

**Focusing Events and the Illusion of Paradigm Shift: The  
Sponsorship Scandal and the Reconfiguration of Public  
Accountability in Canada.**

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## Introduction:

A number of prominent policy studies scholars have attempted to explain policy change from the perspective of sudden and dramatic events, such as natural disasters or external shocks (Birkland 1997, Kingdon 2003; Lowry 2006; Wolfensberger 2004) or what Cobb and Elder call “circumstantial reactors” (2005: 129). However, while these “focusing events” may provide windows of opportunity for policy change, it is unclear as to whether they actually lead to paradigmatic shifts in public policy. Using the new *Federal Accountability Act* as a case study, this paper argues that whereas a focusing event may initiate changes in the prevailing topic of discussion and/or in attitudes toward a particular policy, it is often used simply a vehicle to achieve political ends by creating the illusion of a paradigm shift in a policy domain. By paradigm shift, we are referring to Peter Hall’s idea of “Third Order Change” (Hall 1993).

The quest for greater accountability within the public sector is not new, but can be viewed as part of a broader demand for greater transparency and oversight in the conduct of public business by political and administrative actors, which is in line with new philosophies of governance. In Canada, as part of this demand for greater transparency, there have been systematic attempts to reconfigure the practice of public accountability (Aucoin and Jarvis 2005). Recently, in response to the growing distrust of government resulting from a number of high profile revelations of waste and abuse (Zussman 1997), and particularly those relating to the recent sponsorship scandal, the Harper government decided to make public accountability one of its major preoccupations. The idea, according to Harper, was to replace the traditional “culture of entitlement” with a new “culture of accountability”. In an address to public servants immediately after assuming office, Mr. Harper reiterated his desire to change the public sector accountability regime when he remarked:

[w]e still clearly face challenges today in ensuring for the public the highest standards of integrity, effectiveness, and accountability. You are all aware that the public image of the Government of Canada has been damaged in recent years by a number of high profile revelations of waste and abuse, the most important of which was the sponsorship scandal. Not surprisingly, Canadians were very upset by these revelations and have told us – the politicians, that is – that they want the system fixed. And I have no difficulty in telling them that the public servants have been no less upset and also want the system fixed...what we will do, through legislation and related actions at the top, is to set out principles and policies to strengthen governance to enhance effectiveness, to reward integrity; to give responsibility and to require accountability. In this way, we can give Canadians the clean and honest government that they expect and deserve. And that is precisely what we will do when we pass the federal accountability act in the very near future (2006: 2-3).

Notwithstanding the avowed aim of Mr. Harper and his Conservatives, a number of people have accused him of using the Sponsorship scandal and the new *Federal Accountability Act* (FAA) to deceive Canadians in order to gain political power. Duff Conacher of Democracy Watch, for instance, is of the view that, “[t]he federal Conservatives baited voters with a false promise that if elected they would close 52 government accountability loopholes with an Accountability Act, and since then they have falsely claimed they kept their promise when in fact they have only closed 15

loopholes so far” (n.d.). An interviewee has accused Mr. Harper of using the FAA as part of what he sees as Mr. Harper’s “retail politics” sold to Canadians with no “return policy.”

Thus, the key questions to be asked are: Did Mr. Harper genuinely aim to use the Sponsorship scandal and the *Federal Accountability Act* to completely change the existing accountability regime? Did Mr. Harper and the Conservatives use the Sponsorship scandal just as a political tool to gain power? Did the Harper team seize the wrong end of the stick on each of the dossiers: freedom of information, campaign finance, control of influence peddling, government spending control, and performance accountability as argued by scholars such as Sears (2006)?

We are not discarding the idea of focusing events, such as the sponsorship scandal, having an impact on agenda setting and thus leading to the development of new policies and institutions. We contend, however, that while issues that get onto the government agenda may result in profound policy changes, including dramatic reversals or marginal revisions of existing policy (Baumgartner and Jones 1993), there is no evidence that such policy changes automatically lead to an actual paradigm shift. This paper demonstrates that the *Federal Accountability Act* introduced by the Harper government in early 2006 merely fostered the illusion of a paradigm shift in terms of government and public sector accountability in Canada.

The paper begins with a brief discussion on accountability followed, by an examination of the theoretical literature on focusing events and paradigm shift. The next section analyses the Sponsorship scandal as a focusing event. The fourth part of the paper deals with the Conservative government’s *Federal Accountability Act*, and an assessment of its merits and shortcomings. The paper concludes with some thoughts as to what should be done to address what is perceived as the accountability deficit in public sector management.

### **Thinking About Accountability:**

While the issue of accountability has generated much discussion, defining the term has become an issue in itself (Harmon 1994; Hatry 1997; Savoie 2003; Schafer 1999; Wright 1996). In essence accountability has become a term with multiple meanings due to what has been described as its chameleon-like nature, *i.e.* being coloured by the context in which it is operating and by the perspective of the players in the accountability relationship (Wright 1996). The problem of definition has been compounded by the emergence of the new public management philosophy of ‘letting managers manage’, as well as current reforms to governance in general. As a result, many have accused academics of not being rigorous in their writings but rather keeping the concept of accountability deliberately vague so they can write about it. McCandless (2007), for example, claims that academics have not been courageous enough to propose a firm definition as they fear criticism from other academics on what accountability actually IS. These authors write as though readers already understand accountability as a concept.

It is not our intention to weigh into the definitional quagmire. Nevertheless, we believe that it is essential for us to highlight some of the definitions from the literature. For example, the Citizen’s Circle for Accountability (CCA), a non-governmental organization, states that “public accountability means the obligation of authorities to explain publicly, fully and fairly, before and after the fact, how they are carrying out

responsibilities that affect the public in important ways” (n.d.). Aucoin and Jarvis (2005) define the term within the context of ministerial responsibility, whereby ministers have “specific executive authorities and responsibilities assigned by statutes for the conduct of public business” (14). Accordingly, this means that “the minister must *provide an account* and be *held to account* for his or her actions, or the actions of officials, whether or not the minister had knowledge of these actions” (14). Romzek (2000), in a similar vein, sees accountability as a relationship in which an individual or agency is held to answer for performance that involves some delegation of authority to act. In this context, accountability implies the given account of an exercise of responsibility and accepting the consequences that go with such responsibility. However, while the traditional usage of the term suggests accountability for processes, equity, and access, the focus is currently on a definition of accountability based on outcomes, preferably measured in quantitative and mainly financial terms (Parker and Gould 1999).

Irrespective of how the concept is defined, Aucoin and Jarvis suggest that an accountability regime (in governance and public administration) should at least consist of five major elements:

- A governance structure of superior-subordinate relationships;
- Superiors delegate authority to subordinate for the discharge of assigned responsibilities;
- Subordinates report to superiors on their use of authority in the discharge of their responsibilities;
- Superiors scrutinize the performance of subordinates;
- Superiors use the assessment of subordinates’ performance as the basis for corrective action, rewards or sanctions (2005: 29).

For the purposes of this paper, we believe that any discussion of accountability should take these key elements into consideration. This is important in light of the fact that “accountability is a cornerstone of public governance and management because it constitutes the principle that informs the processes whereby those who hold and exercise public authority are held to account” (Aucoin and Heintzman 2000: 244).

### **Understanding Focusing Events and Paradigm Shift:**

Much of the literature addressing how policies get made dwells on how issues get on to the agenda of government. One way of looking at this is the role of policy entrepreneurs who may use any window of opportunity to force governments to address specific issues of interest to them. In other words, policy issues or problems themselves do not automatically get on the government agenda unless they are taken up or given a push by a policy entrepreneur (Kingdon 2003). However, this push may also emerge from a dramatic event, such as a crisis or disaster, especially when there is an institutional failure. As noted by Kingdon (2003), the push of an issue on to the agenda “is sometimes provided by a focusing event like a crisis or disaster that comes along to call attention to the problem, a powerful symbol that catches on, or the personal experience of a policy maker” (94-95). The attention that a crisis or disaster gains within an entire community, therefore, leads policy makers to pay particular attention to such problems with the view of addressing the problem.

In spite of scholars using such events to explain how policy gets made, defining the term has become quite problematic. This is because what may be considered as an event that merits the attention of government may also be considered as part and parcel of normal and expected change. Birkland's (1998) definition is much more precise. For him, a focusing event is "an event that is sudden; relatively uncommon; can be reasonably defined as harmful or revealing that possibility of potentially greater future harms; has harms that are concentrated in a particular geographical area or community of interest; and is known to policy makers and the public simultaneously" (54).

In some situations, however, because of ideological inclinations, governments may create an artificial crisis within a policy domain to justify a course of action already taken or to be taken. For example, in 1995, a newly appointed minister of education in Ontario was caught on tape telling senior bureaucrats of the need to 'manufacture' a crisis in the educational sector in order to justify the government's attempt to revamp the educational system according to its ideological inclination (Brennan 1995 A3). Such crisis manufacturing is often undertaken by those who perceive an unfavorable bias in the distribution of positions or resources (Cobb and Elder 2005). These actions, however, make it difficult to determine what may be described as a genuine crisis *versus* an ideologically-induced crisis. Thus, "crisis can be internally generated or it can be the result of a disaster or some other undesirable even that strains an organization's adaptive capacity" (Birkland 2006: 5). In discussing focusing events, attention is often paid to those events that are associated with institutional failures and this may ultimately lead to the creation or development of new institutions as a way of addressing the problem(s) that may have emerged from such crises or events.

Whereas scholars such as Kingdon (2003), Brikland (2006; 2004, 1998, 1997), and others conceive focusing events from the perspective of natural and technological disasters such earthquakes, oil spills, and dramatic events such as the September 11, 2001 terrorist attacks on New York and Washington D. C., we see a focusing event as any event marked by upheaval in the political system that eventually leads to the punctuating of the institutional equilibrium that is already in existence (Baumgartner and Jones 1993; True, Jones, Baumgartner 1999). In a nutshell, we view a focusing event as "a situation faced by an individual, group or organization which they are unable to cope with by the use of normal routine procedures and in which stress is created by sudden change (Booth 1993: 86). This leads to the disruption of the existing institutional set up and to radical policy realignment through the creation of new set of institutions with a view to completely preventing such crises in the future. Thus, our understanding of what constitutes a focusing event is quite broader than that of many scholars who have studied policy making and policy outcomes from this perspective.

Perhaps most important from a policy change perspective, a focusing event opens a policy window by dramatically highlighting policy failures and providing opportunities for policy learning (Birkland 2004: 181). As explained by Baumgartner and Jones:

Even a casual observer of the public agenda can easily note that public attention to social problems is anything but incremental. Rather, issues have a way of grabbing headlines and dominating the schedules of public officials when they were virtually ignored only weeks or months before. Policy action may or may not follow attention, but when it does, it will not flow incrementally...Rather, focusing events, chance occurrences, public opinion campaigns by organized interests, and speeches by public

officials are seen to cause issues to shoot high onto the agenda in a short period (1993: 10).

Issues are defined differently in public discourse, and as they gain and lose salience in the public eye, existing policies are either questioned or reinforced. “Reinforcement creates obstacles to anything but modest change, but the questioning of policies at the most fundamental levels creates opportunities for dramatic reversals in policy outcomes” (True, Jones, and Baumgartner 1999: 97-98).

Once a focusing event or occurrence gets on to the policy agenda, policy makers will pay a significant attention to it, which will lead to the development of new institutional arrangements to forestall the future occurrences of such problems and establish and maintain political or policy equilibrium. Hence, the understanding is that such dramatic event(s) ultimately lead to a complete shift in policy direction and, therefore, what may be described as a paradigm shift.

Our understanding of paradigmatic shift is best influenced by the work of Peter Hall (1993). Hall’s perception of a paradigm shift is built on Thomas Kuhn’s idea of scientific paradigms. In discussing paradigm shift, Hall identifies three orders of change in a policy environment or domain. The first is the “process whereby the [policy] instrument settings are changed in the light of experience and new knowledge, while the overall goals and instruments of policy remain the same...” (278). With second-order change, the hierarchy of goals remains largely the same; however, the basic methods used to achieve these goals are altered due to dissatisfaction with the prevailing policy. Hall notes that such changes can lead to a situation where “the instruments of policy as well as their settings are altered in response to past experience even though the overall goals of policy remain the same” (278-279). Hall identifies a policy paradigm shift as a situation where a different process in policy making is marked by radical changes in the overarching terms of policy discourse (279). Hall refers to this as third-order-change.

Third-order change entails simultaneous changes in instrument settings, instruments themselves, and the rearrangement of policy goals. He argues that third order change occurs when an emerging policy failure leads to the discrediting of an old paradigm, which subsequently leads to “a wide-ranging search for alternatives and to a process of experimentation with modifications to policy.” (Hall 1993: 291) There is, therefore significant change not only in the settings of the policy but “the hierarchy of goals, and set of instruments employed to guide policy shift[s] radically as well” (Hall 1993: 283-284). Thus, in a paradigmatic shift, the path of policy making is significantly punctuated so that it leads to a complete departure from the existing policy paradigm.

### **The Sponsorship Scandal as a Focusing Event:**

Before addressing the Sponsorship scandal as a focusing event, it is important to understand the background. The scandal emerged as fallout from Canada’s long standing constitutional crisis and Quebec’s attempt to achieve its long-cherished goal of sovereignty, which many of its political leaders have championed as part of Quebec’s nationalist movement (Conley 1997).

At the height of the nationalist movement in the mid 1990s, the provincial government called for a provincial referendum to determine the status of Quebec within the Canadian federation. This was after the failure of the province to sign onto the

repatriation of the Canadian constitution in 1990, and the demise of the Charlottetown Accord in a nation-wide referendum (Clarke and Kornberg 1996; Conley 1997).

The call for a referendum led to the mobilization of both Quebec separatists and federalists. As the mobilization intensified during the run-up to the polls, the federal government under Prime Minister Jean Chrétien was accused of not paying much attention to an issue that had the potential to break up Canada (Clarke and Kornberg 1996; Conley 1997; Young 1995). In response to these allegations, the strong support for the sovereigntists a few weeks prior to the referendum, and to project the image of Canadian federalism, the Chrétien government abandoned what Clarke and Kornberg (1996: 679) refer to as its “strict silence strategy” on Quebec and initiated a campaign to advertise federal government achievements to counteract the publicity of the separatist movement. The federal strategy certainly helped to shape the outcome of the 1995 referendum.

After the referendum, the government decided to continue the advertising program, particularly in Quebec, with the objective of projecting the federal image and perhaps to deal a fatal blow to the sovereigntists’ ambitions. The overall goal was to promote national unity through advertising and displays at sporting, community, and cultural events. The policy was implemented primarily through the advertising section of Public Works and Government Services Canada (PWGSC) with the support of six other government departments (Winsor 1995). The advertising campaign, or Sponsorship Program as it came to be called in 1996, was managed by Chuck Guité, the director of the Communications Co-ordination Services Branch (CCSB) in the PWGSC. However, as PWGSC did not have enough in-house experience to run such a program, Mr. Guité chose to contract out its management and administration to various advertising and communication agencies (10).

Between 1998 and 2003, the Auditor General conducted a series of audits on the federal advertising contracts, which were worth \$793 million (Ha 2005). These audits were intended to determine whether the government received the best value for its money and if the contracts were awarded fairly. In 2000, reports from some media outlets suggested that there were huge sums of money being paid to Liberal-friendly advertising firms for the administration of the program, with a large chunk of money being donated back to the Liberal party (Grainger and Greene 2007). An internal audit was subsequently undertaken which revealed a number of irregularities in the administration of the Program.

In January 2002, the Auditor General called in the RCMP to investigate three sponsorship contracts it had reviewed. In April 2002, the Auditor General announced a government-wide audit of the Sponsorship and advertising programs after the office found appalling practices in the handling of \$1.6 million worth of projects by Groupaction Marketing Inc. of Montreal and in February 2004, the Auditor General released her report on the program to the public.

The Report was extremely critical of the Sponsorship Program and of government-wide advertising activities in general. The report accused the government of paying money to companies for little or no work done. It highlighted a “major breakdown of controls over financial management, human resources management, contracting, and travel and hospitality” (Fraser 2003a: 1). It was claimed that, from 1997 to 2001, the government ran the Sponsorship Program in a manner that demonstrated “little regard for

Parliament, the *Financial Administration Act*, contracting rules, transparency, or value for money” (Fraser 2003c: 33).

The Auditor General made several other serious and damaging observations. First, Parliament was not informed of the true objectives of the Program, which was to raise the profile of the federal government in Quebec by sponsoring local events. No strategic plan or formal government directive was ever conveyed. Second, many financial transactions were designed to hide sources of sponsorship funding to Crown corporations and communication agencies. Often, payments were made which involved the use of false invoices and contracts or, in some cases, no written contracts at all. Also, contracts were sometimes amended without documented support. Third, selection of government suppliers (communication agencies) was not undertaken through the competitive process that is set out under existing policy and regulations. Fourth, there were limited control and oversight provisions. For example, no written program guidelines were ever set out, nor was there acceptable documentation to justify the levels of funding for each contract approved. Finally, there existed little documentation of what was actually delivered, and thus, no proof that the government actually got what it paid for (Fraser 2003c, Ch. 3: 5-31).

In addition to the revelations surrounding the Sponsorship Program itself, the Auditor General’s Report also noted that government advertising activities in general did not meet required or expected management practices and actions. Many of the other problems uncovered were similar to those of the Sponsorship Program (Fraser 2003c, Ch 4: 1-23). Ironically, the Report was also intended to review government’s action on earlier recommendations regarding accountability and ethics in government. While the government had instituted several related initiatives (*e.g.*, *Guide for Ministers and Secretaries of State*, *Guidance for Deputy Ministers*, a values and ethics code for the public service, and a management accountability framework for deputy ministers), the Auditor General determined that these had clearly not gone far enough (Fraser 2003b).

The Auditor General’s Report was released just after Paul Martin assumed the reins of government in December 2003. Mr. Martin, who was deeply concerned about maintaining power with his minority government, swiftly responded with a number of initiatives including new rules on procurement and on the awarding of contracts, and the suspension of the heads of some Crown corporations implicated in the Auditor General’s Report (Good 2006; Warn 2004). The most important initiative was the setting up of a Commission of Inquiry (which came to be known as the Gomery Inquiry) to unearth, as well as to address, what Mr. Martin described as the accountability deficit in government and to regain the confidence of voters (Axworthy 2004). In setting up the Commission, Martin intended to detach himself from his predecessor, Mr. Chrétien, under whose leadership the sponsorship idea was started and implemented. In short, Mr. Martin attempted to use the Commission to distance himself and his government from what he regarded as the electorally-dangerous legacy of the previous government. He stood ready to admit anything so long as voters understood that his own government had nothing to do with the scandal (Paquet 2004).

In 2004, the Commission of Inquiry into the Sponsorship Program and Advertising Activities headed by Justice John H. Gomery was given a mandate to investigate and report on the issues of government accountability raised by Chapters 3

and 4 of the November 2003 Report of the Auditor General of Canada to the House of Commons. The Commission made a number of relevant findings such as:

- clear evidence of political involvement in the administration of the Sponsorship Program;
- inefficient oversight at the very senior levels of the public service...;
- a veil of secrecy surrounding the administration of the Sponsorship Program and an absence of transparency in the contracting process;
- reluctance, for fear of reprisal, of public servants to go against the will of a manager who was circumventing established policies and who had access to senior political officials;
- gross overcharging by communication agencies...;
- inflated commissions, production costs and other expenses...;
- the use of the Sponsorship Program for purposes other than national unity or federal visibility...;
- deliberate actions to avoid compliance with federal legislation and policies...;
- ...kickbacks and illegal contributions to a political party in the context of the Sponsorship Program;
- the existence of a “culture of entitlement” among political officials and bureaucrats involved with the Sponsorship Program...; and,
- the refusal of Ministers, senior officials in the Prime Minister’s Office and public servants to acknowledge their responsibility for the problems of mismanagement that occurred (Gomery 2005: 5-7)

The Commission was also to make (later) recommendations based on its findings to prevent future mismanagement of programs and activities (Gomery 2005: 2).

### **Responding to a Focusing Event: The *Federal Accountability Act*:**

As already noted, Mr. Martin initiated and implemented a number of policies in response to the revelations by the Auditor General. However, the most dynamic response to the scandal emerged from the opposition parties, particularly the Conservatives under Stephen Harper. The Conservatives made the sponsorship scandal and what they termed “Liberal corruption” the focus of their campaign to unseat the Liberals. Mr. Harper accused the Liberals of putting the party's interests ahead of the country's (MacCharles and Benzie 2004). In the House of Commons and in a series of advertisements on television, the Conservatives hammered the Liberals over the sponsorship scandal and made accountability a key election issue. In one such advertisement, Mr. Harper remarked, “Accountable government: it's a simple concept really...A government that puts the country's best interests ahead of its own. A government that works to reduce taxes, improve health care and put an end to wasteful spending...It's time to demand better. It's time for the new Conservative party” (MacCharles, 2004: A07).

In the run up to the January 2006 federal election, Mr. Harper launched a series of scathing attacks on the Liberals with the view that the sponsorship scandal would propel him into office. As part of his election strategy, Harper proposed a new *Federal Accountability Act*, which was based on a commitment to clean up government. The proposed Act consisted of a 12 point plan to repair what he described as system characterized by “waste, mismanagement and corruption...” (Conservative Party 2005:

1). These 12 points included: ending the influence of money in politics; toughening the Lobbyists Registration Act; banning secret donations to political candidates; making qualified government appointments; cleaning up government polling and advertising; cleaning up the procurement of government contracts; providing real protection for whistleblowers; ensuring truth in budgeting with a Parliamentary Budget Officer; strengthening the power of the Auditor-General; strengthening the role of the Ethics Commissioner; strengthening access to information legislation; and, strengthening auditing and accountability within departments (Conservative Party 2005).

The Act had two basic aims: to strengthen existing institutional arrangements with respect to oversight bodies such as the offices of the Auditor General and Ethics Commissioner, which the Conservatives felt, had been weakened under the Liberals; and, to bring in new legislation to make government more accountable. Looking at the proposed Act, it is obvious that the Conservative Party intended to implement substantial portions of the recommendations made by Justice Gomery in his report.

After winning the election, the Conservatives kept their promise by introducing Bill C-2, the *Federal Accountability Act* in April 2006, two months after assuming power. The proposed Act was a large and technical piece of legislation, which sought to create several new acts as well as to amend many others. It was accompanied by a 36 page Federal Accountability Action Plan, a non-legislated initiative designed to aid in the implementation of the new FAA (Aucoin 2007; Government of Canada 2006). The proposed Act was in five parts:<sup>1</sup>

- **Part 1 - Conflicts of Interest, Election Financing, Lobbying and Ministers' Staff.**

This part involved (a) the creation of a new *Conflict of Interest Act*, which set out several substantive prohibitions governing office holders; (b) amending the *Canada Elections Act* to reduce the maximum individual amount of political donations, and to ban donations from corporations, unions, and associations; and (c) amending the *Lobbyists Registration Act* with the aim of strengthening rules regarding lobbying, and creating the position of a Commissioner of Lobbying.

- **Part 2 - Supporting Parliament**

This section was intended to harmonize the appointment and removal provisions relating to office holders so that Parliament could play a greater role with respect to federal appointments. Further, it aimed to amend the *Parliament of Canada Act* in order to establish a Parliamentary Budget Officer who was to provide objective analysis of the state of the nation's finances to the House and the Senate.

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<sup>1</sup> Information in this section was taken from the Government of Canada (2006) *Bill C-2: An Act for Providing for Conflict of Interest Rules, Restrictions on Election Financing and Measures Respecting Administrative Transparency, Oversight and Accountability*, Ottawa: Treasury Board. For more discussion, see Ben Vongdouangchanh (2006) "FAA Ushers in Sweeping New Changes to Doing Politics," *The Hill Times*, April 17, Issue 833, p. N.A.

- **Part 3 - Office of the Director of Public Prosecutions, Administrative Transparency and Disclosure Wrongdoing**

Part 3 proposed the enactment of a *Director of Public Prosecutions Act* to initiate and conduct criminal prosecutions that are within the jurisdiction of the Attorney General of Canada. Additionally, it sought to amend the *Library and Archives of Canada Act* and the *Public Servants Disclosure Protection Act*, which provided enhanced protection for whistleblowers.

- **Part 4 - Administrative Oversight and Accountability**

In this section, the government proposed amendments to the *Financial Administration Act*, which would create a new schedule to identify and designate certain officials as Accounting Officers for their organizations. These officers were expected to provide accountability before the appropriate parliamentary committees on assigned management responsibilities as set out in the Act. Other amendments were to clarify the authority of the Treasury Board with respect to internal audits in the public administration.

- **Part 5 - Procurement and Contracting**

This part was intended to amend the *Auditor General Act* to expand the class of grant recipients, contributions, and loans into which the Auditor General may inquire. It also proposed amendments to the *Department of Public Works and Government Services Act* to provide for the appointment and mandate of a Procurement Auditor. Further amendments to the *Financial Administration Act* were to provide for a government commitment to fairness, openness, and transparency in contract bidding as well as regulation-making powers aimed at preventing corruption and collusion in the bidding process for procurement contracts.

After going through the normal parliamentary and Senate procedures, and with some modifications to its original content, Bill C-2 was passed by the House and received Royal Assent on December 12, 2006. We examine the merits and shortcomings of the new *Federal Accountability Act* in the next section as well as what has taken place since the Act was proclaimed into law.

### **The FAA and the Idea of a Paradigm Shift in Public Accountability:**

Peter Aucoin (2007) in his analysis of the FAA asked this intriguing question: “After the Federal Accountability Act: Is the Accountability Problem in the Government of Canada Fixed?” He is of the view that the FAA with its accompanying Federal Accountability Action Plan (FAAP) will not have any significant effect in diminishing the negative consequences of systemic pressures, especially not with the reassertion of the traditional Canadian version of the doctrine of ministerial responsibility, for example. Henry McCandless (2006) argues strongly that the FAA is not about accountability, if it is about anything at all. In his opinion, Mr. Harper and his advisers used the term fraudulently to deceive Canadians. McCandless remarked:

The fraud is that the [Act] sets rules of conduct but has nothing to do with accountability, if it did, ‘accountability’ would [have been defined in the Act], and it isn’t. Responsibility and conduct are related to accountability, but they are different concepts. The harm is that the PM’s Accountability [Act], being silent on

accountability, suggests that the PM isn't interested in real accountability within government or to the House. And if that is the case, senior civil servants won't be interested either (11).

Joanna Gualtieri of the Federal Accountability Initiative for Reform (FAIR) is much more cynical about the FAA, especially with respect to how it deals with whistleblowing. In her view, whistleblowing is the hallmark of accountability, yet the FAA does nothing to ensure the protection of whistleblowers as promised by Mr. Harper in his election platform. She contends, for example, that the FAA does not address harassment, particularly passive retaliation from senior management (Gualtieri 2006). Hence, the FAA does not represent any meaningful changes to the accountability regime that existed before the Act came into force.

Why these cynicisms surrounding an act touted to usher in a new regime of accountability? As already indicated, the Act was passed into law in December 2006. A careful examination of the Act reveals a significant watering down of what Mr. Harper promised Canadians, especially with respect to implementing Justice John Gomery's recommendations, and the five priority areas of the Conservative platform.

One of the key promises of Mr. Harper was to revamp whistleblower legislation introduced by the Liberal government and to provide the Public Service Integrity Commissioner (PSIC) 'enforcement powers' and not mere reporting duties. Justice Gomery had recommended a number of measures including extending the definitions of the class of persons authorized to make disclosures to include all persons who work on behalf of the government, providing an open list of 'wrongdoings' that should be disclosed, providing an open list of actions that are forbidden 'reprisals,' and putting the burden of proof on the employer in cases of alleged reprisals against whistleblowers (Gomery 2006). However, according to Joanna Gualtieri, the new Act fails to deal with these issues (2006).

Gualtieri, in her analysis of the FAA, as it applies to whistleblowing, identified six major problems. First, the FAA does not provide the PSIC any enforcement powers but rather continues to report to Parliament, which is "a decade old formula that has allowed ministers to ignore betrayals of the public trust despite repeated admonishment by the Auditor General." Second, the FAA should have provided protection based on what information is being disclosed rather than the whistleblower's employment status. Further, government retaliation against whistleblowers should be a human rights issue. Third, the exemptions granted in the Act to government bodies such as Crown corporations should be eliminated since such bodies are stewards of taxpayer's money. Fourth, the FAA should have discarded the idea of obliging the PSIC to make secret forever all information gathered in the course of investigation concerning complaints of retaliation against whistleblowers. Gualtieri is of the opinion that the government's failure to do this has turned the "FAA into an anti-transparency regime by institutionalizing a gag on both details of the retaliation and the alleged government misconduct." Consequently, she argues that "any whistleblower acting under the law is gagging him or herself permanently, locking in secrecy when the public has the greatest need to know." Fifth, the Act does not ensure that whistleblowers have access to the courts and adequate legal representation. The \$1500 provided in the FAA for legal advice is "woefully inadequate against the Government's unlimited resources." Finally, the FAA should have established monetary rewards for whistleblowers. Gualtieri contends that

“the price of telling the truth is often financial ruin. The FAA’s cap of \$10,000 for pain and suffering displays a shameful disregard for the devastation and emotional scars that a whistleblower endures” (Gualtieri 2006: 5).

It is said that accountability is impossible without transparency (Kothawala 2006). This can only be achieved when there are strong rules on access to information. Access to information enables citizens to check up on the officials who run public institutions (Iacobucci 2006). According to John Reid, the Federal Information Commissioner, “under Access to Information, [one] has the right to see information about what the government is actually doing. It is the transfer of information. It is a transfer of power. It is an empowering of the citizen; it is a diminution of power of the bureaucracy.” (Reid 2003: 79) In spite the benefits of access to information outlined above, an examination of the issue of strengthening transparency and public access to information shows that the promise made by the government was not fully kept. What the Act has done, is to merely expand access to public institutions including any department or ministry of state and any parent Crown Corporation, and any wholly-owned subsidiary of such as a corporation (Government of Canada 2006).

Unfortunately, there are a number of exemptions and exclusions that undermine the usefulness of this change. These exemptions and exclusions, according the Information Commissioner, “infringe the principle that exceptions to the right of access should (1) be discretionary, (2) require a demonstration that a defined injury, harm or prejudice would probably result from disclosure, and (3) be subject to a public interest override” (Reid 2006).

In most cases, the exemptions limit what can be requested to matters of only general administration (Reid 2006). “Things Canadians might care more about – the mandated activities of the Crowns – are excluded, without injury test, without a public interest override, without oversight or review, and for all eternity.” Thus, instead of implementing what the party had promised in its platform, the government followed through on only one of the five promises made with respect to access of information (Kothawala 2006).

According to David McKie, a CBC reporter, the access to information part of the FAA is not as effective as it could be as it does not put structures in place to force the flow of more information. Many documents are heavily redacted by the prime minister’s office before being released to the public. The question is: how can a government be accountable if everything must first past scrutiny by the executive? Hence, to McKie, it has become difficult for the public to access even the most minor information.<sup>2</sup> Ultimately then, from the perspective of the Act, one could argue that the government’s access to information process favours secrecy over openness (Reid 2006).

Justice Gomery, in dealing with the issue of accountability, made a number of recommendations to strengthen the role of Parliament in providing oversight of government activities. For example, he stressed the need for the Public Accounts Committee to ensure that “Deputy Ministers, other heads of agencies or senior officials are the witnesses called to testify before it,” rather than the Ministers themselves (Gomery 2006: 201).

Unfortunately, according to one interviewee, the FAA goes in the opposite direction to Gomery who said Parliament should be the most powerful institution. Under

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<sup>2</sup> Personal Interview, May 10, 2007

Mr. Harper, the PMO has never been more powerful and the PM and cabinet are surrounded by unelected people. The FAA makes bureaucracy more culpable, without giving it more power. Bureaucracy becomes a counter to government, instead of an ally. It must be acknowledged, however, that the FAA did establish a Parliamentary Budget Officer, to support Members of Parliament and parliamentary committees with independent analysis of economic and fiscal issues and the estimates of the government, as well as to provide quarterly updates of government fiscal forecasts from the Department of Finance (Government of Canada 2006).

Another interviewee is of the view that while the establishment of a Parliamentary Budget Officer is laudable, it does not in any way enhance Parliament's ability to act as a check to the executive. The interviewee went further to assert that the Act does not restore trust in politicians, who are perceived by the public as being on an equal footing with car salesmen. The Act also seeks to break ministerial responsibility and this idea is supported by Peter Aucoin who claims:

Within days of the enactment of the FAA...it appears that the official doctrine of Ministerial responsibility and public-service accountability has reverted to its previous state...If nothing has been changed, there is no reason to think that the assignment of responsibility, as culpability, would have been different than it was had the new FAA accounting officer scheme been in place at the time of the sponsorship scandal. The minister would have blamed the deputy minister and the deputy minister still would have claimed that he was merely doing what the minister wanted. Parliament, and especially the Public Accounts Committee, of course, may come to have a very different view (2006: 14).

To overcome these difficulties, an interviewee, in the same vein as Gomery, recommended (a) making Parliament more relevant in terms of oversight activities, and (b) placing less blame on bureaucrats for problems and shifting the focus to cabinet, which represents the people.

Another promise of Mr. Harper was to bring in a new set of conflict of interest, election, and lobbying rules as part of his clean government initiative. In so doing, the FAA included new restrictions on election financing as well as a detailed regime of post-employment rules.

Many have accused the Conservatives of targeting the Liberal Party with their election financing reforms. Some Liberal Members of Parliament have expressed dismay about this part of the Act, claiming it is an attempt by the Conservatives to stifle the party forever. The Liberals are upset that the Act lowers an individual's maximum allowable donation to a party, candidate or leadership contestant to \$1,000 from the previous amount of \$5,400. According to Liberal MP Marlene Jennings, "...the Conservative Party, which became the government under Prime Minister [Stephen] Harper, designed [the limits in the bill] to try and do as much damage as possible to the Liberal Party" (Curry 2006).

The Conservatives, however, are unsympathetic to the claims made by the Liberals. John Baird, ex-president of the Treasury Board, rejected the suggestion that the changes were politically motivated. Prime Minister Harper was more blunt when he stated that "the issue has been 'studied to death', and nobody should think of changing it" (Globe and Mail 2006). Conservative MP Jason Kenney believes "that transition will be

harder on the Liberals by far...The Liberals, the party of powerful insiders, will have to try and become the party of grassroots supporters, and that's easier said than done" (Globe and Mail 2006).

Also, in the original draft of the Act, the Conservatives promised to prohibit certain public holders from lobbying for five years after leaving office. However, when the Act was finally proclaimed, these provisions were scaled down in order to appease Harper's supporters. Commenting on this, an editorial in the Globe and Mail noted:

...[A]h, but when the squawking comes from within their own party, the Tories are more flexible. Mr. Harper decided to make people who have left senior public office wait five years before lobbying the government - a much longer period than necessary to achieve the goal of keeping them honest. But when he included members of his transition team, the people who helped him move into government, all hell broke loose. Team members said they wouldn't have helped out if they had known the consequences. So, just as the Commons was passing the bill, the Conservatives slipped in a section especially for that team, giving members special grounds on which to appeal to the lobbying commissioner for exemption from the restriction (The Globe and Mail, 2006).

On the issue of conflict of interest, the Conservatives promised to institute a new regime with a strong Ethics Commissioner. The Commissioner was to be given the power to: fine violators of conflict of interest rules; prevent the Prime Minister from overruling the Commissioner on violations of the Conflict of Interest Code by members of the executive; enshrine the Conflict of Interest Code into law; close loopholes that enable ministers to vote on matters connected with their business interests; end 'venetian blind' trusts that allow ministers to remain informed about their business interest, and require all ministerial assets to be placed in truly blind trust; allow the public, not just politicians to make complaints to the Commissioner; and, subject part-time and non-remunerated ministerial advisers to the Ethics Code (Conservative Party 2005: 11).

Significantly, the Act as passed, while implementing many of the proposed conflict of interest initiatives, ends up being somewhat weak in terms of actual accountability. Liberal opposition critic, Senator Joseph Day, has asserted that the Ethics Commissioner's position lacks true potency since the commissioner still effectively reports to the Prime Minister instead of Parliament. In a letter to the Globe and Mail, Mr. Day wrote:

Buried in the act is a provision that allows the PM to ask the new ethics commissioner for secret reports on the conduct of ministers and senior officials; these reports could remain secret even if the commissioner found that the minister or official violated the Conflict of Interest Act. The Senate tried to change the section. The government refused. The (Un)Accountability Act also allows ministers and senior officials to accept a gift of any value, without reporting it to the commissioner or anyone, even if the gift "might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function," so long as the gift is from a "friend." The Senate wanted all such gifts to be reported to the commissioner (so someone would know about it). The government rejected the amendment (2007 A20).

Also, when Ethics Commissioner Bernard Shapiro wanted to look into allegations of unethical inducements surrounding the defection of Liberal MP David Emerson to the

Conservatives in 2006, Mr. Harper was quoted as saying: “this Prime Minister has no intention of ceding that jurisdiction [over making cabinet appointments] in any way, shape or form to any government official” (Globe and Mail 2007). This was in spite of the election platform claim that the role of the Ethics Commissioner would be strengthened to prevent the Prime Minister from overruling the Commissioner (Conservative Party 2005).

Further, it has been argued that “the Conflict of Interest and Ethics Commissioner will have limited mandate as to what conflict of interest areas in the public arena can be examined or reported. The commissioner is shielded from being covered under Canada’s ever so weaker Access to Information legislation” (Rubin 2007: 14). As a result, when there is such limited reporting of conflict of interest cases, public confidence will be diminished. Moreover, there are a number of weak and contradictory conflict-of-interest guidelines that are not subject to independent assessment, thus limiting what the public can and cannot know (Rubin 2007).

Reviewing what was promised and what was finally delivered, it is evident that the Conservative government has fulfilled its election promise of ushering in a new accountability act. However, a close scrutiny of the new Act reveals little in the way of substantive measures to address deficiencies (real or perceived) in the old regime that might have led to the sponsorship scandal, or any other government wrongdoing.

### **Conclusion:**

It was not the intention of this paper to dwell on the politics of Mr. Harper and the Conservative government, but rather to highlight the mistakes that commonly made in policy making. We set out to address several important questions concerning the use of the sponsorship scandal as a focusing event to address what was perceived as the accountability deficit in the Canadian political system. The questions focused on whether Mr. Harper and the Conservatives were genuinely interested in addressing the accountability deficit or just using the Sponsorship scandal as a tool to gain power.

The shortcomings identified in the final Act as discussed above may be attributed to a number of factors. First, formulating and proposing legislation while in opposition, is clearly much easier than when actually controlling the levers of government. As Good has cleverly noted:

The promises made by politicians for improving accountability – when they know they are in opposition and not directly responsible for immediate implementation – are invariably bold, all encompassing, and sometime ill considered. Paul Martin, within days of his defeat and within hours of the release of Gomery’s recommendations said that he would implement all 19 of them. Yet, while he was in government, he was unprepared [to] make deputy ministers accountable for the legislative duties directly assigned to them. Stephen Harper, while in opposition, put forward his proposed Federal Accountability Act. Since the election, he is discovering that the reality of governing on earth rubs up against the principles of accountability developed in heaven (2006: 4)

In short, the relative inexperience of the new Conservative Party in terms of governing manifested itself in an ambitious policy that was written without a clear understanding of the implications should the Party gain power. The FAA was assembled as a response to

the revelations stemming from the Auditor General's Report and the Gomery Inquiry, and was used ostensibly as a platform to detail what the party would do if elected. However, while the Conservatives flaunted the FAA as its blueprint for governance, others viewed it as simply representing the party's policy views for electoral purposes, and not as such a blueprint (Good 2006; Leadbeater 2006; Sears 2006). We contend that the aim of the proposed act was to hold the Liberal government accountable and was never meant to be implemented. As one interviewee claimed, "the Conservatives had no idea that they would form the next government."

Second, the FAA can hardly be seen as a transformational piece of legislation. This is because it deals, to a large extent, with rules and restrictions such as those concerning election financing rather than structural changes to enhance accountability. The FAA is in fact too limited in terms of actual accountability mechanisms. What is really needed is more transparency and openness. For example, the Act should have revamped and expanded access to information and whistleblowing legislation, two important ingredients of any accountability regime. In fact, this was well noted prior to its enactment. Commenting on the original bill submitted to Parliament, Alan Leadbeater, the deputy information commissioner noted that although the Conservatives claimed that the proposed Act was designed to prevent another sponsorship scandal, it would instead "reduce the amount of information available to the public, weaken the oversight role of the Information Commissioner, and increase government's ability to cover wrong doing, and shield itself from embarrassment." Leadbeater further claimed that many of the documents regarding the sponsorship scandal, which were uncovered by journalists using the *Access to Information Act*, would have been sealed for years (or even forever) under the provisions in the proposed FAA (Weston 2006: 25).

Finally, the FAA was based on the erroneous assumption that government was dirty and therefore, needed to be cleaned up. To most politicians, the best way to undertake this was with the introduction of more rules and regulations. However, as several of our interviewees noted, there was no reason to clean up government as it was not that dirty to begin with. We need to understand that there will always be some level of illegal activity in government and no amount of new legislation such as the FAA can guarantee that another sponsorship scandal will not occur. According to one interviewee, while attempts to fix the system of accountability with new legislation are well intended, they often simply constipate the system.

There is no doubt that the sponsorship scandal involved a relatively few bad apples. However, the response to the scandal and the assumption that more rules and more complex procedures will make the system safe from this kind of abuse may lead to other disastrous consequences (Iacobucci 2006). The FAA, for example, with its many rules has the potential to inhibit creativity and productivity in the public service.

All of these problems have come about as the result of Mr. Harper's use of the Sponsorship scandal as a focusing event to make policy. The scandal was a relative limited affair and although it tainted the reputation of the public service, it did not in any significant way draw its core values into question (Iacobucci 2006). Hence, the sponsorship scandal did not merit the attention it was given by Mr. Harper and the Conservative Party. The idea of using the scandal as vehicle to create a new culture of accountability has been described by Sears as "overblown nonsense." In his view:

Whatever its motivations, the 255 page Accountability Act is a long, contradictory and, in the end, impossible menu. The policy ingredients and flavours clash, the costs and portions don't match and the promises of gastronomic bliss are hilariously improbable. It's a menu drafted by a chef with no kitchen experience... (19-22).

In essence, the Conservatives misdiagnosed the problems and this led to the wrong medicine (the FAA) being prescribed. To Sears, the cure to fixing the accountability problem as perceived by Mr. Harper and the Conservative Party "was devised for an entirely different disease." (2006: 21) Thus, the instruments developed in the FAA will not lead to the kind of changes espoused by Mr. Harper during the 2006 election campaign. As alleged by one Member of Parliament, the Act was a cleverly packaged product that was sold to Canadians by Mr. Harper, who is well-known for such tactics. It is retail politics without a money-back guarantee. To the MP, "retail politics is not a process but ideology turned into a product displayed in a window." Consequently, the policy response was more political symbolism than a genuine attempt to usher in a new accountability regime to address a perceived accountability deficit.

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