

---

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

**by Simon King**

---

**June 2003**



The **Co** **titution** Unit



---

# *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



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?



---

# *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,

**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

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

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

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 comparIn 7Tng ethicsmanlhicsT linteo4aasurcsis tha 0.1m0.0209 Tc0.13dmu7P8uho13d63/Tm(communic

*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

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



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.

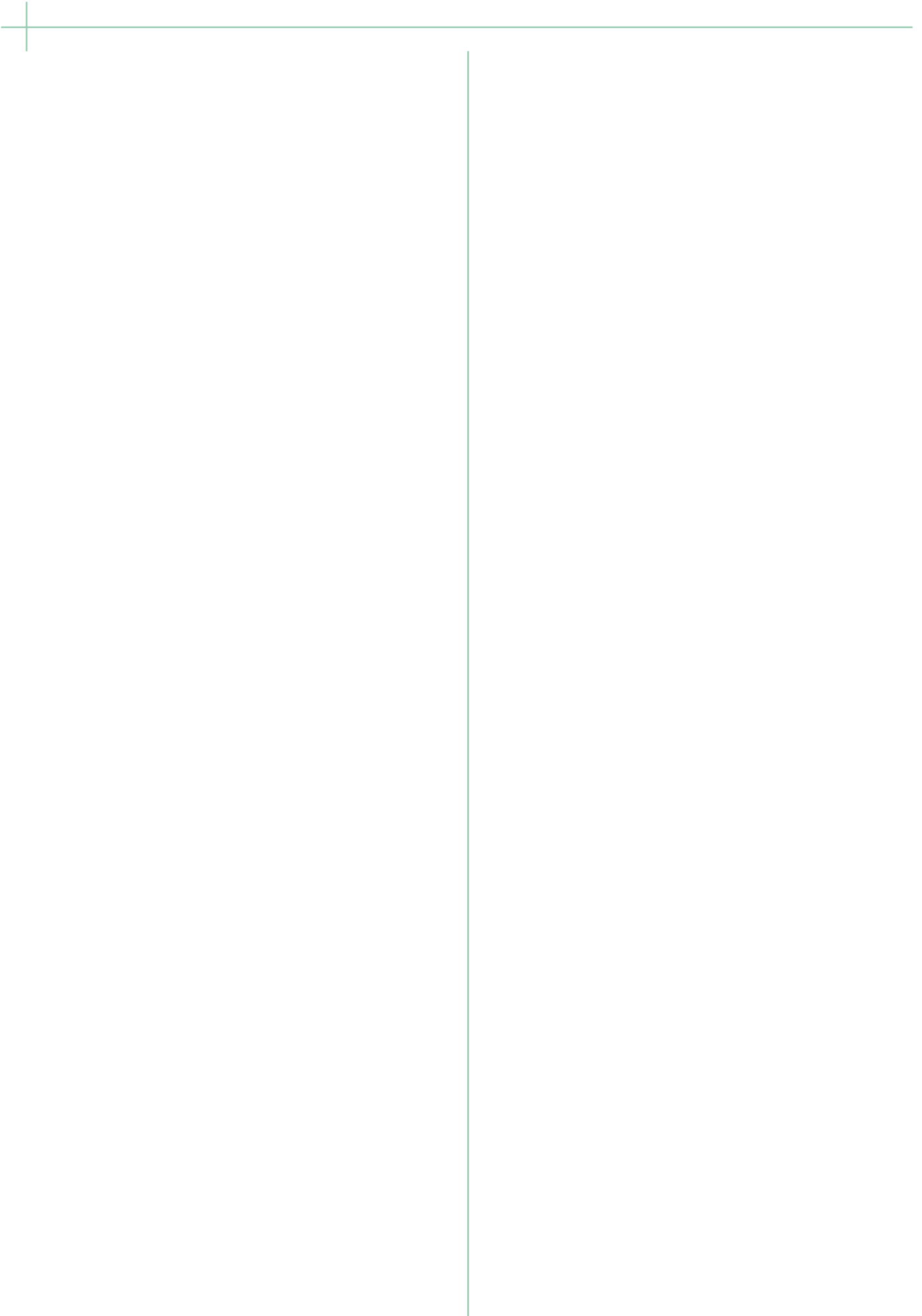
A selection of recommendations have recently been put forward by the Government.<sup>26</sup> For instance it has recommended that it should be easier for civil servants to raise their concerns and that the process should be refined to make it less intimidating. The Committee on Standards in Public life 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	J	J	J	J	J
Exercising influence in return for inducements		J	J	J	J
Prohibition of accepting gifts/benefits				J	J
Restriction on political activity			J		
Making false statements to mislead officials; falsifying public documents	J	J	J	J	J



<sup>1</sup> *Hansard*



# 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/liaison 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

## ***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.





---

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

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

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>

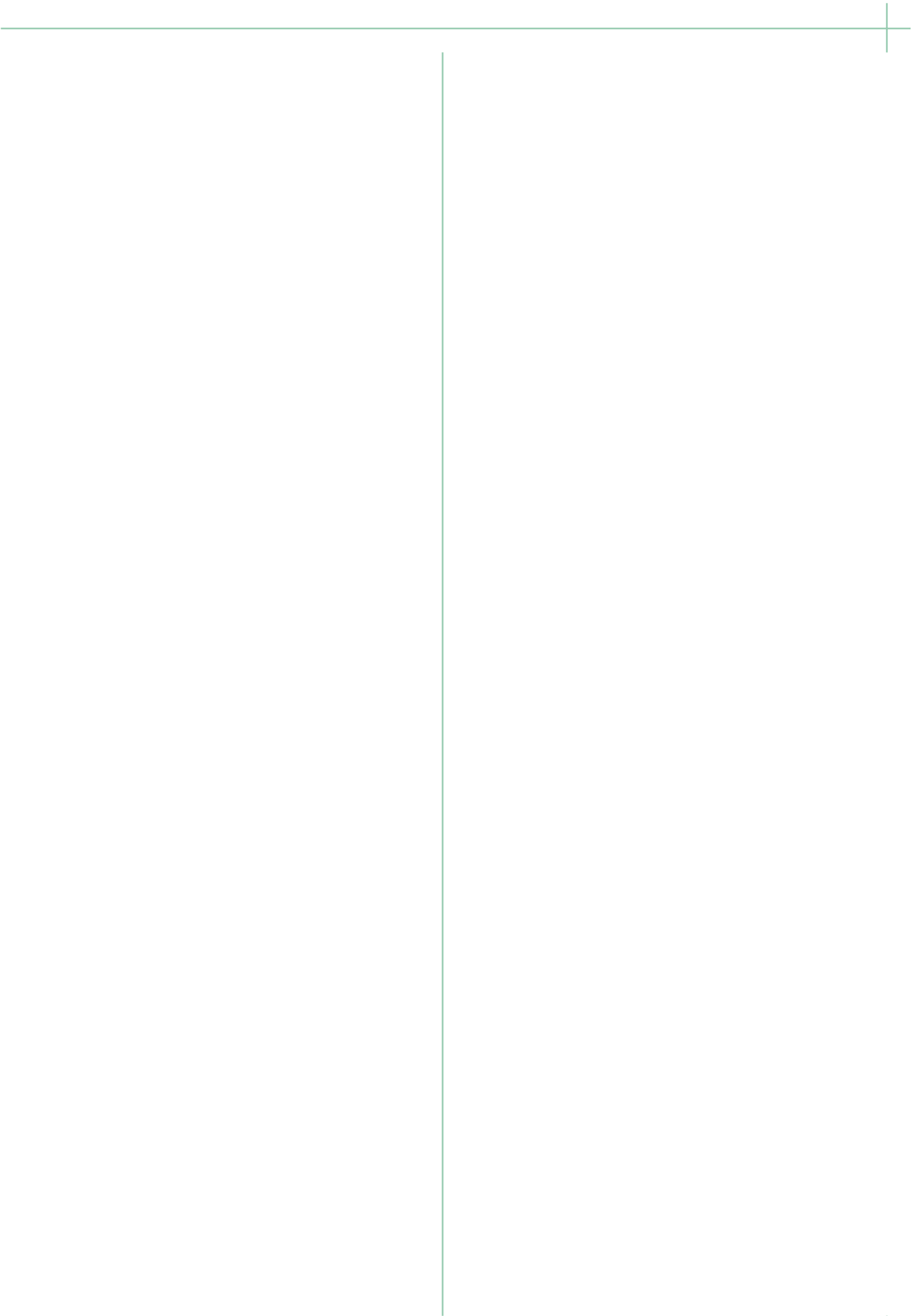
About half tend to be seconded from the public service while around 60 percent tend to be members of the governing party. In 20 years the percentage of female advisers has doubled, as has the average age. In the 1970s most advisers were in their 20s, now most are in their 40s.<sup>40</sup> Furthermore, 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
- 0 0 rxufor(Bargaining—Ministers solve most policy)Tj0S5eydmi2ce l/osition.



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 Public Service measures are necessary in

- 
- <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.

---

<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. "BeB7.51 Tmns 64.18 656.15 Tmp1 ns'4m0[ 610 .D?4.1T5 62J1 Tmns 1202001. p.



# 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.

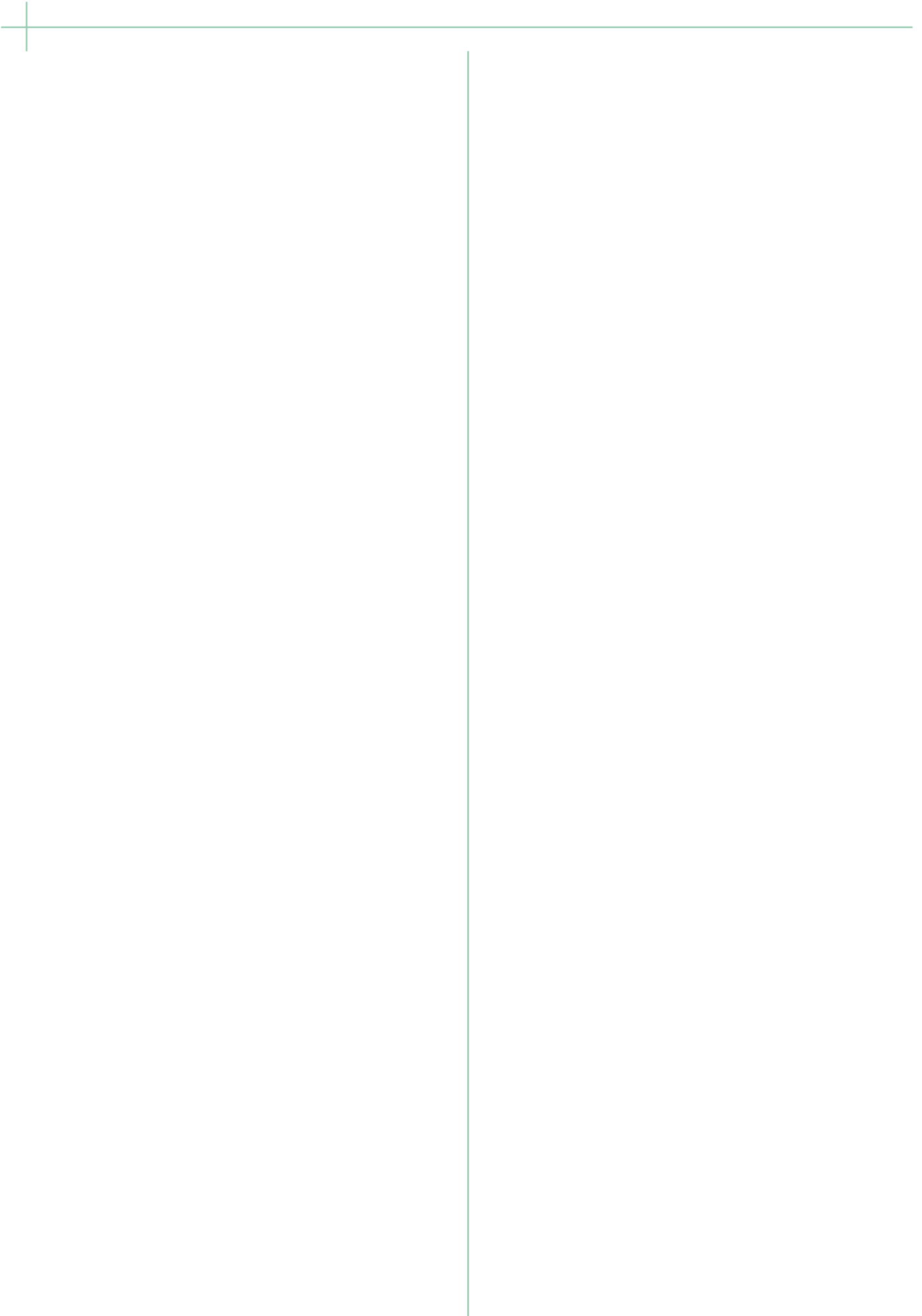
Ministers have offices around central Ottawa but also in their constituencies. The constituency offices are 'political' staffers only. They deal with constituents and also with the local permanent civil servants.

## 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





---

### ***Regulatory Bodies***

There is no central agency responsible for managing ethics policies in the Public Service of Canada. Deputy heads of departments have

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

- 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

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





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>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

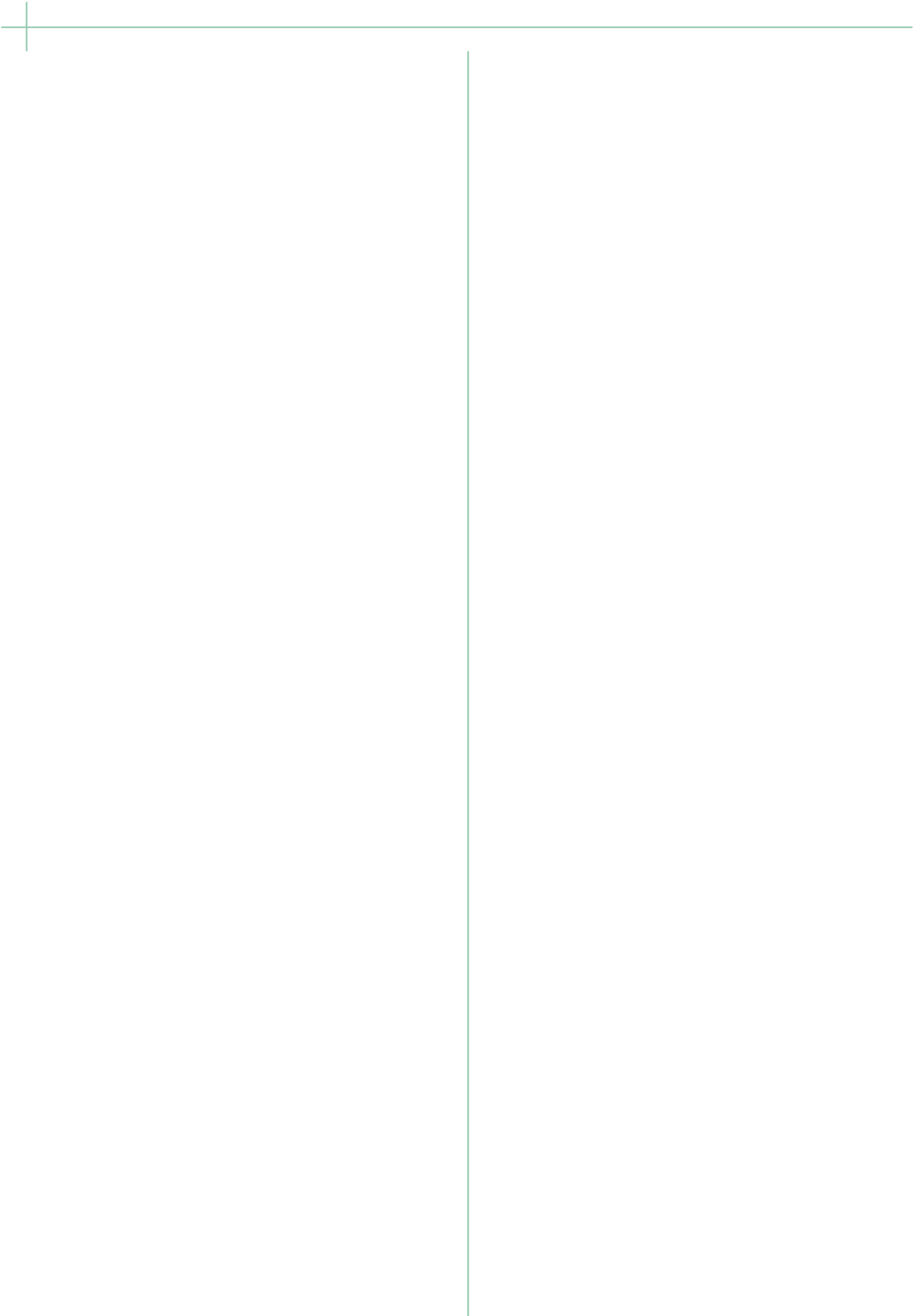
<sup>11</sup> Office of the Ethics Counsellor, Canada: <http://strategis.ic.gc.ca/SSG/oe00001e.html>

<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>







---

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

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***

- 

this guidance is applicable to the wider State sector.

*Standards for Senior Civil Servants*

In 1998, the *State Services Commission*

---

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

***Regulation***

---

### *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

- 
- <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.

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

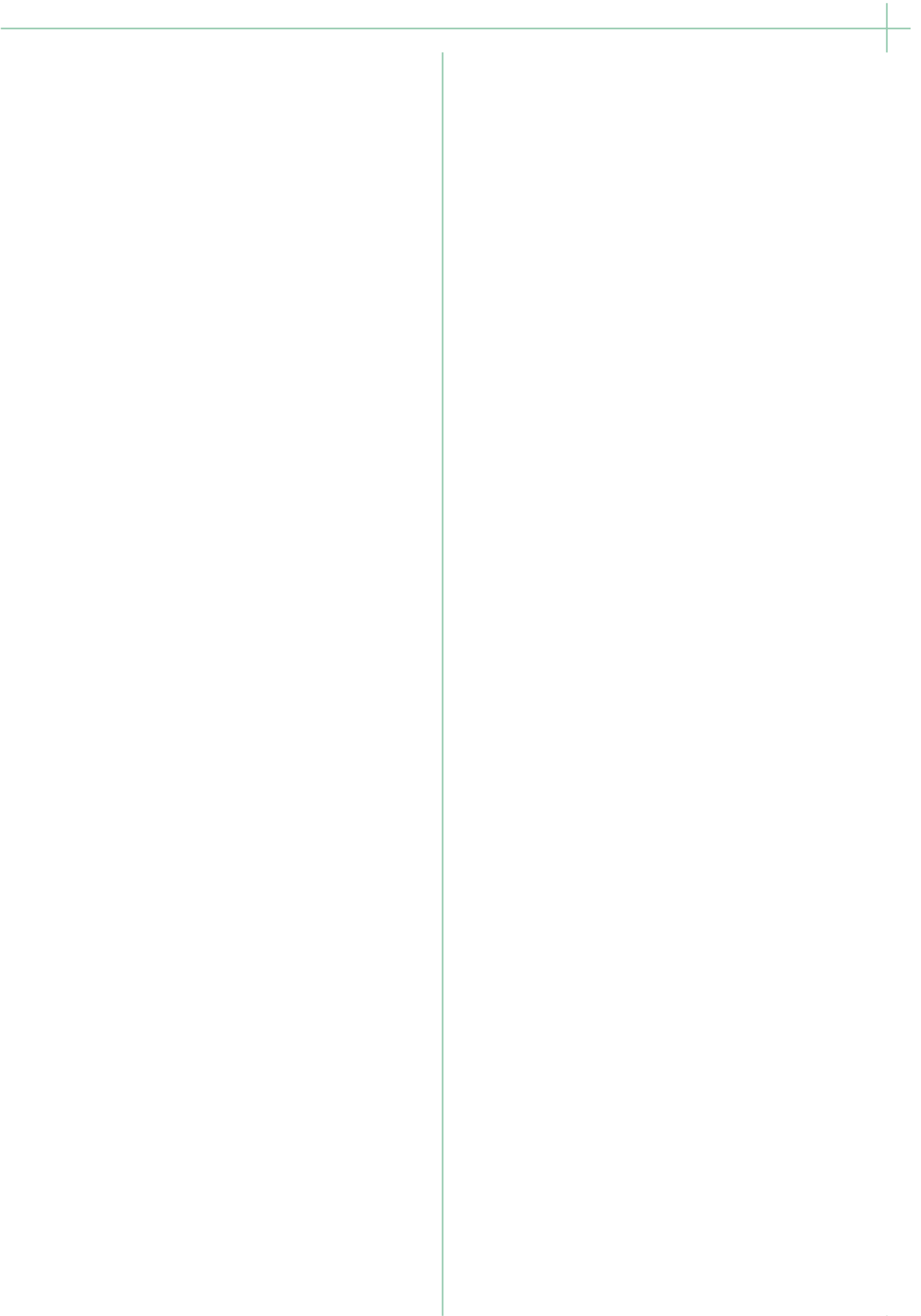
judge, the Comptroller and Auditor General, the Clerks of the Dáil and the Senate and a member appointed by the government. The members have a term of six years. Its powers are analogous to those of a tribunal of inquiry with those put before it being represented by a senior counsel and with witnesses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





However, this does not apply to information that

- 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.

that Irish political parties receive state funding

- 
- 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.

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.

<sup>1</sup> <http://www.ucc.ie/law/irlii/st>



