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# **A Special Calling: Values, Ethics and Professional Public Service**

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In 2003, the Government of Canada adopted the *Values and Ethics Code for the Public Service*. The Code expresses the core values that constitute the essence of Canada's professional public service. The adoption of the Code was a pivotal event in Canada's journey towards a values- and ethics-based public service. As on any long journey, it is appropriate to pause for reflection on how far we have travelled and what we have learned that can inform our next steps. Each section of this study examines a series of milestone developments lying between several watershed events in the evolution of Canada's values and ethics regime. The major thread binding the sections together is the theme of challenge and response—the challenges posed by new and enduring values and ethics issues and the government's responses to these challenges. It is a story about the steadily increasing scope and complexity of values and ethics issues; it is also a story about the building of a solid foundation for a professional public service dedicated to the public interest.

The story begins by examining values and ethics issues in Canada's pre-Confederation period (1763–1866). The second section takes the story from Confederation to the 1918 *Civil Service Act*, and the third section ends with Prime Minister Pearson's 1964 conflict of interest letter. This is followed in the fourth section by a review of developments leading to the 1984 report of the federal Task Force on Conflict of Interest. The fifth section culminates in an examination of the report of the 1996 Task Force on Public Service Values and Ethics. Section six focuses primarily on the links between this report and the adoption in 2003 of the *Values and Ethics Code for the Public Service*. Section seven assesses ongoing developments affecting the government's values and ethics regime and, more generally, Canada's professional public service. The final section summarizes the study's main themes and looks to the future.

It is essential to define a few key terms. *Values* are enduring beliefs that influence the choices we make from among available means and ends. *Rules* are statements about specific acts that are either permissible or prohibited. The term *ethics* refers to principles or standards of right conduct. As explained later, the relative importance of values, compared to rules, has increased substantially since the mid-1980s, but there is a cyclical dimension to their relationship. There has also been wide acceptance in Canada's public administration community of a four-fold classification of values into ethical, democratic, professional and people values. While reference to values is made throughout this study, note that little explicit use of this



concept for *analytical* purposes was made before the mid-1970s and it has only been since the mid-1980s that widespread reference has been made to the *management* of values as a means of promoting and maintaining a professional public service.<sup>1</sup>

## 1. The Public Service and Responsible Government (1840–1867)

The major foundation stone in the edifice of Canada’s parliamentary democracy was the adoption in 1848 of *responsible government* for what was then the United Province of Canada. Under the principle of responsible government, the prime minister and cabinet must have the support of a majority of Members of Parliament in the House of Commons. This principle underpins the constitutional convention of *collective ministerial responsibility* that requires the prime minister and cabinet to resign if they lose the “confidence” of the House. A closely related constitutional convention is that of *individual ministerial responsibility*—a complex concept that requires individual cabinet ministers to resign under certain circumstances and that prescribes appropriate relationships among ministers, parliamentarians, public servants, and the public.

During the years 1841 to 1866, when the Province was ruled by a colonial governor, “the development of the ‘top command’ and the rationalization of the departmental system permitted the gradual growth of individual and collective responsibility of cabinet ministers . . . .”<sup>2</sup> There was evidence in this period also of the enduring challenge of balancing the power and responsibility of ministers and public servants. The fact that the tenure of most ministers was too brief to permit them to master their department’s work strengthened the hand of their senior officials. “The ministers’ subordinates . . . could rest easy on their oars . . . or they could pull themselves into positions of power and influence which even the strongest political heads would not dare to assail.”<sup>3</sup>

The convention of individual ministerial responsibility is now tightly linked to the convention of *political neutrality* that enjoins public servants to avoid activities that are likely to impair, or seem to impair, their political impartiality or the political impartiality of the public service. “[C]learly there was a convention of political neutrality at the time of Confederation [1867] . . .” and political neutrality “is a necessary and fundamental doctrine of the Canadian Constitution, adopted from the Constitution of the United Kingdom.”<sup>4</sup> Political neutrality is widely viewed not only as an important constitutional convention but also as a central public service value as well.



An enduring challenge to the actual or perceived political neutrality of public servants is *political patronage*, that is, the appointment of persons to public service positions based on their contributions to a political party rather than on their merit. By the time of responsible government, Canada had already experienced almost a century of patronage dating back to 1763 when the British took possession of the French colony in North America. By 1850, “partisanship permeated everything in Canada, from the great issues of state to public support for private business projects, down to the smallest matters of parochial concern.”<sup>5</sup> The use of patronage for partisan purposes was often associated with bribery and other types of corruption in which both politicians and public servants were implicated. At the same time, there was evidence of the selfless dedication that is now frequently associated with professional public service. Although “dishonest men, intent on personal plunder rather than public service, sometimes occupied . . . positions of trust, . . . the government was also capable of commanding the services of devoted officials, some of them with outstanding administrative ability and an optimistic vision of Canada’s potential greatness.”<sup>6</sup> The 1857 *Civil Service Act* formally recognized the office of deputy minister as a permanent official serving the minister of each department as its administrative head. The *Act* also established an examining board that administered simple pass examinations and that was the forerunner to the Civil Service Commission established 40 years later.

It is notable that patronage was used in part to attract members of the professional middle class to public service posts.<sup>7</sup> Unlike the U.S. spoils system at this time, most senior-level public servants in Canada were appointed on partisan grounds, but they were not usually removed with a change of government. This security of tenure in the midst of rampant patronage helped to foster in these early days the competence and stability that is characteristic of a professional public service. Measures adopted during this period to prohibit public servants from serving as members of Parliament<sup>8</sup> and from voting<sup>9</sup> were extended into the post-Confederation period.

During these years, the challenges posed by patronage and corruption meant that the major public service values in play were neutrality and integrity. There were, however, stirrings of concern about the need for improved efficiency, and the foundations of a professional public service began to be laid.



## 2. Seeking an Efficient Non-partisan Public Service (1867–1918)

The major values and ethics developments of this period took place within the broader context of Canadian Confederation, the creation of the country's administrative apparatus, and continuing corrupt practices. Canada's founding constitutional document—the *British North America Act* of 1867—provided for a constitution “similar in principle to that of the United Kingdom.” This meant a parliamentary democracy based on the Westminster model. The new federal union adopted much of the administrative structure of the United Kingdom. The central agencies (Privy Council Office, Department of Finance, and Treasury Board) that have historically been major actors in shaping the government's values and ethics regime had antecedents in the pre-Confederation period.

Throughout Canadian history, the professional public service has evolved in a milieu of sporadic political scandals. During the post-Confederation period to 1918, John A. MacDonald, Canada's first prime minister, was forced to resign as a consequence of the Pacific Scandal of 1873, and the administration of his successor, Wilfrid Laurier (1896–1911), suffered several political scandals.

The former British North American colonies that joined Confederation all had a history of extensive patronage. Thus, it is not surprising that the practice continued during the post-Confederation period. Indeed, patronage was the most prominent public service issue during the first 50 years of Canada's existence. The issue was a central concern of no fewer than six public service inquiries between 1868 and 1913. As in the pre-Confederation period, patronage abuses were accompanied by other kinds of corruption, especially conflicts of interest (the use of public office for private gain). The 1891-1892 Royal Commission on the Civil Service was created in large part because of a parliamentary committee's revelation that public servants had been involved in corrupt activities. “Certain officials had been guilty of serious breaches of trust; some had altered accounts; others had accepted bribes; the Government had been defrauded in goods it had bought due to corrupt civil servants; clerks doing extra work had credited it to imaginary subordinates and then cashed the pay cheques; salaries had been drawn by absent clerks . . . .”<sup>10</sup> The Commission's recommendations dealt with patronage, but not with conflict of interest.

Some politicians called attention to the desirability of a professional, non-partisan public service. George Elliot Casey, who headed the 1877 parliamentary committee on the civil service, warned that “[n]o matter



how excellent might be the Government of the day, or how wise its administrative acts, it might be spoiled by the faults of the Civil Service.”<sup>11</sup> Casey also drew attention at this early date to the need for public servants to exercise administrative discretion: “We all speak with horror of government by ‘bureaucracy,’ but we forget that we can never wholly get rid of its influence. Every official must have some freedom of action in the interpretation and performance of his duties, some power to obstruct, facilitate, or prevent the operation of those laws with whose execution he is charged.”<sup>12</sup> The select committee did observe, however, that “[a]s a general principle appointments, promotions, and the whole management of the Service should be separated as far as possible from political considerations. The Service should be looked upon merely as an organization for conducting the public business and not as a means of rewarding personal political friends. The attempt should be made to render it a *profession* . . . .”<sup>13</sup>

A judicial inquiry into allegations of corruption in the Department of Marine and Fisheries led to disciplinary action in 1908 against senior public servants, including the resignation of the deputy minister. Also in 1908, the Courtney Royal Commission on the Civil Service recommended that political patronage be eliminated from the public service, appointments be based on merit, and a Civil Service Commission be established. The government’s response to the perennial challenge of patronage finally came in the form of the 1908 *Civil Service Act*, which created a Civil Service Commission to promote a career public service (for the Inside Service—positions in and around Ottawa) with appointments based on merit as determined by competitive examinations. Given the importance of the value of representativeness in Canada’s contemporary public service, it is notable that the Civil Service Commission at this time did not include French as a competency for appointment and advancement.

A resurgence of patronage during the First World War led to stringent measures in the 1918 *Civil Service Act* (as amended in 1919) to eradicate patronage from the whole public service and thereby to promote efficiency in a non-partisan public service. This act proved to be a watershed event in the evolution of political neutrality in Canada, in part by imposing strict constraints on public servants’ partisan political activities. Public servants were prohibited from engaging in partisan work in connection with a federal or provincial election and from contributing, receiving or dealing in any way with money for political parties.





Thus, while the pre-Confederation problems of patronage and corruption continued for 50 years after Confederation, the government finally took strong measures to promote the values of neutrality, integrity and efficiency. Considerable progress was also made towards establishing the public service as a professional non-partisan institution serving the individual and collective needs of ministers.

### **3. The Arrival of the Administrative State (1919–1964)**

The second half of Canada's first century was marked by several key events in the evolution of the country's professional public service. The major development was the advent of "the administrative state" characterized by the accelerated rate of growth in the size, complexity and influence of the public service. This was also the period of the "mandarin generation." The so-called mandarins were a group of senior public servants (e.g. O.D. Skelton, W.C. Clark) who exercised considerable influence on government decisions from the mid-1930s to the mid-1950s.<sup>14</sup> The mandarins' influence was complemented by a devotion to public service underpinned by a strong sense of personal responsibility.

The 1924 *Civil Service Superannuation Act* strengthened the concept of a career public service by providing pensions for government employees—an initiative recommended by all of the commissions of inquiry that had reported in the previous period. Sir George Murray, who reported on the organization of the public service in 1912, believed that a pension system was absolutely essential for a good-quality public service.<sup>15</sup> The Civil Service Commission argued that a pension system was in the public interest because it would relieve "the Government of the embarrassment and extravagance of retaining the services of officers who had outlived their usefulness," deter "efficient officers from leaving the Public Service for private employment," help "to attract a better class of applicants," and in general tend "to promote efficiency in every way."<sup>16</sup>

The Office of the Comptroller of the Treasury established by the 1931 *Consolidated Revenue and Audit Act* safeguarded two basic principles of Canada's parliamentary democracy, namely that government should only spend money authorized by Parliament and only for purposes authorized by Parliament. Another instrument of financial control—the Treasury Board that was established as a cabinet committee in 1869—began in the early 1930s to exercise greater control over government expenditures. W.C. Ronson, the Board's secretary at this time, earned the nickname "Abominable No Man" for his cost-cutting measures. The 1951 *Financial*





*Administration Act*, which replaced the 1931 Act, gave the Treasury Board authority over a broad range of financial and human resource matters, including the approval of contracts. Much of this authority was delegated to public servants, thereby shifting a heavy load of tedious administrative work away from the ministers on the Board. Subsequent growth in the scale and complexity of government was accompanied by a large and steady increase in the number of contracts awarded under the authority of public servants. It is not surprising that irregularities, sometimes involving conflicts of interest, arose with a small percentage of these contracts. The continuous challenge that exercising contracting authority poses for public servants, especially in their relations with politicians, was manifested 50 years later by the Human Resources Development Canada (HRDC) and sponsorship scandals discussed later in this paper.

An auspicious event in the evolution of Canada's professional public service was the government's decision in 1940 to give to the Clerk of the Privy Council (first appointed in 1867) the additional role of Secretary to the Cabinet. The incumbent of this position became the *de facto* head of the public service—one who takes “precedence as the first of the chief officers of the Public Service.”<sup>17</sup> The Clerk, as the linchpin between ministers and public servants, plays a critical leadership role in defining the constitutional position of the public service and articulating public service values. Subsequent clerks have differed in the priority placed on this role, but their public championing of public service values has increased since 1992 when the title of Head of the Public Service was added to their existing official titles. At the same time, they were required to present an annual report to the prime minister on the state of the public service. In the first of these reports, Paul Tellier said that the report reflected “the values and traditions of the Public Service” and he referred to the need for the public service to be guided “by its traditional values of professionalism, political neutrality and service.”<sup>18</sup> The increased reference to values

in the annual reports of his successors reflected practice in the public service as a whole. In the 2006 report, Kevin Lynch noted “the importance of values to managing people” and referred to specific values “that must be at the very core of our Public Service.”<sup>19</sup>

The values of efficiency, economy and service were foremost in the considerations and recommendations of the 1962 (Glassco) Royal Commission on Government Organization. The Commission's view that the public



service should operate more like a business foreshadowed the emphasis on business values in public administration that emerged in the mid-1980s. The Commission called for greater emphasis on the values of representativeness and responsiveness by noting that public confidence in the public service “will depend, in large measure, on how representative it is of the public it serves.”<sup>20</sup> Moreover, while the Commission considered the importance of the values of integrity and efficiency to be great, “even greater is the importance of a service responsive to public wants and expectations.”<sup>21</sup> The Commission also recommended reforms that would “let the managers manage” by removing many of the constraints on financial and human resource management. Many of these constraints had their origins in earlier efforts to minimize patronage abuses and other forms of corruption, especially conflicts of interest.

While the need to promote political neutrality by reducing patronage lessened substantially during this period, the challenge of preventing and punishing conflicts of interest increased. Among the several types of conflict of interest, the problem of “outside” or “dual” employment received most of the attention. In 1925, a Cabinet regulation<sup>22</sup> gave deputy ministers the authority to dismiss public servants who sold goods or engaged in trade during their working hours. Subsequent regulations<sup>23</sup> between 1931 and 1947 moved gradually towards a more permissible regime of outside employment. In 1951, a relatively comprehensive regulation provided that

- employees could only engage in outside employment with the permission of the Treasury Board;
- outside employment could not be of such a nature that it would conflict with government work or be politically partisan; and
- deputy heads could limit or terminate the outside employment of a public servant if that employment was deemed to prevent the public servant from carrying out his duties or to impair his efficiency on the job.<sup>24</sup>

The view that involvement in partisan political activities could constitute a conflict of interest foreshadowed the expansive definition of this concept that developed over subsequent decades. It is notable in this context that the 1961 *Civil Service Act* maintained the strict controls over participation in partisan politics that were imposed in 1918.



A political scandal known as the Rivard Affair erupted in the fall of 1964. Lucien Rivard was an alleged heroin smuggler who was reported to have close ties to the Liberal party. Two executive assistants to Liberal cabinet ministers were alleged to have used bribery and intimidation to help block Rivard's extradition to the United States.<sup>25</sup> Together with other allegations of corrupt political practices, the Rivard Affair prompted the prime minister to issue what became known as Mr. Pearson's Code of Ethics. This letter to his ministers, dated November 30, 1964, asserted that

[i]t is by no means sufficient for a person in the office of a Minister—or in any other position of responsibility in the public service—to act within the law . . . . There is an obligation not simply to observe the law but to act in a manner so scrupulous that it will bear the closest possible scrutiny. The conduct of public business must be beyond question in terms of moral standards, objectivity and equality of treatment.

This was the first of several prime ministerial pronouncements on conflict of interest over the next 40 years. In fact, much of the message and some of the wording of Prime Minister Harper's letter of February 2006 to his ministers on accountable government is similar to Mr. Pearson's letter of 1964.<sup>26</sup> The 1964 letter continued the gradual process of clarifying the meaning of conflict of interest. It cautioned against giving preferential treatment on the grounds of personal acquaintance or sympathy, placing oneself in a position of obligation to anyone who might profit from special consideration or seek special treatment, having a financial interest in conflict with official duties, or using official information for private gain.

O.P. Dwivedi and James Iain Gow note that from 1918 to the late 1960s the tension between responsible government and career public service in Canada “was managed by an equilibrium that allowed ministers to be responsible for their departments' destinies but granted public servants a career based on selection by merit, political neutrality, anonymity, secrecy, and accountability.”<sup>27</sup> By the mid-1990s, the extent to which the public service was—or should be—a career public service had come into question, and new value tensions had arisen. Public servants were challenged to reconcile the traditional emphasis on anonymity and secrecy (or confidentiality) with widespread demands for openness and transparency.



#### 4. From Ethics Rules to Values Statements (1965–1984)

Between 1965 and 1984, several milestone events had enormous long-run implications for Canada's professional public service and, in particular, for its values and ethics regime. In 1967, the *Public Service Staff Relations Act* gave public servants the right to bargain collectively, including the right to strike, and the *Public Service Employment Act* gave the Public Service Commission exclusive authority to appoint and advance public servants according to merit and to manage the issue of political partisanship. The long standing restraints on public servants' political activities were loosened so that public servants could make financial contributions to political parties and could, with the permission of the Public Service Commission, take a leave of absence to stand for political office. In the same year, the *Financial Administration Act* was amended to give the Treasury Board authority over human resource management, including the authority to set public servants' terms and conditions of employment. The Board, assisted by its Secretariat of public servants, had become the general manager of the government, with responsibility for managing ethics issues which, during this period, involved primarily conflict of interest concerns. During these years also, as a result of the 1968 *Official Languages Act*, and initiatives arising from the 1969 Royal Commission on the Status of Women, the public service became more representative of francophones and women.

Concern in the 1970s about inadequate accountability for government expenditures led to the adoption of the 1977 *Auditor General Act* that gave the Auditor General authority to report on government measures to promote effectiveness as well as on the traditional considerations of economy and efficiency. The Auditor General also began to engage in “value-for-money” auditing (later called “comprehensive” auditing) that goes beyond financial concerns to assessments of the management performance of government organizations. This expanded authority set the stage for the Auditor General's later publication of reports on public service values and ethics.

The Auditor General's 1975 report on deficiencies in the government's financial management and control systems contributed substantially to the creation of the (Lambert) Royal Commission on Financial Management and Accountability<sup>28</sup> (1976–1979). The Commission was in large part a response to public anxiety over the Auditor General's concerns about the government's inadequate accountability for the expenditure of public funds. Unlike the Glassco Commission's mid-1960s focus on letting the managers manage, the Lambert Commission emphasized the importance of “making” the managers manage. On the



matter of ministerial responsibility, the Commission doubted that ministers “really had effective management and direction of their department,”<sup>29</sup> and recommended that deputy ministers be held directly accountable to parliamentary committees for certain specified duties. Another recommendation was that to preserve an impartial public service, the Public Service Commission should concentrate on protecting the merit principle rather than bearing a large measure of responsibility for personnel management.

The 1979 D’Avignon Special Committee on Personnel Management and the Merit Principle<sup>30</sup> supported this latter recommendation and proposed further that the merit principle be balanced with such “principles” as equity, responsiveness, efficiency and effectiveness. The Committee also proposed that government adopt a “philosophy of management,” defined as “a clear declaration of a credo based on the beliefs, values and attitudes of corporate management, which constitutes the bed-rock on which the practices of management and management systems are based.”<sup>31</sup> This call for a careful balancing of central public service values, and for a clear statement of what those values are, recognized formally the importance of a values-based public service—an emphasis that blossomed in the mid-1980s. This recognition of the importance of *values management* followed the first use of values as an *analytical framework* for examining public service issues and interpreting rules.<sup>32</sup> It was suggested that the dominant service-wide values over the broad sweep of Canadian history—the “traditional” values—had been integrity, accountability, neutrality, efficiency, effectiveness, responsiveness and representativeness.<sup>33</sup>

Other key instruments shaping the milieu for the management of values and ethics issues were the 1982 *Canadian Charter of Rights and Freedoms* and the 1983 *Access to Information Act* and the *Privacy Act* of the same year. The Charter has had a huge impact on government, including such public service issues as political rights and employment equity. The *Access to Information Act* gave citizens access to a wide range of government information, and the *Privacy Act* required government institutions to restrict access to information they held on individuals and to adhere to fair information practices.

In the early 1970s, continuing incidents of unethical conduct involving government officials, together with widespread media coverage of government scandals in the U.S. and the U.K., greatly increased the public’s appetite for ethics rules. Concern about politicians’ behaviour spilled over into concern about the conduct of public servants.<sup>34</sup> The *Public Servants Conflict of Interest Guidelines* issued on December 18, 1973,<sup>35</sup>



warned against several variations of the offence. Then, on December 31, 1973, a Treasury Board circular provided a *Standard of Conduct for Public Service Employees*<sup>36</sup> that went beyond conflict of interest to set out guidelines on such ethical issues as discrimination and political partisanship.

The major conflict of interest issue during the rest of the decade was the *post-employment* activities of public servants. Considerable public concern arose from the actions of two deputy ministers who, upon retirement from government, created a consulting company offering assistance to business firms wishing to influence government (the Grandy–Reisman affair). The *Post-Employment Activities Guidelines* that were adopted on January 1, 1978, (and amended on April 24, 1978) covered not only public servants but also ministers and ministerial staff. Under these guidelines, “public office holders” were forbidden during a “cooling-off” period to take up employment with firms with which they had enjoyed a special working relationship, to change sides in regard to matters for which they had responsibility when they were in government, or to lobby departments where they had worked.

Conflict of interest guidelines for ministers were revised by Prime Minister Clark in 1979 and by Prime Minister Trudeau in 1980. Then, in 1983, a former minister of Mr. Trudeau’s government was alleged to have broken the guidelines by lobbying his former deputy minister (the Gillespie Affair). The consequent public concern led Mr. Trudeau to appoint a Task Force on Conflict of Interest on July 7, 1983. The Task Force’s terms of reference and its deliberations focused on conflict of interest but its 1984 report<sup>37</sup> also made brief reference to political activity and public comment by public servants.

The report emphasized that the integrity of public office holders in Canada was high, that no provincial government had more comprehensive guidelines than the federal ones, and that the guidelines were more comprehensive than those in the other Westminster governments of Australia, New Zealand and the U.K. The report recommended that the guidelines be replaced by a short, simple code of ethical conduct, procedural rules to minimize conflicts of interest, and supplemental codes of procedures and rules to meet the particular needs of individual departments. Finally, the report suggested the creation of an office of public sector ethics, headed by an ethics counsellor, to carry out advisory, administrative, investigative and educational functions in regard to conflict of interest matters involving public office holders.





Several public service values competed for primacy during this period. Integrity issues shared the spotlight with concerns about accountability. While accountability has traditionally been an important public service value, it has become a dominant concern since the mid-1970s. This is in large part a reflection of the increased size and complexity of the administrative state and of the consequent need for public servants to exercise a substantial measure of administrative discretion. The government's response to the Lambert Commission's recommendations was to adopt a wide range of accountability measures that imposed a heavier burden of rules on public servants' day-to-day activities. This has been a recurring response to public concern about bureaucratic power and, especially, about its abuse. As explained later, the relatively greater emphasis on values than on rules that began in the mid-1980s gave way to renewed emphasis on rules resulting from government scandals at the turn of the century.

During the 1965–1984 period examined in this section, increased attention also focused on promoting fairness and equity by making the public service more representative of such historically disadvantaged groups as francophones, women, visible minorities and persons with disabilities. Moreover, a responsive public service was sought not only by making it more representative but also by permitting more citizen involvement in the policy process. Finally, the government's response to the public's growing appetite for greater access to information and for protection of individual privacy provided the legislative foundation for a continuing debate on issues of confidentiality, privacy and security.

## **5. Values Take Centre Stage (1985–1996)**

During the 1985–1992 portion of this period, recurring conflict of interest issues occupied the government of Prime Minister Brian Mulroney. First, he had the responsibility of formulating his government's response to the report of the 1984 Task Force report on Conflict of Interest. Although he did not accept the report's recommendations, he did adopt a package of ethics measures in September 1985 that included a new *Conflict of Interest and Post-Employment Code for Public Office Holders* that took effect in January 1986. The Office of the Assistant Deputy Registrar General, which had been responsible for administering the government's conflict of interest rules since 1974, took on responsibility for administering the 1985 Code and for providing advice to officials on ethical issues. A subsequent adaptation of the Code for the public service<sup>38</sup> contained



principles that encapsulated the government's view as to what constituted a conflict of interest at that time. Then, the Mulroney Government had to deal not only with a long string of conflict of interest allegations against cabinet ministers but also with charges of improper patronage appointments.<sup>39</sup> Jean Chrétien, who became prime minister in 1993, appointed an Ethics Counsellor in 1994 to advise him regarding allegations against ministers in the spheres of conflict of interest and lobbying, to investigate complaints against lobbyists, and to administer the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

Other notable values and ethics challenges of this period included three scandals in which both politicians and public servants were implicated. The first of these scandals—the 1991 Al-Mashat affair—involved allegations that federal officials had expedited the granting of landed immigrant status to Mohammed Al-Mashat, who had been Iraq's ambassador to the United States and that country's spokesperson during the Gulf War. During the inquiry into this affair, politicians named and blamed public servants in public and argued over the correct meaning and application of the convention of ministerial responsibility. The affair had an adverse impact on the convention of public service anonymity that had begun to decline for other reasons, including increased emphasis on service to the public and heightened media coverage of the public service.

A second scandal involved an ill-fated Canadian military mission to Somalia in 1993 that included the killing of a Somali youth. A commission of inquiry, appointed by a new Liberal Government in 1995, complained in its 1997 report<sup>40</sup> that the disgrace of the original events had been exacerbated by the “evasion and deception” of the testimony of many senior military officers. The Commission noted also that the government's “decision to end the Inquiry prematurely in itself raises new questions concerning responsibility and accountability.”<sup>41</sup>

The third scandal revolved around a 1993 commission of inquiry<sup>42</sup> into the infection of several thousand Canadians by tainted blood. Monique Bégin, who had been federal health minister at the time of the infections, offered to appear before the commission as “a matter of personal morality and integrity” and in recognition of ministerial responsibility as “the cornerstone of our executive government.”<sup>43</sup> Yet, on the same day, General Jean Boyle, the Chief of Canada's Defence Staff, declined to take any responsibility for



the questionable conduct of the Department of National Defence in connection with the Somalia events and suggested that some of his department's senior officers lacked integrity and moral fibre.<sup>44</sup>

Part of the government's response to these incidents was greatly increased emphasis on the concept and management of public service values. This emphasis was also the result of developments in the private sector. The New Public Management (NPM) movement, with its stress on applying business practices and values to the public sector, became increasingly influential. This influence was complemented by the "corporate culture" movement that was animated by such business publications as Peters and Waterman's *In Search of Excellence*. Values were touted as the essence of corporate culture and the key to corporate success. Both movements had substantial influence on the public service in the form of increased emphasis on strategic planning, accountability for results, and values like service, excellence and innovation—what are described in Canada's public service as "professional" values. The pursuit of these "new" professional values was accompanied by diminished sensitivity to the importance of democratic values like accountability and the public interest.

The 1987 report of a deputy ministers' Committee on Governing Values noted that values "represent the deep-seated, fundamental beliefs or preferences which guide our goals and behaviours." Moreover, values are not "the same as attitudes, opinions, principles, ethics, although these are shaped by the underlying values."<sup>45</sup> This notion of core values as the foundation on which ethics rules and other rules are based has been a persistent theme in Canada's dialogue on public service values. Among the many questions raised by this 1987 report were whether public service values simply need to be more clearly articulated or whether there is a need for new values, whether the values are capturing the emotional commitment of employees, and what the core values are.

The influence of the new public service values was evident in the 1990 report of *Public Service 2000* (PS 2000), a federal government exercise aimed at renewing the public service and preparing it to cope with the challenges of globalization, public demands for better service, an ageing workforce, advances in information technology, and the growing need for knowledge workers. While PS 2000 might best be described as a minor milestone in terms of its long-term impact on the public service, it is notable for its references to public service values. Its report envisaged a change in public service culture with the new



culture based on the “simple and unchanging” values that have characterized the Public Service since the early years of the century:

These values are service to Canada and Canadians; loyalty to the duly elected Government; honesty, integrity and non-partisanship; prudence in the use of taxpayers’ money; faithfulness to the principles of fairness and impartiality; professionalism in carrying out their duties; and respect for Ministers, other Parliamentarians, members of the public, and other members of the Public Service.<sup>46</sup>

These values are similar to the traditional public service values identified earlier.

A major theme of the PS 2000 report was improved service to the public through empowered and innovative public servants within a context of accountability for results achieved as well as for the way things are done. The report manifested the inherent tension between various public service values, for example between professional values like innovation and efficiency and democratic values like accountability and the rule of law. Largely in response to the recommendations of PS 2000, the 1992 *Public Service Reform Act* provided for such changes as the deployment of employees, the streamlining of the staffing process and an improved employment equity system.

On the latter issue, the 1986 *Employment Equity Act* had already required employers regulated by the federal government (e.g. in the banking and transportation industries) to report to government each year on their success in promoting employment equity for historically disadvantaged groups, notably women, Aboriginal peoples, visible minority persons, and persons with disabilities. Also in 1986, the federal government had adopted an employment equity policy for the public service requiring departments to identify and remove systemic barriers to equitable participation by members of these disadvantaged groups. These initiatives were in part a response to the recommendations of the 1984 Royal Commission on Equality in Employment (the Abella Commission) that stressed the need to make the public service more representative of the total population in terms of gender, race, ethnicity and disability. The success of employment equity programs in promoting the values of equity, representativeness and responsiveness was enhanced by an emphasis on “valuing the differences” among the members of an increasingly diverse public sector workforce.



Program Review, initiated by the Chrétien Government in early 1994, used a comprehensive appraisal of all government programs to identify substantial budgetary savings. Only a few years earlier, the PS 2000 Task Force on Staffing had noted that “the structure of employment in the public service is largely predicated on the concept of a career public service.”<sup>47</sup> And the PS 2000 report itself argued that “a professional, career Public Service, capable of attracting and retaining Canadians of talent, commitment and imagination, is essential to Canada’s national well-being.”<sup>48</sup> However, the unduly harsh way in which some of the staff reductions resulting from Program Review were implemented prompted a debate as to whether a professional non-partisan public service was also a *career* public service—an issue examined a few years later by the Tait Task Force.

Program Review was part of a broader reform program that was articulated in the 1996 report on *Getting Government Right*. This report, which was heavily influenced by the NPM movement, encouraged better use of information technology and other means to promote high-quality citizen-centred service, improved performance measurement, and the use of alternative service delivery mechanisms such as partnerships, outsourcing and user fees. At the same time, the government adopted measures, including the 1996 Policy Research Initiative,<sup>49</sup> to revitalize its policy capacity to cope with the same challenges noted above in connection with the work of PS 2000.

The post-1985 values and ethics issues noted above—and many more—were taken up by the deputy ministers’ Task Force on Public Service Values and Ethics that began its work in the spring of 1995 and published in December 1996 its celebrated report<sup>50</sup> (generally referred to as the Tait Report after its chairperson, the late John Tait). A decade later, the ideas, insights and proposals contained in this report continue to resonate within Canada’s public administration community. The title of this study—*A Special Calling*—is drawn from the report’s assertion that

[p]ublic service is a special calling. It is not for everyone. Those who devote themselves to it find meaning and satisfaction that are not to be found elsewhere. But the rewards are not material. They are moral and psychological, perhaps even spiritual. They are the intangible rewards that proceed from the sense of devoting one’s life to the service of the country, to the affairs of state, to public purposes, great or small, and to the public good.<sup>51</sup>



The Task Force concluded that public service renewal “must come first from within: from values consciously held and daily enacted, values rooted deeply in our own system of government, values that help to create confidence in the public service about its own purpose and character, values that help us regain our sense of public service as a high calling.”<sup>52</sup> Public service ethics were treated as a subset of public service values. Ethical values were defined as “enduring beliefs that influence our attitudes and actions as to what is right and wrong.”<sup>53</sup>

The Task Force examined public service issues and pressures in relation to the pursuit of professional public service and to the principles and practices of Canada’s parliamentary democracy. The Task Force called for “a clear, concise statement of the requirements of ministerial responsibility that is easily comprehensible to ministers, public servants and the public”<sup>54</sup> and it stressed the importance of the values of non-partisanship and merit. The Task Force also recommended adoption of a statement of values that could not only help provide “a new foundation for public service values, but could also establish a new moral contract between the public service, the Government and Parliament of Canada.”<sup>55</sup> This notion of a moral contract is the source of the proposal for a Public Service Charter discussed later in this paper.

Four other contributions are especially noteworthy. The first is the Task Force’s sensitivity to getting the balance right between values and rules. It recognized the benefits of moving away from an excessive focus on rules to an approach that looks more for guidance to a framework of values, but acknowledged that some rules will always be important “to ensure democratic will and preserve the legitimacy of government.”<sup>56</sup> The second contribution is the classification of values into four “families” of values—democratic, ethical, professional and people values—and recognition of the need to reconcile the tensions among some of these values. Thirdly, the Task Force viewed respect for the concept of the public interest as central to professional public service. Fourthly, the Task Force recognized that government cannot promise public servants a career in the sense of a job for life, but that a professional public service does require a “critical mass” of public servants who have served long enough to acquire the skills and culture of professionalism that they can pass on to others.

During this period, the continuing importance of the values of integrity and accountability was supplemented by a much greater focus on new professional values like service and innovation. The Tait report was largely





responsible for promoting a vigorous dialogue on the central importance for a professional public service in Canada's parliamentary democracy of democratic values such as the rule of law, accountability and political neutrality. Patronage appointments to public service posts—a long-time enemy of political neutrality—had declined to the point by 1991 that the Supreme Court of Canada felt comfortable in interpreting the *Charter of Rights and Freedoms* so as to extend considerably the right of public servants to participate in partisan political activities.<sup>57</sup>

Near the end of this period, a study of the values *espoused* by public organizations in the federal and provincial governments showed that the most important values, in order of priority, were integrity/ethics, accountability/responsibility, respect, service, fairness/equity, innovation, teamwork, excellence, honesty, commitment/dedication, quality, and openness.<sup>58</sup> This final value, openness, together with the closely related value of transparency, has become increasingly important since that time.

## 6. Getting the Values Right (1997–2003)

In 1997 the government began to respond to the challenges outlined in the report of the Tait Task Force and to the report's proposals for dealing with these challenges. Some of the government's actions dealt with values as part of broader measures to improve the overall management and performance of the public service while others focused specifically on strengthening the government's values and ethics regime.

In March 2000, the government released *Results for Canadians: A Management Framework for the Government of Canada*<sup>59</sup> that committed the government to excellence in four areas of critical importance to a high-performing professional public service, namely focusing on citizens, ensuring responsible spending, managing for results, and *embracing public service values*. It was argued that “management in the Public Service must be guided by a clear set of values . . . . As all else changes, values are the foundation to support action and a compass to guide it.”<sup>60</sup> Public servants were to be guided by the four sets of values—democratic, professional, ethical and people values—that were first outlined in the Tait report. Among ongoing measures for promoting change that were identified in the framework was Modern Comptrollership, a management reform concerned with sound management of government resources and effective decision making. Among the main objectives of this reform was a shared set of *values and ethics*.



During this period, the results of two sets of surveys enhanced the professional image of the public service. Reports from the first three national surveys entitled *Citizens First* (1998, 2000 and 2003) demolished the conventional wisdom that private sector service quality is invariably superior to that provided by the public sector. Canadians ranked the service quality of many public organizations above that of many private sector ones. Also, the first two of three surveys (1999, 2002, 2005) of all federal public servants for which Treasury Board was the employer reported unexpectedly high levels of job satisfaction.

Promoting an exemplary workplace, in part by increasing job satisfaction, was one objective of deliberations beginning in early 2001 that led to the November 2003 *Public Service Modernization Act*. Among the four major themes of the deliberations was the desirability of a values-based public service. The Act provided for amendments to the *Financial Administration Act* and for a new *Public Service Labour Relations Act* and a new *Public Service Employment Act*. This latter act retained the central public service values of merit, non-partisanship, excellence, representativeness and integrity. It also gave a new meaning to merit that moved away from the rules-based idea of “best-qualified” to a values-based approach permitting quicker hiring of qualified persons.

All of the foregoing events had important implications for public service values and ethics. These events, combined with a generally enthusiastic response to the Tait report, led to the creation in 1999 of the Office of Public Service Values and Ethics (OPSVE) in the Treasury Board Secretariat as “a centre of expertise and leadership responsible for furthering values-based management within the public service.”<sup>61</sup> Two deputy minister “co-champions” on values and ethics (Janice Cochrane and Scott Serson) had been appointed in May 1998 to foster a dialogue in the public service on values and ethics. In June 2001, deputy ministers agreed unanimously with the co-champions on the importance of adopting a statement of principles. This was followed on October 15, 2001 by an email from the Clerk of the Privy Council to all employees asking them to participate in the development of the statement. On the same day, the “Principles website” was inaugurated as one of several mechanisms that elicited a large number of employee comments on a draft statement of principles.

By 2000, a substantial percentage of public servants were women. They held more than 50 per cent of public service positions as a whole, and 27 per cent of senior management positions—an expansion from 29 per



cent and 14 per cent respectively since 1970. Over this period, increasing attention was given to minimizing unethical conduct involving sexual and other types of workplace harassment. The Treasury Board *Policy on the Prevention and Resolution of Harassment in the Workplace*,<sup>62</sup> which came into effect on June 1, 2001, is designed to increase awareness of possible harassment situations and to encourage early problem resolution and the use of mediation for conflict resolution. The OPSVE harassment prevention tool—*People to People Communication*<sup>63</sup>—notes that the Policy reflects the values and principles of respect, diversity, integrity and leadership/responsibility.

In the mid-1990s, the Office of the Auditor General had begun to take an active interest in the state of public service values and ethics. While there is disagreement as to whether it is appropriate for the Office to play such a high-profile role in this sphere, its reports on integrity in government have stimulated considerable thought and action. The Auditor General's 1995 report *Ethics and Fraud Awareness in Government*<sup>64</sup> noted that the ethical standards of federal public servants compared well with the private sector and with governments in other countries, but that there were some “vulnerabilities” that needed to be addressed. The report encouraged adherence to an “ethical framework” that included such features as a statement of principles, leadership, transparent decision-making, ethics-related training, and a disclosure mechanism.

The Auditor General's 2000 report on “Values and Ethics in the Public Sector”<sup>65</sup> assessed the values and ethics initiatives underway “to promote sound values and ethics as a vital part of good governance that supports and respects fundamental *democratic* values.”<sup>66</sup> The report noted that values and ethics initiatives in government departments were in their preliminary stages and suggested priorities and a framework for action to speed up progress. The report also recognized the broader context within which values and ethics issues arise by echoing the Tait Task Force's call for clarification of the principle of ministerial responsibility. Among the other recommendations were an extensive dialogue on values and ethics, a statement of values and ethics, and recourse mechanisms to protect public servants who disclose ethical concerns. Finally, it was suggested that the government develop an implementation plan with deadlines to fulfill these priorities.

On the matter of recourse mechanisms, the government adopted on November 30, 2001, a *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*.<sup>67</sup> This policy was a response to the many proposals over several decades for a disclosure (or whistle-blowing) regime and to public



concerns raised by specific cases, including the Chopra case. Dr. Shiv Chopra is the best-known of three scientists employed by Health Canada who for several years alleged that the department had pressured them to approve certain veterinary drugs that they believed were of questionable safety. As a result of their internal opposition to departmental directives and their public criticisms of the department, gag orders were imposed on Dr. Chopra and his two colleagues. They were suspended without pay, reprimanded and demoted, and in July 2004 they were fired.

Under the 2001 disclosure policy, each department is required to appoint a “Senior Officer” to serve as an internal mechanism to which public servants could make good faith disclosures about wrongdoing in their organization, to ensure that such disclosures are dealt with in a timely and appropriate way, and to make certain that those who disclose information do not suffer retaliation. A Public Service Integrity Office was established at arm’s length from the Treasury Board Secretariat to receive disclosures from employees who had exhausted the internal remedies available in their organization or when they believed that there was an immediate threat to the life, health or safety of the public.

At this same time, several well-publicized allegations of wrongdoing involving public servants led to a renewed emphasis on rules to govern public servants’ actions and to speculation as to whether the 2002 disclosure regime was strong enough.

A shift back in the direction of a rules-based administration began with a case involving Jean Stewart, the federal Minister of Human Resources Development (HRDC). She came under fire following the release in January 2000 of an *internal* audit of her department’s grants and contributions programs that identified deficiencies in management control, especially missing documentation. Public discussion of what the audit really meant was greatly complicated by a widespread view among Canadians that many of the department’s grants and contributions were unnecessary or politically motivated. Public concern about the audit quickly escalated into news headlines of “a billion dollar boondoggle” and faded out many months later following a storm of controversy about the real scope of the problem.<sup>68</sup> This case involved in part the politically inspired expenditure of public funds and thereby foreshadowed similar cases over the next few years. In October 2000, Hugh Winsor, a leading journalist, referred to an audit of the Communications Co-ordination Services of the Department of Public Works for which Alfonso Gagliano was the minister. Mr. Winsor argued that



this audit “should become a major scandal” involving “millions of dollars of untendered contracts going to friends of the government with virtually no verification that the contracts did what they were supposed to do.”<sup>69</sup> The scandal, which did not erupt until early 2002, eventually became part of the wider series of events investigated by the Gomery Commission and discussed below.

In the same month, a media report raised questions about the relationship between Paul Cochrane, an assistant deputy minister in the Department of Health, and the Virginia Fontaine Addictions Foundation (VFAF) that provided treatment of Aboriginals suffering from addictions.<sup>70</sup> A forensic audit revealed—and Mr. Cochrane admitted in court—that he received more than \$200,000 in cash and gifts as kickbacks for funneling more than \$70 million to VFAF.

Another incident involved George Radwanski, who had been appointed Canada’s Privacy Commissioner in October 2000. An employee in Mr. Radwanski’s office disclosed to a House of Commons committee that Mr. Radwanski had been making improper personal use of public funds. An October 2003 report by the Auditor General revealed a major breakdown of management controls and the abuse of public funds by the Privacy Commissioner (who had resigned in June 2003) and by some senior executives. She also described his harassment of employees as a “reign of terror.”<sup>71</sup>

By late May 2002, fierce political heat had been fueled by several allegations of wrongdoing involving Prime Minister Chrétien and some of his ministers that began in the late 1990s. The allegations included a charge by Jon Grant, the former chairman of Canada Lands Company Limited, a Crown corporation within the portfolio of the Minister of Public Works, that the minister, Alfonso Gagliano, had repeatedly tried to get jobs for his friends and to influence unduly the conduct of the corporation’s business in the Province of Quebec. The minister’s performance was subsequently discussed in the media in the broader context of continuing allegations about undue financial benefits to the government’s political friends in Quebec.<sup>72</sup> Many of these allegations involved the awarding of questionable federal advertising and sponsorship contracts to firms in Quebec that had made substantial donations to the federal Liberal Party. The Auditor General investigated a charge that Groupaction Marketing Inc., was paid \$550,000 in 1999 for a report on federal visibility in Quebec that was substantially the same as the one for which it had received \$575,000 in 1998. And on May 8, 2002, the Auditor General reported that senior public servants had broken “just about



every rule in the book” in awarding three advertising and sponsorship contracts in Quebec, and the RCMP began a criminal investigation into Groupaction.

In response to these events, Prime Minister Jean Chrétien issued *A Guide for Ministers and Secretaries of State*<sup>73</sup> in June 2002 as part of an “Eight-Point Plan of Action on government ethics.”<sup>74</sup> The Guide was accompanied by guidelines for ministerial dealings with Crown corporations, guidelines to govern ministerial activities for personal political purposes, and a new appointment procedure for the Ethics Counsellor. The Action Plan promised later implementation of a code of conduct for parliamentarians, changes to the *Lobbyists Registration Act*, strengthened legislation on political party financing, and enhanced public service accountability for the expenditure of public funds. The Guide outlined the key principles of ministerial responsibility and noted that public servants should respect the traditional political neutrality of the public service and that ministers should respect the non-partisan character of the public service. The Guide also reminded ministers of the guidelines contained in the *Conflict of Interest and Post-Employment Code for Public Office Holders*.<sup>75</sup>

This ministerial Guide was complemented in June 2003 by *Guidance for Deputy Ministers*,<sup>76</sup> which explains the four categories of public service values and stresses the critical leadership role of deputy ministers in sustaining these values. This document also refers to the *Management Accountability Framework* (MAF) adopted in June 2003 by the Treasury Board Secretariat. The MAF is composed of 10 key components of sound management, including a values and ethics component stating that “[t]hrough their actions, departmental leaders continually reinforce the importance of public service values and ethics in the delivery of results to Canadians (e.g. democratic, professional, ethical and people values).”

The watershed event in this period was the adoption of the *Values and Ethics Code for the Public Service* that came into effect on September 1, 2003. The Code answered the Tait report’s call for a statement of values and was the culmination of several years of debate and consultation about the statement’s appropriate format and content. The Code constitutes part of the terms and conditions of employment for public servants in the regular departments and agencies of government and all of these public servants are required to comply with and exemplify the values contained in the Code. The Code’s objectives are as follows:





- to articulate the values and ethics of public service to guide and support public servants in all their professional activities;
- to maintain and enhance public confidence in the integrity of the Public Service; and
- to strengthen respect for, and appreciation of, the role played by the Public Service within Canadian democracy.

The main section of the Code is a statement of values that elaborates the four categories of values noted earlier. The three sections that follow deal in turn with conflict of interest, post-employment, and avenues of resolution. The Code reflects the Tait report's emphasis on the concept of the public interest. Among the democratic values shown is "helping ministers under law to serve the public interest" and among the ethical values are "resolving official duties vs. private interest conflicts in favour of the public interest" and "taking all decisions in the public interest."

During the decade following the Tait report, the concept of values became a central theme in dialogues and documents related to Canada's public service. Many provincial and municipal governments adopted values statements. Ontario's statement, for example, reflected the values that were considered most important<sup>77</sup> in federal and provincial departments and agencies, that is, values like integrity, accountability, fairness and service. The other developed Westminster-style countries—Australia, New Zealand and the U.K.—had already crafted values and ethics statements in the late 1990s.<sup>78</sup> By the turn of the century, all 29 member countries of the Organisation for Economic Co-operation and Development (OECD) had adopted mechanisms, in a striking variety of forms, to promote values-based conduct in the public service.<sup>79</sup> Values were touted as an important alternative,<sup>80</sup> or at least an important supplement,<sup>81</sup> to organizational restructuring. In 1998, a leading scholar on public sector ethics had emphasized the importance of *managing* public service values; in his view, "[t]he art of values management for practitioners [had] already become the leading skill necessary for managers and leaders of public sector organizations."<sup>82</sup>

The integrity of public servants in respect of conflict of interest was also an important issue at this time. The 1996 Tait report warned against conflict of interest problems as public servants moved "from providing basic information to counseling and involvement in decision-making for individual clients."<sup>83</sup> In that same year, the Supreme Court of Canada ruled that a public servant does not have to have corrupt intent for a gift to be



deemed unacceptable.<sup>84</sup> This decision supported previous judgments that an appearance of conflict of interest can harm the democratic process just as easily as a real conflict.<sup>85</sup> And in 1999, the Secretary of the federal Treasury Board cautioned public servants that since they exercise greater discretion in decision-making they must “avoid any perception of bureaucratic patronage, such as the use of insider information for personal use, favouritism, and conflict of interest.”<sup>86</sup>

Increased demands by the public—and by the Access to Information Commissioner—for greater openness and transparency in government, in part to ensure accountability, sometimes clashed with public servants’ need to protect individual privacy and to be loyal to their political masters. The Commissioner denounced the “culture of secrecy” in government and noted with approval his predecessor’s argument that the government drop loyalty as a value expected of public officials and replace it with “obedience to the law” (the access to information statute).<sup>87</sup>

## **7. Living the Values of Professional Public Service (2004– )**

In response to continuing allegations of wrongdoing involving politicians, two new ethics offices were established in 2004. The Office of the Ethics Counsellor, created in 1994, was replaced by the Office of the Ethics Commissioner who reports directly to Parliament rather than to the Prime Minister. The Commissioner administers the *Conflict of Interest Code for Members of the House of Commons* and the prime minister’s *Conflict of Interest and Post-Employment Code for Public Office Holders* (ministers, ministers of state, and parliamentary secretaries). In addition, the Office of the Senate Ethics Officer was created to administer the *Conflict of Interest Code for Senators*.

Another government response to wrongdoing was the creation in the fall of 2003 of an external-to-government Working Group on the Disclosure of Wrongdoing<sup>88</sup> that reported in early 2004. It recommended, among other things, that the policy on disclosure mentioned above be replaced by a statute, that the Public Service Integrity Office be replaced by a new office acting as an independent investigative body reporting to Parliament, that “allegators” of wrongdoing be protected from reprisal, and that misuse of disclosure mechanisms be subject to disciplinary action.



The Working Group also proposed that the legislative provisions on disclosure be set within a broader framework of public service values and ethics so as to encourage “rightdoing” in addition to proscribing wrongdoing. The report supported the recommendation of the Tait Task Force regarding a moral contract between politicians and public servants. A legislated approach based on public service values was seen as beneficial because “it could commit and bind ministers, M.P.s and public servants alike, in support of a professional public service, dedicated to the public interest.”<sup>89</sup> This notion of a moral contract was later articulated as a central dimension of a Charter of Public Service Values.<sup>90</sup>

The 2005 *Public Servants Disclosure Protection Act*<sup>91</sup> (PSDPA) not only provides a disclosure of wrongdoing regime but also, in its preamble, commits the government to “establishing a Charter of Values setting out the values that should guide public servants in their work and professional conduct.” In addition, section 5 of the Act requires the Treasury Board to “establish a code of conduct applicable to the public sector.” The content of the Act reflects most of the Working Group’s recommendations. The PSDPA received royal assent at the end of 2005, but was not proclaimed pending amendments made through the Federal Accountability Act (Fed AA). The Fed AA received Royal Assent on December 12, 2006, and the PSDPA is expected to come into force in 2007.

The principles of Canada’s parliamentary democracy and the extent to which they were respected by ministers and the professional public service were the subject of enormous public debate during the so-called “sponsorship scandal” that, as noted above, had its origins in the late 1990s. Allegations of wrongdoing were investigated by the Commission of Inquiry into the Sponsorship Program and Advertising Activities that was appointed on February 19, 2004, and headed by Justice John Gomery. Justice Gomery concluded that most of the main actors implicated in the scandal were politicians (the prime minister, ministers, and a range of political advisors and operatives). He did find, however, that one senior public servant had been directly involved in the wrongdoing and that another did not speak administrative truth to political power regarding the questionable activities of politicians.<sup>92</sup>

Many of the values and ethics issues already discussed in this paper reappeared in the pages of the 2005 and 2006<sup>93</sup> reports of the Gomery Commission. A major theme of the reports was the principle of responsible government established, as noted early on in this paper, in 1848. In 2006, the Commission asked: “How is it .



. . that Canada has, in theory, a system of responsible government, though no one is, in fact, prepared to accept responsibility when things go wrong?”<sup>94</sup> The Commission’s recommendations aimed to rebalance the relationship between government and Parliament with a view to assigning clearer accountability to both politicians and public servants. Particular attention was given to clarifying the meaning and application of individual ministerial responsibility.

The Commission’s recommendations also responded to concerns that core public service values had not been respected. Incidents of fraud, patronage, and the failure of public servants to speak truth to power ran counter to such values as integrity, accountability, transparency and political neutrality. Among the Commission’s proposals were support for a stronger disclosure statute than the PSDPA and the entrenchment in legislation of a charter of public service values. The Commission noted, however, that only a very small number of public servants had disrespected core values in connection with the scandal and that “[t]he vast majority of public servants try, in good faith, to do their jobs properly and effectively . . . .”<sup>95</sup>

In February 2004, just after the Auditor General’s report on the sponsorship scandal, and in November 2005, just before the first Gomery report was released, the Liberal government unveiled a large number of initiatives designed to promote greater government accountability. These initiatives, which included rigorous internal auditing and contracting requirements, reinforced the movement towards a more rules-based public service that dated back to the HRDC crisis in 2000. The Gomery Commission concluded that the sponsorship scandal was an aberration that did not justify the addition of still more rules.

In February 2006, following the election of the Conservative government, the *Federal Accountability Act* was introduced to respond to perceived shortcomings in accountability, transparency and oversight. Although it contained little in the way of new rules for public servants, the Act addressed a wide spectrum of issues, including lobbying, appointments, contracting, access to information, whistleblowing, and reform of financing to political parties.

An effort to counter the growing emphasis on rules was launched after the adoption in 2003 of the *Values and Ethics Code for the Public Service*. Attention turned to making the Code’s values come alive—to ensuring that these values were integrated into the structures, processes and systems of government. Some government departments had begun to move in this direction shortly after the Tait report, and the OPSVE



had taken several initiatives to foster values-based management across the public service. In 2000, the Auditor General had recommended vigorous values and ethics initiatives throughout government, but noted in 2003 that such initiatives had been left to individual departments.<sup>96</sup> By this time, there was considerable variation among departments in their efforts to promote values and ethics; some had done a great deal but most had done very little. The Auditor General, in her November 2003 report (released in early 2004), urged that values and ethics be better integrated into the day-to-day work of public servants and, in particular, that the Treasury Board Secretariat develop a model for comprehensive departmental initiatives, ensure that departments have adequate resources for values and ethics training, and establish deadlines for departments to implement comprehensive values and ethics initiatives.<sup>97</sup> It is notable that in Australia both the federal government and some state governments have in recent years taken vigorous measures to integrate values into public service.

Ralph Heintzman, head of the OPSVE from 2003 to early 2006, has distinguished between two types of factors influencing high performance in the sphere of public service values and ethics.<sup>98</sup> The first is factors that help to prevent and manage ethical problems or failures (e.g. the existence of appropriate guidelines, standards and frameworks to guide public servants' conduct, capacity to manage ethical and values risks). The second type is those factors "that go beyond simple problem prevention, to promote genuinely high performance in values and ethics" (e.g. the quality of an organization's leadership and people management and the consequent organizational culture). Canada has the luxury of being able to devote resources to the second set of factors because federal public servants have been involved in relatively little unethical conduct, especially in the sense of corruption. Moreover, it is anticipated that progress on this second front will help reduce the number of ethical problems or failures that have to be managed.

In 2001, Catherine MacQuarrie, then Director of the OPSVE, noted the need "to show how values and ethics can deliver concrete results." She argued that "[f]undamentally, a statement of principles must be integrated in the day-to-day ethical thinking of public employees which informs their conduct and influences their decision-making in all things. We need to assist people in the early recognition of ethical dilemmas, find ways for people to figure out how to balance competing values and to be a support for those who practice ethical decision-making. Last but not least, we need to improve methods to measure how we're



doing both individually and as an organization.”<sup>99</sup> By 2006, the OPSVE had developed a “Roadmap to Results” to assist public organizations to measure their performance in integrating values into their day-to-day operations.<sup>100</sup> This emerging focus on results is the next critical stage in the evolution of a professional public service that is animated by shared values in its pursuit of the public interest.

The management and refinement of its public service values and ethics regime is an ongoing challenge for government. As illustrated below, new values and ethics issues arise, and enduring issues take on new forms and new importance—and require new responses.

As part of its traditional role of helping to sustain and strengthen democratic institutions, the public service has a responsibility to help reduce the current democratic deficit and to promote public trust and confidence in government. The democratic values set out in the *Values and Ethics Code for the Public Service*, complemented by such instruments as *A Guide for Ministers*, the *Guidance for Deputy Ministers* and the Management Accountability Framework, provide a firm foundation for public servants’ performance of this role. The Gomery Commission highlighted the challenge of rebalancing relationships among ministers, public servants and parliamentarians so as to promote the democratic values of accountability and transparency. These democratic values need to be carefully balanced with other values, including the professional value of service. Recent research provides empirical evidence of a causal link between service performance and confidence in government,<sup>101</sup> thereby supporting the need for a continuous public sector focus on improving service delivery.

There is also a need to reconcile the tension between the public’s demand for both increased transparency in government and improved protection of individual privacy. And there is related clash between this demand for openness and the government’s need or desire for secrecy. While the Access to Information Commissioner has condemned the culture of secrecy in government, the Privacy Commissioner has warned that the privacy of Canadians is seriously at risk. The rapid growth in government’s use of information and communication technologies (ICTs) has complicated the challenge of reconciling these tensions. Over the past decade, there has been increasing strain between the pursuit of improved service through the Internet channel and the need to protect the values of privacy and security and to ensure equitable service through all





of the main service delivery channels. In addition, initiatives are being taken to promote high ethical performance by public servants in their use of ICTs.<sup>102</sup>

The continuing challenge of fostering a representative and responsive public service through fair and equitable employment practices is the result not only of historical disparities but also of demographic changes in Canada's population. The increasingly diverse, multicultural and multiethnic nature of Canada, combined with the need to compete successfully with the private sector for knowledge workers, requires a public service that reflects the country's diversity. At the same time, the modern concept of managing diversity goes beyond employment equity considerations of gender, race, ethnicity and disability to take account of such factors as age, geographic origin, religion and sexual preference.

A final illustration of an emerging values and ethics issue is the recent efforts of certain occupational groups in the public service (e.g. internal auditors, program evaluators) to seek a greater measure of professionalism. Key to the professionalization process is the adoption of an ethics program, including a code of ethics. The codes of these aspiring professions must be reconciled with such other value and ethics instruments as the code of the profession as a whole (e.g. the Institute of Internal Auditors) and the *Values and Ethics Code for the Public Service*. Careful consideration must be given to avoiding or resolving clashes between the values, rules, standards and guidelines of the profession and those of the public service.

## 8. The Journey Continues

Early in Canada's history, a royal commission expressed the hope that public service would become a special calling. The commission called for "the title of public servant" to become "an honour to be coveted."<sup>103</sup> This study has examined the extent to which the commission's hope has been realized through Canada's journey towards the goal of a professional public service dedicated to the public interest.

The story of the formation of the professional public service has been illuminated by an account of the evolution of the federal government's values and ethics regime. Central to this regime is the notion of the public interest. The Tait Task Force, in its landmark study of public service values and ethics, noted that "the notion of the public interest is a touchstone of motivation for public servants. It is for the public service what justice and liberty are for the legal profession, or what healing and mercy are for the medical profession."<sup>104</sup>



The concept of the public interest has, accordingly, been given pride of place in the *Values and Ethics Code for the Public Service*.

The Code, like the Tait report, was a landmark event in the evolution of the values and ethics regime. It is the most eloquent statement to date of what the public service stands for. It is also the fullest expression of the government's responses to the many challenges that have arisen in the sphere of values and ethics over more than a century and a half. These responses have been chronicled in this study as a series of milestone measures dealing with such recurring issues as reducing patronage, corruption, and conflict of interest; clarifying relationships between politicians and public servants; and pursuing such public service values as accountability, equity, responsiveness, service, openness and transparency. These values are illustrative of the variety of democratic, ethical and other values that influence public servants' decisions—a consideration that is reflected in the four-fold classification of values contained in the Code.

The enduring issues noted above will continue to be joined by new ones. Demographic realities mean that many of the responses to these new challenges will be the responsibility of a new generation of public servants. Much attention has focused recently on the critical importance of transferring organizational knowledge to this new generation. One purpose of this study has been to contribute to this knowledge transfer by documenting the many steps that have been taken during the values and ethics journey. Another purpose has been to alert both current and aspiring public servants to the firm values and ethics foundation that has already been laid, to the measures under way to strengthen that foundation further, and to the new challenges that lie ahead.

The *Values and Ethics Code for the Public Service* is designed to help public servants deal with both enduring and emerging issues. It is the centrepiece of the Canadian government's values and ethics regime. To stand the test of time, vigorous and sustained efforts must be made to ensure that the content of the Code is reflected in the governance and decisions of the public service.



## **CHRONOLOGY OF EVENTS**

### **The Public Service and Responsible Government (1840–1867)**

1848: Responsible Government

1857: *Civil Service Act*

### **Seeking an Efficient Non-partisan Public Service (1867–1918)**

1867: Confederation and the *British North America Act*

1877: House of Commons Select Committee on the Civil Service

1891-92: Royal Commission on the Civil Service

1908: Courtney Royal Commission on the Civil Service

*Civil Service Act* (Creates Civil Service Commission)

1918: *Civil Service Act*

### **The Arrival of the Administrative State (1919–1964)**

1913: Murray Report on the Organization of the Public Service

1924: *Civil Service Superannuation Act*

1925: First Order-in-Council on Conflict of Interest

1931: *Consolidated Revenue and Audit Act* creates Office of Comptroller of the Treasury

1940: Clerk of Privy Council Given Additional Role as Secretary to the Cabinet

1951: *Financial Administration Act*

Order-in-Council on Conflict of Interest

1961: *Civil Service Act*

1962: (Glassco) Royal Commission on Government Organization



1964: Prime Minister Pearson's Letter to Ministers on Conflict of Interest

**From Ethics Rules to Values Statements (1965–1984)**

1967: *Public Service Employment Act, Public Service Staff Relations Act* and Amendments to *Financial Administration Act*

1968: *Official Languages Act*

1969: Royal Commission on the Status of Women

1973: Public Servants Conflict of Interest Guidelines and Standard of Conduct for Public Service Employees

1977: *Auditor General Act*

1978: Post-Employment Activities Guidelines

1979: (Lambert) Royal Commission on Financial Management and Accountability  
(D'Avignon) Special Committee on Personnel Management and the Merit Principle

1982: *Canadian Charter of Rights and Freedoms*

1983: *Access to Information Act* and the *Privacy Act*

1983-84: Task Force on Conflict of Interest

**Values Take Centre Stage (1985–1996)**

1985: Conflict of Interest and Post-Employment Code for Public Office Holders and Conflict of Interest and Post-Employment Code for Public Servants

1986: *Employment Equity Act*

1987: Report of Deputy Ministers' Working Group on Governing Values

1990: *Public Service 2000*

1991 Supreme Court Decision on the Political Rights of Public Servants



1992: *Public Service Reform Act*

1994: Program Review

### **Appointment of Ethics Counsellor**

1995: Auditor General's Report on Ethics and Fraud Awareness in Government

1996: *Getting Government Right*

Policy Research Initiative

Report of the Deputy Ministers' Task Force on Public Service Values and Ethics

### **Getting the Values Right (1997–2003)**

1998: The First Citizens First Report

Appointment of Deputy Minister Co-champions on Public Service Values and Ethics

1999: The First Public Service Employee Survey

Creation of Office of Public Service Values and Ethics

2000: Results for Canadians: A Management Framework for the Government of Canada

Auditor General's Report on Values and Ethics in the Public Sector

2001: Treasury Board *Policy on the Prevention and Resolution of Harassment in the Workplace*

Treasury Board *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*

2002: A Guide for Ministers and Secretaries of State

2003: Guidance for Deputy Ministers

Management Accountability Framework

*Public Service Modernization Act*

Adoption of *Values and Ethics Code for the Public Service*

### **Living the Values of Professional Public Service (2004– )**



- 2004: Auditor General's Report on Accountability and Ethics in Government
- 2004: Creation of the Office of the Ethics Commissioner for the House of Commons and of the Senate Ethics Officer
- Report of the Working Group on the Disclosure of Wrongdoing
- 2004–06: The (Gomery) Commission of Inquiry into the Sponsorship Program and Advertising Activities
- 2005: *Public Servants Disclosure Protection Act* (Bill C-11). Proposed Charter of Public Service Values and Code of Conduct
- 2006: Prime Minister Harper's Letter to Ministers on Accountable Government
- The *Federal Accountability Act*





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