

RESEARCH PAPER No. 19

THE ETHICS ERA IN  
CANADIAN PUBLIC  
ADMINISTRATION

*Kenneth Kernaghan*

Canadian Centre for  
Management Development  
June 1996

Canada

***For information or copies, please contact the  
Research Group of the Canadian Centre  
for Management Development***

***Phone: (613) 943-8370***

***Fax: (613) 995-0331***

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Catalogue Number SC9461119-1996

ISBN 0-662-62211-3



## A WORD FROM CCMD

CCMD's commitment to deepening awareness and understanding of public service values and the ethical issues affecting public servants has resulted in the creation of a CCMD Study Team on Values and Ethics chaired by John Tait, former Deputy Minister of Justice and a Senior Fellow of CCMD. Kenneth Kemaghan, Professor of Political Science and Management at Brock University, is also a CCMD Senior Fellow and a member of the Study Team. The following paper on *The Ethics Era in Canadian Public Administration* has been prepared as one of the supporting research studies for the Study Team and its work.

Public concern about the ethical performance of politicians and public servants has grown over the last twenty years. This has resulted in a proliferation of ethics rules from all levels of government, but, as Kenneth Kemaghan wisely observes, codes of ethics should be seen as a starting point only. Rules cannot eliminate the need for high personal ethical standards, for leadership, for education and for clear organizational values statements expressing a commitment to shared ethical values such as integrity, dignity, fairness, respect, impartiality and accountability.

In this study, a follow-up to one he conducted twenty years ago, Professor Kemaghan guides us through the developing preoccupation with ethical issues over the past two decades in Canada and outlines the steps that have been taken by governments to establish codes of conduct for

public servants. He distinguishes among three major categories of public service ethics — policy ethics, individual (or personal) ethics and organizational ethics — and shows how each of these areas can pose particular challenges for public organizations. He notes that issues of confidentiality, political partisanship, discrimination, harassment and the ethics of whistle blowing have been at the forefront of public discussion, but other ethical issues, especially those associated with public service reform, have tended to be overlooked as governments try to become more efficient, effective and responsive through innovation. Empowerment, for example, which enables employees to exercise greater decision-making authority, also provides opportunities for conflict of interest, while the move to government partnership with private sector organizations reduces accountability for the use of public funds.

The complexity of the issues confronting government now, and the prospect of new ethical challenges in the next Century, underline the need for public organizations to assess the adequacy of their ethics regimes and to take a systematic approach to promoting ethical conduct. To assist in this process, Professor Kemaghan concludes his study with an outline of the components of an ethics regime.

CCMD welcomes this paper as an important addition to its research and publication program. It explores issues that are as important for the public service of the future as they have been throughout the long tradition of Canadian public administration.

**Janet R. Smith**  
**Principal**

**Ralph Heintzman**  
**Vice-Principal, Research**

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# 1

## INTRODUCTION

In the sphere of public administration, and indeed in government generally, the ethics *decade* of the 1970s has blossomed into what appears to be an ethics *era*. The historical pattern in Canada of rapid rise and fall of public concern about government ethics has been broken by a period, now about twenty-five years old, of sustained interest in the ethical performance of public officials — whether politicians or public servants. During this period, the ethical dimension of public administration has become much more significant, but it is still a fragile dimension. It needs to be considerably strengthened if it is to become an integral — and enduring — part of the discipline and the profession.

Recent initiatives to enhance the ethical performance of public officials include the creation of a study team on values and ethics by the Canadian Centre for Management Development<sup>1</sup> and the 1995 report of the Auditor General of Canada on ethics and fraud awareness.<sup>2</sup> The impetus for the Auditor General's report was his recognition that "Canadians are concerned about integrity in government and they have the right to expect the highest ethical standards in their government."<sup>3</sup> The report found that, overall, public servants in the four departments where interviews were conducted "believe that the programs in which they work are administered ethically and that the risk of fraud is low."<sup>4</sup> The report concluded also "that ethical standards in government compare very favourably with those in the private sector and with those of governments in other countries."<sup>5</sup> However, as

explained later in this paper, the report provides grounds for concern about the attitudes of some public servants on ethical issues.

This paper has two major purposes. The first is to review what we have learned, especially since the 1970s, about maintaining and promoting ethical conduct in the public service. The second purpose is to use this knowledge to provide a basis for governments to evaluate and improve their ethics regime, that is, the collectivity of their measures for enhancing public service ethics. By the mid-1990s, most of the components of the ethics regime outlined later in this paper had been adopted by at least one public organization in Canada, but no single organization — or government — had adopted all, or even most, of the components.

The second section of this paper explains the broad scope of public service ethics. This is followed in the third section by an account of the development of public service ethics from the early 1970s to the mid-1990s. The fourth section explains considerations underpinning the design of an ethics regime and the fifth section outlines a regime's possible components. Some of the data for the paper are drawn from information collected from public organizations at all levels of Canadian government.<sup>6</sup> This study is a follow-up to one conducted twenty years ago.<sup>7</sup>

## II

### THE SCOPE OF PUBLIC SERVICE ETHICS

Given the complexity and pervasiveness of the ethical dimension of public administration, it is useful to distinguish among three major categories of public service ethics.<sup>8</sup> The first category, that of ***policy ethics***, refers to the ethical implications of policy decisions and recommendations. Public servants face difficult ethical choices in making or recommending policy, especially, for example, with respect to policy issues like AIDS or the regulation of hazardous products — issues where human life is at stake. Consider also the unenviable task of making ethical choices among competing rights: “the government has to decide between the rights of children to be well educated and the rights of seniors to more complex forms of health care....Or between the human rights of prisoners and society’s right to be well protected.”<sup>9</sup> Other policy issues with important ethical implications, such as employment equity and freedom of information, impinge to a large extent on the public service itself.

The second category — that of individual ethics (or personal ethics) — refers to the personal ethical standards that public servants bring to their decisions and recommendations. There is a significant ethical component to the actions of public servants because of their power in the policy process, their privileged access to information, and their responsibility for allocating public funds. Despite the proliferation of written rules, it is often necessary to rely on the ethical standards of the individual official and, ultimately, on



his or her conscience. “A first principle of professional morality is that being accountable to others does not make you any less accountable to yourself. We are entering a period when this will be seen as even more important than before....The vitality of government is partly dependent on how well we understand and respect this principle of personal ethics.”<sup>10</sup>

The third category is *organizational ethics*, that is, the ethical duties and obligations imposed by the organization(s) to which one belongs. Public servants occasionally experience conflicting organizational demands within the government itself. In addition, they must on occasion deal on the one hand with conflicts between their personal ethical standards or the policy choices they would prefer to make, and on the other hand with the demands of the organizations they serve. For example, a public servant with knowledge of wrongdoing within government may have to choose between loyalty to the government of the day and personal conviction that the public has the right to know about the wrongdoing.

Given the very broad scope of policy ethics, this paper deals primarily with the categories of personal and organizational ethics.

# III

## PUBLIC SERVICE ETHICS: EVOLUTION AND EXPECTATIONS

### THE 1970s: THE ETHICS DECADE

The upsurge of public concern about government ethics, which began about 1970, did not result from widespread revelations of unethical behaviour involving public servants; the number of reported offences was small. But some of the offences were serious and governments began to realize that unwritten rules and understandings on ethical conduct no longer provided sufficient guidance for a large and complex bureaucracy. Moreover, the news media began to pay more attention to uncovering and reporting ethical infractions, especially those by politicians. Concern about *political* ethics spilled over to the public service realm as the public tended to tar all government officials with the same brush.

Members of opposition parties reinforced media allegations and fed the media with allegations of their own. The media also gave much publicity to ethical controversies in other countries. Coverage of the Watergate affair in the United States, for example, heightened public concern about government ethics in Canada. In addition, the gradual post-war rise in the public's standards for ethical performance in government was accelerated by this publicity. A sign of these times was that apparent conflicts of interest began to be treated almost as seriously as real conflicts. In addition, the increased interest in government ethics was part of a society-wide growth of concern

about ethical issues in general, whether in government, business, medicine, law, journalism or other occupations.

A study conducted in 1974 of public service ethics at all levels of government showed that the major problem area was conflict of interest, followed by issues of confidentiality (especially the leaking of government information), political partisanship, and public comment.<sup>11</sup> These areas received the most attention from the media, the public, the government and academe. Other significant ethical issues, especially in the human resource field (for example, the integrity of the competition process and of performance appraisal), were comparatively neglected. And little attention was given to the pervasiveness of ethical issues in the day-to-day decision making of public servants. Moreover, the focus was on unethical behaviour as opposed to ethical conflicts and dilemmas where the right thing to do is not clear. While the early high-profile issues are still problematic, their relative importance has changed, new problem areas have emerged, and the subject of tough ethical choices receives more attention.

The unprecedented public concern about ethics during the early 1970s was matched by an equally unprecedented outpouring of ethics rules<sup>12</sup> from all levels of government. Indeed, a primary focus of early writings on public service ethics was on the form, content and administration of ethics rules, especially codes of ethics. Before this time, governments' ethics rules were few in number and, because they were largely piecemeal responses to particular problems, they were scattered throughout various government documents. No government had a statement of ethics rules that came close to being a comprehensive source of information on proper ethical behaviour. By the end of the 1970s, governments' ethics rules had become large in number but, in most jurisdictions, they were still dispersed.

The rules usually dealt solely with conflict of interest, but some governments covered all four of the problem areas noted above. Most governments developed rules for public servants that were separate from those for politicians (usually for Cabinet ministers), but some rules covered both elected and appointed officials and some provincial rules covered municipal as well as provincial officials. In some governments, service-wide rules were complemented by departmental rules tailored to particular needs and problems.

## THE 1980s: REDUCING UNCERTAINTY

In the early 1980s, it became clear that the public's interest in government ethics was still on the rise. In response, more and more governments adopted ethics rules and many governments refined and consolidated their existing rules. These rules provided greater certainty as to what constituted ethical conduct, sometimes by specifying in statutes or regulations that certain activities were either permissible or prohibited. Nevertheless, public servants were left with considerable discretionary authority and it was often necessary to rely on their personal ethical standards rather than on written rules.

For several reasons, conflict of interest remained the leading problem area. First, many allegations of conflict of interest, involving primarily federal and provincial Cabinet ministers<sup>13</sup> but also involving municipal officials, were reported. Second, opposition parties used conflict of interest allegations to undermine public support for the governing party. Third, there was much public displeasure over the special access which some lobbyists, including former politicians and public servants, had to federal government decision makers. Fourth, the range of activities covered by the term conflict of interest was considerably expanded.<sup>14</sup>

In 1984 a federal task force on conflict of interest<sup>15</sup> recommended that the government enshrine in statutory form a Code of Ethical Conduct for all public office holders and that an Office of Public Sector Ethics headed by an Ethics Counsellor be established. In response, the Mulroney government adopted a Conflict of Interest and Post-Employment Code for Public Office Holders; it contained, among other provisions, nine principles dealing with conflict of interest.<sup>16</sup> Treasury Board applied the same principles to public servants in a separate code.”

Not only in the conflict of interest sphere, but also in the problem areas of confidentiality, political partisanship and public comment, the limits of permissible activity were spelled out more clearly by written rules. By the end of the decade, there was a clear trend in the direction of clarifying and expanding the rights of public servants to engage in partisan political activity and public comment. In the area of confidentiality, new rules, including freedom of information statutes, narrowed the scope of administrative

discretion by providing greater specificity as to what information the public could obtain and thereby reducing somewhat the temptation to leak government information. While rules supporting individual privacy were also promulgated during the 1980s, concern about the “right” to know took precedence over that of the “claim” to privacy.

The ethics of human resource management received little public attention during this period, except for the issues of employment equity, discrimination and workplace harassment, especially sexual harassment. During the 1980s the area of workplace harassment experienced the most striking growth of ethics rules, often in the form of a lengthy, detailed and separate set of rules. Despite the provision of written rules in these areas, the need for public servants to interpret and apply the rules left much room for the exercise of personal ethical judgment. Regardless of the organizational ethics involved, in most areas of human resource management public servants can often base decisions on grounds that are ostensibly proper but, in reality, unethical. Thus, several governments have adopted rules to emphasize that employment equity is integral not only to organizational ethics but to personal ethics as well.

The realization that ethics rules are necessary, but insufficient, for promoting ethical behaviour prompted a few governments to offer ethics education (or training), especially to senior executives and managers. In addition, several university programs in public administration and political science began to offer courses on public service ethics.

By the end of the 1980s, a large number of public organizations had developed strategic plans, many of which contained a statement of the organization’s values, including *ethical* values. A recent study showed that public organizations in Canada rank the ethical values of integrity, accountability and fairness/equity among their top organizational values.\* The fact that these particular values commonly appear on short lists of the most important values for ethical decision making in both public and private sector organizations<sup>19</sup> indicates the extent to which concern about ethics had penetrated public administration by this time.

## THE 1990s: CONTINUING UNCERTAINTY

Despite the proliferation of ethics rules during the 1980s, a great deal of uncertainty remained as to what constituted responsible bureaucratic behaviour, even in such longstanding problem areas as conflict of interest, political neutrality, confidentiality and privacy.<sup>20</sup> Severe financial constraints have exacerbated the problem. It has frequently been suggested, for example, that low morale, resulting from downsizing and salary freezes, has led some public servants to focus on personal survival rather than personal ethics. One reported consequence has been increased moonlighting.

A large number of public organizations still have few or no ethics rules. Most governments have service-wide rules on conflict of interest and some of these apply not only to regular departments but also to agencies, boards and commissions.\*<sup>21</sup> A survey of the latter organizations, however, found that less than a third of them had formal conflict of interest rules and that the rules that did exist were “very rudimentary.”<sup>22</sup> Moreover, there were marked differences of opinion as to the necessity for ethics rules. For example, most marketing boards (which are usually composed of representatives of the industry being regulated) claimed that they didn’t need rules because they didn’t encounter conflict of interest issues; yet the rules of one marketing board were “among the strictest of any agency surveyed.”<sup>23</sup>

In the federal sphere, the Liberal Government announced<sup>24</sup> on June 16, 1994 the appointment of an Ethics Counsellor to “be available to the Prime Minister” to investigate complaints against ministers and senior officials regarding conflict of interest and lobbying, to investigate complaints about the activities of lobbyists, and to administer the Conflict of Interest Code for public office holders. Two additions were made to this code. A new principle provided that decisions shall be made “in the public interest and with regard to the merits of each case.” And a new compliance provision required public office holders “to avoid giving preferential treatment to persons or groups based on the individuals hired to represent them” — an addition designed to prevent the exercise of undue influence by certain lobbyists. These additions were not made to the conflict of interest code for the public service.

Much of the battle over the appropriate balance between the political neutrality and political rights of public servants was decided in the courts. A landmark Supreme Court decision in 1991, based on the Charter of Rights and Freedoms, expanded the political rights of federal public servants and reduced uncertainty as to what political activities were legal.<sup>25</sup> Within this legal framework, public servants still exercise individual judgment as to what level of involvement in these activities is ethical. The Treasury Board has advised federal employees that they may participate in partisan political activities, but

- they must remain loyal to their employer, the Government of Canada
- their activities should not jeopardize the tradition of the Public Service as a politically neutral institution;
- this may imply some restraint on the political involvement of employees.<sup>26</sup>

While the Supreme Court's decision applied specifically to federal public servants, it provides a legal basis for the expansion of political rights in provincial and municipal governments as well.

The issue of political neutrality — and its relationship to the constitutional conventions of ministerial responsibility and public service anonymity — also arose in the 1991 Al-Mashat affair.<sup>27</sup> Continuing uncertainty about the ethics of relations between Cabinet ministers and public servants was demonstrated by the willingness of ministers to name and blame their officials publicly.

Several other problem areas are either becoming more important or are emerging as major issues for the 1990s and beyond. One of these is the ethics of information management. The massive flow of data along the “information highway” will exacerbate the current, and inherent, tension between openness on the one hand and both confidentiality and individual privacy on the other. Government openness is often urged on the grounds that unethical behaviour cannot usually withstand public scrutiny. At the same time, however, governments must protect the confidentiality of sensitive information in their files and guard against infringements on citizens' privacy, not only by other citizens but by governments themselves.

Intermittently since the early 1970s, a few public servants have forced a measure of openness on governments by disclosing confidential information about government wrongdoing to the public, either overtly or surreptitiously — a practice known as “whistle blowing.” The Auditor General, in the section of his report dealing with the creation of an ethical framework for government, argues that “it must become normal for employees to state their reservations about actions that they consider to be of questionable ethics.”<sup>28</sup> Moreover, he contends that public servants should have “a clearly designated place where they can go to discuss or report ethical issues they encounter”<sup>29</sup> and there should be mechanisms to allow them to do this without reprisal — for example, whistle blower protection legislation.

The longstanding debate about the ethics of whistle blowing has been invigorated by the Ontario government’s decision to provide statutory protection from retaliation to public servants who blow the whistle against *serious* government wrongdoing.<sup>30</sup> The absence, or inadequacy, in many public organizations of internal remedies for public servants’ concerns about wrongdoing is likely to increase public support for legislative protection of whistle blowers.

Whistle blower protection legislation provides for a government-wide independent counsel with whom public servants can, in confidence, discuss their concerns about government wrongdoing. An alternative mechanism is to have an ethics counsellor for the government as a whole or for individual departments and agencies, not only to investigate such complaints but also to provide advice on ethics issues generally. A few public organizations have created an “ombudsman” service to deal with employee concerns about unethical conduct.<sup>31</sup> For example, the federal Department of Communications has an Ombudsman Service in the form of an independent firm of professional counsellors which acts as a neutral third party to investigate complaints and negotiate solutions in such areas as discrimination and harassment and allegations of unfair decisions by managers.

Issues of discrimination and harassment have become more prominent, in part because of widespread societal concern about workplace harassment and in part because of employment equity programs designed to make the



public service more representative of such groups as women, visible minorities and aboriginal peoples. Managing an increasingly diverse workforce has raised difficult issues of both organizational and personal ethics.<sup>32</sup> The workplace environment of many organizations discourages the upward mobility of members of underrepresented groups and in some organizations there is a significant number of incidents of racial and sexual harassment.<sup>33</sup> Beyond these basic problems, however, is the frequent uncertainty and, therefore, the apparent insensitivity of managers as to what constitutes ethical behaviour in dealing with employees who have different backgrounds and values. "It is not bigotry or biased treatment — both are intolerable in public service — but more subtly demeaning behaviour, stereotypical thinking and treatment, inadvertent slights, and misunderstandings."<sup>34</sup>

A new problem area, at least in its magnitude, is the ethics of public service reform. In the pursuit of more efficient, effective and responsive government through innovation, ethical considerations have received shorter shrift than political and managerial ones. Yet many of the ethical implications are closely linked with politics and management. Consider the following examples. Empowering employees by enabling them to exercise greater decision-making authority and interact more closely with the public puts increased onus on their personal ethical standards and provides more opportunities for conflicts of interest. Government partnerships with private sector organizations can reduce government's accountability, especially when these organizations refuse to reveal financial information bearing on partnerships financed in part with public funds. George Frederickson, a strong critic of the reinventing government movement in the United States, goes so far as to argue that "it is fashionable to degovernmentalize on the promise of saving money and improving services" but as "previously governmental functions are shifted to the private sector or shared, it is a safe bet that corruption will increase."<sup>35</sup>

During the past decade, politicians' promises to restore public confidence in the integrity of government have become a staple of election campaigns and newly elected governments. But the federal Liberal Government, elected in 1993, has formally recognized not only the importance of ethics rules but also their limitations. The government promised rules to

minimize conflicts of interest, but it noted that “Integrity in government is not simply a matter of rules and regulations — it is also a matter of the *personal standards* and conduct of Ministers, their staff and *officials at all levels*.”<sup>36</sup>

What **are** the personal standards and conduct of government officials? The Auditor General’s study<sup>37</sup> provides empirical data on the standards of public servants in terms of what they **think** is appropriate conduct in certain hypothetical situations. No **evidence is provided on the actual conduct of public servants**. The study found that 89 percent of employees (96 percent of senior managers) think that it is **inappropriate** “to accept the use of a ski chalet from a recipient of their contribution or grant program.”<sup>38</sup> Expressed another way, the findings were that 11 percent of employees (four percent of senior managers) thought that accepting such a gift is **appropriate**. Some additional findings were as follows:<sup>39</sup>

- twenty-five percent of employees (six percent of senior managers) think that it is appropriate to accept at cost, goods or services for personal use from a supplier to their program;
- thirty percent of employees (11 percent of senior managers) think that it is acceptable for an employee to hire a brother-in-law on an untendered contract;
- twenty-eight percent of employees (77 percent of senior managers) think that it is appropriate for a senior official of a department to use knowledge gained while working to secure a position with a fit-m wanting to do business with government.

It is notable also that less than half of employees (compared to 85 percent of senior managers) said that they would take action to stop or report the first three conflicts of interest; 42 percent of employees (62 percent of senior managers) would stop or report the fourth conflict, that is, using one’s knowledge to secure a position with a business firm.<sup>40</sup>

On issues of impartiality and objectivity,<sup>41</sup> the study found:

- only one percent of employees (six percent of senior managers) think that it is appropriate for a government employee, at the direction of a senior official, to not impose fines or penalties against a particular

company even though other companies in identical situations are being fined or penalized.

- fifteen percent of employees believe that it is acceptable for a government employee, at the request of a supervisor, to write a contract specification for a competitive contract, so that a particular bidder will win.

Thirty-two percent of employees (17 percent of senior managers) would take no action regarding the abuse of the fine system, and 37 percent of employees (23 percent of senior managers) would do nothing to stop or report the tailor-made contract.

The study also found that many public servants have little or no knowledge about the existence or contents of the government's conflict of interest policy, and that about one-third of employees believe that their job security would be threatened if they were to report a conflict of interest matter involving a supervisor or a senior official of the department. With respect to public servants' knowledge of the government's key policy on illegal acts against the Crown,<sup>42</sup> 57 percent of senior managers either did not know of the policy's existence or could not mention any provision of it.

These findings suggest what is already well known in the study of ethics generally, namely that ethics rules are not sufficient to ensure that everyone in an organization knows the rules and understands what ethical conduct is appropriate. Ethics training can help to remedy this problem. The Auditor General's study found that four percent of employees in the nine departments he studied had received some ethics training. In provincial governments, the resources devoted to ethics training, which were already sparse, have actually declined in recent years, in part because resources for "soft areas" like ethics are among the first to be cut back in times of financial constraint.

In view of the enduring problems of public service ethics noted throughout this paper and in preparation for dealing with the emerging ethical challenges of the new century, public organizations should assess the adequacy of their ethics regime.

# IV

## DESIGNING AN ETHICS REGIME

Sustained public concern about government ethics during the past twenty-five years has been accompanied by a small, but steady, growth in scholarly writings on this subject, especially in the United States. On the basis of these writings and of practical experience with ethics rules, a number of assertions can be made about the composition of an ethics regime for public organizations. The ethical culture and, therefore, the need for the various regime components outlined in the next section of this paper vary from one government to another and from one organization to another within a single government.

It is widely agreed that ethical conduct by public officials is essential to public trust in government, and that the current level of trust is lamentably low. The fact that questionable conduct by politicians accounts for a large part of the public's distrust does not obviate the need for high ethical performance by public servants. Yet most public organizations do not have a coherent, comprehensive and easily comprehensible ethics regime designed to enhance the reality and the perception of ethical behaviour.

There is considerable consensus among governments on the matters to be covered by ethics rules, namely, conflict of interest in its several variations, political partisanship, public comment, employment equity, discrimination, workplace harassment, and confidentiality. The protection of individual privacy has received comparatively little attention, except as a by-product of rules to protect confidentiality. In this connection, it is

significant that the Auditor General recommended that the government adopt a statement of general principles covering “all relevant groups” (that is, ministers, members of Parliament and public servants); these principles would address not only conflict of interest but also such topics as privacy, confidentiality and harassment that are not covered by the current code of conduct.<sup>43</sup> This new statement of principles would be based on, and would elaborate on, the revised (1994) code of conduct for public office holders. (See Appendix A.)

Some organizations continue to rely largely on unwritten ethics rules in the form of understandings and practices, but the trend is towards the use of written rules. It is certainly preferable to have public officials debate the *interpretation* of written rules than to argue about whether there are any rules at all. “Since Hammurabi, Moses and Hippocrates, codifiers and executors have operated on the theory that it is easier to do the right thing when one knows what that is.”<sup>44</sup> Moreover, the absence of written rules, like the paucity of resources for ethics education, signals a lack of commitment.

Ethics rules take a variety of forms, but a code of ethics, that is, a single document providing guidelines for the major problem areas, is the most common form. While some governments have put certain ethics rules in statutory form, especially rules for politicians, the general inclination is to avoid the common pattern in the United States of enshrining ethical standards in statutes. Whatever form is chosen, ethics rules must be carefully crafted and vigorously administered.<sup>45</sup>

Some problem areas, such as conflict of interest and fraud prevention — the focus of the Auditor General’s study — can be managed to a substantial extent through written rules. But these high-profile issues constitute only a small part of the broad sphere of public service ethics. Many other ethics issues, including human resource matters and such dilemmas as deciding when lying is justified or the appropriate measure of risk to public health and safety, cannot be easily managed by reference to ethics rules in general or ethics codes in particular. “Codes must be but the starting point for a broad inquiry into the ethical quandaries at work.”<sup>46</sup>

It is notable also that certain activities that are legal, permissible or possible under written rules may not, in practice, be ethical. Thus, while

written rules can provide greater certainty and narrow the scope of personal discretion, they cannot eliminate the need for ethical choice. Regardless of how well crafted and well administered the rules are, there must still be considerable reliance on other measures and, ultimately, on the moral character of individual public servants.”

By what means can we ensure that personal ethical standards are high enough and that they are harmonized with organizational ethics? Aside from formal rules, the primary means available are education and leadership, especially for the purpose of promoting a vigorous dialogue on policy, personal and organizational ethics and on the efficacy of existing rules.<sup>48</sup>

There is considerable empirical evidence that ethics education can be effective in influencing “awareness of moral problems” and “the reasoning/judgment process” among young adults in their twenties and thirties.<sup>49</sup> Hence, the increased emphasis on ethics education in university public administration programs. In addition, impressionistic and anecdotal evidence suggests that ethics education for persons beyond this age group can sensitize them to the ethical dimension of their decisions, improve their skills for analyzing ethical issues, and reduce their uncertainty as to what is ethical. It is intended that the ethics dialogue be carried over from the workshop to the workplace. “Training will not help those who have no interest in ethics, but for those who care (and this is the vast majority of civil servants at all levels of government), such training will help them to improve both their ethical sensitivity and understanding.”<sup>50</sup>

Ethical leadership is the single most important determinant of ethical behaviour in both public and private sector organizations.<sup>51</sup> “Even the best codes of conduct or conflict-of-interest guidelines could not protect Canadians from a government that was not fundamentally honest.”<sup>52</sup> In government, the ethical performance of Cabinet ministers and their senior public service advisors is extremely influential in setting the ethical tone of the organization as a whole; but given the fact that “good” leadership is needed at all levels of the organization, the ethical performance of managers and supervisors below the most senior echelons is important also. Thus, senior managers, in addition to providing an exemplary model of personal ethical behaviour, should communicate their ethical expectations throughout the organization — and they should be held accountable for their

performance in doing so. Too frequently “we promote or appoint candidate: taking only the ‘numbers’ into account, and neglecting the values. In the long run this can only be harmful to the public service, an organization that more than any other depends on a culture and ethos of service.”<sup>53</sup>

The culture and ethos of the public service as a whole, and of individual public organizations, can be articulated and communicated in part through value statements expressing commitment to shared values, including ethical values. These value statements are sometimes described and promoted as codes of ethics, but they usually contain values (for example, effectiveness, innovation) that are not generally considered to be ethical values. Most value statements contain at least some ethical values that can serve to enhance an organization’s ethical climate; they should not, however, be considered a substitute for ethics rules in general or ethics codes in particular. Ideally, a code of ethics dealing with such matters as confidentiality and workplace harassment should supplement, and should be logically and explicitly related to, a value statement containing such ethical values as integrity and fairness. A statement of the organization’s values, or principles, can provide the philosophical underpinning on which ethics rules are based. For example, one code, covering such problem areas as conflict of interest, confidentiality and political involvement, emphasizes in its preamble the values of dignity, fairness, respect, professionalism, accountability, integrity and impartiality.<sup>54</sup>

As explained below, an ethics regime can contain a variety of other measures that complement or supplement the primary components of rules, education and leadership.

# V

## COMPONENTS OF AN ETHICS REGIME

The measures outlined below are designed for application to the public service, but they **can be combined** with measures applicable to government as a whole, that is, to both **politicians** and public servants. Some of these components are **contained** in the section of the Auditor General's report on "possible elements" of an ethical framework.

1. The evaluation of ethical performance as a basis for appointing and promoting **all** members of the public service, but especially its leadership.

Note: The New Brunswick Office of the Comptroller General requires that employees sign off "to acknowledge their **understanding** of [the Code of **Conduct**] on an annual basis as part of their performance review."

2. A statement of values, including ethical values, either as part of a strategic plan or as a separate document.

Note: This document is sometimes described as a credo or a **statement of principles** or philosophy.

3. A code of ethics (or **conduct**), linked to a value statement (if **one** exists) which sets **out** general **principles** of ethical **conduct**.

Note: If there is a government-wide statement on ethics, it **can** be elaborated by various sub-codes to **meet** the needs of particular



categories of officials, for example, Cabinet ministers, legislators, public servants, Crown agency employees.

4. Elaboration on the code, usually as commentary under each principle which explains more fully the meaning of the principle and/or provides illustrations of violations of the principle.
5. Reference to the existence of ethics rules (statutes, regulations etc.) related to the problem areas covered in the code and/or to problem areas covered elsewhere.

*Note:* Rules on such matters as harassment and discrimination often constitute part of a collective agreement between the government and an employee union.

6. Elaboration on the code, either following each principle or in a separate part, which adapts the code's principles to the particular needs of individual organizations.

*Note:* Conflict of Interest Guidelines for Manitoba's Department of Family Services supplement government-wide guidelines to provide for the particular problem of employees who work closely with community based organizations but also participate in the community as citizens.

7. Provisions for administering the code, including publicity, penalties for violations and provisions for grievance.

*Note:* One technique for publicizing the code, especially in respect of conflict of interest, is to circulate it annually to all employees and have employees attest by their signature that they have read and understood it.

8. An ethics counsellor to perform advisory and administrative functions for senior public servants across the government.

*Note:* An ethics counsellor could also perform investigative and educational functions. He or she could perform the same functions for cabinet ministers.

9. An ethics counsellor, ombudsman or committee to provide advice on ethics rules and ethics issues within a single department or agency.

10. Ethics education/training for public servants, beginning with the most senior echelons and new employees.

These approaches can be supplemented by other measures that are less common or more controversial than those shown above.

11. An ethics audit to evaluate the organization's policies and procedures for preserving and nurturing ethical behaviour.<sup>55</sup>

**Note:** Depending on the sophistication of the existing ethics regime, the audit can be done either before any of the above measures are adopted or as a means of assessing a regime already in operation.

12. The raising of ethical considerations in a deliberate and regular way at meetings and through such other means of communication as newsletters.
13. The provision of a confidential hotline that public servants can use to discuss concerns about their personal ethical behaviour or that of others.
14. The inclusion of exit interviews (interviews with employees leaving the organization) to ask questions about the employee's view of the ethical culture of the organization.

The objective of outlining these components of an ethics regime is to encourage public organizations to take a systematic approach to promoting ethical conduct. The measures chosen, however, must be carefully geared to the unique requirements of individual organizations. What has been said about codes of conduct can be said about ethics programs as a whole, namely, that they "should be crafted from a rich empirical base, understandable in the climate of the particular agency, making sense to those to whom they apply — down-to-earth, realistic.... The goal is to underscore that the standards of honesty go hand in hand with those of efficiency and competence."<sup>56</sup> An ethics regime containing an appropriate selection of the measures discussed above can help to make ethics an integral part of daily dialogue and decision making. In government decision making, ethical considerations are tightly intertwined with political and managerial ones and all three dimensions are essential to successful governance.

## NOTES

1. This paper was initially prepared as a discussion paper for the Centre's study team.
2. Auditor General, "Report of the Auditor General to the House of Commons for May 1995," ch. 1, *Ethics and Fraud Awareness in Government* (Ottawa: Minister of Supply and Services, 1995).
3. Ibid., p. 1-7.
4. Ibid., p. 1-10. The report explicitly acknowledged that the areas of conflict of interest and fraud are only part of the large field of government ethics.
5. Ibid., p. 1-24.
6. These data were collected as part of a broader study concerned with organizational values. The response rate was 42 percent (342 responses from 816 mailed requests for information). For the findings on organizational values, see Kenneth Kernaghan, "The Emerging Public Service Culture: Values, Ethics, and Reforms," *Canadian Public Administration*, vol. 37 (Winter 1994), pp. 614-630.
7. See Kenneth Kernaghan, *Ethical Conduct: Guidelines for Government Employees*. (Toronto: Institute of Public Administration of Canada, 1975).
8. See T. Edwin Boling and John Dempsey, "Ethical Dilemmas in Government: Designing An Organizational Response," *Public Personnel Management*, vol. 10 (1981): pp. 11-19.

9. Elaine Todres, "The Ethical Dimension in Public Service," *Canadian Public Administration*, vol. 34 (Spring 1991), p. 13.
10. George Thomson, "Personal Morality in a Professional Context," *Canadian Public Administration*, vol. 34 (Spring 1991), p. 29.
11. Kernaghan, *Ethical Conduct: Guidelines for Government Employees*.
12. In this paper, the term "ethics rules" is used to cover statutes, regulations and guidelines bearing on ethical conduct, including codes of ethics.
13. Between 1984 and 1989, 35 conflict of interest allegations involving cabinet ministers were reported. See Ian Greene, "Conflict of Interest and the Canadian Constitution: An Analysis of Conflict of Interest Rules of Canadian Cabinet Ministers," *Canadian Journal of Political Science*, vol. 23 (June 1990), p. 223.
14. See John Langford, "Conflict of Interest: What the Hell Is It?" *Optimum*, vol. 22 (1991-2), pp. 28-34. See also Kenneth Kernaghan and John Langford, *The Responsible Public Servant* (Toronto: The Institute of Public Administration of Canada and Halifax: The Institute for Research on Public Policy, 1990), ch. 6 for a discussion of eight types of conflict of interest in which public servants can be involved.
15. Michael Starr and Mitchell Sharp, CO-Chairs, *Ethical Conduct in the Public Sector: Report of the Task Force on Conflict of Interest* (Ottawa: Supply and Services, 1984).
16. The revised (1994) version of this code is contained in Appendix A.
17. Treasury Board, *Conflict of Interest and Post-Employment Code for the Public Service* (Ottawa: Supply and Services, 1985).
18. Kernaghan, "The Emerging Public Service Culture," p. 620. Most of the value statements on which the study was based were formulated in the mid- to late 1980s.
19. See, for example, Mary E. Guy, *Ethical Decision Making in Everyday Work Situations*. (Westport, Conn.: Quorum Books, 1990), p. 14.
20. Indeed, this was a major theme of a book on public service ethics published that year. See Kernaghan and Langford, *The Responsible Public Servant*, espec. ch. 1.
21. For an excellent summary of the conflict of interest rules in the federal, provincial and territorial governments, see Office of the Ethics Counsellor,

*Conflict of Interest in Canada: Comparative Tables, 1994* (Ottawa: Office of the Ethics Counsellor, 1994).

22. Law Reform Commission of British Columbia, *Conflicts of Interest: Directors and Societies*, a consultation paper. (Vancouver: Law Reform Commission of British Columbia, 1993), p. 143.
23. Ibid.
24. Office of the Prime Minister, *Release*. June 16, 1994. The code's ten principles are reproduced in Appendix A.
25. *Osborne v. Canada (Treasury Board) (1991)* 82 D.L.R. (4th) 321 (S.C.C.).
26. Treasury Board, *Employee Rights and Responsibilities With Respect to Political Activities During an Election (Principles and Guidelines)*, September 1993.
27. See Sharon Sutherland, "The Al-Mashat Affair: Administrative Accountability in Parliamentary Institutions," *Canadian Public Administration*, volume 34 (Winter 1991), pp. 573-603.
28. *Ethics and Fraud Awareness in Government*, p. 1-23.
29. Ibid.
30. The legislative provisions for the whistle blower protection program have been added as Part IV, entitled Whistle blowers' Protection, of the *Public Service Act*. The legislation was passed in 1994 but, as of October 1995, it had not been proclaimed.
31. For a discussion of ombudsman services in business organizations, see David Nitkin, "Corporate Ombudsman Programs," *Canadian Public Administration*, vol. 34, no. 1 (Spring 1991), pp. 177-83.
32. See Mary Margaret Dauphinee and Ceta Ramkhalawansingh, "The Ethics of Managing a Diverse Workforce in Government," *Canadian Public Administration*, vol. 34, no. 1 (Spring 1991), pp. 50-56.
33. See, for example, Ontario, *Management Board of Cabinet, Breaking Down the Barriers: Report of the Human Resources Secretariat Employment Systems Review Taskforce*, May 1991: 2.
34. Carol W. Lewis, *The Ethics Challenge in Public Service* (San Francisco: Jossey-Bass, 1991), p. 166.

35. "Ethics and Public Administration: Some Assertions," in H. George Frederickson (ed.), *Ethics and Public Administration* (New York: M.E. Sharpe, 1993), p. 250.
36. Office of the Prime Minister. *Release*. November 4, 1993, p. 3. Emphasis added.
37. This study involved interviews with 329 public servants in four federal departments, "randomly chosen" and "stratified by senior managers and other public servants." *Ethics and Fraud Awareness in Government*, p. 1-9.
38. *Ibid.*, p. 1-15.
39. *Ibid.*
40. *Ibid.*, p. 1-17.
41. *Ibid.*, p. 1-18.
42. Entitled *Losses of Money and Offences and Other Illegal Acts Against the Crown*. See *ibid.*, p. 1-12.
43. *Ibid.*, pp. 1-21 and 1-22.
44. Carl W. Lewis, "Ethics Codes and Ethics Agencies: Current Practices and Emerging Trends," in Frederickson, *Ethics and Public Administration*, p. 136.
45. For suggestions on developing a code of ethics and administering it through publicity, enforcement and provision for grievances, see Kernaghan, *Ethical Conduct: Guidelines for Government Employees*, pp. 48-52.
46. Sisela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Random House, 1987), p. 250.
47. For a detailed examination of this argument with respect to the Province of Ontario, see Kenneth Kernaghan, "Rules Are Not Enough: Ethics, Politics and Public Service in Ontario," in John W. Langford and Allan Tupper (eds.), *Corruption, Character and Conduct* (Toronto: Oxford University Press, 1993) pp. 174-96.
48. For elaboration of this point, see Kenneth Kernaghan, "Managing Ethics: Complementary Approaches," *Canadian Public Administration*, vol. 34, no. 1 (Spring 1991), pp. 132-45.
49. James B. Rest, "Can Ethics Be Taught in Professional Schools? The Psychological Research," *Ethics: Issues Said Than Done* 1 (Winter 1988), p. 23.

50. Harold F. Gortner, "How Public Managers View Their Environment: Balancing Organizational Demands, Political Realities and Personal Values," in James S. Bowman (ed.), *Ethical Frontiers in Public Management* (San Francisco: Jossey-Bass, 1991), pp. 59-60.
51. See Kernaghan, "Managing Ethics," pp. 143-44.
52. *Ethics and Fraud Awareness in Government*, p. 1-22.
53. Ole Ingstrup, *Public Service Renewal: From Means to Ends*. Canadian Centre for Management Development, Explorations No. 4 (Ottawa: Supply and Services, 1995), p. 18.
54. City of Richmond Hill, Ontario, *Code of Conduct*.
55. See the model ethics audit in Lewis, *The Ethics Challenge in Public Service*, pp. 199-202.
56. Robert C. Wood, quoted in *ibid.*, p. 158.

## APPENDIX A

### *Conflict of Inter-est and Post-Employment Code for Public Office Holders\**

#### PRINCIPLES

3. Every public office holder shall conform to the following principles.

#### **Ethical Standards**

- (1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

#### **Public Scrutiny**

- (2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

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\* Canada. *Conflict of Interest and Post-Employment Code for Public Office Holders* (Ottawa: Office of the Ethics Counsellor, June 1994), p. 2-3.



### **Decision-Making**

- (3) Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.

### **Private Interests**

- (4) Public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly significantly by government actions in which they participate.

### **Public Interest**

- (5) On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

### **Gifts and Benefits**

- (6) Public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder.

### **Preferential Treatment**

- (7) Public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government when this would result in preferential treatment to any person.

### **Insider Information**

- (8) Public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.

### **Government Property**

- (9) Public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

### **Post-Employment**

- (10) Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of the previous office.

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