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*To inquire into . . .*

*(g) all other matters related to the establishment and operation of the Mine which the Commissioner considers relevant to the occurrence*

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The three provincial politicians most involved with the Westray project, in one way or another, were John Buchanan, Donald Cameron, and Leroy Legere. Of the three, Cameron had the most prominent and enduring role in the project. During the formative stages of the Pictou coal project, when Suncor Inc. and Placer Development Limited were active, John Buchanan was the premier of Nova Scotia. He stepped down as premier and resigned his seat in the Legislative Assembly on 12 September 1990. Since that time, he has been a member of the Senate of Canada. Donald Cameron was a member in the provincial legislature for several years prior to his appointment as minister of industry, trade, and technology on 22 April 1988. He retained that portfolio until 26 February 1991, when he assumed the premiership of the province after winning the leadership convention of the Nova Scotia Progressive Conservative party. He held the post of premier through the time of the Westray disaster until the late spring of 1993. Leroy Legere was appointed minister of labour by Premier Cameron on 26 February 1991 and retained that post until 25 November 1992. On 24 February 1992, Legere was given added responsibility when he was appointed minister of fisheries.<sup>1</sup>

Elmer MacKay, retired member of Parliament for Central Nova, the (former) constituency in which the Westray mine is located, was the only federal politician to give evidence at the Inquiry hearings. MacKay served as MP for Central Nova from 1971 to 1993, except for a brief period when he gave up his seat to the newly elected leader of the federal Progressive Conservative party, Brian Mulroney. Having previously served as minister of revenue, MacKay was appointed minister of public works shortly after the 1988 federal election. At the same time, he assumed responsibility for the Atlantic Canada Opportunities Agency (ACOA).<sup>2</sup> MacKay described his involvement in the Westray project as follows:

The role that I tried to play to the extent of the ability that I had was to be an advocate for the project. I depend a lot on people such as Mr. Rogers, who previously testified, to safeguard the detail and do the negotiations, but, in principle, I thought this was an excellent initiative for this province and particularly this constituency.<sup>3</sup>

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<sup>1</sup> This information was provided by the office of the provincial Executive Council.

<sup>2</sup> MacKay (Hearing transcript, vol. 65, pp. 14251–52).

<sup>3</sup> Hearing transcript, vol. 65, pp. 14262–63. Harry Rogers was MacKay's deputy minister of public works.

This statement appears to sum up MacKay's involvement quite accurately and appears to be consistent with what would be expected of a member of Parliament concerned with the interests of his constituency.<sup>4</sup>

### Political Involvement in the Westray Project

Much of the involvement of the politicians in the Westray project is detailed in Chapter 2, Development of Westray, and will not be repeated here. What follows is limited to a discussion of the conduct of the various politicians as it relates to their responsibility as cabinet ministers in the government of the province. It is intended to provide a brief introduction to the concept of ministerial responsibility in a parliamentary government. Before discussing ministerial responsibility, however, I wish to look more closely at Donald Cameron's role in the development stage of Westray.

There is no question that Cameron, both as minister of industry, trade, and technology for the province, and later as premier, was the politician most heavily involved in the Westray mine project. At the hearing on 28 May 1996, I described Cameron's role in the development of Westray as "pivotal," and that remains an apt description. The project, although not directly in Cameron's constituency, was nearby and would have a direct impact throughout the region.

Prior to his appearance at the Inquiry, Cameron requested, through Inquiry counsel, that he be given the opportunity to make an opening statement. I acceded to this rather unusual request, albeit with some reservations. The opening statement was made under oath and was subject to cross-examination. Cameron came to the Inquiry without counsel, and I am told that he eschewed any offer of assistance from counsel for the provincial minister of justice. His opening statement and the evidence following that statement provided some of the most unusual testimony to come before this Inquiry. Cameron's demeanour as a witness was alternately peevish, obstinate, aggressive, and myopic, with occasional flashes of good humour. Although his evidence provided valuable insights into his political involvement in the project, it did little to provide any useful or objective perception of how the Westray disaster happened. At the outset, Cameron quoted an unknown source to illustrate his point that, owing to the massive amount of material written on the Westray disaster, the "truth has been lost in the story":

For the great enemy of the truth is very often not the lie, deliberate, contrived, and dishonest, but the myth which is persistent, persuasive, and unrealistic. We subject all facts to a prefabricated set of interpretations. We enjoy the comfort of opinion without discomfort of thought.<sup>5</sup>

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<sup>4</sup> **Comment** During the Westray rescue operation following the explosion, MacKay came to the mine site, "suited up," and went down into the mine to make his own observations and to speak with the rescue teams. Graham Clow told me that MacKay's presence in the mine at that time was greatly appreciated by the rescuers, who regarded it as a sincere indication of concern and interest. Clow said it was a real morale booster for the men.

<sup>5</sup> Hearing transcript, vol. 66, pp. 14394–95.

The record will show that this quotation is as descriptive of the evidence and opinions voiced by Cameron as it is of the testimony given by many other witnesses at the Inquiry.

Donald Cameron worked hard on the Westray project to provide an opportunity for Pictou County to re-establish its heritage as a coal-producing area of the province and to foster the many direct jobs and spin-off benefits he assumed would accrue to the people of the county. In his public persona following the explosion on 9 May 1992, Cameron could have taken the high road and assumed a leadership role.<sup>6</sup> He could have stated forthrightly that he had used his best efforts and political acumen for the greater interests of his constituents and the people of Pictou County generally, but that something went horribly wrong – and that he must therefore assume some of the political responsibility for the disaster.<sup>7</sup> Instead, to his discredit, Cameron chose to blame the 9 May explosion on the miners. He elected to follow the path originally espoused and rationalized by Westray general manager Gerald Phillips and picked up on by Curragh Resources Inc. chief executive officer Clifford Frame.<sup>8</sup> Unlike Cameron, Phillips and Frame chose the media as their forum for comment and have steadfastly resisted all efforts by the Inquiry to have them appear and assist it in its investigation of this tragedy.<sup>9</sup>

I accept Cameron's contention that he did not become actively involved in the Westray project until after the understanding between Suncor and Curragh had been reduced to writing in December 1987. Cameron was appointed to the provincial cabinet as minister of economic development by Premier Buchanan on 22 April 1988.<sup>10</sup> The record does show that as a cabinet minister Cameron became the prime motivating force in the provincial government for the Westray project. *And he did so for all the right reasons.*

Cameron wanted to decrease the harmful sulphur dioxide emissions from the old thermal generating plants then in operation in Pictou County. Coal from the Pictou basin was low in sulphur compared with Cape Breton coal, which was being used in the plants; development of a low-sulphur coal mine would be environmentally desirable. Cameron wanted to have Pictou County coal used in the new Trenton 6 thermal generating plant being proposed by Nova Scotia Power Corporation (then a provincial

<sup>6</sup> Indeed, Cameron briefly assumed such a role in his remarks before the Nova Scotia legislature in announcing this Inquiry.

<sup>7</sup> This is the sort of political responsibility alluded to by Buchanan in his testimony and expanded upon later in this chapter.

<sup>8</sup> See the *Halifax Chronicle-Herald* article of 19 April 1996 in which Phillips said that the mine wasn't safe "because of some of the things some of the employees maliciously did." See also the *Globe and Mail* article of 17 February 1997 in which Frame maintained that he had no responsibility for the Westray disaster, characterizing it as a "simple accident."

<sup>9</sup> At the close of the Inquiry hearings at Stellarton, I stated that I felt entitled to draw an adverse inference from the failure of any person to appear before the Inquiry after being requested to do so.

<sup>10</sup> Cameron had previously held a cabinet position but had stepped down for personal reasons, while maintaining his seat in the Legislative Assembly. The Department of Economic Development later became the Department of Industry, Trade, and Technology, and to avoid confusion we use the latter throughout this chapter.

crown corporation) to replace some of the older, low-production plants, which were known polluters in the area. As Cameron said, “The choice was very simple. You could install scrubbers or you could burn low-sulphur coal.” According to Cameron, scrubbers would cost about \$125 million to install, with annual operating costs of \$16 million or more.<sup>11</sup> On the basis of these estimates, the exploitation of Pictou County coal made good financial sense.

Cameron saw the Westray project as the realization of any politician’s dream – the provision of long-term, high-paying jobs in and about his constituency. The direct benefits of more than 200 jobs, and the indirect benefits to the community generally, were substantial. Also, Pictou County could again assume its historical role as a significant coal producer. We note that during the development stages of the Westray project there was strong and enthusiastic support in the community, with mayors, MLAs, and business leaders voicing encouragement.

Cameron pursued the Westray project with exuberance and determination. At times, this determination may have clouded his judgment and prompted him to gloss over negative aspects, rationalize potentially troublesome matters, or simply assume that problems would resolve themselves or be resolved by others. Although it may not have been intentional on Cameron’s part (and probably was not), his aggressive pursuit of the Westray project may have sent a message to the bureaucracy, particularly the inspectorate, that Westray was “special” and ought to be treated as such. Certainly, the machinations of Phillips, as illustrated by some of his memoranda and his actions, would lend weight to this interpretation. Cameron was neither a mining engineer nor a financial consultant. For this, he cannot be faulted. What he can be faulted for is not seeking competent professional advice to help him make important and complex decisions respecting the Westray project. There is evidence that, when advice was proffered, it was sometimes ignored if it did not further Cameron’s ultimate goal of getting a coal mine in Pictou County. There is also evidence that he tended to interpret things in the way most favourable to his vision of things. At times, this tendency led to unreasonable interpretations and actions. Two incidents illustrate these propensities on the part of Cameron.

The provincial cabinet had authorized Cameron, as minister of industry, trade, and technology, to negotiate with Westray for the development of a coal mine. Negotiations were ongoing through 1988 and into 1989. Cabinet approval for the various aspects of provincial participation in the project was not forthcoming until 1990. Regardless, Cameron informed Clifford Frame, chairman and chief executive officer of Westray Coal Inc., on 9 September 1988 that the province had agreed to grant a mining lease, a \$12 million loan, and a take-or-pay agreement

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<sup>11</sup> Hearing transcript, vol. 66, p. 14401.

for 275,000 tonnes of coal per year.<sup>12</sup> The evidence is clear that no such agreement had been authorized by cabinet at that time.

The second example relates to the now infamous take-or-pay agreement.<sup>13</sup> In his testimony, Cameron insisted with vehemence that the province would never be called upon to honour that agreement and that he had firm commitments from Westray to this effect. He maintained this opinion in the face of the clear wording of the agreement and in spite of the fact that the company had asked for an extension on the time allowed for making such a claim. Cameron's tenacious adherence to these views was both startling and mistaken. Again, he had clear advice to the contrary, which he chose to ignore.

### Finding

**The take-or-pay agreement between the province and Westray was a legal and enforceable contract. Donald Cameron was clearly in error when he so firmly stated that the province would never be called on to honour it.**

## Ministerial Responsibility

The concept of ministerial responsibility in a parliamentary system of government is not well understood. In this Inquiry, the concept has particular significance in the context of ministerial accountability for the functioning of the department over which the minister presides. It seemed to me important to examine the concept and to analyse the actions of Buchanan, Cameron, and Legere in the context of this background. In so doing, I have relied on a report prepared for the Inquiry by Peter Clancy, professor of political science at St Francis Xavier University, who analysed the pertinent transcripts of the Inquiry.<sup>14</sup>

The multiple dimensions of ministerial responsibility include a legal relationship, a constitutional convention, a political obligation, and a matter of personal or moral concern both to practising politicians and to the public. In addition, ministerial responsibility embraces two important types of executive action. One type pertains to the working of the cabinet as a whole and highlights aspects of collective ministerial responsibility. The other type focuses on individual ministerial responsibility, by which each minister accounts to Parliament on an ongoing basis for the actions taken by his or her ministry. On rare occasions, the two dimensions may converge.

For almost two centuries in the United Kingdom, the doctrine of ministerial responsibility has been a crucial connecting link between the

<sup>12</sup> Exhibit 141.03.011.

<sup>13</sup> See Chapter 2, Development of Westray, for a full discussion of the take-or-pay agreement.

<sup>14</sup> Peter Clancy, "The Concept of Ministerial Responsibility in Parliamentary Government, with Reference to Certain Testimony before the Westray Mine Public Inquiry," report prepared for the Westray Mine Public Inquiry (November 1996). I wish to acknowledge the contribution of Dr Clancy to this section of the Report. His insightful and thoughtful presentation was of great assistance in placing a complex constitutional topic in context and relating it to the Westray testimony as generated at the hearings.



collective executive – the cabinet – and the elected House of Commons. The rise of disciplined parliamentary parties in the late 19th century had the effect of stabilizing governments based on a majority party, by insulating them largely against the threat of defeat on motions of confidence. By the early 20th century, the age of Parliament as a body able to make and unmake governments had been replaced by an executive-centred era of cabinet government. This trend was further reinforced, and ultimately modified, by the rise of a professional civil service addressing the increasingly complex problems of the state. Although the cabinet continued to set a strategic agenda for governing, ministers were no longer at the centre of departmental deliberations, as they had been in the past. The minister's obligation to account to Parliament for all actions within the department did not change, but a distinction now emerged between "political" and "administrative" matters.

British political scientist Geoffrey Marshall explains that the "doctrine of ministerial responsibility is the most general principle of the system of parliamentary government. It is not a single doctrine or rule but a rather complicated bundle of distinct though related principles."<sup>15</sup> It follows that this bundle must be unpacked in order to weigh particular cases. Among the distinctions we need to bring to this discussion are those of collective and individual ministerial responsibility, and those of legal, moral, and constitutional responsibility.

If collective ministerial responsibility centres on cabinet solidarity, cabinet secrecy, and the principle of collective confidence, then individual ministerial responsibility highlights the role of ministers as political heads of administrative departments. The *legal* dimension of ministerial responsibility pertains to the obligation of the state to account for its actions under law. Under such provision, legal proceedings can be brought by citizens against the crown, in the name of the minister responsible. This principle is shaped by statutes addressing the character of crown liability, which curtail the earlier crown prerogative not to be held liable under tort law. This dimension must be distinguished from the political convention that covers ministerial responsibility in a *constitutional* sense. To quote Marshall again, "Dicey's legal proposition is that acts done by civil servants generally speaking are treated for legal purposes as acts of the Minister. But it does not by any means follow from that every civil servant's act is by convention the act of his Minister."<sup>16</sup>

In fact, the constitutional convention has evolved in a markedly different direction over the past century. In general, it may be said that ministers are clearly responsible for situations of personal fault (a category related directly to the aspect of *moral* responsibility). These situations may extend to private indiscretions or to political errors made in the context of governing. It is the aspect of wider administrative responsibility that has

<sup>15</sup> Geoffrey Marshall, "Introduction," in *Ministerial Responsibility*, ed. G. Marshall (Oxford: Oxford University Press, 1989), 1.

<sup>16</sup> Marshall, "Introduction," 8.

proven more difficult. During much of the previous century, it was possible, and even likely, for ministers to be directly involved in the significant activities of their departments; in the modern administrative state, such involvement is practically impossible. Another British political scientist, Diana Woodhouse, suggests that responsibility of this sort has come to be understood in relation to the degree of control exercised by ministers. In particular: "Where the minister has no control or supervisory authority, no accountability is expected of him."<sup>17</sup> There is little basis for a minister to accept vicarious responsibility for administrative error. This general proposition has been further developed, in terms of both ministerial "awareness" and ministerial "involvement." Each underlines the deliberate activity of the minister arising from his or her actual (or reasonably to be expected) awareness of the matters in question. Woodhouse captures these nuances of ministerial responsibility in the image of a "multi-layered convention."<sup>18</sup>

In terms of the requirements of accountability, it is a convention that has operated on a series of discrete levels. Drawing on a survey of 20th-century British cases, Woodhouse offers a continuum of five responses reflecting levels of ministerial responsibility: to redirect, to report, to explain, to make amends, and to resign (the last termed sacrificial responsibility). At the first level, the minister's obligation is restricted to one of *redirecting* a query from a member of Parliament to the appropriate responding agent. The *reporting* or *informatory* role may fall to the minister in cases of indirect responsibility. The third case involves *explanatory* responsibilities, in cases where the minister is directly responsible for personal or departmental actions. Here, Parliament can expect a comprehensive accounting for matters squarely within a minister's portfolio. Woodhouse contends that this form is fundamental to accountability, but that, in practice, ministers may often deflect their responsibility into redirection or reportage only. A more vigorous response can be found in the fourth case, the *amendatory* responsibility, in which an acknowledgement of error is accompanied by plans for corrective action. Finally, the most extreme response entails the minister's resignation in acknowledgement of direct involvement in unacceptable activity. Woodhouse contends that "individual ministerial responsibility can therefore be defined most accurately as requiring resignation for personal fault or private indiscretion on the part of the minister, or for departmental fault in which the minister was involved or of which he knew or should have known."<sup>19</sup>

The academic literature in Canada approaches the subject of ministerial responsibility from a somewhat different viewpoint. Although the classical constitutional treatment of the executive acknowledges

<sup>17</sup> Diana Woodhouse, *Ministers and Parliament, Accountability in Theory and Practice* (Oxford: Clarendon Press, 1994), 27.

<sup>18</sup> Woodhouse, *Ministers and Parliament*, 38.

<sup>19</sup> Woodhouse, *Ministers and Parliament*, 38.

individual ministerial responsibility, along with collective solidarity and parliamentary confidence, as a pillar of cabinet operation, there have been few extended explorations of the conventions of ministerial responsibility in action to match those found in the United Kingdom. The Canadian literature seems to focus on the complications imposed on individual ministers by the rise of the civil service. This might be described as the public administration dimension.

Kenneth Kernaghan drew attention to these issues in a series of articles in the late 1970s. Arguing that the doctrines of executive decision making risked being found irrelevant for ignoring the rise of administrative authority, he suggested that a stocktaking was overdue. The result was a valuable reminder of the “other side” of ministerial responsibility, which underpinned the longstanding doctrine of political neutrality for the civil service and, in particular, the arrangement whereby “public servants provide forthright and objective advice to their political masters in private and in confidence; in return, political executives protect the anonymity of public servants by publicly accepting responsibility for departmental decisions.”<sup>20</sup> Not only was the anonymity of the public service under threat with the increasing public interest in the bureaucracy, but the degree of political shelter provided by ministerial responsibility had begun to diminish.

In subsequent writings, Kernaghan suggested that much of the renewed debate about the vitality of ministerial responsibility was a product of conflicting meanings and interpretations. On the one hand stood the notion that responsibility meant that ministerial resignation could be expected automatically in cases of serious error in the department; on the other hand was the idea that the minister was responsible in the sense of having an obligation to explain and defend all departmental actions to the legislature. The tension between these two notions triggered a debate between commentators holding that the convention of ministerial responsibility is effectively dead, and those who argue for its vitality. In the end, Kernaghan suggests, the former case is built on the decline of ministerial resignation as a categorical response, while the latter case rests on the continued relevance of explanatory accounting in Parliament. His ultimate conclusion was that “[r]eports of the death of ministerial responsibility are greatly exaggerated,” adding that

the resignation component of the convention of ministerial responsibility may be restated as follows: The minister is not answerable to Parliament for all the administrative errors of his department in the sense that he must resign in the event of a serious error by his department. The second component of the convention, namely that the minister is answerable to Parliament in that he must explain and defend the actions of his department before Parliament, is unchanged.<sup>21</sup>

<sup>20</sup> Kenneth Kernaghan, “Politics, Policy and Public Servants,” in *Public Administration in Canada: Selected Readings*, ed. K. Kernaghan (Toronto: Methuen, 1982), 228.

<sup>21</sup> Kenneth Kernaghan, “Power, Parliament and Public Servants: Ministerial Responsibility Reexamined,” in Kernaghan, ed., *Public Administration*, 255.



Thus, despite certain inconsistencies of application in the parliamentary arena, the convention of ministerial responsibility remains an important provision in contemporary practice.

### **Ministerial Responsibility and the Transcript Evidence**

Questions of ministerial responsibility were explored in the Inquiry hearings in the testimony of three former Nova Scotia cabinet ministers: Donald Cameron, John Buchanan, and Leroy Legere. To clarify the issues raised, they will be framed as far as possible by the themes and distinctions drawn above.

#### *Donald Cameron*

Alone among the former ministers whose testimony is examined, Cameron served in twin roles over the life of the Westray project. When he re-entered the cabinet in April 1988, as minister of industry, trade, and technology, his portfolio included responsibility for negotiating financial assistance incentives such as Westray was seeking and was ultimately granted. Later, from February 1991 to May 1993, he served as premier of Nova Scotia, and for more than half that time the mine was an operating concern. This dual experience during the Westray years allowed Cameron a unique vantage point on the role of cabinet influence.

The issue of ministerial responsibility was an inevitable part of Cameron's testimony before the Inquiry. Questioned about the appropriate level of involvement by ministers in departmental affairs, he described a minister's initial orientation: "There's always briefing books prepared for everyone . . . You look at the legislation you operate under. You start understanding your divisions, what the responsibilities are for each division. You would have meetings with the heads of those divisions. And to get a sense of what's going on." Pressed about the appropriate degree of subsequent ministerial involvement in particular issues or projects (with a direct reference to the Westray mine), Cameron pointed to a possible danger of over involvement that might jeopardize the independence of officials: "You have to be careful that the Minister, the political person that really doesn't come with a whole lot of knowledge, that he doesn't get too involved and start interfering."<sup>22</sup> He further pointed out that certain forms of statutory regulation, such as occupational safety and health, were designed to focus on "internal responsibility" based on technical inspection by government officials and directives to employers.

This prompted the question of the appropriate level of involvement, and Cameron sought to distinguish between routine administration (the "public service side") where ministerial intervention would not be expected, and cases subject to controversy (the "political side") in which the minister's role expands: "If the project becomes a controversy, clearly, he's going to have some additional briefing so he could answer questions

<sup>22</sup> Hearing transcript, vol. 67, pp. 14749–50.

in the House, which is part of his responsibility, or to the public through the media, which is part of his responsibility.”<sup>23</sup>

The discussion then turned to the minister’s obligation to assume responsibility for departmental actions. Here the issues were not as sharply delineated as they might have been, but Cameron suggested that responsibility turned on the degree of knowledge and response: “If that person at the top is aware of information and does nothing, he’s got to take the responsibility.” In the absence of such awareness, “the people, clearly, that were doing it should be responsible. I think that’s a reasonable start. And the people that were actually managing these folks, they would have to share some of the responsibility.”<sup>24</sup> How this might be apportioned was not clarified.

Inquiry counsel John Merrick pointed out a possible manipulation of this rule, if senior political officials chose to insulate themselves deliberately from sensitive issues, with a resulting shield from responsibility “as long as they can establish that they didn’t know.” In response, Cameron extended his scope for accountability, observing that, “if you allow a Minister or a Deputy Minister to do a job that is not up to scratch, then that’s your responsibility.” He pointed out that his government sought to increase the degree of policy scanning, by installing a senior civil servant as the deputy minister in the premier’s office “to have that link, to try to know as much as possible, to try to look for problems before they came and to take action against it.”<sup>25</sup> Returning at the close of his testimony to the question of responsibility, Cameron offered a similar comment to the one above, stating: “If the Minister knew that the regulator did not perform the function, then I say there’s a responsibility, a clear responsibility.” Merrick described this as “the Nova Scotia addendum to the British principle of ministerial responsibility.” Pressed further, Cameron agreed with the proposition that “it was the responsibility of everybody up the chain of command . . . [t]o take reasonable efforts to know what was going on and to be satisfied that it was proper.”<sup>26</sup> Cameron’s position is not incompatible with certain versions of the “responsibility versus accountability” perspective discussed earlier, though his account is a severely truncated version, with no recognition of the obligation to “answer for” and take remedial action.

The complicated field of relationships between ministers and senior civil servants lies at the heart of this issue. Several cases from Cameron’s own experience were reviewed, principally exploring his relationships with officials while serving as minister of industry, trade, and technology in the development stage of Westray. The discussion centred on the key elements of the assistance package negotiated between 1988 and 1990. Cameron’s position was that the cabinet authorized the initial exploration

<sup>23</sup> Hearing transcript, vol. 67, pp. 14751–52.

<sup>24</sup> Hearing transcript, vol. 67, pp. 14756, 14761.

<sup>25</sup> Hearing transcript, vol. 67, pp. 14761–64.

<sup>26</sup> Hearing transcript, vol. 67, pp. 14899–900.

of an assistance package in response to Westray's approach, and that ministers in cabinet decided key points of policy principle (for example, the granting of the interim loan, the decision to fully subordinate the loan, and the take-or-pay agreement). In his words: "The bottom line is that Cabinet approved every part of the deal."<sup>27</sup> He stated that civil servants conducted the day-to-day negotiations on these issues, that the officials pressed the government interest vigorously, and that he relied on their expertise for the technical appraisal of Westray's need and justification for assistance.<sup>28</sup> Cameron did not clearly convey his role as the designated "lead minister," and this ambiguity strongly shaped the balance of his questioning and testimony.

At the same time, these issues were seldom clear-cut in their execution. Cameron's level of recall was uneven, particularly on some major issues that, by the above account, would have been settled at cabinet. This was particularly evident on the issue of grandfathering the licence for the mine project under the old regulatory regime rather than the new. Similarly, the discussion of when the take-or-pay agreement received political approval, and by whom, illustrates the ambiguities of understanding involved in ongoing policy development. Finally, the documentary evidence reviewed on the acceptance of the *pari passu* terms for securing the interim loan, in a fashion that arguably transformed the project into a joint venture between the province and the company, illustrates a gap between administrative advice and ultimate political choice. In the latter two cases, it appears that, rather than simply taking advice from officials, minister Cameron was willing to press ahead without it, *or in spite of it*.

Cameron's testimony raised interesting issues on the broader context within which the role of cabinet and ministerial government occurs. At several points, the role of the opposition was raised, since it operates at both the parliamentary and the electoral level. Cameron viewed the opposition in a consistently negative light, suggesting that it generated exaggerated claims, tending towards outright untruths and even slander. This syndrome was captured in the phrase "the swirl of politics."<sup>29</sup> It was intended to convey the state of constant and excessive partisanship that permeated the Westray question, from the early negotiations of 1988 through to the Inquiry hearings. Cameron described it as deeply rooted in "the process of opposition versus the government. The ins and the outs . . . it starts out by the outs. The opposition, whoever they are at the time. It doesn't make any difference what party it is. They make it a political issue. That's the way the political system works. And if they continue to make it a political issue, it becomes a lightning rod for everything."<sup>30</sup> Cameron left no doubt that he viewed the swirl of politics, fed by the

<sup>27</sup> Hearing transcript, vol. 66, p. 14557.

<sup>28</sup> Hearing transcript, vol. 66, pp. 14468–71, 14482.

<sup>29</sup> Hearing transcript, vol. 67, p. 14705.

<sup>30</sup> Hearing transcript, vol. 67, pp. 14705–06.

Liberal party, the Devco lobby in Ottawa, and the Nova Scotia media, as having made a scapegoat of his government for the mine disaster overall.<sup>31</sup>

This perspective appears to confuse an excess of partisan zeal with the institutional provisions for accountability in a parliamentary system. While the latter is certainly vulnerable to the former, the two are in reality quite distinct. Indeed, political history is replete with examples of a candid and deliberate government turning the exaggerated partisanship displayed by its opponents to advantage. It could equally be argued that a government's best defence lies in prompt and full disclosure of its position, under the provisions that ministerial responsibility makes available.

Cameron was queried about the possible value of a code of conduct for ministers "setting out general principles as to what is acceptable and what is not acceptable political support for projects." Cameron neither opposed nor endorsed this proposal, commenting: "I'm certainly not against standards set for any group in our society, but I just really never gave it a great deal of thought."<sup>32</sup>

## Finding

**Donald Cameron, both as cabinet minister and as premier, did not have a clear understanding of his role or that of cabinet respecting the acceptable level of political support for projects or the relationship between the minister and his department in dealing with such projects.**

Cameron's testimony will most likely be remembered for his opinions on the responsibility for the actual mine explosion: "I'm saying those people that changed the metres – and pressed the reset button, did those things – they should be responsible. It shouldn't be the inspector that wasn't there. It shouldn't be the politicians. Those people that overrode those safety devices should be held responsible."<sup>33</sup>

It is clear that, whatever one's view of the immediate and underlying forces that caused this mine disaster, there remains the question of whether cabinet and ministerial responsibilities, in their respective jurisdictions, have been discharged adequately. Somewhere between assuming direct responsibility for the outcome and totally dismissing the relevance of executive responsibility, there is an opportunity for the coherent and precise accounting of the public role.

## *John Buchanan*

Senator Buchanan, who was premier from October 1978 to September 1990, dated his first awareness of the Westray mine to the second half of 1987. At the time, Suncor Inc. was trying to sell the rights it held to the Pictou County property. While attending a conference in Ottawa,

<sup>31</sup> Hearing transcript, vol. 66, pp. 14395–99.

<sup>32</sup> Hearing transcript, vol. 67, pp. 14736–37.

<sup>33</sup> Hearing transcript, vol. 67, p. 14859. This very controversial issue has been dealt with in Chapter 6, *The Explosion*.

Buchanan was introduced to Clifford Frame, who was negotiating with Suncor. Buchanan resigned as premier in September 1990. His involvement with Westray thus covered the development period only and ended shortly after the Nova Scotia cabinet approved its assistance package in August 1990.

Buchanan was asked his views on the nature of ministerial responsibility. He began by identifying the department and its officials as designated under law to apply regulations. Queried further about the responsibility in cases where this regulatory power is incompetently exercised, he declared that “the buck stops at the top.” Elaborating, he distinguished several levels of involvement:

[Y]ou’ve got to divide that as to . . . what is the problem. If it’s a problem that someone is not following Government policy, and it’s a definite policy of Government and if it’s not being followed then, of course, the Premier has that responsibility of saying to the Minister or his Deputy, who the Premier appoints, “Thank you, but good-bye.” So it depends what the circumstances are.

But if you’re asking me where responsibility lies in Departments, the ultimate responsibility in a Department lies with the Minister, and the responsibility over that is the Premier.<sup>34</sup>

In this account, the premier’s responsibility is triggered by the awareness of a problem. Furthermore, the responsibility is discharged not by an acceptance of blame, but by the requirement to initiate remedial action.

Questioned by counsel about responsibility in the particular case of a failure of regulatory personnel to understand and carry out their duties, Buchanan outlined a ladder of rising involvements: “[R]esponsibilities within Departments goes up the line. And the Deputy Minister . . . knows or should know what’s going on below him. That’s his responsibility in the administration of the Department. And the role of responsibility . . . would then go up to the next level to the Minister. And the ultimate responsibility for government is the Premier.”<sup>35</sup>

These separate contingencies, with their respective levels of responsibility, were seen as driven by the flow of information or knowledge from bottom to top and down again. Thus, when asked about problems of brief ministerial tenure, Buchanan suggested that this should not be a problem with the proper division of labour between broad function and detailed technical matters:

. . . one of the first responsibilities [of the newly appointed minister] is to totally familiarize themselves with the administration of that department without getting into the nuts and bolts of the department. . . the nuts and bolts of a department are, for the most part, left to the Deputy Minister to administer . . . the idea of leadership in the department anywhere is to engage people who know more than you about the certain subject, but they will do it for you.<sup>36</sup>

<sup>34</sup> Hearing transcript, vol. 68, pp. 15006–07.

<sup>35</sup> Hearing transcript, vol. 68, pp. 15007–08.

<sup>36</sup> Hearing transcript, vol. 68, pp. 15021–22.



Thus, requests for information will flow down the line, and reports containing information will move upward to the appropriate levels. It is the resulting awareness, or possession of particular information, that activates relationships of responsibility. Consequently, when offered the example of a January 1989 memorandum from the director of mine safety to the minister of labour that disclosed several serious concerns about the capacity of the Mine Safety Division to accomplish its job, Buchanan was in no doubt about the appropriate course. Responding to a question, he stated he could not recall that this issue was ever brought to the attention of cabinet. To the further question of whether it would be the minister's responsibility to address this concern, he answered: "Oh yes, as the Minister. . . . Through the Deputy. The Deputy would have the responsibility of assessing the whole thing and . . . bringing a report to the Minister."<sup>37</sup> It is in this sense that Buchanan appears to qualify his earlier paraphrase of former U.S. president Harry Truman, stating: "I do adhere to the philosophy that the buck stops at the top. It depends what's in the buck, I suppose . . ."<sup>38</sup>

Similarly, the question was raised about the extent of ministerial discretion, and the extent of explicit cabinet authorization required for ministerial action. Reference was made to several letters from the minister of industry, trade, and technology to Westray, stating the government's commitment to a take-or-pay coal contract in 1988 and again in 1989, despite the fact that there was no cabinet minute approving the contract until August 1990. Buchanan confirmed that the minister did not have the authority to enter into binding agreement before the latter date, although he probably did have a mandate from cabinet, based on past reports and discussions, to negotiate the terms of such a contract.<sup>39</sup>

This testimony suggests that, in the normal course of events, the roles of minister and deputy would converge on the decision of major policy questions. Furthermore, on matters of new policy, cabinet would hold the ultimate power of approval. As Buchanan put it, ". . . in government, all you can do is to rely on the competence of the people within your Department and the Minister to bring before the Cabinet the negotiations as they're ongoing, and finally to bring what he would consider to be the best possible deal . . . for the people of Nova Scotia."<sup>40</sup> In the extended, multi-year negotiations between the government and Westray, the actual talks were conducted by civil servants and "there was no so-called 'political interference.'"<sup>41</sup>

In response to other questioning, Buchanan modified the rather strict division of labour between the roles of ministers and deputy ministers, described earlier as one between policy principles and "nuts and bolts"

<sup>37</sup> Hearing transcript, vol. 68, p. 15029.

<sup>38</sup> Hearing transcript, vol. 68, p. 15031.

<sup>39</sup> Hearing transcript, vol. 68, pp. 14979–80.

<sup>40</sup> Hearing transcript, vol. 68, p. 14937.

<sup>41</sup> Hearing transcript, vol. 68, p. 15009.

detail. In general, he observed, civil servants do not bend to pressure from elected politicians in the conduct of their jobs, “unless it was a matter about a highway ditch or a paving of a road or that kind of basic political thing in Nova Scotia.”<sup>42</sup> Pressed further on the limits of such interventions, he offered a somewhat novel interpretation of the boundary: “[T]he limits, I would suspect, are what I call basic grass-roots politics and non-basic grass-roots politics,” with ditching and gravelling in the former and more centralized and technical issues in the latter. The implication of this distinction prompted the question whether “it wouldn’t be basic grass-roots politics not to close down an employer in a certain town.” Buchanan declined to respond on the grounds that this query was both hypothetical and extended beyond his term in Nova Scotia politics.<sup>43</sup>

Buchanan offered some clarification of the different sorts of presentations, and the different sorts of decisions, that were possible at the cabinet level, helping to answer the question of how individual ministerial responsibility was reconciled with the convention of collective cabinet responsibility. A typical agenda for the weekly cabinet meeting might include 20 issues, plus whatever new matters were raised around the table. Some of these issues would involve ministers updating their colleagues on ongoing questions, or seeking clarification for further work. According to Buchanan, this was often the case when Cameron reported on the progress of negotiations on the Westray financial assistance package. In other cases, ministers would consider a formal report and recommendation from the sponsoring minister; if approved, the decision would be recorded in a cabinet minute, and, where appropriate, an Order in Council would be issued to formalize the decision legally.<sup>44</sup>

Buchanan described how the cabinet would have judged the potential employment and mineral supply advantages of a mine in Pictou County to be in the public interest, thereby justifying the initial talks with Westray officials. The minister of industry, trade, and technology was in charge of the negotiations, with the detailed talks handled by department officials. The cabinet gave the minister a framework within which to work, ruling out direct grants but willing to contemplate a loan, subject to the acceptability of the exact terms (including size, risk, jobs created).<sup>45</sup> During the interval between authorizing negotiations and returning with a proposed draft contract, Cameron was in charge of the provincial government’s negotiating strategy. A similar process was described for the negotiation of the take-or-pay agreement with Westray.<sup>46</sup>

Buchanan spoke to the complicated set of relationships that affected the Westray assistance package. The mining company sought both federal and provincial government support, and the coordination of their

<sup>42</sup> Hearing transcript, vol. 68, p. 15011.

<sup>43</sup> Hearing transcript, vol. 68, pp. 15014–15, 15017–18.

<sup>44</sup> Hearing transcript, vol. 68, pp. 14937–39.

<sup>45</sup> Hearing transcript, vol. 68, pp. 14939–40.

<sup>46</sup> Hearing transcript, vol. 68, p. 14973.

respective policy concerns was itself a major challenge. Each government controlled a crown corporation (Devco and Nova Scotia Power Corporation, respectively) that had an interest in the prospective contracts. Finally, the overall assistance package had various components – the financial loans themselves, the interim loans requested to bridge administrative delays, the extent of security underlying the loans, and the take-or-pay agreement – that threatened to overlap. Buchanan's discussion of these distinctions helped to explain the overall context of the lengthy negotiations extending over several years.

Finally, Buchanan spoke about the difficulties and even the hazards of offering opinions on reports and memoranda for which one lacks first-hand experience. Asked to comment on a series of memoranda purporting to describe reports by a cabinet colleague, Buchanan observed: "[Y]ou know, it's no cop-out on my part, but I learned long ago not to comment on somebody's memorandum where they mentioned something about what somebody else said."<sup>47</sup>

### *Leroy Legere*

Legere was minister of labour from February 1991 to November 1992 and minister of fisheries from February 1992 to May 1993. He articulated the accepted view of a ministry as a combination of distinct but complementary roles. Asked about his understanding of the role of the minister under legislation, he explained that "the Minister does have responsibility for legislation for the Department and also for making sure that the policy of the Department . . . either comes to the Minister or the Minister assures that the government policy is followed by the Department. And, obviously, answers to the House and to the people of Nova Scotia on those issues."<sup>48</sup> The role of the deputy minister as the senior administrator and manager was apparent from the outset of Legere's tenure, when he was presented with briefing books on departmental operations and had regular briefings from the deputy on ongoing matters. He would spend much of Tuesday and Wednesday mornings in conference with the deputy, who was both the official conduit and the predominant channel of direct communications, although written memoranda could be provided by officials on particular questions.

The wider administrative role of the deputy was to supervise and deliver the assigned programs of the department. This responsibility of the deputy minister underlined Legere's view that "a minister . . . does not get involved at all in the day-to-day operations with the personnel. Otherwise that would obviously be construed as interference." Although he did not invoke explicitly the distinction between "policy" and "operations" to explain this division of labour, he offered an observation that in many respects runs parallel: "I look upon my staff to operate and manage the

<sup>47</sup> Hearing transcript, vol. 68, p. 14991.

<sup>48</sup> Hearing transcript, vol. 70, p. 15506.

department and do their jobs as described. But if I have a particular request for information . . . or if they feel that there is a need for me to know a particular thing, then, yes, I would expect to be notified as such.”<sup>49</sup>

Such a division of responsibility does not resolve the question of ultimate ministerial accountability for results or outcomes. Here, Legere seems to draw the distinction between “accountability” as an obligation to answer for or to explain a situation, and “responsibility” as an obligation to assume authorship or acknowledge agency in causing a situation. As he put it,

I’m accountable, answerable to [for?] the actions of the Department. That’s the role that I see the Minister as being in. I’m not saying that I’m not responsible. I am certainly responsible for my duties, but I am accountable. I’m not responsible for others. I’m accountable for the entire Department, for the actions of the Department, to the public . . . and to . . . the legislature. That’s what I always understood was my Ministerial role.<sup>50</sup>

In this accountable capacity, Legere described his involvement in Westray matters prior to the explosion as centring on roof falls: “There might have been other areas, but the general emphasis was on roof falls.”<sup>51</sup> Questions were asked about roof falls at Westray in the Legislative Assembly, and the subject was a matter of media attention from mid-1991 onward.

Questioned about the extent of his knowledge and involvement in other Westray-related issues under discussion by Department of Labour officials, including the broken technical liaison with the Department of Natural Resources and requests for technical upgrading for staff, he replied that he was unaware of those matters at the time.<sup>52</sup> Legere had likewise been unaware of several matters involving mine inspection staff, including a meeting between inspectors and Westray miners in January 1992; infractions revealed to inspectors – both in person and through safety committee reports – on which the inspectors took no action; and the fact that inspectors had travelled parts of the Westray mine for which plans had not been approved over the course of five months.<sup>53</sup>

On the subject of departmental personnel matters, Legere stated:

Staffing is handled entirely by the department people. The Minister does not get involved in hiring or firing and, as such, does not meddle . . . in the staffing because it would not be appropriate. It’s left to the people who work there on a daily basis and who are employed to do that. Now unless they were coming to me for advice or for me to approach someone else to see whether it was appropriate, then I would not have been advised of those decisions or of those requests.<sup>54</sup>

<sup>49</sup> Hearing transcript, vol. 70, pp. 15512–14.

<sup>50</sup> Hearing transcript, vol. 70, pp. 15509–10.

<sup>51</sup> Hearing transcript, vol. 70, p. 15519.

<sup>52</sup> Hearing transcript, vol. 70, pp. 15534–36.

<sup>53</sup> Hearing transcript, vol. 71, pp. 15623–26.

<sup>54</sup> Hearing transcript, vol. 71, p. 15532.

Legere was aware of questions about the performance of Jack Noonan, executive director of occupational health and safety. Legere discussed the situation with the deputy minister, who dealt directly with Noonan.<sup>55</sup>

Inquiry counsel asked Legere how he judged the competence of staff in the Department of Labour. He stated that “[y]ou don’t hold examinations or supervisory reports, but in the day-to-day dealings, you soon become familiar with the people you’re working with.” In the absence of evidence to the contrary, his confidence was quite high: “The department and the people had been there a long time before I arrived there. Things appeared to be working in a satisfactory manner. I assumed my duties. The questions that I raised were answered in a way that I felt was satisfactory to me.” He had no reason to believe that Noonan, Claude White, “or anyone else” was not competent.<sup>56</sup>

After the explosion, the minister was expected to report both to the Legislative Assembly and to the public on a variety of public dimensions. He was assisted in both tasks by a strategy team – including a government information officer – seconded from other departments to prepare an overview and to brief Legere daily. Regular “ministerial statements” were delivered to the media and to the Legislative Assembly.<sup>57</sup>

Ultimately, Legere’s testimony came full circle. When asked to reflect on the lessons of the Westray explosion, he replied: “[N]o matter what procedures we have in place, no matter how diligent we are, accidents do happen.”<sup>58</sup> Clearly the emphasis here is on the impossibility of anticipating the unexpected. As to what lessons might be learned from the rigour or deficiency of the regulatory regime for mine inspections and safety, Legere declined to see any link. Pressed to address whether “any responsibility, any component or any element of responsibility for the Westray disaster lay with the Department of Labour,” he replied:

Not directly. The system apparently failed somewhere and an accident happened. We have to look at all aspects and, hopefully, I’m hoping that[’s] what’s going to come out of this Inquiry, but I don’t at this point point the finger at anyone. . . . I believe, as I’ve stated before, the Department did their work to the best of their ability with no intent on anything. The reports were filed. The inspections were done. Someone will have to judge if those were done appropriately or not. In my feeling, they were done.<sup>59</sup>

This statement defies rational analysis. The minister denied the “direct responsibility” of his department. The minister denied any day-to-day involvement in the operation of the department, yet he did not hesitate to state that the “department did their work to the best of their ability.” He

<sup>55</sup> Hearing transcript, vol. 71, pp. 15537–39.

<sup>56</sup> Hearing transcript, vol. 70, pp. 15515–16.

<sup>57</sup> Hearing transcript, vol. 71, pp. 15563–66.

<sup>58</sup> Hearing transcript, vol. 71, pp. 15590.

<sup>59</sup> Hearing transcript, vol. 71, pp. 15591–92. **Comment** This is a remarkable statement given the fact that Legere testified towards the end of the hearings and after the extensive evidence given by the inspectorate. It is almost as though he came to the hearings without any knowledge of prior testimony. Even a cursory review of media coverage should have prompted him to be more circumspect in his comments.



stated that the reports were filed and that the inspections were done, yet he personally disavowed responsibility as minister – on the grounds of lack of direct knowledge of or involvement in (before 9 May 1992) mine safety issues later discovered to be highly pertinent. Legere's position did not go entirely unchallenged, as counsel for several intervenors pressed him on the extent of his efforts to review and inquire into concerns about Westray that his department was aware of. David Roberts, counsel for the United Steelworkers of America, ended his examination of Legere with this statement: "Listening to your evidence, I have to say to you, sir, that it would appear to me that you didn't really know very much about what your Department was doing in relation to the Westray mine, before the explosion." Legere challenged this statement vigorously, declaring that "it wasn't my responsibility to have my finger on every investigation in every industry that was going on. That's not the Minister's responsibility. If there is something that arises, and I did not deal with it, I accept full responsibility."<sup>60</sup>

There are several important implications to this position. First, it focuses attention on those who *do* have fingers on particular investigations – the administrative officials in mine inspection and their superiors. On this matter, Legere declared himself not in a position to say there was any failure within his department.<sup>61</sup> A balanced view would invite assessment of how senior personnel responded to formal concerns expressed by the inspectorate. These concerns included the decline of technical support, the request for enhanced training in modern coal mining, and the hiring of replacements for recently retired personnel.

Second, Legere's position implies that ministerial errors of omission, in cases where reasonable grounds existed for pursuing further inquiry, could constitute a major breach of responsibility. Given this position, the fact that evidence exists of documented interventions raising such concerns to the minister is highly significant. Not addressed in Legere's testimony, but potentially pertinent in understanding the resolution of such issues, would be the roles of the minister, deputy minister, and other executive staff in annual budget planning for expenditures and staff.<sup>62</sup> In a similar vein, it seems necessary to explore the implications for effective ministerial oversight of assigning a second portfolio, that of fisheries, to Legere. It was established in testimony that the minister's estimated two working days per week in the Department of Labour were cut in half after February 1992, when he acquired the second portfolio.

Legere appeared to have a confused and uncertain appreciation of his role as a minister of the crown, perhaps in part because he held two portfolios. As both minister of labour and minister of fisheries, he had to divide his limited time between the two. He seemed to have little

<sup>60</sup> Hearing transcript, vol. 71, pp. 15632–33.

<sup>61</sup> Hearing transcript, vol. 71, p. 15592.

<sup>62</sup> Macdonald, Noonan, and White were questioned during their testimony about their roles in budget planning.

understanding of the operation of the Occupational Health and Safety Division of the Department of Labour; this lack of understanding may have been due in large part to the apathetic attitude and performance of executive director Noonan. Furthermore, the deputy minister failed to exercise the degree of supervision over the executive director that Noonan's work ethic and performance required. Once Legere had been informed of the deficiencies in the performance of the executive director, it was incumbent on the minister to keep informed and to ensure that adequate remedial action was taken.

It is clear from the discussion above that the three politicians – Buchanan, Cameron, and Legere – had disparate understandings of their roles as ministers of the crown. This inconsistency suggests that, as new ministers, they had little or no formal indoctrination. Because ministers function collectively as a cabinet, they would be guided in that role by the rules and procedures established over time for the conduct of the business of the cabinet. But there do not appear to be rules of conduct established in Nova Scotia for the proper discharge of their duties as ministers in charge of specific departments of government. To provide both consistency and guidance in this role, such rules of conduct should be set out according to the constitutional environment in which the ministers must function.

### Guidelines for Ministers

The fact that these three ministers of the crown had an imperfect understanding of their roles and the nature of their responsibilities suggests that a formal clarification of constitutional responsibilities may be required. Recent debate in the United Kingdom over the doctrine of ministerial responsibility has been driven by several controversies involving ministerial conduct in accounting to Parliament. Two major public inquiries in the United Kingdom in the 1990s have posed problems similar to those being considered here: What standards of accountability are required for ministers in a modern parliamentary system? What legitimate difficulties complicate the realization of acceptable standards? How serious are the transgressions associated with the controversial cases? These recent British debates have revolved largely around a formal directive known as *Questions of Procedure for Ministers*. Versions of this guideline have been furnished to incoming cabinet ministers since 1945, though the directive was released publicly for the first time in 1992.<sup>63</sup> Since then, the debate has been spurred by the proceedings and reports of the two public inquiries: the Committee on Standards in Public Life (Nolan Inquiry), and the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions (Scott Inquiry).

<sup>63</sup> *Questions of Procedure for Ministers* (London: Cabinet Office, May 1992).

The Nolan Inquiry noted that the *Questions of Procedure for Ministers* has evolved over time “largely in the area of conduct and not procedure.”<sup>64</sup> Perhaps the best evidence of the orientation of the 1992 version of *Questions of Procedure for Ministers* can be found in its opening paragraph, which states:

It will be for individual Ministers to judge how best to act in order to uphold the highest standards. Ministers will want to see that no conflict arises or appears to arise between their private interests and their public duties. They will wish to be as open as possible with Parliament and the public. These notes should be read against the background of these general obligations.<sup>65</sup>

Among the specific provisions to follow was paragraph 27, dealing with aspects of ministerial accountability to Parliament. Its exact wording declares:

Ministers are accountable to Parliament, in the sense that they have a duty to explain in Parliament the exercise of their powers and duties and to give an account to Parliament of what is done by them in their capacity as Ministers or by their departments. This includes the duty to give Parliament, including its Select Committees, and the public as full information as possible about the policies, decisions, and actions of the Government, and not to deceive or mislead Parliament and the public.<sup>66</sup>

Both the Nolan and the Scott inquiries found deficiencies with the provisions touching on ministerial responsibility. Consequently, both urged amendments, of two principal types. The first pertains to the introductory section, the second to the wording of paragraph 27. In its first report, the Nolan Inquiry’s thrust was to bring in the prime minister as the arbiter of ministerial conduct and to toughen the language of paragraph 27. In a response to Nolan, the government announced certain changes, including amendments to the introduction. The various formulations are presented for comparison in table 13.1.

In the course of the Nolan and Scott deliberations, a number of important perspectives pertaining to ministerial accountability and responsibility were brought to light that deserve study. Peter Hennessy places the minister’s role in a different context. He remarks that he was struck during the Scott inquiry by the “overloaded” quality of the policy agenda. “The picture it painted was of an overstretched system in which the left hand had little idea what the right was doing.”<sup>67</sup> This is not intended as either an apology or a rationale for lapses in ministerial responsibility. However, for Hennessy, the overloaded character of the governing agenda is a factor integral to many major policy failures, and to the apparent absence of obvious causal agents in these failures. By

<sup>64</sup> Quoted in Peter Hennessy, *The Hidden Wiring, Unearthing the British Constitution* (London: Indigo, 1996), 186–87.

<sup>65</sup> *Questions of Procedure for Ministers*, 1992, cited in Hennessy, *Hidden Wiring*, 187.

<sup>66</sup> United Kingdom, Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions, *Report*, House of Commons 115-4 (London: Her Majesty’s Stationery Office, 1996), 502–03.

<sup>67</sup> Hennessy, *Hidden Wiring*, 212.

**Table 13.1** Opening Paragraph and Paragraph 27 of *Questions of Procedure for Ministers*: 1992 Phrasing and Alternative Formulations

Opening Paragraph	Paragraph 27
<p><b>Excerpts from <i>Questions of Procedure for Ministers</i>, 1992</b></p> <p>It will be for individual Ministers to judge how best to act in order to uphold the highest standards. Ministers will want to see that no conflict arises or appears to arise between their private interests and their public duties. They will wish to be as open as possible with Parliament and the public. These notes should be read against the background of these general obligations.</p>	
	<p>Ministers are accountable to Parliament, in the sense that they have a duty to explain in Parliament the exercise of their powers and duties and to give an account to Parliament of what is done by them in their capacity as Ministers or by their departments. This includes the duty to give Parliament, including its Select Committees, and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead Parliament and the public.</p>
<p><b>Proposals for amended <i>Questions of Procedure for Ministers</i> put forward by the Nolan Inquiry in 1995</b></p> <p>It will be for the individual Ministers to judge how best to act in order to uphold the highest standards. It will be for the Prime Minister to determine whether or not they have done so in any particular circumstance.</p>	
	<ul style="list-style-type: none"> <li>(i) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;</li> <li>(ii) Ministers must not mislead Parliament. They must be as open as possible with Parliament and the public;</li> <li>(iii) Ministers are accountable to Parliament for the policies and operations of their departments and agencies;</li> </ul> <p>...</p>
<p><b>Revised <i>Questions of Procedure for Ministers</i>, November 1995</b></p> <p>Unchanged from 1992</p>	
	<p>Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be seen as open as possible with Parliament and the public, withholding information only when disclosures would not be in the public interest.</p>

**Sources:** Peter Hennessy, *The Hidden Wiring: Unearthing the British Constitution* (London: Indigo, 1996), 187–89, 195.

implication, overload may also be taken to limit both the ability of individual ministers to grasp such issues fully, and their ability to recall and account for their interventions after the fact.

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**RECOMMENDATION**

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- 58 The province of Nova Scotia should immediately study the British approach to ministerial responsibility, as illustrated by the publication *Questions of Procedure for Ministers* (1992), and move to adopt this type of program. Other jurisdictions should be canvassed for information on similar programs. The program adopted should include a codified and published statement of guidelines for ministers outlining ministerial responsibilities.
- (a) The guidelines for ministers program should be provided to all new ministers. It should include definitions of the nature and extent of the responsibility and accountability for the actions of the department over which a minister presides.
  - (b) A minister should have clear guidelines to the frequency and detail of division briefings and the circumstances under which the immediate division head should participate in the briefing along with the deputy minister.
  - (c) A minister should have access to independent advice about the nature and the extent of ministerial responsibility in specific situations. Such advice could be provided, ad hoc, by a person with recognized expertise in the field.
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