
Improving Government Accountability

by Peter Aucoin

This article summarizes recent developments relating to accountability. It examines institutional characteristics that diminish Parliament's ability to hold Ministers and Officials to account and looks at prospects for improved accountability in the future.

The Gomery Commission was given two mandates: to inquire and report on who was responsible for the sponsorship scandal; and, then, in a second report, to make recommendations to address shortcomings in the governance and accountability regime. The establishment of the commission of inquiry and the selection of a judge to be sole commissioner acknowledged the perceived limits of the parliamentary processes of holding ministers and officials to account, and thus the requirement of an "independent" commissioner, preferably someone seconded from the judicial branch of government.

The commission did what was expected of it. It named many who were responsible in some manner; it blamed a smaller crowd; and, it shamed a few. There is no need to repeat the verdicts. However, it is worth noting that Gomery, in Volume 1, concluded that: "Three main factors...caused or contributed to the problems". They were:

- the unprecedented decision [by the Prime Minister] to direct the Sponsorship Program from the PMO, bypassing the departmental procedures and controls which the Deputy Minister of Public Works and Government Services Canada would normally have been expected to apply and enforce;
- the failure of the Deputy Minister of PWGSC to provide oversight and administrative safeguards against the misuse of public funds;

- the deliberate lack of transparency on how the Program was initiated, financed and directed.

Significant here is the juxtaposition of political management – the role of the PMO – and the failures of the professional public service – the signaling out of the DM's responsibilities – leading to deliberate secrecy in government operations. The maladministration, in short, could occur only because the public service was willing to go along with what ministers and their political staff wanted.

People were named, blamed and shamed. But, equally important, the structure of power was questioned. At issue was how ministers, let alone their political staff, could think it proper to run roughshod over the established authority structures for managing the financial and human resources deployed in the provision of public services. Gomery was as shocked and dismayed as the Auditor General had been when she saw the results of her office's audit.

The Liberal Government tried to preempt Gomery by focusing change on "strengthening public sector management". Implicitly, public servants, rather than ministers, were blamed for the maladministration, even if only a few "rogue" bureaucrats were blamed for corruption. There followed a huge volume of new "command and control" rules and regulations as well as promises of a new internal auditing regime. "Overkill" was the most common adjective applied to the initiative. At the same time, the Government refused to make any changes to the official doctrine of ministerial responsibility or public service accountability.

By the time Gomery's second volume was released, everything had changed. The Conservative Party had made an Accountability Act the centerpiece of its

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2005-2006 election-campaign platform and then proceeded to win the 2006 election.

The Conservatives exhibited an appreciation of the fundamentals of government accountability when they crafted the proposed *Federal Accountability Act*. It is not surprising that they would be sensitive to the need for improved checks and balances in the system, given that, with very few exceptions, their leadership and support staff were experienced only in opposition. They knew the limitations of Parliament in holding ministers and officials to account.

One could almost say that MPs have agreed to “contract-out” to Parliamentary agents the duty of Parliament to hold ministers and officials to account.

Further, these proposals were crafted not only when they were the Official Opposition in a minority government situation but also at a time when public opinion polls did not suggest that they would be in a different position after the election. The proposals in the FAA, as they become a government bill, were fundamentally opposition-inspired improvements to government accountability. As one official put it, this is the value of an “outside” view, that is, outside the Government-public service arena.

The Conservatives proposals acknowledged that Government accountability in the parliamentary system of responsible government has to be secured by Parliament having the capacity *to hold the Government to account*. Indeed, the campaign proposals made no mention at all of the considerable efforts that have been made by successive Canadian governments to improve government accountability by way of improved performance or results-based reporting, that is, by an improved *rendering of account by ministers and their departments*.

For the Canadian Conservative Party in opposition, the proposed way to improve the capacity of Parliament to hold government to account was primarily to strengthen the capacities of parliamentary agents, the press, and the public.

- to scrutinize and review the behaviour of ministers and officials,
- to audit public administration,
- to assess government information,
- to obtain government information, and,
- to protect (and reward) public servants willing to blow the whistle on government or administrative wrongdoings.

What is noteworthy here is that the capacity of Parliament to hold ministers and officials to account is considered almost exclusively in terms of Parliament’s agents and not MPs themselves. And, in the Canadian tradition – a tradition that is *not* shared fully by other Westminster systems – these agents or officers of Parliament are deemed to be “independent”, that is, not subject to direction or control by MPs. Within their statutory mandate, they perform their oversight functions of audit, investigation and review as they see fit. It is not surprising, accordingly, that the Conservatives would propose reforms to improve government accountability that draw their inspiration from the model of the Auditor General – the preeminent independent officer of Parliament.

The Canadian Accountability Regime

This focus of the Conservative Party on independent oversight should come as no surprise to anyone. It is widely acknowledged, including by MPs themselves, that the Canadian Parliament is not as effective as it might be in holding ministers or officials to account.

In comparative perspective, the Canadian system of accountability has some real strengths. For instance, for all its alleged and obvious shortcomings in practice, there is an effectively designed Question Period. The Auditor General has a broad mandate, at least in respect to government departments and agencies, and is very well funded. The resources available to MPs and parliamentary committees are generous by international standards. And, whatever its deficiencies, there has been an access to government information regime in place for two decades.

Yet, the Canadian Parliament has at least three major institutional characteristics that diminish the effectiveness of Parliament in holding ministers and officials to account.

First, the Senate does not have the legitimacy to hold the Government to account, even though its committees are often said to be more competent at scrutiny and review than are House of Commons committees. An elected Senate, especially one designed to minimize the likelihood that it would be controlled by the Government by virtue of the electoral system, would overcome this shortcoming. A Senate controlled by the Government is hardly a prescription for better democracy through checks and balances, even if it did shift the *regional* balance of power in Canada.

Second, the House of Commons has usually been controlled by the Government. And in this case, except for the Union Government in the First World War, the Gov-

ernment has always been formed by a single party with its MPs constituting a House majority. In this circumstance, holding the government to account is something that precious few, if any, Government MPs have been willing to do. Indeed, every Government has preferred to have its MPs help to thwart Opposition MPs from being effective in holding the Government to account.

On the relatively few occasions when Canada has been governed by a minority government, the Government has usually had some difficulty in getting its agenda passed in the House without compromise. But no major innovations have emerged from these situations for holding the government to account more effectively. In the 1950s, 60s and 70s, and again in the 2000s, these minority-government situations were generally regarded as temporary, or transitional, that is, awaiting a return to the preferred “normalcy” of single-party majority government. This describes the current the state of affairs. The prime minister, for instance, following the rejection of his nominee for chair of the proposed Public Appointment Commission by a House of Commons committee, suggested that reform on this front will have to wait for the power of majority government, that is, where the prime minister can expect Government MPs to support Government initiatives without question.

Canada, in other words, has yet to benefit from the change in the balance of power between the Government and Parliament that can come with minority government, or coalition majority government, if that outcome is regarded as normal, that is, not merely temporary or transitional. This is in contrast to New Zealand, for example, where minority or coalition majority governments are now expected as normal. This is the result of New Zealand’s adoption of an electoral system of proportional representation a decade ago, a change that ended a tradition of executive-dominated parliamentary government arguably more extreme than the Canadian tradition.

The third major characteristic of the Canadian Parliament is the size of the House of Commons. With 308 MPs, once ministers and parliamentary secretaries are removed from the Government caucus, the number of remaining Government MPs who are willing to play a significant role in holding the Government to account has always been miniscule (even when the governing party has a large caucus, as occurred in 1968 and again in 1984). Since so few Government MPs have been willing to act independently of the Government and its whips, even only occasionally, the capacity of Commons committees to do much in the way of serious scrutiny and review has been severely compromised.

In contrast, the British House of Commons has over twice the Canadian number of MPs, and there has long been a tradition of taking seriously the work of holding the government to account, including by MPs from the Government side. The difference between the British and Canadian experiences on this score should not be exaggerated, as it sometime is, but it is still important. While only some British MPs take this work seriously, and perhaps it is a diminishing number, this number, including Government MPs, has tended to be sufficient to make British committees reasonably effective.

The effect of partisanship in diminishing the capacity of Canadian MPs to hold the government to account has long been acknowledged. For some time now, the principal recommendation for reducing its alleged perverse effect on good governance has been to adopt a system of so-called “free votes” for all but explicit votes of Government confidence. The Conservative Party, in its 2006 platform, in a section called “A Better Democracy”, promised to “make all votes in Parliament, except the budget and main estimates, ‘free votes’ for ordinary Members of Parliament.”¹ This has long been a central part of the democratic reform repertoire of the Reform wing of the Conservative party. The promise was essentially gutted by the new Conservative Government on assuming office when it added votes on “priority items in the government’s agenda” to votes on the budget and estimates as votes subject to Conservative party discipline.² The state of affairs following this decision returns the role of party discipline at least back to where it was when the Martin Liberal Government adopted the so-called “three-line vote”.³

Prospects for Improved Accountability

Although Senate reform may eventually serve to provide a balance to Government control of the House, there appears little likelihood of an increased number of MPs in the House, a change to the electoral system for the House of Commons, or increased willingness of Government MPs to hold the Government to account.

The prospects for improved government accountability, nonetheless, are good. Leaving aside the fact that one or more provisions in the *Federal Accountability Act*, as Bill C-2, such as the changes to the *Canada Elections Act* respecting campaign contributions, have little or nothing to do with government accountability *per se*, the capacity of Parliament, as an institutional complex encompassing independent officers of Parliament, will be enhanced. Taken as a package, the prospect is for greater openness, increased transparency, and more oversight. Indeed, the latter by itself will enhance openness and transparency

given the powers and resources of the various oversight agencies.

At the same time, the bar of what constitutes effective government accountability has been raised, if only because public expectations have been raised. Politically, therefore, the question is whether the numerous “devils in the details” of the provisions now in the bill are perceived as constituting backtracking or reversals, as some have claimed in regard to the access to information provisions for example. Given the explicit promises and the level of rhetoric associated with the campaign proposals, the Government runs the substantial risk of fueling public cynicism if it is seen to be renegeing on its commitments.

The Conservatives have named, blamed, and shamed the Liberals for the sponsorship scandal, among other debacles. They have been advised to continue to do so through to the next election. Insofar as they blame the Liberals, however, the focus is shifted away from the structures of power, which the Conservatives also proclaim that they want to alter in order that they can transform the way the federal government works. Their prescription seeks to improve the checks and balances in the system by improving transparency, openness and independent oversight. But these changes by themselves will not be “transformative”. Most of the provisions to be adopted are in place elsewhere, and nowhere have they transformed the practice of government accountability, even though individually and collectively they constitute improvement.⁴

The change that promises the greatest effect is the proposal to have deputy ministers designated as “accounting officers”, and who will be personally responsible and accountable before Parliamentary committees for their personal performance in exercising their specific management authorities. This innovation is significant because it should serve to enhance the degree to which MPs, among others, are able to distinguish between the respective authorities and responsibilities of ministers and deputy ministers. In short, it should help in the tasks of naming, blaming and shaming specific individuals, as deemed necessary, in holding ministers and/or officials to account. It will not eliminate every instance where ministers or officials seek to shift responsibility and blame to one another. But it will help provide much needed clarification by virtue of its statutory specification of the responsibilities of deputy ministers.

This is the important provision in the accounting officer scheme. The so-called disagreement resolution provision, in my view, is secondary. Although deputy ministers have long appeared before Parliamentary committees, the important change is the recognition that dep-

uty ministers are accountable *in their own person* before these Parliamentary committees. In practice, what this will mean is that if a Parliamentary committee does not hold the deputy minister responsible it follows that the minister must be deemed to be responsible and accountable.

The New Public Governance

This provision is also important precisely because it puts the spotlight on the new power structures of public governance and accountability. Everywhere in the Western liberal democracies there are major challenges to effectively holding government to account because of the consolidation of what I have referred to elsewhere as the *New Public Governance*.⁵ This entails the following developments:

- the concentration of power under the prime minister and her or his court of a handful of a few select ministers, political aides, and public servants;
- the enhanced number, roles and influence of political staff;
- the increased personal attention by the prime minister to the appointment of senior public servants where the prime minister has the power to appoint;
- the increased pressure on the public service to provide a pro-government spin on government communications; and,
- the increased expectation that public servants demonstrate enthusiasm for the government’s agenda.

None of these elements is entirely new, of course. But the consolidation of these several elements has increased the intensity of political pressures on the public service to the point where the so-called “bargain” that ought to govern the relationship between a democratically elected government and its professional and non-partisan public service is called into question, challenged, placed under severe stress, or even “broken”.⁶

In my view, the political leadership cannot escape the pressures that bring about the New Public Governance. They are part of the environment that Governments do not control at all or cannot control very well, however much they may try. These pressures emanate from, among other things:

- the transparency resulting from the contemporary electronic communications revolution;
- the greater assertiveness and aggressiveness of the mass media resulting from greater competition;
- the demand for openness that come with the advent of a recognition of the public’s right of access to government information;
- the creation or expansion of a host of independent audit and review agencies in recognition of the need for expert oversight;

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- the public exposure of ministers and public servants before parliamentary committees as well as public consultation or engagement exercises; and,
 - a less deferential citizenry that demands greater public accountability.

The New Public Governance is clearly not a phenomenon unique to Canada, or to recent Liberal governments, as should now be patently obvious to everyone given the governance practices of the new Conservative government. It is an international phenomenon and it cuts across governments of different partisan stripes. In Britain, for example, many observers would conclude that the Blair Labour Government has succumbed to these pressures even more so than did the Thatcher and Major Conservative Governments. Not all governments are affected exactly the same way, of course, since they have different institutional arrangements and political practices, even in the family of Westminster systems.

The *Federal Accountability Act* will help address the challenge of the New Public Governance in some ways. As noted, the Accounting Officer scheme will help to clarify the respective responsibilities and thus accountabilities of ministers and deputy ministers. Political staffers are to lose their special access to public service positions, thus reducing the degree to which there exists an opportunity for unacknowledged politicization of public service staffing.⁷ And, the better regulation of lobbying, government advertising and public opinion polling should also help, given that each is integral to the pressures that produce the New Public Governance. For the greater part, nonetheless, the power structure stays the same.

Addressing the Imbalance of Power

Judge Gomery departed from the approach taken by the Conservative Party and Government, and, for that matter, the former Liberal Government. He saw the problem of the sponsorship scandal as the result of an *imbalance in power* between the Government and Parliament and the Government and the public service and, thus, by extension, between Parliament and the public service. He thus stressed the need to enhance the capacity of the Public Accounts Committee to do its work in holding deputy ministers to account for the performance of their statutory and delegated authorities and responsibilities.

In Gomery's Volume 1 analysis, a great deal hinged on the relationships of the Deputy Minister of Public Works and Government Services and departmental officials, the Minister, the Minister's political staff, the Prime Minister and his political staff, the Clerk of the Privy Council and other senior officials in the Privy Council Office. Indeed, the entire story of the maladministration of the program

can be told from the vantage point of the deputy minister of PWGS. The corruption part of the story may have defeated the Liberal Government but, in some important respects, it was merely an unfortunate byproduct of the maladministration. While the corruption was undoubtedly an aberration, the maladministration was further evidence of systemic shortcomings in the system arising from the failure of the public service to draw the line between responsiveness to ministers and advancing partisan interests, and the sponsorship scandal is by no means the sole piece of evidence in this script.

Gomery's key recommendations thus sought to alter the balance of power between the Government and Parliament and Government and the public service, including those government agencies at arm's length. He proposed radical changes to the regimes for staffing the deputy minister cadre and for appointing the boards and chief executive officers of Crown corporations.

Gomery sought to radically curb, in some cases to eliminate, the discretionary appointment powers of the Prime Minister.

These proposals did not get incorporated into the Conservative Government's *Federal Accountability Act*. The Conservative campaign platform was silent on the staffing of the deputy minister cadre. It did state that the adoption of the Accounting Officer scheme would address the blurring of lines between ministers and non-partisan public servants that, in their view, took place under the Liberals by re-establishing clear lines of accountability.⁸ Presumably this was thought sufficient to secure the necessary non-partisan independence for deputy ministers and thus for the public service they direct. I think that it will help, and that it is a necessary condition to securing a better balance of power. But, more is required in my view.

I also think that a more independent process for staffing and managing the deputy minister cadre will come at some time in the not-too-distant future in any event. The New Zealand model, adopted in the 1980s, is the obvious option to emulate,⁹ even if the regime in one system must always be adapted to fit the circumstances of another. The course of reform in Canada over the past century has witnessed a progressive diminution of the executive discretion of prime minister and government over matters of management. Given that the deputy minister cadre in Canada has always been regarded as the leadership of the professional, non-partisan public service, the idea of a change in its staffing regime would hardly constitute a

deviation from Canadian public service values. Indeed, it would represent a far better acknowledgement of these values. According to these values, a deputy minister cadre so appointed would be no less responsive to ministers as is now the stated norm. At the same time, however, deputy ministers would be in a better position to resist those explicit or implicit “marching orders”, as a former deputy minister put it, that require them to ignore or overlook their statutory duties, their professional obligations as leaders of the non-partisan public service, or Canadian public service values.

With respect to appointments to the boards and CEOs of Crown corporations the proposal for a Public Appointments Commission, now incorporated into the *Accountability Act*, is an important first step, but only a first step. The operative assumption here is that a transparent process is needed to ensure that those appointed by Government are deemed to be qualified by someone other than the Prime Minister. The appointment is merit-based in this sense, but only in this sense. No claim can be made that partisanship in appointments is thereby eliminated, as amply demonstrated by the prime minister’s nomination of the commission’s first chair.

Moreover, it needs to be stressed that in terms of what transpired throughout the sponsorship scandal, the question of partisanship looms much larger than the question of merit. Very few, if any, of those who have been identified as the responsible persons in connection with these instances have been characterized as not qualified or incompetent to fill the positions they held. Rather, in almost every case, the charge has been addressed to the consequences or effects of *partisan* appointments. If anything, the maladministration or corruption took time to be discovered precisely because those involved were competent. They were competent partisan cronies! In Britain where a public appointment commission has been in operation for some time, there are criticisms, including from commissioners themselves, of the inappropriate involvement of ministers in the appointment process. Some of those so appointed by the Blair Government through this new process are referred to, as one should have expected, as “Tony’s cronies”

A Lesson from Australia

Government accountability in the Australian system of parliamentary government suffered a major blow last year when the Government secured control of the Senate. For over thirty years there had been a steady increase in the extent to which ministers and public servants are exposed to public accountability. And, for roughly the same period of time, the Government, whether under La-

bor or Coalition (Liberal-National), had to cope with a Senate in which they did not have majority control. Beginning in July, 2005, the Coalition government had control. Since Senate committees, of the Estimates and special inquiry variety, have been among the most important instruments of government accountability in the Australian parliamentary system, the capacity of the Government to curtail scrutiny, investigation and review of government by Senate committees constitutes a significant decrease in government accountability. The possibility of this was realized almost on day one of the new balance of power when a proposed Senate committee inquiry was voted down.

This Australian development is important for two reasons. First, Australia has been a leader internationally in improving government accountability, especially in the family of Westminster systems. Australia has been a leader because of the degree to which the Australian Senate over the past three decades has been able to scrutinize, investigate, and review the performance of ministers and public servants. The Senate has been able to do so primarily because it has not been controlled by the Government. The Opposition, collectively, has held a majority in the elected Senate. This result is partly due to the different electoral system used to elect Senators as compared to the system to elect members of Parliament in the House of Representatives.

The Australian Senate, in Canadian terms, has been a model “Triple E” Senate: elected, and therefore legitimate; equal, in terms of the representation of the Australian states; and, effective, in countering the Government’s control of the House of Representatives. It has been especially effective in holding ministers and public servants to account. Its capacity to do this demonstrates that effective government accountability is enhanced to the degree that there exists an Opposition with the power to hold ministers and officials to account. There has been, in other words, a balance of power that has made the intended checks and balances effective. That essential condition was diminished significantly when the Government secured majority control in July 2005. Australia now looks more like Canada.

Second, this development demonstrates that the “holding to account” part of the accountability process is the most important part of the two-sided process of accountability. The other part – the “rendering an account” part – is the less important. If ministers and officials are held to account, they will be forced to render an account. On the other hand, if ministers and officials merely render an account, the accountability process invariably is reduced to either a public relations exercise in self-congratulation on self-reported results or a case where ministers “accept responsibility” for an instance of

maladministration or even wrongdoing but with no admission of personal culpability and therefore no acceptance of the need to suffer any personal consequence. An effective system of government accountability, in other words, requires more than a forum or process for ministers and officials to report. There must be institutions and processes to actually hold ministers and officials to account. There must be a balance of power for accountability to be effective.

Conclusion

The two most significant sets of proposals to reform government accountability in recent years – the Gomery commission recommendations and the Conservatives' *Federal Accountability Act* share at least one common feature: they upset the establishment. It is especially noteworthy that they agreed on the need to have deputy ministers be publicly accountable before MPs for the exercise of the significant powers that Parliament, and not merely ministers, has conferred on these senior public servants. In so doing, they each raise the issue of how the non-partisan, professional public service can be helped to cope with the political pressures that Governments bring to bear on them because they themselves are now subjected to unprecedented unrelenting and intrusive pressures.

The Gomery commission was more radical in its recommendations, at least insofar as relations between the Government, especially in the person of the prime minister, and deputy ministers are concerned. Gomery recognized that effective accountability requires that those who possess authority and responsibility have the independence to discharge their duties and obligations according to the law and the values that are meant to govern their behaviour. In the case of public servants, this requires that ministers, and their political staff, respect the obligations of non-partisan public servants. In the real world of contemporary government, this demands major change. The Liberal Government, and its political staff, may be history, but the pressures of the New Public Governance did not depart with them.

Although the Conservatives' *Accountability Act* will not transform the Canadian system, at least not in significantly altering the balance of power, the Conservatives have signaled an appreciation of what could be changed to effect a significant transformation. Senate reform clearly is on this list, given its longstanding place in the Reform reform program. An elected Senate has been a critical part of Australia's record of effective government accountability. Fixed elections dates would also help, especially if the scheme eliminated the right of a prime minister to dissolution of the House of Commons, and thus an election, following the loss of a no confidence vote. A convention or protocol that required the Govern-

nor General to consult with the leader of the opposition following such a government defeat, to see if a new government could be formed without an election, would also remove the discretion from the Governor General. The process would be democratized by requiring the party leaders in the House to publicly accept responsibility for the formation and defeat of governments and the calling of elections between fixed election dates.¹⁰ Finally, serious thought should be given to some mechanism to give a minority of MPs, especially in committees, the power to initiate committee inquiries and to summons witnesses in pursuit of accountability work. The power of a parliamentary majority, in Parliament or in committee, to curtail scrutiny, investigation and review does not advance the fundamental obligation of MPs to hold the government and officials to account.

Notes

1. Conservative Party of Canada, *Stand Up for Canada: Conservative Party of Canada Federal Election Platform 2006*, 44.
2. See Canada, *Accountable Government: A Guide for Ministers* (Ottawa: Privy Council Office, 2006), 14.
3. Peter Aucoin and Lori Turnbull, "The democratic deficit: Paul Martin and parliamentary reform," *Canadian Public Administration*, Vol. 46, No. 4, Winter 2003, pp. 427-449.
4. Peter Aucoin and Mark Jarvis, *Modernizing Government Accountability: An Agenda for Reform* (Ottawa: Canada School of Public Service, 2005).
5. Peter Aucoin, "The New Public Governance and the Public Service Commission," *Optimum Online: The Journal of Public Sector Management*, Vol. 36, Issue 1, March 2006, 12pp.; and, "The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective: A Proposal for Reform," in Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability: Research Studies*, Vol. 1, (Ottawa: Minister of Public Works and Government Services, 2006), pp. 297-336.
6. See Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers and Parliament* (Toronto: University of Toronto Press, 2003).
7. But they will be given the right to apply for internal competitions for public service positions.
8. *The Federal Accountability Act*, November 5, 2004, Conservative Party of Canada, p. 13.
9. Ironically, the New Zealand reform in the 1980s was adopted to give a greater influence to ministers in the staffing of their equivalent of deputy ministers, as compared to the insulated old-boys club that had full powers to staff the senior executive cadre. See Aucoin, "The Staffing and Evaluation of Canadian Deputy Ministers in Comparative Westminster Perspective".
10. See Peter Aucoin and Lori Turnbull, "Removing the Virtual Right of First Ministers to Demand Dissolution," *Canadian Parliamentary Review*, Vol. 27, No. 2, Summer 2004.