
Gomery: Missed Opportunity or Blessing in Disguise?

Ruth Hubbard and Gilles Paquet

As Justice Gomery himself observed, the sponsorship affair that his Commission investigated was an aberration. A few bureaucrats and a few businessmen conspired with a few politicians to take advantage of the wind of panic that had struck the federal Liberal government, and the Quebec wing of the federal Liberal Party in Ottawa, after the 1995 referendum on separation in Quebec. A good deal of federal money was spent without much scrutiny or diligence that ended up as a quick profit for a number of ad firms, and some of it found its way into the coffers of the Quebec wing of the federal Liberal Party.

Will Canadians remember Gomery as simply having stimulated some much-needed spring-cleaning on the accountability front? Or will they regard the Gomery inquiry as the trigger that has led to a fundamental transformation of the Canadian political system?

A missed opportunity

Gomery I as selective inattention

In the limited tasks that he chose to tackle, Gomery was not very helpful overall. For instance, in his first report, selective inattention often verged on the irresponsible. Even though Gomery I explicitly searched for culprits, his scrutiny of the behaviour of Ran Quail as Deputy Minister of the department at the center of the sponsorship controversy (but also of many other bureaucrats and politicians) was at best unduly loose.

While his inquiry led Gomery to question the functioning of the Westminster system, and to the lack of due diligence (to put it mildly) of many politicians and bureaucrats in many cases, he did not have much "direct evidence" of reprehensible sins of commission. Yet, guilty parties were nonetheless needed. So Gomery I distrib-

uted exoneration and guilty verdicts somewhat shoddily, even arbitrarily. His choices are not likely to be vindicated by the courts in the case of the parties that were indicted, but what about those who were unduly forgiven?

Gomery II as myopia

Gomery's incursion into administrative repairs was not totally ineffective. Suggestions about making senior officials more accountable, giving more resources to parliamentary oversight committees, eliminating privileges for political staff and strengthening the power of the Registrar of Lobbyists are not objectionable.

But the multiplication of control mechanisms, the heavier paper trail, and the suggestion that the role of the Clerk of Privy Council be dismembered were ill inspired. More significantly, as a whole, the Gomery II recommendations urged a dramatic curtailment of the power of the government, and a significant increase in the power of the unelected bureaucracy.

Most important of all was the consequential decision of Gomery II to stay away from the very core sources of the difficulties that had triggered the sponsorship affair: the explicit use of advertising and the social marketing techniques by the federal Liberal government to "sell Canadian federalism" since the mid-1970s (the unholy Canadian Unity Information Office initiative of 1977 in response to the election of a separatist government in Quebec), the ideology of centralization-or-chaos of the federal Liberal party (our way or the highway approach in the Trudeau-Chrétien tradition that imposed an oppressive federalism on the provinces and regions), etc. These were all "underpinnings" of the sponsorship affair.

Gomery's immediate aftermath

The immediate reaction to Gomery's second report was largely uncritical and



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overblown. Since the public had been led by imprudent statements of the Auditor General and the infotainment of the Gomery road show to become convinced that greed, corruption, and mismanagement were rife in the federal government, better accountability through more watchdogs with greater power - as proposed by Gomery II - was seen as the obvious answer.

The government of the day could not choose to be anywhere except on the 'side

of the angels'. So the temptation to apply government-wide idealized management frameworks - what Ian Clark & Harry Swain (Canadian Public Administration 2005) called "the law of mandated utopias" – proved irresistible. Better accountability was one of the five priorities of the Conservative election campaign. And not surprisingly, in response to this overheated environment following the Gomery II report, it became the central concern of the first legislation put forward by the new Conservative government.

Gomery focused exclusively on the monitoring and accountability dimensions of the sponsorship affair. He chose to ignore completely the pathogenic nature of both the centralized mindset of the federal Liberal governments (from Trudeau to Chrétien) and the politics of persuasion and coercion that they had pursued with citizens and provinces. This did not help to draw the attention of the citizens and governments to the failures of the flawed philosophy of governance on which such activities had been built.

A blessing in disguise

Nevertheless, Gomery could not succeed in completely occluding these root causes of the sponsorship affair. In that sense, the Gomery inquiry turned out to be a blessing in disguise.

First it helped to create a climate of change in Canada even while it deflected attention away from the deeper problems of the federation. Second, it provided the Harper government – once elected – with a lever (i.e. 'standing up for accountability') to start some house cleaning quickly and to address the difficulties generated by an era of oppressive centralized federalism.

With respect to the house-cleaning work, many of Gomery's recommendations were helpful and the most unhelpful suggestions have either been discarded entirely by the new government (like fragmenting the role of the Clerk of Privy Council or using an Alberta-like process to choose deputy ministers), or have been adjusted to make them more reasonable. Examples of the latter would be making deputy ministers accounting officers for their responsibilities related to departments – but within the framework of ministerial responsibility – and using a new Public Appointments

Appendix 1 Gomery & Harper Government in Brief	
Gomery Recommendations	Federal Accountability Plan
Clarifying roles & responsibilities	
<ul style="list-style-type: none"> • deputy ministers and senior officials 'accountable before' the Public Accounts Committee (PAC) 'in their own right' for their statutory and delegated responsibilities (R4) • ensuring ministers are not called to PAC as a general rule (R8) 	<ul style="list-style-type: none"> • deputy ministers accounting officers for their responsibilities vis à vis their departments, within framework of ministerial responsibility (slightly mitigated version of campaign platform)
Strengthening Parliament	
<ul style="list-style-type: none"> • *providing more resources for parliamentary committees (R1) and especially PAC (including research) (R3) • *more stability in PAC membership (R7) • more power and resources to the Registrar of Lobbyists (e.g. to be made an officer of Parliament, with the time frame for investigation and prosecution extended from 2 to 5 years) (R15) • insisting on an even greater paper trail from public servants (R16) • *requiring special reserves to be managed centrally, and reported on to the House within a year (R9) 	<ul style="list-style-type: none"> • new Parliamentary Budget Officer in Library of Parliament (slightly mitigated version of campaign platform) • agreed • expand scope of AG to include most recipients of federal funding under agreements (mitigated from campaign platform) • strengthen role of Ethics Commissioner (combined job for House & Senate, must have judicial or quasi-judicial background) plus slightly mitigated version of campaign platform • uniform approach to appointing agents of Parliament (slightly mitigated campaign platform)
Constraining the power of the prime minister	
<ul style="list-style-type: none"> • *fragmenting the job of the Clerk of Privy Council who is to remain mainly Cabinet Secretary. The role of 'head of the public service' is to be shifted to the Secretary of the Treasury Board (i.e. to the employer), the role of deputy minister to the prime minister disappears or goes elsewhere, and someone else (presumably) becomes the Clerk of the Privy Council (i.e., the keeper of the formal Privy Council processes). (R13) • *using an open and competitive process for hiring deputy ministers, with ministers deciding, similar to what is done in Alberta (R12) • making appointments, evaluation, and dismissal of CEO's of crown corporations matters to be handled by the board of the corporation; and, after the initial round of appointments to boards, board vacancies being handled by the board itself. (R18) 	<ul style="list-style-type: none"> • ensure appointments at highest levels are consistent with the rest, which are under oversight of PSC (not in campaign platform) • new Public Appointments Commission (in PM's portfolio) to oversee, monitor, report annually to PM, set code of practice, monitor for compliance for all GiC appointments to agencies, boards, commissions, crown corporations. Annual Report tabled in Parliament. Mitigated version of campaign platform.
More protection for public servants	
<ul style="list-style-type: none"> • *designing and legislating a charter of public service (R2) • *instituting an over-ride letter from the minister (in case of disagreement with the deputy minister in certain cases) with a copy sent to the Comptroller General and specifically made available there for the Auditor General to examine (R5) • *having deputy ministers appointed for at least 3 years (preferably 5), and ADMs too (R6) • providing no priority for political staffers' appointment to the public service (R10) • stituting a code of conduct for political staffers • *stating clearly that they have no authority to give directives to public servants, and requiring them to have training in public administration (R11) • *making violation of section 34 of the Financial Administration Act (FAA) (including sub section (1) certifying payment) an offence leading to dismissal without compensation (R17). 	<ul style="list-style-type: none"> • analogous process (slightly mitigated version campaign platform) • agreed (& can apply for internal positions after 3 years)

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Commission within the prime minister's portfolio to make all Governor-in-Council appointments to agencies, commissions, boards and crown corporations.

A brief comparison of the recommendations of Gomery and the Federal Accountability Plan is contained in Appendix 1.

But the discontent uncovered by Gomery

Appendix 1 – continued Gomery & Harper Government in Brief	
Gomery Recommendations	Federal Accountability Plan
Procurement	
• change the current definition of ‘advertising’ to conform to advertising industry standards (R14)	• slightly mitigated version of campaign platform
Reform political party financing	
	• changes as proposed in campaign platform
Ban secret donations	
	• changes as proposed in campaign platform
Government polling & advertising	
	• slightly mitigated version of campaign platform
Protect whistleblowers	
	• agent of Parliament & new Public Servants Disclosure tribunal with authority for remedy & discipline plus slightly mitigated version of campaign platform
Strengthen access to information	
	• expand scope of Access to Information Act to include specific crown corporations • table separate draft bill of Commissioner’s recommendations plus discussion paper of issues and options. This is different from the campaign platform (which was going to implement them)
Strengthen internal audit in departments	
	• implementation of new TB Internal Audit Policy (similar to previous government) plus compliance framework
Director of Public prosecutions	
	• new Director of Public Prosecutions as per campaign platform

about the ways of the federal Liberal party also generated an impulse to govern differently. Perhaps more important than the modification of the public administration apparatus that it brought about, is a change in the philosophy of governance that it has helped bring forth rather quickly in the new government.

The current government has said that ‘making the federation work better’ is one of its key priorities. So the “friendly dictatorship” – as Jeffrey Simpson would call it – of the last Liberal Party era in Ottawa seems to be on the way out. Indeed, in its very first budget, the Harper government has

announced a plan to restore fiscal balance, notwithstanding that a “fiscal imbalance” was denounced as a “logical impossibility” by the Chrétien-Martin governments.

The “Restoring Fiscal Balance in Canada” document that was part of the May 2, 2006 budget, states clearly that the federal government à la Harper will ‘stick to its core federal knitting’ while drawing attention to important pan-Canadian work that needs to be carried out by the provinces (e.g. reducing internal trade barriers).

So the shadow of over-centralization and top-down federalism that has been cast for the last thirty years by the federal Liberal

Party may be fading away faster than anticipated, as an unintended consequence of the destructive aspects of the politics of persuasion exposed by Gomery.

Conclusion

It would not be prudent to predict a thawing of the Canadian ethos that will proceed in a revolutionary way or advance quickly. It will proceed *à petits pas, par morceau, et de manière oblique* – this is the Canadian way.

Harper will make changes to loosen the federation even more. But there are strong vested interests that will fight hard to maintain their grip on power.

Resistance may come: from MP’s whose ‘traditional’ functions will diminish enormously, and who will need to discover new ones; from senior federal public servants who are bound to see their power base weakened as open-federalism experiments built on a philosophy of subsidiary delegate to the local and provincial level all that can be done well there; and from the federal public sector unions who will inevitably face a future with much less clout as federal retrenchment brings fewer members.

So for all of its flaws, Gomery may turn out to be more than just a stimulus to improving accountability. It may have moved, unwittingly, Canada further and faster down the path of fundamental reform of the federation.

References

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