

Renewal of the Federal Public Service

Toward a Charter of Public Service



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EXECUTIVE SUMMARY

The paper argues that genuine renewal of the federal public service requires a new ‘moral contract’ between the public service, ministers, and parliament in support of the values of a professional, non-partisan public service. A new ‘moral contract’ is required because the boundary between political and public service values has become blurred at the highest levels, a problem identified by the Gomery Commission, by the Public Accounts Committee of the House of Commons, by the political parties themselves, and by leading scholars. As recommended by numerous task forces, commissions and experts, a new ‘moral contract’ should take the form of a Charter of Public Service, which both houses of parliament unanimously committed to establish, in 2005. The Charter of Public Service should have at least four key pillars: (1) the values and ethics of public service; (2) strengthening the deputy minister’s role as accounting officer; (3) reforming the process for the appointment of deputy ministers; and (4) new rules for government communications. The paper concludes with 29 specific policy recommendations.

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1

INTRODUCTION

Most federal elections are about policy and leadership. But any political party that aspires to govern needs to think not just about *what* it will do, if it succeeds, but *how* it will do it. Good public management is an essential precondition for implementing good public policy.

A key priority for any party that takes office, after an election, should always be establishing an effective relationship with a professional, non-partisan public service. Canadian governments that have stumbled in office, at either the federal or provincial level, and lost the confidence of voters, have often done so because they neglected this key requirement. Canadians want governments that are competent (or at least do not appear to be incompetent), effective and trustworthy. And a non-partisan, professional public service has proven to be one of the keys to achieving these goals. If you listen to it, and use it properly, a competent, impartial public service can help keep you out of trouble, it can help win the trust of citizens, and it can help you implement your own political program effectively. The neutral professionalism of the public service is a condition for government effectiveness, for good governance, for integrity, for public trust, and thus for long-term political success.¹

So reflecting on the means for renewing and strengthening the neutral competence of the public service, and establishing an effective relationship between elected and non-elected officials, is an essential part of preparing to govern. It's especially important whenever a government has gone through a period when this relationship has deteriorated, or when a public service has been neglected and devalued, or when its non-partisan neutrality has been abused, as it has under the Harper administration.

¹ The link between professionalism and effectiveness was once a matter of intuitive common sense. But a recent quantitative study of the US federal government by David E. Lewis has shown empirically that the replacement of career professionals by partisan appointees "hurts performance across the government, sometimes dramatically and to catastrophic effect": "Some insulation from political control is necessary to make the bureaucracy effective - to help it cultivate expertise, develop long-term perspective and planning effectiveness, and to provide the institutional memory that keeps the government running from election to election" David E. Lewis, *The Politics of Presidential Appointments: Political Control and Bureaucratic Performance* (Princeton: Princeton University Press, 2008), 202. See also: Ralph Heintzman and Brian Marson, "People, Service and Trust: Is There a Public Sector Service Value Chain?" *International Review of Administrative Sciences*, 71, no. 4 (December 2005), 549-75; "Linked In: Research Proves that People, Service and Public Trust Are Linked." *Canadian Government Executive* 16, no. 1 (January 2010), 12-14; Erin Research, *Citizens First* 5. (Toronto: Institute for Citizen-Centre Service Delivery, 2008).

2

PUBLIC SERVICE RENEWAL: AVOIDING THE CORE ISSUE

Over the past 25 years, the Government of Canada has experienced some eight or more exercises of public service renewal, both major and minor. The first – called *PS 2000* – was one of its highest profile renewal exercises. Led by the Clerk of the Privy Council of the day, it resulted in a government White Paper in 1990, and some new legislation in 1992 which, among other things, designated the Clerk as the ‘Head of the Public Service.’ Depending on what you count, the list of subsequent renewal initiatives and reports might also include the *Blueprint for Renewing Government Services Using Information Technology* (1994); *A Strong Foundation*, the report of the Task Force on Public Service Values and Ethics (1996); *Getting Government Right* (1997); *La Relève* (1997-99); *Results for Canadians* (2000); the *Public Service Human Resources Modernization Act* (2003); and, now, the current renewal exercise, led by the Clerk, and known as *Blueprint 2020*. Depending on your point of view, other initiatives or measures could also be added to this list, such as the *Federal Accountability Act* (2006).

It is not a straightforward matter to assess the success or failure of this almost unending string of public service renewal initiatives or programs over the last two and a half decades. It depends on whether you are inclined to see the glass as half empty or half full. For what it’s worth, I am more inclined to the second view than the first,² though a case can certainly be made for both.³ But what is most striking about these renewal efforts is not so much their success or failure but rather the fact that they have usually (but not uniformly) chosen to avoid or sidestep the core issue.

In a parliamentary democracy, the core issue for public service renewal is the nature and function of the public service itself. Its role in our form of democratic government: the relationship of the public service with the Ministry of the day, with parliament and with parliamentary institutions, and with the citizens of Canada. What *is* a public service? What’s it for? What should it do? What identity and values should it have? How are these to be nurtured and protected, in the heat of the political battle? How is the public service to achieve and sustain the trust of Canadian citizens, and of all the actors in the political process? And, above all, what is the appropriate relationship between elected and non-elected officials, and how should that relationship be structured? Who is accountable for what? And to whom? And how?

² See, for example, Ralph Heintzman, “Measurement in Public Management: The Case for the Defence.” *Optimum Online* 39, no. 1 (March 2009): 66-79. <http://www.optimumonline.ca/article.phtml?id=325>.

³ For the negative view, see Donald Savoie, *Whatever Happened to the Music Teacher? How Government Decides and Why* (Montreal and Kingston: McGill-Queen’s University Press, 2013). For a more positive view, see Phil Charko, “Management improvement in the Canadian public service, 1999-2010,” *Canadian Public Administration*, Vol. 56, No. 1 (March 2013), 91-120. See also Canada, Auditor General of Canada, *Public Service Management Reform: Progress, Setbacks and Challenges* (Ottawa: Office of the Auditor General of Canada, February 2001). http://www.oag-bvg.gc.ca/internet/docs/01psm_e.pdf.

These are the core issues of public service renewal. And yet they are the ones on which public service renewal has often (though not always) been silent.⁴ Like many of its predecessors, *Blueprint 2020*, the current public service renewal initiative, still overlooks the core issue for public service renewal: the role of a public service in a parliamentary democracy, and its relationship with elected officials (both ministers and other members of Parliament) and with the citizens of Canada.

This is the issue that should be at the heart of any public service renewal process worthy of the name. And it should be at the heart of the policy program of any Canadian political party that aspires to govern effectively, and with honour.

⁴ Public Service 2000 was one of the exceptions. The PS 2000 White Paper included an excellent discussion of the role of a public service within the framework of Canadian parliamentary democracy, including the “hierarchy of personal responsibility that stretches from Parliament to the farthest reaches of the Public Service.” (Canada, Privy Council Office, *Public Service 2000: The Renewal of the Public Service of Canada* (Ottawa: Supply and Services Canada, 1990), 5-14). However, Public Service 2000 did not diagnose any threats to this role, nor offer any recommendations to address it. The Al-Mashat affair, occurring only one year later, showed how much PS 2000 had overlooked. Informed by intervening events, the report of the Task Force on Public Service Values and Ethics devoted an entire chapter to the challenges these new developments posed to a professional, non-partisan public service within the framework of Canadian parliamentary democracy, and offered several key recommendations to address them. *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics* (Tait report) (Ottawa: Canadian Centre for Management Development, 1996, 2000), 7-18, 59-61.

3

WHY THE CORE ISSUE IS MORE URGENT THAN EVER

While the public service of Canada has been carefully avoiding this core issue over most of the past quarter-century – even when *invited* to address it, by the prime minister himself⁵ – it has only grown steadily more urgent.

Getting the relationship between elected and unelected officials right has always been a central issue for public administration in parliamentary democracies. But it is now a critical one in Canada. For two kinds of reasons: both the underlying forces now shaping political and public life; *and* the specific actions and policies of recent political and bureaucratic actors.

The underlying forces have to do with the impact of technology – especially communications technology – on culture and society generally, and on political life specifically. The impact on politics – from, first, radio, then television, and now the Internet and all the new social media – has been the rise of a new leader-focused, media-dominated politics.⁶ The result has been what the late Canadian political scientist Peter Aucoin called the “New Political Governance,” or NPG. NPG is essentially a mixture of increasing hyper-politicization of all public debate (the “permanent campaign”), tighter central control by the prime minister and his closest advisors over all aspects of government and politics, and growing importance given to government communications. Indeed, a trend to politics *as* communications, in which “spin” can often be far

more important than substance.⁷ Donald Savoie, one of Canada’s leading scholars of public administration, has labeled the kind of centralized government that emerges from NPG as “court government.”⁸ The behaviour that emerges in a “court” government – at both the political and bureaucratic levels – is, not surprisingly, the behaviour of “courtiers” – perhaps even “courtisans” – seeking to ingratiate themselves with those at the centre who control their political or bureaucratic careers. Not the behaviour of independent ministers or public servants, ready and able to speak truth to power.⁹

The impact of NPG and “court government” on politics is one thing. The effect on a public service is even worse. The combined impact of NPG and “court government” has put tremendous pressure on the professionalism and non-partisanship of the federal public service. They threaten to undermine the very values and ethics of public service, especially its non-partisan ethos, and its value of speaking truth to power.

⁵ The “eight-point plan of action” released by Prime Minister Chrétien on June 11, 2002, made specific reference to the U.K. concept of the accounting officer as a precedent Canada would examine to strengthen “public service management and accountability for public funds” including “mechanisms for more explicit accounting of departmental affairs by deputy ministers.” But because of internal public service opposition, nothing came of this prime ministerial invitation. Similar opposition led to the failure (described later in this paper) of the *Federal Accountability Act* (2006) to implement the accounting officer concept in Canada. See: Donald Savoie, *Court Government and the Collapse of Accountability* (Toronto: University of Toronto Press, 2008), 258; Canada, Privy Council Office, “Prime Minister Announces New Ethics Guidelines for the Ministry and New Appointment Procedures for Ethics Counsellor,” Press release on an “Eight Point Plan of Action on government ethics”. June 11, 2002. www.collectionscanada.gc.ca/webarchives/20060127091847/http://www.bcp.gc.ca/default.asp?Lang=eng&Page=archivechretien&Sub=newsreleases&Doc=ethics.20020611_e.htm2002:8.

⁶ S.J.R. Noel, “Dividing the Spoils: The Old and New Rules of Patronage in Canadian Politics,” *Journal of Canadian Studies*. Vol. 22. No. 2 (Summer 1987), 83-5.

⁷ Peter Aucoin, “The New Public Governance and the Public Service Commission,” *Optimum Online*, Vol. 36, No. 1 (Spring 2006), 33-49; “New Public Management and New Public Governance: Finding the Balance,” in David Siegel and Ken Rasmussen, eds., *Professionalism and Public Service: Essays in Honour of Kenneth Kernaghan*. Toronto: University of Toronto Press, 2008), 16-33; “New Public Management and the Quality of Government: Coping with the New Political Governance in Canada,” paper prepared for the Conference on New Public Management and the Quality of Government, University of Gothenburg Sweden, 13-15 November 2008.

⁸ Donald Savoie, *Governing from the Centre: The Concentration of Power in Canadian Politics*, (Toronto: University of Toronto Press, 1999); *Breaking the Bargain: Public Servants, Ministers and Parliament*, (Toronto: University of Toronto Press, 2003); *Court Government and the Collapse of Accountability in Canada and the United Kingdom*, (Toronto: University of Toronto Press, 2008); *Power: Where Is It?* (Montreal and Kingston: McGill-Queen’s University Press, 2010).

⁹ Savoie, *Court Government*, 312.

Though it has worsened in recent years, this is not an entirely new problem. It has been developing gradually since at least 1974, when the prime minister of the day appointed a Clerk of the Privy Council widely perceived to be a close personal (and even political) associate.¹⁰ Since that time, successive Clerks, with notable exceptions, have often played their role, if not necessarily in an overtly partisan manner, at least with a very zealous responsiveness that can blur the line between political and bureaucratic “space,” that is to say, between political and public service values and norms. As Donald Savoie puts it, they have frequently emphasized their role as the prime minister’s representative to the public service rather than the institutional representative of the public service to the prime minister.¹¹

The impact of this trend on the culture and behaviour of the federal public service was dramatically revealed in the Al-Mashat affair of 1991, when the Clerk and his associate fingered a senior public servant to be the fall-guy for a political snafu.¹² It was revealed again, a decade later, in the sponsorships scandal. The Gomery Commission discovered not only that the deputy minister of Public Works and Government Services failed to draw the line between political and public service values, but that the Privy Council Office (PCO) was an obstacle to doing so. Indeed, when the deputy and the assistant deputy minister of Public Works and Government Services attempted to put the sponsorships program on a footing more consistent with sound public administration, they received a call from the Deputy Clerk of the Privy Council that clearly implied they should back off, and should not interfere in political direction of the program by the Prime Minister’s Office (PMO).¹³

This same reflex was again on display, another decade on, in the role of the public service in stonewalling the Parliamentary Budget Officer (PBO), in 2012. The Clerk of the Privy Council not only took on the highly political role of spokesperson for blocking parliamentary oversight of public finance – a political role that should *never* be assumed by a professional public service in a *parliamentary* democracy. He did so in what can only be described as a forthrightly partisan manner. “In our view,” the Clerk told the PBO, in refusing his request for data on government expenditure reductions, “the government’s latest deficit reduction measures should be ... credible.”¹⁴

This was an astonishing statement. First of all, the Clerk was thereby defending and justifying a highly contestable political decision. In a professional, non-partisan public service, public servants may and should provide information. In certain circumstances and in a sufficiently neutral manner, they may even explain the reasoning used not by themselves but by political actors. But they should never make that reasoning their own. They should never defend or justify, never put themselves in the position of arguing, publicly, for a legitimately contestable political decision. If they do so, how can they expect to be considered non-partisan, or to be trusted equally – as they should be – by all the players in the political process?

Especially in a case like this one. For the Clerk was not only justifying and defending highly contestable political behaviour: he was justifying and defending the very kind of political behaviour which had already brought down upon the government a ruling of contempt of parliament by the Speaker of the House of Commons.

¹⁰ Gordon Robertson, Canada’s greatest post-war public servant, agrees with Donald Savoie and Colin Campbell that this appointment was a turning point in the centralization and “politicization” of the federal public service. Gordon Robertson, *Memoirs of a Very Civil Servant: Mackenzie King to Pierre Trudeau* (Toronto: University of Toronto Press, 2000), 308-10; Savoie, *Governing from the Centre*, 112-13; Colin Campbell, *Governments Under Stress: Political Executives and Key Bureaucrats in Washington, London and Ottawa* (Toronto: University of Toronto Press, 1983), 83.

¹¹ Savoie, *Governing from the Centre*, 112.

¹² S.L. Sutherland, “The Al-Mashat affair: Administrative accountability in parliamentary institutions,” *Canadian Public Administration*, Vol. 34, No. 4 (Winter 1991), 573 - 603.

¹³ Canada, Commission of Inquiry into the Sponsorship Program & Advertising Activities, *Who Is Responsible? Fact Finding Report*. (Ottawa: Her Majesty the Queen in Right of Canada, 2005), 157. The puzzling failure of the Gomery Commission to pursue this critical event and to explore its implications in its final report is a mysterious “black hole” in its conclusions and in the assigning of blame.

¹⁴ Wayne G. Wouters to Kevin Page, 21 September 2012.

But, second, notice the very *language* the Clerk used in doing so. Words such as “In our view” – *our!* – would be quite natural in the mouth of a prime minister. In the mouth of the Head of the Public Service, they are very difficult to explain, or justify.¹⁵ In using them, the Clerk left no space whatever between himself and the current Ministry.¹⁶ A Privy Council Office that could draft such a letter, and a Clerk who could sign it, are at serious risk of abolishing the distinction between a public service and the political administration it serves. No wonder that, under the Harper administration, PCO has become home to a large “communications” machine serving the partisan needs of the incumbent government and prime minister – a very serious problem for a supposedly non-partisan, professional public service, a problem to which I return below.¹⁷

The implications of this kind of example, from PCO and from successive Heads of the Public Service, are not lost upon others. A federal deputy minister of Industry recently described himself and his fellow deputy ministers, with misplaced pride, as “*serially monogamous* in our loyalty to the government of the day.”¹⁸ This is a disastrous misconception

of the role of public servants in general, and of deputy ministers in particular. It may help to explain some of the deplorable things that have occurred in the Government of Canada over the past decade, including in Industry Canada itself.¹⁹ But it is *not* an acceptable definition of a professional, non-partisan public service. A public service cannot be, and cannot be seen to be, a non-partisan, professional institution by being *equally* partisan with each successive government. Serial monogamy is the same thing as “serial promiscuity.”²⁰ That is *not* a recipe for creating a strong public service institution, respected for its integrity both internally and externally. A public service that is serially promiscuous or partisan is *not* one that can be trusted, equally, by all the actors in the political process. Or even by its own employees, let alone by the citizens of Canada.

It is not even a public service that serves the current government well. In fact it may well hasten its demise, by reducing public trust.

¹⁵ Canadian parliamentary democracy depends (in Gordon Robertson’s words) “on its being served by professional, non-partisan public servants, of whom the critical one is the clerk of the Privy Council” who “should, above any others in the public service, be *and be seen to be* non-political.” Robertson, *Memoirs*, 316-17. Emphasis added.

¹⁶ This was not the first nor the last time the Clerk has used the first person plural to conflate the public service with the current Ministry. For an earlier example, see his interview with Paul Crookall: “Trust, the antidote to risk aversion,” *Canadian Government Executive*, Vol. 16, No. 1 (January 2010), 16. For a later one, see the Clerk’s 2014 *Report to the Prime Minister on the Public Service of Canada*, (Ottawa: Privy Council Office, May 2014), 20-1. <http://www.clerk.gc.ca/eng/feature.asp?pageId=371#II-3-2>.

¹⁷ These public incidents, though highly significant, obviously do not tell the whole story of how Clerks have conducted themselves over the past twenty-five years. There have no doubt been many other unseen occasions when they were called upon to draw the line between political and public service values, and did so. For example, there were reports of such an effort following the federal budget of 2009. A conflict between political and public service values related to the administration of the Infrastructure program was said to have contributed to the Clerk’s sudden resignation in early May 2009, and the resignation of the deputy minister of Transport/Infrastructure shortly afterward. These abrupt resignations were reported to reflect the desire of the Prime Minister’s Office (PMO), and the Minister of Transport, to ensure an even faster pace of Infrastructure funding disbursement, for political purposes, than the departing Clerk and the DM – concerned to ensure due diligence, consistent with sound public administration – had been able or willing to achieve. See: John Ivison, “Pragmatist falls victim to partisans: PMO fingerprints all over Lynch resignation,” *National Post*, May 8, 2009; Adam Radwanski, “Guy Giorno, foot soldier,” globeandmail.com, May 8, 2009; James Travers, “Another victory for hired guns,” *The (Toronto) Star*, May 9, 2009; Bruce Campion-Smith, “Trouble at Transport: Clashes over spending,” *The (Toronto) Star*, 20 June, 2009.

¹⁸ Richard Dicerni, “Deputy Minister’s Notes for His Appearance before the House of Commons Standing Committee on Industry Science and Technology,” 19 June 2012. <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/07194.html>. Also published as “Parting Thoughts of a Deputy.” *Canadian Government Executive*, Vol. 18, No. 7 (September), 19. Emphasis added.

¹⁹ For example, officials in Industry Canada, FedNor (the northern Ontario development agency for which the Minister of Industry is also responsible) and Infrastructure Canada appear to have been culpably compliant with political imperatives and shortcuts prior to the 2010 G8 summit. They seem to have cooperated not only in the administration of the G8 Legacy Infrastructure Fund in such a manner as to leave no paper trail, but also to circumvent the due process requirements of the government’s own Policy on Transfer Payments, as the Auditor General found. (Canada. Auditor General of Canada. *Spring 2011 Report*. Chapter 2: *G8 Legacy Infrastructure Fund*. (Ottawa: Office of the Auditor General of Canada, 2011), 39. http://www.oag-bvg.gc.ca/internet/docs/parl_oag_201104_02_e.pdf.) The Auditor General could find no documentation on the selection process or determine why 33 projects were selected from a list of 242 proposals for infrastructure spending in the Parry Sound-Muskoka region, in preparation for the G8 summit. (Ibid, 38-9) The claim that public servants played no role at all in the selection process has since turned out not to be the whole truth. (Joan Bryden, Joan, “Memos contradict Clement’s claims about G8 fund,” *The Globe and Mail*, 24 January, 2012, A10.) Even if it were otherwise, the question remains as to how public service officials could accept to implement spending proposals that did not meet minimal procedural requirements. If they did these things, they were in breach not only of government policies but also of the 2003 *Values and Ethics Code for the Public Service*. Deputy ministers who cooperated – or allowed any other officials to cooperate – in this manner would have been in breach not only of these policies but also of their own obligations under the Code and the general obligations for accounting officers under the FedAA. These are the disastrous results of “serial monogamy.”

²⁰ Graham Wilson and Anthony Barker, “Bureaucrats and Politicians in Britain.” *Governance* 16, No. 3, 2003, 349–72; Peter Aucoin, “The Staffing and Evaluation of Canadian Deputy Ministers in a Comparative Westminster Perspective: A Proposal for Reform,” in Canada, Commission of Inquiry into the Sponsorship Program & Advertising Activities (Gomery Commission). *Restoring Accountability: Research Studies*, Vol. 1 (Ottawa: Her Majesty the Queen in Right of Canada, 2006), 327; Lindquist, Evert, and Ken Rasmussen. 2012. “Deputy Ministers and New Political Governance: From Neutral Competence to Promiscuous Partisans to a New Balance?” In Herman Bakvis and Mark D. Jarvis, eds., *From New Public Management to New Political Governance: Essays in Honour of Peter C. Aucoin*. Montreal and Kingston: McGill-Queen’s University Press, 179–203.

4

RE-ESTABLISHING THE BOUNDARIES: TOWARD A CHARTER OF PUBLIC SERVICE

The root problem in all of this is that, over the last twenty-five years or so, the federal public service appears to have gradually lost sight of the necessary *boundary* between political and public service values – and thus between elected and non-elected officials – in a parliamentary democracy.

That is certainly not to say, or mean, that public service values are better or higher or more important than political values. If anything, it is the reverse. Because political values have a direct democratic legitimacy that public service values possess only *indirectly*, the former should normally trump the latter. But when they do, it is essential for the health both of democratic accountability and of sound public administration that Canadians and their parliament – and public servants themselves – recognize that this is occurring. That a line is being crossed.

The problem is that deputy ministers seem less and less able, or willing, to acknowledge this line, and to recognize when they or others are crossing it. They have become accustomed to a very fluid, vague, imprecise approach to the boundary between political and public service values – between elected and unelected officials – and have even come to see its relative absence as a virtue.²¹

Canadian public servants have traditionally prided themselves on providing loyal service to successive governments, and up to a point, this is a fine principle, an expression of their democratic values. Responsiveness to the policy priorities of the Ministry is one of the prime values of a true public service. But federal public servants have become so accustomed to working closely with ministers, and to seeing that as a virtue, that some of them – especially near the top – appear no longer to notice when they are crossing a line they should not cross. Or the cost of doing so. Especially the cost in trust: the trust lost in the eyes of Canadian citizens, in the eyes of other political parties, and even in the eyes of public servants themselves.²²

But, if they cannot see it, others can. Within the public service itself, this kind of behaviour has led to a growing “fault line” between senior ranks and the rest of the public service.²³ At the political level, the blurring of the boundary between elected and unelected officials has led to a remarkable consensus on the need to redefine and re-establish it. This need was recognized by the Public Accounts Committee of the House of Commons.²⁴ It was acknowledged by the Liberal party, when in government.²⁵ And it was vociferously asserted by the Conservative party, while it was still in opposition. “[T]he lines between ministers and non-partisan civil servants have been blurred,” said the Conservatives’ 2006 election platform, “and clear lines of accountability need to be re-established.”²⁶

This was also the diagnosis of the Gomery Commission. Mr Justice Gomery concluded that this very “confusion” was the heart of the problem revealed by the sponsorships scandal.²⁷ Justice Gomery was quite correct to zero in on this “grey zone,” the imprecise boundary between elected and non-elected officials, as the major lesson from the sponsorships affair. And his first main recommendation for fixing the problem was what he called a Public Service Charter.²⁸

²¹ For a forthright statement of this preference, see Sheldon Ehrenworth, “Letter to Prime Minister Stephen Harper signed by Sheldon Ehrenworth and Some 58 Other Persons from Both the Public and Private Sectors,” 3 March 2006. http://www.pm.gc.ca/grfx/docs/gomery_toaupm_e.pdf.

²² Ralph Heintzman, “Loyal to a Fault.” *Optimum Online* 40, No. 1 (March 2010), 48–59.

²³ *A Strong Foundation*, 15–16, 45–6. Barely half (52%) of the respondents to the 2011 Public Service Employee Survey said that they had confidence in the senior management of their department or agency. This was a 3% decline from the 2008 survey. <http://www.tbs-sct.gc.ca/pses-saff/2011/psesfsm-saffrcs-eng.asp>.

²⁴ Canada, House of Commons, *Governance in the Public Service of Canada: Ministerial and Deputy Ministerial Accountability*, Report of the Standing Committee on Public Accounts, May 2005.

²⁵ Canada, *Government Response to the Tenth Report of the Standing Committee on Public Accounts*, August 2005. http://www.tbs-sct.gc.ca/report/gr-rg/2005/0817_e.asp; Treasury Board of Canada Secretariat, *Review of the Responsibilities and Accountabilities of Ministers and Senior Officials – Meeting the Expectations of Canadians*, October 19 2005. http://www.tbs-sct.gc.ca/report/rev-exa/ar-er-PR_e.asp.

²⁶ Conservative Party of Canada, *Federal Accountability Act*. (Ottawa: 4 November 2005), 13; *Stand Up for Canada*, Federal Election Platform 2006, 13.

²⁷ Canada, Commission of Inquiry into the Sponsorship Program & Advertising Activities (Gomery Commission), *Restoring Accountability: Recommendations* (Ottawa: Her Majesty the Queen in Right of Canada, 2006), 70.

²⁸ *Ibid.*, 67, 199.

By the time it became a centrepiece of the Gomery report, this proposal was not a new idea. The idea of a Charter of Public Service goes back at least to the Task Force on Public Service Values and Ethics (commonly known as the Tait report), which had already concluded, ten years earlier, that it is now necessary to “establish a *new moral* contract between the public service, the Government and Parliament of Canada.”²⁹ In the years following its publication, the Tait report’s recommended “statement of principles or code,” embodying a three-way moral contract between parliament, ministers and the public service, subsequently came to be labelled a “Charter of Public Service.”³⁰

The concept of a Charter of Public Service was endorsed by Donald Savoie in 2003.³¹ And it was again recommended by the external Working Group on the Disclosure of Wrongdoing, in 2004, as the means to establish “a new ‘moral contract’ between the elected and non-elected arms of government.”³² It was also the subject of a major research report by Kenneth Kernaghan for the Gomery Commission.³³

Perhaps most important, by the time it became the second recommendation in the Gomery Commission’s final report, a commitment to establish such a Charter had already been included in the *Public Servants Disclosure Protection Act* (PSDPA), *unanimously* approved by Parliament in 2005.³⁴ In other words, all parties in the House of Commons and Senate had already formally committed themselves to establish such a Charter.

Given this all-party, parliamentary commitment, what are the key elements a Charter of Public Service should contain? If the objective is to maintain and protect a professional, non-partisan public service, with the highest standards of integrity and professionalism – what is required?

Though there may be other potential elements, I think there are four necessary pillars for a future Charter of Public Service:

1. public service values and ethics;
2. strengthening the deputy minister’s role as accounting officer;
3. reforming the process for the appointment of deputy ministers; and
4. new rules for government communications.

Three of these were also the subject of recommendations by the Gomery Commission. The fourth has emerged, with new urgency, because of the actions of the Harper administration, since the Commission’s report.

²⁹ *A Strong Foundation*, 61. Emphasis added.

³⁰ Ralph Heintzman, “A Strong Foundation: Values and Ethics for the Public Service of the Future,” Presentation to the International Summit on Public Service Reform, Winnipeg, Manitoba, 10 June 1999; “A Strong Foundation: Values and Ethics for the Public Service of the Future.” *Isuma: Canadian Journal of Policy Research*, Vol. 2, No. 1 (Spring 2001): 121-6.

³¹ Donald Savoie, *Breaking the Bargain: Public Servants, Ministers and Parliament*. (Toronto: University of Toronto Press, 2003), 274-5.

³² Canada, Public Service Human Resources Management Agency, Working Group on the Disclosure of Wrongdoing, *Report* (Ottawa: Public Works and Government Services Canada, 2004), 28-30.

³³ Kenneth Kernaghan, “Encouraging ‘Rightdoing’ and Discouraging Wrongdoing: A Public Service Charter and Disclosure Legislation,” in Canada, Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission), *Restoring Accountability: Research Studies*, Vol. 2. Ottawa: Public Works and Government Services Canada, 2006), 73-114.

³⁴ Canada, *Public Servants Disclosure Protection Act* (S.C. 2005, c.46): Preamble.

5

CHARTER ELEMENT #1: PUBLIC SERVICE VALUES AND ETHICS

As I already noted, the values and ethics of a professional, non-partisan public service are put under severe pressure by what Peter Aucoin called the New Public Governance (NPG), and by what Donald Savoie calls ‘court government.’ Their combined force makes the boundary between political and public service values increasingly difficult to locate, and maintain. If a Charter of Public Service is to help re-establish that boundary, it needs to re-articulate the values of public service. And, even more important, it must commit the three parties to the contract – the public service, ministers, and members of parliament – to uphold them, and thus to protect the neutrality and professionalism of a non-partisan public service.

The first part should not be a difficult task. Over the past twenty years, the federal public service has invested an enormous amount of productive energy in defining its values. The Task Force on Public Service Values and Ethics identified four families of values (democratic, professional, ethical and people values) in 1996, and, after a lengthy public service dialogue, these four families were eventually incorporated into a *Values and Ethics Code for the Public Service* in 2003. They were retained in a revised *Values and Ethics Code for the Public Sector* in 2012, now summarized in five key words or phrases: respect for democracy, respect for people, integrity, stewardship, and excellence.³⁵ The Tait report and the codes of 2003 and 2012 provide a solid platform for articulating the values and ethics of a professional, non-partisan public service in a new Charter of Public Service that should be both a “charter of the rights and obligations of public servants” as well as a “symbol of the Government’s undertaking to give new respect to the public service.”³⁶ As the Gomery report suggested, the Charter should prohibit anyone from giving instruction to a public servant contrary to the Charter, and should give public servants the tools to enforce this provision.³⁷ This was a feature of the 2003 code that was obscured in its 2012 version, and should be restored.³⁸

But this is only the first step. The current code already sets out the requirements for public servants. What a legislative Charter can do is set out the corresponding requirements for ministers and for members of parliament to uphold these same values. It is not enough to establish requirements for the public service. It is equally important to ensure that ministers and parliamentarians are self-conscious partners in maintaining these values, and in upholding this kind of professional, non-partisan public service. That is why a Charter is needed, and it is something that only a legislative Charter can do.

³⁵ Canada, Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector* (Ottawa: Treasury Board of Canada Secretariat, 2011). <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>. The Code came into effect on 2 April 2012.

³⁶ Gomery Commission, *Restoring Accountability: Recommendations*, 67.

³⁷ *Ibid.*, 67-8.

³⁸ Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Service* (2003), 14, 36. http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/vec-cve1-eng.asp#_Toc46202803.

As far as the obligations of ministers are concerned, there are a number of sources and models for drafting this part of the Charter. Within Canada, there are some useful elements in the 2003 and 2012 codes, as well as in *Accountable Government: A Guide for Ministers and Ministers of State*.³⁹ Outside Canada, one of the best models is the original U.K. Civil Service Code adopted in 1996. The original U.K. Code committed ministers, for example, “not to use public resources for party political purposes, to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code.” It also committed them “to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching decisions.”⁴⁰ These kinds of obligations should be an important part of a Canadian Charter of Public Service.

For ministers, the Charter can also borrow from the four governmental and ministerial obligations toward public servants included in the New Zealand *Statement of Commitment by the Government to the State Sector* issued in 2001 jointly with a parallel *Statement of Government Expectations of the State Sector*. The twin New Zealand documents are noteworthy as they set out both the key values expected of public servants and also “a reciprocal commitment by Ministers.”⁴¹ The reciprocal architecture of these New Zealand statements provides a very useful model for a Canadian Charter of Public Service. A Canadian Charter can also draw on the thinking of the Public Administration Select Committee of the British House of Commons which has recommended a “new public service bargain” to be enshrined in an instrument similar to the proposed Canadian Charter of Public Service. The U.K. Committee suggests such an instrument should express both legitimate civil service expectations and legitimate corresponding ministerial expectations – a two-way moral contract.⁴²

³⁹ Canada, Privy Council Office, *Accountable Government: A Guide for Ministers and Ministers of State* (Ottawa: Privy Council Office, 2011). <http://www.pm.gc.ca/eng/news/2010/12/12/accountable-government-guide-ministers-and-ministers-state>.

⁴⁰ United Kingdom, Cabinet Office. *The Civil Service Code* (1996). <http://www.leeds.ac.uk/law/teaching/law6cw/min-5.htm>. Unfortunately a misguided effort to make the U.K. Code more “relevant” led to its rewriting in “more everyday language” a decade after its introduction (Letter from the Cabinet Secretary and Chief Civil Service Commissioner, June 6 2006; U.K. Cabinet Office, *Civil Service Code*, June 2006. <http://www.civilservice.gov.uk/about/values/cscodex/index.aspx>). The revisions stripped the Code of much of its initial value as a statement of the relationship between the public service and ministers (“the constitutional framework within which all civil servants work”), including reference to these ministerial obligations toward the civil service. On 11 November 2010, the Civil Service provisions of the *Constitutional Reform and Governance Act 2010* came into force. The legislation places the Civil Service values on a statutory footing and includes the publication of a Civil Service Code. UK Acts, *Constitutional Reform and Governance Act 2010*, Chapter 25. <http://www.legislation.gov.uk/ukpga/2010/25>.

⁴¹ New Zealand, Hon Trevor Mallard, Minister of State Services, Government Responds to Standards Board Report, 2001. <http://executive.govt.nz/minister/mallard/state/pr.htm>. The New Zealand Statement of Commitment by the Government to the State Sector makes four ministerial commitments toward the public service, including the obligations to “acknowledge the importance of free, frank and comprehensive advice,” to “provide clear guidance about policy directions and outcome priorities” and to “treat people in the State Sector in a professional manner.” New Zealand Minister of State Services, *Statement of Government Expectations of the State Sector and Statement of Commitment by the Government to the State Sector*, 2001. http://www.ssc.govt.nz/display/document.asp?navid=152&docid=3514&pageno=11#P928_62039; Kenneth Kernaghan, “Encouraging ‘Rightdoing’ and Discouraging Wrongdoing: A Public Service Charter and Disclosure Legislation” in Canada, Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission), *Restoring Accountability: Research Studies*, Vol. 2. (Ottawa: Public Works and Government Services Canada, 2006), 83-4.

⁴² Legitimate public service expectations include access to ministers safeguarded and the right to give – even “unpalatable” – advice; extension of the accounting officers’ role to advise more widely on procedure and propriety; and the right not to be made public scapegoats when things go wrong for which they are not responsible. Legitimate political expectations include the right to expect professional and committed service to their governing objectives; poor performance dealt with effectively, and a robust system of performance management; and also that civil servants will have the skills and experience to enable them to support ministers efficiently. United Kingdom House of Commons, Select Committee on Public Administration, *Politics and Administration: Ministers and Civil Servants*. Third Report of Session 2006-07. 15 March 2007 (London: The Stationery Office, 26 March), 23 (pars. 65-6), 38-44. <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubadm/122/12205.htm>.

But provisions of this kind still touch only two sides of the triangle. They provide only for a two-way contract, between ministers and public servants, in support of a professional, non-partisan public service.⁴³ To ensure that all *three* partners in the governance process do their part to uphold public service values, a legislative Charter of Public Service can and should also make parliament a self-conscious partner in this same objective. The increasing interaction between public servants and parliamentary committees requires some kind of explicit agreement on the basic ground rules. Almost twenty years ago, the Tait report noted that “this is an area where public service values and conventions have been subject to great pressure ... and a public statement of principles endorsed by the Government and Parliament could greatly help to put things on a clearer footing,” by setting out “the principles that govern relations between public servants and Parliament, especially parliamentary committees.”⁴⁴

Twenty years later this need is even greater. In the wake of the Gomery report and the *Federal Accountability Act* (2006), for example, the Public Accounts Committee (PAC) and the Privy Council Office (PCO) clashed over the ground rules for the appearance of the deputy ministers before parliamentary committees.⁴⁵ Each issued its own separate guidelines.⁴⁶ Together the PAC and PCO documents provide many of the principles to be included in a Charter governing the relations between parliament and the public service. But now they should be jointly incorporated in a common Charter binding both. What C.E.S Franks called the “unfortunate experience of the duelling protocols”⁴⁷ provides a good illustration of the need to clarify the boundary between elected and unelected officials, *and* the need to do so through a more explicit *three-way* moral contract, binding public servants, ministers and parliament.

⁴³ This part of the Charter would respond to the need, identified by the Association of Professional Executives of the Public Service of Canada (APEX), to “strengthen respect and confidence between ministers and public servants” through a “public recommitment” to the values and ethics of public service. *Report on Blueprint 2020* (Ottawa: APEX, 28 February 2014), 8-9. <http://www.apex.gc.ca/uploads/key%20priorities/consultations/apex%20report%202020%20-%20eng.pdf>

⁴⁴ *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics* (Tait report) (Ottawa: Canadian Centre for Management Development, 1996, 2000), 61.

⁴⁵ Paul Thomas, “Political-Administrative Interface in Canada’s Public Sector,” *Optimum Online: The Journal of Public Sector Management*, Vol. 38, Issue 2. (May 2008), 21-29; C.E.S. Franks, “The Unfortunate Experience of the Duelling Protocols: A Chapter in the Continuing Quest for Responsible Government in Canada,” in O.P. Dwivedi, Tim A Mau and Byron Sheldrick, eds., *The Evolving Physiology of Government: Canadian Public Administration in Transition* (Ottawa: University of Ottawa Press, 2009), 118-150.

⁴⁶ Canada, House of Commons, Standing Committee on Public Accounts, *Protocol for the Appearance of Accounting Officers as Witnesses Before the Standing Committee on Public Accounts*, March 2007; Privy Council Office, *Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees*, March 14, 2007. http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=informationresources&Sub=publications&Doc=guidemin/account-guideonrole2007_e.htm.

⁴⁷ Franks, “The Unfortunate Experience of the Duelling Protocols”.

6

CHARTER ELEMENT #2: STRENGTHENING THE DEPUTY MINISTER'S ROLE AS ACCOUNTING OFFICER

The second element of a Charter of Public Service should strengthen the deputy minister's (DM) role as an 'accounting officer.' This is an important feature of a future Charter, because the accounting officer role, properly conceived and implemented, is a key tool for re-establishing an appropriate boundary between political and public service values, between ministers, and a professional, non-partisan public service.

This part of the Charter should bring the definition and powers of federal accounting officers more into line with the original British model. The difficulty lies not in the concept itself, which is admirable, and much needed in Canada, but rather in the way the *Federal Accountability Act* (FedAA) botched its implementation here.⁴⁸ As the former U.K. Treasury official responsible for British accounting officers remarked, about the Canadian version, "it would be dangerous to assume that, just because the title of the post is the same, then everything else must be the same too."⁴⁹ In fact, the version of the accounting officer implemented in the FedAA has *none* of the key features of its British model and several regrettable innovations.⁵⁰

In Britain the "accounting officer" role makes deputy ministers "personally" responsible for the financial and general management of their departments. Accounting officers must "make sure that their organisations' activities achieve high and reliable standards of regularity and propriety." In addition to specific obligations for financial management, the concept of regularity and propriety is interpreted in a very "powerful" way, "as *delivering public sector values in the round*," encompassing "honesty, fairness, impartiality, integrity, openness, transparency, accountability, objectivity, accuracy, and reliability" (values very similar those found in the Canadian *Values and Ethics Code for the Public Sector*.) These values are to be "carried out in the spirit of, as well as to the letter of, the law, in the public interest, to high ethical standards, achieving value for money."⁵¹

⁴⁸ For very different views, see Franks, "The Unfortunate Experience of the Duelling Protocols"; and Mark D. Jarvis, "The adoption of the accounting officer system in Canada: Changing relationships?" *Canadian Public Administration*, Vol. 52, No.4. (December, 2009), 525-547.

⁴⁹ Brian Glicksman, "The Role of Accounting Officers: A Perspective from the United Kingdom," *Canadian Parliamentary Review*. (Autumn 2007), 23.

⁵⁰ For a more ample discussion of the accounting officer concept in Canada and Britain, see Ralph Heintzman, "Establishing the Boundaries of the Public Service: Toward a New Moral Contract," in James Bickerton and B. Guy Peters, eds., *Governing: Essays in Honour of Donald Savoie* (Montreal and Kingston: McGill-Queen's University Press, 2013), 92-106.

⁵¹ United Kingdom, HM Treasury, *Managing Public Money* (London: The Stationery Office, 2007), 11, 13, 7. Emphasis added.

From the point of view of defining the “boundary” between political and public service values, the most important feature of the accounting officer role, in the U.K., is the simple tools given to an accounting officer for that purpose, especially the clear instruction from the U.K. Treasury to request a “ministerial direction” for any administrative action for which an accounting officer is unable (by virtue of his own mandate) to accept “personal” responsibility, and the procedures that then follow. If a Minister proposes a course of action whose rationale goes beyond the public service values the accounting officer is charged to uphold, the DM, as accounting officer, is instructed to consult with the Treasury, if time permits and to seek a written instruction from the Minister before proceeding. If such instruction is given, the accounting officer is to copy the direction to the Comptroller and Auditor General, who will normally draw the matter to the attention of the Public Accounts Committee.⁵²

In other words, the accounting officer role, properly conceived, gives deputy ministers the tools to draw a line in the sand, and to define, in concrete circumstances, where the boundaries of public service values and action end, and those of political accountability take over.⁵³

Rather than give Canadian deputy ministers the simple and proven tools for “drawing the line” that are in the hands of British accounting officers,⁵⁴ the FedAA made three serious errors. The first was to frame the accounting officer’s powers exclusively in the context of disagreements between the Minister and the DM (discussed again below). The second was to limit the DM’s accounting officer powers, still further, to *only* disagreements about “the interpretation or application of a policy, directive or standard issued by the Treasury Board.” The third error was that – even within a field thus arbitrarily limited to Treasury Board policies alone – the FedAA established a cumbersome two-step procedure which further undercuts the DM’s own role and judgment, by giving the Treasury Board the ultimate say.⁵⁵

⁵² United Kingdom, HM Treasury, *Managing Public Money* (London: The Stationery Office, 2007), 19-20.

⁵³ One of the persistent myths is that such “ministerial directions” rarely occur. (Ehrenworth, “Letter to Prime Minister Stephen Harper,” 3) In fact they occur quite regularly. See Heintzman, “Establishing the Boundaries of the Public Service,” 96.

⁵⁴ Though the drafters of the FedAA chose to ignore them, there are already several precedents for written ministerial “direction” in Canadian law and practice of public administration. The *Canada Revenue Agency Act*, for example, empowers the minister to issue “a *written direction* to the Agency” on any matter that would normally fall within the authority or responsibility of the Agency’s Management Board, and, if he does, “every person [so directed] must comply with the direction.” (S.C. 1999, c.17, ss.11.(1) and 12.) This same provision for a written direction has also been implemented in the courts administration. A chief justice “may issue binding *directions in writing* to the Chief Administrator [the deputy head of the courts administration] with respect to any matter within the Chief Administrator’s authority.” *Courts Administration Service Act* (S.C. 2002, c.8), s.9.(1). Emphases added. I am grateful to Jim Mitchell for drawing the second Canadian legal precedent to my attention.

⁵⁵ The accounting officer must “seek guidance in writing” from the Secretary of the Treasury Board, and if that does not resolve the issue, the minister must “refer the matter to the Treasury Board for a decision.” *Canada Financial Administration Act*, (R.S.C. 1985, c.F-11), s.16.5(1) and (2).

This approach has many flaws. It does not have the economy, simplicity, or strength of the British procedure; it radically narrows the field within which accounting officer judgment may be exercised; it disempowers the deputy minister (in British practice “the ultimate judgement must lie with the Accounting Officer *personally*”⁵⁶); it does not give him/her the tools to clarify accountability or to define the boundary of public service values; it reinforces centralization of decision-making; it tilts the decision-making process toward Ministers; and it will therefore not be used.⁵⁷

Most of these defects stem from the misconception that the purpose of the accounting officer role is a negative one: to prevent bad things from happening, or to prevent rule-breaking. Because the FedAA approach was based on this mistaken assumption, it cast the accounting officer’s tools *negatively*, in the context of disagreements over rules, rather than in a context for *positively* asserting the key public service values that form the basis of the U.K. accounting officer role.⁵⁸ No positive principles of any kind were included in the FedAA’s description of the accounting officer. The drafters of the act completely overlooked the positive role of accounting officers in the apparatus of good government – their positive role in “delivering public sector values in the round” (in the U.K. terminology), in upholding the boundaries established by these values, and in determining where “administrative space” ends and “political space” begins.⁵⁹

⁵⁶ United Kingdom *Managing Public Money*, 19. Emphasis added.

⁵⁷ The impracticality of the way in which the FedAA pretended to implement the concept of the accounting officer in Canada was illustrated by the situation reported to have arisen in Transport Canada and Infrastructure Canada in the wake of the federal budget of 2009. The political value of ensuring rapid expenditure of funds allocated in the Budget put extreme pressure on the deputy minister of Transport, also the DM for Infrastructure. His efforts to ensure appropriate standards of regularity and due process – consistent with government policies and sound principles of public administration – apparently created great tension, perhaps even a rupture of relations between him and his minister, a notorious political partisan and close confidant of the prime minister. The elaborate procedures provided in the *Accountability Act* were of no use in managing this apparent conflict between political and public service values. Whereas, if the deputy minister had possessed the simple tools available to British accounting officers, the problem could have been immediately resolved through the use of a direction letter by which the minister assumed public and political accountability for expedited diligence in the expenditure of budget funds to combat the recession. See: John Ivison, “Pragmatist falls victim to partisans: PMO fingerprints all over Lynch resignation,” *National Post*, May 8, 2009; Chantal Hébert, “Les commandites, prise deux?” *Le Devoir*, May 11, 2009; Bruce Campion-Smith, “Trouble at Transport: Clashes over spending,” *The (Toronto) Star*, 20 June, 2009.

⁵⁸ Canada *Financial Administration Act*, s.16.5.

⁵⁹ Canada, Commission of Inquiry (Gomery Commission), *Restoring Accountability: Recommendations*, 130-1).

The accounting officer principle, properly understood, does not simply *allow* the public service to draw a line for ministers; it *requires* the public service to draw a line *for itself*. It requires the public service – in its own actions and advice – to stay on the side of the line established by public service values, and *not* to venture onto terrain where other values and norms apply. Even if they agree that a course of action is reasonable, on other (perhaps political) grounds, British accounting officers will ask for a formal ministerial direction if they do not think they can recommend such action, or implement it, or take responsibility for it, *on the basis of public service values alone*.⁶⁰ In other words, the accounting officer principle is, first and foremost, a self-denying ordinance *for the public service*. It tells deputy ministers when and where they are about to cross a line they should not cross, without explicit, public ministerial direction. It draws a line, and establishes the boundaries within which the public service must remain.

There are many other problems with the FedAA version of the accounting officer that a Charter of Public Service can remedy and clarify, including the confusion it created about both the definition and locus of accountability.⁶¹ But from the point of view of re-establishing an appropriate boundary between elected and unelected officials, the most important feature of the Charter of Public Service will be its redefinition of the *purpose* of the accounting officer role – the assertion of a *positive* role, rooted in public service values, rather than a *negative* role rooted in preventing wrongdoing or rule-breaking – and the *requirement* for deputy ministers and other public servants to remain on the public service side of the line.

As we saw in the first part of the paper, that is the key issue for the federal public service today. The decline of its ability to recognize this line, or to stay on the right side of it, is what has brought it to its present condition. And it is only by giving deputy ministers both the tools *and the requirement* to remain on the right side of the line that a future government can get it back on track.

That is the real meaning of public service renewal.

⁶⁰ See Heintzman, “Establishing the Boundaries of the Public Service,” 98-9.

⁶¹ See *Ibid*, 101-3.

7

CHARTER ELEMENT #3: REFORMING THE PROCESS FOR THE APPOINTMENT OF DEPUTY MINISTERS

The third element of a Charter of Public Service should be new procedures for the appointment of deputy ministers (DMs). Because deputies are the link between the public service and ministers, they not only draw the line between the political and public service values: they *embody* it. In an important sense, they *are* the boundary. How the embodiments of the boundary are appointed is therefore of the greatest importance for the boundary itself and how it is maintained. Accounting officers, for example, will be more or less able to play their role in an effective way, depending on the manner of their appointment. But, even more fundamental, the manner of appointment of DMs, and the behaviours that flow from it, shape the broader culture of the public service. They shape the very values of public service the boundaries are meant to protect and strengthen.

In order to restore an appropriate boundary between political and public service values, and between elected and unelected officials, a Charter of Public Service should alter the roles currently played in DM appointments by the prime minister and, especially, by the Clerk of the Privy Council.

The prime minister has, of course, a legitimate democratic role to play. But the way that role is currently structured in the federal government potentially limits the ability of DMs to “draw the line” between political and public service values.⁶² The problem with the prime minister’s current role in the appointment of DMs stems from the way it is bound up with the role of the Clerk. By convention, the prime minister

⁶² The Sponsorships program clearly illustrated the difficulty for a deputy minister to assert principles of sound public administration when his or her appointment – and continuance in office – is at the pleasure of the prime minister. In that case, the very program in which irregularities were occurring was a program the prime minister had deliberately and explicitly maintained under his own personal authority. As appointments are currently structured, it would have required an unusually strong and principled deputy minister to stand in the way of the very person who controls his or her fate. Even if the accounting officer role were revised, as recommended in this paper, requesting a direction letter would only work if the DM felt protected from summary dismissal for upholding public service values, and hence defining the boundaries of public service in this way. This is also clearly illustrated by the reported conflict of political and public service values (described in notes 17 and 57 above), following the federal budget of 2009. The swift resignation of the deputy minister of Transport/Infrastructure in the wake of the Clerk’s departure shows how closely security of tenure and the boundaries of the public service are linked. If a deputy minister – or even a Clerk – cannot continue in office once they are perceived to function on the basis of public service values different from those of elected officials, the line between political and public service values can never be drawn, and essential public service values will always be at risk. See: John Ivison, “Pragmatist falls victim to partisans: PMO fingerprints all over Lynch resignation,” *National Post*, May 8, 2009; Adam Radwanski, “Guy Giorno, foot soldier,” globeandmail.com, May 8, 2009; James Travers, “Another victory for hired guns,” *The (Toronto) Star*, May 9, 2009; Chantal Hébert, “Les commandites, prise deux?” *Le Devoir*, May 11, 2009; Bruce Campion-Smith, “Trouble at Transport: Clashes over spending,” *The (Toronto) Star*, 20 June, 2009.

normally makes DM appointments – as he or she should, and must continue to do – on the basis of independent, non-partisan advice.⁶³ Under the current arrangements, this advice is provided by the Clerk. A Charter of Public Service should remove the Clerk from the process, and should provide for a different and more independent channel of non-partisan advice to the prime minister.

The reason why this change is necessary is because of the impact of the Clerk's current role on the culture and behaviour of the public service. Because the prime minister currently makes DM appointments on the Clerk's advice, the Clerk effectively controls appointments and promotion at the deputy level. And because deputy ministers' careers are directly controlled by the Clerk of the Privy Council, it is natural if not inevitable for them to look to the Clerk as their de facto "boss," the person whose preferences and priorities are to be respected above all. If the Clerk also thinks of the prime minister as his "boss," then you have an unchallengeable hierarchy of executive authority. Exactly the "court government" diagnosed by Donald Savoie.⁶⁴

As we already saw in the first part of this paper, the sponsorships scandal showed some of the serious drawbacks of leaving such a power in the hands of the Clerk of the Privy Council. One of the factors that prevented the DM of Public Works and Government Services from drawing the necessary line between public service and political values in the administration of the sponsorships program was intervention by the Clerk's deputy. As the Gomery Commission correctly noted, the inability or disinclination of a deputy minister to resist this kind of interference in his or her proper role is directly related to the Clerk's role in the selection, appointment, appraisal and promotion of deputy ministers.⁶⁵

This is the first reason why a new DM appointment process is needed. DMs will not have the independence to speak truth to power, or to draw the line between political and public service values, as long as their careers are controlled by someone who stands to them in a hierarchical relationship, and reports to the prime minister.

But there is also another reason. The corroding effects of the appointment of deputy ministers by the Clerk of the Privy Council go well beyond the DMs themselves. They shape the entire culture and behaviour of the federal public service in ways that are ultimately inconsistent with a professional public service dedicated to the public interest. The centralization of the power of appointment at the top of the public service has a ripple effect downward that profoundly affects the public service's organizational culture, especially its ability and readiness to speak truth to power at *all* levels, not just at the top.

This decline in the ability of the Canadian public service to "speak truth to power" – not just in relation to Ministers, but internally as well: between the various levels of the public service itself – was already detected almost twenty years ago, in the Tait report. If "public servants are not as ready as once they might have been to put forth honest views or engage in critical debate for fear of being seen to be 'offside' or untrustworthy," the report argued, this should be matter for deep concern for the public service, because "honest dialogue and exchange leading to clarification and insight" are critical to the ability of a public service to offer the sound, professional advice on which good government depends.⁶⁶ Government involves decisions about contestable public goods. And professional advice about such decisions is unlikely to be wise, or to reflect a sufficiently broad view of the public interest, unless it is informed by a robust internal debate, in which all the angles of those contestable goods are fully explored. "I feel I serve the prime minister," said a Conservative Senator recently, "by telling him really what I think."⁶⁷ That would be a good motto, for a good public service, too. But it is one which – as a result of "court government" – has fitted the federal public service less and less well.

⁶³ To its credit, the Harper administration does not yet appear to have varied from this convention, unlike, for example, the government of Quebec. Because of the divide between sovereigntists and federalists, it has become the habit in Quebec for a new government to make wholesale changes at the top of the Quebec public service. Thus, in April 2014, the new Couillard government immediately replaced not only the secretary general (the equivalent of the federal Clerk) of the Executive Council (the equivalent of PCO), but also many of the other senior officials of the Council, as well as many DMs. Denis Lessard, "La haute fonction publique retourne au rouge," *La Presse*, 25 April 2014, A9.

⁶⁴ Donald Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom* (Toronto: University of Toronto Press, 2008), 312.

⁶⁵ "Deputy Ministers know that their past and future appointments are made by the Prime Minister according to his or her sole discretion, after receiving the advice of the Clerk. There is a danger that they will feel a greater sense of loyalty to these two individuals than to the Ministers with whom they have to work on a daily basis. Divided loyalties of this kind do not promote a single-minded dedication to the welfare of the department to which the Deputy Minister has been assigned. The most important loyalty of all, of course, should be to the public interest." Canada, Commission of Inquiry (Gomery Commission), *Restoring Accountability: Recommendations*, 149.

⁶⁶ *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics* (Tait report), 48-9.

⁶⁷ Senator Nicole Eaton, quoted in Jordan Press, "Keep elections out of it, says Tory Senator," *Ottawa Citizen*, 2 April 2014, A1-2.

In the two decades since the Tait report, both anecdotal and more formal evidence suggest that the honest expression of views is now more difficult than ever, especially at more senior levels in the public service.⁶⁸ Several research studies have reported on the growth of a public service “climate of fear” and of “self-censorship” that is internally self-generated, by the structure of motivation within the public service itself. Public service executives describe a culture of fear and self-censorship that is “completely internal to the public service, and basically unaffected by the colour of the government of the day according to some interviewed. The public service seems more prepared to speak ‘truth’ to politicians than to each other.”⁶⁹ A major source of the problem, as one public service executive put it, is that the career “competitiveness is amazing. People are planning their next career move, and trying to find out what the DM wants to hear before saying anything. This is dysfunctional.”⁷⁰

What this shows is a pyramid of power and ambition, in which too many executives look fearfully to the DM, and too many DMs look in turn to the Clerk. Again, precisely the “court government” identified by Donald Savoie.⁷¹ But exactly the opposite to “one of the core values of the ‘independent, politically neutral public service’... its deemed ability to give fearless advice – sometimes called ‘speaking truth to power.’”⁷²

For both these reasons, the third part of a Charter of Public Service should establish a more independent process for the appointment of deputy ministers, and take the Clerk out of the equation. In order to restore the ability of the public service to be a *true* public service, the advisor on DM appointments should, in future, stand outside the hierarchy of executive authority.

⁶⁸ In a written statement to the House of Commons’ Special Committee on the Mission in Afghanistan, for example, a senior public servant testified that “Embassy staffers were told that they should not report information, however accurate, that conflicted with the government’s public messaging.” When the Embassy reported that security in Kandahar was deteriorating, it was instructed not to “mention the security situation at all, or to assert that it was getting better.” When an embassy official contributed to a security assessment by reporting that the situation was deteriorating, the officer was “severely rebuked” by headquarters in Ottawa. (Jennifer O’Neill, “Colvin contradicts ex-boss on testimony to committee,” *Ottawa Citizen*, December 17 2009). There is obviously more than one side to this story. But such testimony is confirmed by other background reporting on public service management of the Afghan mission. Campbell Clark, “‘The buck stopped nowhere’: Inside Foreign Affairs, no one in charge to act on Colvin’s warnings,” *The Globe and Mail*, 18 December, 2009.

⁶⁹ Peter Larson and David Zussman, “Canadian Federal Public Service: The View from Recent Executive Recruits,” *Optimum Online*, Vol. 36, Issue 4, (December 2006), 12. Another report on a series of sixteen sessions of discussion with dozens of longer-serving public service executives also identified a climate of fear and self-censorship: “The most elusive sense that permeated the discussions was one of latent fear. This had nothing to do with any sort of edicts but rather some form of self-censorship that has become habitual, it would seem, as a survival instinct in a world where critical thinking and sharp exchanges are no longer valued as they used to be.” Ruth Hubbard and Gilles Paquet, “Cat’s Eyes: Intelligent Work Versus Perverse Incentives - APEX Forums on Wicked Problems,” *Optimum Online*, Vol. 38, Issue 3 (August 2008), 18)

⁷⁰ *Ibid.*

⁷¹ “The clerk of the privy council and secretary to cabinet is the most powerful public servant, if only because the person holding this position is the prime minister’s deputy, and the other deputy ministers and aspiring deputy ministers (there is never a shortage of the latter) know that the clerk can promote them or play havoc with their careers at the stroke of a pen. ... One should never underestimate the power of appointment. ... [A]ssistant and associate deputy ministers wishing to become deputy ministers are not short on ambition. They keep an eye on what the prime minister and the clerk of the privy council desire, and they attempt to deliver the goods.” Donald Savoie, *Power: Where Is It?* (Montreal and Kingston: McGill-Queen’s University Press, 2010), 140-1.

⁷² Larson and Zussman, “Canadian Federal Public Service,” 12.

How should this be done? Twenty years ago, the Tait report suggested Canada should consider giving the authority to advise on DM appointments to an “independent public service body” like the New Zealand State Services Commission.⁷³ Ten years later, the Gomery Commission recommended that the Government of Canada should adopt a process for the selection of deputy ministers, similar to the practice in Alberta. In the Alberta model, the Deputy Minister of the Executive Council (the equivalent of the federal Clerk) chairs an interview panel (including stakeholders) which makes recommendations to the relevant minister. The final recommendation is made to Cabinet by the Minister, and a veto power is reserved for the premier.⁷⁴

But the Gomery proposal – like a similar one recommended by Peter Aucoin in a research study for the Commission – has a major defect. It does not address the root problem, which is the role of the Clerk. Indeed it would reinforce this problem, and hence reinforce “court government.” It fails to accomplish the critical feature of the New Zealand model, which is to separate the role of secretary to the cabinet or deputy to the prime minister from the role of appointing and evaluating deputy ministers. The critical feature of the New Zealand system is that the latter function is given to an independent officer who does not stand in a hierarchical, power relationship between the DMs and political authority.⁷⁵

What is the best way in Canada to accomplish the same objective as the New Zealand model? There are several options.⁷⁶ But the best option would be to follow the example of the U.K., where this role is given to the civil service commission. In Canada, that would mean completing the public service reforms of 1918, and simply raising the appointment authority of the Public Service Commission (PSC) from the assistant deputy minister (ADM) level, where it now stops, to include DMs also. The PSC has a record of protecting the “contested ideal” of an independent, non-partisan, merit-based public service, for over a century.⁷⁷ The Charter of Public Service should amend the *Public Service Employment Act* to give the PSC legal authority to hold internal or public competitions for DM positions, to interview candidates, and to make a recommendation (or recommendations) to the prime minister.

⁷³ *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics* (Tait report), 25.

⁷⁴ Canada, Commission of Inquiry (Gomery Commission), *Restoring Accountability: Recommendations*, 150-1.

⁷⁵ In his research study for the Gomery Commission, Peter Aucoin recommended that responsibility for the appointment and performance evaluation of deputies be assigned in law to a new Deputy Minister Commission chaired by the Clerk and including both senior deputy ministers and at least two members from outside the public service. (Peter Aucoin, “The Staffing and Evaluation of Canadian Deputy Ministers in a Comparative Westminster Perspective: A Proposal for Reform,” in Canada, Commission of Inquiry into the Sponsorship Program & Advertising Activities (Gomery Commission), *Restoring Accountability: Research Studies* (Ottawa: Her Majesty the Queen in Right of Canada, 2006), Vol. 1, 297-336.) With the addition of outsiders, this would be very much like legislating the current process by which the Committee of Senior Officials (COSO), chaired by the Clerk, reviews and assesses deputy ministers and potential deputy ministers. Although Aucoin’s proposal was clearly inspired by the New Zealand model of the State Services Commissioner, it fails to accomplish the objective of that model, as Aucoin himself later acknowledged.

⁷⁶ An option that might initially appear plausible would be to give the DM appointment role to a new Public Appointments Commission, similar to what was provided for in the FedAA. But this option has four defects. First, the FedAA version was left deliberately powerless. Its role would have been merely to “oversee, monitor, review and report on the selection process” for government appointments, not to exercise any independent powers of its own. (*Federal Accountability Act*: s.227. 1.1(1)) Second, the intended malleability of this Commission was clearly illustrated when the prime minister nominated a partisan person to head it and – after such an inappropriate nomination was rejected by a parliamentary committee – has since declined to implement this provision of the FedAA. (Lawrence Martin, *Harperland: The Politics of Control* (Toronto: Viking Canada, 2010), 68-9) Third, even if it had more executive authority than the FedAA provided, such an approach would keep DMs separated from the rest of the public service. One of the objectives of such a reform should be to reintegrate DMs into the universe of public service values whose boundary they embody, as has already been partially accomplished by the *Public Servants Disclosure Protection Act* (S.C. 2005, c.46.). Fourth, even if it were more independent than either the Gomery or Aucoin proposals, or than the FedAA’s Public Appointments Commission, creating a new commission for the appointment of DMs offends against the principle of institutional economy. Where there are already mechanisms or institutions available to do the job, new ones should not be created.

⁷⁷ Luc Julliet and Ken Rasmussen, *Defending a Contested Ideal: Merit and the Public Service Commission of Canada 1908-2008* (Ottawa: University of Ottawa Press, 2008).

(In Britain, there is debate about whether the civil service commission should give the PM only one name – the current practice – or a choice between several names: but few question that the commission is the right body to play this role.⁷⁸) As in the U.K. and New Zealand, the prime minister should have the authority to ask for another recommendation, or perhaps (as in New Zealand) even to make a unilateral appointment. But a decision to make a unilateral appointment must be accompanied (as in New Zealand) by a *public* statement and explanation of the action. Following the same principle, deputy ministers should in future be moved, promoted or removed from office *only* upon the advice and with the approval of the Public Service Commission.

Exceptions to this rule should also require a *public* statement and explanation of the decision by the prime minister.⁷⁹ These same procedures should apply to the appointment and replacement of the Clerk, just as to other DMs. This new role for the PSC will in turn require the appointment of Public Service Commissioners who have the stature, reputation and independence to play this critical role, and who are not themselves mid-career public servants, eligible for future appointment within the public service. Consistent with these changes, the Charter should amend the *Public Service Employment Act* to transfer the title of Head of the Public Service from the Clerk of the Privy Council to the Secretary of the Treasury Board, the government’s management board.

⁷⁸ In the U.K., the Minister for the Cabinet Office has proposed that ministers be involved in the DM appointment process (as in Alberta), selecting from a list of acceptable candidates established by the Civil Service Commission. The Civil Service Commission has resisted this proposal, fearing it would lead to the politicization of DM appointments. It has put forward two alternative options instead: in the first option, ministers would be consulted in the selection process, but the commission would retain ultimate responsibility for making a single recommendation to the PM. The second option would allow the PM to select between more than one DM candidate, when the Civil Service Commission decides that there are two or more equally qualified candidates. The U.K. House of Commons Select Committee on Public Administration recently considered these two options and supported the first: it recommended the U.K. Civil Service Commission should continue to put forward *only one* DM nomination to the PM. The select committee argues that “impartial recruitment on merit alone is a fundamental pillar of our system of government. Giving the Prime Minister or the [minister] a choice from a list of differing candidates risks the final decision being made for other reasons, not on merit, undermining the central core of the Northcote-Trevelyan Civil Service.” See U.K., House of Commons, Select Committee on Public Administration, Ninth Report of Session, *Latest proposals for ministerial involvement in permanent secretary appointments: PASC’s recommendations*, 25 February 2014. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/1041/104102.htm>. It should be noted that, in addition to the appointment of DMs by competition (both internal and external), where the Civil Service Commission is in charge, there is another category of DM appointment in the U.K., called “managed moves,” which are deployments at level. The decision about which process to use is taken formally by the Senior Leadership Committee (SLC), whose membership includes senior permanent secretaries, the Cabinet Secretary, the First Civil Service Commissioner, the Director of Talent Management at the Cabinet Office, and is chaired by the Head of the Civil Service (who is not currently the Cabinet Secretary). In practice, it seems, the decision is taken by the Head of the Civil Service and Cabinet Secretary in consultation with the PM and the relevant minister. So-called “managed moves” are made where there is a gap to be filled urgently, and where there is an obvious candidate to take over. And they are also used to shift DMs whose relationship with their minister has broken down. Between May 2010 and May 2013 there were 21 DM-level appointments. Ten were made following an external competition, four were made through internal competitions, and seven (including the Permanent Secretary of the Cabinet Office – who is distinct from both the Head of the Civil Service and the Cabinet Secretary) through so-called “managed moves.” So two-thirds of the appointments were made by Civil Service Commission-led competitions, and one third were “managed moves.” It would seem that a competition is now regarded as the preferred option, and that there has to be some good justification not to have a Civil Service Commission competition for DM appointments. See Akash Paun and Josh Harris, with Sir Ian Magee, *Permanent secretary appointments and the role of ministers* (London: Institute for Government, 2013), 16-20. <http://www.instituteforgovernment.org.uk/sites/default/files/publications/Permanent%20secretary%20appointments%20and%20the%20role%20of%20ministers.pdf>.

⁷⁹ A matter yet to be resolved is whether the PSC should also assume the related responsibility for annual performance evaluation of Deputy Ministers, as part of its role in determining promotions and future appointments, or whether this role should be given instead to the Treasury Board as part of its “management board” responsibilities.

8

CHARTER ELEMENT #4: NEW RULES FOR GOVERNMENT COMMUNICATIONS

The fourth element of a Charter of Public Service should be new rules for government communications. Communications has always been a necessary part of government. That is why the Government of Canada has a Communications Policy, governing how this important but sensitive activity is carried out by public servants. The risk has always been that legitimate, institutional, non-partisan communications about programs, operations and services can easily slide over into communications activities with a partisan flavour.⁸⁰

Though this risk has grown much more acute under the Harper administration, it is not an entirely new one. It has been developing slowly since the mid-1970s. Indeed the sponsorships scandal itself was evidence of the growing problem.⁸¹ But in the last ten years it has reached crisis proportions, and now urgently requires action to get the public service back on track. It has become the greatest current threat to a professional, non-partisan public service, trusted equally by all Canadians, and by all the actors in the political process.

From the moment it took office, the Harper administration gave federal government communications a highly partisan flavour that now progressively seeps into the work and mores of the public service. From 2006 to 2009, Government of Canada websites already had a strongly partisan flavour, with banner headlines using the political slogan “Canada’s New Government.” This occurred even on the Treasury Board Secretariat (TBS) website, the very central agency responsible for government-wide management policy and principles, including the *Values and Ethics Code* and the Communications Policy. So TBS’ own website paved the way for further abuses.

All the departmental websites of the Government of Canada were gradually reengineered in a clearly partisan manner, awash in Tory blue, and serving more to promote the minister than to provide neutral information on government programs.⁸² Consistent with this partisan approach, from late 2009 or early 2010, officials in the Privy Council Office (PCO) began instructing communications officials in federal departments to substitute the partisan expression, “the Harper Government,” in all their websites and other departmental communications, for the traditional, non-partisan terminology of the “Government of Canada.”⁸³ The Canadian Press identified some 698 appearances of the “Harper Government” moniker on Government of Canada websites in the year ending March 2011.⁸⁴

⁸⁰ In 1962 the Glassco Commission explicitly rejected the “philosophy of the public relations man” for the Government of Canada, and concluded that “the objective of being ‘well and favourably known’, so legitimate in competitive business, forms no part of public information policies of departments.” Canada Royal Commission on Government Organization, Vol. 1, *Management of the Public Service*, Vol. 3, *Supporting Services for Government Cont’d. Services for the Public, Report 13: Public Information Services*, (Ottawa: The Queen’s Printer, 1962), 70–71, cited in David C.G. Brown, “The administrative dilemmas of government communications.” Paper presented to the annual conference of the Canadian Political Science Association, Edmonton, Alberta, June 13, 2012, 4.

⁸¹ Kirsten Kozolanka, “The sponsorship scandal as communication: The rise of politicized and strategic communications in the federal government,” *Canadian Journal of Communication*, Vol. 31, No. 2, cited in Ted Glenn “The management and administration of government communications in Canada,” *Canadian Public Administration*, Vol. 57, No. 1 (March 2014), 10.

⁸² Kirsten Kozolanka, “‘Buyer’ beware: pushing the boundaries of marketing communications in government,” in Alex Marland, Thierry Giasson and Jennifer Lees-Marshment, eds., *Political Marketing in Canada* (Vancouver: UBC Press, 2012), cited in Glenn “The management and administration of government communications in Canada,” 10.

⁸³ Interviews with senior Government of Canada communications officials, 23 March 2010, 25 January 2012. See also: Bruce Cheadle, “Tories rebrand ‘Harper Government’ in place of government of Canada” *The Canadian Press*, 3 March, 2011; “No ‘formal directive’ on use of ‘Harper Government,’ just direction, says PCO,” *The Canadian Press*, 7 March 2011; “E-mails cite ‘directive’ to re-brand government in Harper’s name,” *The Globe and Mail*, 7 September 2011. <http://www.theglobeandmail.com/news/politics/e-mails-cite-directive-to-re-brand-government-in-harpers-name/article2157102/>.

⁸⁴ Cheadle “No ‘formal directive,’” *Canadian Press*, 7 March 2011.

Relabeling the Government of Canada as the “Harper Government” had already been pioneered in the infamously partisan website developed by PCO itself, to “market” the Harper administration’s so-called Economic Action Plan – as the Clerk himself put it, in April 2009, apparently without any sense of shame.⁸⁵ The partisan character of PCO’s Economic Action Plan website was so flagrant a *Globe and Mail* editorial commented that “even China’s one-party government would be impressed with the number of pictures of Mr. Harper and his loyal ministers salted into what is supposed to be a *neutral* place for Canadians to find out how they can benefit from a federal program.”⁸⁶

By this time, PCO had also developed a large machinery to manage a highly centralized “Message Event Proposal” (or MEP) system that requires all federal officials – both political and non-political – to obtain detailed, prior clearance for any external communications activities, and determines how the activity can be used to promote the government’s political messaging. Non-elected, non-partisan officials are subject to exactly the same regime as partisan, elected officials. They have to obtain prior approval for any public activity, using a template that includes such categories as: desired headline, key messages, media lines, strategic objectives, desired sound bite, ideal speaking backdrop, ideal event photograph, tone, attire, rollout materials, background, and strategic considerations.⁸⁷ In other words, the MEP system crafts political messages for both political and non-political officials alike. MEPs, as two journalists put it, “have blurred the time-honoured separation of non-partisan public servants and political staffers and sidelined seasoned government communicators, sapping morale across the public service.”⁸⁸

Public servants are now deeply involved in these kinds of partisan communications directives, activities, and materials, and in maintaining the websites where they appear, even central agency websites. But these activities are in conflict not only with the non-partisan character of a professional public service, but also with the stated values and policies of the Government of Canada. The 2012 *Values and Ethics Code* requires public servants to carry out their duties in a “non-partisan and impartial manner,” striving to “enhance public confidence in the honesty, fairness and impartiality of the federal public sector.”⁸⁹ And the Communications Policy declares it is the policy of the Government of Canada to “safeguard Canadians’ trust and confidence in the integrity and impartiality of the Public Service of Canada” – for the obvious and correct reason that “Canadians value an independent, professional Public Service” – and that therefore “public service managers and employees are expected to provide information services in a non-partisan fashion consistent with the principles of parliamentary democracy and ministerial responsibility.”⁹⁰

Public service involvement in these kinds of partisan communications activities is in conflict with both the letter and the spirit of these two key government policies, and it is incompatible with the concept of a professional, non-partisan public service these two policies are designed to support.

⁸⁵ Despite his role as “Head of the Public Service,” the then Clerk apparently felt no compunction about signing a 2 April 2009 briefing note to the Prime Minister about the “marketing” of the Economic Action Plan “of which the website is a key component.” Bruce Cheadle, “Documents show Economic Action Plan marketing blitz a PMO production from the get-go,” *The Canadian Press*, 24 February 2011.

⁸⁶ *The Globe and Mail*, “Stimulus Cheques: Hypocrisy Blue and Red,” 16 October, 2009. Emphasis added)

⁸⁷ Mike Blanchfield and Jim Bronskill, “Documents expose Harper’s obsession with control,” *The (Toronto) Star*, 6 June 2010; Paul Wells, *The Longer I’m Prime Minister: Stephen Harper and Canada, 2006-* (Toronto: Random House, 2013), 35; Lawrence Martin, *Harperland: The Politics of Control* (Toronto: Viking Canada, 2010), 58; Paul G. Thomas, “Communications and Prime Ministerial Power,” in James Bickerton and B. Guy Peters, eds., *Governing: Essays in Honour of Donald J. Savoie* (Montreal and Kingston: McGill-Queen’s University Press, 2013), 71; Ted Glenn “The management and administration of government communications in Canada,” *Canadian Public Administration*, Vol. 57, No. 1 (March 2014), 15.

⁸⁸ Blanchfield and Bronskill, “Documents expose Harper’s obsession with control,” *The (Toronto) Star*, June 6, 2010.

⁸⁹ Canada, Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector* (Ottawa: Treasury Board of Canada Secretariat, 2011), 4. The current Code came into effect on 1 April 2012. Perhaps because it now applies to the entire public sector, and not just to the core public service, the 2012 Code no longer refers (as did the 2003 Code it replaced) to public servants’ obligation to “maintain the tradition of the political neutrality of the Public Service.” Treasury Board of Canada, *Values and Ethics Code for the Public Service* (Ottawa: Treasury Board of Canada Secretariat, 2003), 8. http://www.tbs-sct.gc.ca/pubs-pol/hrpubs/tb_851/vec-cve1-eng.aspx#_Toc46202803. The 2003 Code came into effect on 1 September 2003.

⁹⁰ Canada, Treasury Board of Canada, *Communications Policy of the Government of Canada*, “Policy Statement,” Principle 9. <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12316§ion=text>. The policy was updated in 2012.

And public servants themselves *know* it. To their credit, they have often expressed unease, raised objections, recommended against, or simply refused to go along with these kinds of inappropriate directives and approaches. Some departmental communications officials, for example, simply declined PCO's initial instructions to substitute "Harper Government" for the "Government of Canada" on their websites and announcements.⁹¹ At the Treasury Board Secretariat (TBS), program officials recommended *against* the proposed exemptions for the Economic Action Plan.⁹² Even in PCO itself, communications officials were originally reluctant to take responsibility for "marketing" the Economic Action Plan.⁹³ But the sound instincts of the working-level public servants were usually overturned or countermanded or ignored by their superiors, including at key central agencies like TBS and PCO – thus both illustrating *and* contributing to the "fault line" between the senior ranks and the rest of the public service.⁹⁴

The instincts of ordinary federal public servants may be sound. But the longer these practices continue, the deeper they sink into the habits and reflexes of the public service. Federal public servants will soon stop objecting, or even noticing that anything is wrong. The longer the federal public service's "walk" flatly contradicts its "talk," the deeper public service cynicism will grow. Public servants will come to accept that the public service is non-partisan in name only, but must be "serially partisan," in practice. And thus the door will be opened for much deeper abuses. This is not a recipe for good governance, or public trust. It is not even a recipe for long-term political success.

In order to remedy the dangerous condition to which the Harper administration has brought the Government of Canada, several measures are now required. Following the model of the Ontario *Government Advertising Act* of 2004, a future Charter of Public Service should begin by banning government advertising with a partisan flavour altogether, and establishing procedures to enforce this ban.⁹⁵ The Harper administration has spent over \$100 million advertising its Economic Action Plan since 2009, for example, including \$14.8 million as late as 2013.⁹⁶ These advertisements have been overwhelmingly political and partisan in nature, "marketing" the government and its program (as the Clerk himself put it), rather than providing Canadians with non-partisan program information. In an even more striking example, the Harper administration spent some \$2.5 million in 2013 to market a Canada Job Grant program that didn't even exist at the time, including TV commercials that often ran twice per game during the 2013 NHL playoff broadcasts on CBC. Funding for the TV ads came from an \$11-million fund created by Employment and Social Development Canada "to promote the government as a job creator."⁹⁷ There is no excuse for governments to spend public funds on advertising programs that have these kinds of political and partisan objectives, and there is even less excuse for supposedly non-partisan public servants to be involved in this kind of partisan activity, which is deeply corrupting for the institution of the public service. Adopting the Ontario approach would eliminate both problems with one stroke.

⁹¹ Interview with senior Government of Canada communications official, 23 March 2010.

⁹² Treasury Board Secretariat (TBS) officials responsible for the Federal Identity Program recommended *against* an exemption from the program's requirements for the Economic Action Plan website in September 2011. However this recommendation was overturned by more senior TBS officials. Bruce Cheadle, "Harper's Economic Action Plan website got approval despite violating rules," *The Canadian Press*, 5 January 2011; *La Presse*, "Les libéraux fédéraux raillent les conservateurs," 7 January 2011, A11.

⁹³ PCO officials were uneasy about implementing the Economic Action Plan website with its flagrantly partisan character, and Prime Minister Harper was informed about their "misgivings" at the time of the January 2009 Budget. This unease does them credit and shows they had not lost all sense of their obligations as public servants. It is all the more significant, therefore, that their superiors (like TBS superiors) did not protect them from having to act in ways contrary to both the 2003 *Values and Ethics Code* and the Communications Policy. Bruce Cheadle, "Top bureaucrats objected to government ad campaign, sources say," *The Canadian Press*, 8 October 2009; Lawrence Martin, *Harperland: The Politics of Control* (Toronto: Viking Canada, 2010), 219-20.

⁹⁴ DMs' inability to resist PCO instructions about replacing the "Government of Canada" with "the Harper Government" in departmental communications shows, again, the corrosive effect of the Clerk's role in DM appointments. The instruction was coming from the "boss," the person who controls DMs' performance assessment and pay-at-risk, their prospects for promotion and their future careers – even whether there will be one. The DM whose officials refused PCO's instruction would thereby have put all this at risk. Few were willing to do so.

⁹⁵ The Ontario *Government Advertising Act*, 2004, establishes standards for government advertising, forbids advertising with any kind of partisan flavour and requires the office of the Auditor General to review paid advertising in advance of its public release to ensure it is free of partisan content. Ontario, *Government Advertising Act*, 2004. S.O. 2004, Chapter 20. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_04g20_e.htm.

⁹⁶ Bill Curry, "Government spends millions on ads for 'Economic Action Plan' that ended two years ago" *The Globe and Mail*, 25 January 2014. <http://www.theglobeandmail.com/news/politics/federal-ad-spending-exceeds-projections/article16503725/>.

⁹⁷ Sophia Harris, "Canada Job Grant ads cost \$2.5M for non-existent program: commercials were part of \$11-million fund to promote government as a job creator," *CBC News*, 13 January, 2014. <http://www.cbc.ca/news/politics/canada-job-grant-ads-cost-2-5m-for-non-existent-program-1.2495196>.

Second, a Charter of Public Service should establish rules that more clearly distinguish political from purely institutional communications, and prohibit public service participation in the former. It is unclear why *any* public funds should be expended on partisan communications activities. For one thing, it gives the incumbent party an enormous and unwarranted advantage over the other political parties. In my view, this kind of communications should be paid for by the parties themselves, not by the public purse. But if, for some reason, it were thought unrealistic to ban partisan government communications altogether, no public servants should be involved in this activity. It should be handled exclusively by the Prime Minister's Office (PMO) and by individual ministers' offices – which would also require these offices to be brought under all the apparatus of public scrutiny, including audit and Access to Information legislation.⁹⁸ Responsibility and accountability for ensuring that no public servants are involved in partisan communications activities should be explicitly assigned to deputy ministers in their roles as accounting officers, consistent with their new mandate to draw the line between public service and political values, and ensure that public servants (including themselves) remain on the public service side of the line, in the absence of formal, public ministerial direction. This would mean nothing more than taking the existing Communications Policy and the existing *Values and Ethics* Code seriously – taking them at face value, and giving them operational teeth. It would mean walking the talk.

Third – as a corollary of the preceding recommendation – new arrangements are required for what is now called the Communications and Consultation secretariat in the Privy Council Office (PCO). This secretariat is the source of much of the partisan behaviour that has seeped into the ethos of the federal public service over the past forty years. The PCO Communications secretariat was created in the aftermath of the 1974 election. Ironically, the then new Clerk – whose appointment, as I noted earlier, is often regarded as a turning point in the politicization and centralization of the federal public service – accepted this decision only with reluctance, fearing that it would lead, in the long run, to the politicization of PCO.⁹⁹ The Clerk's fears were entirely founded, and the trend he apparently dreaded has come to pass. The PCO Communications secretariat has always existed in the “swampy zone between information and propaganda and between public and partisan interests”¹⁰⁰ – on the dividing line between political and public service values, sometimes drawn across the line from the latter into the former, by the nature of its work.

This has been a growing problem since the 1970s, but has been greatly worsened by the Harper administration's aggressively partisan and centralized approach to communications, for elected and unelected officials alike. From its modest beginning with a handful of officers in the 1970s, the PCO Communications secretariat has grown into a monster, with some 100 employees, almost 10% of PCO's total personnel.¹⁰¹ The *reductio ad absurdum* of this secretariat is the four-person unit (including an EX-01 director), composed of supposedly non-partisan public servants, whose work includes producing weekly “24 Seven” YouTube video clips that celebrate and promote Stephen Harper's accomplishments as prime minister.¹⁰² It is time to do something about this kind of public service aberration. And a Charter of Public Service should do the job, as part of establishing new rules for government communications, rules that help renew the public service's non-partisan character and ethos.

⁹⁸ David Brown notes that the “exempt staff” model, introduced in the early 1970s, included “from the outset ... twin features not found in any other area of public administration: having parallel communications expertise in both public service and exempt staffs; and providing direct ministerial oversight to both groups by a Cabinet committee on communications.” David Brown, “The administrative dilemmas of government communications.” 13.

⁹⁹ Communications from a former PCO official, 9 and 10 April, 2014.

¹⁰⁰ David Brown, “The administrative dilemmas of government communications.” 1.

¹⁰¹ Thomas gives the figure of 100, Glenn suggests 91. Paul G. Thomas, “Communications and Prime Ministerial Power,” in James Bickerton and B. Guy Peters, eds., *Governing: Essays in Honour of Donald J. Savoie* (Montreal and Kingston: McGill-Queen's University Press, 2013), 73; Ted Glenn “The management and administration of government communications in Canada,” 18.

¹⁰² Glen McGregor, “Stephen Harper's little-watched self-promotional videos are worked on by 4 staffers,” *Ottawa Citizen*, 25 March 2014. <http://www.ottawacitizen.com/technology/four+public+servants+help+produce+Harper+promotional+video/9658977/story.html>.

In the ideal world, a Charter of Public Service might simply abolish the current PCO Communications secretariat. This would go a long way, both symbolically and in practice, to renew the public service as a non-partisan institution. Abolishing the PCO Communications secretariat would return PCO to its condition and practice before 1974. If this approach were adopted, leadership of the communications function in government could be transferred to the Treasury Board Secretariat, which is responsible for the Communications Policy, and this leadership should be of a purely institutional and operational character, consistent with the Communications Policy.

But, in the world of NPG, this approach may not be realistic. In a world where communications have become such a large part of governance, there will continue to be cabinet-level discussion of communications, and hence the rationale for a corresponding cabinet secretariat. But, if so, the Charter of Public Service should fence it in, with much stricter rules about its role and functions, ensuring that public servants participate only in institutional, operational, and program communications, *not* in the strategic and political marketing of the Ministry and its accomplishments. It should make the Clerk responsible, as accounting officer, for ensuring that PCO staff and activities fully uphold the values of a non-partisan public service, in PCO's communications work, as in all other areas. The Charter should limit the share of PCO resources that can be devoted to this part of its work. It should limit PCO to cabinet secretariat functions only, and specifically bar it from operational roles (such as the MEP process). In place of the MEP process, the Charter should simply require deputy heads, as accounting officers, to ensure that, in all communications activities, public servants respect their obligations under the *Values and Ethics Code* and under Canadian jurisprudence, including their obligations to the current Ministry.

These “new” rules would not really be new at all. They would simply make public service do what it already says it does. They would make the public service practice what it preaches, or walk the talk. They would simply operationalize what the public service already espouses, officially, in the *Values and Ethics Code* and in the Communications Policy. Public service leaders have shown, unfortunately, that they need new rules and tools to do this. It is shocking, as the *Globe and Mail* remarked about the Economic Action Plan communications strategy, “that so many of our elected officials fail to grasp the folly of fusing state and party.”¹⁰³ It is far more shocking when public service leaders do the same.

¹⁰³ *The Globe and Mail*, “Stimulus Cheques: Hypocrisy Blue and Red,” 16 October 2009.

9

CONCLUSION: RENEWING THE FEDERAL PUBLIC SERVICE AS A PUBLIC SERVICE

Public service renewal should mean renewal of the public service's vocation as a public service. One of the problems with many of the public service renewal initiatives over the past twenty-five years is that they have often seemed to aim at 'renewing' the federal public service *as something else*.¹⁰⁴

Renewal of the public service as a public service will require clearing up two kinds of confusion. One is the confusion between a government and a Government. And the other is the confusion between the private and public sectors. These two are closely linked, and, in the conclusion to this paper, I will say something about both of them.

The confusion between government and Government is the confusion between the current Ministry and the permanent institution of the Government of Canada that serves and supports the Ministry, and for which the Ministry is temporarily responsible. This confusion explains – and is exploited to excuse – the blurring of the line between political and public service values in general, and the recent explosion of aggressively partisan government communications, in particular.

You can see this confusion at work in the justification for the whole MEP process given to Paul Wells by a “former senior Harper advisor.” “If somebody has ‘Government of Canada’ on their business card,” the Harper advisor truculently declares, “they’d better speak for the government of Canada, and ‘government of Canada’ means government of Canada.”¹⁰⁵ This is a fine example of the logical “fallacy of equivocation.” In this kind of fallacious argument, the meaning of a term is changed in the course of the argument, so that the conclusion does not follow from the premise, as it appears to do. Because the key words have changed meaning, in the process. The “former senior Harper advisor” seems to take for granted that the Government of Canada and the “Harper Government” are the same thing. But they are not.

The Government of Canada does not belong to Stephen Harper, or to any other politician for that matter. If the Government of Canada belongs to anyone, it belongs to the Queen, or to the Governor General (under the Letters Patent of 1947), who themselves are only custodians of parliamentary democracy for all Canadians. No state action of any kind is taken in the name of the prime minister, but only in the name of the Queen or the Governor General. Of course journalists and others often refer, informally, to the “Harper government” or the “Chrétien government” or the “Mulroney government.” But in doing so, they are *not* referring to the *institution* of the Government of Canada, but only to the current (or former) Ministry, the body of Ministers who have the temporary responsibility to carry on the Queen’s government in Canada, because – and *only* because – they currently enjoy the confidence of the House of Commons. The Ministry are merely the temporary trustees for a permanent institution which they do *not* own, an institution they must pass on – unimpaired or, better, strengthened – to a future Ministry, as soon as they no longer enjoy the confidence of the House.

¹⁰⁴ A report from the Association of Professional Executives of the Public Service of Canada (APEX) points out that, in its initial form, *Blueprint 2020*, the current public service renewal exercise, seemed to be based largely on “drivers for change not only in the government of Canada, but for all sectors,” and had overlooked the “distinctive qualities” arising from “the role of the Public Service as a national institution integral to our parliamentary democracy.” Therefore APEX recommended a new emphasis on the “Foundations of Public Service,” including a “public recommitment” by the government to the values and ethics of public service. *Report on Blueprint 2020* (Ottawa: APEX, 28 February 2014), 3-7. <http://www.apex.gc.ca/uploads/key%20priorities/consultations/apex%20report%202020%20-%20eng.pdf>. The important point made by APEX does not appear to have been understood, because the section on “Fundamentals of Public Service” included in *Destination 2020, the Blueprint 2020* progress report released on 12 May 2014, bears little relation to the democratic “foundations” to which APEX was referring. *Destination 2020* (Ottawa: Government of Canada, 12 May 2014), 24-7. http://clerk.gc.ca/local_grfx/d2020/Destination2020-eng.pdf.

¹⁰⁵ Paul Wells, *The Longer I’m Prime Minister*, 37.

The Harper administration has consistently confused the Ministry with the Government of Canada. It has looked upon the Government of Canada as its own possession or plaything, to be used and abused for its own short-term, partisan purposes. It has confused the Harper administration with the Government of Canada, and has increasingly obliged federal public servants to do the same. It has not acted as a responsible steward for the institution of the public service, in the context of parliamentary democracy.

Public servants do not need to be told that they cannot say (in the engaging words of the “Harper senior advisor”) “whatever the fuck comes into their head.”¹⁰⁶ There is a long tradition of Canadian jurisprudence, including the Supreme Court’s famous *Fraser* decision, which makes perfectly clear that Canadian public servants cannot make public statements at odds with the policies of the Ministry they currently serve.¹⁰⁷ Not to mention other things, like the *Values and Ethics Code*, which clearly sets out public servants’ duty of loyalty to their ministers. But neither do public servants need to become partisan mouthpieces for the current administration, parroting its media lines, for its own partisan purposes. That is not consistent with the federal public service’s role as an “important national institution, part of the essential framework of Canadian parliamentary democracy.”¹⁰⁸ A Charter of Public Service can help to renew this democratic role, and clear up the confusion between a “government” – the temporary Ministry – and the permanent Government of Canada.

A second kind of confusion, closely connected to the first, is the confusion between the private and public sectors. One of the obstacles to this deeper kind of renewal is the model of the private sector that has colonized the minds even of many public sector leaders. Because of this unconscious mental model, many such leaders assume that a public service is like a corporation, and can be run like a corporation. Like a corporation, a public service must have a CEO, for example. And so, it is too readily assumed, the prime minister – and the Clerk as his or her deputy – play the roles of CEO for the public service. The prime minister and the Clerk must therefore have all the tools of a CEO, including the appointment of “subordinates” such as deputy ministers. This implicit but erroneous assumption was what led to the designation of the Clerk as “Head of the Public Service” in the *Public Service Reform Act* of 1992. Its continuing influence can also be seen in the letter about the Gomery report sent to the prime minister in March 2006 by a large number of senior public and private sector leaders. The signatories to the letter simply take it for granted that a public service must have a CEO, and base their opposition to changes to the manner of appointment of deputies on that assumption.¹⁰⁹

¹⁰⁶ Ibid.

¹⁰⁷ Canada, *Fraser v. Public Service Staff Relations Board*, [1985] 2 S.C.R. 455. (“*Fraser*”).

¹⁰⁸ Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Service* (2003), 5.

¹⁰⁹ “It is difficult to contemplate how any large business organization would survive if vice presidents and senior officers were selected by a group independent of the CEO. It follows that the Clerk of the Privy Council should continue to be [the prime minister’s] advisor on Deputy Minister appointments.” Ehrenworth, “Letter to Prime Minister Stephen Harper,” 3.

However, the assumption is wrong. As if to demonstrate the error of such a premise, the U.K. government decided, in the fall of 2011, to split the three roles played by the Canadian Clerk, dividing the functions of Secretary to the Cabinet, Head of the Civil Service and Permanent Secretary of the Cabinet Office among three separate individuals. It is unclear whether the U.K. has got the model for public service leadership right yet. But at least it has the merit of asking the right question.¹¹⁰

Neither a government nor a public service is a corporation. Because parliamentary government is the expression of a democratic contest, and depends on maintaining the trust of all citizens and political actors, the structuring principle of governments is *not* centralized command, but rather the careful balancing of *competing* voices and authorities. Unlike private organizations, governments are deliberately structured in a “plural” or multiform manner, so that many functions are carried out independently, at arm’s length from each other, or from those who control the levers of power.¹¹¹

So looking for a CEO in government is as inappropriate as looking for a prime minister or a Clerk of the Privy Council in a corporation.¹¹² Many things that, in a private corporation, might be within the control of a CEO are deliberately put beyond unified political control. Staffing is the obvious example. Since 1918, appointments in the public service have been under the control of an independent, non-political Public Service Commission, precisely to ensure that appointments are non-partisan, made on the basis of merit, alone. But staffing is not the only example. Financial administration is another: the *Financial Administration Act* (FAA) gives many powers and authorities directly to DMs, to ensure sound financial administration, and enhance public trust.¹¹³

¹¹⁰ The Head of the U.K. Civil Service is now a serving DM, not the Cabinet Secretary. In addition to other duties, he (the first appointment was male) manages the Permanent Secretary cadre and advises on senior level appointments jointly with the Cabinet Secretary (see note 78 above). In addition to those shared with the Cabinet Secretary, the Head of the Civil Service’s responsibilities include: to “be the ‘public face’ of the Civil Service, internally and externally; lead on the governance and capability of the Civil Service as chair of key governance bodies; lead the Top 200 with responsibility for succession planning, induction, training and reward and as chair of the Senior Leadership Committee; lead on Civil Service workforce issues including overall planning, recruitment, reward, industrial relations, compensation scheme, pensions reform etc; and take primary responsibility for Civil Service propriety, and be the guardian of the Civil Service Code.” (United Kingdom, *Cabinet Office, Candidate Brief and Job Specification for Head of the Civil Service*, October 2011, 2-3). I am grateful to Tony Dean for making this document available to me. See also the report of the U.K. House Commons Select Committee on Public Administration on the new arrangements for the roles of the Head of the U.K. Civil Service and the Cabinet Secretary. United Kingdom, House of Commons, Select Committee on Public Administration, *Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary*. Nineteenth Report of Session 2010-12. 17 January 2012. <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpublicadm/1582/158202.htm>.

¹¹¹ Lorne Sossin, “Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and its Implication for the Accountability of the Public Service,” in Canada, Commission of Inquiry (Gomery Commission), *Restoring Accountability: Research Studies*, Volume 2, 36.

¹¹² For a very different view, see Tony Dean, Tony, “Why the civil service needs a chief executive,” *The Guardian. Public Leaders Network*. 19 October 2011. <http://www.guardian.co.uk/public-leaders-network/blog/2011/oct/19/why-civil-service-needs-ceo>; “Why the civil service still needs a full-time chief executive,” *The Guardian. Public Leaders Network*. 11 January 2012. <http://www.guardian.co.uk/public-leaders-network/blog/2012/jan/11/civil-service-still-needs-chief-executive>. See also Dutil, Patrice, ed., *Searching for Leadership: Secretaries to Cabinet in Canada* (Toronto: University of Toronto Press and Institute of Public Administration of Canada, 2008); Bourgault, Jacques. 2007. Les facteurs contributifs au leadership du Greffier dans la fonction publique du Canada. *Canadian Public Administration*. Vol 50. No. 4. (Winter 2007), 541-571; “Clerks and Secretaries to Cabinets: Anatomy of Leadership,” in Dutil, ed. *Searching for Leadership*, 41-81.

¹¹³ Under the FAA, it is the deputy head who is responsible, among other things, for establishing appropriation allotments and ensuring that allotments are not exceeded (s.31), controlling commitments chargeable to an appropriation (s.32), authorizing payments (s.34), ensuring an internal audit capacity (s.16), custody and control of public property (s.62), and signing the official accounts of the department (ss.16 and 64.) Canada, *Financial Administration Act* (R.S.C. 1985, c.F-11).

In this paper, I have argued that the Government of Canada should now take a resolutely *public* sector approach to DM appointments, extending the PSC's staffing role to the DM level also – an approach that might not make sense in the private sector, but is essential to protect and enhance the non-partisan professionalism of a public service. But the same thing might also be said about the accounting officer role, and government communications. The *public* sector approach to these matters might not make sense in a *private* corporation, because the private sector principle is unified command. When the Harper senior advisor says that “the ‘government of Canada’ is the government of Canada,” he tacitly assumes that kind of governance model. He is assuming a centralized and unified approach that, in the *public* sector, quickly undermines good government and destroys public trust. It may make sense for every employee of a private sector corporation to spout the same corporate mantra. But it makes no sense for public servants to become regimented mouthpieces for partisan media lines. Because that destroys public and parliamentary trust in the public service as a professional and non-partisan institution, capable of serving all parties, and all Canadians, with equal impartiality. Confusing the governance requirements of a public service with those of a private sector corporation can only do great harm to parliamentary government in Canada.

Parliamentary government is the expression of a democratic contest. It seeks to advance contestable public goods on behalf of a body of citizens who are bearers of rights and duties in a framework of democratic community. It is therefore the custodian of a solemn public trust. And its success depends on the development and maintenance of that trust. In a parliamentary democracy, a public service should conduct itself in such a manner as to retain the confidence and trust of *all* Canadian citizens, and of *all* the democratic contestants – not just the current Ministry – so that it will be ready and able to serve them, with equal dedication and professionalism, if and when they, in their turn, enjoy the confidence of the House of Commons. It can and must be politically *responsive* while, at the same time, remaining (or becoming) self-consciously non-political and non-partisan.¹¹⁴ Indeed the dynamic tension between these two simultaneous imperatives defines the vocation of a true public service, in a parliamentary democracy.

¹¹⁴ A recent report by the Public Policy Forum recommends that public service leaders should develop “greater political acuity.” This is not wrong. But to be helpful, rather than corrupting, such political acuity needs to be accompanied by a lively sense of the boundary between political and public service values, something on which the Forum's report is largely silent – though it does acknowledge the requirement for public service leaders to “provide honest, non-partisan advice” and to “speak frankly about the issues and have uncomfortable conversations with colleagues and elected officials.” *Flat, Flexible and Forward-Thinking: Public Service Next* (Ottawa: Public Policy Forum, March 2014), 11.

The Government of Canada does not belong to the Ministry. It belongs to the people of Canada, for whom the current Ministry are merely the trustees, designated for that purpose by the Crown, because, for the time being, they enjoy the confidence of the House of Commons. The public service serves the Ministry loyally and faithfully, with every ounce of its non-partisan professionalism. But the public service has its own institutional space, its own values, *including its respect for democracy*. And it should not be confused with the Ministry it currently serves.¹¹⁵

The bottom line for the public sector, and for a public service, is not just a financial bottom line. Their bottom line is trust. The trust essential to a parliamentary democracy. The trust of all Canadian citizens in public and parliamentary institutions. The trust of *all* the competing political actors – not just those currently in power – in the non-partisan professionalism of the public service. And the trust of public employees themselves.

A Charter of Public Service can help to reclaim these three kinds of trust by establishing a new moral contract, a new deal, between parliament, ministers and the public service, a three-way moral contract in support of a professional, non-partisan public service. It can renew the vocation of the federal public service *as* a public service.

That would be a public service renewal worthy of the name.

¹¹⁵ Donald Savoie, “The Canadian public service has a personality,” *Canadian Public Administration*. Vol. 49, No.3 (2006), 261-281.

POLICY RECOMMENDATIONS

1. Fulfilling its unanimous commitment in the *Public Servants Disclosure Protection Act (2005)*, the next parliament should enact legislation, to be entitled a Charter of Public Service, which establishes a new moral contract between parliament, the Ministry and the public service, in support of a professional, non-partisan public service.
2. The Charter of Public Service should have at least four pillars:
 - i. public service values and ethics;
 - ii. strengthening the deputy minister's role as accounting officer;
 - iii. reforming the process for the appointment of deputy ministers; and
 - iv. new rules for government communications.

CHARTER ELEMENT #1: PUBLIC SERVICE VALUES AND ETHICS

3. The Charter of Public Service should set out the values and ethics a professional, non-partisan public service is required to display and maintain in all its work and professional behaviour.
4. The Charter should require the public service, ministers, and members of parliament and Senators to uphold these values, and to protect the neutrality and professionalism of a non-partisan public service, so that all three are formally obligated to maintain the integrity and impartiality of the public service, and govern their *own* actions accordingly.
5. Other than in written ministerial directions to accounting officers (recommendations 11-13, below), the Charter should prohibit anyone from giving instruction to a public servant contrary to the Charter, and should give public servants the tools to enforce this provision.
6. The Charter should establish both public service obligations toward ministers of the Crown, and corresponding ministerial obligations toward the public service.
7. The Charter should also set out the principles and basic ground rules that govern relations between public servants and Parliament, especially parliamentary committees.

CHARTER ELEMENT #2: STRENGTHENING THE DEPUTY MINISTERS' ROLE AS ACCOUNTING OFFICER

8. The Charter of Public Service should strengthen the deputy minister's role as an "accounting officer."
9. The Charter should amend the accounting officer provisions of the *Financial Administration Act (FAA)* to bring them more into line with the original British model.
10. The Charter should set out (or cause the Treasury Board to set out) a positive rather than a negative role for accounting officers, especially their role in upholding public service values.
11. The Charter should amend the *Financial Administration Act* to give (or cause the Treasury Board to give) Canadian accounting officers the tools, possessed by U.K. accounting officers, to draw a line between political and public service values, and to define, in concrete circumstances, where the boundaries of public service values and action end, and those of political accountability take over. For that purpose, it should replace the current FAA rules on resolving "disagreements" between a minister and an accounting officer with a simple requirement to request a "ministerial direction," in writing, for any administrative action for which an accounting officer is not prepared to accept personal responsibility, consistent with the public service values set out in the Charter.

12. The Charter of Public Service should require (or cause the Treasury Board to require) accounting officers to draw a line not just for ministers but also *for themselves and for the public service*. It should require accounting officers to ensure the public service – in its own actions and advice – stays on the side of the line established by public service values, and does *not* venture onto terrain where other values and norms apply. Even if a course of action seems reasonable to them on other grounds, accounting officers should ask for a formal ministerial direction if they do not think they can recommend such action, or implement it, or take responsibility for it, *on the basis of public service values alone*.

13. If a formal ministerial direction is given in writing, the Charter should require (or direct the Treasury Board to require) federal accounting officers to copy the ministerial direction to the Treasury Board Secretariat, to the Auditor General, and to the Public Accounts Committee of the House of Commons.

14. The Charter of Public Service should clear up the confusion created by the *Federal Accountability Act* (2006), about the definition and locus of accountability for accounting officers, amending the *Financial Administration Act* (FAA) to make clear that accounting officers are accountable to the Treasury Board and answerable to the Public Accounts Committee of the House of Commons.

CHARTER ELEMENT #3: REFORMING THE PROCESS FOR THE APPOINTMENT OF DEPUTY MINISTERS

15. The Charter of Public Service should establish a new process for the appointment of deputy ministers (DMs), in which the Public Service Commission (PSC) replaces the Clerk of the Privy Council as the non-partisan source of advice to the prime minister on DM (and associate DM) appointments.

16. The Charter should amend the *Public Service Employment Act* (PSEA) to raise the appointment authority of the Public Service Commission from the assistant deputy minister (ADM) level, where it now stops, to include DMs (and associate DMs) also.

17. The Charter's amendments to the Public Service Employment Act should give the PSC legal authority to hold internal or public competitions for DM (and associate DM) positions, to interview candidates, and to make a recommendation (or recommendations) to the prime minister.

18. The Charter's amendments to the PSEA should give the prime minister authority to ask the PSC for another recommendation (or recommendations).

19. If subsequent recommendations by the PSC are not found satisfactory, the Charter should also authorize the Governor-in-Council to make a unilateral DM appointment, but it should require such a unilateral decision to be accompanied by a *public* statement and explanation of the action by the prime minister.

20. On the same principle, the Charter's amendments to the PSEA should provide that deputy ministers can only be moved, promoted or removed from office only upon the advice, and with the agreement, of the Public Service Commission. As in the case of appointments, the Charter should require that exceptions to this rule also be accompanied by a *public* statement and explanation of the government's action by the prime minister.

21. The Charter should specifically stipulate that these same procedures apply to appointment and replacement of the Clerk, just as to other DMs.

22. The Charter should require future appointees to the Public Service Commission to have the seniority, stature, reputation and independence necessary to play the critical role of non-partisan advisors to the prime minister on the appointment of deputy ministers. The Charter should therefore make Commissioners *ineligible* for future appointment within the public service of Canada.

23. The Charter should amend the *Public Service Employment Act* to transfer the title of Head of the Public Service from the Clerk of the Privy Council to the Secretary of the Treasury Board, the government's management board.

CHARTER ELEMENT #4: NEW RULES FOR GOVERNMENT COMMUNICATIONS

24. The Charter of Public Service should establish new rules for government communications, including provisions to ensure that non-partisan public servants are no longer involved in communications activities with a partisan flavour.

25. Following the model of the Ontario *Government Advertising Act* (2004), the Charter of Public Service should ban all government advertising with a partisan or political flavour, and establish appropriate procedures to enforce this ban (such as prior review of any advertising expenditures by the Auditor General, to certify that advertising content is non-partisan, as in Ontario).

26. The Charter should distinguish communications activities with a political or partisan or marketing flavour from purely institutional or program information communications, and prohibit participation of public servants in any activity or work related to the former, consistent with the *Values and Ethics Code* and the Communications Policy of the Government of Canada.

27. The Charter should assign responsibility and accountability for ensuring that no public servants are involved in partisan communications activities to deputy ministers in their roles as accounting officers, consistent with their new mandate to draw the line between public service and political values, and ensure that public servants (including themselves) remain on the public service side of the line.

28. If, for some reason, the Charter does not ban government communications with a partisan flavour altogether, it should require that they be handled exclusively by the Prime Minister's Office (PMO) and by individual ministers' offices. In this case, the Charter should bring these offices under all the apparatus of public scrutiny, including audit and Access to Information legislation.

29. If the Charter does not abolish what is now called the Communications and Consultation secretariat in the Privy Council Office (PCO), it should fence it in, with much stricter rules about its role, size and functions, including:

i. ensuring that public servants participate only in institutional, operational, and program communications, *not* in the strategic and political marketing of the Ministry and its accomplishments;

ii. limiting the share of PCO resources that can be devoted to the communications secretariat and function;

iii. limiting PCO to cabinet secretariat functions only, and specifically barring it from operational roles (such as the MEP process), instead requiring deputy heads, as accounting officers, to ensure that, in all their communications activities, public servants respect their obligations under the *Values and Ethics Code* and under Canadian jurisprudence, including their obligations to the current Ministry;

iv. reinforcing the Clerk's responsibility, as PCO accounting officer, for ensuring that PCO staff and activities fully uphold the values of a non-partisan public service, in communications activities, as in all other areas.

