



Exercising ethics

by Gerry Stobo

GIVEN ALL THE ATTENTION that ethics, governance, and accountability have recently received, one might think that these concepts are relatively recent phenomena. It is almost as though they rose from the ashes of recent corporate and government malfeasance, whether due to accounting fraud that brought about the destruction of multibillion dollar corporations, and with it the hopes and dreams of investors, or government misspending and fraud by politicians and public servants. Commentators denounce this wrongdoing citing a lack of ethical conduct on the part of those responsible.

Responses to the criticism have been predictable – create more rules, more closely supervise the regime and punish those whose behaviour is determined to be below the prescribed standards.

But ethics, as Buddhists will tell us, have long been the cornerstone of all human interaction – as a code of right living. Through the philosophical contemplations of Plato and Spinoza to the modern school of ethical analysts, there has been no shortage of deep thinkers telling us that ethical values are the foundation of all societies. The problem seems to be, in part, that those ethical values and the moral compass they provide have not effectively been translated to “the working level.” To me, this is where the disconnect occurs and where the void must be filled.

In 1996, John Tait, Q.C., a highly respect-

ed jurist and senior public servant in the Government of Canada, attempted to bridge that gap with the publication of *Ethics and Values in the Public Service*. Tait analyzed the values and ethical framework within which public servants were, in a free and democratic society, expected to exercise their mandate. The paper captured the heart of those values that should frame the working activity of all public servants in Canada, and I have often said that the Tait paper should be required reading of all public servants on the first day of work. Sadly though, like many contributions to ethical understanding, this report seems to have never been effectively communicated to rank and file public servants. Ethical values, to the extent that they have been reduced to principles that guide behaviour, rarely live outside of the paper on which they are written.

Public servants are expected to perform their responsibilities to the highest ethical standard; and, because they are representing the public interest in the course of their work, that standard is higher than that expected of employees in private corporations. As Justice Bellamy stated in the “Bellamy Toronto Good Government Report”: “...it is widely recognized that public officials have a greater responsibility to uphold ethical standards to protect the public interest.” This is a cornerstone value, particularly with government procurement practices as the report goes on to note: “almost universally, experts

[stated] that ethics-related values and principles are the essential foundation of public sector procurement in leading jurisdictions.”

This is not to say public servants, and others who are guided by policies, codes of conduct and ethical standards, do not act in an ethical manner. Public officials will say, and most with justification, that the responsibilities they discharge now are done in a manner consistent with the “code of right living” and that more regulations, procedures, directives, guidelines, techniques or best practice pronouncements will do little to ensure compliance.

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We’ve all read codes of conduct that attempt to act as an ethical roadmap. More codes are now being prepared, both in the private and public sector, to respond to the organizational embarrassment that has – fairly speaking – been caused by a handful of misguided and criminally motivated individuals. No ethical roadmap is able to anticipate the myriad of issues that workers will confront in their daily activities, but when workers face a choice in what they are doing and how they are to behave, they must have

some framework to help them analyze the options and choose the course that most closely respects the ethical values of their organization. Even existing ethical roadmaps will have little value unless the principles articulated are alive and rooted in the minds and decision-making of the worker. In short, workers have to be equipped with the tools to understand the choices they face, and to know what factors should be taken into account and those that should be disregarded.

When I joined government in the late 1980s, one of the first jobs I was given was to create a code of ethical conduct in an adjudicative agency in response to some problematic behaviour that had embarrassed our agency. At that time, there were few precedents to rely upon in deciding what principles should be articulated and how best to do so. There was even resistance in the agency to developing and implementing a code of conduct – some believed it would interfere with the independence of decision makers. Our response was simple: the principles and values, those essential ethical ingredients, contained in the code were nothing more than what they were expected to do by law, captured and reduced to writing – an ethical roadmap if you like.

Despite some initial resistance, the code of conduct, once implemented, became a permanent feature no longer viewed with suspicion. It became a useful tool to help us measure whether behaviour met or did not meet the ethical standards outlined. The ethical mission statement proved its worth, time and time again.

Upon moving to another agency, I was again tasked with finalizing its code of conduct. The approach was different but the principles remained the same – as ethical values should be. However, like so many pronouncements on ethical values, once read, these codes were filed, and rarely if ever referred to again.

This is not to say that ethical issues rarely arise. They do, more often than we think. They are often hidden just below the surface of our daily activities and are often not identified as such either because they are not the centre piece of the issue being dealt with or are viewed – wrongly in my view – as something that doesn't need special attention. However, if ignored, ethical issues can and sometimes do create significant anxiety and discomfort.

For example, questions about social relationships between public officials and the

general public is a recurring theme. Would these cause any concern, particularly if public officials were not in a position to influence decisions or affect the outcome of some matter under consideration by governments? Many former public servants, having retired from government service, are lobbyists or consultants for different industries and companies. One of their selling features to prospective employers is their longstanding rela-

tionship with the departments for whom they worked. These people can, and do, pick up the phone and call former colleagues. How should officials react to these calls? Would getting together for lunch or dinner or a weekend visit to the cottage be appropriate? How about an invitation from a stakeholder to play golf or attend a conference? What if the venue was a resort setting? What about a request to sit on the executive of a charitable

organization, which, on its letterhead, uses your name?

The answers to some of these questions are straightforward enough. Others are more subtle and require careful analysis.

As no code or policy can possibly anticipate all permeations of ethical issues that public office holders have on a daily basis, it is important for public officials at all levels to understand the ethical values that guide their work and to understand how to analyze the issues. This is one of the reasons that,

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under the leadership of Pierre Gosselin, chairman of the Canadian International Trade Tribunal, I undertook the task of creating an ethical training programme for federal adjudicative decision makers. Mr. Gosselin believed that decision makers need to understand how to analyze ethical issues, just as they were trained to analyze issues related

to their mandate, whether that was to determine what the government should purchase or how to decide a case under consideration by an adjudicative agency.

With a team of three dedicated lawyers, I helped develop 25 scenarios that were used as a starting point for discussion. Each scenario was less than a page long in length, but confronted the reader with several ethical issues. The audience would be asked to identify those ethical issues and how they would go about analyzing them.

I was always amazed by how well educated and highly ethical people could have such diverse and different approaches to the same factual scenarios. Sometimes these different approaches ultimately led to the same result, at other times it often led to great – and often heated – debates.

The scenarios created a platform from which a discussion about values could be launched and what factors should be taken into account in analyzing them – doing what ethical codes had not done to that point, bringing life to those principles by discussing fact patterns that were relevant and plausible. The ethics training programme has been presented to audiences throughout Canada and in the United States. Other jurisdictions have used the scenarios as a template to form

their own ethical training packages. In my view, all public servants, and indeed workers from the private sector, should have a similar training programme.

An ethics training programme like the one developed for adjudicative decision makers could easily be integrated in training programs such as the newly established certification programme for federal procurement officials, designed to equip public procurement officers with the required skills, knowledge and expertise to perform their responsibilities.

A relevant and meaningful ethical training programme – some framework to help them apply the principles they are already required to follow – will show that the ethical issues they face can be analyzed and resolved in a manner consistent with the “code of right living” discussed earlier. This way, these codes of right living become more than words and form part of the tool chest public officials use as they carry on their day-to-day activities. ❧

Gerry Stobo is a lawyer at Borden Ladner Gervais in Ottawa, practicing in trade, federal procurement and international matters. The assistance of Jack Hughes is gratefully acknowledged. Gerry can be reached at (613) 787-3555 or gstobo@blgcanada.com.