very broad sense, in administration. Now, that's not true for...and I have to qualify that, because most of what government does, it does very well. But we're obsessed with rules and regulations, and the reason is that we haven't inculcated this spirit and sense of propriety and regularity.

Again, this, it seems to me, is where this committee has a real challenge to perform, so that it forces the government to observe those standards of good management.

Mr. Lorne Sossin: I absolutely agree. I don't think it's an answer, for example, for a deputy to come before this committee and simply point to the sections of the various acts or regulations that authorized the activity, and to end the comments at that. I think accountability is asking the question to justify judgment. If you can't come up with a reason for a decision beyond "I had the authority to make it", I don't think that's any kind of real accountability.

So I would look to things like the committee that is responsible for the scrutiny of regulations both as an example of where partisanship hasn't, by and large, undermined the work of the committee, even in this partisan era, and where, if you bring the question of judgment to bear, better things can emerge.

Thank you.

• (1240)

The Chair: Thank you very much.

Since there are no further speakers, and we're going to wrap up in a few minutes, I'll just ask a few questions of my own.

Both of you presented a fairly strongly worded opening statement that, I shall say, was not complimentary to the government in their response to the tenth report. The president of the Treasury Board last week, before the public accounts committee, tabled several documents: "Review of the Responsibilities and Accountabilities of Ministers and Senior Officials"; "Financial Administration Act: Responding to Non-compliance"; and "Management in the Government of Canada: A Commitment to Continuous Improvement".

These are wonderful words, and the titles are very fine. When you read these documents, they give a real Political Science 101 course on how the government and the Parliament and the executive and the administration interact. But after these wonderful words, they have failed to act themselves; they've just kind of glossed it over and said, "Not a problem". Mr. Justice Gomery has said this was a political problem, it wasn't an administrative problem, and yet the government has now said we're going to bring out all these rules.

We've heard debate here today about, well, this committee's partisan, and this committee maybe shouldn't do this or that. We've heard how we should focus on accountability and on administration. You've also suggested that perhaps we have the tenth report concurred in, but that wouldn't be in the realm of partnership; that would be more adversarial. And yet government has dismissed, by and large, the ninth and tenth reports of this committee.

So, gentlemen, in a few minutes: where should the committee go from here?

Dr. C.E.S. Franks: My first answer is that you should pretend a dialogue has occurred; give an answer back to the government on your views on their response to the committee. You might suggest how you and the government might proceed to some mutually satisfactory accommodation.

I will make one other comment: I think you're being unfair to Political Science 101, because I would have flunked the student who presented the arguments in defence of the government's position that I see in the documents.

Voices: Oh, oh!

Mr. Lorne Sossin: I would agree that there are some assertions of our constitutional framework that certainly don't accord with my understanding, or the understanding of a number of colleagues, constitutional lawyers I have spoken with. But I also agree that this kind of adversarial posture is unlikely to produce much substantive change. I also think the dialogue, as a point of departure, is important.

On the Treasury Board initiatives, my own response was, "Terrific, welcome initiatives, and necessary, but not sufficient". So I don't see a reason, for example, to take exception to those kinds of initiatives. But nor is there any reason to think that they're taking the place of an entirely different forum, venue, and criteria of accountability, which resides in this committee.

The last thing I'd say is that in addition to some of the manoeuvring around just trying to get accord, or concurrence, I think facts created on the ground are much more valuable. If you test the boundaries of answerability by asking questions that go to where you believe accounting is appropriate, and see the responses, push on the responses and create an environment where, when there is some substantive justification offered and real dialogue, it's not an opportunity simply for a partisan, quick, five-minute press release but an opportunity to probe and investigate. I think that builds on a culture of confidence, trust, and a focus on the rule of law and the kinds of constitutional duties this committee ought to be driving.

So I think there is a positive story unfolding, and I'd hate to see it go down that road of simply shots across the bow that are at each other and not in any way speaking to each other.

• (1245)

The Chair: I appreciate that comment, because the whole notion of Parliament...and we're an expensive institution to have, but we are here to ensure that government acts on behalf of the citizens of Canada and our perception of what that actually means as far as good policies.

The public accounts committee is the oldest committee of Parliament. It was first created in about 1870, I believe. Our job is the accountability of the administration of programs. When we find out that this particular sponsorship issue went completely and totally off the rails—and, according to Mr. Justice Gomery, benefited the party in power—then we have to look at that very seriously. As you point out, taking shots across the bow and then moving on to some other issue is not sufficient. We have a responsibility, collectively, in this committee to push forward, and I don't think the response by the government that, "Don't worry, it's all fixed, on a process matter", is sufficient. So I guess the committee will continue on, hopefully, to address this matter.

We certainly thank the witnesses who bring a great deal of knowledge and comprehension and understanding to provide guidance to this committee.

Professor Franks, you've appeared here on many occasions, and we always enjoy your wisdom and insight.

Professor Sossin, we thank you again for coming before us this afternoon.

We'll now turn to Mr. Fitzpatrick's motion and deal with that. When that's done, we will adjourn.

Mr. Fitzpatrick, you had a motion that was given to us at the last meeting:

That pursuant to Standing Order 108(3)(g) and the Public Accounts of Canada, the Standing Committee on Public Accounts requests the government table forthwith with the Committee copies of all internal and external audits (including any forensic audits) for the current fiscal year and for the fiscal periods ending March 31, 2005 and March 31, 2004 pertaining to contributions made by or through Technology Partnerships Canada.

Speaking to your motion, Mr. Fitzpatrick.

Mr. Brian Fitzpatrick: It's clearly covered under public accounts. In the years in question, there are line items that deal with Technology Partnerships contributions in excess of \$300 million.

The Minister of Industry in the House has basically acknowledged the fact that there have been audits that have taken place with regard to contributions and payments to lobbyists, and the minister, in the House, has also acknowledged that there have been some inappropriate things taking place with regard to such payments.

Based on the public accounts and the answers of the minister in the House, which are numerous and extensive on this matter, this is an area that public accounts should be looking at.

The Chair: Mr. Carr.

Mr. Gary Carr (Halton, Lib.): I have just a few questions for my friend. One deals with whether...following up on what Professor Franks said about this committee looking at it. It's my understanding that the industry committee may be looking at it as well, and I'm just wondering if you know that, because we don't want to get into duplication. Professor Franks just said that industry should be looking at something specific and we should be following up. I was wondering how we would handle that question.

So that's the first one.

The Chair: I'll just answer that question. Each committee is master of its own destiny, and there's nothing wrong with duplication. We're not subordinate to the industry committee and vice versa. If we want documents we can ask for documents. If they want to get the same documents they can ask for the same documents.

So there's nothing wrong with that.

Mr. Gary Carr: Thanks for your intervention. I'm just wondering if there is any clarification of whether the other committee is looking at it.

The second question, which I think is very important as well, is that, as you know, the agenda is taken up over the next little while, and in order to put something else on, I take it that, with this motion, when we get the audits we're going to then have some discussions and bring the minister in and so on. If we're going to do that, then I think we should be very clear, before we pass this motion, about what needs to be then dropped. Or are you saying that we should look at it—and I don't know what the timelines are—after December 1? The minister will need some time to get it.

So are we saying we're going to do it before December 1? If that is the case, then we definitely have to drop something else, because we

have every day filled. What should we then drop if we're going to take this on?

• (1250)

The Chair: I think that again falls to me to answer. The motion is to table the documents. There is no motion to have a hearing on the documents. Therefore, I think your point is moot—

Mr. Gary Carr: With all due respect, I just wondered if the member who moved the motion could enlighten us on that. I'm asking this in all seriousness.

The Chair: Mr. Fitzpatrick.

Mr. Brian Fitzpatrick: If we received unedited copies of the audit, it seems to me there would be no need for further hearings. What I am concerned about is that if we get audits that have a whole bunch of sections blocked out under the name of privacy and so on, under what I'd call very dubious grounds, then I think I will be making a strong argument that public accounts should be seriously pursuing those matters.

I've looked at what's happened in the industry committee hearings, and I must say, I have a whole lot of difficulty with whoever is making decisions about what is private and what is not private here.

This is the issue: if I get a clean audit without those things in it, I think the chances of having a meeting afterwards are slim to none.

The Chair: Mr. Sauvageau, followed by Mr. Kramp.

We're going to wrap up in 10 minutes, so keep your comments focused and be brief, please.

[*Translation*]

Mr. Benoît Sauvageau: I'm more than just a little surprised by the apparent hesitation on the part of the Vice-Chair, Mr. Carr. Let's be clear on what is partisan, and what is not. When we ask a government that has been advocating transparency for the last 14 months to make certain records available, I don't see that as a highly partisan request.

When Professor Franks and his colleague tell the members of the Public Accounts Committee that they should review the accounting practices of various departments and call in deputy ministers rather than ministers — the final decision will be up to us — this pronouncement ties in directly with Mr. Fitzpatrick's motion. Through Mr. Fitzpatrick's motion, the Public Accounts Committee is calling on the government to examine the internal audit report on one program and, eventually, further to my motion, another program audit report. This is totally in line with the committee's requests.

[*English*]

The Chair: Mr. Kramp, and then Mr. Lastewka.

Mr. Daryl Kramp: Mr. Chair, I'd like to actually table an amendment to the motion, simply to try to establish a definite deadline and a timeline so that we can all set a course of sail and decide whether or not we can bring some closure to one issue or the other.

Where it says, “requests the government table forthwith”, I'd like to remove “forthwith”, because what is “forthwith”? It could be “whatever”, “however”, “whyever”.... I would replace it with a deadline.

So I'm suggesting, at this particular point, that we simply add, "by November 30".

The Chair: That's 2005, I presume.

Mr. Daryl Kramp: Yes, 2005. That way, it gives everybody ample time to be able to bring something forth, leave it here, table it, and then, at the committee's pleasure, to examine it.

The Chair: We have an amendment. Any debate on the amendment?

It's moved that we delete the word "forthwith" and replace it with "November 30, 2005".

(Amendment agreed to)

The Chair: Speaking on the main motion, as amended, Mr. Lastewka.

Hon. Walt Lastewka: The audit that's being done—I think it's 47 companies—is not going to be finished by November. They're going through that. I'm sure Mr. Fitzpatrick wanted to say that the minister has said that he will release publicly the audit once it's completed.

I agree with what was said by Mr. Carr. I tried to confirm that the industry committee was also looking at it, and I would agree that they need to do their work.

I would rather have Mr. Sossin and Mr. Franks and Mr...

An hon. member: [*Inaudible—Editor*]

• (1255)

The Chair: We'll have comments only to the chair, please. When someone is recognized, they have the floor.

Mr. Lastewka, you've got the floor.

Hon. Walt Lastewka: Are you finished?

The Chair: No, no, Mr. Lastewka you have the floor, and direct your remarks to the chair.

Hon. Walt Lastewka: And I would rather have Mr. Alcock and his deputy minister here to carry on the dialogue that was started, I think, with Mr. Christopherson and Mr. Franks on what it is and what it isn't, and how it should be going forward as far as accountability and answerability. I think that's a good suggestion.

I'm sorry, Mr. Chair, I think it would be better served for this committee to have discussion with Mr. Alcock, Minister of Treasury Board, his deputy minister, and Messrs. Sossin and Franks in a round table, to go even further on the answerability and accountability and how we should be going further.

The Chair: No further questions, comments, or interventions?

I'm ready for the question:

That pursuant to Standing Order 108(3)(g) and the Public Accounts of Canada, the Standing Committee on Public Accounts requests the government table by November 30, 2005 with the Committee copies of all internal and external audits (including any forensic audits) for the current fiscal year and for the fiscal periods ending March 31, 2005 and March 31, 2004 pertaining to contributions made by or through Technology Partnerships Canada.

(Motion as amended agreed to)

The Chair: One final point, ladies and gentlemen. We received just a little while ago, when we had lunch with our visitors from China, the oldest computer in the world. The clerk advises me that she is going to bring this to every meeting of the public accounts committee. So if your computers and the government computers all crash and fail, then everybody knows they can come to the public accounts committee and rely on us to provide the answers.

Right? Right.

Monsieur Sauvageau, you have a point.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, since we have two or three minutes left, if there is unanimous consent, perhaps we could turn our attention to my motion, since it is identical to the other one.

[*English*]

The Chair: You seek unanimous consent? All right.

Is there unanimous consent? No?

There is not unanimous consent.

There being no further business before this committee, the meeting is adjourned.

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