Abstract: This article examines the relationship between ministerial responsibility and the machinery of government. It discusses how constitutional government and the practical day-to-day functioning of a parliamentary democracy depend on ministerial responsibility as the bedrock principle for the organization and operation of the machinery of government across the range of government organizations. It concludes that ministerial responsibility remains the pivotal constitutional doctrine essential to the functioning of a parliamentary democracy; that notwithstanding the undue concentration of authority in the hands of first ministers, their machinery of government powers ought not to be reduced; and that first ministers in particular should pay closer attention to ministerial responsibility as the foundation of the machinery of government.

Sommaire : Le présent article porte sur les relations entre la responsabilité ministérielle et l'appareil gouvernemental. Il examine comment le gouvernement constitutionnel et le fonctionnement pratique quotidien d'une démocratie parlementaire reposent sur la responsabilité ministérielle comme principe de base de l'organisation et du fonctionnement de l'appareil gouvernemental dans tous les types d'organismes gouvernementaux. L'auteur conclut que la responsabilité ministérielle demeure la doctrine constitutionnelle cruciale et essentielle au fonctionnement d'une démocratie parlementaire; que malgré la concentration exagérée de pouvoir entre les mains des premiers ministres, les pouvoirs de l'appareil gouvernemental ne devraient pas être réduits; et que les premiers ministres en particulier devraient prêter une plus grande attention à la responsabilité ministérielle en tant que fondement de l'appareil gouvernemental.

Ministerial responsibility and the capacity of first ministers to direct the machinery of government are essential for the maintenance of constitutional government in the Westminster system. Their importance far outweighs whatever merit attaches to the popular wisdom that the principles of minis-
terial responsibility are not followed in practice and that first ministers have concentrated power in their own hands at the expense of ministers and Parliament. This article demonstrates the continuing significance of ministerial responsibility in the day-to-day functioning of government and shows how the appropriate exercise of the first minister’s machinery-of-government powers safeguards ministerial responsibility when its principles are applied throughout the organization of government.

There is considerable literature on the meaning and consequences of ministerial responsibility, much of which is focused on whether and when ministers should resign office, but the experts generally agree that the doctrine is a principle of the Constitution, not an outdated formula for managing the affairs of the state, as is sometimes suggested. Commissions of inquiry in Canada have shown a particular susceptibility for the siren song of those who denigrate ministerial responsibility, as reflected in the reports of the Lambert Commission in 1979 and the Gomery Commission in 2006. However well-intentioned, recommendations to dilute ministerial responsibility are not based on a clear grasp of the foundations of the Westminster constitution or – of equal importance – its practical application. Moreover, this distracting, decades-long debate over the continued relevance of ministerial responsibility has overshadowed its significance for the day-to-day functioning of government.

Ministerial responsibility shapes the machinery of government and hence the relationships between all the participants in our system of government... Without ministerial responsibility and prime ministerial control of the machinery of government, our Constitution will not work because the power of the state will not be subject to democratic control

This article deals tangentially (and unfavourably) with the recommendations of the Gomery Commission concerning ministerial responsibility (principally the relationship between ministers and their deputies) and the machinery of government (principally proposals to reduce the authority of the prime minister for machinery). However, there is nothing advanced here that would challenge the new government’s intention to make deputy ministers “accountable before the appropriate committee of Parliament“ for administrative matters provided that – and this is crucial – this occurs, as is proposed, “within the framework of the appropriate minister’s responsibilities.” These, however, are matters of the moment, and the wider purpose of this article is to explain the central and continuing importance of ministerial
responsibility for the practical functioning and organization of constitutional government in Canada, which as a matter of observation is profoundly significant in the face of criticism that underrates the doctrine. Ministerial responsibility is essential to the proper functioning of the democratic parliamentary constitution, which in turn depends on the smooth functioning of the machinery of government under the central control of the prime minister. This is not to say that all is well, but that it would be a great deal worse if ministerial responsibility were to be marginalized. There is in particular a serious problem with over-concentration of power (particularly over policy, spending and communications) in the hands of first ministers, which in some provinces amounts to relegating ministers to mere assistants to the premier. This is deplorable, but such adventurism with the Constitution is no reason to make matters worse by seeking to denigrate the importance of the doctrine or to weaken the claim of first ministers to exercise machinery-of-government powers. The essential point is that, without ministerial responsibility and prime ministerial control of the machinery of government, our Constitution will not work because the power of the state will not be subject to democratic control.

Traditions of reasonableness are being replaced by rules and codes that are the antithesis of good government

It is also important to bear in mind that ministerial responsibility works tolerably well in practice, notwithstanding particular lapses. Who besides a minister is (or could be) held to account day-in, day-out in accordance with the democratic principle? Because the orderly functioning of ministerial responsibility is essential to the maintenance of parliamentary democracy, it is not something to be put on or off at the whim of a prime minister or premier, whether it be to advance a political agenda or in response to some event or criticism. Ministerial responsibility shapes the machinery of government and hence the relationships between all the participants in our system of government. First ministers have a duty to uphold ministerial responsibility. This requires, first, an awareness of their duty; and, second, adequate professional support to fulfil their machinery-of-government functions.

Almost daily in comment about the activities of government, questions are raised about the relationship between ministers and a wide variety of government organizations. Distinguished commentators have noted that the accountability of ministers for various types of government organization is not always clear. The auditor general has taken the government to task for creating organizations that appear to have been placed beyond the reach of
Parliament and traditional standards of accountability. The "sponsorship affair" revealed ambiguities about the relationship between ministers and deputy ministers and some Crown corporations. Questions have also been raised about the accountability of so-called officers of Parliament, prominently in the case of the privacy commissioner, and, as Paul Thomas has noted, "[p]arliamentary review of the activities of officers of Parliament has not been adequate." Moreover, it is routine inside and outside government to describe ministers as being accountable for all shapes and sorts of government organizations, with scant respect for important questions of institutional independence. The extent of confusion about relationships suggests a continuing erosion of shared understanding by participants of the conventions and practices of the Westminster constitution. One consequence is that traditions of reasonableness are being replaced by rules and codes that are the antithesis of good government and that are incompatible with the essentially democratic idea that ministers be responsible to Parliament for the exercise of the power of the state.

Ministerial responsibility lies at the heart of our democracy, and it remains central to the way in which we are governed, notwithstanding the criticisms levelled against the continued relevance of the doctrine and despite the damage caused by excess concentration of policy and spending power in the hands of first ministers.

**Responsible government and the power of the state**

The Constitution is a collection of statutory and conventional provisions that govern the way in which the power of the state is distributed and exercised. In the Westminster system, powers may be distributed on a unitary or federal basis, but their exercise is governed by the common principle of responsible government.

Responsible government is a means by which those who exercise power are held to account. Coupled with the progress of the 19th and 20th centuries to universal suffrage as the basis for parliamentary authority, responsible government is now the linkage between the power of the state and the ultimate subordination of that power to the principles of democracy. Responsible government, rooted in the democratic institution of Parliament is therefore the mainspring of the Constitution. It follows that the power of the state should be exercised in accordance with the essential requirements of ministerial responsibility and parliamentary accountability.

And what are those requirements? Put succinctly, ministerial responsibility means (first) that ministers must be answerable to Parliament for the way in which the powers assigned through statute are being used. This applies to all forms of government organization. Note the deliberate use of the word "answerable" rather than "accountable." Equally succinctly, the requirement
of parliamentary accountability means (second) that Parliament must have the means to hold to account those on whom it has conferred the powers of the state, be they ministers or non-elected officials. If these two requirements can be met, one may be satisfied that the power of the state is being exercised constitutionally.

As is evident, the terms are not interchangeable: being "answerable" ensures that Parliament is informed of the way in which the power of the state is being used; being "accountable" ensures that those on whom Parliament confers the powers of the state account for their actions.

Legislation is the key to understanding ministerial responsibility and parliamentary accountability: this is how the power of the state is assigned to office-holders. Legislation tells us who is responsible, who is answerable, and who is accountable. The power of legislation is limited only by the Constitution and in fundamental statements of principle such as those contained in the Charter of Rights and Freedoms and the preamble to the Constitution Act. Legislation identifies the powers of the state necessary to fulfil the objects of a statute, and it assigns those powers to office-holders. That assignment is the essential underpinning of ministerial responsibility and parliamentary accountability.

**Responsibility and accountability**

This article takes as given the collective responsibility of ministers and the dependence of the ministry on the confidence of the House of Commons in order to gain and retain office. It also takes for granted that the Westminster system is characterized by a fusion of legislative and executive powers, wherein the ministry, present in the House of Commons, must answer to that assembly for the conduct of the government. Within that setting, the focus here is on how the principle of ministerial responsibility permits the orderly assignment of the powers of the state to the institutions of government and forms the basis for the exercise of parliamentary accountability.

The key to navigating the maze of government organization is to trace the assignment of power by Parliament. Ministers may be assigned powers by statute, in which case they are accountable to Parliament for their use. Similarly, other office-holders may be assigned powers by statute, in which case they are accountable to Parliament for their use. It is fairly straightforward, but there are important nuances as well.

The modern Westminster constitution is rooted in the struggle between king and parliament and the subsequent drawn-out retreat of the restored monarchy from open engagement in partisan politics. The principle articulated throughout this process was that the king – later his ministerial advisors – should account to parliament for the use of the power of the state and, more particularly, for any expenditure of public money. By the mid-19th century, it had become accepted in the Westminster constitution that parliamen-
tary accountability required that ministers be answerable for all aspects of the activities of the state.

As noted earlier, to be answerable is not the same as being accountable. Where a minister exercises a power assigned to him or her by Parliament, the minister is accountable to Parliament. But where the power is assigned to a non-elected office-holder, it is the office-holder, not the minister, who is accountable to Parliament. And yet, the minister has a role, which is to answer to the House of Commons for the activities of the non-elected office-holder. Note that non-elected office-holders refers to the heads of independent bodies, such as boards and commissions, and not to deputy ministers, who only exceptionally exercise powers independently of ministers.

The constitutional responsibility of ministers for their departments should not be eroded by attempts to distinguish abstractly between policy and administration.

The Gomery Commission made heavy weather of its contention that deputy ministers should be accountable to the public accounts committee for the powers conferred on them under the Financial Administration Act. It is not irrelevant that these powers are either delegated by the Treasury Board or subject to direction and approval by the Treasury Board. More to the point, however, the commission berated successive governments for declining to draw a clear line between policy and administration that would permit deputies to be held accountable for the latter without becoming entangled in partisan combat that should properly engage the responsibilities of ministers. The Gomery Commission in particular faulted the government for rejecting the Lambert Commission’s recommendations on this matter. (The ardour with which this opinion was expressed would perhaps have been cooled somewhat had the commissioner noted that the Privy Council Office’s paper, entitled Responsibility in the Constitution, was written and provided to the Lambert Commission in 1977, some two years before the commission made its recommendations respecting deputy ministers.) Moreover, in its submission to the Lambert Commission, the PCO had noted that, because deputies rather than ministers appear before the public accounts committee, it could be said that “[o]fficials are ... accountable before Parliament for matters of administration.” The problem with the Lambert and Gomery commissions is that neither acknowledged that the constitutional responsibility of ministers for their departments should not be eroded by attempts to distinguish abstractly between policy and administration, and neither appreciated sufficiently the extent to which deputies already considered themselves answerable to parliamentary committees.
without in any way derogating from the constitutional responsibility of their minister.\textsuperscript{13}

\section*{Conventional responsibilities of ministers}

The minister's duty to answer is a fundamental constitutional convention, taking us back to the struggles between king and parliament and the insistence of the latter that the king be accountable, and indeed he could be accountable because he was the source of the power of the state. In the modern Constitution, that power is assigned by Parliament to many officer-holders, elected and non-elected. But it is only the minister, present in the House of Commons, who can answer for the panoply of state activity.

The duty to answer is supplemented by three important tools. First, the minister is responsible to Parliament for the legislation that assigns the power of the state and accountable in the sense that legislative amendment depends on the initiative of the minister, not the organization Parliament has established. Second, the minister must approve the organization's estimates, although it is customary not to interfere in any particular way with the normal operating costs of independent bodies. Third, the minister (usually the prime minister) is responsible for recommending the appointments of chief executive officer and board members. These powers, coupled with the duty of the minister to answer to the House of Commons for the activities of the agency, provide the minister with several tools to effect change within the organization. Taken together, these are the conventional responsibilities of ministers in respect of organizations for which they are answerable but not accountable. These may not be the only powers available to the minister, but they constitute a minimum basis on which the minister may fulfil the conventional duty to answer to the house for the activities falling within his or her overall portfolio.

\section*{Machinery of government}

The machinery of government lies at the heart of the Westminster constitution, which like any constitution, is designed to distribute and delimit the powers of the state, who should exercise them, and under what conditions. Responsible government provides practical means for addressing each of these elements.

The power of the state is defined by Parliament, subject to the provisions of the 1867 Constitution and, since 1982, to judicial interpretation of the Charter of Rights and Freedoms. The prerogative power of the Crown, the focal point of the struggle between king and parliament in the 17th century, has essentially disappeared. The Crown remains the formal manifestation of the power of the state, but its powers are now the powers of the people as represented by Parliament.
Parliament is thus left to define the powers of the state and to determine how they shall be exercised. Responsible government includes the duty of the government to govern, which means proposing to Parliament the use of the power of the state through bills of proposed legislation that set out broad policy and detailed expenditures. Such bills include proposed changes in the way in which the powers of the state are to be exercised and by whom, and those provisions capture the essence of the machinery of government in modern parliamentary government.

Responsible government only works if the government commands a majority in the House of Commons (however cobbled together), and this requires that ministers work together supporting one another under the cloak of collective responsibility. For such cooperation to take place, it is essential that ministers submit to some form of management, and this is found in the person of the prime minister.

The machinery of government provides for the constitutional exercise of the power of the state through the efficient organization of government, the proper functioning of the institutions of the state, and the appropriate roles and relationships of office-holders, all in accordance with the principles, conventions and practices of parliamentary and cabinet government.

The prime minister exercises two powers that both define the position and explain its existence. First, he or she has inherited the ancient royal power of patronage, appointing ministers and other senior office-holders. Second, the prime minister exercises ultimate control over bills, including most importantly taxing and expenditure bills that will be presented to Parliament in the name of the Crown.

These two powers are the basis of everything the prime minister does in government and, in some senses, beyond government in his party's activities and its general standing in the country. The power to propose new policy and expenditure includes the power to create new organizations. The power of appointment brings with it the duty to determine the boundaries between the functions of different appointees. These are the foundations of the machinery of government.

"Machinery of government" is a term widely used but seldom defined. It captures the essentials of Westminster-style government and is perhaps more accessible and useful when defined in detail, as follows. The machinery of government provides for the constitutional exercise of the power of the state through the efficient organization of government, the proper func-
tioning of the institutions of the state, and the appropriate roles and relationships of office-holders, all in accordance with the principles, conventions and practices of parliamentary and cabinet government. Government organization is a subset of the machinery of government. It includes both the organizations that make up the government broadly defined and the centrally prescribed management regimes that apply in varying degrees to almost all government bodies.

Prime ministers tend to be (or to become, with experience) conservative about organizational change. Political change can sometimes be essential, and prime ministers who fail to wield the axe when needed are often judged to be poor leaders. The added strain of organizational change often seems superfluous, and in this their judgment is often sound. Massive changes, such as Trudeau's in the late 1960s and Mulroney/Campbell's in the mid-1990s, usually generate little political advantage and a great deal of organizational disruption.

The machinery-of-government function has sometimes been condemned because of such failures. Organizational disruption deserves criticism, but the lesson is not to suppress machinery-of-government support for a prime minister. Critics of machinery of government focus very much on reorganizations and what can and does go wrong. Perhaps lacking experience, they are not conscious of the importance of machinery of government in making often unseen day-to-day adjustments in the gyroscope of state that keeps the ship on course. It is sometimes forgotten that the prime minister's machinery-of-government powers govern the relationships among ministers, between ministers and officials, between the government and Parliament, and between government and the courts. The machinery of government determines the appropriate roles for institutions that are as varied as that of the auditor general and the governor general; safeguards appropriate relationships with police forces, security organizations, and the Armed Forces; informs ministers about their responsibilities; determines matters such as the nature of a cabinet secret and how the Queen may appoint additional senators; prepares and manages transitions of government; stands guard over access to the papers of former ministries, the writing of ministerial memoirs, and the system of honours; and is the guardian of precedent and, just as importantly, the genius that respects precedent without impeding progress. In short, government organization, more particularly reorganization, accounts for a fraction of the issues that a prime minister must deal with in exercising responsibility for the machinery of government. Done well, the machinery-of-government function safeguards the proper functioning of responsible government.

The prime minister's powers over the machinery of government are not the source of the criticism that the office has been too powerful, although commentators are not always clear about this, and the recommendations by
the Gomery Commission are in significant part based on the premise that the machinery-of-government powers need to be curtailed.\(^{15}\) The growth of the power of first ministers has been in the areas of policy, finance and communications. There is a good case, made especially powerfully by Donald Savoie, that first ministers have stepped far beyond their conventional powers in these areas, and it is of course true that, without the machinery-of-government powers, first ministers would not be able to project themselves in these matters, which properly belong to the cabinet and to ministers individually in carrying out their responsibilities. But it is wrong to conclude that these abuses can appropriately be remedied by tinkering with the machinery-of-government powers.

**Government organization and the Constitution**

The government is organized into numerous, sometimes ingenious, ways to fulfil particular purposes. Legislation, although usually framed in accordance with the principles of responsible government, can be stretched to satisfy most organizational needs; and, where those needs exceed the capacity of the legislative drafter, the subtlety of the custom and convention of the Westminster constitution will often make good any shortfall.

It would, therefore, be misleading to think of government organization and the wider machinery of government as static, capable of being reduced to a matrix table, with each enterprise duly slotted into its appointed place. There are, to be sure, attempts made to classify government organizations. The Treasury Board oversees such a codification in the Financial Administration Act, and others are to be found in the Public Service Employment Act, the Public Service Staff Relations Act, and the Federal Real Property and Federal Immovables Act, to name a few.\(^{16}\) These acts of general application may best be described as prescribing the general administrative regimes that will apply to particular organizations, but they are always subject to changes or variations that may be introduced through the organization’s governing legislation. When governments work up the mandates of new organizations and determine their governance arrangements, they do not think in terms of such classifications: they ask Parliament to approve legislation tailor-made to achieve the government’s objectives, and, once this is done, the classifiers come along and determine which schedules of the general administrative legislation best fit the character of the new entity.

Responsible government may be the key to government organization, but a caveat must be noted. The Westminster constitution presupposes an implicit understanding by the players (as well as commentators and observers) that they are engaged in a game whose rules depend as much on custom, convention, practice and precedent as on statute law and derivative regulation. Unfortunately, few understand the subtleties of the Constitution,
influenced as we are by wobbly secondary education, the dominant presence of American (Republican) politics, and the growing fondness for rule-making among the political classes. Rule-making is the antithesis of the common law constitution, and, notwithstanding the Charter of Rights and Freedoms, Canada's constitutional structure still sits on a foundation of common law that in large measure embraces the customs, conventions and practices of our Constitution. In addition to rule-making, it is evident that many of our first ministers have an uncertain grasp of the Constitution and little regard for ministerial responsibility as the keystone of democracy in parliamentary government.

The greater the discretion exercised by the organization, the greater should be the degree of ministerial control and accountability.

The Westminster constitution depends more on shared values of reasonableness and common sense than on formal codes and rulebooks. It is fair to say, however, that the cry for “error-free” government, accompanied by the marshalling and expansion of a cohort of parliamentary auditors during the past thirty years, has seriously eroded the traditions of reasonableness, replacing them with government by rules and codes. The result is poor government. And the machinery of government is slowly being poisoned by the remedy – which is, of course, more rules – prescribed for its poor rules-based performance. This phenomenon underlies and reinforces the thesis so persuasively advanced by Donald Savoie that the “breaking of the bargain” has seriously eroded public confidence in politicians, public servants and the institutions they serve.

The culture of rules has entered into our constitutional arrangements, but it is not a comfortable fit, and, if the trend persists, we shall have a constitutional system that appears Westminster-like but that will be something else in reality. This too should be borne in mind when discussing the relationship between responsible government and the machinery that supports it.

How ministerial responsibility shapes the machinery of government

Every relationship within government and every government organization is shaped by ministerial responsibility. When the prime minister appoints ministers, determines their duties, appoints their deputies, establishes new organizations, constitutes a cabinet decision-making process, decides to establish arm's-length bodies, or otherwise exercises his machinery-of-government powers, ministerial responsibility is his elemental building-block.
In deciding the nature of the minister's responsibility – his accountability or answerability, as the case may be – the prime minister is deciding the particular organizational form necessary to give effect to the purposes he has in mind. The balance of this article discusses this intimate relationship between ministerial responsibility and government organization.

**Exercise of discretion by ministers**

Responsible government provides a framework for the organization of the state’s activities. While that framework is not rigid, it is quite recognizable. And, whereas ministers may not be accountable for all the activities of the state, ministers are in differing ways answerable for them, as discussed earlier.

This distinction between accountability and answerability explains a good deal of the architecture of the state: the power of the state is exercised by ministers and their subordinates, on the one hand, or by non-elected officials and their advisers, on the other.

What, one may ask, can be said about the distinction between organizations directly accountable to ministers and other organizations for which they are at best merely answerable? What are the distinctive characteristics of organizations accountable to ministers compared with those that are independent of ministers?

The answer is “discretion.” Organizations directly accountable to ministers generally exercise broad powers, requiring close political direction and close scrutiny by Parliament, cabinet colleagues and the interested public. These are the established departments – what the British call the great departments of state – that oversee the policy and expenditure of the state in fundamental matters of finance, economic and social development, national security and foreign affairs.

Programs with complex, politically driven objectives should be placed in organizations for which ministers are directly accountable. Industrial-support programs with redistributive regional benefits are a good example. Easily faulted by auditors, such activities often can only be justified and defended in political terms, and only ministers can accept such accountability. Although it matters administratively whether a given organization is a department or a corporate body, these distinctions, so carefully made in the Financial Administration Act, are at best of incidental importance in determining that organization's standing within the machinery of government. What matters is the role of the minister in relation to the organization, and the greater the discretion exercised by the organization, the greater should be the degree of ministerial control and accountability.

The other functions of the state may be, and often are, carried out independently of ministers. Usually there are good reasons for such functions not to be subject to the direct control of ministers – at the extreme, functions
that audit the activities of ministers and their departments – but more fundamentally they are functions that do not need to be controlled by ministers. Where the powers of the state need to be exercised with a wide measure of discretion, it is essential that there be political accountability for activities deriving from those powers.

There is a further important distinction between organizations accountable to ministers and the others: ministers and the organizations for which they account are indeed accountable. This means that the minister takes responsibility, whether he or she had prior knowledge of the matter. He or she establishes the facts, takes any necessary remedial action if an error has been made, and informs the house of what has been done. Some may argue that the accountability is inadequate or that ministers fail to live up to their accountability, but that is beside the point: their accountability is exacted on a daily basis in the House of Commons, whereas the degree of accountability of organizations that are not accountable to ministers is far from clear. To whom is the auditor general accountable? To whom is the chair of a regulatory commission accountable?

The constitutional answer is Parliament, but this is a poor answer in practice. Parliament is a political forum, and it enjoys, and thinks itself very good at, holding ministers to account. Its committees provide a possible forum of accountability for officials heading independent organizations, but the possibility is mostly theoretical, since non-partisan accountability requires application and an attention to detail seldom seen – in particular – in the committees of the House. (Consider, for example, the legislative innovation of establishing an independent board to oversee the management of Canada’s revenue-gathering agency – the first chair of that board completed five years of service without ever appearing before any committee of Parliament.)

The idea that ministers are more accountable than others in our system of government may at first strike a discordant note, but this reality needs to be borne in mind in any examination of the contemporary machinery of government.

Ministerial organizations

So there are two categories of government organizations: those responsible to ministers and for which ministers are accountable to the House of Commons; and those that are independent of ministers and for which ministers generally answer to Parliament. The following discussion focuses on the broad characteristics of the two categories of organizations, their relationship to ministerial responsibility, and how they differ and where they overlap. Surveys of the particular types of non-ministerial organization are readily available elsewhere, so this detailed information is not repeated here.
Ministerial organizations are familiar enough, the most important being the ministerial department. Their establishment, organization and objectives are provided for in legislation; they are presided over by a minister; and they exercise powers, duties and functions vested in the minister.

The statutory department may be the best-known government organization, but (and in addition to the minister's private office) there are several other varieties of ministerial organizations, including ministerial boards and commissions, agencies presided over by ministers, and non-statutory departments.

Perhaps the best-known ministerial commission is the Treasury Board. This is a statutory committee of the Privy Council, established on the prime minister's recommendation, originally by order-in-council on 2 July 1867 (an early example of the machinery-of-government power at work) and later given a statutory basis in what is now the Financial Administration Act. This board also acts informally as a committee of the cabinet, and, unlike all other cabinet committees, it is supported not by the cabinet secretariat in the Privy Council Office but by a separate ministerial department presided over by the president of the Treasury Board.

The Treasury Board and its secretariat constitute one of the central agencies of government, charged in this case with the establishment of administrative standards and the authorization of expenditures in accordance with the budget laid down by the minister of finance and approved by the cabinet. There are other central agencies that are organized as ministerial departments, notably the Department of Finance, presided over by the minister of finance, and the Privy Council Office, presided over by the prime minister.

Ministerial organizations may also be found in a variety of agencies and even boards. These are often established to foster at least an appearance of independence from ministerial control. As such, their existence tends to muddy accountability, and they are not a particularly desirable form of government organization. Examples include the regional development agencies, set up in the 1980s variously to enhance regional autonomy or regional influence. More recently, ministerial agencies have been used to provide administration that is independent of central agency standards and controls without diminishing the minister's overall responsibility, if that is possible. The most interesting example of this type is the Canada Customs and Revenue Agency, for which the minister of national revenue remains statutorily "responsible," but it has a "board of management" said to be a substitute for traditional central agency control, particularly in respect of personnel, procurement and real property management.

Ministerial organization is also seen in the use of departments that are established administratively. This is done through orders-in-council under the Financial Administration Act, the Public Service Employment Act, and the Public Service Rearrangement and Transfer of Duties Act. The result is...
a fully formed department of government with the policy, program, financial, personnel and administrative powers necessary to fulfil whatever mandate may be assigned by the prime minister. Usually this device is used to create a legal foundation for an organization that will later be legislated. Therefore, it is often used at times of cabinet reorganization, which entails the creation of new departments, as recently seen with the transformation of the Department of the Solicitor General and parts of other agencies into the Department of Public Security.

Ministers also have personal offices, which in some respects is a vestige of the post-Confederation, patronage-appointed civil service. When first the inside civil service (Ottawa-based) and later the outside service were converted to appointment-by-merit under the Civil Service Commission in the early years of the 20th century, ministers continued to have the right to appoint a private secretary and, later, a few assistants to staff their personal offices. The provision continues to this day in the Public Service Employment Act, although the size and seniority of such appointments have grown in tandem with the public service.

The modern ministerial office consists generally of two sets of staff: those public servants appointed by the minister and thus exempted from the provisions of non-partisan, competency-based staffing in the public service; and those public servants seconded to the minister from the department to provide non-partisan support in administrative matters. It is not unusual for such an office to contain upwards of thirty people. The Prime Minister’s Office is a ministerial office, although larger.

The minister’s office does not exercise authority over the public service or any other government organization linked in some manner to the minister. This is not to say that the minister’s staff is without influence. Degree of influence will depend on many factors, including in particular the competence and experience of the exempt staff and the relationship between the minister and the deputy minister.

The growth of ministers’ offices, and the concentration of de facto control in the Prime Minister’s Office, has blurred the lines between political and public-service support for ministers. It is commonplace to ascribe executive authority to the Prime Minister’s Office, and even public servants are confused about the roles of that office and that of the Privy Council Office. The latter is supposed to provide public-service support to the prime minister and the cabinet, although the material importance of that support appears to have been diminished during the Chrétien years, particularly in respect of the all-important relationship with the Department of Finance, where the Prime Minister’s Office appears to have taken charge. The rule that ministers’ offices do not exercise authority applies as much to the Prime Minister’s Office as to any other, but this is poorly understood. The ministerial department, which for the prime minister is the Privy Council Office, is sup-
posed to act as the official representative of the minister in all matters requiring executive action; the minister's office, including the Prime Minister's Office, provides political and personal support to the minister. Both are ministerial organizations, and the minister is responsible and accountable equally for both.

Ministerial organizations share most of the characteristics of the statutory ministerial department; including being subject to the generally applicable management regimes prescribed by the Treasury Board pursuant to the Financial Administration Act. This may not always be apparent at first glance, but on closer examination it becomes evident that the minister retains the power to control these organizations, which in turn assures Parliament that the minister is accountable for their activities. So, although there are a variety of ministerial organizations, they share common characteristics that fit comfortably with the constitutional principle of ministerial responsibility and accountability to the House of Commons. Thus, when the prime minister appoints a minister to head such an organization, the house may be assured that the minister will be fully accountable for its activities.

Non-ministerial organizations

The same cannot be said for non-ministerial organizations. Here the relationships with ministers vary widely, but once again the degree of the minister's responsibility determines the standing of these organizations within the overall machinery of government. It is important not to be misled by the term "non-ministerial organization." There are few organizations that do not provide some role for the "appropriate" minister to fulfill, and all government organizations are subject to the exercise of the "conventional responsibilities" of ministers, described earlier. It is also important to be aware of how the conventions of the Constitution may make what appears to be a ministerial organization operate with complete independence from the minister.

The field of non-ministerial organizations covers a panoply of activities and many different forms of authority. The main forms of organization are the independent ministerial departments; regulatory boards and commissions, with or without adjudicative powers; the board or commission administering grants that require peer review and decision-making; the board or commission overseeing independent research and analysis; administrative bodies that support the courts; state-owned corporations that are commercial in character; advisory committees and boards; and various parliamentary agents that fulfil a variety of audit functions and report the results to the House of Commons.

An independent ministerial department may appear to be an oxymoron, and, on strict reading of government organization, that would be correct. All departments are thus defined either by statute or by designation under the Financial Administration Act, or both. This means that the department is
presided over by the minister who is responsible and accountable for its activities.

There are exceptions, however. The most important is the commission or public inquiry, established to provide an independent assessment of an event or policy. In law, these are the same as the administrative departments described earlier. Public inquiries are designated as departments in order to provide them with a legal basis for engaging staff and paying their fees and expenses. The minister, often the prime minister, exercises his responsibility conventionally—that is to say, normally the commission's expenditure plan will be approved without substantive scrutiny, although that is not always the case. A spectacular exception occurred with the Somalia Commission of Inquiry, which not only was denied funds but ultimately was closed due to delays and costs.25

The independent ministerial department has also been used to provide a home for various advisory bodies, although usually these want the cachet of their own legislation, as happened with the National Round Table on the Environment and the Economy. A particularly exotic variety of this species is the independent branch of an otherwise normal (i.e., dependent) ministerial department. The competition commissioner is an example of this arrangement: here the regulatory function is carried out by an appointed official with a direct, independent, statutory mandate, but the organization itself lives within and receives its rations from the department of the "appropriate" minister and is subject to the administrative direction of the minister's deputy minister.

In some respects, the non-ministerial department is the ultimate "organizational heretic" because it is the exact opposite of what it appears to be. It is not under the practical control and direction of the minister; it is, rather, entirely at arm's-length from ministers, operating often as the inquisitor, with the government as its principal focus of inquiry. But perhaps more practically, the independent ministerial department demonstrates that government organization must be supported by authority to engage staff and spend money, and these activities are usually required to conform to generally applicable management standards.

Non-ministerial organizations are by definition independent of the day-to-day direction of ministers because they fulfil objects that are inappropriate for ministerial direction. They are used, therefore, for many regulatory and review activities, particularly those that include adjudication; the conduct or support of certain types of research, particularly those requiring peer assessment; and for activities that require the freedom to operate in a commercial environment. Non-ministerial organizations are also used for unique activities such as public broadcasting, which is supposed to be free from bias of any sort, and the organization and supervision of the electoral system.

The regulation of particular public goods—energy, spectrum frequencies,
broadcasting and telecommunications – is usually assigned to arm's-length boards and commissions with authority to set rules and adjudicate competing interests. But this is not always the case: spectrum management falls to a ministerial department, whereas allocation of broadcast frequencies belongs to a regulatory commission.

Nor can regulatory agencies be neatly pigeonholed as to management regime or even degree of ministerial involvement. As noted, spectrum management is the direct responsibility of a minister, as is most regulation of public health, including food inspection. (The Canadian Food Inspection Agency is another example of an organization that appears to have a degree of independence but that is in fact a ministerial department in all but name – like the Revenue and Parks agencies.) Note too that some regulatory agencies take the form of a commission, while others are analogous to (or actually are) Crown corporations. The ultimate regulatory agency is the Bank of Canada, which enjoys a unique organizational form similar to no other, being neither a Crown corporation nor a commission in the accepted understanding of these terms.

Other non-ministerial organizations include granting councils, Crown corporations, review agencies and a wide variety of advisory bodies, most of which are part-time but some having permanent research capacity. Of these, Crown corporations and review agencies have features that merit further comment in the context of the role played by ministerial responsibility in shaping the machinery of government.

Crown corporations have a variety of relationships with government. Some are practically independent and others not. With a few exceptions, notably the CBC, all are subject to a special expenditure regime and to the Treasury Board's reporting requirements under the Financial Administration Act but otherwise manage their affairs independently of the government's general administrative regime. Ministers have a variety of relations with the chief executive officers and the board chairs of these corporations. Some Crown corporations operate with little reference to the "appropriate" minister or indeed to the Treasury Board, but others find themselves subject to detailed oversight by the minister and sometimes by his or her department. This is a particularly murky area of the machinery of government, and it is made the more so when the boards of Crown corporations try to behave like their private-sector counterparts in representing shareholder interests. This is an erroneous parallel because the shareholder is the minister, who does not need a board or a board chair to represent his or her interests to the chief executive officer. The structure as a whole is flawed, as becomes apparent when some or all directors perceive a conflict between their fiduciary duty to the corporation and the interests of the shareholder (ministers). The reality is that the boards of Crown corporations are seldom more than advisory, no matter their formal duties. The consequence is that boards are often
used for representational purposes, and board chairs often find themselves surplus to the requirements of managing the corporation's business, which is unsatisfactory for all concerned. It is not unusual for ministers to have considerable difficulty in finding and sticking to an appropriate role for dealing with Crown corporations within their portfolios. All too often, assumptions are made—frequently by the media and by other parliamentarians—that do not take account of the minister's limited role in respect of Crown corporations, and in recent years this imprecision has extended to ministers and has given rise to questions about the lawfulness of directions and actions taken by them in respect of certain Crown corporations.

Ministers may also have difficulty obtaining independent advice about corporations under their general responsibility if their departments lack relevant expertise, which can be the case when corporations such as the Post Office or the Wheat Board are assigned independently of the particular portfolio held by the minister. Ministers may improvise by adding expertise to their personal staffs, or they lean on the deputy minister to come up with resources, or they just "wing it"—none of which provides satisfactory means for ministers to fulfill either their statutory duties or their conventional responsibilities for Crown corporations.

Prime ministers and cabinet secretaries should ... ensure that the institutions over which they preside respect the Constitution

Ministers' relations with Crown corporations would benefit from a clearer understanding of their responsibilities for these bodies. This ought not to be as difficult as it has proven over the years: the statutory requirements are clear, and perhaps a little more attention to the extent and limits of the conventional responsibilities of ministers, described earlier, would help establish a better understanding of the appropriate relations between ministers and Crown corporations.

Review agencies have grown in number and importance over the past thirty years. The Office of the Auditor General is perhaps the best known of these organizations and the longest established. Others include the offices of Official Languages, Information, Privacy, and Human Rights commissioners. Sometimes the heads of these organizations are referred to as "officers of Parliament," a term that invites confusion with the real parliamentary officers (the speakers and clerks, in particular) and whose imprecision makes it even more difficult to assess the relationship between these agency heads and the government.26 There are also independent review agencies that somehow are not considered "parliamentary" and that deal with appeals
and complaints in relation to such matters as law enforcement, pensions, immigration activities, and the review of the activities of the Canadian Security Intelligence Service.

As mentioned earlier, the accountability of these bodies is to Parliament, for the most part. How this is exercised in practice is difficult to establish, and the tendency of these agencies to become advocates for wider mandates is disturbing and contrary to the responsibilities ministers are supposed to maintain for proposing amendments to their governing statutes. Thus, even in respect of these highly independent bodies there is a residual ministerial role, and it would be an improvement if all concerned refreshed themselves on the conventional responsibilities of ministers for these review agencies.

The broad range of relationships between government and non-ministerial bodies can give rise to ambiguity in particular cases. Such cases generally come to the fore in politically charged circumstances and lead to panicky responses that result in rules replacing judgment about how ministers are to relate to these sorts of organizations. Thus, over the years, rules have been promulgated to prevent ministers from communicating with judges (sensible enough, and one would have thought unnecessary but for the facts), with members of regulatory bodies outside their general responsibility, and even with the heads of Crown corporations (which is rule-making run amok). Such over-reaction suggests that if governments cannot be more sophisticated in their dealings with non-ministerial bodies, they should consider creating fewer of them.

Conclusion
Ministerial responsibility sets the parameters of the machinery of government. All government organizations have some relationship to ministers. The nature of this relationship determines the extent of the minister's accountability, which in turn establishes the accountability of non-elected officials who head non-ministerial departments.

The machinery of government, when competently administered and diligently applied by first ministers, safeguards ministerial responsibility. It ensures that every government organization has a constitutional relationship with the government and with Parliament, and it provides a constitutional framework for the relationships among all these players.

Notwithstanding the threat to the foundations of responsible government by some first ministers in Canada, the Constitution stands, and its demands must ultimately be respected. Moreover, as demonstrated by this discussion, ministerial responsibility is the strongest, most practical means of supporting the democratic exercise of the power of the state. Ministerial responsibility remains central to the organization and functioning of constitutional government in Canada. The accountability of ministers is clear even if that of organizations for which they are answerable is not. The latter is at least in part the
fault of Parliament itself, which has failed to take seriously its role in making such office-holders accountable, and of the political party system that has not developed enough talent suitably apprenticed to serve in Parliament.

There are, to be sure, shortcomings in the application of ministerial responsibility. Some of these have been noted here, none more important than the breakdown of understanding by the participants of the conventions and practices of a Constitution that depends on reasonableness and shared respect for its fundamental importance, if we are to be governed democratically. At the same time, however, it is important to recognize that ministerial responsibility does not just happen: it needs careful tending and constant care to ensure its effective and appropriate application. That is the duty of first ministers and that is why they have responsibility for the machinery of government.

In order to provide effective support for the machinery-of-government responsibilities of first ministers, cabinet offices must be rooted in a thorough understanding of the principles of the Westminster constitution. Ministerial responsibility continues to be the central principle of that constitution, defining the relationships and organization of the government.

To work efficiently, the machinery of government should respect the responsibilities of ministers and avoid the serious error of substituting a governance culture based on rules and codes for reliance on the judgment and responsibility of ministers. As has been explained, complex government programs depend on ministerial direction and ministerial accountability for an effectiveness that can only be achieved through flexible objectives and tailor-made decision-making that defies codification.

For this flexibility to be protected, it is essential that prime ministers pay attention to the use of their authority. The prime minister is responsible and must be accountable for the integrity and effectiveness of the way in which the government carries out the affairs of the country. While sainthood is not required, the Westminster constitution presupposes that prime ministers will rise above short-term, partisan advantage in overseeing the management of the machinery of government. Prime ministers are supposed to respect the Constitution, and that includes respecting and upholding its all-important conventions and practices. The cabinet – or, at least, a reasonably representative group of ministers – must be the decision-makers, not the prime minister, and still less his political or official advisers. Ministers, not the caucus or interest groups, must be enabled to be responsible. Officials must offer advice, and ministers must listen to it and then decide whether to accept it; and officials must not be intimidated from doing their duty. These are just some of the requirements of adequate management of the machinery of government. The weight to be attached to them is not something for a rising politician to leave to chance when he or she takes custody of the institutions of the state when undertaking to form a government.
Constitutional democracy depends on the successful interplay of many factors, beginning with an informed electorate and substantial political parties that will ensure a sound apprenticeship for those who run for office. Persons elected and appointed to office have important custodial responsibilities, and this is especially the case for the heads of government and the civil service. Prime ministers and cabinet secretaries should have an affinity for the practical application of the Constitution and a desire to ensure that the institutions over which they preside respect the Constitution. And if they themselves understand and respect the pivotal importance of ministerial responsibility in the ordering and functioning of the machinery of government, they will fulfil their elemental duty, which is to preserve and protect the state for those who will succeed them.

Notes


4 See Patrick Weller, First Among Equals (Sydney: George Allen & Unwin, 1985); and, for recent Canadian experience, Donald Savoie, Governing from the Centre: The Concentration of Power in Canadian Politics (Toronto: University of Toronto Press, 1999).


8 Authoritative descriptions of responsible government are found in Peter Aucoin, Jennifer Smith and Geoff Dinsdale, Responsible Government: Clarifying Essentials, Dispelling Myths and Exploring Change (Ottawa: Canadian Centre for Management Development, 2004); and Canada, Privy Council Office, Responsibility in the Constitution (Ottawa: Minister of Supply and Services Canada, 1993 [1977]).


12 Ibid., p. 74.

13 For the commission's position, see, Canada, Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission), *Restoring Accountability. Recommendations [Phase 2 Report]*, pp. 96–100.

14 The author gratefully acknowledges the contribution of his former colleague, Nicole Jauvin, in working out this definition.

15 Generally, this refers to recommendations that would alter the relationship between ministers and deputy ministers and specifically to recommendations to reduce the role of the clerk of the Privy Council and secretary to the cabinet by changing the method of appointment and tenure of deputy ministers and transferring the designation "head of the public service" to the secretary of the Treasury Board. See recommendations 5, 6, 12 and 13 in Canada, Commission of Inquiry into the Sponsorship Program and Advertising Activities (Gomery Commission), *Restoring Accountability. Recommendations [Phase 2 Report]*, pp. 101–109 and 149–52.


19 Savoie's concept of space, or lack thereof, captures the consequences of replacing mutual respect and trust with rules and other measures that reduce the legitimate exercise of discretion in the proper functioning of the machinery of government. See Savoie, *Breaking the Bargain*, pp. 3–20.


21 For a contemporary classification of these organizational types, see Aucoin, "Independent foundations, public money and public accountability," *Canadian Public Administration*, pp. 4–6.


