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# The Rise of Court Government in Canada\*

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In 1956, C. B. Power, a senior minister in the Mackenzie King government, observed with deep concern that the war years had strengthened the prestige and power of Cabinet at the expense of Parliament.<sup>1</sup> Power's concerns, as history has shown, were well founded. Ned Franks has stated that "unquestionably Parliament has become a less prominent place for major political announcements and debates, and the decline is continuing."<sup>2</sup> In this article, I argue that Cabinet has joined Parliament as an institution being bypassed, that it is clear that effective power no longer resides with the prime minister acting in concert with his "elected Cabinet colleagues."<sup>3</sup> Court government has taken root in Canada. By this I mean that in the late 1990s, effective power rests with the prime minister and a small group of carefully selected courtiers. These include key advisors in his office, two or three senior cabinet ministers (notably the minister of finance), carefully selected lobbyists, pollsters and other friends in court, and a handful of senior public servants.

In the latter part of the twentieth century, Canadians witnessed major changes in the way they were governed. The changes were nei-

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1 C. G. Power, "Career Politicians: The Changing Role of the M.P.," *Queen's Quarterly* 63 (1956), 488-89.

2 C. E. S. Franks, "The Decline of the Canadian Parliament," *The Hill Times* (Ottawa), May 25, 1998, 15.

3 See Denis Smith, "President and Parliament: The Transformation of Parliamentary Government in Canada," in Thomas A. Hockin, ed., *Apex of Power: The Prime Minister and Political Leadership in Canada* (2nd ed.; Scarborough: Prentice-Hall, 1977), 114. See also David E. Smith, "Bagehot, the Crown and the Canadian Constitution," this JOURNAL 28 (1995), 619-35.

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ther sudden nor, for the most part, introduced with much fanfare. They were gradual, which may explain why they attracted little notice. The public debate in Canada since the late 1960s focused on actual or proposed constitutional changes and not on the internal machinery of government. In any event, changes to the machinery of government rarely, if ever, enjoy much media or public profile. Yet the evolution of the machinery of government, particularly within the federal government, has had far-reaching consequences for the public service, public policy, Canadian federalism and, ultimately, for Canadians themselves.

This article challenges long-established conventions or understandings about how our government works. Gordon Robertson, former secretary to the Cabinet, stated in 1971 that in our system "ministers are responsible. It is their government."<sup>4</sup> The Privy Council Office, in its 1993 publication on the machinery of government, argued that "we operate under the theory of a confederal nature of decision making where power flows from ministers."<sup>5</sup> I maintain, to the contrary, that power no longer flows from ministers, but from the prime minister, and unevenly at that.

The above speaks to the evolution of how policies are struck and decisions are made in Ottawa. J. S. Dupré argued that "institutionalized" Cabinet replaced the "departmentalized" Cabinet in the late 1960s and early 1970s. Individual ministers and their departments lost a great deal of autonomy to full Cabinet, or to shared knowledge and collegial decision making.<sup>6</sup> This era did not last very long before court government started to take root. To be sure, information was gathered at the centre. However, it was gathered for the benefit of the prime minister and a handful of senior advisors operating in the Privy Council Office (PCO) and the Prime Minister's Office (PMO), not for collegial decision making. Court government took root in Ottawa under Pierre Trudeau and, if anything, it grew stronger under both Brian Mulroney and Jean Chrétien.

This article identifies the central forces that have driven the development of court government and discusses its operation. It outlines instruments of government and policy tools which facilitate governing from the centre. It concludes with a review of the implications court government holds for the public service and for Canadians.

4 Gordon Robertson, "The Changing Role of the Privy Council Office," *Canadian Public Administration* 14 (1971), 497.

5 Canada, *Responsibility in the Constitution* (Ottawa: Privy Council Office, 1993).

6 See J. S. Dupré, "The Workability of Executive Federalism in Canada," in H. Bakvis and W. Chandler, eds., *Federalism and the Role of the State* (Toronto: University of Toronto Press, 1987), 238-39.

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**Abstract.** The article challenges long-established conventions about how Canada's federal government works. It argues that Cabinet has joined Parliament as an institution being bypassed. In the late 1990s, political power is in the hands of the prime minister and a small group of carefully selected courtiers rather than with the prime minister acting in concert with his elected cabinet colleagues. The article reviews the forces that have led to the rise of court government and the policy instruments and administrative tools that enable it to function. National unity concerns, the role of the media and lobbyists, as well as reforms at the centre of government and globalization, have all served to reshape how policy and decisions are made in the government of Canada. The changes hold important implications, not just for cabinet government, but also for the public service and Canadians themselves.

**Résumé.** L'article remet en question des idées acceptées de longue date sur le fonctionnement du gouvernement fédéral canadien. Il soutient que, désormais, le pouvoir échappe au cabinet autant qu'au parlement. À la fin des années quatre-vingt-dix, le pouvoir politique est concentré entre les mains du Premier Ministre et d'un petit groupe de courtisans soigneusement choisis, au lieu d'appartenir à un Premier Ministre qui agirait de concert avec ses collègues élus du cabinet. L'article examine les forces qui sont à l'origine de ce gouvernement monarchique et les outils politiques et administratifs qui en assurent le fonctionnement. Les problèmes d'unité nationale, les médias et les lobbys, aussi que les réformes du gouvernement lui-même et la globalisation, ont également contribué à changer la façon dont les politiques et les décisions sont adoptées au sein du gouvernement canadien. Ces changements ont eu d'importantes répercussions non seulement sur le cabinet, mais sur la fonction publique et sur l'ensemble des Canadiens.

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## The Forces

It is ironic perhaps that an important development that gave rise to court government in Ottawa was the 1976 election to office of the Parti Québécois, a provincial party committed to taking Quebec out of Canada. The impact was felt in every government building in Ottawa. But nowhere was it more strongly felt than in the Langevin building, home to both the PMO and the PCO.

One's place in history matters a great deal to prime ministers. No Canadian prime minister wants the country to break up under his or her watch. Thus one of the main tasks at hand is keeping the country united. No other politician in Canada feels so directly responsible for Canadian unity as does the prime minister. Indeed, should Canada break up, the prime minister would be the first to be held to account.

In any event, briefing material prepared by the PCO for new ministers makes it clear that "the Prime Minister has direct responsibility for the conduct of federal-provincial relations."<sup>7</sup> Federal-provincial relations cover virtually every aspect of the federal government's decision-making process. Prime ministers invariably believe that provincial governments are much better at understanding and applying this than is the federal government. They believe that rarely does a spontaneous or isolated initiative come from a provincial government, particularly in the case of Quebec, when sovereignists hold power. The thinking is

7 Based on material provided to me by a former senior official with the Federal-Provincial Relations Office, Ottawa, January 1993.

that provincial governments have a game plan in their relations with the federal government, and that everything fits into it.

In interviews with PCO officials and federal deputy ministers, many claimed that provincial governments are much better at co-ordinating their relations with the federal government than vice versa.<sup>8</sup> To be sure, provincial governments are smaller, but that does not tell the whole story. One senior PCO official, for example, reports that "all letters coming from the Quebec Government to federal departments and agencies are written by two people. Imagine if we tried to do that."<sup>9</sup> The federal government does not try to do that, but it does from time to time ask one, several or, in some instances, all departments to check with the centre of government before launching an initiative, however limited, which could have implications for federal-provincial relations, particularly in Quebec. Since the Parti Québécois' election in 1976, very few issues have been given comparable attention.

The preoccupation with national unity tends to recast substantive policy issues into the question of their impact on Quebec and the likelihood of securing federal-provincial agreements. There are plenty of examples. Andrew Cooper, in his comparative study of Canadian and Australian foreign affairs, writes,

a tell-tale sign of how Canada's economic and diplomatic strategy was subordinated to political tactics in agricultural trade was the routing of all important decisions in this area . . . through the central agencies of the Prime Minister's Office and the Privy Council Office. The decisive impact of the constitutional issue in this matter inevitably stymied the government's ability to perform effectively in the concluding phase of the Uruguay Round.<sup>10</sup>

The participants directly involved in recasting or rerouting issues are, for the most part, political strategists or generalists operating at the centre and are not usually specialists in health care, social or economic development policy, and so on.<sup>11</sup> They are also often directly tied to the prime minister and his office in one way or another.

Prime Minister Pierre Trudeau established in 1975 a central agency to deal with federal-provincial relations. Ever since, federal-provincial relations have enjoyed a strong presence at the centre of

8 See Donald J. Savoie, *Governing from the Centre: The Concentration of Political Power in Canada* (Toronto: University of Toronto Press, 1999).

9 Quoted in *ibid.*, 153.

10 Andrew F. Cooper, *In Between Countries: Australia, Canada and the Search for Order in Agricultural Trade* (Montreal: McGill-Queen's University Press, 1997), 217.

11 See David Cameron and Richard Simeon, "Intergovernmental Relations and Democratic Citizenship," in B. Guy Peters and Donald J. Savoie, eds., *Revitalizing the Public Service: A Governance Vision for the XXIst Century* (forthcoming).

Ottawa's decision-making processes. The responsibility has always been a part of the Privy Council Office or has enjoyed separate status. It has never, however, shrunk to pre-1975 days, when it had only about eight officials.

What kind of federal-provincial issue can involve the centre of government and even the prime minister? The short answer is anything, everything and it depends. There are no set rules. All major federal-provincial issues qualify, of course, but some minor ones can too, and on a moment's notice. The level of funding for a specific programme, or whether a federal programme applies in one region but not in Quebec (or vice versa), can appear on the prime minister's radar screen. It will make it to the radar screen if it gains visibility in the mass media.

The prime minister, it will be recalled, was firmly in charge of the failed Meech Lake and Charlottetown constitutional accords. Neither initiative was born out of Cabinet's collective decision making. Similarly, Chrétien's Verdun speech on national unity in 1995, where firm commitments were made to Quebecers, was drafted by his advisors and others at the centre. Cabinet was not consulted on its contents, let alone asked to make a contribution.<sup>12</sup>

Provincial premiers have direct access to the prime minister and do not hesitate to pursue an issue with him. If the prime minister decides to support a premier, then the issue is brought to the centre of government in Ottawa for resolution. Commitments are made between two first ministers, for whatever reason, and the prime minister cannot risk the system or the process not producing the right decision. As a result, someone at the centre will monitor the issue until it is fully implemented. When that happens, ministers and their departments inevitably lose some of their power to the prime minister and his advisors. Examples abound. In the summer of 1997, Frank McKenna, premier of New Brunswick, put two proposals to Chrétien during a golf game: that the federal government support a conference on the economic future of Atlantic Canada, and that it cost-share a new highways agreement to continue with the construction of a four-lane Trans-Canada highway. The prime minister agreed and instructed his officials to make it happen. One government agency provided some funding to support the conference, and several federal ministers, including the prime minister, attended it. Officials, meanwhile, were instructed to prepare a Treasury Board submission to secure the necessary funding for the highways construction agreement. Within a few weeks, everything had been sorted out and an announcement was made on both an Atlantic Vision conference and a new Canada/Highways agreement. The prime minister did not ask Privy Council and the Treasury Board Secretariat or relevant department officials to prepare a proposal and submit it for con-

12 See Savoie, *Governing from the Centre*, 152.

sideration in the government's decision-making process. His instructions were clear—make these two initiatives happen. Such incidents are not daily occurrences in Ottawa; nor do all federal-provincial projects enjoy the same status. But they are revealing of what happens when the prime minister decides to get involved.<sup>13</sup>

In 1998, in the final planning stages of the post-TAGS (The Atlantic Groundfish Strategy) initiative for unemployed fishery workers, Premier Brian Tobin of Newfoundland expressed his deep disappointment over the slow progress of the talks and the proposed level of funding. He called the Cabinet “derelict” and said that the relevant federal minister, Pierre Pettigrew, was not up to the task. He then appealed to Chrétien to get directly involved. A few days later, *The Globe and Mail* reported that the “Prime Minister's Office concluded in the final analysis that there was a case to be made that recipients under [TAGS] had previously been promised five years of support to wrap up the programme a year early because it was exceeding its \$1.9 billion budget. Therefore, the money for the East coast was bumped up.”<sup>14</sup> In the end, the matter was resolved in a series of bilateral discussions between Tobin and Chrétien, with the federal Cabinet essentially standing on the sideline. As the media reported, Chrétien and his office took full control of the final negotiations, even though a seven-member ad hoc committee of Cabinet had been established to review post-TAGS measures and the finance minister, Paul Martin, had indicated that only a modest amount of funding (\$150 million) would be made available.

The prime minister's direct involvement is not limited to Atlantic Canada or to premiers from the same political party. In early 1997, he came back from a visit to British Columbia and instructed the Treasury Board to prepare the necessary documents to spend \$50 million to support a variety of projects. He had agreed to this funding at a private meeting with Premier Glen Clark and made it clear that the commitment had been made and the matter was not for consideration. Treasury Board was simply told to make it happen. One official who worked on the submission said, “We had been told time and again by central agencies ‘don't come calling for new money for projects. There is simply no new money.’ Then all of a sudden we get word that we have to prepare a Treasury Board submission to spend new money in British Columbia.”<sup>15</sup> In 1987, Prime Minister Brian Mulroney, after a late-night telephone conversation with Premier Grant Devine of Saskatchewan, agreed to a \$1 billion rescue package for prairie farmers. More-

13 Ibid., chap. 4.

14 “Ottawa Sweetens Aid for Fisheries,” *The Globe and Mail* (Toronto), June 19, 1998, A1, A5.

15 Consultation with an official with Western Diversification Department, Ottawa, December 1997.

over, it was widely known in Ottawa that Mulroney and John Crosbie were the only ministers in favour of additional federal government investment in the Newfoundland Hibernia project after Gulf Oil decided to walk away from it.<sup>16</sup>

### **The Mass Media**

Federal-provincial issues are not the only ones that make it to the prime minister's radar screen. All important files are candidates. But what makes a file important is not at all clear. Again, it depends on the circumstances. And, again, the attention of the mass media can, on very short notice, turn an issue, however trivial, into an important file. When this happens, there is no distinction made between policy and administration. A file that receives media attention becomes political and at that point the prime minister and close advisors will want to oversee its development. Without putting too fine a point on it, the front page of *The Globe and Mail*, CBC/Radio-Canada or CTV/TVA news report can make a file important, whatever its scope or nature.

There is ample evidence to suggest that how the media go about their work has changed substantially in the latter part of the twentieth century. The media are now important political actors in their own right. By all accounts, they are also more aggressive. Television, and its tendency to turn to a 30-second clip to sum up major policy issues or, much more often, to report on something gone wrong in government, has had a profound impact on government operations. Former cabinet ministers in both Liberal and Conservative governments have commented, in some cases in the strongest of terms, on the changing role of the media.<sup>17</sup> The media, much like society itself, are far less deferential to political leaders and political institutions. Political leaders and government officials must continually be cautious of letting their guard down when meeting the press.

The media also hone in on party leaders at election time rather than on selected party candidates, including those enjoying a high profile. Journalists buy seats on the chartered aircraft of party leaders and follow them everywhere. In Canada, at least, the media and, by extension, the public, focus on the clash of party leaders. For one thing, there are the leaders' debates on national television, in both English and French. How well a leader does in the debates can have an important

16 Based on information provided by Senator Lowell Murray, former Mulroney cabinet minister, Ottawa, July 1998.

17 See, among many others, Donald Johnston, *Up the Hill* (Toronto: Optimum, 1986); John C. Crosbie, *No Holds Barred: My Life in Politics* (Toronto: McClelland & Stewart, 1997); and Erik Nielsen, *The House Is Not a Home* (Toronto: Macmillan, 1989).



impact, or at least be perceived to have an important impact, on the election campaign and its outcome.<sup>18</sup> It is widely accepted in the literature, however, that “debates are more about accidents and mistakes than about enlightenment on the capabilities of candidates to govern.”<sup>19</sup>

Increasingly, Canadian political leaders would appear to be the only substantial candidates in the election race. In the past, Canada had powerful cabinet ministers with deep roots in the party or strong regional identification and support. Jimmy Gardiner, Chubby Power, Jack Pickersgill, Ernest Lapointe, Louis St Laurent, Don Jamieson and Allan MacEachen readily come to mind. Canada no longer seems to have powerful regional or party figures who can carry candidates to victory on their coattails or speak to the prime minister from an independent power base in the party.

In Canada, winning candidates on the government side are aware that their party leader’s performance in the election campaign explains in large measure why they themselves were successful. The objective of national political parties at election time is more to sell their leaders to the Canadian electorate than it is to sell their ideas or their policies. Canadian elections invariably turn on the question of who—which individual—will form the government.<sup>20</sup> It should come as no surprise, then, that if the leader is able to secure a majority mandate, the party is in the leader’s debt, and not the other way around.

National political parties, at least the Canadian variety, are not much more than election-day organizations, providing the fund-raising and poll workers needed to fight an election campaign. They are hardly effective vehicles for generating public policy debates, for staking out policy positions, or for ensuring their own party’s competence once in office. Robert Young argues that “the Pulp and Paper Association has more capacity to do strategic analytical work than the Liberal and Conservative parties combined.”<sup>21</sup> Sharon Sutherland points to the omnipresent regional factor in Canadian politics as a major reason why national political parties are not good vehicles to debate and formulate policy positions. She writes, “We do not have party government in the national institutions because of the lack of capacity of parties to reconcile inside themselves regional interests from across the whole country.”<sup>22</sup> Regional cleavages in Canada dominate the national public pol-

18 Richard Johnston et al., *Letting the People Decide: Dynamics of a Canadian Election* (Montreal: McGill-Queen’s University Press, 1992), 244.

19 Nelson W. Polsby and Aaron Wildavsky, *Presidential Elections: Strategies of American Electoral Politics* (New York: Free Press, 1991), 246.

20 Johnston et al., *Letting the People Decide*, 168.

21 Quoted in Sharon L. Sutherland, *Does Westminster Government Have a Future?* Occasional Paper Series, 11 (Ottawa: Institute of Governance, 11 June 1996), 5.

22 *Ibid.*, 11.

icy agenda, and national political parties shy away from attacking regional issues head on for fear they will split the party along regional lines and hurt its chances at election time. At least in the parties that have held power in Ottawa such issues are considered so sensitive and so politically explosive that they are better left in the hands of party leaders and a handful of advisors.

Since Trudeau, Canadian prime ministers have made themselves into television personalities. The same cannot be said for cabinet ministers. A Gallup poll conducted in 1988 is very revealing on this point. It reported that only 31 per cent of respondents could name a *single* cabinet minister four years after the Mulroney government had come to power. In addition, only 5 per cent of the respondents could identify Don Mazankowski, deputy prime minister and one of the most, if not the most, powerful members of Mulroney's Cabinet.<sup>23</sup>

The age of 24-hour television news programming and the intense competition between the electronic and the written media have placed a relentless pressure on journalists to produce something new or provocative.<sup>24</sup> In addition, the electronic media can hardly follow a government decision-making process and, in any case, they have little interest in describing how it works. Their focus is on political actors, to the one who matters the most to their audiences, and the one who is turned to for an answer to any question in any policy field is the prime minister.

In addition, the media have a greater capacity than ever before to ferret out errors or miscues in government. Access to information legislation is one factor in this development. Giles Gherson, a leading media figure in Ottawa and a former policy advisor in the federal Department of Human Resources, explains: "To address the access to information issue . . . I saw it myself that officials are extremely leery of putting things on paper that they wouldn't like to see made public or find its way to the media, several months later, that could be embarrassing to the minister."<sup>25</sup> Conrad Winn, a pollster, argues that access to information has seriously inhibited the ability of government departments to ask the right question when commissioning a survey. He explains, "The bottom line for the average public servant is don't embarrass the minister, that is the surest way to have your career stopped or slowed down. If you have polls that ask all kinds of questions that would reveal the truthful complexity of what people think . . . then [the polls] will inevitably show the public doesn't like something the government does."<sup>26</sup> Hugh Winsor, a *Globe and Mail* journalist, readily

23 See Crosbie, *No Holds Barred*, 301.

24 See, for example, David Taras, *The Newsmakers: The Media's Influence on Canadian Politics* (Scarborough: Nelson, 1990).

25 Public Opinion, *This Morning*, December 3, 1997.

26 Ibid.

admits that the media often take advantage of access to information to get at a story.<sup>27</sup>

The above explains, at least in part, why prime ministers and senior public servants are concerned to promote “error free” government. It has been reported that when Chrétien chaired his first cabinet meeting he had a stern warning for his ministers: “The first person who makes a mistake will be out.”<sup>28</sup> Paul Tellier, secretary to the Cabinet under Mulroney, announced at one of his weekly breakfast meetings with deputy ministers that he wanted “error-free administration.”<sup>29</sup> There can be a thin line between “error-free” and “controversy free” government. There is, of course, a limit to how many controversies the government can manage, and the centre of government will want the “government” to focus on the issues that matter the most to the prime minister and manage any controversies that may flow from them. Tom Axworthy, principal secretary to Trudeau, writes that the political leadership wishes to “master events” and states that “mistakes avoided are just as important as bills passed.” The best way to avoid mistakes is “to avoid surprises.”<sup>30</sup> Al Johnson, a former senior deputy minister, in an “autobiographical” perspective on public management in Canada, stressed the importance political leadership attaches to “error-free” administration.<sup>31</sup>

To avoid “surprises” requires a strong capacity at the centre of government to monitor developments in government departments. The Prime Minister’s Office and the Privy Council Office, in particular, keep a watchful eye on ministers and departments. The centre of government, after all, now belongs to the prime minister, not to ministers.

## The Centre of Government

At the end of the 1990s, the centre of government remained largely intact, despite a management de-layering exercise in the early 1990s, a massive government restructuring introduced in 1993 and the programme review exercise launched in 1994. It remained intact even though the workload of central agencies should have decreased substantially, given that the PCO has far fewer cabinet committees to service than in the 1970s and 1980s. The overall size of the government is also smaller than it was in the late 1960s: numerous crown corporations

27 Ibid.

28 Edward Greenspon and Anthony Wilson-Smith, *Double Vision: The Inside Story of the Liberals in Power* (Toronto: Doubleday, 1996), 7.

29 Quoted in Savoie, *Governing from the Centre*, 330.

30 Thomas S. Axworthy, “Of Secretaries to Princes,” *Canadian Public Administration* 31 (1988), 245.

31 Al Johnson, *What Is Public Management in Government?* (Ottawa: Canadian Centre for Management Development, 1993).

have been sold and over 50,000 permanent positions have been eliminated from the public service. Yet, in 1999, the PCO employed 372 people, compared to 209 in 1969,<sup>32</sup> In 1998, the PMO employed 85 people, compared with 40 people in 1968.<sup>33</sup>

One might well ask, then, what do officials at the centre do? When Trudeau decided to enlarge the size and scope of the PMO in the late 1960s, his first principal secretary sought to reassure critics and cabinet ministers that the office would remain essentially a service-oriented organization. He explained that it existed to “serve the prime minister personally, that its purpose is not primarily advisory but functional and the PMO is not a mini-Cabinet; it is not directly or indirectly a decision-making body and it is not, in fact, a body at all.”<sup>34</sup> It is, of course, not possible to distinguish between a service function and a policy advisory function in this context. Drafting a letter or preparing a speech for the prime minister can constitute policy making, and many times it does. There is also no doubt that several senior officials in the PMO do provide policy advice to the prime minister, and if some in Trudeau’s early PMO denied this, advisors and assistants certainly no longer do.<sup>35</sup>

PMO staffers have the prime minister’s ear on all issues they wish to raise, be they political, policy, administrative or the appointment of a minister or deputy minister. They can also work hand-in-hand with a minister to initiate a proposal, and the minister will feel more secure knowing that someone close to the prime minister supports the proposal. They can also, however, undercut a proposal when briefing the prime minister. In short, senior PMO staff members do not consider themselves simply a court of second opinion. They are in the thick of it, and do not hesitate to offer policy advice or to challenge a cabinet minister.

The role of the Privy Council Office has also changed. Arnold Heeney, the architect of the modern cabinet office in Ottawa, wrote after his retirement that he had successfully resisted Mackenzie King’s desire to make the secretary to the cabinet “a kind of deputy minister to the Prime Minister” or “the personal staff officer to the Prime Minister.”<sup>36</sup> It is interesting to note, however, that no secretaries to the cab-

32 See Canada, *Budget des dépenses pour l’année financière se terminant le 31 mars 1969* (Ottawa: Imprimerie de la Reine, 1969), 106, 109, 349, 365, 436, 438; and *Part III: Estimates, 1996-97*. Consultations with an official with the Privy Council Office (Ottawa, March 1, 1999).

33 See Marc Lalonde, “The Changing Role of the Prime Minister’s Office,” *Canadian Public Administration* 14 (1971), 532.

34 *Ibid.*, 520.

35 See Savoie, *Governing from the Centre*.

36 A. D. P. Heeney, “Mackenzie King and the Cabinet Secretariat,” *Canadian Public Administration* 10 (1967), 367.

inet since Gordon Robertson have described their main job as secretary to the Cabinet. In 1997, the Privy Council Office produced a document on its role and structure whose very first page makes it clear that the secretary's first responsibility is to the prime minister. It states that the "Clerk of the Privy Council and Secretary to the Cabinet" has three primary responsibilities:

1. As the Prime Minister's Deputy Minister, provides advice and support to the Prime Minister on a full range of responsibilities as head of government, including management of the federation.
2. As the Secretary to the Cabinet, provides support and advice to the Ministry as a whole and oversees the provision of policy and secretariat support to Cabinet and Cabinet committee.
3. As Head of the Public Service, is responsible for the quality of expert, professional and non-partisan advice and service provided by the Public Service to the Prime Minister, the Ministry and to all Canadians.<sup>37</sup>

The direct link between the prime minister and the secretary to the Cabinet and the Privy Council Office is made clearer still in the Office's *mission* and *values* statement. Its *mission* is "to serve Canada and Canadians by providing the best non-partisan advice and support to the Prime Minister and Cabinet." Its *values* statement makes absolutely no mention of Cabinet. It reads: "We recognize the special need of the Prime Minister for timely advice and support. We dedicate ourselves to our work and to the effective functioning of government."<sup>38</sup>

When asked to sum up the work of the Privy Council Office from the perspective of a line department, a former senior line deputy minister observed, "If PCO, or for that matter other central agencies, were ever asked to ice a hockey team, they would put six goaltenders on the ice."<sup>39</sup> To be sure, the Privy Council Office has a well-honed capacity to stop the great majority of proposals from line departments dead in their tracks, if it has to. But the Office can also make things happen and take the lead in certain areas if the prime minister so wishes. In any event, in one area—machinery of government—only PCO has the mandate to initiate change. Still, goaltenders can be extremely useful to prime ministers in their efforts to avoid or manage errors the media might pick up and to keep things on an even keel so that the centre can concentrate on carefully selected policy objectives.

It is also important to recognize that the prime minister does not need to rely on regional ministers for an understanding of how government policies are being received. Public opinion surveys are more reli-

37 Canada, *The Role and Structure of the Privy Council Office* (Ottawa: Privy Council Office, October 1997), 1.

38 See the mandate discussion in Canada, *Privy Council Office 1997-98 Estimates*.

39 Quoted in Savoie, *Governing from the Centre*, 122.

able, more objective, less regionally biased, more to the point and easier to cope with than are ministers. They can also be used to deal with any public policy issue. All prime ministers since Trudeau have had their own pollsters in court interpreting events and providing advice.<sup>40</sup> Surveys can enable prime ministers and their advisors to challenge the views of ministers. After all, how can even the most senior ministers dispute what the polls say?

Pollsters, better than ministers, can assist a prime minister in deciding what is important to Canadians and what is not, what is politically sensible and what is not. A pollster in court, always at the ready with data, can be particularly helpful in dealing with the problem of political overload, a pervasive sense of urgency and an accompanying feeling of being overwhelmed both by events and the number of matters needing attention. A pollster can also advise the prime minister on "hot button" issues.

Prime ministers, at least since Trudeau, have decided that the best way to deal with the overload problem is to focus on a handful of policy issues and to rely on central agencies to manage the rest. All of the major policy initiatives in Trudeau's last mandate, including the national energy programme, the constitution, the "six and five" wage restraint initiative, were organized outside the government's formal decision-making process.<sup>41</sup> Similarly, Mulroney side-stepped cabinet in pursuing constitutional reform, the Canada-United States free trade agreement and the establishment of regional agencies. At a considerable cost to the Treasury, Chrétien paid no attention to the formal decision-making process when he decided to introduce the millennium scholarship fund for low-to-moderate income students. The Cabinet was not consulted before the fund was unveiled, even though Chrétien called it "the government's most significant millennium project."<sup>42</sup> Chrétien, like Mulroney and Trudeau, also did not consult Cabinet before striking a number of bilateral deals with provincial premiers.

So, what actually goes on in cabinet meetings? The first item is "General Discussion," which the prime minister opens and leads. He can raise any matter he chooses, ranging from a letter he may have received from a premier to a purely partisan matter, to diplomacy. The Privy Council Office prepares a briefing note of possible talking points for the prime minister to speak from. But he can, of course, completely ignore it. However, the "General Discussion" can be particularly useful to prime ministers as a cover to make it appear that Cabinet has in-

40 Trudeau had Goldfarb, Mulroney had Allan Greg and Chrétien, Michael Marzolini and the Ekos group.

41 "\$3 Billion for Your Thoughts," *The Globe and Mail* (Toronto), December 5, 1997, A1.

42 Quoted in Savoie, *Governing from the Centre*, 297.

deed considered an important issue which could be, for example, life-threatening or require military intervention. Mulroney, for instance, agreed to participate in the Gulf War in a discussion with US President George Bush, but raised the matter in Cabinet, if only to be able to report that Cabinet had indeed reviewed the situation.

The second item on the Cabinet agenda is called "Presentations." Ministers accompanied by their deputy ministers are, on occasion, invited to give briefing sessions on various issues. The minister of finance and his deputy minister, for example, might present a "deck" on the government's fiscal position, or the minister of industry and the deputy might make a presentation on Canada's productivity in relation to the United States. At the end of the presentation, ministers are free to raise any question or to ask for further clarification or explanation. But actual decisions rarely, if ever, flow out of these discussions. The purpose is to brief Cabinet, not to secure decisions.

The third item is "Nominations." Government appointments, ranging from a Supreme Court judge, to a senator, to a deputy minister, to a member of the board of a crown corporation, all require an order-in-council. There is always a list of appointments to be confirmed at every cabinet meeting. However, the nominations have all been sorted out well in advance. The Prime Minister's Office and the Privy Council Office manage the appointment process and they consult with others only to the extent they want to.

To be sure, prime ministers do not seek cabinet consensus when appointing Supreme Court judges or even senators. Thus, the *Ottawa Citizen* had it right when it wrote that "Mulroney's Supreme Court may soon become Jean Chrétien's court" because of "an unusual confluence of expected retirements."<sup>43</sup> Nor do prime ministers seek cabinet consensus when appointing deputy ministers or the administrative heads of government departments. Frequently they do not even consult relevant ministers when appointing their deputies. When asked why it was that Jean Chrétien as minister of, say, Justice and Energy could not be trusted to appoint his own deputy minister, but that the moment he became prime minister he could be trusted to appoint all the deputy ministers, a former senior PCO official replied simple: "because he became king."<sup>44</sup>

The fourth item is cabinet committee decisions, presented as appendices on the agenda. In overhauling the cabinet's decision-making process, Trudeau made it clear that all decisions taken in committee could be reopened for discussion in Cabinet. A former Trudeau minister reports that in his early years in office, Trudeau was quite willing to let ministers reopen a committee decision in full Cabinet. In time, how-

43 "Chrétien Set to Remake Top Court," *Citizen* (Ottawa), December 14, 1997, A7.

44 Quoted in Savoie, *Governing from the Centre*, 283.

ever, he became annoyed with the practice, and did not hesitate to show his displeasure whenever a minister sought to review an appendix item. Cabinet, he felt, simply did not have time available to discuss committee decisions. In any event, by the late 1970s and the early 1980s, Trudeau automatically sent a cabinet committee decision back to the committee for review whenever a minister raised questions about it in full Cabinet.<sup>45</sup> Mulroney did much the same, or relied on the operations committee of Cabinet, chaired by Don Mazankowski, to sort out problems with cabinet committee decisions. Chrétien does not react well when a cabinet committee decision is challenged and, like Trudeau in his later years, he automatically refers it back to the committee without any discussion in full Cabinet. The result is that cabinet committee decisions are now very rarely challenged in full Cabinet.

Mulroney, we now know, had little patience for the cabinet process, and at one point said that he “favoured any decision-making system that minimized the time he spent in cabinet.”<sup>46</sup> He preferred to deal with the big issues outside Cabinet. The telephone and face-to-face conversation were his “stock in trade.”<sup>47</sup> Indeed, we are now informed that “under Mulroney, important matters such as energy mega-projects were often decided without benefit of any Cabinet documents at all.”<sup>48</sup> The point is that Mulroney, like Chrétien and Trudeau, preferred to deal with major issues outside the constraints imposed by the system. Those decisions that matter less to prime ministers are taken in cabinet committees, not in full Cabinet, and, since prime ministers do not easily tolerate ministers querying cabinet committee decisions, it was and is rarely done.

There is another perhaps more important problem with the cabinet committee process: ministers do not sit on all cabinet committees. In the case of the Chrétien Cabinet, for example, about half of the Cabinet sit on the economic union committee and the other half on the social union committee. Accordingly, about half the Cabinet has to accept what has been decided by a committee of which they are not members and based on discussions in which they did not take part. It is also important to bear in mind that prime ministers can direct the work of cabinet committees in various ways, even when they are not members. For one thing, prime ministers appoint all cabinet committee chairs, a task they do not take lightly.

The Privy Council Office prepares briefing notes for the prime minister on virtually all proposals well before they are submitted to

45 Ibid.

46 Arthur Kroeger, “A Retrospective on Policy Development in Ottawa,” mimeo (Ottawa, January 1998), 10.

47 Ibid.

48 Ibid.



cabinet committees. The role of the PCO is to sort out issues that are potentially difficult to manage, to settle conflicts and to seek compromise. PCO officials will make sure that the prime minister is always fully informed of potential conflicts and may well seek guidance from the prime minister on what to do. The prime minister reserves the right to keep an issue off a cabinet committee agenda or even to put a committee decision on hold by not putting it on the Cabinet's agenda for ratification. On occasion, prime ministers may decide to bring issues to their own office for resolution. Trudeau, Mulroney and Chrétien have all done this.<sup>49</sup>

Ministers have very limited means of securing advice on matters discussed in Cabinet other than that relating to their own departments. It is asking a great deal for, say, the minister of Canadian heritage to request briefing on a proposal put forward by, say, the minister of health. Briefing material from the centre, whether it is produced by PCO or the Department of Finance, is off limits to ministers. Ministers are, of course, free to read cabinet documents, but very few actually do.

To be sure, prime ministers do not always bypass their Cabinets or only consult them after the fact. They pick and choose issues they want to direct and, in some circumstances, may decide to let the Cabinet's collective decision-making process run its course. They may also even let the government caucus in Parliament have its day from time to time and permit a government proposal or legislation to be pulled back and reworked to accommodate the views of backbenchers. These are issues on which a prime minister may hold no firm view, and decide that it is best to keep one's political capital in reserve for another day and another issue.

The Trudeau Cabinet and central agency reforms were designed to remove power from strong ministers and their mandarins and bring it to the centre to strengthen the hand of cabinet ministers as a collectivity. In hindsight, it is now clear that the results have fallen far short of the mark. In explaining the Trudeau reforms, Gordon Robertson wrote that "ministers now, in many cases, have to give up some share of their authority and control to other ministers if the totality of policies is to be coordinated . . . ministers have less chance to appear in roles of clear and firm decision."<sup>50</sup> There is no doubt that, beginning with Trudeau, power has not shifted to Cabinet, as might have been initially hoped. Rather, it has increasingly gone to the prime minister and to central agencies.

49 Savoie, *Governing from the Centre*, 268.

50 Robertson, "The Changing Role of the Privy Council Office," 500.

## **Globalization**

Globalization, a word that admittedly suffers greatly from overuse, has also strengthened the hand of the prime minister. In hindsight, we may well have overstated the probability that globalization would spell gloom and doom for nation-states.<sup>51</sup> Many national governments are discovering that the international environment can actually enhance their own power.

In any event, Canadian prime ministers belong to a series of international clubs of heads of government, from the G7 to APEC, and the Commonwealth and la francophonie. Deals, even bilateral ones, between heads of governments are struck at these meetings. The globalization of the world economy means that many more issues, or files, will fall to the prime minister's in-basket. Everything in a government department seems to connect to other departments and other governments, whether at the provincial level or internationally. In Canada, prime ministers and premiers sit at the centre of public policy issues and when they decide to focus on one, they can very easily make it their own.

National governments, precisely because of global economic forces, need to work increasingly with each other and with regional and international trade agreements. They also need a capacity to move quickly to strike new deals when the time is right, or to change course because of emerging political and economic circumstances and opportunities. The focus will be on the heads of national governments.<sup>52</sup> It is they, not the ministers, who lead the discussions at G7, at Commonwealth meetings, at la francophonie and at the APEC conferences.

The Canadian prime minister, unlike the US president who has to deal with Congress, or the Australian prime minister who has to deal with a powerful elected Senate, has a free hand to negotiate for the Canadian government and to make firm deals with foreign heads of government. The final hours of negotiations on the North American Free Trade Agreement (NAFTA) between Prime Minister Chrétien and the US President Bill Clinton, through his Canadian ambassador, are telling. At one point, the American ambassador wondered about Chrétien's political authority to agree to a final deal, given that he had yet to appoint his Cabinet. The ambassador put the question to Chrétien. "What happens if we work all this out and then your new trade minister doesn't agree?" Chrétien replied, "Then I will have a

51 Donald J. Savoie, "Globalization, Nation States, and the Civil Service," in B. Guy Peters and Donald J. Savoie, eds., *Governance in a Changing Environment* (Montreal: McGill-Queen's University Press, 1995), 82-112.

52 Harland Cleveland, "The Twilight of Hierarchy: Speculations on the Global Information Society," *Public Administration Review* 45 (1985), 195.

new trade minister the following morning.”<sup>53</sup> It is hardly possible to overemphasize the fact that the Canadian prime ministers have few limits defining their political authority within the government.

To be sure, the mass media, opposition parties, question period in the House of Commons and public opinion can all inhibit prime ministerial power. Similarly, what may appear at first to be a seemingly innocent incident can take on a life of its own, gain a high profile in the media and force the prime minister to reconsider a strategy or proposed initiative. But inside government, Canadian prime ministers are free to roam wherever they wish and to deal with any file they choose. There is ample evidence to suggest that prime ministers Trudeau, Mulroney and Chrétien have all sought to push back the frontiers of their political authority.

During the Trudeau years, a new breed of advisors arrived on the scene in Ottawa and made their presence felt. Lobbyists happily took up special causes, mostly those tied to big business. They sold their expertise for handsome fees, and they “quickly amassed an impressive list of corporate clients.”<sup>54</sup> One would be extremely naive to assume that this development has not had a significant impact on the decision-making process in Ottawa. Though it is not at all clear precisely what kind of expertise lobbyists peddle around Ottawa, we do know two things: first, their numbers have not gone down, despite the downsizing of government activities and changes in government; second, it appears that what many peddle is political connections, and those who can claim to be connected to the prime minister do much the best. Writing about lobbyists in the Mulroney era, Jeffrey Simpson asked whether they could have plied their trade with such success had a Liberal or New Democratic party government been in office? The answer, he argued, could only be a resounding no. A change of government in 1993 revealed that Simpson was right. If the same question were asked today, the answer would be the same. Senior lobbyists, particularly the discreet ones, can be extremely useful to prime ministers. A prime minister who needs a second opinion on advice provided by ministers and senior public servants can turn to one of several lobbyists who are only too happy to oblige by reporting the views of clients or the results of public opinion surveys.

A minister in the Chrétien government has argued that Cabinet is no longer a decision-making body. It is, he claims, a “kind of focus group for the prime minister.”<sup>55</sup> This analogy is not much of an over-

53 Quoted in Greenspon and Wilson-Smith, *Double Vision*, 48.

54 Jeffrey Simpson, *Spoils of Power: The Politics of Patronage* (Toronto: Collins, 1988), 367. See also John Sawatsky, *The Insiders: Government, Business, and the Lobbyists* (Toronto: McClelland and Stewart, 1987).

55 Quoted in Savoie, *Governing from the Centre*, 3.

statement. In fact, Chrétien himself wrote before he became prime minister that a minister “may have great authority within his department, but within Cabinet he is merely part of a collectivity, just another advisor to the prime minister. He can be told what to do and on important matters his only choice is to do or resign.”<sup>56</sup>

### **The Working of Court Government**

Canadian prime ministers have in their hands all the important levers of power. Indeed, all major national public policy roads lead one way or another to their doorstep. They are elected leader of their party by party members, they chair cabinet meetings, establish cabinet processes and procedures, set the cabinet agenda, establish the consensus for cabinet decisions; they appoint and fire ministers and deputy ministers, establish cabinet committees and decide on their membership; they exercise virtually all the powers of patronage and act as personnel manager for thousands of government and patronage jobs; they articulate the government’s strategic direction as outlined in the Speech from the Throne; they dictate the pace of change and are the main salespersons promoting the achievements of their government; they have a direct hand in establishing the government’s fiscal framework; they represent Canada abroad; they establish the proper mandate of individual ministers and decide all machinery of government issues and they are the final arbiter in interdepartmental conflicts. The prime minister is the only politician with a national constituency, and unlike members of parliament and even cabinet ministers, the prime minister does not need to search out publicity or national media attention, since attention is invariably focused on the person, the office and even the prime minister’s residence, 24 Sussex Drive.

Each of these levers of power taken separately is a formidable instrument in its own right, but when you add them all up and place them in the hands of one individual, they constitute an unassailable advantage. Other than by defeat in a general election, prime ministers can only be stopped, or slowed, by the force of public opinion and by a cabinet or caucus revolt. Even then, public opinion may not be much of a force if the prime minister has already decided not to run again in the next general election. One only has to think of Trudeau or Mulroney’s final years in office to appreciate this. As well, caucus or cabinet revolts or even threats of revolts, are historically extremely rare in Ottawa, if not so rare in other parliamentary systems, as some British and Australian prime ministers can attest.

Canadian prime ministers have enjoyed these avenues of power for some time; however, other developments have served to consolidate

the position of the prime minister and the prime ministerial advisors even further. Indeed, this is evident even before they and their party assume office. Transition planning, a relatively new phenomenon in Canada, has become a very important event designed to prepare a new government to assume power. Transition planning also strengthens the hand of court government, given that, by definition, it is designed to serve the prime minister.<sup>57</sup> It is the Privy Council Office, however, that leads the process and it is clear that “transition services [are for] the incoming prime minister.”<sup>58</sup> Indeed, the focus of the PCO transition planning process is entirely on party leaders or would-be prime ministers. In any event, it would be difficult for it to be otherwise, since in the crucial days between the election victory and formally taking power, the only known member of the incoming Cabinet is the prime minister-designate. For other potential cabinet ministers, it is a “moment of high anxiety,” waiting to see if they will be invited to sit in Cabinet and, if so, in what portfolio.<sup>59</sup>

The central purpose of transition planning is to equip the incoming prime minister to make a mark during the government’s first few weeks in office. It is now widely recognized that these early weeks can be critical in setting the tone for how the new government will govern.<sup>60</sup> It is also the period when the prime minister will make important decisions on the machinery of government and decide which major policy issues the government will tackle during its mandate. These and such key decisions, such as whether to try to amend the constitution or fight the deficit, are taken or set in motion during the transition period.

In the late 1970s, the Privy Council Office began the practice of preparing so-called mandate letters for delivery to ministers on the day of their appointments. It has since become an integrated part of the cabinet-making process. Mandate letters are also now handed to all ministers when they are assigned to a new portfolio. All ministers in the Chrétien government, for example, were given a mandate letter at the time he formed the government in 1993 and again in his second mandate in 1997.

In most cases, the mandate letters are brief, only about two to three pages in length. They are also tailored to the recipient. That is, a mandate letter to a newly appointed minister will be different from one to a veteran minister. In the first instance, it will outline basic information about becoming a cabinet minister, including conflict-of-interest guidelines and the need to respect the collective nature of cabinet deci-

57 Ibid, 108.

58 Ibid., 99.

59 Donald J. Savoie, “Introduction,” in *Taking Power: Managing Government Transitions* (Toronto: Institute of Public Administration of Canada, 1993), 8.

60 Ibid., 1.

sions. In all cases, the letters will delineate issues the minister should attend to and identify priority areas, if any, to be pursued. Here, again, there are two basic mandate letters. One states, in effect, "Don't call us, we'll call you." That is, the prime minister has decided that the department in question should not come up with a new policy agenda or legislative programme. In these cases, the message is essentially: keep things going, do not cause any ripples and keep out of trouble.<sup>61</sup>

In other instances, the letter will refer to particular policy objectives and major challenges. In these cases, they can be quite specific, singling out proposed legislation, a special concern that needs attending to or a programme that needs to be overhauled. Mandate letters are also prepared for newly appointed deputy ministers. Here again the purpose is to outline the main challenges the new deputy ministers will be confronting and the priorities they will be expected to follow.

Mandate letters are taken seriously. Indeed, ministers consulted said that it is the very first thing that they read after leaving the swearing-in ceremony at Rideau Hall and that they take their contents quite seriously. They know, as one observed, that "the prime minister can always dig out his copy and ask about the status of a particular point."<sup>62</sup> More importantly, the letters reveal what the prime minister expects from them during their stay in their departments. Both present and former PMO and PCO officials report that all prime ministers, from Trudeau to Chrétien, take the mandate letters seriously and that they spend the required time to ensure that each says what they wish it to say.

Both present and former senior PCO officials have been asked if mandate letters run counter to the collective nature of cabinet decision making. How can priorities be established and major tasks identified even before Cabinet has held its very first meeting? Where is the collective aspect of these decisions? The answer was that mandate letters are not from the Cabinet. They are from the prime minister. It is the prime minister who identifies priority issues for the government, and if a minister cannot accept them, then, as one former senior PCO official explained, "He is free to leave or to resign on the spot. He is not, after all, forced to stay in Cabinet."<sup>63</sup>

Very few ministers are prepared to put their jobs on the line because they are not happy with a government policy. Those political parties that have held power in Ottawa do not have a strong ideological base and, accordingly, policy principles do not count for much. Thus, ministers can find any number of reasons to justify not resigning over a policy issue. This, too, strengthens the hand of the prime minister.

61 Savoie, *Governing from the Centre*, 138.

62 Quoted in *ibid.*, 139.

63 *Ibid.*

In looking at the causes of ministerial resignations from Confederation to 1990, Sharon Sutherland found that "solidarity" problems were responsible for only 19 per cent (or 28 cases) of all resignations. By "solidarity" problems she meant ministers unable or unwilling to agree with cabinet colleagues or "with the Prime Minister in particular."<sup>64</sup> Resignations from John Diefenbaker's government comprised the following: Douglas Harkness, Pierre Sevigny and George Hees (1963); from Lester Pearson's government: Judy LaMarsh (1968); Eric Kierans (1971); from Pierre Trudeau's government: Jean Marchand (1976); James Richardson (1976); from the Mulroney government: Suzanne Blais-Grenier (1985—here, however, former PMO officials report that she jumped just before she was going to be dropped from Cabinet); and Lucien Bouchard (1990). It is interesting to note that, in contrast, 41 per cent of ministers who left Cabinet did so to accept a political appointment offered by the prime minister.<sup>65</sup> It is also interesting to note that, since 1976, all ministers who resigned did so over the language issue or national unity.

The difficult fiscal situation confronting governments has also had an important impact on Ottawa's decision-making process. The number of people directly involved in putting the budget together is very limited. The key players are the prime minister, one or two of his senior advisors, the minister of finance, the clerk of the Privy Council, the deputy minister of finance and a handful of senior Finance officials. But, unlike in the past, the "budget" is more than just a budget. It has also become an important instrument of court government.

The budget has become the government's major policy statement and defines in very specific terms what the government will do in the coming months and where it will be spending new money. Traditionally, the government's budget process pitted guardians (for example, the prime minister and the minister of finance) against spenders (ministers of line departments and regional ministers).<sup>66</sup> Efforts were made under Trudeau and Mulroney to establish systems to allocate the spending of "new" money, but they all fell far short of the mark.<sup>67</sup>

The prime minister, the minister of finance and their advisors have combined the roles of the guardian and spender. The budget exercise is not strictly concerned with the country's broad economic picture, projecting economic growth, establishing the fiscal framework and deciding which taxes ought to be introduced, increased or de-

64 Sharon Sutherland, "Responsible Government and Ministerial Responsibility: Every Reform is Its Own Problem," this JOURNAL 24 (1991), 101.

65 Ibid., 103.

66 See, for example, Donald J. Savoie, *The Politics of Public Spending in Canada* (Toronto: University of Toronto Press, 1990).

67 See, among others, Richard French, *How Ottawa Decides* (Ottawa: Canadian Institute for Economic Policy, 1990).

creased. It deals with both big and small decisions, “revenue” projections and spending decisions. In addition, when the centre decides to sponsor new initiatives, it will more often than not secure the required funding outside the cabinet process. Examples abound and include both large and small expenditures, ranging from the millennium scholarship fund (Chrétien), the establishment of two regional development agencies (Mulroney) to the Canada Foundation for Innovation (Martin). This also applies to less costly initiatives. Indeed, some ministers became openly critical of Paul Martin, the minister of finance, when he announced a cut in what was then called the “Unemployment Insurance tax cut” without discussing it in Cabinet. Another minister told the media that it “was not necessarily what Canadians are asking for.”<sup>68</sup> A Finance official replied, however, that Paul Martin had not made the UI tax cut unilaterally, but had done so “with the approval of Prime Minister Chrétien.”<sup>69</sup>

It appears that the prime minister and the courtiers are convinced that ministers are not capable of establishing priorities and that they lack the ability to look at spending proposals from a perspective broader than their respective department or region. Accordingly, the “court” has also taken to deciding, on its own, a number of less costly spending decisions. An example will make this clear. The 1998 budget contained a \$400-million provision to enable the government to deal with the year 2000 computer problem. The decision to allocate this amount was taken in private by the president of the treasury board, the minister of finance and the prime minister. When asked why the proposal was not taken to a cabinet committee and then Cabinet, a senior minister responded, “Who knows what ministers might have done with it? They could well have said, ‘This is not our most important priority,’ and spent the money on something else. We had no choice. We have to provide for the Y2K problem.”<sup>70</sup> The prime minister’s court can understand such things but not, it appears, Cabinet.

The role of the clerk of the privy council and secretary to the cabinet has changed a great deal, and the clerk’s influence in Ottawa is readily apparent to everyone inside the system. Outsiders, however, know very little about the clerk’s role and responsibilities. One of the main challenges confronting a clerk is to establish a proper balance between representing the public service as an institution to the prime minister and Cabinet and representing the prime minister to the public service. The balance appeared to have shifted to the latter with the appointment of Michael Pitfield as clerk-secretary in 1975 by Trudeau.

68 “Spending Limits Irk Cabinet,” *The Globe and Mail* (Toronto), December 3, 1997, A1.

69 Ibid. See also A28.

70 A senior cabinet minister, quoted in Savoie, *Governing from the Centre*, 346.



The balance may well have shifted again in favour of the prime minister when Paul Tellier decided, as clerk-secretary under Mulroney, to add the title of the prime minister's deputy minister to his job.

Tellier's decision, however, probably simply reflected the reality of his day-to-day work. Indeed, the clerk-secretary is accountable to the prime minister, not to Cabinet, and the great majority of daily activities are now designed to support the prime minister, not Cabinet. The prime minister appoints the clerk; the prime minister evaluates the clerk's performance; and the prime minister will decide if the clerk stays or should be replaced. All this is to say that not only does the secretary to Cabinet wear the hat of deputy minister to the prime minister, it is without doubt the hat that fits best and the one that is worn nearly all the time. A former senior PCO official observed that "all clerks since Pitfield have done an excellent job at being deputy minister to the prime minister. As far as secretary to the cabinet, the performance has been spotty."<sup>71</sup>

The deputy minister's hat is also the one that provides most influence inside government. This begins with the prime minister's power of appointment. A minute of council first issued in 1896 and last re-issued in 1935 gives the prime minister the power to appoint deputy ministers.<sup>72</sup> All prime ministers have made it a point to retain this power, and for good reason. It is key to controlling government operations and to ensuring that the government goes in the intended direction.

Mitchell Sharp, a cabinet minister under both Pearson and Trudeau and deputy minister under Louis St. Laurent, writes that:

the fact that deputy ministers are appointed on the recommendation of the prime minister means that, with the exception of the clerk of the Privy Council, who reports to the prime minister himself, they have a degree of independence from their own ministers, which gives them freedom in offering advice and administering the departments. They are in a sense part of the structure by which the prime minister controls the operations of the federal government.

He adds that the "appointment of deputy ministers also enables the prime minister to ensure continuity in the administration of a department, notwithstanding his replacement of the minister, the political head of the department."<sup>73</sup>

The clerks have a direct hand in deciding who should become a deputy minister and who should not. This alone ensures that they will enjoy a great deal of influence inside government. As anyone who has

71 Consultation with a former senior PCO official, Ottawa, November 1997.

72 Canada, *The Functioning of the Privy Council Office* (Ottawa: Privy Council Office, December 1978), 4-8.

73 Mitchell Sharp, "Relations between Politicians and Public Administrators," in *Bulletin* (Toronto: Institute of Public Administration, 1985), 1.

worked in government can attest, no one should underestimate the power of appointment. In government, money and appointments steal the stage. They establish success. The one who wields the power of appointment decides, at the highest levels in the public service, who wins, who does not, who is in the ascendancy and who is not. But that is not the clerk's only source of influence. By virtue of their position at the centre of government, the clerks are their prime minister's principal policy advisers. At least from the public service perspective, the clerk represents the final brief for the prime minister on all issues.

It is interesting to note that most line ministers now only meet their deputy ministers and other senior departmental staff on average about three hours a week. The problem, they explain, lies in an overcrowded ministerial agenda. However, the prime minister is able to find the time to meet with the clerk-secretary, for *at least* 30 to 45 minutes nearly every morning when in Ottawa. The minister of finance, meanwhile, can spend up to three or four hours a day, nearly every day, in briefing sessions with senior departmental officials, particularly in the months before the budget is tabled. They, too, have overcrowded agendas. Indeed, interviews with senior PMO and Finance officials reveal that the prime minister and the minister of finance are always in constant battle to manage their agenda and to accommodate the many demands on their time. The difference may be that the prime minister and the minister of finance consider that time spent with their deputies is time well spent. Decisions are made, things get done, major initiatives are planned and launched and policy is established. Both are prepared to sacrifice other meetings to invest the time where it truly matters. The same imperatives cannot be said to be true for line ministers.

There have been some significant changes to line departments that have weakened them in relation to the centre. These are most visible at the deputy minister level. A detailed study, "Changing Profile of Federal Deputy Ministers, 1867 to 1988," is very revealing. It reports that the time deputy ministers spend in a particular department has declined to three years from the average of 12 years in the early period of Confederation. Unlike their predecessors, deputy ministers no longer stay with and retire in their department. As the profile study points out: "They can no longer head the same department for many years."<sup>74</sup> Moreover, in Ottawa, recruitment of deputy ministers now easily crosses the boundaries between departments, while countries such as France and Germany have remained loyal to the tradition that the permanent head of the department is chosen from its senior ranks.<sup>75</sup>

74 Jacques Bourgault and Stephane Dion, "The Changing Profile of Federal Deputy Ministers 1867 to 1988," Research Paper No. 2 (Ottawa: Canadian Centre for Management Development, March 1991), 28.

75 *Ibid.*, 39.

Another study reveals that “experience in a central agency, most notably in the Privy Council Office, is now a virtual prerequisite for deputy minister appointment.”<sup>76</sup>

The above is not without implications for the government and the public service. The “have-central-agency-experience-will-travel” types have a different perspective than those who have come up through the ranks of a department to become its deputy minister. For one thing, the former will be preoccupied with “managing up”—that is, looking up to their ministers, but mostly to the centre of government, rather than down at the organization, to establish priorities and a sense of direction. A federal task force argued that “many senior public servants have made their careers because of their skills in managing up. They have been valued and promoted because they were adept at providing superiors with what they needed. . . . But if they [skills of managing up] are nourished in excess, to the exclusion of other important values, they can obscure the importance of managing down.”<sup>77</sup>

A well-honed capacity to “manage up” is much valued at the centre of government, particularly in the Privy Council Office. Again, the office has a unique relationship with the prime minister. The office has several roles that it plays on behalf of the prime minister. An important one, particularly since Trudeau came to power, is to operate an early warning system to alert the prime minister and staff of any political danger ahead. The system is designed to highlight departmental issues which are or may become politically “sensitive or controversial because of their political ramifications.”<sup>78</sup> Deputy ministers known for their ability to manage up will know not only when to alert the centre, but also how to work with it to bring any potentially controversial issue back on track.<sup>79</sup> If only because of the changing role of the mass media, deputy ministers now have to be particularly adroit at managing a political crisis or defusing a difficult situation. It also explains why the links between the clerk and the community of deputy ministers have come to occupy a dominant position in Ottawa.

Mitchell Sharp explains how the role of the centre has changed. He points out that:

back then [in the St. Laurent and the Pearson governments], deputy ministers were clearly responsible for policy and for working with the minister to define policy in your area of responsibility. Your minister would of course challenge

76 Frank Swift, *Strategic Management in the Public Service: The Changing Role of the Deputy Minister* (Ottawa: Canadian Centre for Management Development, November 1993), 63.

77 Canada, *Discussion Paper on Values and Ethics in the Public Service* (Ottawa: Privy Council Office, December 1996), 45.

78 Swift, “Strategic Management in the Public Service,” 23.

79 Ibid. Frank Swift calls it bringing “the issue under control” (ibid.).

your ideas, but then he would agree on a position with you and take the ideas to Cabinet and have it out with his colleagues. Things did not work quite like that under Trudeau. It was different.<sup>80</sup>

He added that:

you have to understand that the art of governing was different then [in pre-Trudeau days]. Ministers had a strong base and had strong personalities. They would go to Cabinet and take on even the prime minister. Some ministers would threaten to resign over policy, and some actually did. So it was different then for a deputy minister working with a minister. I am not sure that we bothered too much with PCO. Putting aside [Jack] Pickersgill, secretaries to the Cabinet were rather low-profile people and they didn't much bother you.<sup>81</sup>

A retired deputy minister discussed with me the changes at the centre of government from the time he became a public servant in 1958 to when he retired in the early 1990s. Much like Mitchell Sharp, he reports that during the 1960s the clerk of the privy council and secretary of cabinet did not dominate in Ottawa. Things changed with Michael Pitfield's appointment. When my respondent became deputy minister in the early 1970s, he claims that he:

would not have recognized one-third of my colleagues had I come across them on the street. . . . It was very rare that you had dealings with the clerk, perhaps a couple of times a year. You had a job to do with your minister and you went and did it. There was no such thing, for example, as a mandate letter from the clerk. But things began to change in the 1970s, particularly when the clerk started to chair monthly luncheon meetings with deputy ministers. Things changed again in 1985, when the clerk added weekly breakfast meetings and again later when deputy ministers' retreats were organized.<sup>82</sup>

A detailed study of the workload of federal deputy ministers reveals that on average they spend one hour out of every three on interdepartmental issues. Typically, deputy ministers allocate nearly twice as much time to meetings with their peers than on matters involving their own ministers.<sup>83</sup> With respect to issues, deputy ministers on average allocate more of their time to crisis management (16%) than to human resources management (15%).

Deputy ministers, in many ways, have become as much a part of the centre of government as they are the administrative heads of their departments. In some instances, there may well be competition between ministers and their deputies as to who has a better standing in

80 Consultation with the Honourable Mitchell Sharp, Ottawa, March 1998.

81 Ibid.

82 Consultation with a former deputy minister, Ottawa, March 1998.

83 Jacques Bourgault, "De Kafka an Net: la lutte incessante du sous-ministre pour contrôler son agenda," *Gestion* 22 (1997), 21-22.

court. Sergio Marchi, minister in the Chrétien government, claimed that he had more influence in Ottawa than his deputy minister because of his own connections to the centre of government. He observed, "My deputy minister is all right, but he knows that in any showdown, I can get to the prime minister a lot faster than he can."<sup>84</sup> One can scarcely imagine a minister making such a claim 30 or 40 years ago, when line ministers met with their deputies most mornings, when the centre of government was less visible and involved in the decision-making process and when Cabinet actually made decisions. If there was a showdown to be had, it was more likely to involve the minister and his deputy working as a team.

Court government has also had an impact on the public service. Individual public servants have become highly valued at the expense of the public service as an institution. Politicians from all political parties since the late 1970s have engaged in one form or another in bureaucratic bashing.<sup>85</sup> They have accused the public service of favouring the status quo, of being unresponsive and uncreative. Yet, at the same time, they have sung the praises of individual public servants. This is because under court government, individuals matter more than institutions and individuals are to be empowered, not institutions. When the Mulroney government was plagued by one crisis after another and when Mulroney's own office was in disarray, he reached out to Derek Burney, a career public servant, to be his chief of staff. When Trudeau wanted someone to help him in his desire to patriate the constitution, he bypassed the public service to appoint Michel Kirby as secretary to the cabinet for federal-provincial relations. But, when Mulroney appointed Dalton Camp, a high profile partisan with no experience in the public service and already past retirement age, to a senior public service position in the Privy Council Office, he sent a clear message to senior public servants that he had little regard for the public service as an institution.

Still, prime ministers and their advisors attach a great deal of importance to being able to deal with a political crisis. They also think short term. They have their own projects to promote and priorities to pursue and have little patience for due process. They will turn to individuals at the centre to give them a helping hand and to keep other matters under control. But this requires special skills, political skills. These, rather than an intimate knowledge of a sector or a policy field, have become of prime importance.

The way to govern in Ottawa—at least since Trudeau—is for prime ministers to focus on three or four priority issues while always

84 Quoted in Greenspon and Wilson-Smith, *Double Vision*, 212.

85 See, among others, Donald J. Savoie, *Thatcher, Reagan, Mulroney: In Search of a New Bureaucracy* (Pittsburgh: University of Pittsburgh Press, 1994).

keeping an eye on Quebec and national unity concerns. Tom Axworthy, former principal secretary to Pierre Trudeau, in his appropriately titled article, "Of Secretaries to Princes," wrote that "only with maximum prime ministerial involvement could the host of obstacles that stand in the way of reform be overcome . . . [the prime minister] must choose relatively few central themes, not only because of the time demands on the prime minister, but also because it takes a herculean effort to coordinate the government machine."<sup>86</sup> To perform a herculean effort, a prime minister needs carefully selected individuals in key positions to push the agenda. Cabinet, the public service as an institution, or even government departments, are not always helpful. For example, Trudeau established an ad hoc group of officials at the centre to pursue his 1983 peace initiative "largely because of the skepticism of the Department of External Affairs."<sup>87</sup>

The result is that important decisions are no longer made in Cabinet. They are now made in federal-provincial meetings of first ministers, during "Team Canada" trade visits abroad, where first ministers can hold informal meetings, in the Prime Minister's Office, in the Privy Council Office, in the Department of Finance, in international organizations and at international summits. There is no indication that the one person who holds all the cards, the prime minister, and the central agencies which enable effective political authority to reside at the centre, are about to change things. In Canada, there is little in the way of internal institutional checks to inhibit or thwart the prime minister. Prime ministers Margaret Thatcher of Britain and Bob Hawke of Australia were tossed out of their offices before their mandates were finished. Their own parliamentary caucuses showed them the door. This would be unthinkable in Canada. Even at the depths of Mulroney's unpopularity, there was no indication that his caucus was about to boot him out of office. In any event, in Canada the caucus holds no such power. In Britain, prime ministers must still deal with powerful ministers who have deep roots in their party and well-established party policies and positions on many issues. In Australia, the prime minister must contend with an elected and independent Senate.

In Canada, national unity concerns, the nature of federal-provincial relations and the role of the mass media tend, in a perverse fashion, to favour the centre of government in Ottawa. The prime minister's court dominates the policy agenda and permeates government decision making to such an extent that it is only willing to trust itself to overseeing the management of important issues. In a sense, the centre of government has come to fear ministerial and line department independence more than it deplores line department paralysis. As a result, court gov-

86 Axworthy, "Of Secretaries to Princes," 247.

87 Ibid., 262.

ernment is probably better suited to managing the political agenda than is cabinet government. The prime minister decides, at least within the federal government, who has standing at court.

But this is not without significant implications for national political institutions and, ironically, for Canadian federalism. Indeed, from a long-term perspective, court government may not be as effective as the courtiers might assume. The fact is that the prime minister and a handful of courtiers can hardly fully appreciate, let alone accommodate, the regional factor in policy making.