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Policy Brief

Public Service Ethics in the New Millennium: The Evolving Canadian System

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by

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Introduction

The Government of Canada has made ethics in the workplace an explicit consideration for quite some time. The development of a whole system of ethics codes, however, is a recent development. Each of the codes has been created on a set of principles with a specific function in mind. Less clear is the logic of the system overall – what are the underpinnings, how coherent is the system, and where can we go from here? Ultimately, of course, we want to answer the questions *do ethics codes help* and *what else needs to be done*? Addressing these complex questions requires that we first step back and understand what we now have.

The Canadian Ethics Code System

Ethics did not arrive in the Government of Canada because somebody uttered "ethics" and implemented a program. Instead, one could argue that the new interest in ethics is *just a label* – because what is the difference, really, between the traditional goal of "good government" and the new goal of "ethical government"?

One can also argue, however, that making ethics an explicit focus is a very significant change and, indeed, important progress. Dealing with ethics *explicitly* has made it much easier for managers to spend resources on dialogue over fundamental issues. The content of this dialogue may not always represent novel issues, but the dialogue would not take place without the new interest in ethics. And talk is a precondition for something more important, namely action in the form of agreement and implementation. We will discuss towards the end of this brief whether the ethics code system is effective and sufficient.

Historically, the interest in discussing ethics explicitly and broadly was launched with the report *A Strong Foundation* in 1996.[i] This report was developed by the Deputy Minister Task Force on Public Service Values and Ethics that was chaired by the late John Tait, former Deputy Minister of the Department of Justice. It is commonly called the *Tait Report* and considered a landmark in the recent history of the federal public service. The Tait Report recommended the adoption of a public service code, but only after a period of widespread dialogue on values in every federal institution. A sustained process of attention to values and ethics would follow the adoption of the code.

In the following years, John Tait's agenda was supported by the appointment of two deputy ministers as co-champions of values and ethics in the public service. Janice Cochrane and Scott Serson broadened the dialogue across the public service.[ii] The importance of their work was underscored in 2000 when the Auditor General of Canada released a major review of values and ethics in the public sector.[iii] It showed that the comprehensive dialogue recommended by *A Strong Foundation* had to be further invigorated, and follow-up initiatives in every part of the federal public sector were needed.

Then between 2003 and 2005, four key codes were released:

- The *Values and Ethics Code for the Public Service* (2003)[iv] – addressed to public service employees,
- A revised *Conflict of Interest and Post-employment Code for Public Office Holders* (2004)[v] – addressed to senior officials appointed by the government,
- The *Conflict of Interest Code for Members of the House of Commons* (2004)[vi] – addressed to elected officials, and
- The *Conflict of Interest Code for Senators* (2005)[vii] – addressed to appointed members of the Senate.

From a governance perspective it is important to consider the environment within which these four codes function – this perspective reveals a complex *Canadian Ethics Code System* as shown in **Figure 1**. We should note, however, that this figure only depicts codes as they relate to workplace or business ethics (with the particular focus on conflicts-of-interest). This is compliant with the strong "business ethics" focus of the four key codes shown in rectangular boxes on the middle-left. Canada also has ethics codes that address policy-related issues and science (for example, the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, which is the foundation for the work of Research Ethics Boards in Canada).[viii]

Figure 1 includes codes for judges, lobbyists and private sector suppliers. Equally important are the "whistle-blower policy"[ix] and the reports of various bodies that comment on public ethics from outside the public service (including the Auditor General, academics and the media, as well as the OECD, the Council on Governmental Ethics Laws, and the Conference Board).

**Figure 1**: The Canadian Ethics Code System
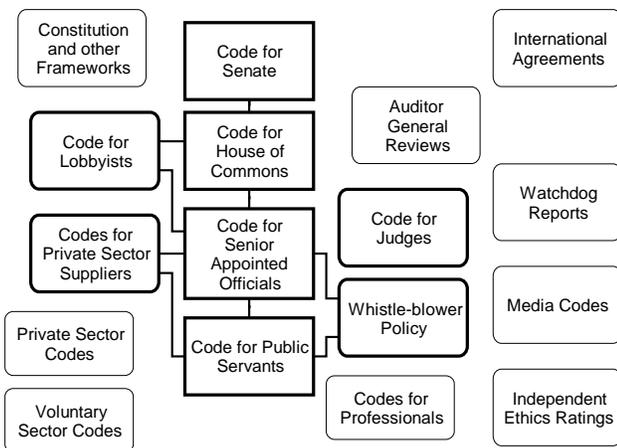
Five Principles

Many codes start with a statement of principles and intent. It would be possible to simply copy all these statements to describe the underpinnings of the ethics code system. This would, however, not be a good approach for two reasons. First, not a single code refers to the entire system of codes – they were not written to explain to the user how they function within the broader system of codes. Second, there is sometimes a gap between the principles stated at the beginning of a code and the principles actually expressed in the standards, rules, and recommendations of the code.

We propose that the five underpinning principles shown in **Figure 2** can be derived from analysing the ethics code system. Each of the five principles will be discussed below.

Figure 2: Principles Underpinning Ethics Codes
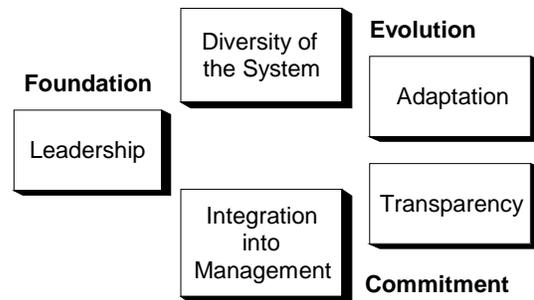
Principle 1 – Leadership: The importance of ethical leadership has long been understood and has been emphasized in almost all classical texts on ethics and governance. Aristotle, for example, stated more than two millennia ago in his lectures on politics: "The ruler ought to have moral virtue in perfection." Even earlier, Confucius wrote in *The Doctrine of the Mean*: "The institutions of the ruler are rooted in his own character and conduct." What is less obvious is the answer to the question: Is ethical leadership only for "rulers"? The Canadian ethics system expresses the insight that all

players share responsibility. Moreover, the amount of power held is tied to the level of accountability and ethical duties. This idea is illustrated in the figure below.

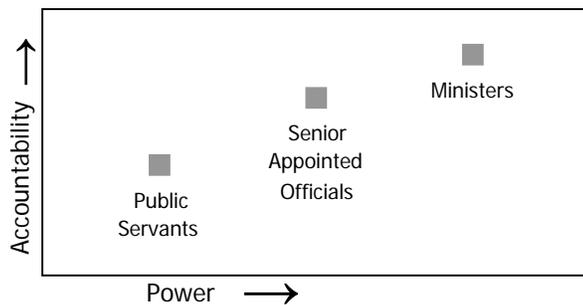**Figure 3**: Power, Accountability and Ethics

Figure 3 shows that a rise in power goes along with a rise in accountability and, thus, demand on ethical leadership. For this reason, senior appointed officials have their own code of ethics that is more stringent in its conflict-of-interest rules. Ministers must conform to both the code for elected officials and the one for senior appointed officials. This principle can be extended to the other players in the system – different types of functions and levels of power create the need for a diverse system of codes.

***Principle 2** – Diversity of the System*: We have already illustrated the diversity of ethics codes in **Figure 1.** This figure also includes the Auditor General's reviews as well as watchdog reports and independent ratings from a diverse array of sources. It should be understood that ethics codes are only one of a number of ways to express ethical values, standards and goals. Other examples are:

- Laws (both preambles and texts),
- International agreements,
- Pronouncements and actions of leaders,
- Standard operating procedures,
- Spiritual guidance,
- Mentors' advice, and, very important,
- Dialogue on ethical issues.

Clearly, a public service ethics system resembles more a living ecosystem than a coherent linear system (e.g. a computer code).

***Principle 3** – Integration into Management*: A commitment to the integration of ethics into top-level management is visible in the Canadian Management Accountability Framework (MAF).[x] One of the ten elements in the MAF is called "public service values." In other words, the performance of Deputy Ministers will be judged, among other things, by the extent to which they have institutionalized "public service values" into their organizations. Ideally, this goal is translated into the sustained maintenance of ethics programs and the integration of ethical considerations into both recruitment of new staff and promotion of existing staff.

Another form of the commitment to the integration of ethics into the public service is structural – visible in the fact that Canada has functions such as the Auditor General, the Office of the Ethics Commissioner, and the Office of the Public Service Integrity Officer.

***Principle 4** – Adaptation*: A potential downside of formalizing ethics into codes is that they can become too static. Both changing environments and new knowledge gained in using a code provide reasons to conceive of codes as "living documents" rather than absolute standards. In fact, Canadian public service ethics codes are periodically revised as governments change and mandatory reviews are carried out. Another very important driving force for change is the Auditor General of Canada who reviews values and ethics every 3 to 5 years.

***Principle 5** – Transparency*: The system as a whole is based on transparency – the codes are public statements against which officials can be held to account. Transparency is also a tool for resolving possible conflicts of interest. To

varying degrees, public servants, senior appointees and politicians must make a confidential disclosure of their private interests to an ethics official. Key pieces of information on the private assets, outside activities and gifts of senior officials, which could affect their public duties, become a public declaration available on the Internet.

A commitment to transparency is also visible in the stated commitment to annual reports that review the implementation and workings of ethics codes and initiatives. Access-to-information policies are another key element of transparency.

In a Nutshell: Based on our analysis, the system appears to be designed to function as follows:

- Leadership at different levels provides the *foundation* for the entire program.
- Diversity of the system and continuous adaptation provide the capacity for *evolution* that is necessary to provide the stability and sustained relevance of the program.
- Full integration into management and mechanisms for transparency provide the *commitment* that is necessary for the establishment and public credibility of the program.

The Missing Link

The principles shown above can be derived from an analysis of existing codes, but they do not provide much information on the process of the development of these codes. Most ethics practitioners agree that process – "the road to the code" – is of the highest importance in creating sustained ethics programs.

Any organization that wants to develop an ethics code has to address two key challenges.

The first challenge is the art of designing a *process* that will produce a credible, effective ethics code system. Such a process should be incremental yet forceful, inclusive yet coherent, flexible yet consistent - a continuous balancing act that is required both at the level of the system as a whole and in the development of each code within the system.

The second challenge is to balance "compliance" versus "integrity" approaches. This is in part an *ideological* issue that stems from the common view that "big problems require big measures" – which leads us to demand strong, mandatory standards, strong enforcement and strong punishments. In the context of ethics codes this is called the *compliance* approach.

There is increasing evidence that this view is too simplistic because voluntary approaches can be more effective than mandatory rules. A case in point is Canada's *Smart Regulations Initiative.*[xi] In organizations, personal integrity and culture can be very effective forces although they are difficult to measure. This focus is called the *integrity*, or *values-based* approach to codes.

It has been argued in another IOG Policy Brief that the combination of both compliance and integrity approaches is unavoidable if one wants to achieve an outcome-oriented, effective approach.[xii] The compliance approach goes hand-in-hand with the inclusion of a strong analytic basis to code development, and it lends itself to enforcement and performance measurement. The values-based approach improves the tailoring of theoretical ideas into the reality of an organization, and paves the way for buy-in by the prospective users. Buy-in is of key importance because it can make the difference between a code that is no more than "a frame on the wall" and a code that affects organizational culture and performance.

Therefore, overcoming the ideological challenge with a more balanced approach goes a long way towards addressing the practical challenge of designing a *process* to produce an effective system of codes. In fact, in Canada, both compliance and values-based approaches have been used in ethics programs. Over time, this *two-pronged approach* will lead to ethics programs that are balanced, stable and effective. This leads us to propose a sixth principle, as follows.

Principle 6 *– Two-pronged Approach*: Ethics programs should strive to balance compliance and values-based approaches. The explicit inclusion of the latter will lead to an opportunity for dialogue and workplace integration that affects all elements of an ethics program.

Figure 4 shows the central position of this principle that affects all of the other principles. Its most important effect is the ability to provide a higher level of completeness and *balance* to the other elements. We believe that these principles are universally applicable not only to code development but to the development of complete ethics programs.

Figure 4: Universal Principles for Ethics Programs
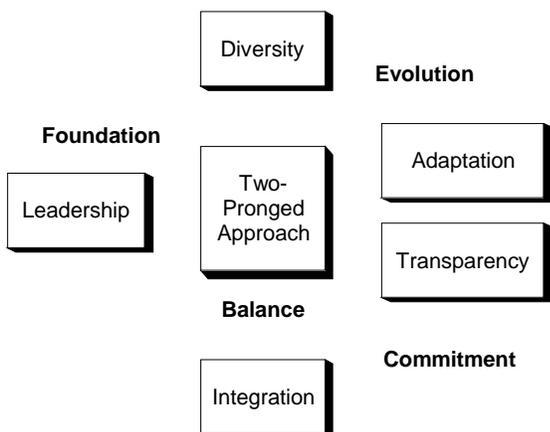
Observations for the Future

The system of ethics codes in the Canadian public service is quite new. It is too soon to come to a judgement on the efficacy of the ethics project overall and the new ethics codes in particular. Nevertheless, we would like to offer some observations for discussion.

1. *Leadership*. The current inquiry into the "sponsorship scandal" goes right to the heart of leadership. Its resolution provides a significant opportunity for better understanding of the root causes of ethical failure, and for effective changes and a new commitment.
2. *Diversity*. A high level commitment in the Government of Canada is that "the public service is a public trust". This implies that the public should be systematically included during the development of ethics programs.
3. *Integration*. The current codes are strongly focussed on conflicts of interest. The next versions should take a broader approach on values and ethics in the policy process as well as in the workplace.[xiii]
4. *Adaptation*. The current codes are still slanted towards compliance. The next versions would enjoy improved buy-in through a stronger emphasis on the proper role of values along the lines of the two-pronged approach.
5. *Transparency*. Transparency measures can, ironically, lead to a culture of secrecy ("let's not write this down because we would have to disclose it"). This should be countered by an ongoing defence of the fundamental necessity of transparency to ensure ethical conduct in public service. The proper balance of disclosure with privacy and national security must of course be taken into account.

6. *Two-Pronged Approach.* Implementing the Canadian balance of compliance and values-based approaches also provides for the balancing of the centralized leadership common to compliance approaches with the shared decision-making common to values-based approaches. This in turn provides a basis to balance the current public sector emphasis on audit and sanctions with a focus on creating a strong culture founded on values and ethics (the original intention of the Tait report).

Conclusion

It seems clear that the emerging system of ethics codes and programs in the federal sector requires not just the sort of description and analysis offered here, but would also benefit from an explicit framework that would deal with overlaps and contradictions between individual components, and help to guide the development of further ethics-related initiatives. However, it is not clear at this time which central player should initiate work on such a framework.

An overall framework would not prevent any of the independent stakeholders from undertaking specific measures they may find necessary. But such a framework would provide a visible commitment that public sector institutions strive for mutually compatible approaches to values, ethics and compliance. Such a framework would, in other words, provide a measure of high-level consistency to the evolving Canadian system.

The systems-perspective provided here opens the door for a move from *government* thinking to *governance* thinking. In this way, ethics programs would move away from a concentration on inward-looking management issues, to focus directly on what is, after all, the primary value: outward-looking "service for Canadians".

Acknowledgements

Endnotes

[i] Tait Report: www.myschool-monecole.gc.ca/Research/publications/pdfs/tait.pdf
[ii] Building on a Strong Foundation, Vol. I: myschool-monecole.gc.ca/Research/publications/pdfs/Dialogue-eng.pdf and Vol. II: myschool-monecole.gc.ca/Research/publications/pdfs/StrongFound_vol2_e.pdf
[iii] Auditor General's Report: www.oag-bvg.gc.ca/domino/reports.nsf/html/0012ce.html
[iv] Code for the Public Service: www.hrma-agrh.gc.ca/veo-bve/vec-cve/vec-cve_e.asp
[v] Code for Public Office Holders: www.parl.gc.ca/oec/en/public_office_holders/conflict_of_interest/
[vi] Code for the House of Commons: www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm
[vii] Code for the Senate: sen.parl.gc.ca/seo-cse/code_eng.html
[viii] Tri-Council Policy Statement (Research Ethics): www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm
[ix] The correct term is *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace.* See www.psio-bifp.gc.ca
[x] Management Accountability Framework: http://www.tbs-sct.gc.ca/maf-crg/index_e.asp
[xi] Smart Regulations Initiative: www.regulation.gc.ca/default.asp?Language=E&Page=smartregint
[xii] See Policy Brief 20, *Ethics Codes Revisited: A New Focus on Outcomes.* Marc Saner, June 2004. Available at www.iog.ca
[xiii] See our Policy Brief 24, *Workplace and Policy Ethics: A Call to End the Solitudes.* Available at www.iog.ca