

---

# **Regulating the Behaviour of Ministers, Special Advisers and Civil Servants**

**by Simon King**

---

**June 2003**



The **Constitution** Unit

---

ISBN: 1 903903 21 1

First Published June 2003

Copyright © The Constitution Unit

Published by The Constitution Unit  
School of Public Policy, UCL  
29–30 Tavistock Square  
London  
WC1H 9QU

Phone: 020 7679 4977

Fax: 020 7679 4978

[constitution@ucl.ac.uk](mailto:constitution@ucl.ac.uk)

[www.ucl.ac.uk/constitution-unit/](http://www.ucl.ac.uk/constitution-unit/)

This report is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, hired out or otherwise circulated without the publisher's prior consent in any form of binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

---

---

# *Contents*

Summary of Issues Explored	4
Recommendations on the Regulation of Special Advisers	7
The Accountability of Ministers, Civil Servants and Special Advisers	9
Lessons for the UK	15
Conclusion	18
Australia	21
I. Ministerial Regulation	22
II. The Australian Civil Service	23
III. Special Advisers	27
Conclusions	30
Canada	32
I. Ministerial Accountability	33
II. Civil Service Accountability - Overview	35
III. Special Advisers	40
Conclusion	42
New Zealand	44
I. Ministerial Accountability	46
II. The New Zealand Civil Service	46
III. Special Advisers	51
Conclusions	53
Ireland	55
I. Ministerial Regulation	55
II. The Irish Civil Service	56
III. Special Advisers	59
Conclusions	61



# Summary of Issues Explored

The growth of the bureaucracy in the UK has raised questions on how to promote and maintain ethical standards of conduct. There is a consensus that ministers and civil servants should be publicly accountable, yet opinion is divided over what precise mechanisms work best in maintaining ethical standards. Furthermore, the insertion into the bureaucracy of political or 'special' advisers—persons directly appointed by ministers to provide both political and policy advice—has complicated the enforcement of ethical guidelines. This report compares accountability measures in four Westminster style countries, Australia, Canada, Ireland and New Zealand. The principal issues explored are:

## *The changing structure of ministerial and civil service relationships*

- How has the relationship between ministers and civil servants changed in each comparator country?

## *Ministerial, Civil Service and Special Adviser accountability*

- How accountable are ministers, civil servants and special advisers in each country?
- What mechanisms does each country use to promote accountability?
- How effective are such mechanisms?

## *The balance between statutory specification or looser advisory codes*

- What is the optimal balance between statutory regulation and unenforceable codes of conduct in establishing accountability?
- Which countries combine the two approaches most successfully?

## *Communicating ethical guidelines*

- What are the best methods of communicating ethical guidelines to ministers, civil servants and special advisers?
- How is misconduct reported and investigated in each country?

## *Training on ethical issues*

- Which countries provide training for ministers, civil servants and special advisers on ethical issues?
- What are the best training mechanisms?

## *Lessons for the UK*

- Each chapter concludes with lessons that the UK can draw from practices peculiar to the country under review

The conclusion of the examination of the four countries is that a combination of statutory regulation and codes of conduct work best in maintaining executive ethical accountability. Countries such as New Zealand and Ireland that promote dialogue between ministers, civil servants and special advisers through regular communication and training programmes tend to experience few problems. The biggest challenge is in managing the growing number of private sector personnel entering the civil service. This is particularly the case in Australia and New Zealand, which have broadened civil service recruitment.

Ethical rules tend to emerge from negotiations between interested parties rather than deductions from a set of principles. They need to be sustainable and difficult to reverse. While written rules make the management of ethics more efficient, voluntary compliance is the key to making a regime work over time.



---

## *Recommendations on the Regulation of Special Advisers*

- Under New Labour the number of special advisers in Whitehall has doubled, from 38 under John Major to 81 under Tony Blair. In the Prime Minister's Office the numbers have trebled. Special advisers have a power and influence not felt before.
- The UK is not alone in this respect. Other countries which adopted the British model of a permanent, non-partisan, impartial civil service have felt the need for political advisers, and have seen steady increases in their numbers. Australia, Canada, New Zealand and Ireland have all introduced political advisers. Australia and Canada now have twice the numbers of political advisers of the UK.
- Recent years have seen increasing concern in all these countries about declining standards of behaviour amongst ministers, advisers and officials. This has led to increasing regulation, through statute, codes of conduct and commissioners to police them. All five countries have extended and updated their codes in the last five years.
- Legal regulation on its own is not enough. The promotion of virtue is as important as the control of vice. Codes of conduct need to be developed in dialogue with civil servants, and ethical behaviour needs to be promoted in a variety of different ways, through induction training, seminars and human resources management.
- Political advisers are less regulated than ministers or civil servants. The UK is the only country to have introduced a Code of Conduct for political advisers, and before that a model contract. But there remain difficulties in its enforcement. The government insists that political advisers can only be disciplined by the minister who appointed them, and not by the head of their department.
- There are also difficulties of enforcement in relation to the Ministerial Code of Conduct, which has no external enforcement agency to investigate allegations of misconduct. In Ireland this has now been given to the *Standards in Public Offices Commission* which supervises compliance with Ireland's *Ethics Acts* insofar as they apply to office holders, ministerial special advisers, senior civil servants and directors and executives of specified public bodies.
- There is no panacea for ensuring high standards of civil service behaviour. The most effective long term measure is to combine the existing codes with legislation and training to reinforce each other in promoting a strong institutional culture of ethical awareness and behaviour.
- A Civil Service Act would help give statutory backing to the civil service Code of Conduct. But it needs to be supplemented by regular training sessions in ethical conduct. It will also take more time to properly assess the impact of this legislation on public service accountability.



# *The Accountability of Ministers, Civil Servants*

## *The Scope of the Report*

The research for this report was commissioned by the Committee on Standards in Public Life as a comparative study of accountability regimes for ministers, civil servants and special advisers.

The countries selected for this study are Australia, Canada, Ireland and New Zealand. This is because all operate Westminster style systems of government and have recently been involved in modifying their regulatory codes and practices.

Table 1 gives an overview of the size of the public service in each comparator country. All countries have a similar size civil service when taken as a percentage of overall population with the UK and New Zealand having the largest. The number of cabinet ministers tends to range between 20 and 30 with Canada having the most and Ireland the least.<sup>6</sup> In terms of special advisers, Australia has the most per ministry, followed by New Zealand and Canada. The UK and Ireland have roughly similar amounts. The distribution of special advisers varies. In the UK one-third are concentrated in the Prime Minister's office as they tend to be in the other countries. In all three public service categories, the UK does not appear unusual.<sup>7</sup>

## *Institutions promoting ethical conduct*

All four countries in this study have institutions and procedures committed to maintaining ethical standards of conduct in public life. There is a consensus that there should be a measure of public accountability among politicians and civil servants. Yet the problem lies in what mechanisms work best in maintaining ethical standards. For example, it is not sufficient to assume that a mere awareness of ethical matters by the parties concerned is good enough to guarantee ethical conduct. Furthermore, it is difficult to determine the precise methods that should be used in most countries to regulate ethical behaviour. Initiatives have concentrated on formulating guidelines and amending legislation. Yet these are but two ways of tackling ethics issues in the public service. Other methods range from education-based strategies to quasi-judicial

regulation, constitutional rules and criminal legislation.

In short, the main procedures for regulating ethical conduct in our comparator countries comprise:

- Westminster conventions of ministerial responsibility
- A written code, known to all and policed by the executive (Australia)
- A combination of a code of conduct and a civil service commissioner (UK)
- Parliamentary legislated code under which a commissioner is appointed to advise MPs and recommend courses of action (Canada)
- A statutory authority which may initiate its own investigations, independent of government (Ireland)

The main conclusion of this study is that there are no simple institutional solutions. A variety of approaches for the regulation of ethics should be adopted rather than relying completely on legislation or the capabilities of an ethics counsellor. Furthermore, it is suggested that if practical measures can be combined with initiatives to promote a long-term culture of ethical responsibility, a low level of corruption will ensue.

## *Ministerial Accountability*

In all four comparator countries it could be argued that ministers are not accountable to parliament in the way they were once meant to be. It is possible that breaches of ministerial responsibility have been ignored and individual ministers have not been answerable to any regulatory authority. This is helped by the protective power of cabinet convention since decisions are protected by cabinet secrecy. If so, it shows that a great deal of evidence on potential ethical malpractice may be out of the public domain. Furthermore, ministers have a high level of authority over junior officials. This factor presents them with unique opportunities and powers of patronage which can potentially place pressure on the civil service to behave unethically.

The individual country chapters indicate that the institutions that countries use to regulate ministers have a limited set of powers. In Australia the *Auditor General* has proved reluctant to investigate ministers. In New Zealand there are only a limited set of rules governing ministerial conduct. In Canada the *Conflict of Interest Code* and the *Office of the Ethics Counsellor* although useful, have failed to completely deter ministerial scandals. The Canadian Auditor-General suggests that the minister is accountable to parliament for the management of a federal department or agency. But he also suggests that government should begin a process of consulting parliament and the public on how to reconcile new governance arrangements with accountability to parliament.

A problem is that there are often divergent opinions about appropriate standards. This is because there may have been differences in the perception of ethics from citizens and representatives. Several studies have found that the ethical standards of elected representatives were both lower and more diverse than those of voters.<sup>8</sup> It is possible that this is because parliamentary and ministerial life creates a set of ethical choices not faced by ordinary citizens. If this is the case, it could give rise to inappropriate and inflexible guidelines being approved by parliament.

Specific legislation appears to be effective in preventing ministerial unaccountability. Here Ireland leads the way with its *Standards in Public*

*Office Act, 2001*. The legislation established a long-term committee of politicians, civil servants and judges to review ethical conduct and to apply sanctions to ministers through parliament. So far, one successful prosecution has taken place.

### **Civil Service Accountability**

Two doctrines have traditionally underpinned the notion of a politically impartial, neutral civil service.<sup>9</sup> The first emphasises the distinctiveness of the civil service and makes a clear division between it and the private sector. The second implies that a number of procedural regulations should restrict the discretionary power of senior civil servants.<sup>10</sup> These doctrines have been challenged in all four comparators under review, as well as in the UK. Reforms in these countries have envisaged a civil service organised along more private sector lines where traditional style bureaucrats are transformed into more enterprising managers.

In this new world of enterprising government, the civil servant is expected to honour his official mandate while at the same time moving outside the hierarchical world of government in search of quasi-market relationships with contractors and competitors.<sup>11</sup> This has made the life of the civil servant more complex since parliaments and courts seek detailed, descriptive reports, the statute honoured and due process followed. In contrast, the world outside the civil service is

**Table 1. Comparative Public Service Overview**

Country	Population	Size of Civil Service	Size as % of population	No of Cabinet Ministers	No. Political Advisers	Advisers per Minister
UK	59.7m	463,000	0.8%	23	83 <sup>1</sup>	3.6
Australia	19m	121,300	0.6%	30	152 <sup>2</sup>	5.0
Canada	31m	186,314	0.6%	36	161 <sup>3</sup>	4.4
Ireland	3.5m	27,000	0.7%	15	33 <sup>4</sup>	2.2
New Zealand	3.8m	30,600	0.8%	23	106 <sup>5</sup>	4.6

more fluid and adheres less to a common set of standards.

### ***The Rise of Special Advisers***

An important new source of support for Ministers is the political or 'special' adviser. Known as ministerial advisers in Australia and New Zealand, executive assistants in Canada and *directeurs de cabinet* in France, political advisers differ from civil servants in being appointed directly by ministers. They have close and direct access, their tenure depends on that of the minister, and they are exempt from the requirement to be impartial and non-partisan. The number of political advisers is increasing in Westminster systems but very little is known about their recruitment, roles, duties, interaction with the permanent civil service and effect on policy making.

Special advisers first emerged as a significant phenomenon in the 1970s. Australia, New Zealand and Ireland have seen a large increase in their numbers. A similar and dramatic increase has occurred under the Blair government in the UK. Since Labour's election in 1997, the total number of political advisers has grown from 38 to 83, while government expenditure on personal staff has increased from £1.5m to £3.8m. Most government departments have two special advisers working alongside the permanent civil servants.

The role of a special adviser is complex and varied. For example, some special advisers are primarily political and seek to add a political dimension to the advice available to ministers. Others are more policy focused and concentrate on providing a minister with expert advice in a particular field. Others still are unpaid and provide general advice to ministers. The number of unpaid advisers has also increased in the UK, particularly with the formation of the *Forward Strategy Unit* in the Prime Minister's Office. Before the 2001 general election, the Prime Minister was served by a private office (consisting largely of civil servants) and a policy unit (consisting largely of special advisers). Now the office, known as the *Policy Directorate*, brings both civil servants and special advisers together in a single unit. These varying categories of adviser seem to have placed a strain on the ability of regulatory rules to provide clear ethical guidelines.<sup>12</sup>

In 2001, the UK drew up a *Code of Conduct for Special Advisers* which consolidated appropriate elements of the existing *Civil Service Code* setting out the duty of special advisers to uphold the political impartiality of the civil service. It also includes a section on the direct media contacts of special advisers, making clear the nature of the role they play in relation to the work of the civil service information staff. The *Code of Conduct* is issued to all special advisers on commencing employment. The *Code of Conduct* only applies to paid special advisers. Unpaid advisers are not required to comply with the code and their terms of employment are set out in a letter indicating the subjects with which they may deal. In the case of paid special advisers, their contractual position complicates accountability measures. Since special advisers are appointed directly by ministers, responsibility for their behaviour rests ultimately with the Prime Minister. Complaints from civil servants have to be made via departmental permanent secretaries who in turn have to approach individual ministers. This is considered a cumbersome way of achieving the accountability of special advisers.

### ***Procedures in Place to Regulate Ethics***

All of the countries in the study have formal procedures in place to govern the conduct of civil servants. These are expressed as rules in various pieces of legislation or as recommendations in codes and guidelines. Furthermore, most countries have updated these core values and guidelines over the past five years. Their major challenge is how to ensure consistent standards of behaviour while at the same time allowing for unforeseen situations and specific departmental characteristics. None has yet discovered a panacea for such regulation. New Zealand, with its range of documents stating expected standards of behaviour has, perhaps, come closest. For example, the country has a general code stating minimum standards, guidance material for different departments, statements of expected performance from departments, individual department codes and other documents such as the *Cabinet Office Manual*, which includes advice for those working at the political/administrative interface (in this case, special advisers).

Furthermore, government departments in each country possess internal control mechanisms, which incorporate annual reviews of ethical practice. Similarly, each parliament undertakes reviews of civil service activities. The empowerment of an independent commission (as in Ireland) to scrutinise poor administration has also become a popular tool of control.

### ***Getting the balance right***

The challenge is to get the balance right between statutory specification of conduct and advisory codes. This is known as the ‘vice and virtue’ argument. Focusing on vice tends to lead to proposed solutions that involve strict forms of legal regulation to better detect and thereby deter civil service misconduct.<sup>13</sup> On the other hand, analysts of ‘virtue’ seek to devise motivational institutions and incentives that can restore a commitment to ethical values among civil servants.<sup>14</sup> This tends to manifest itself in the issuing of codes of conduct coupled with individual departmental awareness programmes and training initiatives.

The general view is that the best system combines the two. In attempting to legislate for unrealistically high standards of public virtue one runs the risk of creating unworkable solutions and public cynicism. On the contrary, no one would wish to have a regime where standards of corruption were high, tolerated and unnoticed. At present, virtue-ethics are in vogue, as can be seen from the plethora of codes of ethics that our four comparators have developed. They are a product of the search for something more substantial than the austere conflict-avoidance approach found in the self-regulatory regimes usually devised by political executives.<sup>15</sup>

All countries in this study make an effort to balance the two approaches. All have *Public Service Acts*, which are frequently updated to take ethical values into account. For example, in 1998, the Australian government updated its *Public Service Values* to take into account new regulations requiring departmental heads to uphold and promote the revised *Australian Public Service Values*. In Ireland, a draft code of conduct—which incorporates core public service values—is under consideration by the government. Both countries sought to involve the existing civil service in helping draft the revisions through a method of consultation. Staff

took part in focus groups with ethics experts. This is not unlike the current consultative process being undertaken by the Wicks Committee in the UK.

### ***Communicating ethical guidelines***

Surveys of civil servants often reveal that they are unaware of ethical guidelines. Therefore, it is particularly important that governments have an effective method of communicating core values and changes in legislation. Some countries do better than others. Australia, Canada and Ireland communicate core civil service values to employees as soon as they take up employment. This is done through the circulation of leaflets (Ireland) or via the internet (Australia). In Canada and New Zealand individual departments have ongoing training programmes to communicate and reinforce core values. Furthermore, human resource sections of government departments in Canada run impromptu seminars on the latest ethical developments. While this is a productive development, it is essential that all countries have several channels of communication to civil servants so that ethical values can be absorbed in a clear and relevant way.

### ***Statements of core values***

Most statements of core values cover the same issues. Conflict of interest prevention features highly, with sections on receiving gifts, benefits and the use of official information. The issue of working outside the civil service is also widely covered. Australia gives particular attention to whistleblowing while Canada has a lengthy section on political work. All countries make use of criminal codes to sanction corrupt behaviour by civil servants. These codes cover active corruption, passive corruption, attempted corruption and partiality in decision making. In Ireland, dedicated anti-corruption laws specify more stringent standards for civil servants (*Public Bodies Corrupt Practices Act, Prevention of Corruption (Amendment) Act, Ethics in Public Office Act*). This is more up to date than parallel UK legislation (*Public Bodies Corrupt Practices Act 1889, Prevention of Corruption Act, 1916*).

### ***Role of human resources***

All four countries emphasise that sound human resources management plays a key role in

promoting an ethical environment. This ranges from recruitment and promotion practices based on merit to the employment of skilled human resource officers who can communicate core values on a regular basis. For example, in Australia, an evaluation of candidates' ethical standards during interviews is carried out. Furthermore, pre-posting briefings are given by the Australian *Department of Foreign Affairs and Trade* to raise awareness of ethics. Irish human-resources officers have a policy of paying special attention to civil servants working in sectors particularly susceptible to corruption such as the customs services and procurement divisions. Here, staff are regularly rotated and are required to disclose financial interests.

### ***Training on ethical issues***

All countries in the study provide training to civil servants on ethical issues. Some differ on whether training is voluntary or compulsory. In Australia, training is mostly voluntary but can be made compulsory if a department identifies a specific need. The UK operates a similar system. Here, ethics is included in the induction training for all new senior civil servants. In Canada and New Zealand training is voluntary but defined by ministries and agencies. This is also the case in Ireland where different departments hold [irregular] training courses.

Canada, like the UK is keen on using new technology to assist in the training programme. The homepage run by the *Office of the Ethics Counsellor* in Canada gives access to the rules on conflict of interest and post-employment for civil servants. This is akin to the Cabinet Office website in the UK, which gives specific ethics-related information. The Canadian version allows civil servants as well as citizens to send comments and suggestions on current issues. Australia and New Zealand are also exploring how new technology can help promote values and ethics. Both use interactive CD-ROMs for training purposes.

### ***Reporting mechanisms***

Since secrecy can lead to an environment of corruption, all four countries require civil servants to report misconduct and suspected corruption. This is known as 'whistleblowing.' Australia and New Zealand, for example, use a combination of laws and internal rules. This is

much like the UK where departmental rules define procedure while the *Civil Service Code* determines the specific matters that should be reported by public servants. All countries afford protection to whistleblowers. In New Zealand, employment law guarantees protection. In Australia legal provisions guarantee protection but only when the person concerned uses the correct reporting procedure and does not disclose any information to the media. The country also has a dedicated website for whistleblowers. However none of these provisions match the force of the UK's *Public Interest Disclosure Act* which provides a wide range of protection for different circumstances. In Ireland a *Whistleblowers Protection Bill* was put before the Dáil in 1999 but was defeated.

In the UK there are a number of ways by which a civil servant can raise concerns about the behaviour of special advisers. They can raise matters with their individual line managers, the nominated "appeals" officers within individual departments, or with the Permanent Secretary of their Department. The Permanent Secretary can raise the matter with the Cabinet Secretary who can take complaints direct to the Prime Minister.

### ***Investigating misconduct***

Misconduct tends to be investigated by individual ministries in the comparator countries. In some countries, such as Australia, the ministry is required by law to hold an inquiry. In Canada, the *Office of the Ethics Counsellor* has jurisdiction over civil servants and, when requested by the Prime Minister, may investigate ethics related disputes. In Ireland, the *Standards in Public Office Commission*, established under the *Standards in Public Office Act, 2001*, has the right to investigate allegations of corrupt activity. The Commission is independent of government. If the Commission thinks that the individual under investigation has committed an offence, he may be referred to the *Director of Public Prosecutions*. In cases where there is a possible breach of criminal law the police are brought in. This is also true of Australia and Canada.

Ireland is unusual in having a national ethics strategy that is included in the programme for government. This gives priority for ensuring an enhanced policing mechanism for ethical issues and is intended to strengthen public confidence in government. In the UK there is no national

ethics plan due to the fact that individual agencies have developed their own internal arrangements.

### *Assessing ethical measures*

The countries in this study have a variety of methods for assessing ethics measures. In Australia, the *Public Service Commissioner* is required to report annually to Parliament on the extent to which the civil service is upholding the legislated public values. In Ireland, the *Public Offices Commission* provides an annual report on its activities to the Oireachtas (Parliament) and the government. In New Zealand, the *State Services Commission* makes assessments of expectations and standards of departmental performance. In Canada, assessment is undertaken by the *Office of the Auditor General* which reviews the various elements of the ethics infrastructure in individual ministries. In addition, the *Office of the Ethics Counsellor* provides advice to public office holders.

### *Effective measures that promote accountability*

The conclusion of the examination of the four comparator countries is that a combination of 'vice and virtue' measures work best. Pragmatism is key. Countries such as New Zealand and Ireland which engage in extensive dialogue with civil servants and who communicate ethical values in a variety of ways tend to experience fewer problems.

It is clear that an enforceable set of standards of conduct is one of the most powerful ways of ensuring ethical behaviour. Furthermore, a regular set of training programmes is necessary in order to keep ethical issues prominent.

Regular updating of the existing legal framework is also an effective measure as is the drafting of different codes for different circumstances. An example is Canada's *Criminal Code* and *Conflict of Interest and Post-Employment Code*.

Enhancing accountability and preventing malpractice comes down to innovative and adaptive management techniques across the body of the civil service. Management should eliminate detailed restrictions and take into account the numerous variations and side effects that can occur in the daily round.

The biggest challenge is in managing the changing interface between the public and private sectors. This is particularly the case in Australia and New Zealand which, like the UK, have brought into the civil service more and more private sector expertise. The experience of both these countries indicates that the greater involvement of the private sector causes problems. This is due to greater flexibility in decision-making as well as greater decentralisation.

### *Regulations covering special advisers*

It is sometimes thought that ministers turn to special advisers because of suspicion of the civil service or because ministers feel the need of independent policy advice to be able to direct the bureaucracy. Ministers need staff who understand their party and manifesto commitments and who are perceived to be more responsive to government demands than the civil service. An alternative view about the growth of special advisers is that it has protected the civil service from governments that wish to politicise its upper echelons.<sup>16</sup> This is particularly the case in Australia and New Zealand where more and more civil servants are being drafted in from the private sector on short-term contracts. By giving ministers more staff to deal with partisan issues it reduces the pressure on department heads to be politically responsive.

There is little regulation of special advisers in all of our comparator countries despite the fact that their numbers are on the increase.

However, all countries are exploring ways to regulate special advisers and political appointees. The New Zealand government issues a *Cabinet Handbook* for its members with sections on responsibility, ethics and conflict of interest issues. In Canada, the prime minister gives additional guidelines to ministers on their appointment to cabinet covering ministers' relationship with the civil service and special advisers. There is also the *Conflict of Interest and Post-Employment Code for Public Office Holders* which set out conflict of interest guidelines for special advisers. The Code is backed by the advice and reporting of the *Office of the Ethics Counsellor*.

In Ireland, special adviser conduct is legislated for in two separate pieces of legislation, the

*Ethics in Public Office Act, 1995* and the *Standards in Public Office Act, 2001*. In addition the Standards Commission receives and considers the annual statements of interests of the Attorney General, Ministerial special advisers and persons who hold designated directorships in the semi-state sector.<sup>17</sup> Yet none of the comparators have a *Code of Conduct for Special Advisers* as exists in the UK which covers matters such as the tasks which special advisers can do, prevention of the use of resources for political party purposes, contact with the media and the holding by advisers of political party offices. It also establishes a complaints structure.

Yet even prior to the Code's introduction ministerial staff were not unregulated. There existed a *Ministerial Code* and a *Model Contract for Special Advisers*, which, together with other policies covered issues now consolidated into the *Code of Conduct*.<sup>18</sup> No other country issues a model contract for special advisers.

In Canada, Ireland and New Zealand there is no hard evidence of special advisers frustrating the work of permanent civil servants or compromising their authority. Perhaps this is due to the success of special advisers in these countries in differentiating their role from that of the civil service. In Australia though, recent scandals indicate evidence of tension with special advisers being accused of providing inappropriate ministerial advice. This could be a function of the large number of special advisers employed by Australian ministers compared with other countries. It could also be due to the poor regulatory regime. Australia has practically no codes of conduct, legislation or guidance material to cover special advisers.

The recruitment of special advisers remains a contentious issue. In Australia and Canada special adviser positions are publicly advertised. In the UK, Ireland and New Zealand special advisers are appointed personally by ministers. The UK government has recently concluded that requirement that special adviser posts be advertised would deprive any incoming government of support from special advisers at a crucial time.<sup>19</sup>

The UK has also seen the introduction of training for new special advisers in November 2002. The programme covered the roles and

responsibilities of special advisers and Ministerial codes, their relationships within departments and with the Prime Minister's office and their balancing of their political role. Special advisers are also being invited to attend the UK's *Engaging with Government* programme. This is a programme designed for new senior-level entrants to the civil service. It aims to give a broad understanding of the civil service and government.

## ***Lessons for the UK***

### ***The Changing Structure of Ministerial and Civil Service Relationships in the UK***

The UK, like all Westminster systems has traditionally had very close relationships between ministers and civil servants.<sup>20</sup> The idea was that a civil servant should be the 'reciprocal' of the minister and that ministers and civil servants should be an organic unity for the purposes of ministerial decision making.<sup>21</sup> Civil servants had a duty to provide impartial advice as well as instruct ministers on the legitimacy of what they did. The criteria, though informal, were similar to more formal legal criteria for legitimacy in decision making.<sup>22</sup> As long as the independence of civil servants was coupled with a close ministerial relationship, neither statute nor formal regulations were required to define relations between ministers and civil servants.

By the 1970s ministers became conscious of fulfilling manifesto commitments and protecting them from civil service negativism.<sup>23</sup> Regular meetings of ministers on their own started and political advisers were recruited to review policy outputs in the light of party policy. In the 1980s the traditional relationship between ministers and civil servants altered even further. Margaret Thatcher instinctively distrusted civil servants and saw them as undermining the process of getting things done. Many ministers were indifferent to statistics, research and analysis and the consequence was that civil servants became less deliberative. Many of the brightest civil servants left the profession, discouraged by disparagement of the public sector and the lure of more money elsewhere.

The 1990s saw more changes. Senior civil service numbers were reduced by 20-25 percent under the Major administration. Ministers spent more time courting the media and made an

increased number of policy announcements outside parliament. Political advisers began to play a different role in oiling the wheels of government. Ministers began to rely more on outside opinion and analysis and civil servants were increasingly left outside the loop.

The coming to power of the Blair administration in 1997 brought about further change. Eighteen years of opposition meant that almost no minister had prior experience. Many ministers came in with a suspicion of civil servants. Media relations became even more important and Labour ministers spent more time than their predecessors with special advisers and lobbies. Therefore, many ministers and their advisers felt they did not need the civil service as much as their predecessors had done. Issues began to be settled after elaboration in policy networks in which the prime minister, ministers and special advisers played leading roles with varying weight. Yet the civil service's role in co-ordinating these networks declined. The number of special advisers doubled and their position in government was enhanced. Parliament became less of a consideration for ministers in policy and decision making. Ministers still needed and got civil service help with the unexpected but they were less inclined to rely on it in their dealings with the Prime Minister's office, cabinet, parliament, the media and outside interests. Some civil servants joined special advisers and others in a formal *cabinet* style relation with ministers but were expected to agree with and not challenge policies.

This has had an undoubted effect on the quality of legislation and has made the structure of implementing policies haphazard. Civil servants have certainly lost out, especially those that were closest to ministers. One consequence of this has been a decline in the attractions of civil service employment. It can be argued that ministers have also lost out in that they find it more difficult to ensure that contrary points of view are considered in policy making and that legislation entering parliament is well drafted.

### ***The Committee on Standards in Public Life***

The Committee on Standards in Public Life was set up in 1995 as a response to perceived unethical behaviour in government. It drew up seven principles of public life namely selflessness, integrity, objectivity, accountability,

openness, honesty and leadership. These principles emphasise that there is a moral threshold between representation and responsibility and that public office holders have a higher set of responsibilities than others. The Committee has recently released its 9th report which discusses the regulation of ministers, special advisers and the permanent civil service.<sup>24</sup>

The difficulty with the seven principles is that they are not legally binding but for guidance only. It was thought that if ethical principles were set out in law it would involve both complex drafting and instances of lawyers attempting to find loopholes in the regulations. There is a certain overlap between the principles and some are vague, but public office holders do seem to understand them and do their best to adhere to them. The principles do not distinguish between politicians and civil servants.

### ***Ministerial Accountability***

The UK has a ministerial code covering various aspects of ethical conduct. It is regularly revised to take into account new provisions. While other countries have similar guidelines they tend to be less extensive and less subject to revision. In order to take account of changes in ministerial responsibility and relationships with the civil service and special advisers, best practice is to continue the regular review and updating of the code. However it may be that appropriate legislative weight should be attached to the code in order to avoid a Canadian-type scenario where unethical behaviour might occur due to the limited enforcement powers of the *Ethics Counsellor*. An alternative measure might be to create an independent policing agent to oversee codes of conduct which would not need statutory authority to be effective. Moreover, the combination of statutory authority and parliamentary monitoring of breaches in ministerial conduct is currently proving effective in Ireland as evidenced by the recent prosecution of a minister in the Dáil through the powers of the *Standards in Public Office Act, 2001*.

The Committee on Standards in Public Life in its 9th report, issued in April 2003, suggested that the current UK ministerial code is unclear and that it is not forceful enough in promoting ethical conduct. The Committee recommended that the substantive material on issues of conduct should

form a new ministerial code. The Committee also recommended that the Civil Service Commission appoint an adviser on ministerial interests, for a fixed term. Such a person would advise an incoming minister on the prevention of conflict of interest as well as having the power to consult the minister's permanent secretary about departmental business to ascertain whether a conflict of interest may exist. The adviser would then refer any breach or allegation of a breach to the Prime Minister. The Committee also suggested that at the beginning of each Parliament the Prime Minister, in consultation with opposition parties, should nominate two or three individuals of senior standing to carry out an investigation into any allegation of ministerial misconduct.

### *Legal Regulation of the Civil Service*

Table 2 (above) gives a summary of the statutory prohibitions imposed on civil servants. We see that the UK has legal provision against the violation of confidentiality and the acceptance of gifts. The other provisions are contained within the civil service code but are not legislated for. This could be achieved if a *Civil Service Act* were to be passed in the UK. Since the comparator study showed that effective measures combine a selection of guidelines, departmental briefings, legislation and human resource management, statutory regulation would need to be accompanied by such measures. The UK could follow the example of Australia and New Zealand by establishing regular training sessions on ethical conduct. It could also make full use of new technology such as departmental intranets to communicate values. There is no panacea for ensuring high standards of civil service accountability. Perhaps the most

effective long-term measure is to combine codes, legislation and training to promote an institutional culture of ethical awareness. While this takes time and patience it is difficult to identify an alternative short-term solution.

A selection of recommendations have recently been put forward by the Government.<sup>26</sup> For instance it has recommended that it should be easier for civil servants to raise their concerns and that the process should be refined to make it less intimidating. The Committee on Standards in Public life has also made a set of recommendations on how to promote civil service accountability. It believes that the civil service should be established in statute under a Civil Service Act which would define the status of the civil service, set out core values and define the status of special advisers as a category of government servant distinct from the civil service. The report also recommends that the government should establish a register of departmental nominated officers to whom any civil servant may go if he or she believes that he or she is being required to act in a way which is inconsistent with the Civil Service Code.

### *Special Advisers*

The present Labour government in the UK has had attention drawn to special advisers. The latest round started with the leaking of an email from Jo Moore, special adviser to Stephen Byers, in which she suggested that the 11 September disaster might be a good day to 'bury bad news.' It was added to with the publication of emails by her fellow special adviser, Dan Corry which were seeking information about the motives of the leaders of the Paddington rail crash survivors group.

**Table 2. Legal Prohibitions and Restrictions for Public Officials<sup>24</sup>**

	Australia	Canada	Ireland	New Zealand	UK
Violation of confidentiality; unauthorised use of confidential information	✓	✓	✓	✓	✓
Exercising influence in return for inducements		✓	✓	✓	✓
Prohibition of accepting gifts/benefits				✓	✓
Restriction on political activity			✓		
Making false statements to mislead officials; falsifying public documents	✓	✓	✓	✓	✓

The UK's *Code of Conduct for Special Advisers* is a detailed document setting out the job specification, status, political responsibilities and relations with government of special advisers. As such it intends to provide as comprehensive a set of guidelines as possible without recourse to legislation. In this respect the UK is far in advance of other countries, none of which have as extensive a code or set of guidelines. In order to tighten up adherence to the code the UK should, indeed, have it included as part of a revised *Civil Service Act*. Other than that, it could follow the Irish example and draft a specific *Ethics in Public Office Act* with parliamentary oversight and sections covering the specific conduct of special advisers.

The government has recently recommended that the system for handling disputes between ministers, special advisers and civil servants should be reviewed. It believes that the ultimate responsibility for disciplining an individual special adviser should fall to the minister who made the appointment. There are also proposals for parliamentary regulation of the numbers of advisers and that these should be set by parliament at the beginning of each new parliament.<sup>27</sup>

The Committee on Standards in Public Life in their 9th report also recommended measures to improve special adviser accountability. The Committee suggested that special advisers should be defined as a category of government servant distinct from the civil service. This would help reflect the fact that their role is to serve ministers in a more personal and political capacity than members of the permanent civil service. The Committee also recommended that a clear statement of what special advisers cannot do should be set out in primary legislation. In addition, it suggests that the total number of advisers be limited by statute, with an upper limit subject to alteration by resolution approved by both Houses of Parliament. This recommendation was prompted by the large increase in special advisers over the years. The Committee proposed that the management of special advisers in Number 10 should be administered by the most senior adviser in the Prime Minister's Office and that this person should ensure that special advisers appointed by the Prime Minister comply with the *Code of Conduct for Special Advisers*. Also, those special advisers in the Prime Minister's Office holding

executive powers should only have a limited role in the line management of civil servants.

It is difficult to know whether special advisers are always as influential as is sometimes suggested or whether they merely enjoy a privileged position. The evidence suggests that some individuals exercise a considerable amount of influence on political leaders. In the UK, the concentration of special advisers in the Office of the Prime Minister provides them with a considerable amount of influence. It is up to individual Prime Ministers how they wish to structure their offices and a future incumbent may wish to reduce the role of special advisers. However, given their steady rise over the years coupled with a weakening of the role of civil servants it seems likely that special advisers will remain influential.

## ***Conclusion***

Ethical codes need to be sustainable and difficult to reverse. This requires proponents from both inside and outside the system to help bolster support for new ethics-related institutions. Ethical guidelines should not simply be reactions to particular scandals, instead there needs to be a long-term process of ethical education. Voluntary compliance is the key to making the regime work in the long term.

It might be thought that a Civil Service Act would make codes of conduct enforceable and ensure that they were paid more than a passing observance. So far there is little evidence on the efficacy of codes enshrined in legislation. Ireland has recently passed laws relating to standards in public office encompassing ministers, civil servants and special advisers. It is also drafting a set of codes of conduct applicable to each. Yet it will take more time to properly assess the impact of this legislation on public service accountability.

Promoting the accountability of special advisers is more difficult. Special advisers are not socialised by training into an ethical culture in the manner of permanent civil servants. The suggestion by the Wicks Committee in their 9th Report that the role of special advisers be more clearly defined is a sensible one. Although it is impossible to compile an exhaustive list of what special advisers do, they should be subject to terms of service which preserve the relevant

elements from civil service codes of conduct. Other countries might emulate the UK in drafting a separate code of conduct for special advisers. It should not be forgotten that responsibility for the conduct of special advisers lies with individual ministers. Ministers choose special advisers and direct their work. In accordance

with the recommendations of the Wicks committee, ministerial codes of conduct should clarify this responsibility. Special advisers should also be given regular training.

<sup>1</sup> Hansard (HC) 22 January 2001, col 469W and 21 November 2001, col 340W

<sup>2</sup> Maley, M. 2000. "Too Many of Too Few? The Increase in Federal Ministerial Advisers 1972-1999" *Australian Journal of Public Administration* 59(4): pp.48-53

<sup>3</sup> Source: Information obtained from Canadian ministries

<sup>4</sup> Source: Institute of Public Administration, Dublin

<sup>5</sup> Source: *The Dominion*, Wellington, 25 April 2002

<sup>6</sup> In Ireland the number of cabinet ministers is constitutionally limited to 15

<sup>7</sup> Measuring the precise number of special advisers in different countries can be problematic. In part this derives from different definitions of special advisers. For example, Australia counts special advisers (known as ministerial staff) as policy advisers, media advisers, consultants and electorate staff. In contrast the UK categorises as special advisers those political appointees whose purpose is providing advice to a Minister.

<sup>8</sup> Fleming and Holland. 2001. p.206

<sup>9</sup> Dunleavy, P. and C. Hood. 1994. "From old public organisation to new public management." *Public Money and Management* July-Sept. pp.9-16

<sup>10</sup> Laegreid, P. 2000. "Top Civil Servants Under Contract." *Public Administration*, Vol. 78 No. 4 pp.879-896

<sup>11</sup> Considine, M. 2002. "The End of the Line? Accountable Governance in the Age of Networks, Partnerships and Joined-Up Services" *Governance* 15 (1) pp.21-40

<sup>12</sup> Committee on Standards in Public Life. 2002. *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service*. Issues and Questions Paper.

<sup>13</sup> Uhr, J. 2001. "Moderating Ministerial Ethics: Putting Political Ethics in its Place" in Fleming, J and I. Holland. (eds.) *Motivating Ministers to Morality* Dartmouth: Ashgate

<sup>14</sup> Chapman, J. and Galston, W. 1992. *Virtue: Nomos 34*. New York: NY University Press.

<sup>15</sup> Uhr, J. 2001. p. 51

<sup>16</sup> Weller, P. 2001. *Australia's Mandarins: The Frank and the Fearless?* St Leonards: Allen and Unwin

<sup>17</sup> See the Standards Commission Website: [http://www.sipo.gov.ie/227e\\_246.htm](http://www.sipo.gov.ie/227e_246.htm)

<sup>18</sup> Daintith, T. 2002. 'A very good day to get out anything we want to bury' *Public Law*, Spring 2002, pp.13-21

<sup>19</sup> Cabinet Office. 2003. 'Government Response to the Public Administration Select Committee's Eighth Report of the 2001-02 Season "These Unfortunate Events" [HC 303]

<sup>20</sup> Haldane of Clone, Viscount. 1918. *Report on the Machinery of Government Committee*.

<sup>21</sup> Hennessy, P. 1989. *Whitehall*. London: Free Press

<sup>22</sup> Foster, C.D. 2000. 'The encroachment of law on politics', *Parliamentary Affairs*, Vol. 53, No. 2

<sup>23</sup> Foster, C.D. 2001. 'The Civil Service Under Stress: The Fall in Civil Service Power and Authority' *Public Administration* 79, No.3, pp.725-749

<sup>24</sup> Committee on Standards in Public Life. 2003. *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*. London: The Stationary Office

<sup>25</sup> OECD. 2000. *Trust in Government: Ethics Measures in OECD Countries*. Paris: OECD Publications. p.42

<sup>26</sup> Cabinet Office. 2003. 'Government Response to the Public Administration Select Committee's Eighth Report of the 2001-02 Season "These Unfortunate Events" [HC 303]

<sup>27</sup> UK Cabinet Office, *Portrait of a Profession Revisited*, Speech by Sir Richard Wilson, 26 March 2002, <http://www.cabinet-office.gov.uk/2002/senior/speech.htm>



# Australia

This section sets out the accountability regulations for ministers, civil servants and special advisers. It discusses the advantages and disadvantages of each. In general Australian ministerial regulation is not as detailed as some others due to a loosely worded *Ministerial Code*. Civil service ethics are well provided for while it may be necessary to improve accountability measures for special advisers.

## *The Structure of a Ministerial Office*

All ministerial offices are located in Canberra, in one section of the Parliament House building. Ministers are also entitled to a small office in their constituency where they can work on ministerial business. Civil servants and special advisers frequently travel to the minister's constituency office for consultations on portfolio business.

The only non-political appointees in minister's offices are *Departmental Liaison Officers* (DLOs), who are few in number and are not understood

**Table 1: Regulatory Milestones**

1922	Public Service Act	Initial legislation covering civil service accountability
1981	Cabinet Handbook Issued	Set out guidelines for ministers
1984	Public Service Reform Act; Merit Protection Act	Allows for the investigation of grievances lodged by public servants
1984	Members of Parliament (Staff) Act	Enables ministers to employ special advisers
1995	The Public Service Commission and the Merit Protection Review Agency are joined to form the Public Service and Merit Protection Commission (PSMPC)	
1995	Guidelines on Official Conduct for the Australian Public Service	Published by the Australian Public Service Commission, set out rights and responsibilities of civil servants.
1996	Workplace Relations Act	
1996	Code of Conduct for Ministers	Introduced by Prime Minister, John Howard to tighten ministerial conduct
1997	Financial Management and Accountability Act, Commonwealth Authorities and Companies Act, Auditor General Act	Variety of legislation that indirectly promotes civil service accountability
1999	Public Service Act	Large scale revision of 1922 Act. Sets out civil service structure

to be ministerial staff - they are departmental officials placed in the minister's office for administrative/liason purposes under the direction of the minister. DLO's are never included when compiling numbers of ministerial staff.

A typical junior minister would have between 4 and 7 ministerial staff (plus 1 DLO), while a typical senior minister would have between 7-13 ministerial staff, (plus 2 DLOs).

In 2001, for example, a junior minister with 4 staff had a chief of staff, media adviser, general adviser and office manager (plus 1 DLO). A senior minister with 8 staff had a chief of staff, media adviser, 3 advisers, 1 assistant adviser, 1 personal secretary, 1 receptionist (plus 2 DLOs). The only "permanent civil servants" are the DLOs.

## ***I. Ministerial Regulation***

The first set of codified rules for Australian ministers was issued in 1981. The Cabinet Handbook was a loose-leaf folder containing a statement of cabinet principles, procedures for submissions and guidelines for dealing with the press. The only reference to personal behaviour was the requirement for declarations of interests from ministers and their immediate families if these interests were thought to conflict with public duty.<sup>1</sup> The handbook was a confidential document but was published in the May 1982 edition of the Australian Journal of Political Science. It was then published officially by the government in 1983 and revised in 1988.

The 1988 edition expanded the section on declaration of interests. Ministers were now required to give the *Prime Minister* an annual return of their private interests and, as far as they were aware of them, the interests of their immediate family. The onus was on the Prime Minister to be the judge of ethical irregularity but the document made clear that the onus was on individual ministers to report any potential problem.

In 1996 the then prime minister, John Howard, implemented a Code of Conduct for Ministers as part of a manifesto commitment to cleaning up government. The Code has two parts. The first part represents an interpretation of Westminster conventions of government and discusses

Cabinet, the Ministry and the Executive Council. The second part sets out guidelines for ministerial conduct, ministerial staff conduct, facilities and services for ministers and so on. The emphasis of the section on ministerial conduct is on preventing situations of conflict of interest. In cases of doubt, the minister is told to consult the Prime Minister.<sup>2</sup>

However, the issue of the Code did not prevent issues of unethical behaviour arising. Between 1996 and 1998 eight ministers either resigned or were sacked.<sup>3</sup> In response to this, Howard sought to defuse the situation by altering the way the Code was applied and by relaxing restrictions on share ownership and investments.<sup>4</sup> However this was criticised since it put ethical questions surrounding ministers at the discretion of the prime minister. Evidence elsewhere suggests that discretion can cause an ethical problem in itself and can increase the incentive to undertake corrupt behaviour.<sup>5</sup> This has the potential to create a situation where ministers might bend the rules, knowing that they can influence the Prime Minister to use his powers of discretion.

The Australian government also employs an *Auditor General* to scrutinise the ethical behaviour of ministers. He has wide inquisitorial powers to summon officials and inspect records. However, the officer is appointed by the Prime-Minister through the Governor-General and has never been advertised. Furthermore, Auditors-General tend not to investigate issues of ministerial ethics.<sup>6</sup> This is because their powers tend to be limited, even under the recently revived *Auditor General Act, 1997*.<sup>7</sup> For example, while the Auditor General can extend an investigation to include certain aspects of ministerial behaviour, the matter must be referred by the prime minister with the ministers then agreeing to co-operate with the investigation.

In the Australian parliamentary system the Senate committee system is responsible for the greatest scrutiny of government actions.<sup>8</sup> This is because the Senate often grants its committees considerable powers to obtain documents and call witnesses. Furthermore the government seldom has a majority of Senators on select committees established to inquire into controversial matters.

## *II. The Australian Civil Service*

The Australian civil service dates from the formation of the federation in 1901. Formerly, six separate colonial systems operated independently. Since then, it has gone through several periods of reform. This has resulted in the widespread adoption of private sector principles. For example, contractual appointments and secondees from the private sector are now common in the civil service although many feel that the transition away from traditional administrative practices is proving slow.<sup>9</sup>

Traditionally, the Australian civil service prided itself on its neutrality and willingness to serve regardless of partisan considerations. However, since the 1970s this model has been eroded and the influence of politicians has expanded.<sup>10</sup> The Hawke Labor government of 1983 installed a comprehensive set of political mechanisms at cabinet and ministerial level.<sup>11</sup> These reforms refocused the cabinet system in that ministerial staff took over some roles previously undertaken by senior public servants. Similarly, ministerial staff increasingly replaced civil servants as policy advisers. It is possible that this had the effect of limiting the role of the senior civil servant.

Further reform touched upon the job security of the civil service. Greater competition was engendered by increasing the opportunities for external entry. Tenure was reduced and more civil servants were given contractual appointments. In 1994, the *Public Service Act, 1922*, was amended to provide for fixed-term statutory appointments for permanent secretaries. This measure met with strong opposition from senior civil servants, despite the salary increases brought in by the new system. One of the strongest concerns was that fixed-term contracts would unduly politicise the civil service.<sup>12</sup>

The most recent change has been the repeal of the 1922 Act in 1999. This was primarily amended due to the 1922 Act having become both complex and fragmented as well as not providing for the 'managerial' style of civil service that had evolved since the 1980's.

### *Accountability within the civil service*

In Australia as in the UK, there are frequent assertions that the civil service is becoming politicised. The assumption is that there is evidence of partisan alignment in appointments and promotions and that the link between political and administrative life is growing.<sup>13</sup> However, direct evidence of this is hard to come by. For instance, senior civil servants are only appointed and promoted with the agreement of the Public Service Commissioner who is statutorily independent and is himself involved in the selection process.<sup>14</sup> Similarly, the *Public Service Act, 1999* contains a prohibition against ministers seeking to influence appointments. Yet ministers are involved in the selection of department secretaries who themselves are on fixed-term 5 year appointments. However it is suggested that it is impossible to expect the civil service to be completely apolitical since they are required to remain up-to-date with the political environment and the objectives of the government of the day in order to provide comprehensive advice.

Successive Australian government have been keen to increase the accountability of senior civil servants. In response to this the Management Advisory Board of the Australian Public Service has suggested that:

'In deciding whether a particular action is ethical, public servants should consider whether the impact of the decision will be fair, whether the action is guided by responsiveness to the needs of the community and the government, whether they would be happy to have the action made public, and whether they could easily justify the action if called on to do so.'<sup>15</sup>

Despite being bound to act ethically, the difficulty for civil servants is that the situation is often not clear-cut. The requirements of various programmes can be interpreted in different ways and there are many occasions when public servants and ministers differ in their interpretation of legal requirements. It would be difficult to legislate in this area. For instance it is not clear what exactly would legitimise a senior civil servant's view of the common good against that of the democratically elected government which is then held accountable for its decisions.<sup>16</sup>

## ***Statutory Regulation of Australian Civil Service***

In 1995, the Australian Public Service Commission (APS) published *Guidelines on Official Conduct of Commonwealth Public Services*. This gives an overview of the rights and responsibilities of civil servants when dealing with the public, ministers and Parliament. The *Guidelines* admit that they do not have the answer to every ethical problem that may arise but that they provide a set of principles that at least point the way towards an answer.

Much of the material contained within the guidelines is based on legislation. The most important pieces of legislation touching on civil service regulation are the *Public Service Act, 1922*; the *Public Service Act, 1999*; *Public Service Regulations, 1999* and the *Crimes Act, 1914*. Staff of ministers, including ministerial consultants are employed under the *Members of Parliament (Staff) Act 1984* administered by the *Department of Administrative Services*.

### ***The Public Service Act 1999***<sup>17</sup>

In many respects, the *Public Service Act 1999* represents the culmination of the changes that had already occurred over the previous 20 years. Most powers under the old Act had already been devolved, but the new Act confirmed explicitly that heads of departments are responsible for their juniors. The Act also established the *Australian Public Service (APS) Values*, (see below) with minor modifications from earlier work, and the *APS Code of Conduct*, again drawing on existing regulations setting out the “duties of officers”.

The *Public Service Act 1999* sets out:

- the important values and culture the Parliament wants in the APS (see Act Part 3);
- the role and powers of Agency Heads, and their relationship to Ministers, in a clear and public way;
- a clear statement to those within the APS, and to the Australian people, of the conduct that is expected of public servants (see Act cl.13);
- significant new inquiry, evaluation and reporting powers for the Public Service Commissioner (see Act Part 5 Division 1);

- an independent mechanism for review of employment actions affecting the employment of an APS employee (see Act cl.33 and Act Part 6); and
- a mechanism by which Government decisions on administrative arrangements and re-organizations can be implemented (see Act Part 10).

### ***Other Legislative Items***

#### ***The Ombudsman Act 1976***<sup>18</sup>

- Allows for investigation into complaints, generally made by the public, about poor administration in Commonwealth agencies

#### ***The Merit Protection (Australian Government Employees Act) 1984***<sup>19</sup>

- Allows for the investigation of grievances lodged by public servants and appeals against certain employment related decisions

#### ***Administrative Decisions (Judicial Review) Act 1977***<sup>20</sup>

- Provides for the investigation of complaints against processes used in making decisions in Commonwealth agencies

#### ***Financial Management and Accountability Act 1997***<sup>21</sup>

- Requires Agency Heads to manage their organisations in ways that promote the efficient, effective and ethical use of resources

#### ***Freedom of Information Act 1982***<sup>22</sup>

- Allows individuals to apply for access to information held by commonwealth agencies

#### ***Privacy Act 2001***<sup>23</sup>

- Requires Commonwealth agencies to protect the confidentiality of individuals' personal information subject to certain expectations

#### ***The Australian Public Services Commission (APS)***<sup>24</sup>

The *Public Service and Merit Protection Commission* (PSMPC) changed its name in June 2002 to the Australian Public Services Commission (APS). It provides advice and

guidance to agencies rather than laying down prescriptive rules. It seeks to work in partnership with agencies to identify, develop, pilot and promote good practices in public administration.

In summary, the PSMPC's role involves:

- Providing advice to the government on the Australian civil service;
- Administering, and facilitating understanding of, relevant legislation, particularly the PS Act 1999 and subordinate legislation made under that Act;
- Providing advice to departmental heads and managers on strategic people management and organisational performance;
- Supporting the implementation of government policy on the APS in matters such as the APS Values, the Code of Conduct, and workplace diversity;
- Monitoring and analysing issues, trends and innovations in people management;
- Contributing to effective leadership in the APS, and facilitating and providing Service-wide development and training to meet current and emerging needs;
- Reviewing actions affecting APS employees in their employment;
- Evaluating and reporting on the performance of the APS through the Public Service Commissioner's State of the Service Report; and
- Making information on the nature and composition of the APS accessible to the community.

### ***Guidelines Issued to Improve Civil Service Conduct***

In 1993 the *APS Management Advisory Board* (MAB) published "*Building a Better Public Service*" which articulated for the first time a set of core values for the Australian civil service.<sup>25</sup> These supplemented previous sets of values by emphasising responsiveness to government, a close focus on results and continuous improvement in performance through individuals and teams.

The Guidelines also advise on merit as the basis for staffing, how to achieve accountability, serving the government and public ethically, public comment on political and social issues,

conflict of interest and outside employment while working in the public service.

Other key civil service guidelines include:

- *Performance Management in the APS: A Strategic Framework, 2001*. Provides a means to recognise and reward good performance and to manage under-performance.
- *Managing Breaches of the APS Code of Conduct, 2002*. Provides advice and guidance to Agency Heads and human resources practitioners on developing procedures for determining whether an APS employee has breached the Code of Conduct.<sup>26</sup>
- *Outsourcing Principles, Guidelines and Good Practice, 1998*. This includes a requirement for probity standards to be adhered to.
- *Ethical Standards and Values in the APS, 1996*. This document provides guidance on expected ethical standards for public servants supported by specific case studies. It illustrates the complexity of the decisions that civil servants have to make.

### ***The APS Values and Code of Conduct***<sup>27</sup>

These values are designed to maintain the Australian civil service as an apolitical impartial, professional organisation that is responsive to the elected government as well as openly accountable within the framework of Ministerial responsibility.

Other provisions that define the APS relationship with the government include the obligation to maintain appropriate confidentiality with any minister or minister's member of staff and the requirement to use Commonwealth resources in a proper manner.

Relationships with the public emphasise achieving results, adding value and managing performance, as well as the need to be fair, impartial and courteous.

In terms of personal behaviour, the APS is obliged to have the "highest ethical standards". In addition, the code emphasises the need to exercise care and encourages familiarity with the procedures for identifying and addressing ethical dilemmas. The *Public Services Commissioner* is required to conduct an annual evaluation for Parliament of the extent to which

agencies incorporate the APS values and the adequacy of systems to maintain standards.

Although the range of sanctions, including termination of employment, form an integral part of any misconduct process, imposing sanctions is not primarily about 'punishing' an employee who has failed to meet the required standards of conduct.

Sanctions are intended to be proportionate to the nature of the breach and in some cases will signify that the agency no longer has confidence that the employee has the appropriate qualities to perform certain duties. Sanctions also operate as a deterrent to others and confirm that misconduct is not tolerated in the agency.

Not all breaches of the Code are the subject of formal action. Depending on the seriousness of the conduct, the employee's employment history and an assessment of whether the incident is likely to be an isolated one, a manager has the discretion to consider counselling or a warning to be more appropriate. Other actions, such as specific training, varying the employee's duties or line of reporting, may also be considered.

### ***Communicating Ethics to Civil Servants***<sup>28</sup>

- Core values are automatically provided to new employees in the public service;
- Induction programmes and performance management arrangements are organised on a departmental basis;
- The statement of core values is usually part of the employment contract/ document.
- APS values are stated in staff newsletters

Training is the responsibility of each department. Most training is voluntary although sometimes it becomes compulsory when a department identifies a particular need. The content of training varies, depending on the audience. It can range from raising awareness of ethics principles to fraud investigation training and training on handling breaches of the Code.

For the 2001 *State of the Service Report*, the PSMPC asked agencies to conduct surveys to test staff understanding of the *Values and Code of Conduct*. This revealed that staff understood most of the values, but that there were some worrying levels of unease about the application

of the merit principle and fairness in the treatment of staff. The suspicion is that many employees are not yet familiar with the fact that the application of the *Values and Code of Conduct* is through departmental systems and procedures. Similarly, staff concerns about the application of the values focus on those clauses that affect them directly and not enough on clauses that are more central to responsibilities towards government, parliament and the public.

### ***Human Resource Departments***

Human resource sections in different government departments have a variety of mechanisms to promote ethical behaviour. These include:

- Providing rules/guidelines/policies for recruitment and promotion procedures;
- Taking ethical considerations into account in the recruitment process;
- Considering ethical behaviour in the performance appraisal.

### ***Disclosure Policy***

All civil servants are required, by the *Code of Conduct*, to disclose to their managers actual or potential conflicts of interest and then to take reasonable steps to remove the conflict. Members of the *Senior Executive Service* (SES) are required to complete a '*Return of Private Interests*' and lodge it with their department. This covers assets, gifts, outside pensions, investments, real estate, shares and sponsored travel.

### ***Whistleblowing***

There is a whistleblowing scheme in place whereby civil servants may disclose to their departments alleged breaches of the *Code of Conduct*. Except where the allegations are considered frivolous or vexatious, agencies are required to investigate the disclosure and to ensure that the findings are dealt with as soon as practicable.<sup>29</sup>

### ***Annual Reports***

The *Public Service Commissioner* provides a report to Parliament on the state of ethics in the public service at the end of each financial year. The report details the extent to which public service agencies are upholding the APS values

and the adequacy of their procedures for ensuring compliance with the *Code of Conduct*.

### ***III. Special Advisers***

Most summaries of Australian government view the role of the ministerial adviser as offering alternative, politically orientated advice and strategy to ministers.<sup>30</sup> In 1976, the *Royal Commission on Government Administration* (RCAGA) commissioned research on ministerial advisers and their activities in government departments. The report was based on the results of two main research papers that surveyed advisers and analysed their roles.<sup>31</sup> There have been several reviews of the topic since.<sup>32</sup>

#### ***History***

The *Royal Commission* recognised that until the 1970s, ministerial offices had traditionally been staffed by seconded, non-partisan civil servants. The Whitlam administration in 1972 began to introduce partisans into ministries largely to provide advice of a political nature. Gradually the advisers became more institutionalised and were regarded as a route into parliament by the ambitious.<sup>33</sup> Many civil servants interviewed by the RCAGA saw this as a sinister development that could potentially undermine the authority of the senior civil servant.

In response, the RCAGA stressed that special advisers should focus on liaison rather than policy advising. It did not generally favour policy advisers in ministers' offices and recommended that ministers should make use of the permanent civil service when seeking policy advice.<sup>34</sup> The civil service itself went further and suggested that the new system of advisers be abandoned.

This advice was largely heeded when Fraser came to power in 1975. He reduced the number of special advisers and replaced them with seconded civil servants. Ironically, the numbers of special advisers were increased in Fraser's own office, which served to keep the concept alive.<sup>35</sup> By the time the Hawke government was elected in 1983, special advisers were back on the agenda. The administration sought to boost political influence in policy making and thereby sought to increase the number of ministerial advisers.<sup>36</sup>

In the 12 years between the Hawke and Keating governments, the number of special advisers grew by 63 percent. During this time, they became more and more important in policy making, becoming pivotal actors between ministers and the executive.<sup>37</sup> While the first Howard administration in 1996 initially reduced the number of special advisers, the present administration has once again seen their numbers grow.

Geography plays a major part in accounting for the increase in Australian special advisers.<sup>38</sup> In Canberra ministers almost never work out of their departments, unlike their British counterparts. If departmental secretaries want to see ministers they have to travel across Canberra to Parliament House. In contrast, special advisers have their offices outside the ministers'. Proximity provides the immediate capacity to exercise influence and makes it harder for the departmental secretary to develop a close relationship with the minister and maintain control over policy advice.

#### ***Background of Australian Special Advisers***

In 1995-96 a major study was undertaken of ministerial advisers working for the Keating government. The study aimed to track the growth and development in the role that advisers played generally in government over the Labour period 1983-96.<sup>39</sup>

About half tend to be seconded from the public service while around 60 percent tend to be members of the governing party. In 20 years the percentage of female advisers has doubled, as has the average age. In the 1970s most advisers were in their 20s, now most are in their 40s.<sup>40</sup> Furthermore, advisers today tend to be more experienced. Around half have previously worked as an adviser to a state or federal minister whereas only 20 percent of the Whitlam advisers had any previous advisory experience.

Australia differs from the UK in that it is acceptable for public servants to go to work in clearly partisan roles in minister's offices and return to work in the public service. In fact, special advisers coming from the public service are highly prized since they are deemed to bring valued expertise. Prime-Minister John Howard, for example, recently described public servants as the 'ideal' ministerial advisers.

### *Roles of Special Advisers*

Most Australian special advisers see their jobs as essentially short-term although a small cohort have made longer careers out of the position.<sup>41</sup> Many move in and out of adviser jobs over a long period, combining it with work in the public service, the private sector and academia. Most special advisers see themselves as working closely with the civil service in generating policy ideas and implementation. Yet the 1995-96 study also identified five separate roles where special advisers thought they had unique skills. These were:<sup>42</sup>

- Agenda setting—Helping ministers set out future policy directions and liaising directly with interest groups;
- Linking ideas, interests and opportunities—Recognising and creating policy opportunities in government and maintaining strategic contacts;
- Mobilising—Making sure proposals get off the ground, acquiring political support for proposals, lobbying the most powerful advisers in PM office, Finance Minister's office and Treasurer's office;
- Bargaining—Ministers solve most policy disputes outside of Cabinet. Advisers have become executive level negotiators within government in order to free ministers for higher-level negotiations;
- Delivering—Making sure that government agenda gets implemented, making sure policy proposals make it all the way through the legislative process.

Ministerial advisers have had their status increased over the years. They are graded higher than civil servants and receive better pay. The proportion of ministerial advisers occupying the top two classifications has risen from 12.7 percent in 1988 to 18.7 percent in 1999.<sup>43</sup>

Thus, in Australia, advisers cannot be viewed as peripheral actors in policy making. Their policy roles are determined by their location within government but since they are involved in their ministers' overlapping relationships with various actors, advisers are extremely important. They deal with different information, agendas and policy goals from permanent civil servants and they can enhance ministers' capacity to influence policy actors in different organisations.

### *Numbers*

As in most other countries, the number of special advisers in Australia has increased over the years. Yet there are various problems with measuring their exact number. Some analysis has focussed specifically on the use of 'advisers' while others have looked at all staff, including secretaries and constituency staff that arguably have nothing to do with ministers' executive responsibilities.<sup>44</sup> Table 2 (below) shows the number of staff described as ministerial advisers 1972 and 1999. These figures do not include media advisers or administrative support staff.

The table shows an increase in advisory staff of 81 percent between the early days of the Hawke government and the Keating government. If the number of ministers is taken into account, the proportionate increase is lower at 63 percent. Although the number of advisers has increased, growth has also come in other areas including administrative staff and constituency personnel. The large increase in the number of advisers from the Keating period onwards is primarily due to the creation of parliamentary secretaries who are allowed to recruit their own staff.<sup>46</sup> Parliamentary secretaries undertake tasks delegated by a minister and are able to take the role of the minister in parliament.<sup>47</sup> In 1990 only one parliamentary secretary had any additional staff at all but in October 1991 a pattern was

**Table 2. No. of Special Advisers and Government Ministers 1972-1999<sup>45</sup>**

	McMahon 1972	Whitlam 1974	Fraser 1976	Fraser 1981	Hawke 1983	Keating 1995	Howard 1996	Howard 1999	Howard 2001
No. Ministers	27	27	24	26	27	30	28	30	30
No. Advisers	29	68	55	96	95	172	131	152	155

established whereby each parliamentary secretary's office would have two advisers.

### ***Ministerial Press Officers***

In Australia press-officers, known as "media advisers" are political appointees as are all ministerial staff by definition due to their employment under the *Member of Parliament Staff Act (MOPS)*.

Media advisers are not counted in the table above. In the 'traditional' minister's office (pre 1972 changes) there was often a politically appointed press secretary, so having non departmental people do the media liaison is nothing new and accepted by all. The number of media advisers has also grown. The Keating ministry in 1994 had 32 media advisers while the Howard ministry in 1999 had 34 media advisers, plus a media unit within the Prime Minister's office with six staff.<sup>48</sup>

### ***Special Advisers and Ethical Behaviour***

Are special advisers 'part of the problem' or 'part of the solution' in motivating ministers to behave ethically?<sup>49</sup> Since special advisers operate in an unclear regulatory arena, it has been asked whether this creates the potential for unethical behaviour to occur. The following case studies illustrate this.

#### ***Case Study 1 : The Travel Expenses Affair***

In 1997, *Administrative Services Minister*, David Jull was forced to resign due to political use of the official travel allowance report. He had turned a blind eye to irregularities in travel expenses from members of his own party while at the same time drawing attention to anomalies in the submissions of opposition Labour party members. Two others, the National Party Minister for Transport and Regional Development and the Minister for Science and Technology were also forced to resign over misleading the House on travel expenses.<sup>50</sup> Yet, the evidence indicated that Jull was influenced by his special advisers to act unethically. The advisers suggested that Jull use the travel allowance report as a way of achieving political capital over Labour.

The problem was also that the minister relied upon his personal advisers to provide

administrative as well as political advice. By ignoring the warnings of public servants about the political risks of travel allowance reporting the minister lost his portfolio. In short, the minister acted too quickly in accepting the advice of his special advisers who had usurped the traditional roles of public servants.

Paradoxically, the Travel Expenses case has made Australian ministers even more reliant on special advisers. Since the leaks that sparked the affair came from civil service officials this has led ministers to mistrust the reliability of the civil service personnel.<sup>51</sup>

#### ***Case Study 2: The Children Overboard Affair***

An inquiry currently being conducted by the Senate, the upper house of the federal Parliament, is looking into whether the government fabricated claims days before the November 2001 election that asylum-seekers on a boat off the north-west coast had threatened to throw their children overboard unless Australia took them in.

Government ministers released selected pictures from a Navy video to support their claims at the time, and Mr Howard himself told voters such people should not be allowed into Australia. The full video released since then, backed up by evidence from navy officers, shows that no such threats were made and that the boat was actually sinking.

Yet it transpires that the adviser to the Minister of Defence, Ross Hampton became aware of the existence of photographs of people in the water and ordered their release with explanatory texts. The Senate enquiry is currently attempting to establish the degree to which Hampton fabricated the photographic evidence for political purposes.

#### ***Regulatory Suggestions***

At present ministerial advisers are not accountable to government. The only regulation is in the *Members of Parliament Staff (MOPS) Act 1984*, which enables ministers to seek specialist advice through the use of consultants.

It has been suggested that the Australian Parliament could amend the *Members of Parliament Staff (MOPS) Act* to distinguish the

advisory function from the executive function, and explicitly withdraw the protection presently provided to those carrying out executive functions. In other words, staff in a ministerial office carrying out executive functions would be subject to the same accountability requirements as bureaucrats. An easier route might be for the Senate to spell out the parameters of executive privilege, outline its limits and then exercise its powers to call witnesses.<sup>52</sup>

In the absence of clear guidelines there are some guiding principles that can be followed in attempting to clarify the relationship between civil servants and special advisers<sup>53</sup>:

- There is no doubt a relationship of trust is essential, where the different responsibilities of the two groups are acknowledged, along with the common commitment to serve the minister;
- Trust is best formed when the working arrangements between advisers and APS employees are articulated clearly by agreement between the Minister and Agency Head;
- Advisers need to appreciate the legal responsibilities of APS employees to the APS Values and Code of Conduct;
- they also need to appreciate the formal lines of authority from the Minister to the Secretary, and from the Secretary to Agency staff;
- public servants similarly need to understand that close and ongoing communication with advisers is essential, but that advisers do not have the power to direct;
- all public servants need to understand that confidentiality is critical to a relationship of trust between the Agency and its Minister;
- Values along with a Code of Conduct should be articulated for ministerial advisers in a similar way to the arrangements now in place not only for the APS but also for the Parliamentary Service.

## Conclusions

The maintenance of ministerial ethics in Australia is potentially compromised by the nature of the *Ministerial Code* which gives the Prime Minister discretionary powers over whether to charge ministers with misconduct. Similarly, the auditor-general is appointed by the Prime Minister and tends not to investigate cases of ministerial ethics. As in other countries, the Australian government could appoint an independent ethics commissioner, answerable to parliament.

Civil service ethics, on the other hand, are well provided for with a clear and broad range of guidelines, statutory regulation in the *Public Service Act*, an advisory body in the *Public Services Merit Commissioner* and departmental training programmes. These different channels for controlling ethics suggest that a variety of simultaneous measures are necessary in helping to keep a high level of conduct. In a sense, these ethical controls are a response to the changes in the civil service that have occurred over the past 10 years with its influx of private-sector personnel and contractualism. As the structure of the Australian civil service changes, so will the ethical pressure points.

Australian ministers regard special advisers as important sources of information, facilitation and strategy advice. Yet the *'Travel Expenses Affair'* and *'Children Overboard Scandal'* demonstrate that advisers do not always behave ethically. Without institutional and regulatory arrangements to control the conduct of Australian special advisers it is highly probable that further ministerial scandals will emerge. Australia has a great number of special advisers compared to other countries (see table in introduction). This may prompt the government to consider the introduction of detailed regulation covering their conduct.

<sup>1</sup> Weller, P. 2001. "Ministerial Codes, Cabinet Rules and the Power of Prime Ministers" in J. Fleming and I. Holland. (eds.) *Motivating Ministers to Morality*. Aldershot: Dartmouth

<sup>2</sup> Fleming, J and Holland. I. 2000. p.6

<sup>3</sup> Uhr. J. 1998. "Democracy and the Ethics of Representation." in N. Preston and C. Sampford (eds.) *Ethics and Political Practice: Perspectives on Legislative Ethics*. London: Routledge p.7

- <sup>4</sup> Evans, H. 2000. "The Howard Government and the Parliament." in G. Singleton (ed.) *The Howard Government: Australian Commonwealth Administration, 1996-1998*. Sydney: University of NSW Press. p. 32
- <sup>5</sup> della Porta, D. and A. Vannucci. 1999. *Corrupt Exchanges. Actors, Resources and Mechanisms of Political Corruption*. New York: Aldine de Gruyter
- <sup>6</sup> Wanna, J., and A. Gash. 2001. "The Role of the Auditor-General in Scrutinizing Ministerial Ethics" in J. Fleming and I. Holland. (eds.) *Motivating Ministers to Morality*. Aldershot: Dartmouth
- <sup>7</sup> <http://scaleplus.law.gov.au/html/pasteact/2/3066/top.htm>
- <sup>8</sup> Holland, I. 2002. p.13
- <sup>9</sup> Halligan, J. 1997. "The Australian Civil Service System" Paper presented at *Civil Service Systems in Comparative Perspective*, School of Public and Environmental Affairs, Indiana University, 5-8 April 1997.
- <sup>10</sup> See the *White Paper on Reforming the Australian Public Service, 1983* for further details
- <sup>11</sup> Campbell, C and John Halligan. 1993. *Political Leadership in an Age of Constraint: The Australian Experience*. Pittsburgh: University of Pittsburgh Press
- <sup>12</sup> Halligan, J. 1997 p.13
- <sup>13</sup> Weller, P. 1989. "Politicisation and the Australian Public Service" *Australian Journal of Public Administration* 48 (4) pp.369-378
- <sup>14</sup> Keating, M. 1999. "The Public Service: Independence, Responsibility and Responsiveness" *Australian Journal of Public Administration* 58 (1) pp.39-47
- <sup>15</sup> MAB/MIAC [Management Advisory Board and Management Improvement Advisory Committee] 1996. *Ethical Standards and Values in the Australian Public Service*, Report No. 19, AGPS, Canberra.
- <sup>16</sup> Keating, M. 1990. "Managing for Results in the Public Interest" *Australian Journal of Public Administration* 57 (1) pp.3-11
- <sup>17</sup> Available from: <http://www.psmpc.gov.au/psact/>
- <sup>18</sup> Available from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/oa1976114/](http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/)
- <sup>19</sup> Available from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/mpgea1984541/](http://www.austlii.edu.au/au/legis/cth/consol_act/mpgea1984541/)
- <sup>20</sup> Available from <http://scaleplus.law.gov.au/html/pasteact/0/65/top.htm>
- <sup>21</sup> Available from [www.finance.gov.au/publications/financecirculares/2001/fc\\_2001\\_02.html](http://www.finance.gov.au/publications/financecirculares/2001/fc_2001_02.html)
- <sup>22</sup> Available from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/foia1982222/](http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/)
- <sup>23</sup> [http://www.privacy.gov.au/privacy\\_rights/index.html#npr](http://www.privacy.gov.au/privacy_rights/index.html#npr)
- <sup>24</sup> <http://www.psmpc.gov.au/about/role.htm>
- <sup>25</sup> <http://www.psmpc.gov.au/publications96/conductguide.htm>
- <sup>26</sup> This was an update from a document first issued in 2000 <http://www.apsc.gov.au/publications02/breaches.htm>
- <sup>27</sup> <http://www.psmpc.gov.au/publications/conduct.htm>
- <sup>28</sup> OECD. 2000. *Trust in Government: Ethics Measures in OECD Countries*. Paris: OECD Publications p.86
- <sup>29</sup> OECD. 2000. p.89
- <sup>30</sup> Bridgman, P. and G. Davis. 1998. *Australian Policy Handbook*. St Leonards: Allen and Unwin; Davis, G., J. Wanna, J. Warhurst and P. Weller. 1993. *Public Policy in Australia*, 2<sup>nd</sup> ed. St Leonards: Allen and Unwin
- <sup>31</sup> Smith, RFI. 1976 "Appendix 1. Ministerial Advisers" *RCAGA Appendix Volume One*, AGPS Canberra; Forward, R. 1977. "Ministerial Staff under Whitlam and Fraser." *Australian Journal of Public Administration* 36 (2)
- <sup>32</sup> See Maley, M. 2000. "Conceptualising Advisers' Policy Work: The Distinctive Policy Roles of Ministerial Advisers in the Keating Government, 1991-96" *Australian Journal of Political Science*, 35, 3 pp.449-470; Maley, M. 2002. "Australian Ministerial Advisers and the Royal Commission on Government Administration" *Australian Journal of Public Administration* 61 (1) pp.103-107; Weller, P. 2001. *Australia's Mandarins: The Frank and the Fearless*. Crow's Nest NSW: Allen and Unwin; Holland, I. 2002. 'Accountability of Ministerial Staff?' *Research Paper No.19 2001-02*, Canberra: Department of the Parliamentary Library
- <sup>33</sup> Weller, P. 2001. p.101
- <sup>34</sup> Maley, M. 2001. p.104
- <sup>35</sup> Walter, J. 1986. *The Ministers' Minders: Personal Advisers in National Government*. Melbourne: Oxford University Press
- <sup>36</sup> Maley, M. 2001. p.105
- <sup>37</sup> Campbell, C. and J. Halligan. 1992. *Political Leadership in an Age of Constraint: Bureaucratic Politics under Hawke and Keating*. St. Leonards: Allen and Unwin p.204
- <sup>38</sup> Weller, 2001. p.101
- <sup>39</sup> Maley, M. 2002.
- <sup>40</sup> Maley, M. 2000. p. 105
- <sup>41</sup> Maley, M. 2000. p.106
- <sup>42</sup> Maley, M. 2002. p.455
- <sup>43</sup> Australian House of Representatives *Debates* 17 February 2000.
- <sup>44</sup> Maley, 2000.

- 
- <sup>45</sup> Maley, M. 2000. "Too many or too few? The Increase in Federal Ministerial Advisers 1972-1999" *Australian Journal of Public Administration* 59 (4) pp.48-53
- <sup>46</sup> Holland, I. 2002. p.8
- <sup>47</sup> *House of Representatives Practice*, 4<sup>th</sup> edition, Department of the House of Representatives, Canberra, 2001, p.69
- <sup>48</sup> Holland, I. 2002. p.9
- <sup>49</sup> see Tiernan, A. 2001. "Problem or Solution? The Role of Ministerial Staff" in J. Fleming and I. Holland (eds.) *Motivating Ministers to Morality* Dartmouth: Ashgate
- <sup>50</sup> Tiernan, A. 2001. p.95
- <sup>51</sup> Tiernan, A. 2001. p.97
- <sup>52</sup> Murray, A. 2002. 'Ministers must be accountable for their actions' *Canberra Times* 04 April.
- <sup>53</sup> Adapted from Podger, A.S. 2002. "Beyond Westminster : Defining an Australian Approach to the Roles And Values of the Public Service in The 21st Century" Address to IPAA Seminar, May 2<sup>nd</sup> 2002

# Canada

This section examines accountability initiatives for ministers, civil servants and special advisers in Canada. In general ministerial accountability does not feature due to a lack of parliamentary scrutiny and an *Ethics Counsellor* with limited powers. Civil service standards are enforced by a detailed code of conduct but there is little legislation and low public awareness. Special advisers are lightly regulated and increasing in numbers.

## A Typical Ministerial Office

The budget for political staff is set by the *Treasury Board* but can be spent on as many personnel as the minister sees fit. There are usually 5 to 8 politically appointed staff depending on how

many responsibilities the minister has and about 2-6 permanent civil servants of various ranks.

Ministers have offices around central Ottawa but also in their constituencies. The constituency offices are 'political' staffers only. They deal with constituents and also with the local permanent civil servants.

## I. Ministerial Accountability

The first set of ministerial guidelines emerged in 1964 under the Lester Pearson government.<sup>1</sup> By 1972, formal guidelines were being issued to Cabinet. However, these guidelines were not backed up by legislative sanctions and could be considered ambiguous. Moreover, there were no

**Table 1: Milestones**

1882	Civil Service Act	Established Canadian Civil Service
1908	Act to Amend the Civil Service Act	Created permanent Civil Service
1961	Civil Service Act	Protected the independence of the Civil Service Commission and the fundamental principles of the merit-based system
1962	Glassco Royal Commission	Recommended, among other things, the transfer of responsibility for human resources management to the departments
1989	Public Service 2000 (PS 2000)	An initiative to renew the Public Service. This document covered staffing, staff relations, classification, compensation and benefits, remuneration and staff training, among other things. It was designed to facilitate the work of managers and avoid any undesirable effects.
1992	Public Service Reform Act (PSRA)	Amended the Public Service Staff Relations Act (PSSRA) and the Public Service Employment Act (PSEA). These changes represent the first major changes to the employment legislation since 1967
1994	Conflict of Interest and Post-Employment Code	Set certain guidelines on conflict of interest within the civil service
1994	Office of Ethics Counsellor created	Advisory role relating to application of Code of Conduct
1995	Tait Report Issued	Large scale report on values and ethics in the civil service
2002	Guide for Ministers and Secretaries of State	Outlines responsibilities and standards of conducts for Ministers

mechanisms in place to determine whether unethical behaviour was occurring. In 1985, Prime Minister Mulroney introduced new conflict of interest guidelines for ministers. These were more detailed than their predecessors but stopped short of full, mandatory disclosure of private interests.

In 1986, ethical issues were back on the agenda after an accusation that a cabinet minister was engaged in insider-dealing. Mulroney decided that the existing guidelines were not sufficient. In 1988 he introduced conflict of interest legislation. The Bill attempted to limit the amount of disclosure required in order not to deter highly qualified individuals from entering politics. However, the proposed legislation died on the Order Paper when the 1988 election was called. Further attempts to introduce conflict of interest legislation also failed.

Since 1988 legislation on ministerial accountability has been piecemeal and reactive. Scandals provoke a frenzy of media and public criticism of ministers in the search for scapegoats but rarely result in concrete legislative proposals. The *Criminal Code*, the *Parliament Act* and the *Standing Orders of the House of Commons and Rules of the Senate* apply to any minister involved in fraud or breach of trust. The *Parliament Act* in particular, forbids MPs from holding government contracts. However gaps continue to exist in the legislation potentially increasing the likelihood of unethical conduct.

Different provinces also have different ministerial rules, some of which are more stringent than those at federal level. Ontario has had both an Integrity Commissioner and an Integrity Act since 1988. British Columbia legislated for a Conflict of Interest Commissioner in 1990. In contrast, the federal government has never accepted that ministerial ethics should be legislated.<sup>2</sup>

On assuming office in 1993, the current Prime Minister, Jean Chretien declared that he wanted to set up an 'integrity regime' and to make the Prime Minister responsible for ministerial behaviour. He argued though, that high standards of ethical behaviour would not be achieved through legislative measures but by individuals maintaining high personal standards. In 1994 he unveiled a *Conflict of Interest and Post-Employment code* for senior officials. The code

covers all members of cabinet, parliamentary secretaries, members of the ministers' staff and over 1,200 officials in the federal public service. The wives and dependants of ministers are also covered and must disclose their activities. Ministers are prohibited by the code from engaging in a profession, managing a business, holding office in a union or acting as a paid consultant.

Chretien also arranged for prospective cabinet ministers to be interviewed by the newly appointed Ethics Adviser, Mitchell Sharp, to identify potential ethical conflicts before their appointment. They were asked, among other things, whether they could live with conflict of interest guidelines and whether they had tax arrears. The results of the survey kept two individuals out of cabinet.<sup>3</sup>

In June 1994 the *Office of Ethics Counsellor* was created as an advisory body.<sup>4</sup> The Ethics Counsellor is responsible only to the Prime Minister.<sup>5</sup> This is a cause for concern since the Ethics Counsellor is not responsible to parliament and reports back to the Prime Minister privately without any record of their conversations or decisions.<sup>6</sup> This lack of reporting gives an air of secrecy to the Ethics Counsellor which is unusual for an office created to improve transparency.

At the same time *The Conflict of Interest and Post-Employment Code* administered by the Ethics Counsellor has a lengthy and structured system for administering ministerial accountability. The minister is first issued with a letter requesting the return of a personal information statement for himself and his family covering assets, investments, loans, business interests, income, liabilities, gifts and any other activities which might lead to a conflict of interest. The Ethics Counsellor then reviews the statement in detail and returns a commentary to the minister. The minister then has to sign a series of documents confirming his interests. If the Ethics Counsellor is satisfied, a letter is sent to the Prime Minister indicating that the minister concerned has complied with the Code. The minister is then obliged to inform the Ethics Counsellor of any changes that take place in assets and any gifts or hospitality received in excess of CAN\$200.

Since 1995, almost every government minister investigated by the Ethics Counsellor has been

cleared of wrongdoing. Irrespective of the outcome, the public demanded to know more details of the investigative process. Most commentators are critical of the discretionary powers of Ethics Counsellor in deciding whether or not an incident comes within Prime Ministerial guidelines.<sup>7</sup>

The rules surrounding judgements by the Ethics Counsellor are ad hoc. Each Prime Minister can change them at will. This adds to the uncertainty and lack of credibility of the Ethics Counsellor. It has been suggested that position of the Ethics Counsellor is regulated by parliament. In 1994, Chretien announced that there would be a House of Commons debate on the development of ethical guidelines surrounding cabinet ministers. No such debate has ever occurred.<sup>8</sup>

Lately, controversies over the awarding of certain government contracts has rekindled the debate on ethical regulation. . The media and opposition parties have raised issues with respect to ministerial judgement, the transparency of ethics guidelines, and the credibility of the prime minister in defending the conduct of his ministers. Allegations of unethical conduct led to the removal in January 2002 of Alphonso Gagliano as public works minister (Gagliano was appointed ambassador to Denmark), and to the dismissal in May 2002 of Art Eggleton as defence minister when a newspaper revealed that he had secured a C\$36,000 (£16,000) contract for a former girlfriend to write a 14 page report.

In June 2002 a *Guide for Ministers and Secretaries of State* was issued by the Prime Minister. It gives an overview of the conduct expected on ministers and emphasises their accountability to Parliament. Although, there is nothing in the guide that is not contained in documents issued by the *Ethics Counsellor*, it is a useful and accessible overview.

## ***II. Civil Service Accountability - Overview***

Since the 1970s, successive Canadian governments have been concerned with making civil servants more accountable. This was partly due to fiscal pressures encouraging downsizing, privatisation and wage freezes in the public service. These factors helped produce a change in expectations regarding public service

behaviour with a renewed focus on values and ethics.<sup>9</sup> For example, in 1987, a committee of deputy ministers (i.e. permanent secretaries) was established to examine the fundamental values governing the Public Service. In 1995, when the *Clerk of the Privy Council* decided to create task forces led by deputy ministers to examine various issues identified through the program review process, one of those task forces was on *Public Service Values and Ethics*. At the completion of its work, the Task Force released a report entitled "*A Strong Foundation*". During the past decade, most public sector organisations have spent time defining their missions and their visions. Others have even developed guides promoting values or a code of conduct.

Therefore, the number of accountability devices in Canada has increased. Broadly, they encompass:

- A more prominent role for central agencies;
- New budgetary systems to merge policy determination with expenditure allocation;
- Mandatory requirements for the periodic and systematic evaluation of programs;
- Greater scrutiny of the bureaucracy by parliamentary committees through estimates, the review of order-in-council appointments and general investigations;
- A strengthened role for the auditor general to practise comprehensive auditing;
- The passage of access-to-information and privacy laws;
- The passage of conflict-of-interest guidelines, codes of conduct, and the appointment of an ethics commissioner;
- The development of numerous consultative mechanisms: discussion papers, task forces and partnerships;
- The extension of judicial review as a form of supervision over the exercise of discretionary authority.

However, despite these rules, Jackson comments that, Canada has found it difficult to motivate ministers and senior public servants to adhere to standards of honesty and ethical behaviour.<sup>10</sup>

## ***Regulatory Bodies***

There is no central agency responsible for managing ethics policies in the Public Service of Canada. Deputy heads of departments have responsibility for administering the Conflict of Interest Code for the Public Service. The Treasury Board Secretariat's Office of Values and Ethics provides support to and assistance with implementation of the government's policy on ethics and values. Human resources branches in the various departments administer matters related to conflicts of interests. The Office of the Ethics Counsellor administers the Conflict of Interest Code for Public Office Holders.

There are no structures in place to ensure the regular evaluation of the effectiveness of public service policies on values and ethics. However, proactive administration, the work of various ad hoc committees, Auditor General reports and the review of government policies contribute to improving management systems, and those related to ethics, in particular.

## ***Office of the Ethics Counsellor***

The Office of the Ethics Counsellor was created in 1994 and has responsibility for the *Conflict of Interest and Post-Employment Code for Public Office Holders*, the *Lobbyists Registration Act*, and the *Lobbyists' Code of Conduct*. The Ethics Counsellor provides advice to ministers and receives disclosure of asset statements from them. The Office also provides advice on ethical issues to federal and provincial departments.<sup>11</sup> The Ethics Counsellor reports to the Prime Minister and not to Parliament. This causes some disquiet in the Canadian press since it is felt that reporting to the PM compromises the impartiality of the Ethics counsellor.

## ***Treasury Board Secretariat***

Through its *Office of Values and Ethics (OVE)*, the *Treasury Board Secretariat* acts as the centre for policy and expertise responsible for promoting public service management based on values and ethics. The OVE publishes documents relating to ethics including *Guide on the Application of the Conflict of Interest and Post-Employment Code for the Public Service 2002-03* and *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace, 2001*.<sup>12</sup> It

also works in partnership with various agencies in an effort to maximise the impact of its interventions and ensure an acceptable degree of uniformity in the implementation of its outreach activities on the importance of values and ethics in decision-making.

## ***The Canadian Centre for Management Development***

The CCMD contributes to the promotion of values and ethics through training courses for public-service managers. In February 2000 it establishes a series of "armchair discussions" on values and ethics. However, the CCMD training courses are not mandatory and there has been a low up-take among public servants.

## ***Privy Council Office (PCO)***

Headed by the Clerk of the Privy Council, PCO provides advice, information and services to the Prime Minister, to ministers, and to their sub-committees. The Clerk takes a leadership role in setting the overall direction and vision for the Public Service and, in particular, with respect to the role values and ethics play in the overall management of the Public Service. PCO also supports the Treasury Board Secretariat's values and ethics initiatives, by providing strategic advice and ensuring follow-up to decisions made by the Prime Minister, Cabinet and the Clerk in the area of values and ethics within the Public Service.

## ***Public Service Commission (PSC)***

The PSC, an independent administrative authority, is responsible for establishing general staffing principles for the public service in accordance with the *Public Service Employment Act*. These principles reflect traditional values such as merit, absence of patronage, and representativeness. The PSC is also responsible for providing effective training and development programs to public servants and for promoting a leadership based on values and ethics in training offered to Public Service managers.

## ***Promotion of Values***

Although there are no service-wide ethics training programs for government employees, some government departments and agencies

have their own training programs for staff. Executive training programs cover values and ethics and training modules are provided on these topics to individuals who require such information and advice. Consultations on ethical issues enable affected employees to understand more fully the fundamental values of the public service. Human resources branches and managers have responsibility for making new employees aware of the values of the federal administration.

Other provisions also facilitate the promotion of values within the public service: the confidential declaration by public office holders of their property and interests, the confidential declaration by government employees of possible conflicts of interests, the identification of more vulnerable sectors and risk assessments, sanctions for non-compliance with the regulations, recourse against administrative decisions, and internal and external control mechanisms.

### ***Major Guidelines***

The *Canadian Public Service Commission* (CPSC) has developed a set of guidelines on civil service accountability.

They believe that the federal government needs to set a reasonable time frame for the development of a set of values and ethics principles for the public sector. The United Kingdom's *Seven Principles of Public Life* and *Civil Service Code* are regarded as starting points for discussion.

As part of a longer-term effort, the CPSC proposes that the federal government needs to ensure that senior managers discuss, share, and promote a common set of values and ethics. To this end, the *Privy Council Office*, the *Treasury Board Secretariat*, and the *Canadian Centre for Management Development* need to design mandatory training on core values and ethics for all senior managers. This training could be expanded to include all civil service managers. The Secretariat would need to ensure that this training is also given to all public servants.

### ***The Conflict of Interest and Post-Employment Code***

The Conflict of Interest and Post-Employment Code (1994) sets certain guidelines for conflict of interest. This Code is a regulation passed pursuant to the *Financial Administration Act* and is made available to all public servants at the time of their appointment.<sup>13</sup>

Provisions of the code include:

- Employees shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate. (Section 6)
- Employees shall not step out of their official roles to assist private entities or persons in their dealing with the government where this would result in preferential treatment to any person. (Section 5)
- Employees shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office. (Section 6)

The *Conflict of Interest and Post-Employment Code for the Public Service* needs to be updated. The Auditor General of Canada recommended in its May 1995 report that explanatory guidelines and illustrative cases be developed. In June 2000 the Treasury Board Secretariat published a guide on the application of the Code.

### ***The Tait Report***

The most comprehensive report to date on public sector ethics was issued in 1996 by the Canadian Centre for Management Development. This is formally titled *A Strong Foundation: Report of the Task Force on Public Service Values and Ethics*, but is known as the *Tait Report* after its chairman.<sup>14</sup>

The Tait Report identified 45 different values grouped into five overlapping categories of core public service values: democratic values, ethical values, "traditional" professional values, "new" professional values, and people values. The report assigned primacy to the values of respect for law and the public interest. However, it did

not provide guidance on how to resolve conflicts between competing and overlapping values.

### ***Major Values and Ethics Initiatives Recommended in the Tait Report***

- Initiate a wide-ranging and honest dialogue on values and ethics
- Re-focus the character of public service as a public trust
- Adopt a statement of principles for the public service
- Adopt comprehensive ethics regimes government-wide and in public service organisations
- Clarify for both the political and public service levels the principles of reasonable government, the concept of ministerial responsibility and the role the public service is expected to play
- Acknowledge the confusion, tension and conflicts between “traditional” and “new” public service values, and establish an appropriate balance between these values giving primacy to the public interest and respect for law
- Reaffirm that speaking truth to power is a public service value
- Establish suitable recourse mechanisms for public servants who feel that they are under pressure or have been asked to perform actions that are unethical or contrary to public service values and to the public interest
- Align systems, policies and processes to ensure that they support a sound public service culture and values
- Hold deputy ministers and managers accountable for leading by example and ensuring that core public service values are understood and respected
- Establish an independent body for non-partisan appointments so that patronage appointments do not threaten the integrity of the public service

The report was followed up with the preparation and detailed analysis of guidelines relating to the acceptance of gifts, benefits and other forms of hospitality. This work has been circulated to deputy ministers who are responsible for ensuring that the appropriate steps are taken in their departments to deal with such matters.<sup>15</sup>

The Canadian Centre for Management Development (CCMD) reissued the Tait report in January 2000 to help re-invigorate dialogue. However, it was found that most public servants had not even heard of the Tait report and had not participated in any discussions relating to it.<sup>16</sup> Similar surveys by the Treasury board also indicate that there are vulnerabilities in the area of values and ethics. This is mainly due to the inconsistent application of policy by different departments.

### ***Steps to reinforce ethical decision-making***

#### ***Training***

At present, there is no broad-based mandatory training given to public servants on ethical matters although some departments run optional training programmes for staff. The release of the report of the deputy ministers task force on values and ethics began a period of consultation, which included the preparation of formal workshops on values and ethics.<sup>17</sup>

#### ***Disclosure policy***

Public servants are required to make confidential disclosures when they have assets, activities and investments which have some relationship with the exercise of their duties and responsibilities. This information is protected by the *Privacy Act*, and used for recommending measures to prevent real or potential conflicts of interest from arising.<sup>18</sup>

#### ***Procedures to report misconduct or suspected corruption***

There are no procedures or obligations for public servants to report misconduct committed by public servants. The *Privacy Act* guarantees protection to public servants who expose wrongdoing. For the public, no special procedures are available to expose wrongdoing committed by public servants.

#### **Scrutinising Misconduct in the Canadian Public Service**

There are several institutions in place to investigate misconduct. These include:

- Departmental officials who examine departmental practices and operations on an ongoing basis
- The Comptroller General (who examines overall public service practices)
- Central agencies (who advise senior government officials on misconduct)
- The Auditor General (who audits the finances of all government operations)
- The Royal Canadian Mounted Police (who investigate breaches of the law)
- The Ethics Counsellor (who, when asked by the Prime Minister, may undertake investigations on ethics related matters)

### **Regulation of Public Service Values**

Although there is still no formal statement of public service values, a number of documents describe the fundamental values of the public administration, including the *Constitution*, the *Canadian Charter of Rights and Freedoms*, the *Criminal Code*, certain acts (*Public Service Employment Act*, *Financial Administration Act*, *Official Secrets Act*, *Official Languages Act*, *Public Service Staff Relations Act*, etc.) and regulations, numerous policies, two conflict of interest codes governing respectively public office holders and public service employees, as well as other documents (especially the *A Strong Foundation* report).

Criminal legislation covers the following kinds of specific misconduct for public officials:

- Active, passive, direct or indirect corruption of public officials/corruption committed by public officials
- Breach of trust by public officials
- Fraud perpetrated by the government
- To protect from detection or punishment a person who has committed or intends to commit an offence

Because of the nature of their duties, some officials are also covered by specific provisions. This is the case for employees of *National Defence*, *Revenue Canada*, *Industry Canada*, supply officers at *Public Works and Government Services Canada*, lawyers, physicians, engineers, accountants and actuaries.

The policy on the *Internal Disclosure of Information Concerning Wrongdoing in the Workplace* was issued in June 2001 and came into effect in November of the same year. It sets

out the procedures for disclosure of wrongdoing and the protection of those making such disclosure.

Recently, the Canadian parliament passed the *Corruption of Foreign Public Officials Act* which gave effect to Canada's commitment to ratify both the OECD and OAS anti-corruption conventions.

It could be argued that these of laws, rules and regulations designed to promote ethical conduct among ministers and public servants have emerged haphazardly and with little coherence. A result is that there is little enthusiasm today to draw up more rules and regulations.<sup>19</sup> This problem has been recognised by the Canadian government and there is an active campaign to promote dialogue within the public service on ethical issues. The Public Service Values and Ethics Office is the main body co-ordinating such dialogue.

### **Provincial Regulation**

In 1998 Nova Scotia adopted a *Whistleblowers Act* that allows employees to disclose information about government wrongdoing to the Province's ombudsman and protects those who do so. The March 1999 *Canadian Environmental Protection Act*, the August 1999 amendments to the federal *Competition Act*, and the April 2000 *Personal Information Protection and Electronic Documents Act* provide authority and protection for employees who report alleged violations of the Acts to designated officials. Since 1980, members of Parliament have introduced several private members' bills to provide similar authority to federal public servants.

### **Current developments**

According to Jackson, public servants tend to find the application of the *Conflict of Interest* guidelines both bureaucratic and rigid. The impression is that the rules are too narrow and that they are not applied with much thoughtfulness. Public servants express frustration that the guidelines do not make allowances for the highly particular situations encountered by public servants.

Because a wide-ranging dialogue is required, the development of a set of core principles is time consuming. Federal entities can take

immediate steps to establish elements of the infrastructure needed to help staff manage and deliver programs ethically. The establishment of this infrastructure would indicate to staff that senior management is taking seriously current values and ethics initiatives.

The initial step is to acknowledge the difficult value and ethical judgements that may have to be made in delivering programs. Employees who have been told to make judgements need to have the necessary guidance and support. Judgement involves consciously asking if decisions and the reasons for the decisions are fair, honest, and reputable and would bear close public scrutiny if the media disclosed them.

To help make judgements, the *Canadian Auditor General* proposes that departments could adopt a decision-making model to help managers and staff manage ethically. They also could establish program support centres, which would offer objective guidance to staff and complement the role of superiors. As well, they could use their risk management programs to assist staff in predicting and planning for difficult situations. Without them, it believes that asking staff to take risks and apply ethical values “will be seen cynically as an attempt by management to download its responsibilities on staff.”

On May 23 2002, the Canadian Prime Minister, Jean Chretien, made a speech to parliament outlining new steps to be taking in reinforcing a culture of ethical behaviour among ministers, civil servants and special advisers. He promised that the following measures would be enacted:

- The *Guide for Ministers and Secretaries of State*, which outlines the standards of ethical conduct that should guide them will be made public (see earlier section on *Ministerial Accountability*).
- Revised rules for ministerial dealings with Crown corporations are to be issued. They will clarify the relationship between ministers and Crown corporation when dealing with constituency matters.
- Guidelines to govern ministerial fundraising for personal political purposes will be published. These will establish rules and procedures that will ensure that such fundraising causes no real or apparent conflict of interest.

- In September 2002, the first annual report of the *Ethics Counsellor to Parliament* on the range of his duties and activities will be tabled. The Ethics Counsellor will also be available to a parliamentary committee to be examined on his report.
- A stand-alone *Code of Conduct for Members of Parliament and Senators* will be drawn up by October 2002.
- Measures will be introduced to strengthen the ability and responsibility of senior public servants to exercise propriety and due diligence in the management of public funds.

On May 27, 2002, the Prime Minister announced that a new parliamentary committee would be created to scrutinise the spending of independent bodies including the Public Service Commission.

### ***III. Special Advisers***

Canada, like the other countries in this study, has seen very little published research on the subject of special advisers. In fact, over the past 20 years there has been only one comprehensive study, dating from 1994, dealing with the topic.<sup>20</sup>

Special advisers in Canada used to be called ‘Ministerial Chiefs of Staff.’ They were political appointments in the sense that the minister has the discretion to appoint anybody he likes to the post.<sup>21</sup> They were first set up in 1984 under the Progressive-Conservative government. These partisan advisers are not judged to play significant policy roles due to a lack of policy expertise and focus on short-term political objectives.<sup>22</sup> Their role in giving policy advice is also hampered by the traditional strength of the (non-partisan) Privy Council Office in providing policy advice.<sup>23</sup> Upon coming to power in 1993, Chretien abolished the chief of staff position in all ministerial offices except his own. This was in order to promote a better working relationship between his ministers and the civil service. Ministers continued to employ special advisers, now called ‘executive assistants.’ However, the executive assistant is a relatively junior position and enjoys neither the salary nor the status that the chief of staff position enjoyed in the Mulroney years.<sup>24</sup>

## ***Numbers and Background***

In 1990 it was found that 145 persons held 'political' (i.e. special adviser) positions in Ministers' offices in the federal government of Canada.<sup>25</sup> This number includes the staff of the offices of the Prime Minister, Deputy Prime Minister, The Ministers of State, the Treasury Board President, the Leader of the Government in the House of Commons and the Leader of the Government in the Senate. Most had backgrounds in political science (as academics), law or journalism.<sup>26</sup> The majority have also some work experience in the public administration field. The average age was 38. Present day executive assistants are similar. They are well educated but often have limited government experience. Their average age is about 30.

## ***Selection and Regulation***

The political staff of ministers' offices belongs in a category known as 'exempt staff.' In legal terms, it is Article 39 of the *Public Service Employment Act* which states that the minister is 'permitted to nominate the staff of his or her office, in particular the chief of staff.' Most of these advisers are known personally to the minister before their appointment, and a small proportion have held similar posts in other ministerial offices. Nearly all are partisan. Under the Mulroney administration the Prime Minister insisted on approving all chief of staff appointments, primarily to ensure that francophones and women were adequately represented. There is less prime-ministerial scrutiny under the present Chretien administration.

Each minister receives a budget from the government for the employment of exempt staff. The size of the budget depends on the particular ministry and is set by the *Treasury Board*, a statutory committee of Cabinet. Within the budget ceiling, a minister may hire as many special advisers as required although there is a restriction on how many can be at the most senior pay-levels.

Canadian ministries have their fair share of professional civil servants seconded to work in ministers' offices on non-partisan matters. Typically this would include tasks such as preparing parliamentary questions or scanning correspondence. There is no restriction on the number of seconded public servants and this

has become a popular method of providing extra manpower to ministers. In practice, a great deal of care is taken to ensure that seconded public servants do not attend meetings of a partisan political nature.

Ministerial assistants are sent the *Conflict of Interest Guidelines* and given 60 days to declare that they have read and understood the document and report their assets. They have 120 days in all to become compliant. Immediately after a general election, the ethics counsellor gives a presentation to groups of ministerial staff. Advisers are then free to contact the director with any queries on ethical behaviour.

The present prime minister, Jean Chretien has appointed Howard Wilson, a highly respected former senior bureaucrat and minister to be his personal adviser on ethics and conflict of interest.

## ***Role and Duties***

The majority of executive assistants is to participate in all their ministers meetings. They also participate in meetings of the department's executive committee. These meetings are likened to seminars where policies and objectives are discussed between the minister, his chiefs of staff and permanent bureaucrats.

The 5 most cited duties of ministerial executive assistants in Canada are:

- Advise the minister;
- Manage the office;
- Ensure liaison with strategic organisations;
- Review departmental policies/suggestions;
- Work with minister in developing a political slant to policies.

Interviews with former Canadian chiefs of staff and present day executive assistants reveal that they do not feel that senior civil servants are marginalised by their presence. Most feel that they work well with them developing policies and pushing through the ministers' policy agenda. This good relationship is partly due to the fact that executive assistants are too busy to intervene in the strictly administrative sphere of activities. Nevertheless, certain ministries differ

and interviews show that in the higher ministries (finance, regional government) there is often more tension. Certain senior public servants resent that chiefs of staff, in addition to their political duties take over responsibilities that belonged to them. In many instances this tension is due primarily to simple personality conflicts between chiefs of staff and senior public servants.

In the 1994 survey of chiefs of staff, the following factors were mentioned as being key to working well with the public service:<sup>27</sup>

- Ensure mutual communication of a constant and direct nature
- Create a transparent atmosphere of frankness, confidence and honesty
- Ensure mutual respect of roles, responsibilities and authority
- Agree on goals, objectives, co-operation and ground rules.

Finally, some Canadian chiefs of staff saw their role as bringing to the attention of the minister aspects of policy that concern the various regions of Canada. In short, they often act as a counterbalance to the bureaucracy with at times is overly preoccupied with the interests of central Canada.<sup>28</sup>

Above all though, the role of the chief of staff/ executive assistant and the nature of his/her interaction with the civil service is a reflection of the minister and his operating framework.

### ***Press Officers***

Generally one Press Officer in a ministerial office is a political appointee and one is a senior civil servant reporting through the permanent secretary on communications issues. The co-ordination of these two streams varies from minister to minister. Interestingly, the minister's driver is also a political appointee.

## ***Conclusion***

Canada, like many other countries, has an ethics framework that enables it to promote values and ethics in the civil service. This framework includes statutory documents, policies, mechanisms for the promotion of values and ethics, and internal and external monitoring authorities. Recently, the Prime Minister has begun to issue official statements of values or principles for the civil service, like those in Australia, the United Kingdom and New Zealand. These principles are designed to eventually replace the overly wide range of values found in various documents and provide a common set of basic values and principles for the whole of the civil service.

However, Canada does not yet have a central agency responsible for co-ordinating, managing and periodically reviewing policies on ethics and values for the government as a whole. The *Values and Ethics Office of the Treasury Board Secretariat*, established in 1999, acts as a centre of expertise, policy, leadership and services in the values and ethics field in the federal civil service, but deputy heads are responsible for the accountability framework.

In some countries, codes of conduct, disclosure of wrongdoing in the workplace, values and principles of government and sanctions have been entrenched in legislation. The Canadian tradition is to deal with these matters through policy. A useful start is the recent publication of *A Guide for Ministers and Secretaries of State*.

As far as special advisers are concerned, Canada mirrors other countries in that they are playing an ever-increasing role in government. They are lightly regulated although they are issued with guidelines on their appointment.

<sup>1</sup> Jackson, R. 2001. "Honesty and Corruption in the Canadian Federal Government: Regulating Ethics." In J. Fleming and I. Holland (eds.) *Motivating Ministers to Morality*. Dartmouth: Ashgate

<sup>2</sup> Greene and Shugarman, 1997.

<sup>3</sup> Jackson, R. 2001.

<sup>4</sup> Office of the Ethics Counsellor, Canada: <http://strategis.ic.gc.ca/SSG/oe00001e.html>

<sup>5</sup> Wilson, H.R. 1998. Ethics Counsellor to the Government: The Canadian Experience in N. Preston and C. Sampford (eds.) *Ethics and Political Practice: Perspectives on Legislative*

<sup>6</sup> Fleming, J. and I. Holland. 2000. 'Motivating ethical conduct in government ministers' Paper presented at the International Institute for Public Ethics Conference, Ottawa, September 2000

- <sup>7</sup> Thomas, Paul G., 1998. "The Changing Nature of Accountability" in B. Guy Peters and D. Savoie (eds.) *Taking Stock: Assessing Public Sector Reforms*. Montreal: Canadian Centre for Management Development, p.349
- <sup>8</sup> Jackson R. 2001. p.115
- <sup>9</sup> OECD. 2000. *Trust in Government: Ethics Measures in OECD Countries*. Paris: OECD Publications. p.117
- <sup>10</sup> Jackson, R. 2001. "Honesty and Corruption in the Canadian Federal Government: Regulating Ethics." In J. Fleming and I. Holland (eds.) *Motivating Ministers to Morality*. Dartmouth: Ashgate p.100
- <sup>11</sup> Office of the Ethics Counsellor, Canada: <http://strategis.ic.gc.ca/SSG/oe00001e.html>
- <sup>12</sup> [http://www.tbs-sct.gc.ca/Pubs\\_pol/hrpubs/TB\\_851/sigliste.html](http://www.tbs-sct.gc.ca/Pubs_pol/hrpubs/TB_851/sigliste.html)
- <sup>13</sup> The Code can be found at <http://strategis.ic.gc.ca/pics/oe/coiencod.pdf>
- <sup>14</sup> The Tait Report can be found at [http://strategis.ic.gc.ca/SSI/oe/tait\\_e.pdf](http://strategis.ic.gc.ca/SSI/oe/tait_e.pdf)
- <sup>15</sup> OECD. 2000. p.118
- <sup>16</sup> 2000 Report of the Auditor General of Canada, Chapter 12. p.4 [http://www.oag.bvg.gc.ca/domino/reports.nsf/html/00menu\\_e.html](http://www.oag.bvg.gc.ca/domino/reports.nsf/html/00menu_e.html)
- <sup>17</sup> OECD. 2000. p.122
- <sup>18</sup> OECD. 2000. p.123
- <sup>19</sup> Jackson, R. 2001. p.101
- <sup>20</sup> Plasse, M. 1994. *Ministerial Chiefs of Staff in the Federal Government in 1990: Profiles, Recruitment, Duties and Relations with Senior Public Servants*. Ottawa: Canadian Centre for Management Development
- <sup>21</sup> Savoie, D. 1999. *Governing from the Centre*. Toronto: University of Toronto Press
- <sup>22</sup> Bakvis, H. 1997. "Advising the Executive: Think Tanks, Consultants, Political Staff and Kitchen Cabinets." in P. Weller, H. Bakvis and R.A.W Rhodes. *The Hollow Crown: Countervailing Trends in Core Executives*. New York: St. Martins Press p.114
- <sup>23</sup> Aucoin, P. 1991. "Cabinet Government in Canada: Corporate Management of a Confederal Executive." In C. Campbell and M. Wyszomirski (eds) *Executive Leadership in Anglo-American Systems*. Pittsburgh: University of Pittsburgh Press
- <sup>24</sup> Savoie, D. 1999. p.250
- <sup>25</sup> Bakvis, H. 1997. p.3
- <sup>26</sup> Bourgault, J and S. Dion. 1989. "Gouvernements antibureaucratiques face à la haute administration: une comparaison Québec-Canada." *Politiques et management public* 7:2 pp.97-118
- <sup>27</sup> Plasse, M. 1994. p.60
- <sup>28</sup> Plasse. M. 1994 p.39



# New Zealand

This section sets out the accountability regulations for ministers, civil servants and special advisers in New Zealand. In general, New Zealand has a high level of ministerial accountability that is hampered by a lack of regulation. Civil service ethics are also well provided for especially in the light of the new management practices in the New Zealand public sector.

Special advisers are playing an ever more important part in government and this may invite

a more detailed code of conduct to be drawn up to govern their behaviour.

## *The Structure of a Ministerial Office*

All ministers are located in the parliament buildings in Wellington separate from their departments. Table 2 (below) gives a breakdown of personnel employed in a typical ministerial office.

With the exception of the departmental private secretary, all the staff in ministerial offices are

**Table 1: Regulatory Milestones**

1912	Public Sector Management Act	Set out the structure of the civil-service
1986	State-Owned Enterprises Act	'De-coupling' the governments commercial activities from direct ministerial control
1988	State Sector Act	Direct ministerial involvement in process of appointing departmental heads. Introduction of fixed-term contracts and performance based remuneration
1989	Public Finance Act	Redefined the roles of ministers and officials
1994	Fiscal Responsibility Act	Provided greater accountability in the public-sector
1995	Public Service Principles, Conventions and Practice	Issued by the State Services Commission (SSC) as a code-of-conduct for the public-service
1997	Responsibility and Accountability: Standards Expected of Public Service Chief Executives	Issued by the SSC in an attempt to clarify the role of chief executives (department heads) in the wake of the Cave Creek tragedy (see below)
2000	Protected Disclosures Act	Gives protection to whistleblower

**Table 2: A Typical New Zealand Ministerial Office**

Position	No
Departmental private secretary' per substantive ministerial appointment (but some offices have no dept person permanently as there tends not to be enough work)	1
Receptionist	1
Senior Private Secretary	1
Secretaries to handle correspondence etc.	1-3
Press Secretaries	1-2 (2 if senior ministers, 0 if junior)
Political advisers	0-5 (depending on seniority)
Total	6-10

appointed by the minister. They are on temporary contracts, which terminate with the departure of the minister.

Parliamentary under-secretaries tend to have 2 advisers, junior ministers 3 or 4, the Prime Minister has 24 (plus the entire department of Prime Minister and cabinet), The deputy Prime-Minister has 18 and the Minister of Finance has 10.

## ***I. Ministerial Accountability***

New Zealand has relatively few rules governing the ethical conduct of members of parliament and cabinet ministers. Ministers are required to declare their financial interests on a register that is made public from time to time. They are subject to investigation by *Commissions of Inquiry* should allegations of impropriety be tabled.<sup>1</sup> In practice, there have been few Commissions of Inquiry and ministers have generally been acquitted of ethical misconduct.

Ministers are subject to specific *Cabinet Office Guidelines*. These require ministers to place on the record personal interests that might be seen to influence decision making and to avoid conflicts of interest. If a minister feels he has a conflict of interest he must hand over relevant obligations to a different minister or department. Ministers must not play a part in an external business and must resign from all company boards. All overseas travel must be declared as well as all gifts received valued in excess of NZ\$500 (£166).<sup>2</sup>

## ***II. The New Zealand Civil Service***

Prior to 1988, New Zealand had a unified public service career system with regulations laid down by the *Public Service Act of 1912*. The *State Services Commission* (SSC) managed a detailed array of occupational classes, each of which had its own pay scale and promotion system.<sup>3</sup> The New Zealand civil service was tightly controlled, appointments were made centrally and there was little ministerial influence in the recruitment procedure and appointment decisions.<sup>4</sup>

By the 1980's, the New Zealand bureaucracy began to come under heavy criticism for inefficiency and rigidity.<sup>5</sup> Reforms of the New Zealand Public Service were put in place by the *State Sector Act, 1988* and the *Public Finance Act,*

*1989* and were largely driven by a small network of entrepreneurial cabinet ministers, government officials and external consultants.<sup>6</sup> These set in place an emphasis on management empowerment, output measurement, deregulation of central personnel controls, the greater use of contracts for senior managers and the introduction of performance pay.<sup>7</sup>

Essentially, the New Zealand reforms sought to separate the commercial from the non-commercial activities of government. Many of the commercial activities were transferred to state-owned enterprises and many of these were subsequently privatised.<sup>8</sup>

The New Zealand reforms can be outlined as follows:

- Senior civil servants were placed on term contracts;
- Senior civil servants were required to sign performance agreements to deliver specified outputs in return for resources granted;
- Internal accountability to ministers was strengthened through the use of agreements, plans, budgets, financial reports, and after 1994 a system of key result areas indicators;
- External accountability to parliament was to be based upon the presentation of budgets, estimates, plans and annual reports.

### ***Implementation and Assessment of Reforms***

Most assessments of the New Zealand reforms judge them as being successful. There seems to be no evidence of politicisation of the public service and the system is transparent, allowing parliamentary committees and agencies to hold ministers and civil servants accountable for results. There has, however, been a noticeable shift towards a more technocratic style of government, and the previously egalitarian public service has adopted a more managerial ethos.<sup>9</sup> This is seen as having displaced the old service ethic of trust and responsibility with accountability for the results from each chief executive.

The New Zealand reforms introduced a bonus system for senior civil servants where performance exceeds expectations. It also sets out formal reprimand and dismissal procedures

where performance falls below expectations. The annual lump-sum bonus can be up to 15 percent of base salary. This was to bring civil service salaries in line with the private sector.<sup>10</sup>

The introduction of these annual performance reviews has had mixed success. On the one hand, chief executives use them as a device for monitoring departments' work and for measuring progress. On the other hand, it has proved difficult and time-consuming to specify performance standards and there is a constant danger of inflexibility and rigidity.<sup>11</sup> Furthermore, many civil servants have spoken of a loss of professional ethics and a commitment to do one's best when responsibility is reduced to a set of contract-like documents.<sup>12</sup> Similarly, annual agreements tend to focus unduly on short-term priorities and the excessive specification of activities. In short, there has been a need to 'reinvent' standards and behaviour in the New Zealand public service.<sup>13</sup>

There is also the view that contractualism generates a subtle form of politicisation in the civil service system.<sup>14</sup> This manifests itself in the form of increased demands for policy congruence as a necessary component of a trusting relationship between ministers and senior civil servants. Ministers increasingly express intolerance of advice that they would prefer not to hear and senior civil servants have less incentive to be as frank with advice as under the pre-reform system.<sup>15</sup> The guidance for senior officials from the *State Services Commission* is straightforward on this matter:

"Free and frank advice is not always advice the Minister may wish to hear. Advice to a Minister that has been watered down may not meet the test of being frank and free. It is inappropriate, for instance, for departmental advice to be altered, or influenced unduly, by a third party (say by ministerial staff) before it reaches the Minister."

The passing of the *State Sector Act, 1988* enabled ministers to have more of a say in the appointment of departmental heads. A fear expressed at the time was that this would contaminate the New Zealand civil service with political bias.<sup>16</sup> Yet there is no evidence that partisan considerations have played a part in public service staffing.

## Ethics in the New Zealand Public Service

The New-Zealand reforms were primarily concerned with improving efficiency. They were not motivated by a concern with a loss in ethical standards.<sup>17</sup> There is no centralised general policy to ensure promotion of values and no mandatory training programs on ethical issues. The *State Services Commission* is asked for advice and direction from time to time. However, certain provisions and procedures draw attention to and strengthen the ethical culture within the public service, such as the publication of the *Code of Conduct* and policy and leadership documents, the sharing of responsibilities, the declaration of real or potential conflicts of interest, conflict of interest reporting, various annual reports and the obligation to justify administrative decisions.

Ethical standards can be summarised as being maintained in New Zealand through:

- Pre-emptive controls—codes of conduct, communication of standards expectations. Example: *NZ Public Service Code of Conduct*
- Integrative controls—circulation of guidance material, incorporation of standards into performance management instruments. Example: *Standards Expected of Public Service Chief Executives, 1997*
- Diagnostic controls—evaluation of chief executive performance, departmental performance and occasional audits. Example: *Chief Executive Credit Card Expenditure*
- Interactive controls—incorporation of ethics-related content into conferences and encouragement of dialogue across departmental boundaries.

New Zealand considers itself to have an *integrity-based* approach to civil service ethics.<sup>18</sup> This means that departments are encouraged to focus on actions and effects that can be achieved rather than the behaviour that should be avoided. As a result, documents issued by departments and by the State Services Commission tend to be strong on aspirational values, tacitly admitting that a watertight ethics regime is impossible to enforce.

At first glance this would seem to suggest a lack of ethical control in the New Zealand civil service. Yet the rationale is to increase management autonomy and institutional

responsiveness to local conditions. This is, in part, a product of the new public management reforms of the public service, which aim to instil private sector practices within the civil service. It is thought that ethical accountability in the private sector is loose and reactive and that this could have an impact on the reformed civil service.

Whether an integrity based approach to ethics works is difficult to tell. True, New Zealand ranks near the bottom on worldwide indices of corruption.<sup>19</sup> Yet the weakness of the ethical culture in the civil service is evidenced by the much-documented tragedy at Cave Creek.

### ***The Tragedy at Cave Creek***

According to Mulgan, the New Zealand government has a reputation for blaming public officials when the cause of the problem is often ministerial oversight.<sup>20</sup> This was shown up in the aftermath to the Cave Creek tragedy in 1995. The tragedy occurred when a viewing platform built by the Department of Conservation (DOC) collapsed killing 14 people.<sup>21</sup> Although public accountability requirements were fulfilled, there was considerable dissatisfaction over political accountability. This was because standards of building practice and maintenance were overlooked. Yet although the commission of inquiry into the disaster identified that responsibility lay with the department, no prosecutions were made and no minister was brought to account. This led to considerable public disquiet.

There was a lack of clarity following the commission's report about the role that the DOC minister should have played. On the one hand, under the *State Sector Act* and the *Public Finance Act*, the job of ensuring DOC safety standards had been handed over to the chief executive, who should have ensured that no such death trap was built, regardless of poor departmental funding. On the other hand under a literal interpretation of the *Public Finance Act*, the minister of finance should have been held responsible on the grounds that he should have been trusted to 'purchase' a safe viewing platform.<sup>22</sup>

The overall public impression was that ministers were unaccountable and civil servants were beyond their control. Since both the minister and

chief executive (head of department) failed to resign promptly, the impression was given that fragmented accountability had become no accountability and that the system was beyond caring.

In the light of Cave Creek, the *State Service Commission* has sought to clarify the roles of ministers and department heads. It has suggested that they could opt to resign in cases of 'performance failure,' even though they themselves were not at fault. However this suggestion has not met with approval from some quarters who argue that it does not place sufficient weight on ministerial accountability.<sup>23</sup>

### ***Core Values for the Public Service***

There is no single document containing a comprehensive outline of core public service values. In most cases these are implied or expressed through principles. The most widely used is the State Service Commission's *Code of Conduct*, issued in 1995 (see below). Chief executives of government departments are responsible for setting standards for their own employees, discipline and issuing specific departmental codes of conduct.

### ***The State Services Commission***

The SSC plays a pivotal role in providing ethical leadership in the public service. It derives its mandate from the *State Sector Act, 1988*. It issues a *Code of Conduct* 'covering the minimum standards of integrity and conduct that are to apply in the public service.' It elaborates the expectations set out in the Code in a series entitled *Principles, Conventions and Practice Guidance Series*. The SSC has also a role in recommending appointments to CE positions and ensuring integrity at the top of the public service.

Despite the code, the SSC's role in relation to ethics remains unclear. While it must be consulted on any code of conduct issued by the Secretary of Education and other statutory bodies, it still lacks a decisive mandate. This is because the *State Sector Act, 1988* provides an explicit framework for human resources practices that are mandatory for the core State sector. This has reduced the need in New Zealand for a central body charged with guarding ethical behaviour. Furthermore, while

the SSC has an overarching responsibility for influencing ethics, its jurisdiction is limited to the core civil service and does not extend to the wider state sector.

Thus, the SSC has played down ethics, regarding it as an issue to be tackled only when something has gone wrong. It is a reactive institution that seeks to convert lessons learnt into rules and guidance material. An alternative approach is the recently issued *State Services Commission Statement of Intent for 2002*, which has committed the organisation to a more thorough monitoring of ethics related issues.<sup>24</sup>

### ***Details of the Code of Conduct***

The *Public Service Code of Conduct* sets out three principles of conduct all public servants are expected to observe:

- Civil servants should fulfil their lawful obligations to Government with professionalism and integrity;
- Civil servants should perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues;
- Civil servants should not bring the Public Service into disrepute through their private activities.

The code is written at the level of general guiding principles. It is deliberately written this way to establish minimum requirements, as stated in the *State Sector Act, 1988*. Departments may add additional or more specific requirements to fit their own circumstances. While the code is written for the Public Service, organisations in the wider state sector may use the code to inform their own codes of conduct.

The values contained in the code are not communicated in any systematic way.<sup>25</sup> Departments do not have induction programmes that explain or outline core values. Neither do they have ongoing education or training programmes to reiterate the Code.

The Code of Conduct covers the following areas:

### ***First Principle***

- Obligations to Government

- Political Neutrality
- Public Comment on Government Policy
- Individual Comment
- Private Communications with Ministers and Members of Parliament
- Political Participation
- Participation in Public Bodies or Voluntary Associations
- Standing as a Member of Parliament
- Release of Official Information
- Protected Disclosures

### ***Second Principle***

- Performance of Duties
- Respect for the Rights of Others
- Integrity and Avoidance of Conflicts of Interest
- Offers of Gifts or Gratuities

### ***Third Principle***

- Personal Behaviour

The Public Service Code of Conduct does not, and cannot, specify every conflict or difficulty that public servants may experience in the course of their duties. There are other major sources of advice, support and information that public servants can go to for help in applying the principles of the Code of Conduct:

### ***Departments***

Departmental codes of conduct build on the principles of the Public Service Code of Conduct when designing their own Codes. Departmental codes are usually available on departmental intranets or through managers or the Human Resources unit.

### ***The State Services Commissioner and the State Services Commission***

The State Services Commissioner issues the Public Service Code of Conduct and other guidance material under the Commissioner's statutory responsibilities to prescribe minimum standards of integrity and conduct for the Public Service.

The State Services Commission provides advice, guidance and publications on various matters to do with the Code of Conduct and wider standards of behaviour, including *Public Servants and Select Committees* and *Public Servants, Political Parties and Elections*. Much of

this guidance is applicable to the wider State sector.

### ***Standards for Senior Civil Servants***

In 1998, the *State Services Commission* first issued a document setting out the ethical standards expected of senior civil servants.<sup>26</sup> It is updated periodically. The document sets out a series of guidelines for departmental heads and other senior civil servants and is intended to instruct those on secondment from the private sector on the traditions and practices of the civil service. It encourages senior civil servants to be flexible and improve efficiency and gives advice on how to maintain high standards. Ethical standards, it maintains, are upheld if the civil servant is able to know when to change a decision or course of action if the objective is no longer tenable. Furthermore, a senior civil servant should be able to handle mistakes constructively and treats all subordinates equally. The document is a thoughtful one and provides useful guidance on leadership in a changing civil service.

### ***The Cabinet Manual and Cabinet Office Circulars***

The Cabinet Manual includes important information on how the Public Service interacts with the Government and Parliament, although its main purpose is as a guide to central government decision-making. It is available in electronic form from the Cabinet Office's website or in book format from the Cabinet Office.<sup>27</sup>

### ***The Communication of Public Service Values***

There is no systematic method for communicating values to the New Zealand civil service. Departments do not hold regular induction programmes or undergo regular training sessions to reinforce core ethical values.<sup>28</sup> There are various guidance measures available to civil servants to help them resolve ethical issues. These mainly take place through human resource sections in individual government departments. There is considerable variation in the method and approach to these measures.

## ***Regulation***

### ***General Legislation***

The *State Sector Act, 1988* and the *Public Finance Act, 1989* underlie the main areas of civil service regulation. The combined effect of these Acts has been to put the onus on individual chief executives for the activities of their departments.<sup>29</sup> The main result of these Acts is that they have made public servants more visible. In many cases this is because issues of management attract public attention.

### ***Legislation covering unacceptable conduct***

The *Crimes Act, 1961* contains offences that apply specifically to all public officials. These are:

- Judicial corruption (s. 100)
- Bribery of a judicial officer (s. 101)
- Corruption and bribery of a minister of the Crown (s. 102)
- Corruption and bribery of a member of Parliament (s. 103)
- Corruption and bribery of a law enforcement officer (s.104)
- Corruption and bribery of an official (s. 105)
- Corrupt use of official information (s. 105a)
- Use or disclosure of personal information disclosed in breach of s.105a (s. 105b)

In addition the *Public Finance Act, 1989* (s.76) and the *Public Finance Act, 1977* (s. 109) contain offence provisions in relation to public money.

### ***Legislation covering whistleblowers***

The *Protected Disclosures Act, 2001*, provides protection to whistleblowers who report wrongdoing in the civil service. Disclosures may be made to the Ombudsman and must follow the correct procedures. The Act is required to be reviewed every two years by the appropriate minister who must then report to the House of Representatives.

The *Protected Disclosure Act, 2001* also contains procedures enabling the public to disclose misappropriation of funds and other wrongdoing committed by officers of the state, primarily

through complaints (specific procedure for each ministry), and a telephone helpline.

### *III. Special Advisers*<sup>30</sup>

#### *History*

'Non Public Service' advisers in ministerial offices are a relatively recent phenomenon. While Sir Robert Muldoon as Prime Minister 1975-84, had press officers from the private sector, 'policy advisers' from 'outside' arrived with the fourth Labour (Lange) Government in 1984. There had been ministerial 'think tanks' in the 1930s but in the post-war period ministerial offices were serviced by a private secretary from the 'corps' of secretaries funded by the *Department of Internal Affairs* (in some respects the NZ Home Office). These officers were passed on from minister to minister irrespective of changes of government. This was a career service with the pinnacle being the Prime Minister's office (followed by the office of the Minister of Finance).

While these secretaries built up a large institutional memory in the portfolio they were scrupulously apolitical and careful not to appear to be usurping the role of the public service as the minister's principal source of advice.

The corps of private secretaries was augmented in the larger portfolios by officers seconded from the principal agencies for which the minister was responsible (bearing in mind that NZ ministers have more than one portfolio). The Treasury, for example, always had an officer in the minister's office usually on a three-year term. Typically these were young 'high-fliers'; but they were there to assist liaison between the minister and the department and not as policy advisers.

In 1984, the new Labour government brought so-called 'advisers' to most portfolios. For example, the Minister of Health employed a young psychiatric registrar as an adviser. Yet, according to Martin, there was not a universal welcome in the ministry for this innovation, particularly among senior medical colleagues. In the event though, officials came to value the bridge this person made between the department and the minister.

By the late 1980's, the *State Services Commission* was developing a template to clarify the role of

these new arrivals in ministers' offices. Nothing emerged — it was too difficult — and the situation simply evolved. These 'advisers' were there because they were compatible with the minister rather than because of party allegiance. There was also a feeling on the part of Labour (out of office for the past 9 years and in government in only 6 of the past 45 years) that they needed a trusted source to 'keep the public service honest'. In some cases, including in the office of the then Minister of Health (Helen Clark) in the last years of the Fourth Labour Government, there were clear signs that the private office was developing a policy capacity separate from the department.

In 1990, the National government led by Jim Bolger also brought advisers into private offices but not to the same extent as Labour. This was a reflection of the traditional wariness of Labour of the civil service.

Under the present coalition government led by Helen Clark, ministerial support is from a sub-group in the *Department of Internal Affairs*, known as *Ministerial Services*. They are responsible for employment and contracting, but take advice from the Minister on actual people. Once a formal 'chief of staff' or 'senior private secretary' or such other person is appointed and has the confidence of the minister to work out staffing matters, *Ministerial Services* tend to work through that person.

All contracts in ministerial offices (apart from ordinary departmental staff temporarily seconded as "private secretaries" to a department) are 'event-based' - meaning they terminate when the minister loses the warrant. That applies to press staff, policy advisers, and the secretaries. In this sense, many special advisers are essentially civil servants on event-based contracts. In some cases, appointments to these posts come from the ranks of people who have worked before for a range of other governments. This is especially the case for senior private secretaries and the other secretarial staff. In the more advisory and politically sensitive appointments (press secretaries, policy advisers, and the odd chief of staff), these appointments are from people who have the minister's complete confidence. Therefore, there is provision for the contracts to be terminated if the relationships break down.

## **Regulation**

There is no particular guidance for ministerial advisers. Such individuals are expected to refer to the *Cabinet Office Manual* and the *Principles, Conventions and Practice Guidance Series*. But it is a fairly vague reference and there is no additional code. The conduct of special advisers tends to be managed by the government chiefs of staff. Each minister would also take responsibility individually, if something went wrong. In the end, the legal requirements of accountability govern as regards finance and formalities, but the political accountabilities also apply given the confidence required by the minister.

The *Cabinet Office Manual* contains a section entitled 'Non-Departmental Advisers' in which it sets out several principles applying to special advisers.

These state that:

- A clear understanding must be established between the Minister and the chief executive so that departmental officials know the extent of the authority on which these advisers are speaking;
- Staff in Ministers' offices must take care to ensure that they do not improperly influence matters that are the responsibility of others;
- Ministers have a responsibility to ensure that their staff consider potential conflicts and take appropriate steps to avoid them;
- Where there is a possible conflict of interest the staff member should notify his or her Minister immediately so that the issue can be dealt with.

Political appointees are formally employed by the ministerial services branch of the *Department of Internal Affairs* under the *State Sector Act 1988*. But they work for the minister—not to the Secretary of Internal Affairs or the portfolio departments' chief executives.

They do not seem to be regarded as subject to the *Public Service Code of Conduct* issued by the State Services Commissioner in accordance with statute. This brings about certain anomalies, and the potential for problems in these arrangements. However, political appointees are now an established part of the

system; but there does not seem to be any effort underway to tidy up and formalise in a constitutional sense the present arrangements.

## **Problems of Accountability**

There has been practically no empirical analysis of the positive and negative aspects of the New Zealand reforms on public sector performance and accountability. The statutory listing of responsibilities for outputs and outcomes has failed to clarify political as distinct from managerial responsibilities, irrespective of the introduction of contractualism.<sup>31</sup>

Discussion continues about the role of special advisers in New Zealand. The following list summarises the main points being made:

- That there might be a case for explicitly designating staff in ministerial offices as between public servants and ministerial appointees (who came and went with the minister) so that it was crystal clear that the conventions applying to the public service clearly accompanied the secondees to ministerial offices.
- Explicitly 'brand' secondees for the time that they were seconded as subject to a separate code of behaviour during the period of secondment.
- A code of behaviour covering such matters as the status of directions from the minister's office and the role of the departmental chief executive should be put in place.
- Explore the concept of a 'chef de cabinet.'

However, in another sense, the role of advisers in a coalition government can help public servants to preserve their neutrality. Prior to the introduction of proportional representation in New Zealand, it was feared that public servants might be placed in an invidious position if the situation arose where they supported a proposal that only had the support of one of the parties in coalition. This may have left them exposed to potential accusations of partisan bias from the dissenting party. Advisers have instead assumed the role of brokers on political issues although it seems that both the parliamentary and extra-parliamentary parties have lost influence as a result.

## Numbers

Table 3 (below) shows that the number of special advisers (listed here under the term 'contract staff') is large. However, 'contract staff' would not be solely ministerial advisers but would include drafted civil servants from the private sector as part of the 'New Public Management' initiative and temporary administrative personnel. A more likely estimate is that the number of actual special advisers numbers between 82 and 106.

## Conclusions

The ethos of the NZ public service was challenged by the reforms of the 80's and 90's. As a result, it has had to adapt to new structures and expectations. Due to this it has been mindful of threats to ethical principles. The passing of the *State Sector Act* and the establishment of the SSC helped institutionalise ethical behaviour and there is no evidence of a breakdown in standards. However, the turnover of staff has increased and the flattening of middle management has led to the development of a strong agency culture not dissimilar to that of the US Civil Service.<sup>33</sup>

Yet it is possible that public service accountability may be diminished due to the new contractual nature of the civil service.<sup>34</sup> This is because the officials concerned, aware of the boundaries of their contracts, will only be held

accountable for what is directly in their control. Furthermore, a contractual management style may reduce the cultural elements that are so important in maintaining ethical standards. This includes the trust that comes from serving others over a period of time, the sense of obligation that overrides personal interest and the pride in establishing a stake in a long-standing and respectable institution.

The New Zealand civil service has a low level of reported corruption. It is not possible though to ascertain what influences are the most effective in maintaining the relatively high rates of responsibility. Some have suggested that the increased autonomy of departments, greater decentralisation and devolution and the influx of private sector employees into the civil service decreases awareness of core-values and ethical practice. So far there is not much evidence for this. However, although New Zealand has a variety of mechanisms and guidelines promoting ethical behaviour in the civil service it still lacks comprehensive training programmes and a mandatory distribution of the *State Service Code*.

Special advisers, as in other countries, are playing a wider role in New Zealand. While they are regulated by the *Cabinet Office Manual* there may be need for a more detailed code of conduct and possibly the establishment of a *chef de cabinet* to monitor their conduct.

**Table 3. Private staff in ministerial offices<sup>32</sup>**

Date	Administration	Executive Size	Contract Staff	Annual cost (\$)	Average rate (\$)
Jun 1989	Labour	26	45	2.1m	46,072
Oct 1990	Labour	26	58	2.7m	46,813
Apr 1991	National	25	56	2.8m	49,792
Mar 1994	National	27	77	4.4m	57,030
Sep 1997	National-NZ First	24	129	7.3m	57,214
Jun 1999	National (minority)	23	106	6.4m	60,989
Feb 2002	Labour	23	179	10.3m	68,118

<sup>1</sup> Hicks, C. 1998. "The Ethics Regime in New Zealand" in N. Preston and C. Sampford (eds.) *Ethics and Political Practice: Perspectives on Legislative Ethics*. London: Routledge p.112

<sup>2</sup> As of August 2002

- <sup>3</sup> Boston, J. 1991. "Chief executives and the senior executive service." In J. Boston *et al.*, (eds.), *Reshaping the State*. Auckland: Oxford University Press
- <sup>4</sup> Henderson, A. 1990. *The Quest for Efficiency: The Origins of the State Services Commission*. Wellington: State Services Commission
- <sup>5</sup> Martin, J. 2001. "The Public Service" in R. Miller (ed.) *New Zealand Government and Politics*. Auckland: Oxford University Press. p.133
- <sup>6</sup> Goldfinch, S. 2000. *Remaking New Zealand and Australian Economic Policy: Ideas, Institutions and Policy Communities*. Wellington: Victoria University Press
- <sup>7</sup> Considine, M. 2000. "Contract Regimes and Reflexive Governance: Comparing Employment Service Reforms in the UK, Netherlands, New Zealand and Australia." *Public Administration* Vol. 78. No. 3. pp.613-618
- <sup>8</sup> Thomas, P. 1998. 'The Changing Nature of Accountability' in Peters, B. Guy and D. Savoie (eds.) *Taking Stock: Assessing Public Sector Reforms*. Montreal: McGill-Queen's University Press.
- <sup>9</sup> Gregory, R. 1998. "The Changing Face of the State in New Zealand: rolling back the public service?" Paper presented at the Annual Meeting of the American Political Science Association, Boston, 3-6 September.
- <sup>10</sup> Laegreid, P. 2000. "Top Civil Servants Under Contract." *Public Administration*, Vol. 78 No. 4 pp.879-896
- <sup>11</sup> Boston, J. 1991. "Chief executives and the senior executive service." In J. Boston *et al.*, (eds.), *Reshaping the State*. Auckland: Oxford University Press
- <sup>12</sup> Schick, A. 1996. *The spirit of reform: managing the New Zealand state sector in a time of change*. Wellington: State Service Commission
- <sup>13</sup> Boston, J., J. Martin, J. Pallot and P. Walsh. 1996. *Public Management: the New Zealand model*. Auckland: Oxford University Press p.332
- <sup>14</sup> Christensen, J. 2001. "Contractualism and Politicisation in the Public Service: A Comparative View of Denmark and New Zealand" Paper presented at the 97<sup>th</sup> Annual Meeting of the American Political Science Association, San-Francisco, 30 August –2 September.
- <sup>15</sup> Christensen, J. 2001. p.17
- <sup>16</sup> Boston, J., J. Martin, J. Pallot and P. Walsh. 1996. *Public Management: the New Zealand model*. Auckland: Oxford University Press p.321
- <sup>17</sup> OECD. 2000. *Trust in Government: Ethics Measures in OECD Countries*. Paris: OECD Publications p.241
- <sup>18</sup> State Services Commission. 1999. *An Ethics Framework for the State Sector*. Occasional Paper no. 15
- <sup>19</sup> See the series of reports from Transparency International entitled *Index of Corruption around the World*
- <sup>20</sup> Mulgan, R. 1997. "The Processes of Public Accountability" *Australian Journal of Public Administration*, 56 (1) pp.25-36
- <sup>21</sup> Gregory, R. 1998. "Political Responsibility for Bureaucratic Incompetence: Tragedy at Cave Creek" *Public Administration* 76, pp.519-538
- <sup>22</sup> Gregory, R. 1998. p.531
- <sup>23</sup> Palmer, G. and Palmer, M. 1997. *Bridled Power: New Zealand Government under MMP*. Oxford: Oxford University Press
- <sup>24</sup> It can be found at <http://www.ssc.govt.nz/siteset.htm>
- <sup>25</sup> OECD. 2000. *Trust in Government: Ethics Measures in OECD Countries*. Paris: OECD Publications p.242
- <sup>26</sup> <http://www.ssc.govt.nz/documents/cecompetencies.pdf>
- <sup>27</sup> <http://www.dpmc.govt.nz/cabinet/manual>
- <sup>28</sup> OECD. 2000. p.242
- <sup>29</sup> Boston, J., J. Martin, J. Pallot and P. Walsh. 1996. *Public Management: the New Zealand model*. Auckland: Oxford University Press p.321
- <sup>30</sup> A great deal of this section is derived from an interview with John Martin, former senior public servant with the NZ Ministry of Health and a professor of public policy at Victoria University Wellington.
- <sup>31</sup> Gregory, R. 1998. "Political Responsibility for Bureaucratic Incompetence: Tragedy at Cave Creek." *Public Administration*, 76 pp.519-538
- <sup>32</sup> Shaw, R. 2001. "Advisers and Consultants" in Raymond Miller (ed.) *New Zealand Government and Politics*. Auckland: Oxford University Press
- <sup>33</sup> Boston, J., J. Martin, J. Pallot and P. Walsh. 1996. *Public Management: the New Zealand model*. Auckland: Oxford University Press p.332
- <sup>34</sup> Shaw, R. 2001

# Ireland

This section sets out the regulatory regime in the Republic of Ireland for ministers, civil servants and special advisers. The country has seen a great deal of legislation enacted recently, mainly as a response to high profile ministerial scandals. Now, ministers are subject to investigation by an independent commission and sanction by the Oireachtas (Parliament). Civil service accountability is provided for in a *Civil Service Act* and a new code of conduct is currently being drawn up. Recently, legislation has been drafted to cover special advisers.

## I. Ministerial Regulation

In recent years, Irish ministers have been subject to a considerable degree of scrutiny. In 1996, the Minister for Energy and Communications, Michael Lowry was forced to resign over financial impropriety. In 1997 another minister, Ray Burke resigned over bribery allegations. These resignations led to the

establishment of the Flood Tribunal on Ethics in Public Office. At the same time, the Moriarty Tribunal was assembled to investigate unethical behaviour while in office by former Taoiseach, Charles Haughey.

The outcome of these ministerial scandals was that the government paid close attention to drafting legislation and setting up institutions that would prevent further incidents of this kind. The result has been the passing of legislation, the *Ethics in Public Office Act, 1995* and the *Standards in Public Office Act, 2001* as well as the tightening up of the *Standards in Public Offices Commission*, the regulatory body established to investigate public-service impropriety.

The *Standards in Public Office Act, 2001* established the *Standards in Public Offices Commission*, which replaced the *Public Offices Commission* set up in 1995.<sup>1</sup> This commission consists of a High Court or Supreme Court

**Table 1: Milestones**

1889	Public Bodies Corrupt Practices Act	Contains criminal statutes applying to the civil service
1916	Prevention of Corruption Act	Set out conflict of interest specifications for civil servants
1924-95	Ministers and Secretaries Acts	Established legal basis for accountability in civil service
1956	Civil Service Commissioners Act	Established rules of entry into the civil service
1956	Civil Service Regulations Act	Charged the Minister for Finance with fixing the terms and conditions for civil servants
1995	Ethics in Public Office Act	Set out responsibilities of public-office holders and special advisers
1997	Committees of the Houses of the Oireachtas Act	Confers power on Oireachtas to request papers and summon civil servants
1997	Public Services Management Act	Introduced a statutory basis for the creation of a new management structure for the civil service
2001	Standards in Public Office Act	Clarified responsibility of ministers
2001	Prevention of Corruption (Amendment) Act	Updates legislation on bribery, ministerial conflict of interest
2003	Guidelines for Public Servants and Office Holders	Instructs public servants on compliance with the Ethics in Public Office Acts, 1995 and 2001

judge, the Comptroller and Auditor General, the Clerks of the Dáil and the Senate and a member appointed by the government. The members have a term of six years. Its powers are analogous to those of a tribunal of inquiry with those put before it being represented by a senior counsel and with witnesses afforded the same rights as in a court of law.

The Commission undertook its first formal investigation into a minister (Ned O’Keefe) in December 2001 for failing to declare his interests. He was suspended for 10 days following a debate in the Dáil. The requirements of the 2001 Act state that it is the responsibility of the Dáil to impose sanctions on one of its members.

In December 2002, the Standards Commission published guidelines for office holders (i.e Ministers, Ministers of State and Committee Chairmen).<sup>2</sup> These help ministers carry out their obligations under the *Ethics in Public Offices Acts* and relate mainly to disclosure of interests.

### ***A Typical Ministerial Office***

In Ireland all government departments are located in different buildings in Dublin, as are UK ministries in London. Ministers have their main offices in their departments.

Table 2 (below) gives an example of a typical ministerial office. In this case it is the Department of Education in 2002. There are two

***Table 2: The Structure of a Ministerial Office<sup>3</sup>***

Category	Number
Minister	1
Ministers of State (Junior Ministers)	2
Higher Executive Offices (Private Secretaries)	2
Executive Officers	6
Staff Officers	2
Clerical Officers	1
Clerical Assistants	9
Special Advisers	2
Personal Secretaries	3
Civilian Drivers	2
<b>Total</b>	<b>30</b>

special advisers, all the other staff are civil servants.

## ***II. The Irish Civil Service***

The structure of the Irish Civil Service mirrors that of the UK and other Westminster systems. In all, there are roughly 32,000 civil servants in Ireland.<sup>4</sup> This is less than the number of persons employed in the local authorities, the health services and the state-sponsored bodies. Most civil servants are recruited as a result of competitions held by the Civil Service Commission under the *Civil Service Commissioners Act, 1956*.

The civil service is divided into three main categories: general, departmental and technical. Those in *general* service perform general duties from routine clerical operations to higher policy, advisory and managerial work. *Departmental* grades are confined to a few departments or offices, such as the Department of Foreign Affairs and the Houses of the Oireachtas (Parliament). *Technical* officers are recruited to perform specialised work and will have prior, specific qualifications. They tend to be solicitors working for the *Office of the Chief State Solicitor* or doctors working for the Department of Health.

### ***Civil Service Reform***

In the mid-1990s, the Strategic Management Initiative Programme (SMI) set about restructuring and reforming the Irish civil service.

The review identified a need for a civil service code of conduct to update and clarify rules of ethical behaviour. Furthermore, the sequence of Tribunals of Inquiry set up to review conflicts of interest between the public and the private sector emphasised the need for reform.

Reform was prompted by a view that the Irish civil service had become too hierarchical. Decisions tended to be taken at a high level and authority had become unduly centralised. This resulted in structures that did not always ensure optimal levels of efficiency and effectiveness.<sup>5</sup> *The Public Services Management Act, 1997* was enacted in order to improve performance and accountability.

### **Core Values**

In January 2003 the Standards Commission drew up a set of guidelines to assist public servants comply with the provisions of the Ethics in Public Office Acts, 1995 and 2001. These core values will be automatically provided to new civil service recruits and will form part of the terms and conditions of their employment contract.

At the moment, Ministry of Finance circulars provide guidance on the following areas:

- Impartiality;
- Political neutrality;
- Recruitment and promotion based on merit;
- Proper disclosure of information;
- Sympathetic, efficient and courteous dealings with the public;
- Efficiency and diligence in work;
- Avoidance of conflict of interest.

### **New Code of Conduct**

The Department of Finance is currently drawing up a new code of conduct. It should be published by September 2002. The new code is likely to cover some of the following areas:

- Receiving gifts or benefits;
- Use of official information/facilities/property;
- Work outside the civil service;
- Involvement in political work;
- Official travel.

### **Regulatory Bodies**

*The Ethics in Public Office Act*, which came into operation on July 22nd, 1995, applies to each member of both Houses of the Oireachtas, including office holders, and to specified categories in the civil service. In particular, the Act provided for the establishment of:

- A Dáil and a Seanad Select Committee on Members' Interests
- A Public Offices Commission.<sup>6</sup>

The remits of the select committees established under the Act apply to members of the Houses of the Oireachtas (Parliament) who are not office holders. The Commission's remit extends to office holders and also to civil servants. The principal function of the Commission is to provide advice and guidance on compliance with the legislation as well as investigating and reporting on alleged contraventions of the Act.

The Commission receives and considers annual statements of the registrable interests of the Attorney General, ministerial special advisers and persons who hold designated directorships in the semi-state sector. It also receives annual statements of the registrable interests of their spouses or children which could materially influence them in the performance of their official functions.

The annual statements of their own registrable interests furnished by members of both Houses of the Oireachtas (including office holders) are laid before the Dáil and the Seanad and are published in *Iris Oifigiúil*. The information is, therefore, in the public domain. Similarly, the statements of Ministerial special advisers' own registrable interests, and other information relating to the appointment of special advisers, which are laid by office holders before each House of the Oireachtas, are in the public domain as are the statements made by members of the Oireachtas concerning a material interest in proceedings of the House(s) or a Committee of the House(s).

The legislation provides that the disclosure by any person of information obtained under the Ethics in Public Office Act, or by being present at a sitting of the Commission constitutes an offence.

However, this does not apply to information that is:

- Disclosed, in the public interest, by a Minister of the Government,
- Contained in certain statements and disclosed, by the person to whom the statements were furnished, to specified parties in circumstances where the person disclosing is of the opinion that a conflict may exist between an interest specified, or an undisclosed interest, and the public interest,
- Disclosed by a person in the course of the performance of the person's functions or disclosed to a Minister of the Government, the Secretary General to the Government, a Select Committee on Members' Interests, the Commission or a relevant authority where such disclosure is in the public interest or
- Disclosed to comply with an order of a court for the purpose of proceedings in that court.

Neither does the prohibition apply to disclosure by, or with the consent of, the person to whom the information relates, of information contained in a report of an investigation by the Commission or a Select Committee on Members' Interests which has not been laid before either House.

### **Regulation**

The statutory basis for the accountability of civil servants derives from the *Ministers and Secretaries Acts, 1924-1995*, the *Civil Service Regulation Act, 1956*, the *Comptroller and Auditor General (Amendment) Act, 1993* and some other relevant legislation.

The Minister for Finance is responsible for the regulation and control of the civil service, their classification, numbers and remuneration and terms of conditions and service, promotion and discipline. Only the government has had the authority to dismiss established civil servants.

The *Public Service Management Act, 1997* introduced a statutory basis for the creation of a new management structure for the civil service. Its purpose was to enhance transparency and to put in place mechanisms for increased accountability of civil servants. For example, officers who have been assigned functions were

made accountable, in statute, to their secretary general and to their line manager. Furthermore, all civil servants are required by the Act to appear before Oireachtas committees when requested to do so.

In all, the Public Service Management Act has provided a firm foundation for developing a more results-orientated and accountable civil service.

The *Ethics in Public Office Act, 1995* goes further in defining the ethical framework for the civil service, politicians and senior executives of state bodies.

Broadly it requires senior officials to disclose:

- Outside income, shares etc;
- Directorships, consultancies;
- Land holdings;
- Public contracts;
- Certain gifts, travel provided free or below cost.

The Act contains a procedure whereby failure to comply with the disclosure requirements can result in referral to the Director of Public Prosecutions.

The *Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunity of Witnesses) Act 1997* confers power on Oireachtas committees to request papers and summon civil servants to attend meetings and respond to questioning relevant to the terms of reference of the investigating Committee.

The *Civil Service Regulations Act, 1956* (Section 17), charges the Minister for Finance to fix the terms and conditions of civil servants. This is achieved through the publication and distribution of circular letters throughout the civil service.<sup>7</sup>

Relevant criminal statutes are the *Public Bodies Corrupt Practices Act, 1889*; the *Prevention of Corruption Act, 1906*, and the *Prevention of Corruption Act, 1916*. All three have been amended by the *Ethics in Public Office Act, 2001*. Responsibility for investigating suspected criminal offences such as bribery rests with the Police. The decision on whether to prosecute rests with the Director of Public Prosecutions (DPP).

Criminal legislation covers:

- Active, passive, direct, indirect or attempted corruption of public officials/ corruption committed by public officials;
- Partiality in official decision making and abuse of office.

The *Prevention of Corruption (Amendment) Act, 2001* strengthened the law on corruption and brought Ireland into line with international guidelines. These are:

- European Union Convention on the Fight against Corruption involving Officials of the European Communities (1997);
- Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD: 1997)
- Criminal Law Convention on Corruption (Council of Europe, 1999)

### ***Civil Service Involvement in Politics***

In general, civil servants above clerical officer level, excluding personal assistants and special advisers whose terms of appointment are coterminous with the appointing Minister, are totally debarred from engaging in politics. The exception is where a civil servant, who holds a position which had been within the clerical officer threshold, has been upgraded through the general restructuring of his or her grade and as a result of which such upgraded position now carries a salary maximum above that of clerical officer.

### ***III. Special Advisers***

The practice of appointing special advisers dates back to the government of 1954-57 when two appointments were made. Thereafter, there were no further appointments till 1970.<sup>8</sup> The governments that took office in 1973 and 1977 had four and six advisers respectively. Since the 1980's the number has grown and now nearly every minister has an adviser.

The role of the special adviser in Ireland consists of:

- Discussing with the minister the political and electoral implications of the advice coming from civil servants;
- Discussing organisational changes that the minister is thinking of proposing;
- Drawing attention to aspects of policy that the civil service may not have referred to;

- Researching matters for discussion at government meetings;
- Dealing with constituency matters in a broader framework than the normal constituency correspondence handled by the private secretary demands;
- Writing speeches for the minister.

Advisers have access to departmental files and may see all submissions to the minister.

The arrangement bears some resemblance to that of the European 'cabinet' system. Under that system a minister (or a member of the European Commission) has a group of 8-10 people known as a 'cabinet' whose work is broadly akin to that of special advisers, described above. There are periodic suggestions in Ireland to establish a 'cabinet' system but the matter has not been considered in any detail. As Dooney and O'Toole comment, it would necessitate radical changes to the public service to an extent that could be politically unacceptable.<sup>9</sup>

A new development introduced by the 1993-4 Fianna Fáil/Labour government was the appointment of programme managers to act as go-betweens between the coalition partners. Some of these were civil servants and some were appointed from outside the service. This practice continued under the 1994 Fine Gael/Labour coalition but has ceased with the present Fianna Fáil/Progressive Democrat government.<sup>10</sup>

Programme managers were assigned the specific function of providing administrative support to ministers in progressing the coalition government programme, the *Partnership Programme for Government*. They would meet formally every week to discuss the programme. They would also meet bilaterally, where they sought solutions to interdepartmental agreements and so saved ministers' time.

Many special advisers are veterans of previous governments. The most celebrated is Dr. Martin Mansergh who has served as a salaried adviser in Fianna Fáil headquarters when the party was in opposition and as special adviser on Northern Ireland to successive Fianna Fáil Taoisigh. He is now a member of the Senate but continues to act as a special adviser. This type of revolving door appointment has become the norm now

**Table 3. Special Advisers in Irish Governments 1981-2002<sup>11</sup>**

	Fitzgerald 1982-1986	Haughey 1989-1992	Reynolds 1992-1994	Bruton 1994-1997	Ahern 1997- 2002
Ministries	15	15	15	15	15
Advisers	13	15	30	49	28

that Irish political parties receive state funding which provides an assured level of finance for party work.

### **Numbers**

It is difficult to attain precise numbers of the number of special advisers employed by Irish ministers. However, table 3 (above) gives an indication based on information drawn from questions put to Ministers in the Dáil. Until the 1990's it was customary for every Minister to have one special adviser. The Fianna Fáil led Reynolds government of 1994 was the first to increase numbers, with every minister and every junior minister having a special adviser. The Fine Gael led Bruton administration of 1994-1997 marked the pinnacle of special adviser proliferation in Irish government with 49 special advisers spread through 15 departments. The present Fianna Fáil government led by Bertie Ahern reduced the number of advisers. However, the role of special adviser has been blurred by the use of politically appointed press secretaries and party interns who are not included in these figures.

The Department of the Taoiseach has always had the largest number of special advisers. Ahern, for example, employs eight while Bruton employed five.

### **Salaries**

When the Fianna Fáil—Progressive Democrat coalition government came into office in June 1997, the Minister for Finance laid down certain rules governing the salaries of special advisers, since the *Public Service Management Act, 1997* made no reference to salaries.

The Minister for Finance established an attraction allowance of 10% on top of the previous salaries of appointees. The offices of the Taoiseach and Tánaiste are excluded from these regulations and the Minister for Finance and the Taoiseach were given authority to

sanction the appointments and salaries of advisers in these Departments.

### **Legislation governing Special Advisers**

Ireland is well provided for in legislation covering the role and conduct of special advisers. The relevant Acts are:

- Public Service Management Act, 1997 (section 11);
- Ethics in Public Office Act, 1995;
- *Prevention of Corruption Act, 2001.*

Section 19 of the *Ethics in Public Office Act, 1995* and section 11 of the *Public Service Management Act, 1997* have regulated the position of special advisers to Ministers and Ministers of State. They are set out in the appendix.

In brief, the *Public Service Management Act, 1997* specifies:

- That a minister or minister of state (other than the Taoiseach or Táiniste) cannot have more than two special advisers;
- That special advisers are accountable to the minister;
- That the terms and conditions of the employment of special advisers be periodically reviewed by the Minister for Finance.

The *Ethics in Public Offices Act, 1995, Section 19* specifies:

- That special advisers are not part of the core civil service but are appointed personally by an office holder;
- The contract of a special adviser is terminated upon the relevant office holder leaving his position;
- The special adviser must submit to the Public Offices Commission a statement of personal interests and family interests;

- The special adviser must inform the Public Offices Commission immediately of any conflict of interest scenario.

Failure to comply with the legislation results in investigation from the Public Offices Commission and potentially, dismissal or the bringing of criminal charges.

In performing their duties special advisers are not excluded, as are civil servants, from providing advice to an office holder in his or her role as a member of the Oireachtas or a political party.

### ***Codes of Conduct for Special Advisers***

At present there is no code of conduct for special advisers. However, the new code of conduct currently being devised to outline core public service values will be issued to special advisers.

Special advisers are included in Minister of Finance circulars covering standards of behaviour (see above). For example, *Circular 37/95 (E109/56/86)* issued by the Department of Finance on 14<sup>th</sup> December, 1995 indicates that all Personal Advisers and Programme Managers are required to comply with the requirements set out in the *Ethics in Public Office Act*.

The Standards Commission has issued a set of guidelines for Public Servants to help them comply with the terms of the *Ethics in Public Office Act*. Section 5 of this covers special advisers. The guidelines state, among other things, that special advisers are required:

- to submit each year to the Public Offices Commission a statement of registrable interests
- to submit, on leaving the post, a copy of the contract listing the terms and conditions under which one acted as special adviser

Special advisers are also required to provide a statement of the facts to his or her minister as well as to the Standards Commission if a specific function fails to be performed and if the special adviser has a material interest in the matter to which the function relates. This is designed to eliminate collusion with lobby groups or the withholding of information.<sup>12</sup>

### ***Relationship between special advisers and civil service***

Civil servants in Ireland have a close working relationship with special advisers. Prior to 1981 advisers who wished to remain in office at the termination of a government were often appointed established civil servants 'in the public interest', as provided for in the *Civil Service Commissioners Act, 1956*. This has now been repealed partly as a response to dissatisfaction from existing civil servants who saw the rule as interfering with promotion arrangements.<sup>13</sup>

In general, informal interviews with civil servants acknowledge that the political connections of special advisers are an asset because they understand the political consequences of policy and have an instinctive sense of what their minister can achieve.

Another explanation for the good working relationship between permanent civil servants and special advisers in Ireland is that many special advisers tend to be in place for a long time. Ireland's largest party, Fianna Fáil, has been in power for 14 out of the last 16 years. Ministers tend to retain their special advisers and the same adviser often works for different ministries. In this respect, special advisers can get to know permanent civil servants well and build up long-term working relationships with them.

### ***Conclusions***

Ireland has recently passed legislation on ministerial ethics. The *Ethics in Public Office Act, 1995* and its successor the *Standards in Public Office Act, 2001* have laid down strict guidelines for ministerial conduct.

There have been several recent developments in civil service regulation. The *Public Services Management Act* introduced a statutory basis for civil service conduct in 1997. The Department of Finance is also preparing a new *code of conduct*, which will be issued by September 2002. Ireland has also made advances in ethical awareness with individual departments circulating pamphlets on different ethical issues and human resource departments organising periodic training sessions.

The current system of special advisers in Ireland is acknowledged by civil servants as being non-contentious.<sup>14</sup> It prepares ministers for discussions in government in areas outside their departments' responsibilities. It also provides specialist advice to ministers on certain policy areas, providing a different perspective to expert civil service advice. Special advisers also provide advice on the political implications of public policy helping both the minister to keep a high profile and enabling the civil service to keep out of political matters. In turn, civil servants recognise that advisers are politically focused.

It can be argued that a great deal of the recent legislation on public service ethics was prompted by concern over ministerial conduct of the mid-1990's and the public nature of the various tribunals of inquiry that were subsequently set up. However, Ireland's reaction has been a thorough appraisal of the various measures needed to promote public service accountability.

<sup>1</sup> [http://www.ucc.ie/law/irlii/statutes/2001\\_31.htm](http://www.ucc.ie/law/irlii/statutes/2001_31.htm)

<sup>2</sup> [http://www.sipo.gov.ie/2796\\_246.htm](http://www.sipo.gov.ie/2796_246.htm)

<sup>3</sup> Source: author interviews with relevant civil servants

<sup>4</sup> Based on answers given from ministers in the relevant issue of the *Dáil Report*

<sup>5</sup> Boyle, R. and T. McNamara. 1997. *Governance and Accountability: Power and Responsibility in the Public Service*. Dublin: Institute of Public Administration. p.87

<sup>6</sup> <http://www.irlgov.ie/poc/>

<sup>7</sup> OECD. 2000. *Trust in Government: Ethics Measures in OECD Countries*. Paris: OECD Publications. p.186

<sup>8</sup> Dooney, S. and J. O'Toole. 1998. *Irish Government Today* 2<sup>nd</sup> ed. Dublin: Gill and Macmillan.

<sup>9</sup> Dooney, S. and J. O'Toole. 1998. p.41

<sup>10</sup> O'Halpin, E. 1997. "Partnership programme managers in the Reynolds/Spring coalition, 1993-4: an assessment" *Irish Political Studies*, 12, pp.78-92

<sup>11</sup> Compiled from ministerial declarations contained in the relevant issue of the *Dáil Report*

<sup>12</sup> See the Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts, 1995 and 2001, Appendix 5 for further details. [http://www.sipo.gov.ie/2796\\_246.htm](http://www.sipo.gov.ie/2796_246.htm)

<sup>13</sup> Dooney, S. and J. O'Toole. 1998. p.42

<sup>14</sup> Dooney, S and J. O'Toole. 1998 p.44



