

**The Level of Political Leadership
Required to Implement
the Gomery and Bellamy Recommendations**

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In late 2005 and early 2006, two commission of inquiry reports were released that will have a major impact on rules and procedures designed to promote higher ethical standards in Canadian politics: the Bellamy and Gomery reports. The Bellamy Inquiry was a response to the computer leasing scandal in the City of Toronto, while the Gomery Inquiry was a response to the federal sponsorship scandal. Both reports recommend major changes to the rules governing ethical practices, as well as important changes to procedures intended to prevent fraud and abuse of public funds. Some changes have already been made as a result of lessons learned from the public inquiries and of the reports themselves, and many more are being contemplated. In the spring of 2006, the Conservative government introduced the Federal Accountability Act into the House of Commons, and this Act overlaps significantly with Gomery's recommendations.

The last half of 2006 will witness debates about whether the recommendations of Gomery and Bellamy are the most appropriate response to the scandals, or whether implementing the recommendations would simply result in unnecessary red tape while leaving the root causes of corruption untouched. The purpose of this paper is not to enter into this particular debate, but rather to argue that an important set of leadership qualities is required in order to ensure that the debate is a fruitful one, and in order to successfully implement useful changes following the debate.

We will begin by providing some background to the Bellamy and Gomery recommendations, and we will then summarize the Federal Accountability Act. The third part of the paper discusses the leadership qualities that we think are necessary to move our polity forward to higher ethical standards with the substantial support of those affected, and without opening the floodgates to a surge of stultifying and unnecessary rules and procedures.

Bellamy

In 2001, Toronto City Councilor Bas Balkissoon began asking questions about why the City had paid more than \$84 million for a computer lease, when Council had approved only \$43 million. City officials could not answer questions to the satisfaction of many councilors, and so in December of 2002, Madame Justice Denise Bellamy was appointed to head a Commission of Inquiry into the causes of the cost overruns, and was asked to make recommendations to prevent similar situations in the future. The inquiry encompassed two phases, the first to determine what went wrong and who was to blame, and the second to recommend improvements. After hearing from 156 witnesses over 214

days of hearings, and spending nearly \$20 million, Bellamy reported on September 12, 2005 with a four-volume report containing 241 recommendations.¹

Volume I of the report, "Facts and Findings," reads like a good detective novel. In lucid prose, it describes how a computer company low-balled a tender to get its foot in the City's door, how millions of dollars beyond what was approved from Council was hidden from Council's purview, how lobbyists for the company bought city officials and the Council's budget chief with lavish gifts, free trips, and possibly a \$25,000 bribe, and how a the city's chief financial officer struggled to ensure that a company associated with a close friend and former lover got the contract for the city's tax system.² The "culture" of corruption was traced back to the days of former Mayor Mel Lastman, when the ethics rules for business-government relations were too often ignored.³

Bellamy's detailed recommendations included specific advice about creating or improving codes of ethics for elected politicians and public servants, and improving the independence and effectiveness of Toronto's Integrity Commissioner, who was appointed in 2004 as one of Mayor David Miller's responses to the revelations of the Bellamy public hearings.⁴ Bellamy recommended that the Integrity Commissioner should be a full-time appointment, responsible to Council, and should oversee ethics training, answer questions from public servants, and investigate breaches of improved ethics rules. She recommended that procedures be put in place to ensure that those doing business with the City would understand the ethics rules and comply with them. City officials should be prohibited from receiving free meals from lobbyists, and if they do business over lunch, they should be reimbursed for their expenses from the City's budget, not by a business. A gift registry should be established, and public officials should be able to accept only nominal gifts. A lobbyists registry should be established, as well as a lobbyists code of conduct. Procurement procedures should be tightened up, and staff should be properly trained in accounting procedures in order to ensure proper financial accountability.

Following the release of the Bellamy report, both Mayor David Miller and Shirley Hoy, the City Manager, issued statements applauding the report and outlining steps to implement the recommendations. Many of the recommendations, especially those regarding procurement procedures, were in the process of being implemented by city officials while the Inquiry took place or while the report was being written, because many of the Inquiry's recommendations were predictable given the nature of the testimony during Phase II that considered improvements to governance procedures. Several of the recommendations (such as those relating to lobbying and an enhanced role for the Integrity Commissioner) would need changes to provincial legislation, and Manager Hoy expressed the hope that the proposed new City of Toronto Act would give the city the

¹ The Honourable Madame Justice Denise E. Bellamy, Report, *Toronto Computer Leasing Inquiry, Toronto External Contracts Inquiry*, Volume 4, Executive Summary (Toronto: City of Toronto Publications, 2005).

² *Toronto Star*, September 13, 2005, A1.

³ Bellamy, *Report*, Executive Summary, 8.

⁴ Toronto's Integrity Commissioner was the first ethics officer to be appointed for a municipal government in any city anywhere.

powers needed to fully implement the Bellamy recommendations.⁵ City Council agreed to a consultative process to discuss other Bellamy recommendations.

Early in 2006, Council approved terms of reference for a Bellamy Recommendations Steering Committee that mandated the committee to examine improvements to the Council's Code of Conduct, orientation and education of Council and staff regarding the Code of Conduct, the establishment of a Lobbyists Registration system (in anticipation of the empowerment to do so in the proposed City of Toronto Act), and the strengthening and expansion of the role of the Integrity Commissioner. In February, the steering committee was struck with a membership of five Council members, and in May, the committee approved a schedule of meetings.⁶ It may be that Council is slow to proceed with considering the Bellamy recommendations because there still persists, amongst some Council members, the culture of cozy relationships between business and elected politicians that is a hangover from the Lastman council.

Gomery⁷

Instead of making public statements minimizing the importance of the sponsorship scandal, as Jean Chrétien had done, Prime Minister Martin created the Gomery Commission to get to the bottom of the wrong-doing, and to set an agenda for reform. Like the Bellamy Inquiry, the Gomery Inquiry was divided into two phases, the first to determine the facts, the second to recommend reform. The second phase of the Report includes three volumes (1016 pages) of must-read research reports by the team of commissioned scholars.⁸ The research studies themselves are summarized at the

⁵ Statement by Shirley Hoy, City Manager, City of Toronto, September 12, 2005, http://www.toronto.ca/city_manager/computerleasinginquiry.htm.

⁶ Bellamy Recommendations Steering Committee Meeting No. 1, Agenda, <http://www.toronto.ca/legdocs/2006/agendas/committees/brs/brs060508/agenda.pdf>

⁷ The research and writing of this section of the paper was conducted in conjunction with research and writing for an article which will appear in the upcoming edition of *Canadian Public Administration: Ian Greene and David Shugarman, "Review of Commission of Inquiry into the Sponsorship Program and Advertising Activities, the Gomery Commission of Inquiry, Phase I Report and Phase II Report,"* and parts of this section are similar to parts of the Review written by Ian Greene. The Gomery Phase I Report, released in October of 2005, consists of three volumes entitled *Who Is Responsible? Summary, Who is Responsible?* (p. 80), *Fact Finding Report* (Pp. xxii, 685, appendices) and *Who is Responsible, Forensic Audit.* (Pp. 287, appendices) In the text below, references to these volumes will appear as Phase I, Summary; Phase I, Fact Finding Report; and Phase I, Forensic Audit. The Phase II Report, released in February of 2006, consists of four volumes: *Restoring Accountability: Recommendations* (Pp. xii, 245, appendices) and *Restoring Accountability: Research Studies* Volumes 1 (Pp. 338, list of authors) Volume 2 (Pp. 340, list of authors) and Volume 3 (Pp. 338, list of authors). These will be referred to below as Phase II Report, and Phase II Research Studies Volume 1, 2 or 3. The Commission Reports are available on the internet at <http://www.gomery.ca>.

⁸ Volume I of the research studies is entitled *Parliament, Ministers and Deputy Ministers*, and includes a chapter by Peter Aucoin, "The staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform." One of the chapters in Volume II, *The Public Service and Transparency*, is Lorne Sossin's "Defining Boundaries: The Constitutional Argument for Bureaucratic Independence and Its Implications for the Accountability of the Public Service," Volume III, *Linkages*,

beginning of each of the three research study volumes by Donald Savoie, the Director of Research for the Inquiry.

The federal Sponsorship Program dated from 1994-95, when Public Works and Government Services Canada (PWGSC) spent about \$2 million helping to sponsor major events in exchange for advertising the federal contribution. After the 1995 referendum on sovereignty, the Cabinet decided to spend more money on sponsorships, particularly in Quebec. Between 1994 the cancellation of the Sponsorship Program in 2003, \$332 million was spent on the program.⁹ The head of the advertising section of PWGSC, Charles Guité, hired advertising and communications firms to administer the Program, and altogether \$147 million (nearly 45% of the total cost of the program) was spent on fees to administer the program.¹⁰

The Sponsorship Program was initially directed, at Jean Chrétien's insistence, by Jean Pelletier, Chrétien's Chief of Staff, and after 1997, by Public Works Minister Alfonso Gagliano. In 2000, media stories began to appear that suggested that the Liberal-friendly advertising firms getting the contracts for administering the program were being paid huge fees, and that large portions of these fees ended up being donated to the Liberal Party. Continuing allegations led to the resignation of Alfonso Gagliano early in 2002, but he was rewarded with an appointment as Canada's ambassador to Denmark. In May of 2002, Auditor General Sheila Fraser produced a report on three sponsorships that indicated serious irregularities, and the RCMP was subsequently asked to investigate. In February of 2004, the Auditor General made public a complete review of the Sponsorship Program. The review stated that very little work had been done by the advertising companies that had received over \$100 million in fees and commissions from the Sponsorship Program. It was then that Prime Minister Martin decided to appoint Quebec Superior Court Justice John Gomery to head a Commission of Inquiry into the Sponsorship Program.

Gomery made eighteen substantive recommendations for preventing future scandals like the sponsorship scandal, and for restoring accountability in government. Each of these recommendations summarizes numerous more specific recommendations, and so the total scope of the recommendations is at least as detailed as the Bellamy recommendations. However, because Gomery is addressing a parliamentary system as opposed to the structure of city government, his recommendations reflect his concerns about the effects of over-concentration of power in the Prime Minister's Office and the pressing need for greater transparency in the operations of the public sector.

For convenience, the recommendations are divided here into three categories: the role of Deputy Ministers and the Clerk of the Privy Council, Parliament and the Public Accounts Committee, and the public service, exempt staff, and crown corporations.

Responsibilities and Accountabilities, includes Sharon Sutherland's chapter, "The Role of the Clerk of the Privy Council."

⁹ Phase I Report, Summary, p. 9-13.

¹⁰ Phase I, Fact Finding Report, 14.

1. The role of Deputy Ministers and the Clerk of the Privy Council

The most controversial of Gomery's recommendations concern the relation between Deputy Ministers and the Clerk of the Privy Council on the one hand, and the cabinet on the other. Gomery recommends major changes to the way in which Deputy Ministers are appointed,¹¹ along the lines of the current practice in Alberta. In the oil province, an open competition for Deputy Minister positions is held that is managed by a government search group. The short list of candidates is presented to the Minister, who makes the final selection, subject to the approval of the Premier and the cabinet.¹² As well, Gomery recommends that Deputy Ministers should be designated as accounting officers so that they can be directly accountable to the Public Accounts Committee.¹³ To prevent Ministers from ordering spending that is illegal, Gomery recommends that in the event of a disagreement between a Deputy and a Minister in areas where the Deputy has statutory authority, the Minister can overrule the Deputy only in writing, and this document must be sent to the Comptroller General and made available to the Auditor General.¹⁴ Noting that Deputies and Assistant Deputy Ministers tend to be shuffled so often that they cannot develop expertise about their departments, Gomery recommends that Deputies and Assistant Deputies should hold their appointments for three to five years, as a rule.¹⁵ With regard to the role of the Clerk of the Privy Council, Gomery recommends that the Clerk's title should be changed to "Secretary to Cabinet" in order to reflect the primary role of this official – to represent the public service to the Government. The Clerk's duties as head of the public service should be transferred to the Secretary of the Treasury Board.¹⁶

Not long after the release of the Gomery Phase II report, a group led by Arthur Kroeger, a well-known former Deputy Minister, and including leading current or former senior public officials, business leaders, and university heads published an open letter to Prime Minister Harper. The letter endorsed a number of Gomery's recommendations, but warned against the adoption of the recommendations dealing the Clerk of the Privy Council, changes to the selection process for Deputy Ministers, making the Deputies directly accountable to the Public Accounts Committee for their statutory responsibilities, and the process for handling disagreements between Deputies and Ministers.¹⁷

2. Parliament and the Public Accounts Committee

¹¹ Gomery's view reflects the recommendations of Peter Aucoin's reserach report, "The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform" Phase II Research Studies, Volume 1, p. 297.

¹² Phase II Report, Recommendation 12.

¹³ Phase II Report, Recommendation 4.

¹⁴ Phase II Report, Recommendation 5.

¹⁵ Phase II Report, Recommendation 6.

¹⁶ Phase II Report, Recommendation 13. For this recommendation, Gomery relies on the research study recommendations by Sharon Sutherland and Lorne Sossin.

¹⁷ The letter was signed by a group of sixty-one individuals including Tom Axworthy, Peter Barnes, Allan Blakeney, Rita Burak, Ian Clark, Tom Courchene, Jim Coutts, Tom d'Aquino, Hershell Ezrin, Yves Fortier, Huguette Labelle, Marc Lalonde, John Manley, Barbara McDougall, Desmond Morton, Gordon F. Osbaldeston, Andrew Petter, Bob Rae, Hugh Segal, Paul Tellier, and Richard Van Loon.

Gomery recommends beefing up the powers of the Public Accounts Committee and other Parliamentary committees by substantially increasing their funding to conduct research.¹⁸ Further, he recommends that the Public Accounts Committee should have "its own research personnel, legal and administrative staff, and experts as needed."¹⁹ Members of this committee should normally be appointed for the duration of a Parliament so that they can develop expertise and a degree of independence from party discipline.²⁰ Deputies and other senior officials should generally testify before the Public Accounts Committee rather than Ministers because of their greater depth of program knowledge.²¹ And the Registrar of Lobbyists should report directly to Parliament rather than to a Minister.²²

3. The public service, crown corporations, and ministerial exempt staff

Gomery recommends a clear and concise legislated statement of values for the federal public service, to be known as the Public Service Charter, that would include such principles as "selflessness, integrity, objectivity, accountability, openness, honesty and leadership."²³ New rules are recommended to prevent the abuse of special reserve funds: these funds should be managed by a central agency and not a department, and an annual report should be released providing details of the status of each fund.²⁴

Gomery gives special attention to procurement procedures. He recommends the adoption of an industry-standard definition of advertising so as to prevent non-experts from applying for contracts, and he recommends fair, transparent and competitive procurement procedures.²⁵ He recommends broadening the scope of the Access to Information Act, proper documentation of decisions made by public servants under the Act, and the criminalization of the illegal destruction of records.²⁶ If a public servant signs off that a contract has been completed when it has not, Gomery recommends that this person should be liable to dismissal without compensation.²⁷ He praised the initiative of the Liberal government over the creation of whistle-blowing legislation, and recommended ways of strengthening it.

The merit principle, Gomery wrote, should be extended to the appointments process for the Boards of Crown Corporations, and the government should not interfere with the responsibility of the Boards over their Chief Executive Officers.²⁸

¹⁸ Phase II Report, Recommendations 1 and 3.

¹⁹ Phase II Report, p. 200.

²⁰ Phase II Report, Recommendation 7.

²¹ Phase II Report, Recommendation 8.

²² Phase II Report, Recommendation 15.

²³ Phase II Report, Recommendation 2, p. 67. Gomery is critical of the current (2003) Values and Ethics Code for the Public Service because he considers it unnecessarily lengthy and vague.

²⁴ Phase II Report, Recommendation 9.

²⁵ Phase II Report, Recommendation 14.

²⁶ Phase II Report, Recommendation 16.

²⁷ Phase II Report, Recommendation 17.

²⁸ Phase II Report, Recommendation 18.

With regard to ministerial exempt staff, Gomery recommends that they should be properly trained, should be prohibited from directing public servants, and should have their own Code of Conduct. Furthermore, the option of appointing ministerial exempt staff to the permanent public service, without competition, after three years employment should be ended.²⁹

Following the release of the Gomery Reports and the 2006 General Election, the new Conservative government introduced the Federal Accountability Act (FAA), which attempts to implement the a good many of the Gomery recommendations. Much of the content of this legislation reflects Conservative campaign promises which were developed in response to the weaknesses exposed by the public hearings of the Gomery Inquiry. This approach of anticipating the commission recommendations, and taking action in advance to commit to the anticipated recommendations, is similar to what went on during the Bellamy inquiry, when mayoral candidate David Miller promised to implement what he fairly accurately anticipated would be the recommendations of the Bellamy inquiry.

Major provisions of Bill C-2, the Federal Accountability Act

The major contents of the lengthy and somewhat obtuse Federal Accountability Act are briefly summarized below according the same categories used to summarize the contents of the Gomery recommendations. A fourth category has been added for the parts of the FAA that bear no relation to the Gomery recommendations.

1. The role of Deputy Ministers and the Clerk of the Privy Council

Deputy Ministers will be designated as accounting officers, as recommended by Gomery. In the event of a disagreement between a Minister and a Deputy Head regarding spending or administrative practice, Ministers will be required to provide written instructions, and to notify the Auditor General and the Comptroller General. However, no changes are contemplated with regard to the method of appointing Deputy Ministers, or to the role of the Clerk of the Privy Council, or to the term of appointment of Deputy Ministers and Assistant Deputy Ministers.

2. Parliament and the Public Accounts Committee

An independent Commissioner of Lobbying reporting to Parliament would replace the current position, which reports to a minister. The new position would be given a strong mandate to investigate violations under a new Lobbying Act and the Lobbyists' Code of Conduct.

As accounting officers, the Deputy Heads will be accountable to Parliament through Parliamentary Committees for their spending and administrative practices.

²⁹ Phase II Report, Recommendations 10 and 11.

A Parliamentary Budget Officer will be appointed to support MPs and parliamentary committees, such as the Public Accounts Committee, by providing an independent analysis of economic and fiscal issues. As well, the Department of Finance will provide quarterly updates of governmental fiscal forecasts that will be publicly available. However, additional research and administrative staff for the Public Accounts Committee and other Parliamentary committees are not provided in the FAA, and the term of appointments to the Public Accounts Committee is not mentioned.

3. The public service, crown corporations, and ministerial exempt staff

Ministerial exempt staff will no longer have the option of being appointed to a public service position without competition. The authority of the Auditor General will be expanded to include the entire federal public sector, including the Crown Corporations. As well, the powers of the Auditor General will be expanded to include the ability to audit individuals and organizations that receive federal money. The practice of departments undertaking reviews of their granting programs will be enshrined in law, and an independent blue-ribbon panel will be established to examine barriers to access for potential recipients of government grants and contributions programs. The Access to Information Act will be expanded to include seven agents and officers of Parliament,³⁰ seven Crown Corporations,³¹ and three foundations.³² Internal audit functions within departments will be strengthened, and Deputy Heads will be required by law to establish internal audit capacities and independent audit committees. Amendments to the Criminal Code and the Financial Administration Act will broaden the definition of fraud, and tougher penalties for fraud convictions will apply. Discipline procedures for public servants will be enshrined in law for the first time.

The Act would establish a Public Appointments Commission to oversee order-in-council appointments to agencies, boards and commissions, including the Boards of Crown Corporations, and to ensure merit appointments, an important concern of the Gomery commission. Further, the governance structures of Crown Corporations will be overhauled to promote better oversight and accountability. As well, the Act promises a consistent appointment process for agents and officers of Parliament, which would include a meaningful role for Parliament.

A new Director of Public Prosecutions will be created by the Act with a mandate to deal with the prosecution of fraud, and possibly other criminal offences, committed by public servants and other public officials.³³

³⁰ Included will be the offices of the Information Commissioner, the Privacy Commissioner, the Commissioner of Official Languages, the Chief Electoral Officer, the Auditor General, the Public Sector Integrity Commissioner, and the Commissioner of Lobbying.

³¹ These are Canada Post, Via Rail, the Canadian Broadcasting Corporation, Atomic Energy of Canada, Export Development Canada, the National Arts Centre and the Public Sector Pension Investment Board.

³² The three foundations are the Canada Foundation for Innovation, the Canada Foundation for Sustainable Development Technology, and the Canada Millennium Scholarship Foundation.

³³ If this measure is implemented, it should be carefully watched to ensure that the office does not become simply another avenue for patronage appointments to reward law firms loyal to the party in power. This is still the case regarding the appointment of some of the federal prosecutors for narcotics cases.

The procurement process will be more clearly defined in legislation and there will be a legislated commitment to fairness, openness and transparency in procurement, particularly with regard to the procurement of advertising and public opinion research. All government contracts will include integrity provisions. A new office entitled Procurement Auditor will be created to oversee the auditing of contracting and procurement in the federal government, and a code of conduct for procurement will be developed.

The whistle-blowing legislation (the Public Servants Disclosure Protection Act), dating from 2004, will be implemented, and in addition a special tribunal will be created to adjudicate complaints of reprisal (rather than the Public Service Labour Relations Board). New rules would protect all Canadians who report government wrong-doing, not just public servants. Documented cases of wrongdoing would be made public. As well, a newly-created Public Service Integrity Commissioner will be given the power to enforce the whistle-blowing legislation.

Finally, all government-commissioned polling findings will be released within six months.

4. Other provisions in addition to those recommended by Gomery

Part of the FAA deals with what the Conservatives saw as weaknesses in Jean Chrétien's election financing reforms that were brought in at the end of his term. The FAA places new lower limits on amounts of individual donations to parties and candidates, bans all contributions from corporations,³⁴ unions and organizations to parties or candidates, and increases the period during which prosecutions under the Canada Elections Act can be initiated. It bans candidates (not just MPs) from accepting gifts that might have the appearance of influencing their decision-making if elected. Money donated to trust funds would not be able to be transferred to candidates or parties, and the ethics commissioner would be given the power to ensure that trust funds set up for political purposes would be properly wound up.³⁵

The FAA would attempt to enhance the conflict of interest rules covering MPs and Senators in a number of ways. First, the Senate Ethics Officer (Jean Fournier) and the Ethics Commissioner for the House of Commons, Cabinet, and senior public officials (Bernard Shapiro) would be replaced by a single Conflict of Interest and Ethics Commissioner. This was the plan of the Chrétien government when in its latter days it finally decided that Parliament should have an independent ethics commissioner, but the plan was thwarted by the Senate, which insisted on having its own separate ethics regime.

³⁴ The legislation introduced by the Chrétien government allowed corporations, unions and organizations to make contributions of up to \$1000 annually, and these contributions were limited to constituency associations, candidates and their campaigns, and local nominations.

³⁵ It has been a tradition for both the Liberal and Conservative parties to establish trust funds that could be used for a variety of purposes, from supplementing election spending to providing a pension to leaders after their retirement. Those donating large amounts to the trust funds sometimes expected and received public office favours.

The Chrétien government's legislation therefore failed, and the Martin government agreed to a separate Ethics Officer and separate rules for the Senate in order to get the legislation through – and even then the Senate was a reluctant bride. It is unlikely that the Harper minority government will succeed in unifying the two positions.

If, however, the FAA does succeed in unifying the ethics regimes for the House of Commons and Senate, this position would be given the power to consider public complaints, not just complaints from MPs and Senators.³⁶ Ministers would be prohibited from voting on matters connected to their business interests. The new commissioner would have the power to levy fines against those found in violation of the rules. The use of "venetian blind" trusts³⁷ as a mechanism to prevent conflicts of interest would be banned. Guidelines would be established for the commissioner's to waive post-employment bans on doing business with government so that this power is not purely discretionary. Finally, the Public Office Holders' Code would achieve the status of legislation as the Conflict of Interest Act.³⁸

The Public Service Integrity Commissioner, a position reporting to a cabinet minister and established by the Chrétien government to oversee the implementation of the ethics rules for most public servants, would be replaced by a Public Sector Integrity Commissioner, who would become an independent officer of Parliament.

It is clear that the Conservative government intends to implement a good many of the Gomery recommendations. However, the Federal Accountability Act was likely drafted largely in the backrooms of the Conservative party prior to the release of the second Gomery report, and so the draft misses some of the more important recommendations of Gomery. For example, the FAA does not contemplate an improved method of appointment for Deputy Ministers, does not mention a more effective way of selecting and training ministerial exempt staff, does not deal with the responsibilities of the Clerk of the Privy Council, or longer terms for DMs and ADMs, or all of the new supports for the Public Accounts Committee and other parliamentary committees recommended by Gomery. The reforms directed toward election financing that were not within the scope of the Gomery recommendations do represent an improvement to the existing rules. These changes also reflect the fact that the Conservative party's current fund-raising strategies – targeting numerous small donors – would fare better under the proposed new rules than the Liberal party's current practices.

³⁶ The conflict of interest commissioner in British Columbia has the ability to consider complaints from the public, and successive commissioners have found this to be a useful innovation.

³⁷ Justice William Parker, who headed the commission of inquiry into the Sinclair Stevens affair, recommended against the use of blind trusts to prevent conflicts of interest, as such trusts are usually not blind at all. The owners of assets often have considerable knowledge of how the assets are likely being managed by the trustees. The Conservatives were critical of the "blind trust" that administered Canada Steamship Lines, owned by Paul Martin when he was Finance Minister, as Martin was sometimes consulted about critical decisions regarding the company.

³⁸ Giving the Code the status of legislation would make it more difficult to change, and it might also make it more likely that decisions made by the commissioner would be subject, in some situations, to judicial review. It would also give the code more public prominence. It is debatable whether the benefits of turning the code into legislation outweigh the disadvantages.

The provision that the Public Service Integrity Commissioner would report to Parliament is also a good idea, as this will increase the profile and importance of the position in the eyes of public servants. As well, providing this official will independence will likely encourage innovations to raise ethical standards in the public service.

The Leadership Factor

In order to advance and improve the culture of ethics both at the municipal level in Toronto, and at the federal level, skilled leadership is required that encourages both elected officials and public servants to take ethics seriously, to think about the most appropriate procedures, and to trust that the reforms will make the public service a more satisfying place to work. Leadership by example is required, as the tone at the top sets the standard below. Good faith consultation is required with elected and appointed officials about the appropriateness of the suggested reforms, and the best way of implementing them. In order for these two qualities to emerge, leaders require a deep understanding of the nature of ethical politics and its relation to democracy, and an appreciation of the historical process of evolution of government institutions.

There are a number of similarities between the ethics reform process currently underway in the City of Toronto and the one we are currently witnessing at the federal level. Both reform processes are a result of well-publicized public inquiries, of "opposition" politicians devising campaign platforms that reacted decisively to the revelations of the public inquiries, and both processes embrace many of the recommendations of the inquiries. Both the David Miller campaign symbol of the broom sweeping corruption out of municipal politics, and the Stephen Harper platform on ethics reform, made deep impressions on voters. Both leaders are currently planning their re-election campaigns, and so are under pressure to show significant process regarding their ethics reform packages before the elections.

As well, both leaders face significant opposition from those whose support is essential in order to implement their preferred ethics reforms. Many members of Toronto's City Council, as well as a significant number of opposition members in the House of Commons and even a good number of government back-benchers, are skeptical about some of the reforms proposed. The skeptics often argue that the reforms go too far, will create too much red tape, will slow down government processes unnecessarily, will be too costly, or will interfere with the "natural" and "necessary" relations between business and government. Mayor David Miller and Prime Minister Stephen Harper face similar challenges, in spite of their ideological differences. The similarities between the challenges faced by Miller and Harper illustrate the fact that ethics reforms and ethics scandals are not the preserve of either the right or the left. Ethics in government principles are relatively neutral on the left-right spectrum and are more closely aligned with individual values of right and wrong.³⁹

³⁹ Both Conservative Prime Minister Brian Mulroney and Liberal Prime Minister Jean Chrétien were elected with a mandate to "clean up" after the ethics scandals of previous governments. Both failed miserably by involving themselves in progressively more significant ethics scandals. At the provincial

In order to have a positive impact on government ethics reforms, leaders need a deep and firm understanding of the nature of ethical politics. Ethical politics is based on the principle of mutual respect. In a democracy, every human being is considered of equal worth, and therefore deserves to be treated with equal concern and respect by government officials and institutions. This principle does not imply the absolute equality of treatment, but rather appropriate accommodation for difference. There are legitimate debates about what appropriate accommodation means. The cornerstones of government ethics rules – the rule of law, honesty, the prohibition of conflicts of interest, the prohibition against using public office for personal gain, the rules preventing undue influence, the promotion of fair procedures and objectivity, the promotion of accountability and openness – all stem from the principle of mutual respect. As human beings, we get used to carrying out our work the way we have learned to do it, and most of us think of ourselves as ethical without stopping to examine whether the way things are usually done might contradict the principle of mutual respect and the sub-principles that derive from it. Leaders who want to introduce real and lasting reforms to ethics in government need the ability to be able to examine carefully whether business as usual is really meets the ethical standards they claim to espouse.

Second, effective leaders dealing with ethics reforms require some basic understanding of the nature of the evolution of the parliamentary system, and of other sub-systems such as municipal governance, over the past few centuries. The parliamentary system, and the constitutional conventions governing it, have never been static. They have evolved to reflect the changes in thinking about the nature of the human condition, to accommodate social changes, and to utilize technology.⁴⁰ A grasp of the history of these changes is likely to assist one's judgment about whether a particular reform is likely to be helpful in the sense of promoting greater democratic accountability, or harmful in the sense of eroding public trust because of the probability of failure.

Third, good leaders must exhibit a genuine willingness to consult and listen to all perspectives, including those of one's most vocal opponents. The changes proposed for both the Toronto and the federal ethics regimes are of historic proportions. Even if a theoretically sound ethics regime results from the suggested reforms, if they are perceived as "rammed down the throats" of those affected, the reforms will not work. Witness the ethics reforms promoted by the Tri-Council at universities across Canada. We believe that the great majority of these reforms are useful and necessary, and yet they have encountered significant opposition at all Canadian universities from many who consider them unnecessary, a waste of valuable research time, or worse. The research culture at universities will not change as a result of top-down orders. A broad program of discussion that is intended to lead to a broad consensus in finding a way forward is more likely to result in real change. Given the urgency that both David Miller and Stephen

level, NDP and PQ governments have certainly not had an unblemished ethics record. The Clark government in British Columbia had an ethics record as bad as the previous Social Credit government, and some of the PQ strategies leading up to the 1995 referendum on independence rivaled the corruption of the federal sponsorship scandal.

⁴⁰ A.V. Dicey. *An Introduction to the Study of the Law of the Constitution*, 1885.

Harper must be feeling to get their reform packages through prior to the next election, it will take some careful stick-handling to ensure that the reforms are not introduced too hastily.

Finally, there must be constant leadership by example. Unfortunately for Prime Minister Harper, his inauguration as Prime Minister by appointing David Emerson as a cabinet minister, after Emerson crossed the floor even prior to his first appearance on the floor, has cast so much doubt on his ethical sensibilities that it may be hard for him to regain the high ground. Harper's appointment of a senator to a key cabinet position, and his appointment of a former defence industry lobbyist as Defence Minister, have all cast doubt on the question of whether he has a deep enough understanding of basic ethics in government principals. David Miller has not subjected himself to errors in judgment of such magnitude, although his preference for significantly enhanced powers for the mayor in the proposed City of Toronto Act, absent appropriate public consultation, has clearly eroded some of his credibility.

Given that both David Miller and Stephen Harper are advocating similar ethics in government reforms, it may be useful for both to study each others' leadership styles, and learn from each others' successes and failures.