

THE MINISTER'S OFFICE STAFF: AN UNREFORMED PART OF THE PUBLIC SERVICE

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There exists in our system of government, according to all of the textbooks, a clear dividing line between the Minister and his Deputy Head at the apex of the departmental pyramid. This "sharp distinction between the political and the non-political official," Lawrence Lowell noted with approval, saved the system "from a bureaucracy, such as prevails over the greater part of Europe, on the one hand, and from the American spoils system on the other."¹ In essence, he said, the public service consisted of two classes of persons: politicians, who were impermanent and political; and civil servants, who were permanent and non-political. Professor Hodgetts makes the same clear-cut distinction in describing the Canadian system: "Looking upward, the civil servant confronts one of the major distinguishing marks of a Civil Service which has sought its inspiration in British traditions, namely the clear-cut dividing line which, as a consequence of prolonged constitutional developments, we have drawn between the politician and the administrator."²

The Dorion Report³ serves as a sharp reminder that this basic constitutional distinction, while very useful, may not in fact be a wholly accurate description of the organization and decision-making machinery of Canadian departments. The fact of the matter is that there appears to exist an intermediate class of persons in the Minister's Office, who are political rather than bureaucratic in their functions, appointed rather than elected, and who operate in an area which strict constitutional theory does not recognize as existing.

On November 24, 1964, Chief Justice Frederic Dorion of the Superior Court of Quebec was appointed to inquire into allegations made on the previous day in the House of Commons by Mr. T. C. Douglas and Mr. Erik Nielsen concerning the conduct of certain members of the staffs of Ministers of the Crown in relation to one Lucien Rivard. The Commissioner was further instructed to inquire into related matters "including the manner in which the Royal Canadian Mounted Police, or any officer

¹A. Lawrence Lowell, *The Government of England*, New York, 1914, I, 145.

²J. E. Hodgetts, "The Civil Service and Policy Formation," *Canadian Journal of Economics and Political Science*, vol. 23, no. 4 (November, 1957), 470.

³*Special Public Inquiry. Report of the Commissioner*, Ottawa, June, 1965.

thereof, and the Department of Justice, and the Minister of Justice dealt with the allegations when they were brought to their attention."⁴

EVOLUTION OF MINISTER'S PERSONAL STAFFS

The enduring interest of the Dorion Report is that it illuminates certain facets of government which have hitherto escaped the attention of scholars. For the tide of civil service reform in Canada has left undisturbed, by a curious oversight, the personal office staffs of Ministers of the Crown.

No doubt there were reasons for this. Ministers had always accepted the permanent status of departmental officials, and in time were willing to give up the right to nominate protégés to the public service. But one exception remained: the Minister's private secretary, paid out of public funds, but appointed by the Minister. This left the Minister with one man close to him who could be expected to understand the political responsibilities of his office, and be of maximum use to him as a public and political man. Their political as distinct from administrative responsibilities are great and omnipresent, and it is not surprising that Ministers have clung fiercely to the right to surround themselves in their private offices with congenial and politically useful staffs. This is all the more important because the necessities of representation in the federal system have imposed a certain ambiguity on Ministerial responsibility by recognizing that Ministers have, in addition to their departmental responsibilities, an ill-defined but important representative role in relation to matters connected with their districts or provinces which gives them a right to "interest themselves" in the operations of other Departments which bear on this special political constituency.⁵

The exemption of the Minister's Office from the civil service system has even been sanctified by special recognition in the Civil Service Act. Successive Civil Service Acts have always contained provisions which not only exempted Minister's staffs from appointment under the merit system, but also provided that a Minister's private secretary might, after three years' service, transfer into equivalent rank in the regular civil service.⁶

⁴*Ibid.*, 1.

⁵See J. R. Mallory, "Cabinets and Councils in Canada," *Public Law* (Autumn, 1957) 240-241.

⁶Section 71 of the Civil Service Act, 1962, reads as follows:

Minister's Staffs

- (1) A Minister may appoint his Executive Assistant and his Private Secretary, and other persons to be employed in the office of a Minister shall be appointed by the Governor in Council.
- (2) A person who is employed in the office of a Minister ceases to be so employed when the person holding the position of such Minister ceases to hold that position but
 - (a) a person who was an employee immediately before he became employed in the office of a Minister shall, unless he is on leave of absence for that purpose, be deemed to be a lay-off, and for the purposes of Section 54 his

No doubt the reason for this curious provision is the recognition that an able man, brought to Ottawa to operate near the centre of power, must have some reasonable expectation of a career if he is to take the risk and cost of moving to the capital. Ministers are transient beings, and it is asking much of a young man to tie his career to a politician with an uncertain future.

So the Minister's Office has become a back-door into the higher civil service, untouched by the merit system. That this provision is not wholly bad is attested by the quality of a number of able civil servants who have found it the beginning of a long career in the public service. An early example of the breed is Sir Joseph Pope, the first Under-Secretary and the creator of the Department of External Affairs, who first came to Ottawa as private secretary to his uncle.

But within the last decade or so the Minister's private office has been inflated beyond recognition. The old and honourable title of "private secretary," which no longer seems to convey an appropriate image, has been replaced by the term "executive assistant." The public treasury now supports an office establishment which includes special assistants and administrative assistants, whose various duties include speech-writing, improving the Minister's contacts with the press gallery, and keeping the Minister in the public eye and sufficiently responsive to the politically importunate. Ministers have even maintained offices in their constituencies, staffed by this new kind of public servant.

Until 1950 the number of the Minister's staff members excluded from the provisions of the Civil Service Act was comparatively modest. It consisted of one "secretary to the executive," two stenographers, one messenger,

position at the time he so ceased to be employed in the office of a Minister shall be deemed to be the position held by him immediately before he became employed in the office of a Minister and his rate of pay shall be deemed to be the rate of pay that would have been applicable to him if he had not been appointed to a position in the office of a Minister; and

- (b) a person who, during the time that he was employed in the office of a Minister, qualified for a position in the civil service, shall be deemed to be a lay-off, and for the purposes of Section 54 his position at the time he so ceased to be employed in the office of a Minister shall be deemed to be such other position in the civil service and his rate of pay shall be deemed to be the minimum rate of pay for that other position at the time he qualified for it.
- (3) A person who, for at least three years, has held the position of Executive Assistant to a Minister or the position of Private Secretary to a Minister, is entitled to be appointed to a position in the civil service for which he is qualified, not being lower than the position of head clerk.
- (4) The time during which a person acted as Private Secretary or Executive Assistant to a Minister before the coming into force of this Act, shall for the purposes of sub-section (3), be deemed to be time during which such person held the position of Private Secretary or Executive Assistant, as the case may be, to a Minister.
- (5) This section applies to a person employed in the office of the person holding the recognized position of Leader of the Opposition in the House of Commons as it applies to a person employed in the office of a Minister.

and the Minister's private secretary. In 1934 the Auditor General was legally advised that a Minister might have two or more persons as private secretaries, but that, for administrative purposes, these should be designated as assistant or associate private secretaries.

An Order in Council of 1950 raised the number of excluded persons to eight.⁷ In 1955 an additional clerical position was added to the excluded list to provide secretarial assistance to the Parliamentary Secretary to the Minister (or Parliamentary Assistant as he was then called). In 1958 the term "special assistant" was introduced to provide for those Ministers who were able to make a successful claim for a press officer.

A Treasury Board Minute of 1960 restated the definition of the exempt positions to take account of changes in titles of classified posts under the Civil Service Act, and made it plain that the secretary to the executive was warranted only if required in the office of a Parliamentary Secretary. The 1962 Civil Service Act excluded all persons in Ministers' Offices from the operation of the Act, and also had the effect of removing the limit previously imposed by Treasury Board Minutes. The average number of such positions is now eleven, but some Ministers in charge of very large departments have larger staffs than this.⁸

These developments have not entirely passed without notice. For several years questions on the Commons Order Paper have reflected increasing interest by Opposition Members in the extent to which the political side of Ministers' affairs were being paid for out of public funds—a privilege not shared by other members, except for the Leader of the Opposition and the other party leaders, who are permitted small personal staffs paid for out of the House of Commons vote. However, nothing seems to have been made of the dangers to the public service inherent in this system until the Rivard affair broke.

THE RIVARD AFFAIR

Even now there is a great deal that we do not know about Lucien Rivard, except that he evidently possessed a considerable talent for making the right friends. However, the essential facts are all too well known. In 1964 Rivard had been arrested in Montreal and was the object of extradition proceedings by the United States authorities in connection with allegations of smuggling heroin into the United States.

The efforts of Rivard's friends were directed to getting him out on bail, presumably (as later events suggested) to enable him to escape the toils

⁷P.C. 30/1188, dated March 8, 1950. The positions were: Executive Assistant to the Minister, Head Clerk, Secretary to the Executive, Clerk Grade 4 or Stenographer Grade 3, Clerk Grade 3, Stenographer Grade 2B, Stenographer Grade 2A or Clerk Grade 2A or Messenger, and Confidential Messenger.

⁸I gratefully acknowledge my thanks to the Treasury Board for providing me with the above information.

of the law. Initially they approached the Department of Citizenship and Immigration, under the mistaken impression that the matter came under the jurisdiction of that Department. Although they quickly found that Citizenship and Immigration had nothing to do with extradition proceedings, Rivard's friends were able to enlist the zealous assistance of the Minister's Executive Assistant, Raymond Denis. Denis seems to have acted as he did in the belief that Rivard was an active party worker and a heavy contributor to Liberal Party funds. This impression seems also to have been shared by Guy Rouleau, the Prime Minister's Parliamentary Secretary, who also thought (though this was not the case) that Rivard was one of his constituents.

The efforts of these persons were now directed to persuading Pierre Lamontagne, a Montreal lawyer who frequently appeared in cases representing the Department of Justice and who was in this instance the lawyer for the United States authorities, not to oppose bail on Rivard's behalf. Mr. Lamontagne was a friend and contemporary of Raymond Denis and this fact, together with his connection with the Department of Justice, suggested methods by which he might be approached.

The object of the Dorion Inquiry was to investigate the efforts of Denis and others to influence Pierre Lamontagne on Rivard's behalf and to determine how far these pressures had extended into the Department of Justice itself. In his report Mr. Justice Dorion did find, as a matter of fact, that Denis had offered Mr. Lamontagne a bribe of twenty thousand dollars. When that failed to have any effect, a number of representations were made by persons in the office of the Minister of Justice, the intent of which was to suggest that the Minister was personally interested in the matter, and that Mr. Lamontagne's future employment by the Department to represent the Crown in cases in Montreal somehow depended on the question of Rivard's bail. If he cooperated all would be well. If he did not the Minister would prefer to retain other counsel to represent the Crown in future. These various pressures were resisted and, in due course, Mr. Lamontagne reported this harassment to the R.C.M.P. As a consequence of the investigation Mr. Denis was suspended by his Minister and subsequently requested to resign. This did not close the matter. While much still remains obscure, the government agreed, after parliamentary prodding in November, to the setting up of the inquiry.

While it is no doubt alarming to discover the ramifications of the underworld coming close to the operations of government, the most important revelation of the Dorion inquiry is the way in which Ministers' private office staffs—who are not civil servants—deal as a matter of course with difficult policy questions which require a degree of judgment, experience, and non-partisanship which they are unlikely to possess.

Consider first the case of Mr. Guy Lord, whom the Commission exonerated completely from any imputation of misconduct. Mr. Lord was

at that time twenty-five years old. After being admitted to the Quebec bar he had been appointed as Special Assistant to the Minister of Justice. "His work," says the Report, "consisted of handling relations between the Minister and the departmental staff, seeing, for instance, that a file reached the Minister on time, together with a memo summarizing the contents of the said file for the Minister's information. He had also been asked to handle the Minister's correspondence, to read it, and distribute it to the different offices within the Department. Quite frequently, he drafted acknowledgments of receipt of letters. He added that all files going to the Minister were handed to him beforehand, so that he could check and see that they were complete and in order. His main office was in the Centre Block of the Parliament Buildings but he also had an office in the departmental offices, but only used the latter very irregularly."⁹ When Mr. Lamontagne received a telephone call from Mr. Lord about the Rivard affair requesting information because an M.P. wished to see the Minister about the affair, it was natural for Mr. Lamontagne to believe that the call had been made on behalf of the Minister. As Mr. Justice Dorion concluded: "When an Executive Assistant to a Minister deems it advisable to make representations to a lawyer in respect of a case which has been entrusted to that lawyer by the Minister in question, it is quite normal that the lawyer should conclude that these representations have been authorized by the Minister himself."¹⁰ While it is true that, in this particular case, Mr. Lamontagne was not acting for the Department of Justice, he frequently did so and its ramifications were already such that he could hardly have been surprised at receiving a telephone call from the Minister about it.

While the behaviour of Mr. Lord in allowing himself to be drawn into this affair seems to have been merely naive and inept, the conduct of his superior, André Letendre (who was Mr. Favreau's Chief Executive Assistant) can only be described as bizarre. In his telephone conversation he began by congratulating Mr. Lamontagne on his work for the Department, and then brought up the name of Robert Kennedy, the Attorney General of the United States. "Mr. Letendre told Mr. Lamontagne that the Minister (the Hon. G. Favreau) had met Robert Kennedy and that he himself was getting ready to attend the Democratic Party convention in Atlantic City. He added that on his way back from the Convention, he would be going through Washington, where he intended to call at the Department of the Attorney General and there, he would let them know that they had an excellent lawyer in Montreal." He later explained to the Commission that this was only a joke, but Mr. Justice Dorion's grim observation is surely right: "This is a very odd sort of joke, coming from the lips of the Executive Assistant to the Minister of Justice for Canada, when

⁹*Report*, 81-82.

¹⁰*Ibid.*, 89.

he is talking to a lawyer who he does not know and with whom he is discussing the bail possibilities for a narcotics trafficker, whom the Government of the United States wants to extradite."¹¹

It would be easy to conclude that these grotesque activities represent nothing but the naiveté and incompetence of the persons described and that they reflect discredit on nobody except the Ministers who had the bad judgment to employ them and the party which has the misfortune to be led by such Ministers. Indeed the government seems to have shrugged the whole matter off as just one of those unlucky accidents—which have been rather numerous—which befall men of high purpose and earnest resolve. How else can one interpret the Prime Minister's determination to retain Mr. Favreau in the Cabinet when the affair had raised the gravest doubts about the Minister's political sense. In his letter of resignation Mr. Favreau had said: "I wish to repeat that my resignation was tendered, not out of a feeling that I had done anything wrong, but because of the feeling that my usefulness as Minister of Justice had been impaired by the situation which had developed."

The Prime Minister justified his decision to offer Mr. Favreau the honorific portfolio of President of the Privy Council by explaining that "My hon. friend remains a man and a Minister of unimpeachable integrity . . . and unsullied honour. He is a devoted and unselfish servant of Canada and his own province. He entered political life only because he was persuaded—and I had something to do with the persuasion—that he could make a contribution to his country's unity and welfare."¹² Apparently the doctrine of ministerial responsibility now fashionable in Ottawa exonerates a Minister from blame if his intentions are good and his heart is pure.

Apart from adding to misgivings about the government's capacity to govern, the Dorion Inquiry has raised a number of questions of a more alarming nature. There is some reason to share the alarm of those who see the Report as evidence of the penetration of organized crime into the higher reaches of government. The most reassuring thing about the Report is that it provides clear proof that, in several instances cited, these sinister interests were not in fact able to get the preferred treatment for which they were ready to pay. Nevertheless, it does seem odd that the criminal classes of the more elegant sort seemed to know a great deal about methods of approaching the Department of Citizenship and Immigration.

THE PROBLEM OF MINISTERS' OFFICES

The problem which is being considered here is smaller than these great questions. To understand it requires no specialized knowledge either of

¹¹*Ibid.*, 89.

¹²*Canada. House of Commons Debates* (unrevised). June 29, 1965, 3025.

the inner workings of the Liberal Party or of the criminal classes. It is simply a matter of administrative efficiency.

It is clearly undesirable that a considerable number of persons not a part of the civil service should be interposed between a Minister and his department. They lack the training and professional standards of the civil service: it may even be that the peculiar nature of the appointment means that they escape the security screening which is an unpleasant accompaniment of most candidatures for responsible posts in the public service. Not only do these functionaries wield great power because they control access to the Minister and can speak in his name, but they may wield this power with ludicrous ineptitude and in ways that are clearly tainted with political motives.

One does not wish to damn a whole class of public servants by association with the antics of a small group, but the danger inherent in having such professionally untrained people, lacking the career motives and professional standards of the civil service, in positions of both influence and power, is clearly demonstrated by the Dorion Report.

It is of course easy to say that they do things better in the United Kingdom. The truth of the matter is that they do. The Minister's office there is staffed by young and promising members of the administrative class, who perform precisely the duties described by Mr. Lord to the Dorion Commission. It is one of the most exacting tests in the career of a civil servant.¹³ It is not one to be entrusted to amateurs.¹⁴

The Dorion Inquiry was not totally lacking in effect. On November 30, 1964, the Prime Minister took the unusual course of sending a letter to

¹³"The post is occupied by a picked young man on his way to fill posts of higher rank in the Department. He has continuous relationships with the Minister, he has a duty to protect the Minister against unnecessary engagements or strain, and prevent papers reaching his desk with which it is not really necessary to bother him. Ideally, he should be intelligent, efficient, a good organizer, not temperamental or excitable (nor should he be dreary) and able to be long-suffering if he has to live with a temperamental or excitable Minister, with some way of his own whereby equanimity will be restored as quickly as possible. Sometimes that takes the form of the Private Secretary in the midst of a storm becoming studiously quiet, combined with a very slightly subdued and pained look which will convey to the Minister a distinct and respectful consciousness of shock, sorrow and surprise." Herbert Morrison, *Government and Parliament*, London, 1954, 313.

¹⁴I have perhaps slightly exaggerated the contrast with British practice. The existence of something like the French minister's *cabinet*, at least at Number Ten Downing Street, has a fairly long history. Thus A. J. P. Taylor says that Lloyd George "is said to have been the only minister of modern times who could defeat the obstinacy even of treasury officials. Usually, however, he preferred to circumvent them. He carried his private secretaries with him from one department to another, much as a French politician does, culminating, when he was prime minister, in the creation of a duplicate civil service dependent on himself, the 'Garden Suburb.' After the war, Philip Kerr, one of this 'suburb,' was more influential in foreign affairs than Lord Curzon, the foreign secretary; just as J. T. Davies, Lloyd George's principal private secretary, was a more important figure than the permanent head of the civil service." "Lloyd George: Rise and Fall," in *Politics in Wartime*, London, 1964, 126-127.

all of his cabinet colleagues, requesting them to meet at once with their ministerial staffs and "impress on them the vital importance of their conduct." He noted that a Minister's staff should be subject "to exactly the same high code of conduct that is recognized for ministers themselves," and that it was important not only to act within the law but "to act in a manner so scrupulous that it will bear the closest public scrutiny." He stressed the importance of avoiding special treatment for special friends, he warned of the dangers of incurring obligations to those seeking favours, and the necessity of avoiding pecuniary interest which might conflict with the discharge of public duty. He warned against the temptation of persons close to a Minister "to speak for him or in his name in order to get quicker . . . results."¹⁵

The significant thing about this letter was not what it said—for its sentiments were admirable—but that it should have been necessary to write it at all. One does not issue commandments against sins that no one has ever thought of committing.

Nevertheless, the matter must be seen in perspective. Not all Ministers have private staffs made up of political appointees: some are content with small staffs recruited from the public service. Furthermore, a strong-minded Deputy Head of a department is unlikely to tolerate the interposition between himself and his Minister of a cluster of bright young men recruited from politically ambitious lawyers, political activists from the universities, and energetic young journalists and public relations men. The power that a Minister's private assistant may wield is no more and no less than that which the Minister and his officials will tolerate in their hands.

It should not be thought that there are no special tasks in the Minister's office that are more usefully performed by those recruited from outside the public service. The principle has now been established that these activities should be paid for out of public funds. It is probably better than having them paid for out of the Minister's own pocket.¹⁶ These duties include writing the Minister's speeches, a job requiring both skill and knowledge of a certain kind. The barriers to communication that exist because of the editorial procedures of the press make it necessary not only to make an announcement to the press, but also to hand it out

¹⁵The letter was not released to the press, but an accurate version somehow emerged. The quotations above are taken from the *Toronto Star*, December 5, 1964.

¹⁶Nor should these salaries be supplemented from anonymous sources. Mr. Pearson's special assistant, Richard O'Hagan (a public relations man who handles the Prime Minister's relations with the press) was reported to be paid a salary of ten thousand dollars out of public funds, together with an undisclosed amount from "private sources." The reason given for this arrangement was that Mr. Diefenbaker had paid his press secretary ten thousand dollars, and the same arrangement prevailed. (*Canadian Weekly*, July 26–August 6, 1965.) If the salary provided for is not enough to attract a first-class man, then it would surely be better to pay the required salary openly, from public funds.

in a prepared press release if accurate and adequate coverage is desired. It may also be that such mundane matters as supporting the Minister's public image by cultivating the good will of the press gallery are now legitimate. There must also be someone to act as a buffer between a busy Minister and his constituents and political followers of all sorts. This also requires skill, knowledge, and judgment.

But the Minister's private staff should not sit alone across the main stream of administration. The Minister's office, as an integral part of the path to the political summit where important issues have to be identified and important decisions made, should be a part of the process of government, of the neutral, impersonal machinery of the state.