

Right today Wrong tomorrow

by Mike Levin

ALL GOVERNMENTS IN Canada have rules for their employees: about what kind of gift a public servant can accept, how a government contract is awarded and who gets to use the corporate credit card. Not every public servant follows the rules, and it is this minority which has catapulted public-sector ethics back into the headlines.

In the tempting world of public-sector procurement, according to Norman Steinberg, director general of the Audits and Ethics Branch of Public Works and Government Services Canada (PWGSC), ethical behaviour means, “ensuring Canadians have trust in the institutions that deliver their services.”

When people have that trust – which most believe is Canada’s status quo – there is no problem. But for many reasons, the perception of appropriate behaviour has taken a beating in recent years, and government officers tasked with the business of ethics know they have the near-impossible job of creating an environment where all decisions can stand up to public scrutiny.

To understand the dilemma is to understand the clatter of the modern world and how the ethics bar often appears to be a moving target, especially under the torque of high-profile malfeasance.

“I can’t imagine a rule for every (ethical) contingency; there are so many new issues coming up all the time. But you can’t be

they did on the first day of school, being judged by often-incomprehensible criteria, worrying about the right thing to do, the proper way to act, and often hesitating to do anything for fear it’s wrong. This is dangerous because they run the lion’s share of Canada’s economy.

A damned-if-you-do, damned-if-you-don’t attitude has festered for a decade. While surveying public servants to help create a government-wide ethics code, the federal Treasury Board Secretariat (TBS) found a huge percentage of workers unwilling to report unethical behaviour for fear of reprisal or because they believed no action would be taken to correct it.

Jeff Le Bane, senior director of TBS’ Office of Values and Ethics, believes this does not reveal problems with what government ethics are, just how they are applied. “Public servants want the tools, and assurances, that they can maintain a high level of ethical performance.”

Those resources have only recently been identified and become available. Which is why Steinberg and Le Bane, among many others, are trying to inject a much-needed dose of confidence into how Canada’s public service makes its ethical decisions.

A renaissance of Canadian-government probity started in 1994 with the appointment of a Public-Service Ethics Counsellor. Fairness monitors – who advise on procurement contracts – emerged at about the

Provincial governments, through various municipal Acts, are jumping on the ethics-code bandwagon. For example, Ontario’s Ministry of Municipal Affairs is taking input from stakeholders in preparation for passing procurement policy into law in 2005. Perhaps one of the more-telling signs of behaviour modification is how many schools are building ethics components into courses.

“Students have to be exposed to ethical behaviour standards, because today there is so much focus on (good and bad) collaboration and relationships in business. I think this is one of the major issues in procurement, one that should aim at producing a better business environment,” says Algonquin College professor Geoff Mace, coordinator of Ontario’s first degree in supply-chain management.

If nothing else, Mace adds, this focus will give workers a foundation to question what ethical behaviour is, a conspicuously sporadic trend in today’s public service. It was only early in 2003 that Steinberg’s office started hearing specific requests for help on ethical issues from PWGSC procurement officials.

“They felt a need for guidance and dialogue,” Steinberg says, especially from assistant deputy minister and director general levels, where answers to ethical dilemmas “have taken longer to percolate.”

Steinberg isn’t pointing fingers. He simply sees ethics as a holistic issue, where each person is a practitioner and should provide input. Which is why last year he asked the non-profit Canadian Public Procurement Council and its constituency of 600 federal, provincial and municipal entities to help refine ethics guidelines for PWGSC employees.

Edward Keyserlingk, the Public Service Integrity Officer (Canada’s ethics sheriff), takes a harder line. “Yes, there is a need for

ethics... a moving target

completely a values-based organization either,” says Steinberg. “Our goal is to establish what ethical dilemmas are about and to try and help employees understand and work through these complexities.”

Most public-sector procurement officials interviewed for this article are stressed out. Many talk about feeling the same way

same time. TBS created the Public Service Values and Ethics Code in 1999, and PWGSC created its own code in 2000. The Public Service Integrity Office was established in 2001, and even former Prime Minister Jean Chrétien layered many of his 2002/2003 addresses with the call for improved ethical behaviour.

better guidance so we can know which ethical values we're going to put into practice. But the government is too big, with too many temptations, not to have wrongdoing. The idea of changing the (ethical) culture is terrific, but you can't change human nature," he says.

Because there will always be corruption, a proper venue for enforcement is vital if the government wants to show that ethics are a high priority. Yet a compliance system doesn't provide much clarity for procurement front-liners wondering what, exactly, is being asked of them. Direction comes from defining how ethical behaviour is created – from rules or values – and then explaining how it should be followed.

And, it isn't possible for Canadian procurement officials to understand ethical processes by looking toward the United States. This is not a cheap swipe; rather it is an acknowledgement that America defines its ethical behaviour with a very precise, and very fat, rulebook. Steinberg calls this book an over-reaction to scandal. "Canada is much more of a balance between rules and values," he says.

At the Conference Board of Canada, research on ethics has been filtered into the public service for years. Senior Research Associate Zachariah Ezekiel feels building integrity into a system is achieved faster by asking, "What would the world be like if...?" than by narrowly defining right and wrong behaviour.

"In our research we've found a correlation that shows value-based systems are more effective in creating ethical behaviour. I know this can be perceived as ambiguous because it flies in the face of 'what gets measured gets done,' but if appropriate behaviour is a goal, people have to know what their organization's standards are and what is expected of them," Ezekiel says.

Ethics are ultimately about making personal decisions and are therefore about human nature. Unfortunately, there's always a large *Catch 22* element involved. It's usually easier to get people to buy into a system where their values are listened to and incorporated – yet they generally feel more comfortable where rules have already been proscribed. Certainly strong regulations give substance to TBS' newest edict:

"You decide. You act. You accept responsibility for your actions."

"The public service could be better served with more legislation," says Le Bane, but adds quickly that rules are best-used for "ethical maintenance," not creation.

In procurement, these rules predicate on four points:

- upholding the public trust in all activities;
- creating transparency at all times in all contracts;
- avoiding preferential treatment, or even the perception of preferential treatment; and
- providing maximum value for public funds.

These could be replaced by a single statement – do the right thing. Yet as one procurement official in Ottawa puts it, "The thing that was right yesterday may not be right today. In my experience, there's not a lot of consistency. No one wants to take the responsibility of explaining what 'right' means."

Defining "the right thing" can also be difficult when a political agenda supercedes the public interest. "This is why you have to force articulation of what goes into contracts," says Keyserlingk.

From a private-sector view, procurement ethics have one goal: a transparency that provides honest answers to 1) what the real scope-of-work guidelines are, 2) why the contract was awarded to a specific bidder and 3) how fairness will be guaranteed during project monitoring.

"I think the point you want to get to is where the rules are known, not only by the procurement official, but also by customers so that they can understand how the system works. This develops trust, which is everything because today, once you lose your reputation – even the perception of it – it can take forever to get it back," says Garth Whyte, executive vice president of the Canadian Federation of Independent Business.

It is beyond the scope of this article to itemize ethical rules, such as how to debrief losing bidders or how to tell a minister "No, I can't give the contract to your brother-in-law's firm just because he can make the cheapest widge."

However, ethics guidelines can be found. Ontario's comprehensive guide for municipal procurement officers, *A Guide To Developing Procurement Bylaws*, is available on the Ontario Ministry of Municipal Affairs website.

The Treasury Board is the place to find the federal public service's code; Industry Canada has the Office of the Ethics Counsellor; the Public Service Integrity Office is where to lodge complaints of unethical behaviour; and the Audits and Ethics branches of federal government departments, such as PWGSC, hold departmental rulebooks.

Conversely, it is difficult to find specific rules, leaving many decisions open to individual discretion. For example, employees can only accept gifts that are "infrequent and minimal" according to the Public Service Values and Ethics Code. But, the amount appears to be less important than the context of the transaction, meaning that if a contract has already been awarded, or if it is deemed in Canada's interest, more-expensive gifts might be acceptable. And nowhere is there an explanation of how to tell your ADM that it's going to cost his department an extra \$5,000 to award what you perceive as an ethical contract. Is it any wonder procurement officials are confused, and frustrated, when the best piece of advice they're hearing is "When in doubt, don't do it."

Steinberg recognizes the frustration and has initiated a PWGSC pilot project to help procurement officers deal with ethical dilemmas. It provides resources and tools to ask ethical questions right up the chain of command, to help communicate transparency to stakeholders, and to make ethical decisions in contract allocation.

Yet even with his department's progress, Steinberg admits there's still a quagmire of ethical dilemmas to wade through. "To purchase fairly adds a dimension that is not always effective or efficient. It can be the most ethical process, but if the product is not delivered, have we done our job?" he wonders.

These questions aren't new, but procurement officials can now tap several sources for answers. ♪

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