



A PUBLIC SERVICE UNDER PRESSURE

Administrative traditions can vary depending on a country's culture, but there are generally shared views as to how public servants should fulfil their duties – fairly, honestly and effectively. However, these values can come into conflict with other expectations. For example, family members and others may believe that they should be provided with jobs, with contracts or simply with government property. Intense pressure can be brought to bear on a family member in public employment by the expectation that they will provide for various members of the extended family – even when pay levels are barely sufficient to meet the immediate personal needs of the public employee.

On top of these pressures, situations arise where the right decision is not an easy one to make or when it is difficult to identify even where the ethical dilemma lies. This makes it essential for civil servants to observe standards which they know and understand, and on the basis of which they can make ethical decisions. Confidential advice should be available to them when they feel the need for it.

Most people would prefer to be – and to be seen to be – honest and respected for their personal integrity. This assertion is correct and provides the starting point for an ethics management system that has the potential to make serious inroads into ethical misconduct. Often, this misconduct can be as much the result of misunderstandings and misperceptions as of blatant illegality.

In such an environment, working out what is right and wrong is usually very simple. The answer to the question “Should I, as a public servant, donate my office supplies to a charity I think is worthy of my personal support?” is not very difficult to grasp.

The real problem when it comes to ethics, however, is that the questions are not usually so simple. Rather than choosing between black and white, it becomes a matter of distinguishing between shades of grey.

Take, for example, such questions as:

- *Should I enforce the law in this instance? Even though it will cost the community a great amount of money to do so?*
- *Should I withdraw from re-negotiating this contract? Even though the contractor is only a very distant relative?*
- *Should I do as the minister has requested? Even though it is not clear that the law allows me to do what I am being asked to do?*
- *Should I do anything about a case of minor corruption in my work unit? Even though I can expect to be thought of as disloyal if I do?*
- *Should I make sure that the clients of my program are getting all of the financial assistance to which they are entitled? Even though my department is trying to save money?*

Even when the answers seem clear, there can still be an element of personal risk in acting on them, and a reluctance to do so.

Today, both in developed countries and countries in transition, strains on the public service come from varied quarters. These include: Increasing privatization and contracting out of traditional government functions; the delegation of responsibility, including financial responsibility, within public service organizations; greater pressures for openness and more intensive media scrutiny of the public sector; a greater and growing intensity of lobbying by those anxious to capture government business; and an increased willingness on the part of the public to complain when the quality of public service is poor. All have contributed to an increased awareness of the need to take steps to bolster the ethical basis on which public service functions. On top of this, many transition countries have had to cope with the inheritance of demoralized and dysfunctional public sector cadres, frequently underpaid and even left unpaid to survive on whatever they can extract from the public for the services they have been providing.

Public management reforms involving a greater delegation of responsibility and discretion for public servants, budgetary pressures and new forms of delivery of public services have challenged traditional values in the public service. Ethics may not have changed, but in managing a modern civil service, areas of discretion in many areas have widened.¹ Moreover, surveys in many countries have disclosed that the public's hostility towards government structures can run high. These concerns have manifested themselves at the international level, too. Member states of the Organization for Economic Cooperation and Development (OECD) have taken part in comparative surveys to share their experiences and so strengthen their own ethics programs.

There is a clear role for schools of public administration in the development of their country's standards and in inculcating these into the ethical frameworks of the public officials they train.

INTERNATIONAL STANDARDS

In 1996, the United Nations promulgated an International Code of Conduct for Public Officials in 1996 (Resolution 51/59: Action Against Corruption adopted by the General Assembly on 12 December 1996), which was recommended to Member States as a tool for guiding their efforts against corruption.²

Similar to the United Nations' Code is the Council of Europe's Model Code of Conduct for Public Officials (2000). The Code contains some mandatory items, but the document itself is a recommendation and is intended to set a precedent for countries drafting their own mandatory codes of conduct. Many of the standards set deal with subject matter which is similar to the United Nations text, but the Council of Europe text goes beyond only those aspects of public service conduct which are linked to anti-corruption measures or policies. Article 6, for example, which deals with arbitrary actions, is broad enough to cover problems such as general discrimination, as well as conduct which is specifically biased by corrupt influences.

A study group within the OECD has suggested the following broad principles for ethical conduct within

public administrations. According to the organization, countries can use these principles as a tool to be adapted to national conditions, and to find their own ways of arriving at an effective framework that suits their own circumstances. The principles are, of course, not sufficient in themselves, but are a means of integrating ethics management within the broader public management environment.³

1. ETHICAL STANDARDS FOR PUBLIC SERVICE SHOULD BE CLEAR.

Public servants need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behavior lie.

A concise, well-publicized statement, such as a code of conduct, of core ethical standards and principles that guide public service, for example, in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community.

[Note: The emphasis here is on broad statements of principle. The statement should not be written in detail or resemble legislation, or simply be a list of prohibitions and restrictions. The core values should be the focus. These are higher values than the minimum and minimal thresholds prescribed, for example, by criminal law. There is scope here for long-term goals.]

2. ETHICAL STANDARDS SHOULD BE REFLECTED IN THE LEGAL FRAMEWORK.

The legal framework is the basis for communicating the minimum obligatory standards and principles of behavior are for every public servant. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action and prosecution.

[Note: This is the opposite of the principle above. When drafting legislation, a code's long-term goals can be stated to reinforce the values protected by the laws and regulations that follow.]

3. ETHICAL GUIDANCE SHOULD BE AVAILABLE TO PUBLIC SERVANTS.

Professional socialization should contribute to the development of the necessary judgement and skills to enable public servants to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advance can help create an environment in which public servants are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace.

[Note: A code without a mentor or an adviser is like a ship without a rudder. Public servants need to know where and to whom they can turn when they are confronted by potential difficulties. These individuals need to be persons in whom public employees have trust, and in whom they can confide confidentially.]

4. PUBLIC SERVANTS SHOULD KNOW THEIR RIGHTS AND OBLIGATIONS WHEN EXPOSING WRONGDOING.

Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing.

[Note: A core value of public service is commitment to the law and to the rule of law. This is of higher value than any duty to superiors, colleagues or subordinates. It also overrides any claim to loyalty on the part of the political party in power.]

The subject of “whistleblowing” is discussed in a separate chapter. It should never be necessary, other than in the most exceptional of cases, for a public servant to feel compelled to go outside the system in order to draw attention to wrongdoing.

This is an area, too, in which the private sector is taking an increased interest. Although previously senior managers would prefer not to know about such problems, today’s more progressive managers want to make sure that staff feel comfortable in raising matters which concern them. This allows senior managers to put matters to rights, or to correct mistaken impressions. It is, therefore, important that the official channels for complaint be trustworthy so that staff can use them without feeling exposed to reprisals by more senior staff on whom they may be reporting. They must also instill confidence in the staff that their complaints will be taken seriously, and not just ignored.

5. POLITICAL COMMITMENT TO ETHICS SHOULD REINFORCE THE ETHICAL CONDUCT OF PUBLIC SERVANTS.

Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level; for instance, by creating legislative and institutional arrangements that reinforce ethical behavior and create sanctions against wrongdoing; by providing adequate support and resources for ethics-related activities throughout government; and by avoiding the exploitation of ethics rules and laws for political purposes.

[Note: Unless political leaders demonstrate high standards, they have no moral authority upon which to draw when they wish to reprimand others who step out of line. Experience suggests that when the behavior of superiors is seen to be incorrect, similar indiscretions occur among subordinates. Also important is the role of political leaders in clearly articulating their unqualified support for high ethical standards.]

6. THE DECISION-MAKING PROCESS SHOULD BE TRANSPARENT AND OPEN TO SCRUTINY.

The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legisla-

ture and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.

[Note: A corrupt and/or inefficient administration will wish to shield its shortcomings through denying access to information. The provision of channels for information, and rights of access, are important antidotes to this malaise. The greater the transparency, the fewer the shadows.]

7. THERE SHOULD BE CLEAR GUIDELINES FOR INTERACTION BETWEEN THE PUBLIC AND PRIVATE SECTORS.

Clear rules defining ethical standards should guide the behavior of public servants in dealing with the private sector; for example, regarding public procurement, outsourcing or public employment conditions. Increasing interaction between the public and private sectors demands that more attention should be placed on public service values and requiring external partners to respect those same values.

[Note: Much of the large-scale corruption that mars today's administrations around the world takes place on the interface between the public and the private sector, primarily in the context of public contracting. The question of respect for shared values is not exclusive to the public service. Leading players in the private sector, too, increasingly try to ensure that their own private sector partners respect and share the core business principles to which they subscribe.]

8. MANAGERS SHOULD DEMONSTRATE AND PROMOTE ETHICAL CONDUCT.

A working environment in which appropriate incentives are provided for ethical behavior has a direct impact on the daily practice of public service values and ethical standards. Such incentives can include adequate working conditions and effective performance assessment. Managers have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, citizens and other public servants.

[Note: This principle reflects the same concerns for managers as are contained in principle five, above. Adequate working conditions would include pay levels, professional development prospects, and the physical working environment.]

9. MANAGEMENT POLICIES, PROCEDURES AND PRACTICES SHOULD PROMOTE ETHICAL CONDUCT.

Management policies and practices should demonstrate an organization's commitment to ethical standards. It is not sufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage some public servants simply to function on the edge of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only delineate the minimal standards below which a government official's actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to.

[Note: This principle stresses the importance of including long-term goals in standards for ethical conduct, and the need to avoid a minimalist, rule-bound approach under which everything which is not expressly forbidden is implicitly allowed.]

10. PUBLIC SERVICE CONDITIONS AND MANAGEMENT OF HUMAN RESOURCES SHOULD PROMOTE ETHICAL CONDUCT.

Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behavior. Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationalize integrity in public service.

[Note: Just as unethical conduct can be contagious, ethical conduct can be built from scratch. If nepotism, favoritism and the selective application and waiver of rules are taking place, however, standards for such conduct will come under pressure.]

11. ADEQUATE ACCOUNTABILITY MECHANISMS SHOULD BE IN PLACE WITHIN THE PUBLIC SERVICE.

Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on compliance with rules and ethical principles and on achievement of results. Accountability mechanisms can be internal to an agency as well as government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls, while allowing for appropriately flexible management.

[Note: Corruption and inefficiency flourish in an environment devoid of accountability. In this regard, an ombudsman can play a particularly potent role.]

12. APPROPRIATE PROCEDURES AND SANCTIONS SHOULD EXIST TO DEAL WITH MISCONDUCT.

Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should exercise appropriate judgement in using these mechanisms when actions need to be taken.

[Note: Mechanisms need to be fair and trustworthy. They should protect the innocent and the naive, just as they should detect and publish the culpable. Penalties, where applicable, should be proportionate and should be consistently applied. A sanctions regime which is idiosyncratic and viewed as untrustworthy by staff can seriously undermine efforts to raise and to protect ethical standards.]

ESSENTIAL PREREQUISITES FOR AN ETHICAL PUBLIC SERVICE

Prerequisites for the establishment and maintenance of an ethical public service include:

- *Leadership by senior officials that inspires respect*
- *Building on values from the bottom up, not the top – down*
- *Clear rules and guidelines that are based on commonly understood and shared values and principles. These values should be politically neutral and applicable beyond any change of government.*
- *Broad participation in a discussion about the government's code of ethics and any concerns those affected by them might have.*
- *Efficient accountability mechanisms*
- *Wide dissemination of codes of conduct and other documents related to ethics and to expected standards among government agencies and those individuals or organizations which work with government agencies*
- *Training for public sector employees in how to use the code of conduct to make ethical decisions*
- *Positive incentives for compliance*
- *Counsellors to provide guidance and to enforce ethical conduct*
- *A non-partisan framework for the fulfilment of the code of conduct. The code should contain standards that any employee, whatever his or her political beliefs, can support*

CODES OF CONDUCT

Subordinates take their lead from the conduct of their superiors. It is, therefore, essential that any drive to reduce corruption be led by the most senior public officials and that they openly display their support for the campaign.

One way of achieving this is to develop a code or statement of conduct which applies to everyone in a particular agency or department of government.

Thereafter, top officials within a department should not only exemplify the conduct recommended by the code, but also foster an understanding of the values the code seeks to capture.

As in the private sector, codes of conduct in public service are playing an ever-increasing part in the development of national integrity systems.⁴ They offer a way by which to develop strategies to prevent scandals over corruption or other illicit actions. Obviously, if, from the outset, officials act properly and with an understanding of the principles they are expected to uphold, many problems will be minimized.

However, public sector codes tend to be drafted at the top, by senior public officials or managers, and then passed down to more junior staff. All too seldom are staff at all levels actively involved in the preparation of a code. As a result, such codes often fail to reflect the situations and aspirations of the public service as a whole. Public employees often have little sense of a personal stake in the code, since they were not asked to participate in its formation.

In some respects, the way a code is prepared is just as important as the code itself. It is also important that the code include at least some acknowledgement of long-term goals, rather than be simply a long list of prohibited actions. This will provide the code with a positive tone rather than with the somewhat forbidding appearance of a criminal statute. It is also why self-generated codes of conduct are much to be preferred to a “one-size-fits-all” piece of legislation imposed by a legislature and without participation by all employees.

As described below, the legislature in the north-eastern Australian state of Queensland recognized the importance of avoiding the imposition of a code that did not have the full participation of the government behind it. One example of a well-worded public service code is the Czech Republic’s Code of Ethics of the Public Administration⁵.

Once a code is finalized, many regard the process as at an end. However, to be effective, codes should be publicized throughout an organisation and to all those with whom it has dealings, including the gen-

eral public, so that everyone is aware of its contents. Moreover, employees should receive regular training that allows officials to apply the code to their work and discuss ethical dilemmas drawn from real life.

The interpretation of the code is also important. It should protect the staff who comply with its standards. For this reason, an effective code will usually have designated someone to provide advice and guidance for staff who have difficulty in determining what position they should take on a given question. Even if the advice offered turns out to be misconceived, if a full disclosure of the relevant facts has been made and if the advice has been followed, the person seeking guidance should be regarded as blameless. Such protection, however, is only applicable when the person in question has made full disclosure.

Interestingly, the Australian state of Queensland has established a legislative framework within which departments are required to develop their own codes of conduct.

CODE OF CONDUCT LEGISLATION: THE QUEENSLAND APPROACH

Queensland is the only jurisdiction in Australia, and one of the few in the world, to have enacted specific legislation for ethical conduct in public management⁶. The 1994 Public Sector Ethics Act⁷, and its companion piece, the 1994 Whistleblowers Protection Act⁸, are Australia’s first examples of specific ethics legislation which aim at ensuring high professional standards in the public sector. Under these Acts, department chiefs are required to develop conduct codes and to make them accessible to staff and to the public, to institute training and to describe the implementation of the code in the department’s annual report.

Both Acts proceeded from an explicit demand by employees and managers for greater certainty about what was expected of them in the workplace. This demand was driven by everyday concerns about fairness, equity, responsiveness, and integrity and by community expectations that official wrongdoing would be effectively countered by the system itself.

THE QUEENSLAND PUBLIC SECTOR ETHICS ACT

The Act, as passed, declares five principles to be the basis of the “Ethics Obligations” specified by the Act. These principles are required to be the basis of the agency-specific codes of conduct which individual public sector agencies are required to develop in consultation with staff and relevant members of the public.

The framework values are:

- *Respect for the law and the parliamentary system of government*
- *Respect for persons*
- *Integrity*
- *Diligence*

ECONOMY AND EFFICIENCY IN MANAGEMENT OF PUBLIC RESOURCES

The Act sets out these obligations in the following terms⁹:

Integrity – *In recognition that public office involves a public trust, a public official should seek:*

- (a) *to maintain and enhance public confidence in the integrity of public administration; and*
- (b) *to advance the common good of the community the official serves.*

Having regard to [that obligation], a public official –

- (a) *should not improperly use his or her official powers or position, or allow them to be improperly used; and*
- (b) *should ensure that any conflict that may arise between the official’s personal interests and official duties is resolved in favour of the public interest; and*
- (c) *should disclose fraud, corruption, and maladministration of which the official becomes aware.*

In practice, this obligation requires that officials should, for example, not disclose official information improperly, not abuse the powers or resources available to them as officials, and avoid any conflict

between personal interest and official duties, or resolve such conflict in favor of the public interest.

Diligence – *In performing his or her official duties, the official should exercise proper diligence, care and attention, and should seek to achieve high standards of public administration.*

This obligation requires that officials should, for example, provide “a fair day’s work,” observe procedural fairness requirements of good administrative decision-making, make all reasonable efforts to provide high standards of service to clients, act in accordance with relevant “duty of care,” requirements to protect the health and safety of others in the workplace, avoid negligent conduct, provide expert and comprehensive advice to ministers, and seek to maintain high standards of public administration.

Economy and Efficiency – *In performing his or her official duties, a public official should ensure that public resources are not wasted, abused, or used improperly or extravagantly.*

In practice, this obligation requires that officials should manage all forms of public resources (for example human, material, and financial resources, intellectual property and information) in the interests of safeguarding public assets and revenues and ensuring efficient programs and service-delivery.

“Chief Executives’ Obligations – *The Ethics Act requires Chief Executives of public sector agencies to ensure that the Act is implemented in their agency, that training in ethics is undertaken, and, of utmost importance, that the agency’s “administrative practices and procedures” are consistent with the Act and with the agency’s Code of Conduct.*”

Failure to do so could result in sanctions under the Chief Executive’s contract of employment, or (potentially) in a private legal action for compensation resulting from breach of statutory duty. Such an action might arise when the interests of a citizen or client of the agency suffered damage from the foreseeable and preventable unethical conduct of an employee; for example, in a contract negotiation or tendering process involving the Chief Executive’s agency.

THE ROLE OF THE PUBLIC OFFICIAL

In 1995, the guidelines issued to Queensland public sector agencies went a step further by reinforcing the traditional view of the appointed official's responsibility and accountability, and the official's relationship to power delegated by parliament and the community at large. The guidelines include the following statement:

Public employment involves a position of trust.

The standards of conduct which may be expected of public officials at all levels are, therefore, a matter for legitimate and continuing concern by the Government of the day, public sector organisations, and the community.

Public officials control, in various ways, the use of financial and other valuable resources provided by the community. The use, and misuse, of those resources raises important questions of professional ethics for administrators.

It is similarly expected that those public officials who control the financial and other resources provided by the community have an ethical obligation to ensure that those resources are used efficiently and appropriately.

Rather than blurring the distinctions which exist between the public and private sectors, the Queensland legislation sets down a benchmark for public sector integrity.

AN EXAMPLE FROM LITHUANIA

In Lithuania, the 1995 Law on Civil Service sets out the rights, duties and main principles of the civil service as well as provisions for the prevention of corruption. It disqualifies those convicted of major crimes or crimes against the civil service and those who have been dismissed from the civil service for misconduct in office within the last 10 years.

An official may not work in a position in which he would be related to his or her immediate superior by a close relative or by marriage. Nor can he or she be related to an official who is a direct subordinate or

to an official who would supervisory power for his or her position. Nor may an official hold a second job in the civil service.

The law elaborates which activities are declared incompatible with the civil service. Civil servants cannot be managers of private companies or non-profit organizations or enter into contracts on behalf of the institution or an agency where the civil servant is employed with companies in which he or she has a personal stake. Nor may the official represent the interests of the country or foreign enterprises.

An official is required, without delay, to notify his or her superior about tasks or instructions which he or she believes to be unlawful. An official also has a right to refuse to carry out a task or an instruction if he or she believes that the task or the instruction is in breach of the law or a government decision. An official must report the matter in writing to his or her superior, and carry out the task or the instruction only if directed to do so in writing. In this case, responsibility for the consequences of this action lies not with the official who implemented the request, but with the superior who instructed the official to do so. However, no task or instruction may be carried out if it would constitute a criminal or administrative offence. Responsibility for the consequences of carrying out such a task or instruction lies not only with the official, but also with the superior who gave the task or the instruction. Similarly, no task or instruction is to be undertaken which would be degrading to human dignity.¹⁰

OVERSIGHT: THE OMBUDSMAN AND THE INSPECTOR GENERAL

A government's ombudsman, inspector general and public service commission all have a keen interest in the public service achieving high ethical standards.¹¹ The higher the standards, the easier life is for all. Some governmental bodies which audit public finances have started to develop "ethical audits" to determine where they need to concentrate their limited resources, and where they do not.

Each of these officials and institutions can play a useful role in reviewing the internal management processes of government agencies and working with senior managers to develop cost-effective,

efficient and corruption-free internal processes. Such a role in prevention can pay large dividends. Preventing corruption can mean that losses have been avoided and costly investigations rendered unnecessary. (The role of the ombudsman is discussed in Chapter 7.)

ESTABLISHING AN OFFICE OF GOVERNMENT ETHICS?

To be effective, over-all responsibility for public ethics development and training must be vested in a particular agency of government.¹² Frequently, this is within the ministry for government administration. It can also provide a counseling service for public servants who face difficult conflict of interest questions and who need to be able to talk through the position with a trusted professional on whose advice they can safely rely.

In the wake of the Watergate scandal, the United States created the Office of Government Ethics (OGE) in 1978.¹³ The OGE provides policy leadership and direction for the executive branch of government's ethics program. This system is a decentralized with each department or agency having responsibility for the management of its own ethics program.

The OGE has issued a uniform set of Standards of Ethical Conduct for Employees of the Executive Branch that applies to all officers and employees of executive branch agencies and departments. These regulations contain a statement of 14 general principles that should guide the conduct of federal employees. Central to these principles is the concept that public service is a public trust. Federal employees must be impartial in their actions and not use public office for private gain. These regulations also contain specific standards that provide detailed guidance in a number of areas: gifts from outside sources, gifts between employees, conflicting financial interests, impartiality, seeking employment, misuse of position and outside activities. The rules are enforced through the government's normal disciplinary process.

The Office has also implemented uniform systems of financial disclosure. These systems, public and

confidential, are enforced throughout all agencies and are subject to periodic review by the OGE. It regularly reviews agency ethics programs, makes recommendations and conducts training workshops for ethics officials both in Washington D.C., and in cities throughout the United States.

In recent years, a number of other countries have followed the United States' lead, including Argentina and South Africa.

THE CANADIAN APPROACH

In Canada, a number of provinces as well as the federal government¹⁴ have introduced posts to provide guidance to parliamentarians and senior public officials on ethical issues. These positions are variously titled – “Ethics Commissioner” (Alberta), “Integrity Commissioner” (Ontario); “Conflict of Interest Commissioner” (British Columbia, Saskatchewan, Nova Scotia, New Brunswick, Northwest Territories and Yukon), “Commissioner of Members' Interests (Newfoundland) or “Ethics Counselor” (Federal Government).

These offices all recognize that, in the area of ethics, there are two major risks when relying wholly on a legalistic system.

First, public office holders can easily forget what truly ethical conduct actually is, and instead defend themselves by dwelling on what they understand to be the legal technicalities of words and concepts.

Second, rules are often extremely detailed about matters that should be self-evident to anyone with sound moral judgement. When this happens, it can do more to erode public confidence than it does to enhance it. Canada's federal government has taken an approach that assumes that public office holders do want to take ethical actions. It assumes they do want to earn a higher level of respect among citizens. For this reason, it has chosen not to rigidly codify ethical behavior through an exhaustive list of forbidden behavior.

The Canadian approach to building and managing an ethics structure turns on avoiding possibilities for conflict of interest well before the fact. It focuses on

working with people, based on the assumption that they do want to do the right thing.

The Canadian Federal Ethics Counsellor's Office deals with potential conflicts of interest and other ethical issues for those most likely to be able to influence critical decisions in the federal government, including those officials responsible for handling "blind trusts." Blind trusts are established to enable a decision-maker's investments to be held separately (and secretly) by independent trustees so as to avoid any conflict of interest. The decision-maker is wholly unaware of where his or her investments have been made and so is unable to be influenced in any way by them.

The Ethics Counsellor's Office covers all members of the federal cabinet, including the prime minister. This includes cabinet members' spouses and dependent children, members of government ministers' political staff and senior officials in the federal public service. The Office handles the monitoring of the assets, incomes and liabilities of those it oversees.

When it comes to suspected breaches of the criminal law, the Ethics Counsellor, of course, does not replace the role of the police, prosecutors and judges. Rather, he deals with those situations which could appear unethical to citizens without ever actually being illegal. In practice, his or her Office works closely with those covered by Canada's Conflict of Interest Code.¹⁵ These officials come with questions about how a given asset or interest should be treated, and the Office offers advice. It is also asked by the prime minister to investigate and comment on specific issues when they arise.

The Office is also responsible for the Lobbyists' Registration Act and the Lobbyists' Code of Conduct. These laws are designed to bring a level of openness to lobbying activities and ensure high professional standards are met by the people involved in that work. Both laws are discussed in Chapter 4.

The present Canadian Ethics Counsellor believes the Office is succeeding in meeting its objectives: "The people that I deal with recognize that making the right decisions helps to ensure their long-term political health. They recognize that Canadians expect high standards of conduct and rightly so.

They have generally gone out of their way to meet those standards."

Notwithstanding, recent scandals in Canada have led the prime minister to introduce a so-called "Ethics Package" that, if enacted, would strengthen the position of the Ethics Office considerably.¹⁶

RISK MANAGEMENT AND STAFF

Risk management involves identifying problems before they arise, and then making sure they do not do so.

There are some obvious "red flags":

- *Staff who do not take holidays. They may be work-obsessed, but they may also be anxious to prevent relieving staff from seeing their files.*
- *Staff who take holidays they could not afford based on their salaries alone.*
- *Staff in sensitive positions who have become addicted to gambling.*

None of these is evidence of misconduct, but each calls for a watchful eye on the part of managers.

More formal are arrangements for the disclosures of assets and liabilities and for staff in sensitive positions to be periodically rotated.¹⁷

Managers should be conscious of the areas of corruption risk. These should be reviewed regularly and an up-to-date organizational risk strategy implemented in which the corruption issue is dealt with appropriately.

High risk functions should be identified and documented, and contingency plans prepared ahead of any problem arising. These functions include such matters as:

- *Inspecting, regulating or monitoring the standards of premises, businesses, equipment or products*
- *Issuing qualifications or licenses to individuals to indicate their proficiency or enable them to undertake certain types of activities*

- *Receiving cash payments*
- *Allocating public fund grants*
- *Providing assistance or care to the vulnerable or disabled*

Helpful risk management tools include:

- *Codes of conduct; their relevancy should be reviewed every two years or so*
- *Code of conduct training; this should occur at regular intervals of no more than two years*
- *Gifts and benefits and gifts registers*
- *Information management and technology*
- *Educating staff about their role and responsibilities in information security management*
- *Recruitment; contracting and procurement strategies*
- *Providing information on ethical work practices to staff*
- *Audit procedures*
- *Regularly informing staff about the organization's internal reporting policy, its internal and external reporting channels and how they work*
- *Regularly informing staff about the organization's internal investigation capacity; specific plans should be detailed to effectively deal with an allegation of corrupt conduct if one were to arise*

BUILDING AND SUSTAINING A MERIT-BASED PUBLIC SERVICE

No institution can be expected to perform with professionalism in the absence of qualified and motivated personnel. One of the most destructive features of corruption is when people are appointed to public service based on their connections rather than on their capabilities.¹⁸

The institutional arrangements for selecting, recruiting, promoting and dismissing public servants are central to the proper functioning of the public sector and can best be provided through legislation.¹⁹ The right people have to be attracted to the right posts. This, in turn, means that the positions themselves need to be sufficiently attractive to qualified citizens and be a viable alternative to the private sector.

A public service whose members are appointed and promoted based on merit will be far less susceptible to corruption than one based predominantly on political and personal connections. In a meritocracy, staff advance on the basis of their performance and they owe their positions, at least in part, to the public they serve. Where positions have been obtained through powerful connections, the loyalty is to the connection, not to the institution to which the person has been appointed. Frequently, the beneficiary of such an appointment will look to his or her patron to protect them if they encounter any difficulties. Appointees of political parties can pose particularly difficult problems for managers who may be less well-connected.

A merit-based public service presents numerous advantages:

- *Candidates are judged against verifiable criteria that can be checked if breaches are suspected.*
- *Office holders have an incentive to perform well. Politicizing the civil service leads to mediocre performance. When politicians have a direct impact upon the recruitment, promotion and dismissal or transfer of civil servants for reasons other than those based upon merit, professional discipline may be hard to enforce and performance incentives difficult to use since their appointment is short-termed.*
- *Politically appointed civil servants may be more inclined to break the rules in order to maximize their personal gains in the short time they expect to be in office.*
- *Civil servants owing their positions to their own capabilities as well as to clear and verifiable criteria, will feel accountable towards the state that employs them rather than towards the government of the day.*

- *A merit-based public service avoids the relatively short-term nature of political appointments and the consequent loss of expertise with each change of government.*

However, a purely merit-based civil service may have to be varied to accommodate affirmative action programs consistent with democratic practices. For example, such programs may ensure that minorities are fairly represented in the public service, and redress gender and geographical imbalances. Furthermore, a merit-based civil service is no guarantee against corruption.

Prerequisites for corruption-free recruitment for public sector jobs include:

- *A predominantly merit-based recruitment and promotion program with objective and contestable criteria and with a clear career path*
- *A minimization of political interference in both the action and the staffing of the public sector*
- *A strict limitation of political appointments to certain high-level posts*
- *Suitable pay and other benefits to provide suitable incentives*
- *Protection of public servants through internal rule of law mechanisms*

Intuitively, many people often assume that increasing salaries will wipe out corruption among grossly underpaid civil servants. In practice, the situation is somewhat more complex. Pay reform, essential though it may be, is just one of a variety of incentives that needs to be addressed.²⁰

Nevertheless, reforming the wage structure can be an important tool for the prevention of corruption. Such reforms change the incentive structure for public servants, make remuneration more transparent, eliminate underpay and win more skilled personnel for the public sector:

- *The incentives for public servants to reject corruption and work efficiently are much higher if the system of remuneration is based on the principle*

of meritocracy. When wages and promotion clearly depend on public servants' respect for rules of conduct and on good performance, both incentives are more likely to be implemented. Greater value is placed on the job itself. Therefore, dismissal or demotion becomes a much more serious matter. This in turn, however, means that there have to be proper and effective disciplinary mechanisms.

- *If public servants are not paid a living wage, incentives to demand bribes are considerable. Pay reforms that create living wages for public servants can, therefore, potentially curb petty corruption. This approach has been promoted by the World Bank in a number of countries it has assisted.*
- *Wage reforms can also try to make public sector wages competitive with private sector wages in order to attract more highly skilled employees. Better human capital increases the efficiency of the public sector and can induce better compliance with codes of conduct. Singapore and Hong Kong are examples of this.*
- *Among the measures for creating incentives for corruption-free behavior, so-called "social benefits" should also be included. For example, retired public servants should receive monthly allowances. Similarly, public servants, who are caught in a flagrant delit – receiving bribes or other corrupt benefits – should automatically lose their social benefits.*

DRAWING THE LINE BETWEEN POLITICIANS AND SENIOR PUBLIC SERVANTS

A professional public service is essential to the smooth running of a government's administration. When a government changes, the great bulk of the public servants remain. Yesterday's politicians and their appointees have gone, but the business of administration continues under the new government.

As for all citizens, it is the duty of public servants to obey the law. However, civil servants also have a professional obligation to ensure that the official

actions they take – including those that politicians and ministers senior to them want them to take – are within the law.

This means that public servants can be required to inform their political superiors that certain actions they have been directed to take are illegal. They can be required to refuse to comply with such instructions. This is, however, easier said than done, and there are no clear solutions for such a situation.

Senior public servants need to be able to refer contentious matters to the government's legal advisers. When dealing with a minister who is asking them to act corruptly, they need to understand that it is no defense in a criminal prosecution for them to say that they were ordered by their ministers to act as they did. Government is subject to the law. Ministers are not above the law. On occasion, public servants have said to their ministers that they would like to comply with his or her wishes, but that to do so would render both of them liable to criminal prosecution.

The problem is at its most acute when ministers go outside their role and involve themselves in the administration and the implementation of policy. The role of ministers is to create policy, but it is left to public servants to put that policy into action. When this distinction in roles is not clear, and when senior public officials feel intimidated by a minister unwilling to accept that the law applies to his or her actions just as it does to those of others, corruption can flourish.

It is essential that training for senior officials emphasizes the fact that the mere fact that they were required to commit an unlawful act by the direction of a minister does not afford them any defense against criminal charges.

WHEN IS A GIFT A BRIBE? GIFTS AND GIFTS REGISTERS

It is essential that there be clear rules and regulations as to what employees are entitled to receive in the course of their employment and how these gifts are to be recorded.

In a private context, gifts are usually not requested and are meant to convey a feeling, such as grati-

tude, on behalf of the giver. There is no expectation of repayment. Gifts given in a purely private context are not the focus of this discussion. However, gifts are also offered to individuals in the course of business relationships. Such gifts are usually given to create a feeling of obligation in the receiver.

For a public official to corruptly receive a gift or benefit is a criminal offense in all countries. How, then, is an official to distinguish between a gift and a bribe?

A gift can be offered innocently in good faith or it can be an attempt to influence the official. The giver may have any number of motives, ranging from friendship, hospitality and gratitude to bribery and extortion.

In a business context, gifts are rarely offered to an individual for purely charitable or hospitable reasons. This may be the case if the gift or benefit is of little or no commercial value, such as a memento or a trinket. However, in cases where the gift or benefit has more than a nominal value, it is possible that it was offered to create a sense of obligation and even an expectation that something will be given in return.

Feelings of obligation can arise with the acceptance of a free meal, tickets to a sporting event or discounts on commercial purchases. Once such a gift is accepted, a public official can be compromised. If the giver later requests favorable treatment, it can be difficult for the official to refuse. The giver may even threaten to allege that the official asked for the gift in the first place.

Individuals attempting to corrupt public officials often start with small inducements that appear to have no improper motive behind them.

One way officials can become involved in corruption is by rationalizing their acceptance of a gift or benefit. Frequently used rationalizations include:

- *Everybody else does it.*
- *The motivation of the giver is purely one of generosity, kindness or friendship.*
- *The exchange of gifts and benefits harms no one.*

- *Gifts and benefits foster the development of beneficial business relationships, which encourage administrative efficiency by allowing red tape to be cut.*
- *Gifts and benefits are merely part of cultural rituals or practices. To refuse may cause offense.*
- *Public officials are not paid enough. They deserve a little extra reward.*

These arguments ignore the concept of public duty. As a public official, officials have a duty to ensure that government business is carried out with impartiality and integrity. If they accept gifts and benefits offered to them in the course of their work, they may feel a sense of obligation toward the person offering the gift or benefit. Feelings of obligation will undermine their impartiality and generally help undermine confidence in the public service.

The Model Code of Conduct for New South Wales Public Sector Agencies (Australia)²¹ states that employees should not accept a gift or benefit that is intended to, or is likely to, cause them to act with prejudice in favor of the giver in the course of their duties. If the gift or benefit is of more than nominal value, employees are expected to provide their supervisor with a note outlining the incident (described below).

The onus of deciding whether or not to accept a gift or benefit should not be on an individual employee. Rather, it is the responsibility of agencies to set limits and provide guidance on the types of gifts and benefits employees can receive. This can be achieved through developing gifts and benefits guidelines and policies.

I. AS A GENERAL RULE, PUBLIC OFFICIALS SHOULD NOT SOLICIT OR ACCEPT GIFTS AND BENEFITS OF MORE THAN NOMINAL VALUE. OFFERS OF MONEY IN ANY FORM SHOULD NEVER BE ACCEPTED.

By refusing gifts and benefits, public officials can avoid feeling compromised and contributing to a public perception of bias. An organization that adopts a policy which prohibits the acceptance of

gifts and benefits protects its employees from being compromised. In fact, employers have a positive legal obligation toward their employees to provide a safe working environment. Agencies may potentially be in breach of this duty if they fail to advise employees on how to handle compromising situations, which can cause considerable stress and anxiety. An advantage of prohibiting acceptance of gifts and benefits is that people who offer gifts are less likely to be offended by a refusal. Employees can decline offers by explaining that acceptance would be against agency policy and consequently they have no discretion in this area. Employees are then not placed in the difficult position of trying to decide whether a gift is an attempt to bribe.

2. PUBLIC OFFICIALS WHO ARE OFFERED A GIFT OR BENEFIT, OR WHO ARE GIVEN A GIFT OR BENEFIT AGAINST THEIR WILL, SHOULD BE REQUIRED TO REPORT THE INCIDENT IN WRITING TO THEIR SUPERVISORS.

All offers of gifts and benefits of more than nominal value, even those rejected, should be immediately reported to a supervisor. A written note from the employee should follow up the initial oral report as soon as possible. The note should include:

- *Date, time and place of the incident*
- *To whom the gift or benefit was offered*
- *Who offered the gift or benefit and contact details (if known)*
- *The response to the offer*
- *Any other relevant details of the offer*
- *The writer's signature and the date*

A copy of the note should be kept by the employee and a copy given to his or her supervisor, who should also sign and date it, and then place it on an appropriate file.

By writing a note, an employee who has been offered an inappropriate gift or benefit can remain in control of a situation. Most public officials feel

uneasy when they are placed in a compromising situation. A written statement allows a person to record their version of events, which provides them with a degree of comfort. The reporting of an incident also tends to oblige the official's organization to take appropriate action.

3. IF A PUBLIC OFFICIAL'S REFUSAL IS IGNORED, OR FOR OTHER REASONS A GIFT OF MORE THAN NOMINAL VALUE CANNOT REASONABLY BE RETURNED, THE GIFT MUST BE REGARDED AS THE PROPERTY OF THE AGENCY CONCERNED.

In some situations, it is difficult to refuse a gift; for example, if the giver ignores the refusal and persists with his or her offer. It may also cause embarrassment to refuse a gift in circumstances where it has been offered publicly; for instance, to a guest speaker at a conference. Once a gift or benefit becomes the property of an agency, its use or disposal is the responsibility of the organization, not the individual. Disposals can take many forms, including via public auctions.

4. OFFERS OF NOMINAL VALUE CAN BE ACCEPTED.

Gifts and benefits of nominal value usually do not create a sense of obligation in the receiver that will influence, or appear to influence, the exercise of his or her official duties. For this reason, allowing public officials to accept infrequently offered gifts of nominal value poses little risk of corruption. Examples of gifts and benefits that could be regarded as having a nominal value include cheap marketing trinkets or corporate mementos that are not targeted specifically at the business of an agency. It should not be up to employees to decide if a gift is of nominal value, however. Rather, guidance should be provided by agencies.

5. IN SOME INSTANCES, A GIFT OR BENEFIT MAY BE ACCEPTED IF IT IS RECEIVED IN THE COURSE OF A PUBLIC OFFICIAL'S DUTIES AND RELATES TO THE WORK OF A PUBLIC OFFICIAL'S AGENCY, OR HAS A PUBLIC BENEFIT. ALL SUCH ITEMS MUST BECOME THE PROPERTY OF THE AGENCY.

Agencies should clearly stipulate to their employees when it is appropriate to accept a gift or benefit under this category. An example of a gift or benefit relating to the work of an agency is a book on a relevant topic. Such gifts should become the property of the agency concerned.

It may also be appropriate for an agency (but not individual staff members) to keep a gift or benefit received through a purchase incentive scheme. For example, a company may offer a free car to all its clients after they have purchased a certain quantity of its product. The car should not result in a private benefit for anyone in the agency. An appropriate way for the agency to achieve this, while still obtaining the benefit of the car, would be to obtain a refund for the car, dispose of the vehicle at a public auction or ensure that the car is only used for official purposes. It is also important that agencies do not compromise their impartiality in order to obtain bonuses.

6. IN SOME CASES, IT MAY BE APPROPRIATE TO ACCEPT MODEST HOSPITALITY ALSO MADE AVAILABLE TO COLLEAGUES OR ASSOCIATES WHO SHARE A COMMON PURPOSE OR TASK.

Hospitality such as tea or coffee is a common courtesy, as opposed to a gift or benefit, and would be offered by most organizations to visitors. A modest lunch offered to a working group would also come under this category.

7. IT MAY BE APPROPRIATE FOR PUBLIC OFFICIALS TO ACCEPT SPECIAL OFFERS UNCONNECTED WITH THEIR OFFICIAL DUTIES.

In some countries, new products are launched at special prices or the price of goods is markedly reduced for a limited time. This provision suggests that it may be appropriate for public officials to be able to accept these offers when they are not connected with their official duties.

8. AGENCIES SHOULD MAINTAIN A GIFTS AND BENEFITS REGISTER.

If an organization decides that it is acceptable for

staff to receive gifts and benefits in some circumstances, limits still need to be set to regulate and monitor conduct. For instance, there should be a requirement that all gifts and benefits of more than nominal value be declared and noted on a publicly available gifts register against the name of the recipient. The name of the person who offered the gift and their agency or organization should also be included. There should also be a record of the decision that was taken in relation to the gift, and the register should be signed and dated by the employee's supervisor (or appropriate senior officer). If an issue arises later, it can be shown that the agency was open and transparent in dealing with the gift.

One of the most important determinants of the incidence of unethical decisions is the behavior of managers. In other words, employees are more likely to do what they see their managers doing, than adhere to ethical behavior policies. If an organization's management is perceived by its employees to preach one thing and do another, employees will soon become disillusioned.

Management can foster the ethical development of their organizations by leading by example. Particular strategies that can be adopted in relation to gifts and benefits include informing employees of instances when the organization's management declined to accept inappropriate gifts and benefits, and taking steps to actively reward those employees who display an understanding of ethical behavior.

There are also a number of pro-active approaches an agency can adopt when dealing with gifts and benefits. It can write to its major and potential suppliers informing them that it is its preferred practice that no offers of gifts, of whatever value, be made to its officers. This approach has the advantage of assuring potential suppliers that they are competing on a level playing field and that the processes involved in tendering for work are impartial, open and accountable.²²

ENDNOTES

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- 2 For a report on implementation, see the Report of the UN Secretary General E/CN.15/2002/6/Add.1. http://www.unodc.org/unodc/crime_cicp_commission_session_11.html?print=yes
- 3 The notes are not part of the OECD, but have been inserted by the author.
- 4 See Best Practice Codes of Conduct for Public Officials <http://www.ti-bangladesh.org/cgi-bin/cgiwrap/Wtiban/bpvodocs.cgi>; Centre for Applied Ethics – Government, Policy and Public Sector Ethics Page: www.ethics.ubc.ca/resources/govt/; International Institute for Public Ethics: <http://www.iipe.org>; OECD / PUMA Ethics and Corruption Page (in particular the “Principles for managing ethics in the public sector”, 1998): www1.oecd.org/puma/ethics/index.htm; Office of the Ethics Counsellor, Canada: <http://strategis.ic.gc.ca/epic/internet/inoec-bce.nsf/vwGeneratedInterE/Home>; Jeremy Pope, Transparency International Source Book, Chapter 20 “Public Service Ethics, Monitoring Assets and Integrity Testing”

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6. Czech Code of Conduct: <http://www1.oecd.org/puma/ethics/pubs/czechcode.pdf>.
7. Taken from Whitton, above.
8. Australian Public Sector Ethics Act: <http://www.legislation.qld.gov.au/LEGISLTN/ACTS/1994/94AC067.pdf>
9. Australian Whistleblower Protection Act: http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WhistleblowA94_03E_030509.pdf
10. The Queensland Public Sector Ethics Act: www.legislation.qld.gov.au/LEGISLTN/CURRENT/PublicSecEthA94.pdf

11. Anti-Corruption Network for Transition Economies, Baltic Anti-Corruption Initiative: http://www.anticorruptionnet.org/acncgi/user_side/projects.cgi?lang=en&site_type=graphics&come_from=projects&search=1&country_id=14. 2 Camerer, Lala, (10/2001): Prerequisites for Effective Anti-corruption Ombudsman's Offices and Anti-corruption Agencies, 10th IACC, Workshop Papers, Prague, IACC, Transparency International (<http://www.10iacc.org/download/workshops/cs06.pdf>); J. Pope, Transparency International Source Book 2000. Confronting Corruption: The Elements of a National Integrity System, Chapter 10 – Ombudsman, Berlin, Transparency International (<http://www.transparency.org/sourcebook/10.html>); Citizen Ombudsmen – Local Government Disclosure Systems-Japan, (http://www.transparency.org/toolkits/monitor_ombudsman-japan.html) UN Global Programme against Corruption, CICP, Draft Anti-Corruption Tool Kit, Version 3, (last edited 01/2002): Institution Building: Ombudsmen, Vienna, UN (<http://www.undcp.org/adhoc/crime/toolkit/f2.pdf>) Link to the Office of the Inspector General of Government, Uganda (<http://www.igg.go.ug>)
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13. US Office of Government Ethics: <http://www.usoge.gov/>
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