ETHICS IN GOVERNMENT AND BUSINESS

by

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ABSTRACT

Canadians appear to hold the activities of those in government and in big business in low esteem. Media reports of several high-profile political and corporate instances of unethical conduct have reinforced the public's concern for the status of ethical conduct and honesty in government and in big business.

The response by public and private sector managers to unethical conduct by employees is largely in the form of 'ethical rules' which both sectors agree provide a measure of certainty as to the ethical conduct expected from employees. Since research on ethics in the public and private sectors is limited and since ethics is a topic of increasing concern to both sectors, this thesis provides data that could assist managers in dealing with the issue of ethical conduct within their respective organizations.

The purpose of this thesis is to compare the state of ethical conduct within public and private sector organizations in Canada. This is accomplished through a description and analysis of the approaches taken by the public and private sectors as well as the four professions of law, engineering, accountancy and medicine. Ethical conduct within the public sector focuses on the ethical behaviour of public servants rather than elected officials.

The underlying intent of this thesis is to discover if contemporary ethical problems are similar in the public and
private sectors with respect to the four ethical problem areas of conflict of interest, political activity, public comment and confidentiality. The comparative data on both public and private sector ethics are assessed and similarities and differences are identified.

One major finding emerges from this study. Codes of ethics in both the public and private sectors are perceived by management to play an important role in the prevention of unethical conduct.

A procedure for developing a code of ethics is presented along with recommendations as to the administration of a code of ethics. Finally, recommendations are made as to the role of education in ethics.
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Ethics is a word derived ultimately from the Greek word 'ethos', meaning character. It has come to refer to 'a set of moral principles or values', but it may be thought of as something much more penetrating than a moral code. It refers to the very essence of one's integrity—-the intangible part of us motivating us to be and do the same when people are not watching as when they are.

Government of Canada
Ethical Conduct in the Public Sector,
CHAPTER I

INTRODUCTION

ETHICS AND THE PUBLIC

In January 1985, the Canadian Institute of Public Opinion questioned Canadians concerning their level of respect for and confidence in a number of different groups in society. Public schools, the Supreme Court, and the church were at the top of the list. At the bottom of the list, with less than three-in-ten expressing confidence in them, were labour unions, political parties, the House of Commons, and large corporations.1 The Institute has found that over the past five years confidence in the House of Commons has dropped from thirty-eight percent to twenty-nine percent while confidence in political parties has declined from thirty-eight percent to twenty-eight percent.2

In a separate, earlier survey the Institute asked Canadians to rate people in twelve occupations in terms of 'honesty' and 'ethical standards'. Doctors received the highest rating, with fifty-nine percent of those surveyed assessing their standards as high or very high, followed by police officers with fifty-two percent giving them top ratings. Among those occupations that had a less than fifty percent ratings are engineers(43%), university teachers(40%), psychiatrists(28%), lawyers(28%), journalists(21%), business executives(19%), building contractors(18%), members of Parliament(14%), advertising executives(13%) and labour
union leaders (12%). It appears that Canadians hold the activities of those in government and in big business in low esteem. Several high-profile political and corporate events, such as the federal fisheries minister permitting the release of tuna judged unfit for human consumption, Dominion Stores Ltd. being ordered by the courts to return $38 million it took from an employees' pension fund without proper notification, and the inquiries into conflict of interest allegations against former federal industry minister Sinclair Stevens and Ministry of Transport employees, John Spinks and Richard Cottingham, have reinforced the public's concern for the status of ethical conduct and honesty in government and big business. The Report of the Task Force on Conflict of Interest attributes public concern about ethical conduct in the public sector to the poor public image of politicians and public office holders in general. It argues that "allegations against a few or appearances of unethical conduct by some officials support the exaggerated view that all are corrupt." In the private sector this same public concern about ethics is attributed to what Sherwin Klein refers to as "the widespread belief that amorality if not immorality is too prevalent in business", although he feels that this picture of "an amoral or immoral business world" is exaggerated.

Ethics is the study of standards of conduct and moral judgment. The Task Force on Conflict of Interest refers to ethics as being much more than a moral code; it views ethics
as "the very essence of one's integrity--the intangible part of us motivating us to be and do the same when people are not watching as when they are". For the purpose of this thesis, the definition provided by Theodore Purcell in his efforts to institutionalize ethics will be used:

Ethics is a practical science, based on reason and concerned with the rightness and wrongness of human action. Ethics requires that each person act according to his/her nature, retaining dignity as a free human being.

This introductory chapter will provide an overview of ethics, in both the public and private sectors with particular reference to the Canadian experience. For the purpose of this thesis, 'ethics in the public sector' will focus on the ethical behaviour of public servants rather than elected officials. In order to examine the ethical behaviour of public and private sector employees one could take at least three approaches, namely: examine the ethics and the organizational role demands on the employee; examine ethics as it relates to public policy formation; or examine ethics as it applies to one's personal ethical standards. In this thesis, the latter approach will be used although the problem of organizational demands conflicting with personal ethical standards will be discussed in the section on confidentiality and whistleblowing.

OVERVIEW OF ETHICS IN THE PUBLIC SECTOR

The matter of ethics in government has been a concern of various civilizations throughout the ages. This concern has manifested itself in 'codes of right conduct' which Gerald
Caiden notes have been remarkably similar even though they originated from different civilizations and at different periods in history. The Code of Hammurabi, the Law of Moses, Athenian law, Roman law, and the Chinese principles of public conduct based on the teachings of Confucius have all addressed the issue of ethical conduct. In the Canadian context, Kernaghan argues that:

historically, the public's interest in the ethical conduct of government officials, whether politicians or public servants, has waxed and waned as instances of wrongdoing have been exposed, publicized, debated, punished and then forgotten.

He notes that during the 1970s there was strong public concern about the ethical conduct of public officials, and he attributes this concern to the following: the shocking and controversial Watergate Affair; the cumulative impact of offences of a lesser degree; and the news media who have played a role not only in exposing unethical conduct but also in maintaining the public's interest in the extent of the offence and the fate of the offenders. Kernaghan further maintains that, in part, this publicity has resulted in a widespread public perception that ethical standards are too low and that many unethical acts go undetected and, therefore, unpunished. Numerous instances of unethical conduct have come to the fore in the 1980s, thereby reaffirming the public's suspicions.

Along with this staunch public concern about the ethical conduct of public servants there has been a gradual change in the public's view of what standards of conduct are
appropriate for public officials. Kernaghan has noted that certain kinds of official conduct that used to be tolerated or mildly condemned are now considered unacceptable and punishable, especially in the areas of conflict of interest and unauthorized disclosure ("leaks") of government information. On the other hand he has noted that political activity by public servants has become more acceptable.

The ethical conduct of public servants has been the subject of intense interest both to the public and academics. Traditionally ethics has been viewed by scholars of public administration as an important part of the broad concept of administrative responsibility. When one examines the concept of administrative responsibility one must address the concept of administrative power and the subsequent problem of guarding against its abuse.

The notion generated by the politics/administration dichotomy that public servants simply administer the policies formulated by politicians no longer appears to be valid; public servants do participate in the policy-making process. They also invoke the authority of the state with respect to regulation, and the distribution and redistribution of resources. Dwivedi argues that in carrying out these duties they use power, the exercise of which he refers to as "an action which can seldom be value-neutral".

On the basis of a review of recent publications in the field of public administration, Dwivedi observes that there is "a growing concern by scholars with the values public
servants apply in the course of their jobs". Kernaghan argues that the way in which public servants use their power depends on their 'mix of values' and the importance they place on these values will vary over time. He goes as far as to argue that in the practice of public administration value neutrality is a fiction. He states that with the power senior civil servants have both to make and to influence decisions, they are "routinely and significantly involved in choosing and balancing values".

As the power and influence of public servants grow, so do the demands for mechanisms to ensure that bureaucratic power is exercised in a responsible manner. One response to this demand has been the formulation of codes of ethics which contain ethical rules or standards that have been formulated to insure that bureaucrats do not abuse their bureaucratic power; standards that ensure that public servants conduct the public's business with impartiality, objectivity and integrity.

The power that public servants now exercise offers them opportunities to be involved in unethical conduct. Kernaghan argues that:

the public's unhappiness about ethical transgressions together with confusion within and outside government as to what constitutes unethical conduct demonstrates the need to clarify and specify ethical standards.
AN OVERVIEW OF ETHICS IN THE PRIVATE SECTOR

As values and customs change, so do society's views of what conduct is or is not considered to be ethical. In the Middle Ages the business practice of charging interest on loans was considered usury, but as a commercial society evolved, as capital became productive and as the science of economics developed, this proscription changed.

Historically, problems of ethics in business have not been of major concern to society. The Task Force on Conflict of Interest notes that there is a general perception that conflict of interest concerns and business morality in general are more lax in the private sector than in the public sector. Richard Finlay argues that:

Students of North American business history know that concerns over ethical conduct and social consequences rise and fall. Today, on the heels of growing public anxiety about increasing corporate concentration and an expanding litany of indiscretions in the business world, the trend is clearly in ascendancy once again.

Although the public may appear to be more tolerant of unethical conduct in the private sector than in the public sector there has been a heightened concern over unethical business practices during the past decade. This concern can be attributed to the following: the sensational investigations of international payoffs; the frequency of "whistle-blowing"—leaking to the public information on the misconduct of one's employer; Wall Street being hard-hit by charges and admissions of insider trading schemes; the col-
lapse of two Western Canadian banks that raised serious questions about insider self-dealing, shoddy management practices and dubious auditing procedures; the news media which has begun to intensify its scrutiny of corporate decision-making and whom it affects; and the rise of the consumer movement in the 1970s under the leadership of such consumer advocates as Ralph Nader, Ellen Rosemann and Phil Edmonston, who taught the Canadian public the meaning of the term 'caveat emptor'.

As in the public sector, there has been a gradual change in the public's view of what standards of conduct are appropriate for the private sector. It appears that in the past, ethical principles that guided business policies were taken for granted. Michael Blumenthal, former president and chief executive officer of the Bendix Corporation, argues that the context in which corporate decisions are made has changed, that corporate executives are accountable to many different constituents--the board of directors, other members of management, shareholders, customers, employees, the news media etc., resulting in what he refers to as "a dramatic magnification of the significance of our actions". Consumers complain about goods that are of low quality, unsafe, and misrepresented. The public is upset over reports of white collar business crime, bribery, kickbacks, fraud and the like. Employers have their own complaints such as business thefts, e.g., trade secrets, general dishonesty and whistle-blowing. It appears that certain kinds of business
conduct that used to be tolerated are now considered unaccept-
able and punishable, especially in the areas of conflict of
interest, confidentiality, and unauthorized disclosure of
company information.

Ethical conduct in the private sector has also been of
interest to academics. A review of recent literature in the
field of business administration shows that the issue of
ethics in business has been addressed using what Sherwin
Klein refers to as "the philosophical approach". This
approach presupposes that business people are morally
conscientious; thus, when faced with a moral problem within
their business activities they want to determine what is
morally right or wrong. Executives are concerned with their
moral and social responsibilities to employees, shareholders,
consumers, and society in general. Employees want to know
what their rights and duties are, e.g., is whistle-blowing
ever morally defensible or what constitutes morally
responsible conduct in advertising? This philosophical
approach that seeks to determine what one ought or ought not
to do has in part led not only to the development of codes of
ethics by business executives, but also to the development of
ethics workshops, seminars, and courses in business ethics.
The critics of this approach question the value of codes of
ethics and ethics courses in general. Academics caution
that:

raising the profile of corporate morals in
the classroom may not influence the next
generation of managers to behave with
greater ethical concern. Not only is
moral character shaped early in life,
values can often become quickly eroded in
the competition of the market place.33

When managers carry out their duties they use power. The way
in which they use this power will depend on their values and
how they choose and balance them.

This dilemma has led to another approach to business
ethics, an approach Klein refers to as "a value based inter-
disciplinary one". This approach entails the analysis of
business life styles (ideals) that have determined the
character of business people, and show both their positive
and negative moral consequences. This analysis would re-
veal not only the morality or lack of it in business, but it
would also identify possible changes that are occurring in
business morality and possible ways of developing a
desirable, viable business ethic.34 This approach which ex-
amines human ideals or what has traditionally been called the
'good life', i.e., the type of human being or human life
style or society that is basically good, is derived from the
ethics of Socrates, Plato and Aristotle. These philosophers
recognized that one's life style or basic values mold one's
character, and it is upon this foundation that one's concrete
judgments and activities (including ethical judgments and
actions) depend. For example, if one has a materialistic
concept of the 'good life' then one's solution to a problem
will differ from the solution of one who equates the 'good
life' with some type of excellence or spirituality. In other
words, human lifestyles basically determine attitudes towards
morality and immorality.35 Whatever approach is taken, the
subject of ethics has become a "very live issue in corporate board rooms and executive suites".  

PURPOSE AND METHODOLOGY OF THIS THESIS

The purpose of this thesis is to compare the state of ethical conduct within public and private sector organizations in Canada. The major hypothesis is that contemporary ethical problems are similar in the public and the private sectors with respect to the four problem areas of conflict of interest, political activity, public comment, and confidentiality.

Since the research on ethics in the public and private sectors has been limited and since ethics appears to be a topic of increasing concern to both sectors, the research for this thesis could provide data that would assist managers in dealing with the issue of ethical conduct within their respective organizations.

The methodology used in this thesis involves description and analysis. The descriptive part of the thesis centres on synthesizing the literature relating to ethics in both the private and public sectors with particular reference to the Canadian experience. A summary of the literature on ethics in the public and private sectors in Canada is not included in this thesis because this literature is so sparse, especially in the sphere of the private sector. The analytical part of the thesis assesses the comparative data on both public and private sector ethics with the purpose of determining similarities and differences. Kernaghan's classification of
problem areas related to ethical conduct in the public sector will provide the basis for the description and analysis in both sectors. These problem areas are conflict of interest, public comment, political activity, and confidentiality. Why approach private sector ethics using these four problem areas? Because, in the private sector as in the public sector, conflict of interest, confidentiality, public comment and to a somewhat lesser extent, political activity have been identified as ethical problem areas and they appear to be areas that can be and have been codified by a number of private sector organizations.

It is important that one relate the practical significance of this thesis to the discipline of political science and its subfield, public administration. Political scientists are concerned with the concept of power and within our political system, bureaucrats do exercise considerable power in both the making and implementation of public policy. Accountability and responsibility are also important areas of study both within the discipline of political science and within the subfield of public administration; administrative responsibility, like political responsibility, is fundamental to public confidence in government institutions. The issue of the ethical conduct of public servants is "an integral part of the larger issue of reconciling administrative power and administrative responsibility". High ethical standards are viewed as one means of guarding against the abuse of administrative power. In turn the areas of accountability and responsibility are now being addressed by the private
sector, albeit in the form of social responsibility or shareholder accountability. Finlay notes that most corporations today are ill-equipped to manage these concerns with the degree of intelligence and sophistication they require.\textsuperscript{34}

Sources of data for this thesis included the following:

1. Published codes of ethics acquired from private sector organizations upon request;
2. Published literature on ethics in the public and private sectors;
3. Interviews with managers who administer codes of conduct/ethics in the private sector.

**AN OVERVIEW OF THE THESIS**

In addition to this introductory chapter which provides an overview of ethics in the public and private sectors, this thesis contains four chapters. These chapters deal with the ethical problem areas of conflict of interest (Chapter II), political activity and public comment (Chapter III), and confidentiality (Chapter IV). Each of these chapters is organized in a similar manner. A discussion of the nature of the problem area is followed by a review of the approaches taken by the public and private sectors as well as the four professions of law, engineering, accountancy and medicine. A summary of the data is presented at the end of each chapter. The final chapter contains general conclusions and recommendations.
ENDNOTES


2Ibid.


7 This definition of ethics was taken in part from Webster's New World Dictionary, Second College Edition, (New World Publishing Company, 1970).


12 Ibid.

13 Ibid.


15 Ibid.


17 D. P. Dwivedi, *Ethics and Public Policy: Reflections*
(Draft manuscript prepared for the Annual Meeting of the Canadian Political Science Association, Saskatoon, May 30, 1979), p. 19.

18 Ibid., p. 18.


21 Kernaghan, "The conscience of the bureaucrat: accomplice or constraint?", p. 578.

22 Ibid.


30 Klein, op.cit., p. 72.

31 Ibid., p. 71.

32 Ibid., p. 71.

33 Lipovenko, op.cit., p. 82.

34 Klein, loc. cit.,

35 Ibid., p. 73.
36 Taylor, loc. cit.

37 Kernaghan, "Ethical conduct: Guidelines for Government Employees," op. cit., see preamble.


39 Finlay, loc. cit.
CHAPTER II
CONFLICT OF INTEREST

INTRODUCTION

Conflict of interest appears to be the most common and problematic area of unethical conduct in both the public and private sectors. The media has inundated the public with numerous reports of incidents of conflict of interest. Although recent reports of conflict of interest in the public sector have dealt mainly with infractions committed by elected officials there have been incidents involving public servants. A recent case involved four civil servants who set up MYSTL Management Inc., for the purpose of conducting seminars telling businesspeople how to deal with government and in particular, how to get government contracts. After an investigation by a Treasury Board lawyer and a hearing before the Public Service Staff Relations Board, the two most senior bureaucrats involved (John Spinks and Richard Cottingham) were fired. It was noted that 'knowledge vending' by moonlighting civil servants was an obvious conflict of interest.¹

The media have also provided the public with frequent reports of conflict of interest in the private sector, especially in the area of corrupt practices. Recently twenty people and thirteen companies doing business primarily in Sarnia's chemical valley were charged with a total of 160 counts of fraud, secret commissions, and theft involving a loss to the companies of well over $2 million.² In March 1986, Consumers Distributing Co. founder Jack Stupp and stock
promoter Allen Manus were fined $100,000 each for misleading the public about stock activity. In January of the same year the first charges were laid in the now well-known Greymac Trust Co. apartment-flipping scandal in Ontario. Seven executives from three trust companies are facing a total of eighty-two fraud-related charges. Toronto lawyer Edward Greenspan notes that "We have gone from crime in the streets to crimes in the suites." ~

Why is conflict of interest such a problem area of unethical conduct? There are at least three possible answers to this question. Firstly, a conflict of interest can manifest itself in a number of ways which can include anything from influence peddling to corrupt practices. Secondly, the simple fact is that the opportunity for financial gain is usually cited as one of the principal motivators for committing such offences. Thirdly, there appears to be some difficulty in defining what 'conflict of interest' is. Kernaghan attributes this difficulty to the fact that conflict of interest relates to "those aspects of human behaviour which deal with a person's moral convictions." How do managers view their moral and social responsibilities to their employees, shareholders, consumers and society in general? How do public servants view their moral and social responsibilities to their ministers, departments, employees and society? When do people cease to use their power to further the goals of an organization and begin to abuse it to further their own wants or desires? A good definition of the term 'conflict of interest' is needed to clarify the ambiguity
surrounding this issue. A review of the literature pertaining to conflict of interest in both the public and private sectors has resulted in the identification of two broad definitions of the term 'conflict of interest'.

The first definition relates to the public sector. A conflict of interest situation for a public servant is one in which "a public employee has a private or personal interest sufficient to influence or appear to influence the objective exercise of his official duties." The ways in which a conflict of interest can manifest itself include influence peddling, financial transactions, outside employment and future employment, dealings with relatives, gifts and entertainment, and corrupt practices. The second definition pertains to the private sector. In the private sector a conflict of interest occurs "where employees' actions, choices or personal circumstances actually or potentially place their private and personal interest in competition with or in opposition to that of the company." The ways in which a conflict of interest can manifest itself in the private sector are similar to those of the public sector except for the addition of a situation that is referred to as 'influencing public employees'.

The underlying theme of each definition is that a conflict of interest occurs when one's private or personal interests influence or appear to influence decisions relating to the discharging of one's duties to one's employer. The question is how can managers in both the public and private
sectors approach this ethical problem area in order to minimize the incidence of this destructive and costly phenomenon.

THE PUBLIC SECTOR APPROACH

An historical review of the question of ethical conduct in government in Canada reveals that apart from religious and philosophical teachings about ethics the problems relating to unethical conduct were not addressed in any formal manner until certain provisions in the Criminal Code addressing such flagrant abuses as fraud, bribery and corrupt inducement of office holders were added to the statutes. 18

The Task Force on Conflict of Interest Report refers to the evolution of the rules that govern ethical conduct as a "continuum of provisions". The continuum starts with the extreme and severe sanctions found in the Criminal Code; ranges through "statutory provisions governing the conduct of those in public office" dealing not only with criminal law but also with issues of a non-criminal nature; and ends with "general statements or codes as to what is considered appropriate conduct." 11

In Canada, all levels of government (municipal, provincial and federal) have addressed the issue of conflict of interest. The approach taken by each level of government will be discussed below.

THE MUNICIPAL APPROACH

At the municipal level in Canada one finds the largest body of law and jurisprudence with respect to matters of conflict of interest. Although this body of law has for
many years contained provisions relevant to the ethical conduct of elected officials, recent practice has been to develop rules that are applicable to municipal employees. Section 112 of the Criminal Code deals with municipal corruption and applies to any member of a municipal council or a person who holds an office under a municipal government. (See Appendix A for Section 112 of the Criminal code.) Kernaghan notes that a survey of selected municipalities across Canada indicates that efforts to encourage employees to avoid conflicts of interest are quite varied. He also notes that in comparison to the efforts put forth by the federal and provincial governments, the municipalities have been less sophisticated and less comprehensive in developing guidelines.

Two municipalities that have recently developed comprehensive guidelines are the City of Calgary and the Municipality of Metropolitan Toronto. The City of Calgary Code of Ethics and the Code of Conduct for Employees of the Metropolitan Corporation address the following conflict of interest areas: influence peddling; outside employment; dealing with relatives; gifts and entertainment; and financial transactions. In addition to their guidelines relating to outside employment, both municipalities included specific guidelines relating to the 'misuse of municipal property'. The guidelines basically state that the use of municipal property for activities not associated with the performance of civic duties is prohibited. (See Appendix B for details of both guidelines.)
Both municipalities outline procedures to deal with conflict of interest situations as well as the provisions for the enforcement of these guidelines. The Municipality of Metropolitan Toronto places the responsibility for the enforcement of the guidelines with the department heads. The Metro Chairman, as chief executive officer of the Corporation, is responsible for the application of the guidelines in respect to the department heads. If employees fail to comply with the guidelines they are subject to disciplinary action.

The City of Calgary places the responsibility for the enforcement of its Code with management. The Code contains a 'Penalties and Appeals' section that outlines the following actions that can be taken by management if an infraction has occurred: an employee may be instructed to divest himself/herself of his/her outside interests or transfer them to a blind trust; an employee may be transferred to another division of the department; an employee may be temporarily removed from duties which brought about the conflict of interest; an employee's resignation may be accepted; an employee may receive disciplinary action ranging from an oral or written reprimand, financial penalty, to dismissal; and an employee may face criminal charges if indicated.

Municipalities recognize that a number of their employees are also subject to guidelines that emanate from their respective professions. The International City Management Association developed a City Manager's Code of Ethics
and Guidelines for Professional Conduct which can be found in Appendix C. The 'guidelines' deal with such conflict of interest situations as outside employment, financial transactions, influence peddling and gifts. The 'guidelines' contain no enforcement measures.

THE PROVINCIAL APPROACH

The approaches that provincial governments take to regulate conflict of interest situations vary from province to province. The provisions in the Criminal Code (Sections 109 and 111 deal with bribery and corrupt practices by provincial employees) apply to all provinces and territories and thus provide a base to which other rules relating to ethical conduct can be added.14 (See Appendix A for Sections 109-111 of the Criminal Code.) Employees of all provinces and territories are required to take an oath of office affirming that they "will not seek or receive any money, services or other benefits in return for carrying out their official duties."15 Kernaghan notes that by taking such an oath an employee is expected to refrain from such practices as influence peddling or financial transactions which could benefit him, his friends or relatives, and from the inappropriate acceptance of gifts or entertainment.16

As mentioned, the approaches taken by the provinces and territories do vary. The provinces of New Brunswick and Newfoundland have enacted specific legislation dealing with conflict of interest.17 The provinces of British Columbia, Saskatchewan and Quebec have conflict of interest provisions built into their Public Service Acts. Prince Edward Island
has made two unsuccessful attempts to pass a bill that would address conflict of interest in its Civil Service Act. This situation has left Prince Edward Island in the same position as Nova Scotia, relying on the employee's oath of office to serve as a framework for conflict of interest issues. The remaining provinces and territories have developed regulations or guidelines, some of which are in the process of evolution. (See Appendix D for the Code of Conduct and Ethics for the Public Service of Alberta.) Table 1 provides a comparative analysis of regulation of conflict of interest in the provinces and territories in Canada.

Although the approaches by the provinces and territories vary, be they regulations, guidelines or legislation, the content of these various documents is quite similar. In most cases these governments rely on the Criminal Code to deal with the areas of corrupt practices and influence peddling. The Yukon as well as the provinces of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, and Newfoundland all address the matter of financial transactions that would be in conflict of interest. In the province of Newfoundland the Conflict of Interest Act 1973 requires that public employees file a disclosure statement within sixty days of first employment, and thereafter by January 15 of each year. In the Yukon and the provinces of New Brunswick, British Columbia, and Alberta, a statement of financial disclosure may be required whereas in Ontario it is
### Comparative Analysis of Regulation of Conflict of Interest

#### In the Provinces and Territories in Canada

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<tr>
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<td>Oath of Office - disclosure required</td>
<td>Sec. 3 - permission required</td>
<td>not specified</td>
<td>Sec. 8</td>
<td>Sec. 7</td>
<td>not to accept gifts for service</td>
<td>Criminal Code C24 Sec. 109-111</td>
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<td>Saskatchewan</td>
<td>Sask. duty of public servant to report Conflict of Interest</td>
<td>Sec D-1 - permission required</td>
<td>Sec E-5</td>
<td>C. of I. Guidelines Sec E.1, 2.</td>
<td>C. of I. Guidelines Sec E.3</td>
<td>Criminal Code C24 Sec. 109-111</td>
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<td>Sec B-1 - not specified</td>
<td>Sec B-4</td>
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<td>Quebec</td>
<td>Public Service Act Sec. 72 - Premier’s Directive, of 1976, Oath of Office</td>
<td>Sec. 99 - none if classified &quot;professional&quot;</td>
<td>not specified</td>
<td>not specified</td>
<td>Premier’s Directive, 1975, may accept gifts under $25 in value</td>
<td>Criminal Code C24, Sec. 109-111</td>
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<td>JURISDICTION</td>
<td>INFLUENCE PEDDLING</td>
<td>FINANCIAL TRANSACTIONS</td>
<td>OUTSIDE EMPLOYMENT</td>
<td>FUTURE EMPLOYMENT</td>
<td>DEALING WITH RELATIVES</td>
<td>GIFTS AND ENTERTAINMENT</td>
<td>CORRUPT PRACTICES</td>
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<td>Criminal Code</td>
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<td>The Civil Service Act of Prince Edward Island does not address conflict of interest matters.</td>
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<td>C24, Sec.109-111.</td>
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<td>Reg. 311/82,</td>
<td>1973</td>
<td>Sec. 9</td>
<td>Sec. 15</td>
<td>Sec. 15</td>
<td>C24, Sec.109-111.</td>
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<td>C. of I. Directive specified (1983)</td>
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<td>Criminal Code</td>
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<td>C24, Sec.109-111.</td>
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**TABLE 1** (continued)
the public servant who decides if a statement of disclosure is needed.20

The territories and most of the provinces address the issue of outside employment. In most instances outside employment is prohibited if it is or appears to be in conflict with the public servant's ability to perform his/her job. Prior approval for outside employment is required by most provinces.

The issue of acceptance of gifts and entertainment is addressed in part by the 'oath of office' that discourages such practices. In the provinces of Alberta, Saskatchewan and Newfoundland, governments have explicitly barred public servants from accepting such benefits. In Quebec, the Premier's Directive 1975 restricts the acceptance of gifts to those of 'modest value' (under $25) and when the gift is personal and was received at an event in which a person participated.21 Most provinces and the territories appear to expect their employees to use their own judgment when accepting gifts and entertainment benefits.22

Very little has been said about the issue of dealing with relatives. The provinces of New Brunswick and Saskatchewan prohibit the conferring of benefits on relatives and friends. The Yukon is also very clear on this issue: no preferential treatment is to be given to friends or relatives.23

The final area is future employment. Except for Saskatchewan, Newfoundland, and the Northwest Territories,
none of the governments address this issue. Newfoundland deals with this situation in broad terms:

A public employee must not allow the performance of his or her official duties to be influenced by plans or offers of future employment.\textsuperscript{24}

The Northwest Territories is very clear in its position on this issue. Public servants at the senior officer level are required to sign a covenant (under the Conflict of Interest Directive 1983) that:

\begin{quote}
during a period of one year of post-employment he or she will not use knowledge and information obtained while a public service employee to cause loss to the Northwest Territories Government or to benefit himself or herself.\textsuperscript{25}
\end{quote}

Post-employment requirements do not exist for public servants below the senior officer level.

How governments deal with the enforcement of their conflict of interest rules varies as well. The penalties outlined in the Criminal Code are one method of enforcement. New Brunswick requires that public servants comply with the Conflict of Interest Policy 1981 as a condition of employment and infractions of this policy may bring about disciplinary action which could entail dismissal.\textsuperscript{26} As previously mentioned, Newfoundland requires public servants to make a full business disclosure on an annual basis. It also gives the department head the power to require a public servant to divest or to cease outside employment. The department head may transfer, impose discipline, or recommend dismissal.\textsuperscript{27} The penalty of a fine of not more than $1000, or a sentence
of not more than three months in jail has been prescribed for those who do not comply with the provisions in the Newfoundland Act. In Quebec, disciplinary penalties for infractions include reprimand, suspension, or dismissal.29 A covenant such as the one that must be undertaken by public servants of the Northwest Territories concerning future employment is another method of enforcement. Saskatchewan outlines an appeal process in its conflict of interest guidelines but no penalties for non-compliance are indicated. Manitoba also outlines an appeal process in its policy on conflict of interest and includes a statement that disciplinary action can be taken if there is a departure from the rules without specific prior approval of the Deputy Minister or designate.30 In the remaining provinces no penalties for non-compliance to conflict of interest policies are provided.

THE FEDERAL APPROACH

Prior to the late 1960s, conflict of interest problems at the federal level were addressed only by criminal law and by some procedural requirements concerning the conduct of employees in the acts which created their functions. For example, Sec. 3 (5) of the National Energy Board Act prohibits members of the National Energy Board from owning shares or having interests in companies in the energy sector.31 The early initiatives dealing with conflict of interest were in the form of orders-in-council. The first order-in-council on this subject was passed to prevent civil
servants from "moonlighting" (outside employment). The order-in-council approach to conflict of interest is referred to as an "incrementalist approach":

a piecemeal approach of dealing with problems only when they generate enough concern to warrant serious attention, at which point a tailor-made solution would be devised.

Written 'codes and/guidelines' designed to set the tone for one's conduct in public office as well as to establish procedures for preventing and resolving conflicts of interest were not addressed in depth at the federal level until the late 1960s. A letter written by Prime Minister Pearson (November 30, 1964) to his ministers, emphasizing the need for their staff to maintain high standards of conduct, provided the basis for the main principles of the guidelines that are used today. Pearson stressed that more was required:

There is an obligation not simply to observe the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. The conduct of public business must be beyond question in terms of moral standards, objectivity and equality of treatment.

He also warned against the following:

-giving preferential treatment to persons on the grounds of personal acquaintance or sympathy;

-ministers and their staff placing themselves in a position where they might be under obligation to anyone who might profit from special consideration or who might seek special treatment;

-having pecuniary interest that could conflict with official duties; and

-using official information for personal gain.
This letter became known as Mr. Pearson's Code of Ethics. Kernaghan notes that although scandals subsequently erupted which led to the resignation of Cabinet Ministers, legislators and ministerial assistants, popular interest in ethical conduct of civil servants subsided in 1967. Very little was done in the way of service-wide guidelines for federal employees in this area until 1973.

One of the first attempts to codify ethical conduct in the public sector came in the form of a document that was issued on December 18, 1973 and was entitled *Guidelines to be Observed by Public Servants Concerning Conflict of Interest*. (See Appendix E for the complete document) This document incorporated the 'Pearson Code of Ethics' along with guidelines that outlined actual or potential conflicts of interest in very broad terms relating to financial transactions, outside employment, and dealing with relatives. This document was followed by the issuance of a Treasury Board circular (1973-183) entitled *Standard of Conduct for Public Service Employees*. (See Appendix F) This circular contained a section on conflict of interest which basically referred to the December 18, 1973 Guidelines. The circular did not attempt either to define these situations of conflict of interest or to impose penalties for non-compliance. Jean-Pierre Kingsley notes that:

the onus was placed on individuals to conduct their activities in such a manner that the principles would be respected, the test being the scrutiny which could be brought to bear on the activities with the guidelines as the standards.
The circular also recognized the need for departments to supplement the guidelines with more specific provisions pertaining to the department's operation. As a result eighty such supplemental codes have been developed. The circular also acknowledged the enormity of the job of identifying all potential areas of conflict of interest and noted that, in order to obtain a totally comprehensive set of guidelines, constant review and interpretation would be required.48

The Post-Employment Guidelines were tabled in the House of Commons in April 1978. (See Appendix G) These guidelines were applicable to public servants and Governor-in-Council appointees until the Conflict of Interest Post-Employment Code for Public Office Holders replaced them in 1985. The purpose of the 1978 guidelines was to "give a degree of certainty to the activities of employees during and after their employment with the government."49 The essence of these guidelines is contained in five appendices which deal with the following: principles regarding the activities of holders of public office; guidelines for holders of public office during their employment with the government; guidelines applying to employment and commercial activities of former holders of public office; administration arrangements; and rules of practice for hiring of former public servants by the government.

In 1981 the Secretary of the Treasury Board conducted a review of departmental and agency experiences in the application and administration of both the conflict of interest guidelines and the post-employment guidelines. As a
result of this review, it was found that there were wide variations in the various departmental and agency approaches. The subsequent report recommended methods that would provide for some measure of consistency. It was noted that some public officials expressed concerns about the post-employment guidelines. 

In July 1983, Prime Minister Pierre Trudeau established the Task Force on Conflict of Interest co-chaired by Michael Starr and Mitchell Sharp. The task force was directed to:

examine and report to the Prime Minister on the policies and practices that should govern the conduct of Ministers, Parliamentary Secretaries, exempt staff, full-time Governor-in-Council appointees and public servants during and after their period of public service, having particular regard to the need to ensure both public confidence in and the integrity of the governmental process and the need to attract to government individuals of high calibre from all walks of life.

The report noted that there were serious defects in the content and the administration of current guidelines and related rules dealing with conduct and conflict of interest in the federal public sector. These defects in the present system for regulating ethical conduct included such problems as: the need to take into account sufficiently the varying duties of Governor-in-Council employees; the need for clarification of rules applying to Crown Corporations and their officers; the ambiguity of post-employment guidelines that do not sufficiently recognize the differences between the situations/circumstances of ministers and senior public servants; and the lack of flexibility resulting in unfair, unreason-
able, and restrictive demands. In its efforts to "enhance public confidence in the integrity of the governmental process at the federal level" the task force recommended that the present guidelines be replaced by the following:

- a short simple Code of Ethical Conduct binding upon all public employees;
- procedural rules to minimize conflicts of interest; and
- supplemental codes of procedures and rules to meet particular conflict of interest problems encountered by individual departments, Crown Corporations, and agencies of government.

The report also recommended the formation of an Office of Public Sector Ethics (OPSE), headed by an Ethics Counsellor. This office would perform the functions currently assigned to the Assistant Deputy Registrar General (ADRG) along with additional powers to advise, administer, investigate, and educate. The Ethics Counsellor would advise the Prime Minister, ministers and deputy heads with respect to the formation, application, and enforcement of the rules of ethical conduct. The administrative role of the Ethics Counsellor would involve administering procedures to ensure that they are followed and acting as trustee of frozen and retention trusts. The investigative role would involve the investigation of allegations that the Code of Ethical Conduct had been breached. This function would only be performed at the request of the Prime Minister or heads of departments or agencies. The final role of the Ethics Counsellor would be to educate all public office holders to ensure that they
understand the nature and application of the rules relating to ethical conduct and the procedures for minimizing conflicts of interest.\textsuperscript{56} In comparison to the ADRG this office would have a clearer mandate, broader powers and a higher public profile.\textsuperscript{51}

The task force presented its report to Prime Minister Pierre Trudeau in May 1984. Neither the Trudeau government nor the new Turner government acted on the report. On September 9, 1985 Prime Minister Brian Mulroney tabled in the House the Conflict of Interest Post-Employment Code for Public Office Holders, as part of his "package of major initiatives on public sector ethics."\textsuperscript{52} In doing so Mr. Mulroney acknowledged the Report of the Task Force on Conflict of Interest, and paid tribute to its authors noting that "these gentlemen will find some of their thinking and, on occasion, their very words enshrined in the new code."\textsuperscript{53}

Two of the task force's major recommendations, the Ethics in Government Act and the establishment of an Office of Ethics Counsellor, were not included in the Mulroney initiatives.

Prime Minister Mulroney's response to the recommendation that an Office of Ethics Counsellor be established was negative. He argued that Canadian governments have too often set up quasi-independent agencies to deal with important areas of public policy. He noted that the effect was simply to substitute an appointed decision-maker for an elected one leaving Parliament in the position of not being able to influence policy or exact accountability.\textsuperscript{54} The new code did assign the education role of the
proposed Ethics Counsellor to the ADRG.

On the basis of the Mulroney code the Treasury Board issued the Conflict of Interest and Post-Employment Code for Public Office Holders. (See Appendix H) The code contains the following nine principles governing conflict of interest and post-employment matters:

1. Public Confidence and Trust

- Public office holders shall perform their official duties and so arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;

2. Public Scrutiny

- Public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;

3. Private Interests

- Public office holders 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;

4. Public Interest

- On appointment to office, and thereafter, public officer holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interest of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest;

5. Hospitality, Gifts and Other Benefits

- Public office holders shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder;

6. Preferential Treatment
-public office holders shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;

7. Personal Advantage Through Information

-public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;

8. Government Property

-public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and

9. Post-Employment Behaviour

-public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Although the principles set forth in the code are quite similar to those of the former guidelines, the new code has the following additional provisions: it covers virtually everyone whose salary is paid for by the taxpayer (exception-judges and officers and employees of Parliament); it consolidates into one document the information that was previously contained in five documents; it places an absolute prohibition on switching sides (that is, former senior employees who have provided advice to a department on an ongoing specific matter may not switch sides by acting for another employer on the same matter); it adds a degree of fairness and reasonableness to the individuals it affects as it takes into account both the individual's circumstances and the public interest; it clearly allocates responsibility and provides for accountability; and it includes enforcement
mechanisms which were lacking in the former post-employment guidelines.  

The code provides the following methods of compliance:

1. avoid situations that may represent real, potential or apparent conflict of interest;

2. submit a confidential report to disclose assets, liabilities, hospitality, gifts, other benefits and outside activities which may give rise to conflicts of interest;

3. divest assets which are in real or potential conflict of interest. Divestment can be by sale at arm’s length or by approved trust arrangements;

4. former senior employees who have provided advice to a department on an ongoing, specific matter may not switch sides by acting for another employer on the same matter; and

5. certain post-employment activities may require a limitation period of one year after leaving public office. Reductions of this time period may be sought.  

The code also requires that public servants read, understand, and comply with it and sign a ‘certification document’ indicating their compliance. The ‘certification document’ contains a list of ‘exempt’ (not subject to disclosure) and ‘non-exempt’ (possibly subject to disclosure) assets and liabilities which are designed to help public servants in the assessment of their personal situations in light of their official duties. Public servants can therefore decide whether or not to file a ‘confidential report’. If they are in doubt public servants can consult with the ‘designated persons’ in their departments. If the employee and the ‘designated person’ cannot agree, the disagreement would be resolved through an established grievance procedure.

The onus is on public servants to report any personal
conflicts of interest. If a report has been filed, it is up to the public servant to update it if circumstances change. It is required that all public servants review their obligations under the code at least once a year. Failure to comply with the code could result in termination of employment.\footnote{33}

THE PRIVATE SECTOR APPROACH

Apart from religious and philosophical teachings about ethics, ethical problems were not addressed in any formal manner until certain provisions in the Criminal Code addressing such abuses as bribery and fraud relating to contracts and trade were added to the statutes.

The "continuum of provisions relating to the evolution of rules that govern ethical conduct" proposed by the Task Force on Conflict of Interest, can be applied to the private sector. The continuum starts with extreme and severe sanctions found in the criminal code; ranges through statutory provisions governing the conduct of business; and ends with codes or statements as to what is considered appropriate conduct by business.

In addition to the provisions found in the Criminal Code, statutes have been passed to protect Canadians from unethical practices by business. One major piece of legislation was the Combines Investigation Act which was passed in 1910. The Act (which has been revised a number of times and is now known as the Competition Act 1986) provides for the investigation of combines, monopolies, and trusts as well as deceptive trade practices which affect consumers directly.
Such trade practices include misleading advertising, spurious testimonials, bait and switch methods, pyramid selling, referral selling, double ticketing, and dishonest or deceptive promotional contests. In other words, the purpose of the Act is to maintain competition in the marketplace. As a result of a number of revisions in the Act, there has been a gradual shift from a total reliance on criminal law in proceedings to a greater emphasis on civil law; e.g., the Competition Act contains the prohibitions against false and misleading advertising which were formerly in Sec. 306 of the Criminal Code. Although this Act contains a number of criminal offences, it also deals with a number of trade practices that are not illegal but are subject to review and prohibition by the Restrictive Trade Practices Commission. (See Appendix I for a review of the Act which Imperial Oil prepared for its employees.)

Some of the other statutes that govern the conduct of business in Canada are as follows: Canada Business Corporations Act; The Bank Act; The Canadian and British Insurance Companies Act; various Securities Acts that were passed by the provinces; and consumer protection legislation and regulations that have been passed by both the federal and provincial governments in order to protect consumers from fraudulent business practices.

The 'continuum' ends with codes or statements as to what is considered appropriate conduct by business. In order to examine the private sector's codes or statements of conduct relating to conflict of interest, two distinct areas are
identified, namely, business corporations and professions.

BUSINESS CORPORATIONS

A number of business corporations in Canada have codes of conduct/ethics that address the area of conflict of interest. For the purpose of this thesis thirty-five corporations were selected at random. Of the thirty-five corporations that were examined only twelve did not have a conflict of interest policy or code of conduct that addressed this concern. (See Appendix J for a complete list of the corporations with notes indicating those with or without conflict of interest policy or codes of conduct.)

Much of the information concerning these corporations was obtained from materials gathered by the Task Force on Conflict of Interest. The Task Force contacted one hundred and thirty-four companies requesting codes of conduct or conflict of interest policies and found that a number of companies were without such policies or codes. The codes and policies that were submitted to the task force were primarily from fairly large corporations with the manpower and expertise to develop such codes.

The author, in turn, while soliciting additional information regarding conflict of interest policy and codes of conduct, noted that there was a reluctance on the part of the companies to release such information. The banks in particular had to be reassured that the information would be used for academic purposes only. One must agree with Virginia Levine when she noted that:
direct research on ethical issues ishampered by the difficulty in gathering
objective data. Few employees are willing
to divulge information which may prove to
be incriminating and organizations are
reluctant to confront publicly ethical
issues particular to their organization. 2

On the other hand employees of a corporation such as Norton
Company, which has had a code of conduct since 1976, were
proud of their code and had no qualms about releasing copies
of the code to the public.

As noted previously, data obtained from the thirty-five
corporations listed in Appendix L were examined. These
corporations were ranked using the Report on Business
Magazine's classification of corporations, namely: Natural
Resource Companies; Financial Companies; Primary Industry
Companies; Food and Hospitality Companies; Utilities;
Manufacturing Companies; and Multinational Companies. In
order to provide a comparative analysis of these corporations
as to conflict of interest regulations, a representative
company from each of the eight classifications was randomly
selected. Each of the eight companies was examined using the
areas of conflict of interest as proposed by Kernaghan 3 plus
an additional area referred to as 'dealing with the public
sector'. Using the above criteria Table 2 provides a com-
parative analysis of regulation of conflict of interest in
selected private sector companies.

Only four of the eight companies address the matter of
influence peddling. On the other hand, the area of financial
transactions is addressed by all eight companies and in some
cases disclosure is required. Outside employment is addres-
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<th>INFLUENCE PEDDLING</th>
<th>FINANCIAL TRANSACTION</th>
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<th>FUTURE EMPLOYMENT</th>
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<th>GIFTS AND ENTERTAINMENT</th>
<th>CORRUPT PRACTICES</th>
<th>DEALING WITH PUBLIC SECTOR</th>
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<td>not specified</td>
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<td>Sec E3 of Code of Conduct</td>
<td>Sec E5-use insider info</td>
<td>Sec E2</td>
<td>not specified</td>
<td>not specified</td>
<td>Sec. E6</td>
<td>Criminal Code not specified</td>
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<td>Sec. 5</td>
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<td>not specified</td>
<td>Sec. 6.7 gifts of nominal value by Weston as well</td>
<td>Sec. 8</td>
<td>Criminal Code Sec. 337-384 no gifts or Competition Act favours to Ont. Securities public servants Act, Canadian Code of Advertising</td>
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COMPARATIVE ANALYSIS OF REGULATION OF
CONFLICT OF INTEREST IN PRIVATE SECTOR COMPANIES
198b

COMPANY
CLASSIFICATION

INFLUENCE
PEDDLING

FINANCIAL
OUTSIDE
FUTURE
TRANSACTIONS El'lPLOYMENT EI1PLOYMENT

DEALING ~IITH
RELATIVES

GIFTS AND
ENTERTAINMENT

CORRUPT
PRACTICES

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no gif ts

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spec I fi ed
Provo
SecuritiG'la Act.
Competi tion
Act

Sec. 3.
can accept
gifts of
nominal
value

Criminal Code not
Sec.337-384
specified
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Act, Antitrust
Act. of foreign
countries
Compe'UUon Act

DEALI NG WITII
PUBLI C SECTOR

UTILITIES
Bell Canada

Conflict
Sec. b
of Intereat
Appendix
Sec. 2. 9.

Sec. 1.7. not
limited
specified

Sec. b
2 (a)

Code of
Business
Conduct
Sec. 4

Sec. 4
not
disclosure specified
of outside
activities
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MANUFACTURING
Hayes Dana

Sec. 4
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MANAGEMENT
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sed by seven of the eight companies and in most cases outside employment is discouraged. Future employment is not a stated concern of any of the eight companies. Dealing with relatives is not a concern of most of the companies although two of the companies do apply their conflict of interest regulations to the relatives of employees. Bell Canada is quite specific in the areas where conflict of interest relating to relatives applies, namely:

A conflict of interest would exist when an employee... because of his/her relationship to a near relative, engages in a business transaction on behalf of the company with that near relative or with a firm in which such a person is a principal, officer or representative and... make possible personal gain or favour to the employee involved or any of his/her near relatives due to the employee's actual or potential power to influence dealings between the company and the outsider.^[4]

The area of gifts and entertainment is addressed by all eight companies. In most cases only gifts of a nominal value can be accepted; only Bell Canada prohibits the acceptance of any gift regardless of value. It is interesting to note that the George Weston Company has a policy that will not allow the company to give gifts. In the area of dealing with the public sector the George Weston Company is quite specific when it states that no gifts or favours will be given to public servants.^[5] The Norton Company also addresses this area in its Policy on Business Ethics that states that "no gifts will be given to influence public employees".^[6]

The area of corrupt practices is governed by
considerable legislation, both federal and provincial. Sections 337-384 of the Criminal Code address fraudulent transactions relating to contracts and trade. (See Appendix K). Other relevant statutes relating to conflict of interest situations in the private sector have been discussed at the beginning of the section entitled 'The Private Sector Approach'.

The fact that all eight companies have fairly comprehensive conflict of interest regulations indicates that the companies have addressed the problem area. How these companies enforce their regulations would indicate just how committed they are to them. It is one thing to have regulations but if they are not enforceable they are nothing more than 'window dressing'. Bell Canada's policy states that "conflict of interest can lead to disciplinary action, even to dismissal and/or prosecution." Regulations are reviewed with employees on an annual basis and if an employee is uncertain as to possible conflicts of interest he/she is to discuss the potential problem with his/her supervisor. Imasco, on the other hand, requires employees to submit a written conflict of interest declaration and requires the employee to update this declaration when changes in the employee's circumstances have occurred.

The Royal Bank requires that its policy be reviewed with employees at the time of each employee's annual or semi-annual performance appraisal. The employee is required to sign an acknowledgment indicating his/her awareness of the regulations. Full compliance with regulations is a condition
Hayes-Dana states that compliance is mandatory but no provisions for enforcement are outlined in the code. Dofasco states that it expects all employees to comply with its regulations but it too does not include provisions for enforcement in its regulations.

Alberta and Southern Gas Co. Ltd. requires all officers and selected employees who have responsibilities dealing with other companies to complete a questionnaire regarding conflict of interest and business ethics on an annual basis. The questionnaires are reviewed by the vice-president and problem areas are discussed. No sanctions are mentioned for non-compliance.

The Norton Company has the most comprehensive enforcement mechanisms. Two broad actions can be taken to insure that the code is enforced. The first is to provide a mechanism to review 'grey areas'. All managers are to maintain an "open door" policy with regard to questions of ethics. The second action consists of the following steps:

* A Corporate Ethics Committee serves as the final authority with regard to our policy on business conduct and is responsible for specifying procedures to implement this follow-through program. This committee consists of the Chief Executive Officer and other designated members of management and the Board of Directors.

* At least once a year managers will review the Policy on Business Ethics with their supervision and field representatives to insure that the Policy is fully understood.

* Managers will investigate any suspicion that unethical or illegal activities are taking place, or call upon the Chief Auditor for assistance.
* Each corporate officer, divisional general manager, managing director, and corporate department head will sign a letter every year to sent to the Corporate Ethics Committee affirming a knowledge and understanding of Norton, Policy on Business Ethics and stating that within the past year:

- He or she has reviewed the Policy with subordinates.
- He or she has investigated all cases of suspicious conduct.
- He or she has reported significant violations of the Policy to the Corporate Ethics Committee.

* The Chief Auditor of the Company, and the Company’s independent public accountants, will report immediately to the Corporate Ethics Committee any violations or suspected violations of this Policy on Business Ethics which come to their attention as a result of carrying out normal audits of the Company’s accounts.71

The Norton Company states that adherence to its Policy on Business Ethics carries the highest priority worldwide. Non-compliance with the Policy can and does result in dismissal.72

PROFESSIONS

The professions are examined separately because large numbers of professionals are employed in both the public and private sectors. All professionals are governed by their own particular professional code of ethics, and those who are not self-employed are in the unique situation of being regulated not only by their professional codes of ethics but also by the codes of ethics of their employers. Problems could arise if there was a conflict between professional ethics and employer demands. It is not the intent of the author to deal with this unique ethical problem area to any great extent but only as it applies to the ethical problem areas of con-
Conflict of interest, political activity, public comment and confidentiality.

Several professions have developed codes of professional conduct. The professions of engineering, accountancy, medicine and law have codes that address this issue of conflict of interest. Professional engineers are governed by provincial associations. The engineers in Alberta have a code that calls upon its members to avoid conflicts of interest and requires them to disclose to clients and employers any conflicts of interest which arise.  

Accountants are governed by codes of conduct that are established by the provincial chapters of the Canadian Institute of Chartered Accountants. The Institute of Chartered Accountants of Ontario's Rules of Professional Conduct state that it is "the duty (of the accountant) to avoid conflicts of interest in respect of a client's affairs" and that "there is acceptance by the practitioners of a responsibility to subordinate personal interests to those of the public good." In order to protect the public from any conflict of interest by accountants a "reasonable man" test is applied by the profession to determine whether an accountant's independence or objectivity has been compromised. One of the principles states that:

A member who is engaged to express an opinion on financial statements shall hold himself free of any influence, interest or relationship, in respect of his client's affairs, which impairs his professional judgment or objectivity or which, in the view of a reasonable observer, has that effect.
Although doctors in Canada are licensed on a provincial basis, the Code of Ethics of the Canadian Medical Association is the only Canadian code of conduct for medical doctors. The code does not deal specifically with conflict of interest but does touch upon situations that could be viewed as potential conflicts of interest. One such situation relates to financial arrangements. Doctors are required to avoid "any personal profit motive" in regard to the ordering of drugs, diagnostic procedures, etc. therefore prohibiting a doctor from such practices as owning a radiology clinic to which he/she might refer patients. One must recognize that the medical profession is also governed by a very old code of ethics, that being the Hippocratic Oath. It deals with only one area of conflict of interest; namely, corrupt practices. The oath states that doctors must refrain "from all wrongdoing and corruption" which includes such acts as giving deadly drugs, seduction of a male or female, and aiding a woman to procure an abortion. (See Appendix L) Canadian doctors are faced with a conflict between the Hippocratic Oath and the law that allows them to perform therapeutic abortions.

The legal profession is not only governed by provincial codes of professional conduct but also by the Canadian Bar Association's Code of Professional Conduct. The Code states that lawyers:

must not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the client...should not act or continue to act in a matter where there is or there is
likely to be a conflicting interest.\textsuperscript{76}

The Code also requires lawyers to disclose conflicts of interest to their clients. The Task Force on Conflict of Interest notes that "the legal profession has the most extensive set of ethical guidelines, based on high principles of honesty and integrity, of any professional group" but it is still the subject of "public distrust and suspicion".\textsuperscript{77}

The Task Force on Conflict of Interest attributes this distrust to the 'Watergate Affair' because a large number of the conspirators were members of the legal profession.\textsuperscript{78}

Although these professions do have professional codes that deal with conflict of interest situations, the enforcement of these codes comes into question. Professional organizations are self-regulating; therefore, it is up to the professions to police themselves. This in itself presents a problem. The codes provide for a high degree of respect and collegiality between members whose primary objectives are to carry on their respective practices, not to administer codes. The notion of professional judgment implies a trust in the integrity of the professionals to conduct themselves in an appropriate manner.\textsuperscript{81}

The Task Force on Conflict of Interest notes that although the professional codes are fairly comprehensive with regard to conflict of interest ....

any difficulties that have arisen with regard to enforcement seem to be the result of a lack of inclination or due to administrative machinery rather than as a result of deficiencies of the codes.\textsuperscript{82}
SUMMARY

Conflict of interest is the most common area of unethical conduct being addressed by managers in both the public and private sectors. Public awareness of this problem area has been heightened and sustained by the media and both sectors have responded by giving the problem serious attention.

Managers in both the public and private sectors have taken an incrementalist approach to the problem; that is, they deal with a problem when enough concern is generated to warrant its attention. The rules that govern conflict of interest in both sectors have evolved on what the Task Force on Conflict of Interest refers to as 'a continuum of provisions'...from severe sanctions found in the Criminal code to statutory provisions to codes and standards.

In the public sector all levels of government have addressed conflict of interest relating to public servants. In comparison to what has transpired at the provincial and federal levels of government, municipalities have done very little, although some municipalities (for example, the City of Calgary) do have excellent codes that deal with conflict of interest. All the provinces and territories except Prince Edward Island and Nova Scotia have some form of regulation dealing with conflict of interest. The provinces of Alberta, Manitoba, Saskatchewan, and Newfoundland have fairly comprehensive regulations which were developed between 1980 and 1984.

The federal government did not attempt to codify ethical
conduct until 1973 when guidelines were first developed. The
media were very active during the 1970s, exposing
allegations of unethical conduct by both politicians and
public servants. This media activity has not stopped in
the 1980s. In 1985 the Conflict of Interest Post-Employment
Code for Public Office Holders was tabled in the House of
Commons.

Private sector companies have addressed the matter of
conflict of interest. Until the 1970's conflict of interest
problems were basically addressed only by the Criminal Code,
the Competition Act (dates back to 1910), and the various
securities acts passed by the provinces (Ontario Securities
Act dates back to 1928). 'Watergate' and the consumer move­
ment prompted the passage of numerous additional statutes to
protect the public from fraudulent business practices.

Not until the mid 1970s did private sector managers
appear to take a serious look at the area of conflict of
interest. Of the companies examined in this chapter most
developed codes/regulations between 1980 and 1983. These
codes/regulations tend to be found in large corporations.
Most of the companies examined in this chapter that had
codes/regulations were rated in the Top 1000 Companies in
Canada. Of the eight companies that were reviewed the
Royal Bank of Canada, George Weston Limited, and Bell Canada
had very extensive codes. All three companies are listed in
the Report on Business as being in the biggest companies
category and the ones with the largest number of employees.
One would have to agree with the Task Force on Conflict of Interest when it argued that: "contrary to the notion that 'anything goes' in private business, large corporations with publicly traded securities and large numbers of employees do have a need for guidelines on professional conduct."

The professions of law, engineering, accountancy and medicine all have dealt with the issue of conflict of interest. Although the medical profession's original code of ethics dates back to Hippocrates, the remaining professional codes that were examined were originally developed between 1920 and 1947.

The ways in which a conflict of interest can manifest itself are quite similar in both the public and the private sectors although the scope for corrupt practices is far greater in the latter as indicated by the numerous statutes that have been passed to protect Canadians from fraud. The opportunity for financial gain is definitely a motivator for committing such an offence in both sectors.

Both sectors have had difficulty in defining what constitutes 'conflict of interest'. The numerous attempts to codify this problem area indicate there is a problem. The codes indicate that not all areas of conflict of interest are identified nor can they be anticipated; therefore, some mechanism for counselling has been incorporated into most public and private sector codes. Conflict of interest in both the public and the private sectors is the most problematic area of unethical conduct.
ENDNOTES


3Editorial, Maclean's, June 30, 1986, p. 22.

4Ibid., p. 22.


6Ibid.,

7Ibid., pp. 13-16.


9Of twenty-five companies with codes of ethics five stipulated in their codes that the practice of influencing public employees is forbidden.


11Ibid.,

12Ibid., pp. 137-38.

13Kernaghan, op. cit., p. 21.


15Kernaghan, op. cit., p. 18.

16Ibid., p. 18.


19Province of Newfoundland, Conflict of Interest Act 1973, (St. John: Queen's Printer, 1973), Sec. 4-b.

27 Ibid., p. 127.

28 Kernaghan, **op. cit.** p. 19.

29 Government of Canada, **op. cit.** p. 130, p. 136.

30 Government of Newfoundland and Labrador, *Newfoundland Regulations 311/82,* (St. John: Queen’s Printer, 1982), Sec. 9.

31 Government of Newfoundland and Labrador, **op. cit.** Sec. 9.

32 Ibid., p. 75.

33 Ibid., p. 76.

34 Ibid., pp. 79-80.

35 Ibid., p. 80


39 Ibid., p. 588.


41 Government of Canada, **op. cit.** p. 104.
4\textsuperscript{2}Ibid. p. 93.
4\textsuperscript{3}Ibid. p. 5.
4\textsuperscript{4}Ibid. p. 271.
4\textsuperscript{5}Ibid.
4\textsuperscript{6}Ibid. pp. 272-73.
4\textsuperscript{7}Ibid. p. 209.
4\textsuperscript{9}Ibid.
5\textsuperscript{0}Ibid. p. 213.
5\textsuperscript{1}Ibid. p. 273.
5\textsuperscript{3}Office of the Prime Minister, \textit{Notes for a Statement by Prime Minister Brian Mulroney in the House of Commons Monday, September 3, 1985}, p. 4.
5\textsuperscript{4}Ibid. p. 5.
5\textsuperscript{5}Office of the Prime Minister, \textit{Conflict of Interest and Post-Employment Code for Public Office Holders}, September 1985, Sec. 7.
5\textsuperscript{6}Office of the Prime Minister, "Notes for a Statement" \textit{op. cit.} p. 3.
5\textsuperscript{7}Secretary of the Treasury Board, \textit{Conflict of Interest and Post-Employment}, pamphlet.
5\textsuperscript{8}Office of the Prime Minister, "Conflict of Interest and Post-Employment Code for Public Office Holders", \textit{op. cit.} Sec. 40-53.
6\textsuperscript{1}Government of Canada, \textit{op. cit.} p. 161.
The seven areas of conflict of interest identified by Kernaghan are: influence peddling, financial transactions, outside employment, future employment, dealing with relatives, gifts and entertainment and corrupt practices.


George Weston Ltd., *Code of Business Conduct*, p. 3.


Alberta and Southern Gas Co. Ltd., *Statement of Policy and Questionnaire Regarding Business Ethics and Conflict of Interest*, pp. 3-5.


Ibid.* p. 12. In an interview with Dr. J. Patchett, executive of Norton, Niagara Falls, he noted that compliance to the Policy is required. Employees who have breached the Policy have been dismissed.


Ibid.* p. 5.05.


Ibid.* p. 158.

Ibid.*


Ibid.*


Ibid.*

Oil, Norceen, George Weston Ltd., Labatts, Steinbergs, Zerox, CIL, IPSCO, Rothmans and Hayes-Dana.


*The APEC Code of Ethics was developed before 1937 but it did not become legally binding until 1947. The Institute of Chartered Accountants of Ontario developed its first Code of Professional Conduct between 1940 and 1941. The Canadian Bar Association adopted its first Code of Professional Conduct at its 5th Annual Meeting in Ottawa in 1920.*
CHAPTER 111

POLITICAL ACTIVITY AND PUBLIC COMMENT

INTRODUCTION

The previous chapter, on conflict of interest, reveals that both public and private sector employees must conduct their business activities in an impartial manner; that is, "one's private or personal interests cannot influence or appear to influence decisions relating to the discharging of one's duties to one's employer". Employees are therefore considered to be acting in an unethical manner if their business activities are or appear to be influenced by the promise of personal, private, financial or partisan gain. Kernaghan argues that in the public sector these considerations also apply to the issues of political activity and public comment. Public sector employees traditionally have been expected to carry out their duties in an impartial manner by adhering to the constitutional convention that the public service is politically neutral.

In the private sector these considerations (promise of personal, private, financial and partisan gain) apply to the issues of political activity and public comment as well. Private sector employees are expected to carry out their duties in an impartial manner that adheres to corporate policy which may or may not encourage employees to engage in political activity and public comment. The hierarchy of most private sector companies dictates who speaks for the company.
Prior to a discussion of the approaches taken by the public and private sectors to the issues of political activity and public comment, it is necessary to define the terms political rights, political activity and public comment. Kernaghan defines these terms as follows:

The term Political Rights includes the rights to participate in political activity (also commonly referred to as political partisanship) and to engage in public comment.

Political Activity encompasses the rights to vote in any election; to seek election to public office; to be a member of a political party or organization; to attend political meetings, rallies and conventions; to speak in support of or in opposition to a particular candidate at political meetings, rallies or conventions; to serve as a delegate or alternate to a political party convention; and to campaign for or against a political party or candidate by such means as making a financial contribution, soliciting financial or other contributions, canvassing door-to-door, working at the polls in a partisan capacity, transporting voters to the polls on behalf of a political party or candidate, distributing campaign material, wearing political badges, and displaying lawn signs.

The right to engage in Public Comment is the right to speak in public on matters of political controversy or on issues of government policy or administration. Kernaghan argues that "the issue of public comment is much more complex than the conventional rule suggests". He notes that public servants are inescapably involved in public comment in the performance of their duties and that in speaking or writing for public consumption public servants may serve such purposes as:
1. providing information and analysis of a scientific or technical nature for consideration primarily by their professional colleagues within and outside government;

2. describing administrative processes and departmental organization and procedures;

3. explaining the content, implications, and administration of specific government policies and programs;

4. discussing within the framework of governmental or departmental policy, the solutions of problems through changes in existing programs or the development of new programs;

5. discussing issues on which governmental or departmental policy has not yet been determined;

6. explaining the nature of the political and policy process in government;

7. advocating reforms in the existing organization or procedures of government;

8. commenting in a constructively critical way on government policy or administration;

9. denouncing existing or potential government policies, programs, and operations; and

10. commenting in an overtly partisan way on public policy issues or on government policy or administration.

This list is a continuum illustrating the types of public comment beginning with actions that are expected, required or permissible and ending with actions which are questionable, risky or prohibited. Few public servants have ventured beyond the first four categories and the fourth category often involves public servants in bargaining, accommodation, and compromise on behalf of their political superiors. Although
these meetings usually take place in private, public servants may be required to make presentations, in public forums, which could pose a risk to them.

One should note that it is often difficult to distinguish one category of public comment from another as the category of the employee’s statement depends on the perception of the person receiving the statement. For example, a statement may be perceived by a Cabinet minister as being critical of his department whereas the same statement may be perceived by a journalist as constructive criticism.

Although Kernaghan’s definitions relate to the public sector, they can be reworded to apply to the private sector to read as follows:

The right to engage in Public Comment is the right to speak in public on matters of political controversy, or on issues of government or corporate policy or administration.

One can also apply the ten categories of types of public comment to the private sector as well if one rewords the categories to read as follows:

1. providing information and analysis of a scientific or technical nature for consideration primarily by his professional colleagues within and outside the corporation;

2. describing administrative processes and departmental organization and procedures;

3. explaining the content, implications, and administration of specific corporate policies and strategies;

4. discussing within the framework of corporate or departmental policy, the solutions of problems through changes in
existing strategies or the development of new strategies;

5. discussing issues on which corporate or departmental policy has not yet been determined;

6. explaining the nature of the political and policy process in government or in the corporation;

7. advocating reforms in the existing organization or procedures of government or the corporation;

8. commenting in a constructively critical way on government or corporate policy or administration;

9. denouncing existing or potential government policies, programs, and operations; and

10. commenting in an overtly partisan way on public policy issues or on government policy or administration.

This list is also a continuum illustrating the types of public comment beginning with actions that are prohibited, risky or questionable and ending with actions that may be required or permissible. In the private sector the continuum has somewhat reversed itself. For example, category ten is quite acceptable in most cases if employees make it clear that they are expressing their own views rather than those of their companies, whereas in the public sector such actions are prohibited.

Although the issues of political activity and public comment are two distinct areas of ethical conduct they are discussed together in this chapter. The rationale for doing so is that in both sectors these two issues are closely related. Public servants who actively pursue partisan poli-
tics, especially if they seek election to public office, will be required to express their personal views or the views of their party on government policy and/or administration. This situation would of course apply to a private sector employee as well. One will note that most arguments for or against the extension of political rights of public servants can apply to both political activity and public comment.

On the other hand one can argue that the issues of political activity and public comment can be quite distinct. Both public and private sector employees can support political candidates in ways other than through the use of public comment; e.g., through financial contributions to their parties or to the internal operations of the party. One can also argue that although they have no partisan affiliation or motivation, public servants, like their private sector counterparts, have been known to speak out publicly against government policies and programs.

When one examines these definitions of political rights, political activity and public comment, one can see that the opportunity for conflict between one's political rights and one's duty to one's employer could arise. For example, a public sector employee could be actively campaigning against a party in power which he or she is employed to serve, or a private sector employee could provide information of a scientific or technical nature for consideration of a colleague from a competitive company. The question is how can public and private sector managers approach these ethical problem areas? Do employers have the right to limit
the political rights of employees? When do an employee's political rights infringe upon his or her duty to an employer?

THE PUBLIC SECTOR APPROACH

As noted previously, public sector employees are expected to carry out their duties in an impartial manner by adhering to the constitutional convention and/or doctrine that the public service is politically neutral. Political neutrality is defined as:

a constitutional doctrine or convention according to which public servants should not engage in activities which are likely to impair--or appear to impair--their impartiality or the impartiality of the public service.

It is useful to begin by examining the traditional doctrine of political neutrality; it contains the following tenets:

1. politics and policy are separated from administration so that politicians make policy decisions and public servants execute these decisions;

2. public servants are appointed and promoted on the basis of merit rather than affiliation with or contributions to a political party;

3. public servants do not engage in partisan political activity;

4. public servants do not express publicly their views on government policy or administration;

5. public servants provide advice to their ministers in private and in confidence and, in return, ministers protect the anonymity of public servants by publicly accepting responsibility for departmental actions; and
6. public servants execute policy decisions loyally irrespective of the philosophy and programs of the governing party in power and regardless of their personal opinions; as a result, public servants enjoy security of tenure during good behaviour and satisfactory performance.\textsuperscript{15}

The tenets of this doctrine represent an 'ideal model' in the sense that they are not a perfect depiction of reality. This model represents an 'absolute' adherence to political neutrality. In practice, there have long been and still are considerable departures from the various tenets. As a constitutional convention the interpretation and application of political neutrality has changed over the years.\textsuperscript{16}

In recent years there has been much controversy over the most appropriate balance between the political rights and the political neutrality of public servants. This controversy has been heightened because of actions by the courts based on the 1982 Canadian Charter of Rights and Freedoms.\textsuperscript{17} Plaintiffs in a recent case \textsuperscript{18} claimed that Section 32 of the Federal Public Service Employment Act which prohibits an employee from engaging in work for, on behalf of or against a candidate for election or a political party (See Appendix M) is incompatible with Section 2 of the Charter which provides that everyone has the following freedoms:

(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association.

The Government of Canada argued that these rights and
freedoms were not absolute as Section 1 of the Charter provides that the rights and freedoms of the Charter may be subject to limitations, provided they are "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". It should also be noted that certain rights and freedoms guaranteed by the Charter may be expressly abrogated by Parliament or a Provincial legislature pursuant to Section 33 of the Charter. The plaintiffs argued that their research suggested that other free and democratic societies have not felt the need to restrict the political activities of their employees and that judgments by the Supreme Court of Canada up to mid-1986 (particularly the Oakes decision) suggest that very few limits on the Charter freedoms will be accepted as justified under Article 1.

A case involving the Charter of Rights and Freedoms and the issue of public comment by public servants has yet to come before the highest courts of Canada. Although an important decision was handed down by the Supreme Court of Canada in 1985 involving a case of public criticism of government by a federal public servant (Mr. Neil Fraser), the decision did not involve a consideration of the Charter of Rights and Freedoms because it had not been proclaimed when the events of the case occurred. Mr. Fraser was an employee of the Department of National Revenue who publicly criticized the federal government's policy on the mandatory use of the metric system. As a result of his actions Mr. Fraser was dismissed from the public service. He then
brought a grievance before the Public Service Staff Relations Board alleging unjust suspension and dismissal. Mr. Fraser argued that the federal Public Service Employment Act (R.S.C. 1970, C P-32) did not set out principles governing the extent to which public servants could comment on political issues.²⁵

Mr. Fraser's dismissal was upheld by an adjudicator of the Public Service Staff Relations Board who argued that Mr. Fraser's conduct "adversely affected his own ability to conduct the affairs of the department in which he worked"...and concluded that public criticism by Mr. Fraser of his employer was "unlikely to instill confidence in a clientele that has the right to expect impartial and judicious treatment".²⁶

The Supreme Court of Canada upheld the adjudicator's decision. Chief Justice Dickson, in his conclusion, argued that

an absolute prohibition against public servants criticizing government policies would not be sensible...on the other side, however, it is equally obvious that free speech or expression is not an absolute, unqualified value. Public servants have some freedom to criticize the government, but it is not an absolute freedom.²⁷

Chief Justice Dickson did indicate some instances when public criticism of government was appropriate. He argued that it would be appropriate for public servants to criticize government policies publicly

if for example, the government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no
impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability.28

The courts are therefore faced with the task of deciding whether or not the legislation relating to the political partisanship of civil servants is compatible with the Charter of Rights and Freedoms.

The major arguments for and against political rights of civil servants which the courts must consider will now be examined. The arguments most frequently presented in favour of preserving the traditional restrictions limiting political partisanship of public servants are that public servants must be—and must appear to be—politically impartial in order to: preserve the public's trust in government by assuring the public that political affiliation is not considered in any dealings they may have with civil servants; retain the trust of political superiors who depend on civil servants for advice; retain the trust of the opposition parties so that there will not be a politically motivated turnover of public servants with each change in government; avoid the re-emergence of the patronage system of hiring and promotion which would destroy the present system which is based on merit rather than party affiliation; and protect public servants against financial or other forms of exploitation by political or administrative superiors who are affiliated with a particular party or candidate.29

The major arguments for the extension of political rights to public servants are: public servants should enjoy
the same political rights as other citizens; by restricting the political activities of public servants one is restricting the political rights of a significant percentage of the labour force; by restricting the political activities of public servants one is restricting the activities of persons who tend to be more knowledgeable about political matters than the average citizen; and as a result of restricting the political activities of public servants some persons who may have the expertise needed by the public service but who wish to be politically active will not be willing to enter the public service.\(^2\)

The search for the most appropriate balance of the political rights and the political neutrality of public servants is not easy. As in the area of conflict of interest there are both legal and administrative measures that can be utilized to deter and punish unethical conduct in the areas of political activity and public comment.\(^3\) The issue of political rights of public servants in contemporary governments is not a 'black and white' issue. Certain classes of employees enjoy certain political rights and with the exception of absolute prohibition of political rights there will always be room for interpretation as to the extent of what is permissible.\(^4\)

How Canadian governments handle these areas of political activity and public comment will be examined by reviewing the approaches taken by the municipal, provincial and federal governments.
POLITICAL ACTIVITY
THE MUNICIPAL GOVERNMENT APPROACH

Employees of municipal governments in Canada are more restricted in the sphere of political activity than their federal or provincial counterparts. The common practice is to not allow municipal employees to engage in political activity related to municipal elections; thus, municipal employees must resign if they wish to stand for election or to campaign actively for a candidate.33

In several provinces the regulation of political activity of municipal employees is governed by the provinces through their Municipal Acts. In the Province of Ontario, for example, Section 38 of the Municipal Act (see Appendix N) provides that employees of municipalities, or of local boards, except employees of school boards, are ineligible to be elected as members of council or to hold office as members of council except during a leave of absence.34 Employees of metropolitan, regional or district municipalities are not eligible to be elected as members of a council or to hold office as members of a council.35 If such employees wish to run for office they must apply for a leave of absence without pay for a specified period prior to election.36 If elected the employee must resign.37 Thus the municipalities within the Province of Ontario have little control over the constraints placed on the political activities of their employees.

The City of Calgary in its Code of Ethics deals rather
extensively with the area of political activity (see Appendix B). No employee is permitted to run for the office of Mayor or Alderman but may run for and serve in elective offices providing no conflict of interest exists between the elected office and the employee's responsibilities to the City. If an employee wishes to run for school trustee he or she must make a request for a leave of absence which is forwarded to the Board of Commissioners for consideration. An employee is entitled to a leave of absence without pay during candidature for provincial or federal election. If elected the employee must resign.

The City of Calgary also addresses other political rights of its employees. Any employee may join a provincial or federal party or other political organizations; participate actively in the internal affairs of a Federal or Provincial party or organization; hold an office in a Federal or Provincial party or organization; and solicit financial or other contributions for Federal, Provincial or trustee elections or campaigns.

As explained in Chapter II, the City of Calgary places the responsibility for the enforcement of its code with management. The Code contains a 'penalties and appeals' section that outlines the actions that can be taken by management.

THE PROVINCIAL APPROACH

The approaches taken by provincial governments to regulate political activity vary from province to province. Except for the provinces of British Columbia, Alberta and
Newfoundland all regulations pertaining to political activity are incorporated in the respective provincial Public Service Acts. In the Province of British Columbia regulations are incorporated in the collective agreements of non-management employees and in Treasury Board Order No. 40/79 governing the terms and conditions of employment for management personnel. Political activity regulations are addressed by the Province of Alberta in its Code of Conduct and Ethics 1978, and by the Province of Newfoundland in its Order-in-Council 951-75.

In order to examine the approaches to regulations taken by the provinces the degree of political activity allowed will be measured on a continuum. The continuum runs from unrestricted political activity at one end to complete prohibition at the other end. An examination of Table 3 reveals that the provinces of British Columbia, Alberta, and Saskatchewan can be placed at the unrestricted end of the continuum whereas the provinces of Prince Edward Island, Newfoundland and Nova Scotia tend towards the restricted end. The remaining provinces of Manitoba, Ontario, Quebec and New Brunswick can be placed roughly halfway along the continuum in a position similar to that of the federal government. It appears that as one moves east the political rights of provincial public servants become more restricted.

In most provinces, public servants must take a leave of absence in order to become candidates for federal or provincial office. If successful most are required to resign
## Comparative Analysis of Regulation of Political Activities in Canada

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Source</th>
<th>Candidate for federal or provincial election</th>
<th>Campaigning</th>
<th>Fund Raising</th>
<th>Other activities prohibited</th>
<th>Referral of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>Public Service Employment Act, R.S.C. 1978, c.P-31, s.31</td>
<td>must apply for leave to seek nominations; leave may be granted without pay if usefulness not impaired; if elected deemed to resign.</td>
<td>apparently prohibited</td>
<td>apparently prohibited</td>
<td>working for candidate in federal or provincial election or political party</td>
<td></td>
</tr>
<tr>
<td>British Columbia</td>
<td>collective agreement (master agreement)</td>
<td>non-management employee when nominated as candidate entitled to leave without pay to campaign. If elected, entitled to 1 year leave; if defeated, entitled to return.</td>
<td>not specified</td>
<td>not specified</td>
<td>no restrictions specified except oath of office</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Treasury Board Order No. 60/78; B.C. Reg. 108/78, Oct. 19.</td>
<td>management employee must seek leave without pay before seeking nomination to determine if there is a conflict of interest. If elected, a member entitled to five year leave without pay; if appointed a minister, employment deemed terminated.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alberta</td>
<td>Code of Conduct and Ethics established pursuant to Public Service Act, R.S.A. 1988, c.P-31, s.33</td>
<td>non-management personnel must take a leave of absence without pay once nominated; if elected, must resign; if defeated entitled to return.</td>
<td>non-managements permitted</td>
<td>prohibited except where on leave</td>
<td>non-management personnel oath of office only restraint; management personnel excluded from holding office in political parties and constituency associations; general rule requiring discretion; active public participation prohibited.</td>
<td></td>
</tr>
</tbody>
</table>
## COMPARATIVE ANALYSIS OF REGULATION
### OF POLITICAL ACTIVITIES IN CANADA

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Source</th>
<th>Candidature for federal or provincial election</th>
<th>Campaigning</th>
<th>Fund Raising</th>
<th>Other activities prohibited</th>
<th>Safeguard of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saskatchewan</td>
<td>Public Service Act, R.S.B. 1980, c. 261 s.50</td>
<td>employees entitled to leave of absence to become candidates; deemed to have resigned if elected</td>
<td>not specified</td>
<td>not specified</td>
<td>prohibited to use position in Crown to influence political action of any other person; all political activity banned in working hours; activities which impair usefulness banned</td>
<td>prohibition against compelling public servant to take part in political activity or make contribution to political party; prohibition against threats and intimidation for refusal to take part in political undertaking</td>
</tr>
<tr>
<td>Manitoba</td>
<td>Civil Service Act R.S.M. 1974, C.118 as amended by S.M. 1974, c.16, s.44</td>
<td>all except deputy ministers and designated staff entitled to leave of absence without pay to seek nomination; entitled to reinstatement and continuous service benefits if defeated; if elected entitled to leave without pay for five years</td>
<td>permitted except for designated staff</td>
<td>prohibited for all</td>
<td>oath of office only restriction except for designated staff</td>
<td>prohibition against coercing or intimidating employees into supporting a political party or candidate</td>
</tr>
<tr>
<td>Ontario</td>
<td>Public Service Act, R.S.O. 1989, c. 418, ss. 11-18</td>
<td>all but senior staff entitled to leave of absence without pay, reinstatement and continuous service benefits,</td>
<td>prohibited except on leave</td>
<td>prohibited except on leave</td>
<td>speaking out on party platform prohibited except on leave</td>
<td>associating position in service of Crown with political activity</td>
</tr>
<tr>
<td>Quebec</td>
<td>Civil Service Act B.Q. 1983, c.35 ss.10-11, 21-31</td>
<td>entitled to leave without pay to be candidate; entitled to reinstatement if not elected</td>
<td>not specified</td>
<td>not specified</td>
<td>public servant to be neutral and act with reserve in public display of political opinions</td>
<td></td>
</tr>
</tbody>
</table>

TABLE 5 continued
# Comparative Analysis of Regulation of Political Activities in Canada

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Source</th>
<th>Candidates for federal or provincial election</th>
<th>Campaigning</th>
<th>Fund Raising</th>
<th>Other activities prohibited</th>
<th>Excluded from Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Brunswick</td>
<td>Civil Service Act R.S.B.C. 1970, c.4, s.17</td>
<td>employees required to seek leave of absence without pay to seek nomination; may be granted if judged uselessness not impaired; if elected, deemed to have resigned</td>
<td>prohibited</td>
<td>prohibited</td>
<td>engaging in work for or against a political party or candidate</td>
<td></td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>Civil Service Act R.S.N.B. 1910, c.13, s.16</td>
<td>not permitted</td>
<td>prohibited</td>
<td>prohibited</td>
<td>no partisan work permitted nor contribution or receipt of party funds</td>
<td></td>
</tr>
<tr>
<td>Prince Edward</td>
<td>Civil Service Act S.P.E.I. 1983, c.4, s.28</td>
<td>partisan election work prohibited</td>
<td>prohibited</td>
<td>prohibited</td>
<td>prohibited to use official position to influence political action of another person or during working hours engage in political activity or at any time take part in activities impairing his usefulness or engage in partisan work in election</td>
<td></td>
</tr>
<tr>
<td>Island</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>employees cannot be compelled to take part in political undertakings contribute to party be threatened or discriminated against for refusing to take part in political undertakings</td>
<td></td>
</tr>
<tr>
<td>Newfoulndland</td>
<td>Order in Council 931-15, Aug. 18, 1973</td>
<td>must resign to seek nomination; no obligation to reemploy</td>
<td>partisan activity prohibited</td>
<td>partisan activity prohibited</td>
<td>may not use position to influence political action of another person participate in action which would impair usefulness or engage in partisan election activity at any time</td>
<td>employees cannot be compelled to take part in political undertakings contribute to party be threatened or discriminated against for refusing to take part in political undertakings</td>
</tr>
</tbody>
</table>
and if defeated they are entitled to reinstatement. In other areas of political activity, such as canvassing, approaches vary from no restrictions (British Columbia and Saskatchewan) to no restrictions except for management and designated staff (Manitoba and Alberta) to complete prohibition (New Brunswick, Prince Edward Island, Newfoundland, and Nova Scotia). The approaches taken to fund raising vary as well from no restrictions (British Columbia and Saskatchewan) to prohibited except when on leave (Alberta and Ontario) to complete prohibition (Manitoba, New Brunswick, Newfoundland and Nova Scotia). Quebec does not specify whether canvassing or fund raising are permitted but it does have a section in its Civil Service Act that states that "a public servant is to be neutral and act with reserve in public display of political opinions." This would lead one to believe that the activities of fund raising and canvassing are not encouraged. It is notable that in the provinces of Saskatchewan, Manitoba, Prince Edward Island and Newfoundland, there is a prohibition against coercing, intimidating or compelling employees to take part in political activities such as supporting a political party or candidate.

How provincial governments deal with the enforcement of their political activities rules varies as well. In British Columbia where there are no restrictions placed on non-management employees there is no need for enforcement measures. Under Section 9 of the Alberta Code of Conduct and Ethics an employee who does not comply with any provisions of the Code may be subject to dismissal or other disciplinary
action. In Newfoundland an employee who is guilty of a breach of the Order-in-Council 951-75 will be liable to whatever disciplinary action the Lieutenant-Governor-in-Council sees fit to impose in the circumstances. 49

Quebec has no enforcement measures except Section 130 of the Public Service Act which seeks to prevent coercion of public servants. If one is guilty of such an offence, fines of $500-$5000 may be levied. 46 In the remaining provinces the method of enforcement of rules is based on the fact that if public servants violate the statutory provisions on partisan political activity they risk dismissal from the public service.

In the Province of Ontario the Ontario Law Reform Commission was directed to examine and make recommendations on the issues of political activity and public comment. In its 1986 report the Commission recommended that

For the purpose of restricting political activity and critical comment, the public service should be divided into the following two categories: (a) a politically restricted category and (b) a category comprising all other Crown employees, the members of which are free to engage in political activity and critical comment, subject to certain restrictions relating to candidature and certain standards of conduct. 47

It also recommended that a Code of Conduct governing the conduct of all Crown employees in relation to political activity should be enacted by statute and contain the following provisions:

(a) a Crown employee, other than a Crown employee on a candidacy leave of absence,
should not undertake any political activity during his or her working hours;

(b) a Crown employee, other than a Crown employee on a candidacy leave of absence, should not undertake any political activity at his or her place of employment;

(c) a Crown employee should not undertake any political activity that in any way amounts to coercion or gives rise to a reasonable apprehension of coercion by reason of the employee’s position in the service of the Crown;

(d) a Crown employee should not undertake any political activity that would take improper advantage of the employee’s position in the service of the Crown;

(e) a Crown employee should not engage in any political activity that produces a direct conflict with the interests of the Crown in connection with the performance of his or her duties as an employee; and

(f) a Crown employee should not engage in any political activity that gives rise to a reasonable apprehension, on the part of the public, of bias in the making by the employee of any adjudicative, allocative, or evaluative decision in the course of his or her duties as an employee. 48

A grievance and appeals procedure was recommended giving an ‘appeal board’ the right to impose penalties for failure to comply. 49

THE FEDERAL APPROACH

Prior to 1908 the issues of political partisanship and political patronage were closely linked. Rewards for service to the government were often in the form of patronage appointments to the civil service. 50 The Civil Service Amendment Act of 1908 is seen as the first step to eliminate the ‘evils of patronage’ through the application of the merit principle to what is referred to as the ‘inside service’
(public servants working in Ottawa) and through the imposition of the penalty of dismissal for political activity. The merit system in the decade after 1908 was almost destroyed because patronage in the 'outside service' (public servants working outside of Ottawa) continued along with the practice of making temporary appointments on political grounds to the 'inside service'.

In part as an effort to combat this problem the Civil Service Act of 1918 was passed. It reinforced the prohibition against political activity by granting the exclusive power of appointment and promotion to the Civil Service Commission rather than the politicians. Section 55 of the Act set forth the following stipulations:

- civil servants were prohibited to engaging in partisan work in connection with a federal or provincial election;
- civil servants were prohibited from contributing, receiving or dealing in any way with money for party funds; and
- the penalty for violating these provisions was dismissal.

Kernaghan notes that "with the exception of the right to vote the impact of the Act was the political sterilization of Canada's federal public servants." This Act was not altered until 1961. The primary explanation for this was the desire to insure the political neutrality of the public service whose advisory and discretionary roles were increasing.

In 1961 the Civil Service Act was revised. The prohibition against political partisanship was maintained but
a process of inquiry prior to dismissal provision was added. (See Appendix O for the relevant section of the 1961 Act)

The liberalization of the stringent statutory provisions that governed the political activity of public servants for fifty years came about with the passing of the Public Service Employment Act 1967. Section 32 of the Act (See Appendix M) states that no deputy head may engage in political activity but employees may attend political meetings and contribute money to a party or to a candidate. Employees who are granted leave without pay by the Public Service Commission can be candidates for election to federal, provincial, or territorial council. It should be noted that there is no automatic entitlement to leave. Section 32 (3) provides that the Public Service Commission may grant a leave of absence "if it is of the opinion that the usefulness to the Public Service of the employee in the position he then occupies would not be impaired by reason of his having been a candidate for election." If leave is granted the Commission publishes a notice in the Canada Gazette. If the public servant is elected he or she ceases to be an employee and there is no provision for reinstatement following service as an elected member. During the period from 1975 to 1985 the Public Service Commission received 145 requests for leaves, of which 120 were granted.

The Act provides federal public servants with regulations concerning who may engage in political activity
as well as the penalty for contravening regulations. Section 32 (6) of the Act provides for a procedure whereby a contravention of the general prohibition on partisan activity is alleged. If an allegation against a person has been made an inquiry is held by a board established by the Public Service Commission. If the board has ruled that the employee has contravened Section 32 (1), the Public Service Commission may dismiss the employee.

The Act does not cover all areas of political partisanship, therefore leaving considerable room for confusion and disagreement. As the agency responsible for the implementation of the Act, the Public Service Commission interprets the Act for those employees who are uncertain as to its meaning. Thus the Commission has supplemented the Act by circulating bulletins.

Recommendations for Change

Within the past decade there have been recommendations for change relating to the issue of political activity of federal government employees. These recommendations can be found in the following three reports: Report of the Special Committee on the Review of Personnel Management and the Merit Principle (1979) (known as the D'Avignon Report); Report of the Task Force on Conflict of Interest: Ethical Conduct in the Public Sector 1984; and the Report of the Parliamentary Committee on Equality Rights: Equality for All (1985).  

1. The D'Avignon Report:

The D'Avignon committee considered whether federal public employees should be allowed to participate in
political activity at the federal and provincial levels. The Committee advocated the adoption of the British tripartite system as an appropriate framework for the Canadian public service.  

The Committee noted that although its recommendations would extend dramatically the position of federal employees with respect to the exercise of political rights, the extension of these rights to public servants would not be without risk. The public would perceive that public servants would be politically motivated in the exercise of their official duties. The Committee argued that this perception was already held by many people and that there are politically active public servants regardless of any law to the contrary.  

We think it far more important to put legislation in step with reality by according to a great number of public servants the rights of political participation enjoyed by most Canadians than to perpetuate the present unenforceable system.

2. Task Force on Conflict of Interest:  

The 1984 Task Force on Conflict of Interest whose mandate has already been discussed in the previous chapter, examined the matter of partisan political activity which it regarded as an improper form of conduct for those in the public service. The Task Force reviewed the arguments for and against restrictions on political activity and concluded that "the restrictions imposed on public servants today are far fewer than was formerly the case", and on balance, it believed that "the provisions contained in Section 32 strike
an acceptable balance between individual freedom and the requirement for a politically neutral public service". The Task force did propose one change. It recommended that Section 32 of the Public Service Employment Act be transferred to the proposed Ethics in Government Act and that the responsibility for the administration of Section 32 be transferred from the Public Service Commission to the proposed Office of Public Sector Ethics.

3. Equality Report:

The Parliamentary Committee on Equality Rights (a sub-committee of the Standing Committee on Justice and Legal Affairs of the House of Commons) was established to study the status of equality rights in light of Section 15 of the Charter. The issue of political rights of public servants was considered briefly and the Committee recommended that Section 32 be amended "to ensure that no greater limitations are imposed on the political rights of public servants than are necessary to maintain a politically neutral public service."

PUBLIC COMMENT

THE MUNICIPAL APPROACH

In his 1975 study of ethics in the public sector Kernaghan noted that the large municipalities which provided information and documentation for the study showed "comparatively more concern with the problem of public comment than the federal and provincial governments". He noted that a few municipalities had extensive coverage of certain aspects of the problem but none provided a comprehensive treatment of
The Code of Conduct for Employees of the Municipality of Metropolitan Toronto deals with the areas of releasing information to the public. It states that "employees do have obligations in respect to the handling and releasing of information" and that although the public should be informed "the release of specific information should generally be subject to guidelines laid down at the departmental level." It also states that "releasing information on individuals (e.g., employees, taxpayers, recipients of payments, etc.) except where required by law or authorized by the Department Head" constitutes an unacceptable practice. The guidelines do not deal with public comment of a politically partisan nature or critical comment of the municipal government.

The Code of Ethics of the City of Calgary provides very comprehensive guidelines dealing with 'public statements'. It clearly states that "employees will not give information or opinions to the news media." The department head is responsible for making statements to the news media. (See Appendix B) There is nothing specific in the Code relating to public comment of a critical or politically partisan nature. Both municipalities outline procedures to deal with the enforcement of these guidelines. As previously outlined in Chapter Two, the Municipality of Metropolitan Toronto places the responsibility for the enforcement of these guidelines with the department heads. If employees fail to comply with the guidelines they are subject to disciplinary action.
The City of Calgary places the responsibility for the enforcement of its Code with management. The 'penalties and appeals' section outlines the actions that can be taken if guidelines are not followed. (See Appendix B)

The International City Management Association's Code of Ethics and Guidelines does touch upon certain aspects of the matter of public comment. The Code states that "the city manager defends municipal policies publicly only after consideration and adoption of such policies by the council." (See Appendix C Section 4) It also states that "the city manager avoids coming into public conflict with the council on controversial issues" and that "the credit or blame for policy execution rests with the city manager." (See Appendix C Section 5) The Code contains no enforcement measures.

THE PROVINCIAL APPROACH

The matter of public comment is not specifically addressed by most of the provinces in their statutes or regulations but is alluded to in their statutes and regulations relating to political activity. (See Table 3 for statutes and regulations relating to political activity.) As previously stated, public servants who actively pursue partisan politics, especially if they seek public office, would be required to express personal views or the views of their party on government policy and/or administration. The provinces of Alberta, Quebec and Ontario do deal specifically with the area of public comment.

The Province of Alberta's Code of conduct and Ethics
Section 6 addresses the matter of 'public statements'.

(See Appendix D) Section 6 (1) states:

employees who speak or write publicly are responsible for ensuring that they do not release information in contravention of the oath of office set out in section 20 of The Public Service Act.

It should be noted that while the Code indicates a concern for confidentiality it appears to envisage that public servants may communicate their views in public although it does not address whether or to what extent public servants would be limited with respect to their entitlement to do so.?

The Province of Quebec in its Public Service Act states that "(a) public servant shall act with reserve in any public display of his political opinions." The Act also imposes duties of loyalty and impartiality on public servants.?

The Province of Ontario in the Public Service Act states that

Except during a leave of absence granted under subsection 2 of section 12, a civil servant shall not at any time speak in public or express views in writing for distribution to the public on any matter that forms part of the platform of a provincial or federal political party.?

The enforcement of rules relating to public comment would of course be the same as for political activity. If public servants violate the statutory provisions on partisan political activity and public comment they risk dismissal from the public service.?

As noted previously, the Ontario Law Reform Commission in its December 1986 report examined the issues of political
activity and critical comment. In the area of critical comment it made a number of recommendations. The Law Reform Commission recommended that restrictions on critical comment should apply to critical comment in the literal sense and should only apply to critical comment that is public in the sense that the views expressed are those of a speaker known to be a Crown employee. The Commission also recommended that Crown employees in the restricted category and employees whose duties include adjudicative, allocative or evaluative decision-making should not engage in critical comment. The recommendations state that restrictions on critical comment would apply only to critical comment by employees in their private capacities and not to employees carrying out their duties as Crown employees, bargaining agents, or employee association representatives. The Commission also recommended that employees should be able to seek advice from the Special Counsel in relation to any proposed exercise of critical comment the employee is unsure of and that Special Counsel's advice should be admissible as a fact before a tribunal, as evidence that the employee acted in good faith. (For a complete list of the recommendations see Appendix P.)

THE FEDERAL APPROACH

Unlike the area of political activity the restrictions on public comment for federal public servants are based to a large extent on unwritten rules and understandings. The fourth tenet of the doctrine of political neutrality has traditionally been seen as the rule against public comment: "public servants do not express publicly their views on
government policies or administration". This has been the major guideline for federal public servants since the evolution of the rule which is said to have been in existence since the time of Confederation. The rule has, however, for most of this period been an unwritten one, an understanding, a convention. The Ontario Law Reform Commission in its 1986 Report on Political Activity, Public Comment and Disclosure by Crown Employees argues that

If this tenet were rigidly interpreted in practice, freedom of expression by public servants would be confined within very narrow bounds indeed...yet many governments in Canada provide little guidance concerning what kinds of public comment by public servants are permissible and what kinds are prohibited.

Any statutes or regulations relating to public comment have been ambiguous to say the least. The Civil Service Act 1918, Section 55, prohibited civil servants from engaging in partisan work in connection with a federal or provincial party. This would imply that public comment was prohibited but no explicit regulations existed. The Civil Service Act 1961, Section 61(1)(a) prohibited public servants from engaging in partisan work with any election. (See Appendix D) Once again the statute implied that public comment was prohibited but no explicit regulations existed.

The Public Service Employment Act 1967 Section 32 (1) (See Appendix M) prohibits employees from working on behalf of or against a candidate or political party in a federal, provincial or territorial election. This section of the Act has led to uncertainty concerning the permissible limits on
political activity.

In 1979 Prime Minister Clark issued guidelines on communications between the public and public servants. The guidelines advised public servants to "be prepared to discuss frankly information within their areas of responsibility that describes or explains programs that have been announced or implemented by the government" but they should not "go beyond this discussion of factual information." Public servants were advised not "to discuss advice or recommendations tendered to Ministers, or to speculate about policy deliberations or future policy decisions." The guidelines stated that "it would be normal for public servants to be quoted by name, and to be interviewed." The guidelines did prohibit public servants from disclosing information which was prohibited by law. The Trudeau government which was elected in 1980 retained these guidelines.

In its 1984 report the Task Force on Conflict of Interest regarded public criticism of government policy as an improper form of conduct for public servants. In its proposed Ethics in Government Act the task force expressed the following principle:

Public office holders shall not express publicly personal views on matters of political controversy or on government policy or administration, where this is likely to impair public confidence in the existing or subsequent performance of their duties or which is likely to impair relations with other governments.

It also recommended that the administrative responsibility for dealing with matters of public comment should be given to
the proposed Office of Public Service Ethics.\textsuperscript{a}

In 1984 the Mulroney government amended the guidelines by requiring that interviews with the media or public "shall be on the record and for attribution by name."\textsuperscript{37} Kernaghan notes that "While this amendment was made in the name of "open government," the view was widely expressed that it would have the effect of discouraging public servants from giving out even factual information."\textsuperscript{38}

The breadth of language of Section 32 (1) of the Public Service Employment Act has led to uncertainty as to what is permissible political activity. In 1984 the Public Service Commission issued a statement of its "interpretation of the spirit and scope of the law."\textsuperscript{39} This statement not only addressed the matter of partisan political activity in more detail than the Act but it also addressed the matter of public comment. On the premise that the importance of impartiality required the declaration of 'principles of conduct' that went beyond the electoral context, the Public Service Commission adopted the following general principle:

Federal Public Service employees should not undertake activities, assume responsibilities or make public statements of a politically partisan nature or of a kind which could give rise to the perception that they may not be able to perform their duties as public servants in a politically impartial manner.\textsuperscript{40}

To elaborate upon the meaning of this principle the Public Service Commission proposed the following prohibitions:

-employees should not personally campaign for or against political parties or candidates in federal, provincial or ter-
[...]

- Employees should not become involved in the solicitation, collection, distribution or administration of the finances of political parties or of candidates in federal, provincial or territorial elections;

- Employees should not assume any official functions or be elected to any recognized offices, including being a delegate to meetings or leadership conventions, on behalf of a candidate or a political party at the federal, provincial or territorial level; and

- Employees must not stand for elected office or seek nomination in a federal, provincial or territorial election, unless they have first obtained permission from the Public Service Commission to take leave without pay in order to do so.  

Although this clarifies to some extent the question of politically partisan public comment it does not address the issue of nonpartisan critical comment.

Whether public servants are seeking election or not they are still bound by the fourth tenet of the doctrine of political neutrality. One can argue that this unwritten rule or convention is certainly open to interpretation in today's society. Public servants, in the course of their employment, are now finding that they are required to attend public forums and explain government policies and programs.

The issues of public comment and political activity have been addressed by all levels of government. The traditional view that public servants carry out their duties in an impartial manner by adhering to the convention that public servants be politically neutral still stands. Is there a need for private sector employees to act in an impartial manner in...
the course of their duties and in doing so remain politically neutral? How the private sector views these problem areas will be discussed below.

THE PRIVATE SECTOR APPROACH

In the private sector, although there is no constitutional convention of 'political neutrality', there are the 'common law duties of loyalty, good faith and confidentiality' owed by the employees to their employers that place certain restraints upon the activities of private sector employees. In Elizabethan times the law treated any 'violence by a servant' against his or her master as a minor form of treason, and "visited the employee with the grisly methods of execution reserved for the most heinous of offences". Smyth and Soberman note that this attitude of the law, demanding of employees the utmost in subjection and loyalty has lingered long: until comparatively recent times, a strike was regarded as a form of conspiracy.

Misconduct against an employer today is not seen as a crime but it may well be grounds for dismissal. A company is entitled to have confidence in its employees, and evidence of lack of loyalty is often grounds for instant dismissal.

The Ontario Law Reform Commission refers to the duty of 'loyalty or fidelity' as the most comprehensive of the three duties, with the duties of good faith and confidentiality, forming subspecies of the larger duty of loyalty. In order to relate these 'common law duties' to the issues of political activity and public comment in the private sector,
it is necessary to define each of the three duties.

The duty of loyalty has been defined as:

the obligation to perform lawful work assigned diligently and skillfully; to refrain from any sort of deception related to the employment contract; to avoid any relationship, remunerative or otherwise, giving rise to an interest inconsistent with that of the employer; and, finally, to conduct oneself, at all times, so as not to be a discredit to one’s employer.

The duty of good faith has been defined as:

the duty of an employee to perform assigned tasks according to the best interests of his or her employer. Any degree of undisclosed self-seeking in carrying out the employee’s employment obligations, even at no apparent cost to the employer, runs counter to this duty.

The duty of confidentiality has been defined as:

the duty to keep certain information confidential until released from that duty by the employer. The duty may arise by contract; or it may be imposed by equity on an employee whenever the employer entrusts to him or her "confidential" information on the understanding that such information is not to be disclosed without authorization; or a general duty of confidentiality may arise by virtue of the particular relationship between the employer and the employee.

In the area of political activity the duties of loyalty and good faith can apply. If a company has a policy that either prohibits or restricts political activity by its employees, employees who disregard this policy may be in breach of the duty of loyalty as they did not "avoid any relationships, remunerative or otherwise, giving rise to an interest inconsistent with that of the employer". Employees who en-
gage in political activities may be in breach of the duty of good faith if their political activities run counter to company policy, thereby performing tasks not according to "the best interest of his or her employer". Employees could also be in breach of good faith if they used their positions as employees to seek political office or favours, thereby using "undisclosed self-seeking in carrying out the employees' employment obligations".

In the area of public comment all three 'duties' apply. Critical public comment may breach the duties of loyalty (conduct oneself, at all times, so as not to discredit one’s employer), good faith (perform assigned tasks according to the best interest of one’s employer), and confidentiality (information is not to be disclosed without authorization).

The effect of the Charter of Rights and Freedoms on 'common law duties' to one's employer as they relate to political activity and public comment has yet to be seen. Although the Supreme Court of Canada has not yet had an opportunity to consider the meaning and scope of many of the rights and freedoms guaranteed by the Charter one can nevertheless gain some insight from the general interpretive approach that has been articulated by the Court in determining the application of the Charter. On several occasions the Court has advocated a 'liberal approach' to the interpretation of the rights and freedoms guaranteed by the Charter. The Court has identified the purpose of the Charter to be "the unremitting protection of individual rights and liberties" and it emphasized that the Charter is intended
to set a standard against which present as well as future legislation is to be tested. The Court has noted that a "narrow technical interpretation, if not modulated by a sense of the unknowns of the future, can stunt the growth of the law and hence the community it serves". The importance of adopting a generous, rather than a legislative, approach, while at the same time cautioning that the Charter must "be placed in its proper linguistic, philosophic and historic contexts" was reiterated by the Chief Justice in R. v Big M Drug Mart Ltd.

The search for the appropriate balance between the political rights of private sector employees and the common law duties of loyalty, good faith and confidentiality is not as easy as it may appear. The Charter guarantees the rights and freedoms set out in it but Section 1 does state that these rights and freedoms may be subject to limitations provided they are "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Are the 'common law duties of loyalty, good faith and confidentiality' an infringement of the fundamental rights and freedoms guaranteed in the Charter?

How the private sector handles these areas of political activity and public comment will be examined by reviewing the approaches taken by business corporations and the professions.
POLITICAL ACTIVITY

BUSINESS CORPORATIONS

As explained in Chapter II,\textsuperscript{185} eight of the thirty-five business corporations examined were randomly selected to included a representative company from each of the eight categories of businesses (using the \textit{Report of Business Magazine's} classification scheme) in order to provide a comparative analysis of private sector companies as to political activity regulations. Table 4 provides a comparative analysis of regulation of political activity in randomly selected private sector companies.

Only three of the eight companies specifically addressed the matter of candidature for federal or provincial office. All three companies provide leaves of absence to run for public office. If an employee is elected, Imasco requires that the employee resign; while Dofasco provides a leave of absence while in public office. Bell Canada does not state what its policy is if an employee is elected.

None of the eight companies specifically addresses the matters of canvassing or fund raising, although the Royal Bank of Canada, Bell Canada, Geo. Weston Ltd. and Dofasco encourage their employees to make political contributions to the party or candidate of their choice. Corporate contributions if sanctioned by the company must be approved by the designated corporate authorities. Bell Canada and Norton Company have corporate policies that prohibit the companies from contributing to political parties or candidates. It is
### COMPARATIVE ANALYSIS OF REGULATION OF POLITICAL ACTIVITIES OF SELECTED PRIVATE SECTOR COMPANIES, 1986

<table>
<thead>
<tr>
<th>COMPANY</th>
<th>SOURCE</th>
<th>CANDIDATURE FOR FED./PROV.ELECTION</th>
<th>CANVASSING</th>
<th>FUND RAISING</th>
<th>OTHER ACTIVITIES PROHIBITED</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UTILITIES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bell Canada</td>
<td>Our code of Business Conduct</td>
<td>encouraged to support party of their choice - leave of absence required to run for public office</td>
<td>not specified</td>
<td>not specified</td>
<td>Bell Canada does not contribute to political parties or candidates.</td>
</tr>
<tr>
<td><strong>MANUFACTURING</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hayes Dana</td>
<td>Code of Business Conduct Sec. 6.</td>
<td>not specified but cautioned to avoid activities that would deprive the company of the employee's time to his duties.</td>
<td>not specified</td>
<td>not specified</td>
<td>Encourages political activity by employees acting on their own behalf and not as company representatives.</td>
</tr>
<tr>
<td><strong>MANAGEMENT COMPANIES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imasco</td>
<td>Corporate Policy 1983, Absences.</td>
<td>- leave of absence required to run for public office - if elected expected to resign from the company.</td>
<td>not specified</td>
<td>not specified</td>
<td></td>
</tr>
<tr>
<td><strong>MULTINATIONAL COMPANIES</strong></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Norton Company</td>
<td>The Norton Policy on Business Ethics</td>
<td>not specified but encouraged to participate in political process</td>
<td>not specified</td>
<td>not specified</td>
<td>Corporate contributions to political parties or candidates are prohibited.</td>
</tr>
</tbody>
</table>
## Comparative Analysis of Regulation of Political Activities of Selected Private Sector Companies, 1986

<table>
<thead>
<tr>
<th>COMPANY</th>
<th>SOURCE</th>
<th>CANDIDATURE FOR FED./PROV ELECTION</th>
<th>CANVASSING</th>
<th>FUND RAISING</th>
<th>OTHER ACTIVITIES PROHIBITED</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Natural Resource</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>disclosure of any knowledge of illegal political contributions by employees</td>
</tr>
<tr>
<td>Alberta &amp; Southern Gas Co. Ltd.</td>
<td>Questionnaire Regarding Conflict of Interest &amp; Business Ethics</td>
<td>not specified</td>
<td>not specified</td>
<td>not specified</td>
<td></td>
</tr>
<tr>
<td><strong>Financial</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Bank shall make only those contributions to political parties or candidates which are permitted by law and approved by management officer authorized to do so.</td>
</tr>
<tr>
<td>The Royal Bank of Canada</td>
<td>Code of Conduct Principles of Ethical Behaviour</td>
<td>encourages political activity and involvement by employees but must do so on own behalf not as representatives of the bank.</td>
<td>not specified</td>
<td>not specified</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Personnel manual Sec. 29.</td>
<td></td>
<td></td>
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<tr>
<td><strong>Primary Industry Co.</strong></td>
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</tr>
<tr>
<td>Dofasco Inc.</td>
<td>Dofasco Code of Business Conduct</td>
<td>encouraged leave of absence for campaigning &amp; holding public office. Policy 48. -political activity solely on their own behalf &amp; not as representatives of Dofasco.</td>
<td>not specified</td>
<td>not specified</td>
<td>no political contributions on behalf of Dofasco without prior approval of President or Exec. Vice-President</td>
</tr>
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<td></td>
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</tr>
<tr>
<td><strong>Food &amp; Hospitality</strong></td>
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<td></td>
<td></td>
<td></td>
<td>Corporate contribution should be approved by the office of the Chairman.</td>
</tr>
<tr>
<td>Geo. Weston Ltd.</td>
<td>Geo Weston Ltd. Code of Business Conduct</td>
<td>not specified but political interest should not deprive the company of the employee's time unless prior approval is obtained from management</td>
<td>not specified</td>
<td>encouraged to make political contributions</td>
<td></td>
</tr>
</tbody>
</table>

*Table 4 continued*
interesting to note that although the Alberta and Southern Gas Co. Ltd. does not have a specific corporate policy on political activity for employees it does require employees to disclose any knowledge of any political contributions that were not in accordance with the law or any political contribution to foreign governments or their representatives for special privileges such as to acquire a commodity.¹⁰⁴

One could conclude that the company is more interested in the reporting of wrongdoings than setting out corporate policy that would prohibit such activities.

Of the seven companies that encouraged political activity by their employees all implied that employees who participate in political activities do so on their own behalf and not as representatives of the company. The Royal Bank of Canada, Hayes Dana and Dofasco included such statements in their regulations.

The enforcement mechanisms for regulations regarding political activity are the same as the methods outlined for the conflict of interest regulations found in Chapter II.

PROFESSIONS

As previously noted in Chapter II several professions have developed codes of professional conduct. Of the four professions of law, engineering, accountancy and medicine that have codes only the law profession addresses the issue of political activity. The Law Society of Upper Canada Professional Conduct Handbook states in Rule 9 that:

> the lawyer who holds public office should, in the discharge of his official duties, adhere to standards of conduct as high as
those which these Rules require of a lawyer in the practice of law.\textsuperscript{107}

The 'commentary' to Rule 9 expands upon the conduct expected of lawyers who hold public office. Lawyers are expected to declare or avoid if possible all conflicts of interest, and not divulge confidential information acquired while in office. The essence of Rule 9 is summarized in 'commentary B' which states:

Generally speaking, the Society will not be concerned with the execution of official responsibilities of a lawyer holding public office, but if his conduct in office reflects adversely upon his integrity or his professional competence, he may be subject to disciplinary action.\textsuperscript{108}

The type of disciplinary action that would be imposed for non-compliance is not outlined in the Handbook. The problem arises with enforcement of regulations by self-regulating professional organizations.\textsuperscript{109} The view that only those with the requisite knowledge and skill are fully able to understand, let alone make judgments on, the proper exercise of those skills in specific cases, forces us to place the obligation of self-regulation in the hands of professionals. The public must trust them to keep their houses in order.

Although the remaining professions do not address the issue of political activity in their respective codes, accountants, engineers and doctors may be regulated by the codes or regulations of their employers. For example, accountants in the firm of Wood Gundy are regulated by the Wood Gundy Code of Corporate Ethics which encourages political involvement on the part of its employees regardless of
party affiliation; however, such involvement is strictly personal and cannot be undertaken as representatives of the firm.\textsuperscript{110}

PUBLIC COMMENT

BUSINESS CORPORATIONS

The matter of public comment is not addressed in most corporate codes of ethics or regulations regarding employee conduct. Those companies that do address the issue are very specific in their regulations. Dome Petroleum Ltd. does restrict public comment of employees who hold public office (if they continue in their employment with Dome) by expecting them to refrain from taking a position on any issue related to Dome.\textsuperscript{111} Sun Life Assurance Co. of Canada is very specific in its regulations regarding public comment. Section VII of its Policy states:

\begin{quote}
when communicating publicly on matters that do involve Company business, individuals shall not presume to speak for the Company on any matter, unless they are certain that the views they express are those of the Company, and that it is the desire of its management that such views be publicly disseminated; and
\end{quote}

\begin{quote}
officers and other employees shall take care when communicating on matters not involving Company business to separate their personal roles from their Company positions.\textsuperscript{112}
\end{quote}

Dofasco sets out in Policy 34 the procedure for releasing all Company information to the media. Bell Canada also has a basic rule that no information which is not clearly in the public domain should not be released without authorization. The company also identifies two kinds of information which
should only be released in accordance with authorized Bell practices: company proprietary information, which includes anything the company does not wish to disclose such as the details of Bell innovations that would have a competitive market value; and government classified information.~13

Partisan public comment would of course come under the regulations relating to political activity. (See Table 4) The enforcement mechanisms for regulation of partisan public comment are the same as the methods outlined for conflict of interest in Chapter II.

The enforcement mechanisms for regulations regarding public comment for companies that have not been discussed in Chapter II range from compliance to regulations as a condition of employment (Dome Petroleum) to an annual review of corporate policies but no written sanctions for non-compliance (Sun Life Assurance Co. Ltd.).

PROFESSIONS

Of the four professions that were examined, (law, engineering, accountancy and medicine) all four address the issue of public comment. The legal profession appears to have the most comprehensive regulations. The Law Society of Upper Canada Professional Handbook outlines in Rule 21 the following regulations for lawyers making public appearances and statements:

1. Lawyers in their public appearances and public statements should conduct themselves in the same manner as with their clients, their fellow practitioners, the Courts, and tribunals. Dealings with the media are simply an extension of the
lawyer's conduct in his professional capacity. The mere fact that his appearance is outside of a courtroom, a tribunal, or his office does not excuse conduct that would otherwise be considered improper;

2. A lawyer's duty to his client demands that in contemplating a public appearance by him concerning his client's affairs, he must first be satisfied that any communication by him is in the best interests of the client and within the scope of his retainer. His duty to his client requires that he be qualified to represent effectively his client before the public and he must not permit any personal interest or other cause to conflict with that of the client;

3. The lawyer should, when acting as an advocate, refrain from expressing his own personal opinions as to the merits of his client's case;

4. The lawyer should, where possible, encourage public respect for and try to improve the administration of justice. In particular, the lawyer should treat his fellow practitioners, the courts, and tribunals with respect, integrity, and courtesy. Lawyers are subject to a separate and higher standard of conduct than that which might incur the sanction of the court; and

5. Public communications should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that the lawyer's real purpose is self-promotion or self-aggrandizement.

In the commentary that follows Rule 21 (See Appendix 0 for details) the Law Society notes that public comment by a lawyer on the "effectiveness of existing statutory or legal remedies, on the effect of particular legislation or decided cases" or involvement by a lawyer "as an advocate for special interest groups whose objective it is to bring about
changes in legislation, governmental policy, or even heighten public awareness about certain issues" is seen as an important role the lawyer can be called upon to play. Regulation concerning partisan public comment is governed by Rule 9. (See Appendix R)

Professional engineers are regulated by provincial associations. The Association of Professional Engineers of the Province of Ontario in its Code of Ethics does show concern for the issue of public comment. Section 2, duty of Professional Engineer to the Public states:

- a professional engineer shall endeavour at all times to enhance public regard for his profession by extending the public knowledge thereof and discouraging untrue, unfair or exaggerated statements with respect to professional engineering;

- the professional engineer shall not give opinions or make statements on professional engineering projects of public interest that are inspired or paid for by private interests unless he clearly discloses on whose behalf he is giving the opinions or making the statements; and

- the professional engineer shall not express publicly, or while he is serving as a witness before a court, commission, or other tribunal opinions on professional matters that are not founded on adequate knowledge and honest conviction.

Section 5 of the code states that: a professional engineer shall not maliciously injure the reputation or business of another professional engineer", nor shall he advertise in a misleading manner injurious to the dignity of his profession."

The accounting profession, when dealing with the matter of public comment, centres its regulations mainly around the
actual expression of opinions on financial statements. The Institute of Chartered Accountants of Ontario, in its Rules of Professional Conduct, states that members or students shall not associate themselves with any false or misleading documents, nor "make any oral report, statement or representation which he knows, or should know is false or misleading", and that in "expressing an opinion on financial statements accountants must disclose all material facts and report any material misstatements known to be contained in the financial statement." The Institute does set out the following major principle which not only deals with the matter of confidentiality but also relates to public comment:

a member or student has a duty of confidence in respect of the affairs of any client and shall not disclose without proper cause any information obtained in the course of his duties, nor shall he in any way exploit such information to his advantage.119

The medical profession does not deal directly with public comment but through its regulations concerning confidentiality it does curtail public comment relating to information obtained as a result of the 'doctor-patient relationship'. The Hippocratic Oath states:

Whatsoever thing I see or hear concerning the life of men, in my attentions on the sick or even apart therefrom which ought not to be noised abroad, I will keep silence thereon, counting such things to be sacred secrets.120

The Geneva Convention Code of Medical Ethics adopted by the World Medical Association in 1949, simply states that "I will respect the secrets which are confided in me" and "I will not
permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient." 

The enforcement of regulations relating to public comment by these professions comes into question. Once again one is faced with self-regulated professional organizations which have the responsibility to police themselves.

**SUMMARY**

Public and private sector employees are expected to conduct their business activities in an impartial manner whereby their private or personal interest cannot influence or appear to influence the discharging of their duties to their employer. There is a conflict between the need for 'impartiality' and the desire by employees to exercise their political rights (the right to participate in political activity and public comment).

In the public sector employees have been expected to carry out their duties in an impartial manner by adhering to the constitutional convention or doctrine of political neutrality. In the private sector the 'common law duties of loyalty, good faith and confidentiality' owed by employees to employers place certain restraints upon the activities of employees. These restraints can limit private sector employees from exercising their political rights.

Although the issues of political activity and public comment are distinct, regulations in both the public and private sectors that relate to the two issues tend to over-
In the public sector all levels of government have addressed the issues of political activity and public comment. At the municipal level one finds that the political rights of employees are very restricted. Although the recognition, by the City of Calgary, of the political rights of its public servants may be seen at first glance as being very progressive by those who advocate political freedom for public servants, a closer examination reveals that a number of restrictions are still in place. Kernaghan argues that at the municipal level, where public servants are more visible, the importance that is attached to political neutrality has led to the stringent restraints placed on political partisanship.\textsuperscript{122}

At the provincial level all the provinces have addressed the matter of political activity but the matter of public comment has received little attention. Only the provinces of Alberta, Quebec and Ontario deal specifically with the area of public comment in their regulations.

The federal government in its effort to curb patronage has gone from a policy of no restrictions on political rights, to prohibition of political rights, to restricted political rights for public servants.

In the private sector only the law profession addresses the issue of political activity. One would assume that the need for regulations pertaining to political activity by lawyers was identified because of the number of lawyers who seek public office. In regard to the matter of public com-
The law profession has a rule regarding public statements and appearances by lawyers. The engineers have regulations relating to public comment although they are not as comprehensive as those of the law profession. The professions of accounting and medicine have regulations regarding public comment but they are closely tied to the issue of confidentiality.

Business corporations with codes of ethics or regulations generally did not address the issue of political activity to any extent. Only three of the eight companies that were examined had policies relating to candidature for public office and none specifically addressed the matters of canvassing and fund raising. Companies do encourage political activity by employees but they caution that employees do so on their own behalf and not as representatives of the company. In the private sector, in most cases, it is the employer who wishes to be or appear to be politically neutral.

Regulations regarding public comment are not specifically addressed by most companies. The area of partisan public comment would of course be implied in the regulations regarding political activity. The 'common law duties of loyalty, good faith and confidentiality' may be viewed by some companies as adequate regulation in this regard. Formal guidelines on public comment are sparse and often imprecise and are subject to varying interpretations. This situation can result in confusion and uncertainty for
employees.

The advent of the Charter of Rights and Freedoms has brought about the questioning by employees, especially those in the public sector, of the restraints placed on their political rights by their employers. Managers in both the public and private sectors are facing the dilemma of balancing competing values: the rights and freedoms guaranteed under the Charter on one hand with the need to restrict political rights of their employees on the other.
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ENDNOTES

1See Chapter II, p. 19.


3In twenty out of thirty-five Canadian Companies political activity by individual employees, not implicating the employer, was encouraged.


6Ibid., p. 283.

7Ibid., p. 283.


9If a traditional rule on public comment has evolved in the private sector it has been to regulate the activities described in items 1-5. The remaining items are not encouraged by most private sector companies.

10Kernaghan, "Political rights and political neutrality: finding the balance point," op. cit., p. 640.

11Ibid., p. 640.

12A recent case involved Neil A. Fraser, an employee with the Department of National Revenue, who criticized the government's policy on compulsory metrication.

13See Chapter 3, p.1.

14Kernaghan and Siegel, op. cit., p. 625.


16Ibid., p. 641.


18Barnhart, Camponi, Cassidy, Clavette and Stevens v.
the Queen and the Public Service Commission, Court File No. T-1636-84.


20Section 33 applies to s. 2 and to ss 7-15 of the Charter; the democratic and mobility rights (ss.3-6) are not subject to abrogation. Because of the obvious political implications of a wholesale infringement of fundamental rights and freedoms it is expected that Parliament and the legislative assemblies will invoke the s. 33 "override" only in extreme circumstances.


23Kernaghan, op cit., p. 651.


25Ontario Law Reform Commission, op cit., p. 44.

26Fraser v. Public Service Staff Relations Board, op cit., p. 225.

27Ibid., pp. 131-32.

28Ibid., pp. 133-34.


32Ibid., p. 28.

33Kernaghan, op cit., p.31.

34See Section 38-1, ss. 1.

35See Section 38-2.

36See Section 38-4 ss. (a) (b).

37See Section 38-5.
See Chapter II, p. 22.


Kernaghan, "Political rights and political neutrality: finding the balance point", op. cit. p. 648.

Civil Service Act S.Q. 1983 ss. 10-12, 24-31.


(E)very person who uses intimidation or threats to induce a public servant to engage in partisan work or to punish him for refusing to do so is guilty of an offence and liable, in addition to costs, to a fine of $500 to $5000.


Ibid. pp. 363-64.

Ibid. p. 364.


Government of Canada, op. cit. pp. 75-76.


Government of Canada, op. cit. p. 76.


Ibid. p. 255.

Government of Canada, op. cit. p. 78.

Ibid. pp. 78-79.

See Section 32 (2) of the Public Service Employment Act.
Statistics provided by the Public Service Commission of Canada based on a survey of its Annual Reports (1975-1985).


Ibid. p. 174.

Ibid. p. 175.

Government of Canada, "Ethical Conduct in the Public Service", op. cit. p. 34.

Ibid. p. 43.

Ibid. p. 235.

Ibid. p. 236.


Kernaghan, op. cit. p. 38.

See Appendix B, p. 2.

Ibid. p. 5.


Public Service Act S.Q. 1983 Division 1, Section 11.

Ontario Law Reform Commission, op. cit. p. 147.


See Chapter III, pp. 78-79.

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\[ ^{11} \text{Ibid., p. 14.} \]

\[ ^{12} \text{Ibid., p. 19.} \]

\[ ^{33} \text{Policy Guidelines for Public Servants: Communications with the Public, November 23, 1979, reproduced in Debates (Commons), November 29, 1979, p. 1875.} \]

\[ ^{34} \text{Government of Canada, "Ethical Conduct in the Public Sector," op. cit., p. 34.} \]

\[ ^{35} \text{Ibid., p. 47. The rule does not prohibit employees from exercising their rights under the Public Service Staff Relations Act.} \]

\[ ^{36} \text{Ibid., pp. 238-39.} \]

\[ ^{37} \text{Office of the Prime Minister, Policy Guidelines for Public Servants: Communications with the Public, November 23, 1984.} \]

\[ ^{38} \text{Kernaghan and Siegel, op. cit., p. 284.} \]

\[ ^{39} \text{Government of Canada, Public Service Commission, "Message from the Commissioners of the Public Service of Canada to federal employees", published in "DialoguExpress" (February, 1984).} \]

\[ ^{40} \text{Ibid.} \]

\[ ^{41} \text{Ibid.} \]

\[ ^{42} \text{Ontario Law Reform Commission, op. cit., p. 33.} \]


\[ ^{44} \text{Ibid., p. 490.} \]

\[ ^{45} \text{Ibid., p. 490.} \]

\[ ^{46} \text{Ontario Law Reform Commission, op. cit., p. 35.} \]

\[ ^{47} \text{Ibid., p. 36.} \]

\[ ^{48} \text{Ibid., p. 36.} \]

\[ ^{49} \text{Ibid., p. 36.} \]

\[ ^{50} \text{Ibid., p. 106.} \]


105 See Chapter II, p. 42.

106 Alberta and Southern Gas Co. Ltd., Questionnaire Regarding Conflict of Interest and Business Ethics.


108 Ibid., p. 10.

109 See Chapter II, p. 51.


113 Bell Canada, Our Code of Business Ethics, pp. 5-7.

114 Law Society of Upper Canada, op. cit.; See Appendix Q for complete document.

115 Ibid., See articles 3 and 4 of commentary.

116 Association of Professional Engineers of the Province of Ontario, Code of Ethics, p. 27.

117 Ibid., p. 28.

118 The Institute of Chartered Accountants of Ontario, Rules of Professional Conduct, August 1982, p. 510

119 Ibid., p. 5 05.

120 The Hippocratic Oath. See Appendix L for complete document.


122 Kernaghan, "Political rights and political neutrality: finding the balance point", op. cit., p. 649.
CHAPTER IV
CONFIDENTIALITY

INTRODUCTION

The final ethical problem area to be discussed is that of confidentiality of information. This problem area is related to those areas discussed in Chapters II and III, namely, conflict of interest, political activity and public comment. Employees who use confidential information to advance their personal or private interests would be considered to have a conflict of interest. This close linkage between the problem areas of conflict of interest and confidentiality is illustrated well for the public sector in the following principle of conduct adopted by the Institute of Public Administration of Canada.

Public employees should not seek or obtain personal or private gain from the use of information acquired during the course of their official duties which is not generally available.¹

Similarly, employees who engage in political activity and public comment and use confidential information to further their partisan or non-partisan goals would be considered to be acting in an unethical manner. In order to ensure confidentiality in the public sector, most employees are bound by regulations and oaths of secrecy as well as by the common law duties of loyalty, good faith and confidentiality (which also apply to the private sector). In both sectors confidentiality is important in achieving efficient and effective administration.² Public servants must be assured that their
contributions to the policy-making process remain confidential. Fear of public disclosure of their inputs would result in a decline in the frankness and completeness of their advice to their ministers. In the private sector, managers must be assured that employees will not disclose confidential information. Interpersonal trust between the employer and employee is necessary in order to pursue the common goals of the organization.

What is confidential information? The Ontario Law Reform Commission refers to confidential information as information that is "basically not common knowledge, or where it is rendered confidential either by the context in which it was disclosed to the confidant or by its very nature". Jones, in his "Restitution of Benefits Obtained in Breach of Another's Confidence", lists the following factors that determine when information is confidential:

(a) some degree of secrecy is essential before information can be deemed to be confidential;

(b) confidential information need not be novel in the sense, for example, that it could be the subject of a successful patent application;

(c) confidential information cannot embrace the ordinary skills which an individual may acquire in the ordinary course of his life; and

(d) the courts will not impose an obligation of confidence upon a defendant when it would be illegal or contrary to public policy to do so.

The disclosure of confidential or sensitive information gained by a public or private sector employee in the course
of, or by virtue of, his or her employment is referred to as 'whistleblowing'. Disclosures are made either to those inside or outside the employment organization in the name or some 'greater good' or some private, 'selfish good', as perceived by the individual conscience of the disclosing employee. The issue of 'whistleblowing' by employees of both the public and private sectors has become more prominent in the last two decades. James Bowman argues that "the late 1960s and 1970s witnessed the initiation of the Age of the Whistleblower". Such events as the Vietnam War and Watergate dramatized 'whistleblowing': Daniel Ellsberg made the famous Pentagon Papers public; and 'Deep Throat' was instrumental in disclosing the wrongdoings of the Nixon administration. In Canada the 'leaking' of confidential information during the 1970's was unprecedented in the country's history.

Ralph Nader has been credited with sparking the current scholarly interest in 'whistleblowing'. As a result of a national conference which he organized in 1971 on the topic of 'whistleblowing', Nader published the following definition of 'whistleblowing':

An act of a man or woman who believing that the public interest overrides the interest of the organization he serves, publicly blows the whistle if the organization is involved in corrupt, illegal, fraudulent, or harmful activity

It has been noted that various philosophers, legal scholars and social scientists have spent the better part of the last decade trying to improve upon Nader's definition. Three elements have been identified to render it more functional:
1) a more exact demarcation of when 'public interest' is truly at stake;

2) a more exact specification of just what is included in the "interest of the organization"; and

3) a particular characterization of what is meant by "corrupt, illegal, fraudulent or harmful activity."

Nicholas Rongine argues that:

without such specifics, it is impossible to distinguish whistleblowing from other less meritorious kinds of dissent and, a fortiori, to justify it morally in order that legal protection for the whistleblower is merited.

Whistleblowers face a moral dilemma: when can one's duty of loyalty to one's employer be overridden because of one's duty to society?

THE PUBLIC SECTOR APPROACH

The rationale for confidentiality of government information is based on the tradition of administrative secrecy inherited from the British Parliamentary system. The government of Canada has traditionally operated on the basis that all information is secret until it decides otherwise. The need for confidentiality in government operations is said to be essential to the maintenance of national security and the protection of the public interest. In order to protect national security and the public interest, the following types of security are required:

-MILITARY SECURITY is required so that a country may carry out its international and domestic obligations in the military sphere;

-DIPLOMATIC SECURITY is required to protect secret and confidential information...
received or given during diplomatic negotiations;

- INTERNAL SECURITY is required to safeguard national interests from internal subversive elements and foreign agents;

- POLITICAL SECURITY is required so that elected representatives can conduct public affairs without anxiety that views expressed in private might become a subject of public debate; and

- PRIVATE SECURITY is required with regard to personal or business matters so that confidential information received from business concerns and private individuals is preserved and there is no injury to the financial interests of the firms or to the private affairs of individuals.¹⁰

During the mid 1960s the need for confidentiality of all government information was being questioned. Critics of administrative secrecy based their arguments for a more open government on the following considerations: the governmental process was surrounded by too much secrecy; the public interest would be better served by greater openness; and the citizens in a democracy can only participate intelligently in public affairs if they receive sufficient information on public policy issues of the day.¹¹ Proponents of freedom of information legislation argue that the principle on which the government has traditionally operated with respect to confidentiality should be reversed so that all government information will be released unless the government can make a case for keeping it confidential.¹⁷ They also argue that if the public had broader access to government information, the motivation for disclosing confidential information would be significantly reduced.¹⁸
How Canadian governments have dealt with the issue of confidentiality will be examined by reviewing the approaches taken by the municipal, provincial and federal governments.

THE MUNICIPAL APPROACH

Compared to the federal and provincial governments, municipal governments have made very little provision in the way of by-laws, regulations and guidelines to protect the confidentiality of government information. The Official Secrets Act does not apply to municipal employees. Although problems of military, diplomatic or internal security do not normally arise at the municipal level, problems of political security and private interest security do. Most municipalities do not require an oath of secrecy but those with codes of ethics or guidelines do have regulations regarding confidentiality.

The Municipality of Metropolitan Toronto, in its code of conduct (See Appendix B), states that the following practices related to confidentiality are unacceptable: releasing information relating to personnel matters or matters under negotiation or litigation to unauthorized persons; releasing information on individuals such as taxpayers, except where required by law; making files and documents available to unauthorized persons; and breaching particular rules regarding confidentiality or privacy prevailing within a department or division.

The City of Calgary, in its code of ethics, cautions that the distribution of confidential information to the public or others in the civic service will be done on a 'need
to know' basis. The disclosure of information regarding systems, procedures, reports and information developed by the civic service can only be divulged when approval has been obtained from the Director of Data Process Services. Finally the code cautions that the indiscriminate or negligent disclosure of information may cause:

1. embarrassment to individual civic employees;
2. a breach of trust or confidence;
3. false impressions to be created for the public or civic employee—
   a) such action may result in disciplinary action being taken;
   b) disclosure of information for personal gain or advantage is a form of theft.\(^{21}\) (See Appendix B)

The Code of Ethics for City Managers addresses the issue of confidentiality. It states that "personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest." (Appendix C) The Guidelines for Professional Conduct for municipal administrators states that "a member should not disclose to others, or use to further his personal interest, confidential information acquired by him in his course of his official duties." (See Appendix C)

The enforcement measures relating to rules on confidentiality adopted by the Municipality of Metropolitan Toronto, the City of Calgary and the City Managers' Association are the same as those measures outlined under conflict of interest in Chapter II.\(^{22}\)

THE PROVINCIAL APPROACH

Civil servants in all ten provinces are subject to the
Official Secrets Act and, except for Nova Scotia and Quebec, each province requires its employees to take an 'oath of office' that includes a promise to maintain secrecy. Except for minor differences in language each oath requires the employee to swear "not to disclose or make known, without due authorization, any matter or thing that comes to his or her knowledge by reason of employment in the public service." 

Although the provinces of Quebec and Nova Scotia do not have an oath of secrecy the absence of such an oath does not mean that employees are not subject to a duty of confidentiality. In Quebec public servants are bound by Section 6 of the Public Service Act "to preserve confidentiality regarding any matter brought to their attention in the performance of their duties." In Nova Scotia, although civil servants are not governed by a general secrecy regulation, they are required to adhere to the common law duty of confidentiality.

In addition to the oaths of secrecy, some provinces have enacted nondisclosure provisions that specifically forbid the release of information.

The Ontario Law Reform Commission notes that oaths of office and secrecy such as Section 10 (1) of the Ontario Public Service Act, are unclear. A literal reading of each would indicate that any or all communication without prior authorization is forbidden regardless of the type of information disclosed or the person to whom it was disclosed. The courts and arbitrators have found that they are unable to
clarify the meaning of the oaths. In the case Re Ministry of Attorney-General, Corrections Branch and British Columbia Government Employees' Union the arbitrator considered the oath of office required under the British Columbia Public Service Act. In this case senior corrections officers disclosed confidential information when they publicly criticized government policy. They were dismissed on the grounds of their public criticism and their breach of oath of office. The arbitrator refused to find a violation of the oath explaining that his reluctance to accept the employer's position is due to the uncertainty which surrounds the meaning to be attributed to the words in the oath, how these obligations have been enforced in the past, the manner in which the oath is explained to employees when they are hired and, in particular, the meaning which one management official attached to the oath when it was explained to one of the grievors.

He concluded that the language of the oath gave no real guidance concerning the extent of the obligation by employees not to disclose information.

The advent of freedom of information legislation in certain provinces has altered the legislative framework regarding confidentiality. Except for the Nova Scotia Freedom of Information Act, which provides for access only to defined categories of information, these provincial statutes provide for a general right of access to documentary information, which is subject to various exemptions. These statutes also address the relationship of the newly created right of access to information to the existing legislation
governing confidentiality. For example, in the New Brunswick Right to Information Act the matter is resolved by making the right to information subject to an exemption where "its release would disclose information the confidentiality of which is protected by law."35

The matter of 'whistleblowing' was addressed by the Ontario Law Reform Commission in its Report on Political Activity, Public Comment and Disclosure by Crown Employees. The Commission argued that "the government can no longer justify confidentiality for all information...we cannot see how the principle of confidentiality can be invoked in order to cover up serious government wrongdoing."37 The Commission also recognized the tension between the need for loyalty and confidentiality in the workplace and the need of the public to be informed when wrongdoing has taken place.38 The Commission recommended that:

as a general principle, whistleblowers should be protected from disciplinary or other action when they disclose government information that ought in the public interest to be disclosed. We believe that the legitimation of whistleblowing is consistent with recent trends and philosophy in Ontario respecting access to, and disclosure of, government information and will help ultimately, to secure good government in this Province.39

The Commission recommended the 'Special Counsel procedure' for potential 'whistleblowers'. Employees would present their evidence of wrongdoing to a Special Counsel who would initiate the process designed to screen an employee's allegation, alert the proper government official to the allegations that have not been rejected by the Special Counsel,
ensure that confidential information is disclosed only where warranted in the public interest (as determined by the court) and have information made public where the public interest justifies publication.\(^4\)

In the provinces having an oath of secrecy only the Province of Alberta states the consequences of non-compliance. Section 20 (2) of the *Alberta Public Service Act* states that:

> an employee who, without authorization, discloses or makes known any matter or thing that comes to his or her knowledge by reason of employment in the public service is guilty of an offence and liable to a fine of not more than $500.

In the other provinces the consequences for non-compliance are not specified. Employees who violate the oath risk disciplinary measures. In Quebec employees who contravene the standards of ethics and discipline are liable to disciplinary measures according to the nature and gravity of the offence; this may include dismissal.\(^4\)

THE FEDERAL APPROACH

As previously noted Canada inherited the tradition of 'administrative secrecy' from the British. In 1889 the British passed the *Official Secrets Act* which was applicable to Canada until 1939 when it was replaced by the Canadian *Official Secrets Act*.\(^4\) Both federal and provincial employees are bound by this Act. Section 4 (1)(a) of the Act relates to the area of communication of information and states the following:

> 4.—(1) Every person is guilty of an offen—
...who, having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document or information that has been entrusted in confidence to him by any person holding office under Her Majesty, or that he has obtained or to which he has access owing to his position as a person who holds or has held office under Her Majesty.

(a) communicates the code word, pass word, sketch plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate with, or a person to whom it is in the interest of the State his duty to communicate it;...

The remainder of Section 4 of the Act deals with the handling of information and states that any person is guilty under this act who

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State;

(c) retains the document in his possession or control when he has no right to retain it;

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the information. (See Appendix S)

The language in the Act has been criticized as being imprecise. The Ontario Law Reform Commission argues that in Section 4 (a) there "is an important ambiguity, which leaves uncertain the extent to which individuals are restricted in their ability to disclose information without risk of contravention of the Act". It also argues that there is a question as to the type of information that must not be communicated; in particular it is unclear whether the information must be classified as 'secret official' for there to be
In 1969 the government received reports from the Royal Commission on Security and the Task Force on Government Information Services, both of which dealt in part with the problem of administrative secrecy at the federal level of government. The Commission acknowledged the inadequacy of the present system but was unable to suggest one to improve it. The task force recommended that the government provide the public with more information and that the mass media's access to government information be improved by releasing more documents and by improving the communication between public servants and the mass media. Kernaghan notes that "neither report had much impact in the way of improving public access to classified information" except for the fact that the government amended "a thirty-year rule for access to government files except for those records whose release might adversely affect Canada's external relations, violate the right of privacy of individuals, or adversely affect national security." During the early 1970s very little was accomplished in the movement towards openness in government. In March 1973, the Liberal government tabled a Cabinet directive which required all departments and agencies to provide information to members of Parliament except where information fell within the scope of sixteen enumerated exemptions. The opposition viewed these guidelines as being too vague, too broad and too restrictive and gave the government the choice as to what
information should be made available. Cabinet Directive No. 46, tabled in June 1973, confirmed the 'thirty-year rule'. It also directed departments to transfer to the public archives records less than thirty years old and to make these records available with the permission of the appropriate ministers. In late 1974 a private member's bill on freedom of information, introduced by Conservative member of Parliament Gerald Baldwin, was referred to the Committee on Regulation. The committee approved in principle the concept of freedom of information legislation and Parliament unanimously accepted the committee's report in February 1976 but in doing so referred it back to committee.

No major developments took place in regard to openness in government until 1977 when the Liberal government published a 'green paper' entitled Legislation on Public Access to Government Documents. The paper contained a brief but comprehensive examination of the possible consequences for government freedom of legislation. The paper was referred to the Committee on Regulations which submitted its recommendations on the paper in June 1978.

In July 1977 the Canadian Human Rights Act was passed. Among other things the Act granted Canadians the right of access to personal records held by the government and permitted them to correct inaccuracies or obsolete information.

In 1979, the McDonald Commission submitted its first report that proposed that Section 4 of the Official Secrets Act be changed. The Commission felt that it was improper to include offences relating to unauthorized disclosure of in-
formation in a statute dealing with espionage offences. In its view the two types of offences were concerned with very different types of conduct and with very different levels of threat to the state. The Commission proposed that espionage be addressed by new espionage legislation, leaving the unauthorized disclosure of government information to be addressed separately.

The Commission criticized Section 4 of the Official Secrets Act as being an inappropriate response to unauthorized disclosure of government information. In particular it considered that the Section provided unnecessarily for criminal liability in many cases that could be handled by internal disciplinary measures. It noted that criminal liability should not be imposed for all unauthorized disclosure of government information, but only in relation to certain kinds. The Commission recommended that "new legislation with respect to the disclosure of government information should make it an offence to disclose without authorization government information relating to security and intelligence." The commission also made the following recommendations with respect to information relating to 'law and order':

New legislation with respect to the unauthorized disclosure of government information should make it an offence to disclose government information relating to the administration of criminal justice the disclosure of which would adversely affect:

(a) the investigation of criminal offences;

(b) the gathering of criminal intelligence
on criminal organizations or individuals;

(c) the security of prisons or reform institutions;

or might otherwise be helpful in the commission of criminal offences.\textsuperscript{62}

The McDonald Commission also proposed a 'whistleblowing' defence.\textsuperscript{63} It recommended that "it should be a defence to such a charge if the accused establishes that he believed, and had reasonable grounds for believing, that the disclosure of such information was for the public benefit."\textsuperscript{64} The Ontario Law Reform Commission also identified two major recommendations relating to Section 4 of the Official Secrets Act. The first recommendation was a response to the commission's concern that persons not be required to secure express authorization prior to every communication and therefore recommended that the proposed offence of unauthorized disclosure should provide that:

\begin{quote}
a person shall not be convicted (a) if he had reasonable grounds to believe and did believe that he was authorized to disclose such information, or (b) if he had such authorization which authorization may be express or implied.\textsuperscript{65}
\end{quote}

The second recommendation addressed the matter of inadvertent disclosure through lack of care in which it viewed that, generally, reliance should be placed upon "vigilant administrative disciplinary action."\textsuperscript{66} The McDonald Commission recommended the following:

\begin{quote}
the failure to take reasonable care of government information relating to security and intelligence or to the administration of criminal justice not be an offence unless such conduct shows wanton or reckless disregard for the lives and
property of other persons."67

In October 1979 the newly elected Clark government introduced Bill C-15, the Freedom of Information Act. Then, in July 1980 the re-elected Trudeau government introduced Bill C-43, the Access to Information Act which was subsequently passed in July 1982 and came into effect on July 1, 1983.68

The Access to Information Act confers a general right of access to Canadian citizens, permanent residents or a Canadian corporation, to records under the control of government institutions, subject to a series of exemptions. Such exemptions include records containing information obtained in confidence from a foreign government, or international organization or a provincial, municipal, or regional government in Canada unless the government or organization in question agrees to the release of such information.69 Section 13 of the Act deals with exception relating to federal-provincial affairs and Section 15 provides a very broad exception for nine categories of information which if disclosed "could reasonably be expected to be injurious to the conduct of international affairs, defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities." Other exemptions include: information relating to law enforcement and investigation; information that threatens the safety of individuals; information that adversely affects the financial interests of Canada; information that contains personal information; and information that contains trade secrets, fin-
ancial, commercial, scientific or technical information which if disclosed would be harmful to a third party. Access to information legislation has provided public servants with guidelines as to what information is or is not 'confidential'.

Federal public servants are bound by the **Official Secrets Act** which makes the wrongful communication of government information a criminal offence, punishable upon conviction by imprisonment for a time not to exceed fourteen years.

Public servants are also subject to Section 111 of the **Criminal Code** which states:

> every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

In addition to the above regulations every employee and every deputy head must take and subscribe to the oath of office and secrecy that is set out in Schedule 3 of the **Public Service Employment Act**. The employee promises to fulfill his or her duties faithfully and honestly and "will not, without due authority in that behalf, disclose or make known any matter that comes to my knowledge by reason of such employment."

Kernaghan argues that it is very difficult to pinpoint and discipline public servants who surreptitiously disclose confidential information, and
the practice is therefore an effective and usually risk-free method by which bureaucrats can oppose government policy or expose what they believe to be government abuse, negligence, or corruption.\textsuperscript{74}

As noted previously, there is uncertainty in the courts as to the meaning of the language of the regulations regarding disclosure of confidential information. This has resulted in various interpretations of the regulations and consequently in the penalties imposed for those who are caught. In some cases penalties can be severe, as in a recent case involving Richard Price, a senior Ottawa bureaucrat in the Department of Indian and Northern Affairs. Mr. Price allegedly 'leaked' a confidential government document relating to cost cuts to native health, education, and economic development programs. Charges under the Criminal Code alleging breach of trust by violating the civil service oath of secrecy were laid by the R.C.M.P. on orders from the federal government. Although the Minister of Justice, John Crosbie, decided not to prosecute, Mr. Price's actions led to his dismissal from the public service.\textsuperscript{75}

THE PRIVATE SECTOR APPROACH

By the very nature of the master/servant relationship (a relationship founded on inequality and supported by commands enforced by threats), the relationship between employers and employees has been an adversarial one. The labour movement has been an attempt by employees to achieve collective parity in bargaining power with employers to do battle over such issues as wages, fringe benefits, working conditions and less tangible concerns of workplace health and safety, job satis-
Nicholas Rongine notes that regardless of the issues involved "the battle always took place within the organization and according to rules formulated for the most part by the employer." Today employers are hearing demands for 'employee rights' and proposals for an employee Bill of Rights are being brought to the bargaining table. Some employees feel that their employers are denying them freedom of expression. Freedom of expression not only includes the right to express oneself in the political arena but it also includes the right to inform the public when one's employer is engaged in an activity that is judged to be illegal or unethical. Rongine notes that for the courts to grant employees the right to 'blow the whistle' on legitimate authority would result in a very different employee-employer relationship.

As noted in Chapter III the 'common law duties of loyalty, good faith and confidentiality' owed by employees to their employers provide the legal basis on which employers base their demands for such duties. Employees who use confidential information to advance their personal or private interests would be considered to have a conflict of interest. Employees who engage in political activity and public comment and use confidential information to further their partisan or non-partisan goals would be considered to be in violation of the common law duty to render the employer loyal, faithful and confidential service, all of which entails keeping secret all information entrusted to them. Without the attributes of
loyalty to one's firm and obedience to one's superiors, which are said to supply the 'cement' for a successful organization, "the esprit de corps evaporates, interpersonal trust fails to develop and the joint pursuit of common goals becomes impossible." The goals of most private sector organizations are efficiency, productivity and profits, all of which are felt to be difficult to achieve if the duty of loyalty to one's firm is not present.

The traditional managerial view has been that by accepting employment employees agree to serve the interests of their employers, for which they receive various kinds of compensation. This view does not take into consideration the number of roles, beyond that of employee, such as family member and citizen, that are performed by a worker. An employee may be faced with the dilemma of conflicting loyalties: loyalty to one's company may be overridden because of one's loyalty to society.

Those who support 'whistleblowing' argue that while an organization is owed a duty, that duty is not absolute, especially if the organization engages in illegal or immoral activity that could be harmful to society. In the case Re Ministry of Attorney General, Corrections Branch and British Columbia Government Employees' Union, Arbitrator Weiler addressed the issue of duty of loyalty to one's employer and 'whistleblowing'. He argued that:

With respect to public criticism of the employer the duty of fidelity does not impose an absolute 'gag rule' against an employee making any public statements that might be critical of his employer...
duty of fidelity does not mean that the Daniel Ellsbergs and Karen Silkwoods of the world must remain silent when they discover wrongdoings occurring at their place of employment. Neither the public nor the employer's long-term best interests are served if these employees, from fear of losing their jobs, are so intimidated that they do not bring information about wrongdoing at their place of employment to the attention of those who can correct such wrongdoings.\textsuperscript{83} Weiler did however state that "the duty of fidelity does require the employee to exhaust internal 'whistleblowing' mechanisms before going public", as unwarranted attacks based on inaccurate information can cause irreparable damage to an employer's reputation.\textsuperscript{84} Although these comments originated from a public sector case they are also applicable to the private sector.

Another argument in support of 'whistleblowing' is that freedom of expression is a freedom guaranteed under Section 11 of the Charter of Rights and Freedoms. Employees should not be punished for exercising this right any more than any citizen should be punished for engaging in freedom of expression in other contexts.\textsuperscript{85} As previously noted, the rights and freedoms guaranteed under the Charter are not absolute as Section 1 of the Charter states that these rights may be subject to limitations, provided they are "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."\textsuperscript{86}

Whatever the merits of the arguments regarding 'whistleblowing', the courts have been slow to protect the private sector 'whistleblower'.\textsuperscript{87} In the United States the
following states have passed 'Whistleblowing Protection Legislation': New York; Michigan; New Jersey; Connecticut; Maine; and California. Under Michigan law, any employee in the private sector who is fired or disciplined for reporting alleged violations of the law can bring an action for unjust reprisal. Critics note that so far a number of suits brought forth because of these acts have been dismissed as frivolous.\\

There is no such legislation in Canada. Toronto lawyer Frederick Sagel argues that:

> if there is a public interest in exposing potentially hazardous situations, then there should be a public interest in protecting those who come forward.\\

**BUSINESS CORPORATIONS**

The matter of confidentiality is addressed in most corporate codes of ethics or regulations regarding employee conduct. Most regulations remind employees of the Securities Act which prohibits employees from trading or trying to persuade others to trade in company shares or securities or those of another company based on confidential information obtained by virtue of their employment.\\

The banks include statements relating to the preservation of the confidentiality of the banker-client relationship. Bell Canada is very specific in its confidential information regulations. (See Appendix T) It reminds employees that they have access to a "lot of confidential information" about
the company's business and its plans for the future as well as access to information that has a government security classification. Bell Canada's basic rule is "no information which is not clearly in the public domain should be released without authorization." Bell Canada classifies its confidential information into two categories: proprietary and government.

Bell Canada employees are required to sign an agreement to protect Bell Canada proprietary information which includes such information as design and development work and planning and selling of telecommunication products and services information which could have value in the competitive market. All proprietary information is protected even after one's employment terminates as Bell Canada requires that all documents and records belonging to the company be turned in when an employee leaves the company. Bell Canada also reminds employees who deal with government classified information that "the Official Secrets Act provides stiff penalties for failure to safeguard government classified information, whether carelessly or willfully." Employees are also warned not to discuss proprietary or classified information (the company's or the government's) with or in hearing of anyone not entitled to such information. Finally, Bell Canada requires its employees to report "any attempts by unauthorized personnel to obtain classified information or to enter restricted company premises."

Only three, including Bell Canada, of the thirty-five private sector firms that were examined required employees to
report any violations of regulations. One large pharmaceutical company requires its employees to sign a document indicating that they have reviewed the contents of the policy and will abide by the policy. In addition they agree to report to the General Counsel of the company any knowledge of any violation of the policy. As noted in Chapter II, the Norton Company requires its Chief Auditor and independent public accountants to report any violation or suspected violation of their Policy on Business Ethics to the Corporate Ethics Committee.\textsuperscript{**}

All banks require employees to sign an agreement to adhere to bank policy or risk dismissal. Another pharmaceutical company requires employees to sign a Secrecy Agreement as a condition of employment. Two large oil companies follow a similar practice.

One final area that is addressed is that of confidentiality in regard to computer data. One company in its code of ethics acknowledges that the "ever increasing role of computers in society has raised public concern about privacy." The company requires that in practice the minimum of information should be requested of a client on a need-to-know basis, and its use should be strictly controlled.\textsuperscript{**}

During a conference on freedom of information Ontario Cabinet Minister Norm Sterling told firms to adopt codes of ethics to protect personal information in computers.\textsuperscript{**7} Firms such as IBM Canada whose business includes the designing of computer systems for companies has very extensive regulations as to
Enforcement of rules relating to confidentiality for business corporations that have not been discussed in Chapter Two range from compliance to regulations as a condition of employment through nonspecified disciplinary measures to dismissal. Depending on the type of wrongful disclosure, employees could face charges for such violations as a breach of the Securities Act. Private sector employees who 'blow the whistle' usually find themselves without a job. Professor Stevenson who teaches ethics to engineering students at the University of Toronto notes that "in many cases the whistle-blower gets an office in the basement. He’s shut off from any more real work." Professor Elliston offers this suggestion to possible 'whistleblowers':

If the CEO makes ethics a corporate priority, the matter will be treated sensitively but if you work for a company where obeying the rules is the norm, I’d suggest you line up another job and then blow the whistle. Protect yourself.

One company that has addressed the issue of 'whistleblowing' is IBM Canada which has a program entitled Speak Up. This is an internal mechanism designed to deal with potential whistleblower revelations and to prevent bad press. This program which was started in 1959 in IBM’s San Jose, California office, is used in IBM offices around the world. It enables employees to note their question, complaint or concern on 'Speak Up' forms which are then submitted to the 'Speak Up' coordinator who removes the name and locks it in a
safe. The query is then directed to the appropriate manager and a written response is returned to the employee within ten working days. If the employee is not satisfied he or she may request an anonymous telephone interview with the manager. The success of the program is attributed to the fact that anonymity is guaranteed throughout the process. In 1984, 350 employees in Canada participated in the 'Speak Up' program, without fear of recrimination.181

PROFESSIONS

Of the four professions that were examined (law, engineering, accounting and medicine) all four address the matter of confidentiality. The legal profession has the most comprehensive rules. The Law Society of Upper Canada Professional Conduct Handbook under Rule 4 states:

The lawyer has a duty to hold in strict confidence all information acquired in the course of his professional relationship concerning the business and affairs of his client, and he should not divulge any such information unless he is expressly or impliedly authorized by his client or required by law to do so.182

The commentary to Rule 4 notes that "the lawyer owes the duty of secrecy to every client without exception" and this duty continues even though the lawyer ceases to act for the client. The commentary also notes that confidential information may be divulged with the express authority of the client although disclosure is sanctioned if a lawyer has reasonable grounds for believing that a crime is likely to be committed. The society does caution lawyers that "when disclosure is required by law or by order of a court of competent jurisdic-
tion, the lawyer should always be careful not to divulge more information than is required of him." (See Appendix U)

Professional engineers are quite concerned about the matter of confidentiality. Their codes of ethics contain rules concerning confidentiality. The Association of Professional Engineers of Ontario (APEO) in its code states:

A professional engineer shall act in professional engineering matters for each employer as a faithful agent or trustee and shall regard as confidential any information obtained by him as to the business affairs, technical methods or processes of an employer and avoid or disclose any conflict of interest which might influence his actions or judgement.

The code also obliges engineers "to expose before the proper tribunals unprofessional or dishonest conduct by any other member of the profession."

In 1985 the APEO hosted a 'whistleblowing seminar'. Those present agreed that its members, who are on the forefront of technological change, needed protection from their employers. They also agreed on the need for an APEO ombudsman to investigate 'whistleblowing' cases confidentially.

The purpose of an engineering society ombudsman is not to encourage 'whistleblowing' but to encourage enlightened teamwork of engineers and their employers to assure a role as the public's advocate if technological proposals involve engineering principles that are potentially dangerous or wasteful but still preventable or predictable.

The benefits of such teamwork are seen as being twofold: money might be saved and regulatory control decreased. Dan Pletta, P.E. argues that
the cost to society of needless personal injuries, deaths, legal fees, judgements and material replacement were horrendous when the DC-10 plane crashed because of a faulty cargo door design, and when the Teton dam collapsed due to inadequate foundation explorations, and when the BART subway system was detailed improperly. 

In response to the recommendations the APED appointed a task force to study the full implications of providing a formal mechanism by which its members could "blow the whistle" on wrongdoings in the corporate sector. This is the first time in Canada that a professional organization has taken such a step.

The accounting profession is also quite concerned over the need for confidentiality. The Institute of Chartered Accountants of Ontario in its general principles states:

A member or student has a duty of confidence in respect of the affairs of any client and shall not disclose, without proper cause, any information obtained in the course of his duties, nor shall he in any way exploit such information to his advantage.

In its Standard of Conduct Affecting the Public Interest the institute states:

A member or student shall not disclose or use any confidential information concerning the affairs of any client except when properly acting in the course of his duties or when such information is required to be disclosed by order of lawful authority or by the Council, the professional conduct committee or any subcommittee, the discipline committee, the appeal committee or the practice inspection committee in the proper exercise of their duties.

The institute also requires its members to report to the professional conduct committee "any apparent breach of the
rules of professional conduct and any instance involving or appearing to involve doubt as to the competence, reputation or integrity of a member, student or applicant.\textsuperscript{112}

Confidentiality has been an essential element of the practice of medicine since its beginning. In the fourth century B.C., the Greek physician Hippocrates recognized this in his oath for new doctors which is still in use today. The Hippocratic Oath states:

\begin{quote}
Whatever, in connection with my professional practice, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken abroad, I will not divulge, as reckoning that all such should be kept secret.
\end{quote}

The Ontario Commission of Inquiry into the Confidentiality of Health Information notes that "even in ancient Greece privacy was not viewed as an absolute value but one that must be balanced against other important values."\textsuperscript{113} It argues that The Hippocratic Oath does not forbid all disclosures of information, only information which "ought not to be spoken abroad". Defining what information that ought not to be spoken abroad remains an issue in medical privacy today.\textsuperscript{114}

In August 1987 The Canadian Medical Association (CMA) voted to change its code of ethics to allow disclosure of confidential information concerning patients with AIDS. The new ruling will allow 'discreet disclosure' of blood test results of people infected with AIDS. There was considerable debate by CMA members, but the resolution was passed. The debate centred around patient consent to such disclosure and the illegality of breach of professional ethics.\textsuperscript{115}
In Ontario, *The Hippocratic Oath*, although not irrelevant, is overshadowed by Section 26 of Reg. 577/75 of *The Health Disciplines Act 1974* which defines professional misconduct as it relates to the medical profession as giving information concerning a patient's condition or any professional services performed for a patient to any person other than the patient without the consent of the patient unless required to do so by law.\(^{118}\)

Ontario regulations are quite clear as to the matter of consent and this was brought forth during the debate on disclosure of Aids information at the August 1987 CMA convention.\(^{117}\)

*The Geneva Convention Code of Medical Ethics* simply states that "I will respect all secrets which are confided in me." (See Appendix L)

Enforcement measures for disclosure of confidential information by the four profession can vary. The codes of conduct refer to disciplinary measures being taken if regulations are violated but no specific measures are indicated. Professionals who disclose confidential information not only risk possible dismissal, if not self-employed, but also risk the loss of clients and face possible legal action for such violations as breach of the duty of confidentiality.

**SUMMARY**

Canada has inherited the tradition of administrative secrecy from the British which has contributed to the very
confidential nature of government activities. Confidentiality is said to be important in the promotion of efficient and effective administration in both the public and private sectors.

In the public sector most employees are bound by an oath of secrecy and regulations as well as the 'common law duties of loyalty, good faith and confidentiality'. Although the confidentiality of government information can be justified because of the need to maintain national security and protect the public interest, proponents of freedom of information argue that the government process is surrounded by too much secrecy.

Municipal governments have made very little provision in the way of by-laws, regulations and guidelines to protect confidentiality of government information. Those municipalities with codes of ethics do address the matter of confidentiality.

At the provincial level employees of all ten provinces are subject to the provisions in the Official Secrets Act. Most of the provinces require employees to take an oath of secrecy and in some provinces nondisclosure provisions have been enacted as well. Freedom of information legislation, which has been enacted in some provinces, alters the legislative framework regarding confidentiality.

Disclosure of confidential information by federal government employees is governed by the Official Secrets Act, Section 111 of the Criminal Code, and the Oath of Office and Secrecy as set out in Schedule 3 of the Public Service
In the private sector although the 'common law duties of loyalty, good faith and confidentiality' prohibit the disclosure of confidential information, the threat of dismissal appears to be the major deterrent for not violating the duty of confidentiality to one's employer.

In their codes of conduct most private sector firms address the issue of confidentiality, with particular reference to insider trading laws. Some firms require employees to sign declarations of secrecy. Bell Canada has the most comprehensive regulations regarding confidential information; this should be expected as the company's business is communications and requires dealing with information, most of which is of a confidential nature.

The matter of 'whistleblowing' is an important current problem in both the public and private sectors. Ralph Nader is credited with sparking the current scholarly interest in 'whistleblowing'. His definition of 'whistleblowing' has been the subject of debate by scholars for the better part of the last decade. There appears to be a general consensus by the public that 'whistleblowing' is justified in order to protect the public interest. Arbitrator Weiler in his 1981 decision, sanctioned 'whistleblowing' if the public interest was at stake but only after all internal mechanisms had been exhausted. The courts are also having difficulties interpreting the language of the various statutes regarding confidentiality. Both public and private sector employees who
have 'blown the whistle' have been dismissed by their employers. In the United States 'Whistleblower Protection Legislation' has been enacted by some states. In Canada no such legislation exists.

Some private sector companies are taking a proactive approach to 'whistleblowing'. These companies are committed to corporate ethics. Within their guidelines for ethical conduct internal mechanisms are in place for employees to voice their concerns. IBM Canada has a very successful program for potential 'whistleblowers' that has been in place for a number of years.

The professions of law, engineering, accountancy and medicine all address the matter of confidentiality. The law profession has very specific regulations. The engineering profession is concerned about confidentiality and 'whistleblowing' as some of its members have been faced with the dilemma of loyalty to one's employer versus loyalty to professional engineering standards that when applied are in the public interest. This is the only profession that has addressed the matter of 'whistleblowing protection legislation'. The accountancy profession addresses the issue of confidentiality in its regulations which include an obligation by accountants to report wrongdoings of fellow accountants and students. The medical profession has the oldest guidelines on confidentiality, namely, the Hippocratic Oath.
ENDNOTES


5 Memorandum on Whistleblowing (Draught No. 1), February 1986., p. 1.


7 Ibid., p. 1.


10 Rongine, op. cit. p. 283.

11 Ibid., p. 283.

12 Ibid., p. 283.

13 Ibid., p. 286.


15 Ibid., p. 41.

16 Ibid., p. 41.


19Kernaghan, "Ethical Conduct: Guidelines for Government Employees", *op. cit.* p. 44.

20Ibid., p. 44.

21See Appendix B. *City of Calgary Code of Ethics*, Misuse of Property and Information, Sec. C, D, E.

22See Chapter II, pp. 22-23.


31Ibid., pp. 157-58.


36Ibid., s 6 (a).


38Ibid., p. 326.

39Ibid., p. 326.
40 Ibid., p. 333.
41 Province of Quebec, *Public Service Act* S.Q. 1983, c. 55, as am. by S.Q. 1984, c. 27, s. 6.
45 Ibid., pp. 102-03.
51 Cabinet Directive No. 45, "Notices of Motions for Production of Papers".
53 Cabinet Directive No. 46 "Transfer of Public Records to the Public Archives and Access to Public Records Held by the Public Archives and By Departments"
57 Committee on Regulations Respecting Green Paper, *Issue no. 34, June 27, 1978*.
59 Government of Canada, Commission of Inquiry Concerning

\(1\) Ibid., p. 9.

\(2\) Ibid., p. 24.

\(3\) Ibid., pp. 24-25.

\(4\) Ontario Law Reform Commission, op.cit., p. 159.


\(6\) Ibid., p. 25.

\(7\) Ibid., p. 27.

\(8\) Ibid., p. 27.

\(9\) Kernaghan and Siegel, op.cit., p. 430.

\(10\) Access to Information Act, op.cit., s.13.

\(11\) Ibid., ss. 15-20.


\(15\) Kernaghan and Siegel, op.cit., p. 436.


\(17\) Rongine, op.cit., p. 281.

\(18\) Ibid., p. 281.

\(19\) Ibid., p. 282.

\(20\) Ibid., p. 282.

\(21\) See Chapter III, pp. 35-36.

\(22\) Rongine, op.cit., p. 284.

\(23\) Ibid., p. 286.

\(24\) Re Ministry of Attorney General, Corrections Branch and British Columbia Government Employees' Union, op.cit., pp. 162-63.

Ibid. sec. 1.

Rongine, op. cit. p. 289.


Ibid. p. 59.

Contained within the guidelines of the following companies: Dofasco, Geo Weston Ltd., Norton, Alberta and Southern Gas Co. Ltd.


Bell Canada, Our Code of Business Ethics p. 5.

Ibid. p. 6.

Ibid. p. 7.


Archer, op. cit. p. 58.

Ibid. p. 58.

Ibid. p. 58.


Ibid. p. 8.

Association of Professional Engineers of Ontario, Code of Ethics, p. 27.

108Ibid., p. 3.


110The Institute of Chartered Accountants of Ontario, Rules of Professional Conduct, August 1982, p. 5.05.

111Ibid., pp. 5 11-5 12.

112Ibid., p. 5 12.


114Ibid., p. 8.


117Krever, op.cit., p. 9.

CHAPTER V
CONCLUDING REMARKS AND RECOMMENDATIONS

INTRODUCTION

The purpose of this thesis has been to compare the state of ethical conduct within public and private sector organizations in Canada. The intent of the comparative approach was to discover if contemporary ethical problems are similar in the public and private sectors with respect to the four problem areas of conflict of interest, political activity, public comment, and confidentiality.

Research findings from this thesis provide data to assist managers in both the public and private sectors in dealing with the issue of ethical conduct within their respective sectors. For this reason the final chapter of this thesis is concerned with the following: drawing general conclusions about the state of ethical conduct within public and private sector organizations; identifying a major conclusion; and making recommendations to managers.

GENERAL CONCLUSIONS

The issue of ethics has been a concern of various civilizations throughout the ages but one must agree with Finlay and Kernaghan that when evidence of wrongdoing by employees (private and public sector) has been exposed the public's interest in ethical conduct heightens. As a result of media reports on such incidents as Watergate in the 1970s, the increase of 'whistleblowing', and the charges and
admissions of 'insider trading' schemes, public interest in ethical conduct by employees in both the public and private sectors has been maintained and heightened.

Research findings indicate that the response by public and private sector employers to unethical conduct by employees is largely in the form of 'ethical rules'. Ethical rules refer to statutes, regulations, guidelines, codes of conduct or ethics, or any combination of these instruments. In the public sector, statutes and regulations were in place prior to the 1970s when the first attempts were made to codify the rules on ethical conduct. In 1973 the federal government put into effect its code of ethics which dealt primarily with the matter of conflict of interest. By the end of the decade most provinces had adopted codes or rules to regulate ethical conduct. The municipalities were much slower in developing regulations. Codes of ethics are still being developed in the 1980s. In 1985 the federal government put into effect its Conflict of Interest Post-Employment Code for Public Office Holders. The provinces of Saskatchewan, Manitoba, Newfoundland as well as the Northwest Territories adopted conflict of interest codes. Alberta promulgated the most comprehensive code of ethics, The Alberta Code of Ethics 1980, which not only addresses all of the major ethical problem areas but also deals with the administration of the code. Similar codes of ethics were also developed by the municipalities of Metropolitan Toronto and the City of Calgary.
In the private sector, codes of ethics, which were obtained from large corporations, deal primarily with conflict of interest issues although many touch upon the other ethical problem areas of political activity, public comment and confidentiality. Most of the private sector codes that were examined were developed between 1980 and 1983 although the Norton Company, which has a fairly comprehensive code of ethics (addresses major ethical problem areas and the administration of the code) developed its first code of ethics in 1976.

Information concerning the approaches taken by the professional organizations, whose members can be found in both the public and private sectors, was also contained in codes of ethics. The professions of law, engineering, and accountancy that were examined in this thesis, have codes that were originally developed between 1920 and 1947. The medical profession's original code dates back to Hippocrates. These codes deal primarily with the matters of conflict of interest and confidentiality although the law profession's code does deal extensively with the other ethical problem areas of political activity and public comment.

The impetus for developing codes can be summed up in the words of Donald McIvor, chairman and chief executive officer of Imperial Oil, who stated that "although the standards of conduct we demand of employees is nothing new it is better to have something that is clearly articulated than something that is only vaguely understood." This rationale for developing codes of ethics is similar to that of Kernaghan's
who argues that "the single greatest advantage of a code of ethics is the measure of certainty it provides as to the ethical conduct expected from public servants."

In all four problems areas an incremental approach was taken by both the public and private sectors; that is, they dealt with a problem when enough concern was generated to warrant its attention. For example, in the public sector the Charter of Rights and Freedoms is having an effect on public sector regulations especially in the areas of political activity and public comment. In 1986 the Nova Scotia Supreme Court struck down a provincial law prohibiting government employees from engaging in partisan activity. This decision was the first ruling under the Charter of Rights and Freedoms on laws that restrict political activity by civil servants. As a result of this decision by Justice Grant, the Government of Nova Scotia was left with the job of rewriting the legislation. In the private sector employers have reacted to the increase in 'whistleblowing' by instituting 'whistleblowing mechanisms' whereby employees who wish to speak out against their employers may do so within the confines of the company thus avoiding the embarrassment of public exposure. This action is another example of the incremental approach. Professional organizations have also utilized the incremental approach. For example, the law profession updates its code of professional conduct on an annual basis. As new ethical problems develop, the profession addresses them in the form of new regulations.
A review of the codes of ethics of both the public and private sectors as well as the professions leads one to conclude that codes of ethics are based on the perceived needs of the organization. In the public sector the federal and provincial governments have identified the need to develop codes of ethics or regulations although very few municipalities appear to have perceived a need for codes. In the private sector, it appears that only large companies with the human resources, the motivation and the funds to prepare and administer codes, have developed formal codes of ethics. The need for large organizations to develop codes of ethics could also be attributed to the fact that in large organizations the chances of a breach of ethical conduct are greater and the consequences could be more far-reaching. This is not to imply that small businesses or municipalities would not benefit from such a program; it only refers to the fact that in large organizations with many employees there are more opportunities for unethical conduct to occur. For example, it would be foolish to say that the cashier at the corner store is any more or less ethical than a cashier at the Bell Canada service office but the opportunities for the Bell Canada cashier to disclose confidential information are far greater than those of the corner store cashier. Furthermore, this breach of confidentiality would have an impact on more people--customers, employees, management and shareholders.

Professional organizations have also perceived a need to develop codes of ethics that are geared to meet the particular requirements of their members. For example, professional
engineers are addressing the issue of confidentiality as it relates to the matter of 'whistleblowing' as some of them are being faced with the dilemma of loyalty to their employers versus loyalty to professional engineering standards.

Although the content of the various codes of ethics of both public and private sector organizations may differ as to the emphasis placed on the four problem areas of conflict of interest, political activity, public comment and confidentiality, one can conclude that contemporary ethical problems are similar in the public and private sectors.

MAJOR CONCLUSION

One major finding emerges from this comparative study of the public and private sector approaches to ethics. Codes of ethics in both the public and private sectors are perceived by management to play an important role in the prevention of unethical conduct. Codes of ethics will be discussed and recommendations will be made as to how to address this matter.

CODES OF ETHICS:

Written rules or codes do provide certain benefits. Codes state what activities are not permissible; therefore, employees can refer to the rules that forbid their involvement in certain activities, e.g., receiving gifts of a certain value. Codes provide a mechanism for resolving disputes when disagreement occurs. Codes of ethics can also decrease the incidence of embarrassment to employers due to unethical conduct by employees. The development and review of codes can
provide an opportunity for management to reassess its positions on certain issues, e.g., extend political rights or increase the dollar value of what is considered an acceptable gift. Finally a code is one method whereby politicians and senior managers or boards of directors and managers can hold employees accountable. Codes provide a measure of certainty as to the standard of ethical conduct expected from the employee.

Along with the benefits that codes confer there are also costs, both monetary and non-monetary. In order to develop and administer codes of ethics operating costs could and do mount up. Non-monetary costs are a real concern for some critics of codes of ethics. One major concern is that in the public sector rules that require financial disclosure or restricted political activities by employees may deter a number of talented people from entering the public service. However, hard evidence is not available on the number of persons who do not enter the public service because their political activities will be restricted. Along the same vein, those who advocate freedom of political rights for public servants argue that rules restricting political activity that may have been required for those who abused the system have made public servants second class citizens when it comes to their political rights. Another concern is that employees will become disgruntled because of restrictions placed on their outside financial activities, e.g., not being able to buy stock in a competitive company.
The critics of codes of ethics argue that codes are 'window dressing' or just 'current fads' contrived by certain management circles that want to show that managers are socially responsible. The very cynical argue that corruption is related to greed, and that no code of ethics is a cure for greediness. In order to achieve the positive affects of codes of ethics and not be left with just 'window dressing', the following recommendations relating to the development and administration of codes for the public and private sectors should be seriously considered by managers.

PROCEDURE FOR DEVELOPING A CODE OF ETHICS

The following is a recommended procedure to be used by managers of either the public or private sector for writing an effective code of ethics. Some steps may not be appropriate for certain organizations but one must keep in mind that a code of ethics should be developed around the needs of an organization, thereby making the content of each code unique. In addition to meeting the particular needs for high ethical standards required by an organization one must strive to preserve the individual rights of employees.

1. Be clear on your objectives.

Before any code of ethics can be developed management must take a serious look at just what it wants a code to accomplish. If it just wants to have a few rules on paper with no methods of enforcement or administration in place the code may be nothing more than 'window dressing'. Management must not expect codes to help solve all its organization's
ethical problems; in fact, codes can create a sense of false security. Managers must realize that a code of ethics does not deter certain people from unethical conduct; in fact, finding the 'loopholes' in a code presents a challenge to some employees. Behrman refers to the objectives of a code as "the express collective ethic of the company to assist and support individual managers in complying with the ethic."¹¹

2. Have a firm commitment by top management to a code of ethics.

In order for employees to be committed to a code of ethics the board of directors and senior management or government and senior management must make a commitment to high ethical standards and responsible practices. Top management must set the 'moral tone' of an organization. McIvor argues that "senior managers have to be visibly above suspicion as employees learn the character of their firm from their top executives."¹²

3. Set up a realistic timetable for developing and implementing the code.

A code of ethics requires considerable thought and input from all levels of an organization—board of directors, senior staff, managers, professional staff, unions etc.—therefore it will require considerable time to write. Everyone within the organization must be able to live with the final product so care must be taken to insure that it is an operational document. (See section on implementation)

4. Know the costs of developing and administering a code of ethics.

Initial short-term funding will only cover the cost of
developing a code. Long-term funding must be available to administer the code. (See section on administering a code) This is a significant consideration for both public and private sector managers as costs incurred from an ethics program do have an impact on the organization's budget.

5. Gear the code to the problems faced by the organization.

Identify and study existing and potential problems facing your organization. As Kernaghan notes: "codes should be 'based on experience'." If there are areas within an organization where particular problems have occurred or could occur then the code should address these areas. This may be the opportunity to set up a 'whistleblowing' mechanism within the organization. A procedure like the one instituted by IBM may be in order.

6. Review existing legislation and/or procedures relating to ethical conduct in terms of their effectiveness in

   a) providing adequate coverage of the various ethical problems which have arisen or which may arise

   b) encouraging high standards of ethical conduct

   c) providing the means to punish breaches of ethical conduct.

7. Be aware of the latest developments in the area of self-regulation.

This is of particular importance to private sector organizations. Managers are aware that self-regulation by an industry or profession can be replaced by government regulation if the need is demonstrated. This is not to say that a code of ethics will prevent government regulation but it will send a signal to the government and the public that the
organization is aware of what has happened or could happen and that rules are in place. It is also important for organizations who have a number of professional people on staff to be aware of the various codes of ethics of the professional organizations in which their staff are involved. The organizational and professional codes should complement, not conflict with, each other.

8. Write the code as simply as possible and avoid the use of jargon.

One must remember that this code applies to all employees and therefore must be in language that will be clearly understood by all. Jargon clutters the meaning of the code. State what must be stated in clear and simple terms.

9. Watch the rhetoric. Don't promise more than can be delivered.

Avoid 'motherhood' statements. If one is not prepared to stand behind what is stated in the code then the code will lose its effectiveness. Ambiguous statements lead to ambiguity, the avoidance of which should be one of the purposes for the development of a code.

10. State explicitly what kinds of conduct will not be tolerated.

If an organization does not want employees accepting gifts (as in the case of Bell Canada) then a statement that no employees shall accept gifts, monetary or non-monetary, from any client, customer etc. must be included in the code.

11. Legal counsel should be consulted to insure that the code is legally defensible.
A code of ethics cannot contravene existing legislation unless it is specifically designed to replace such legislation. In the private sector one must be very aware of existing regulations and collective agreements. If a code's enforcement measures include dismissal the procedure must comply with existing labour laws and union contracts.

12. The code must contain enforcement measures to be effective.

Not to include a statement as to the enforcement of the code or simply state that 'disciplinary measures will be taken if the code is breached' is not sufficient. Employees should know up front what the penalties are for breach of the guidelines, what course of action will be taken and by whom. This is not to imply that the code should read like the Criminal Code but it should state the penalties that can be imposed, from the least to the most severe.

13. Incorporate into the code a section on penalties available for violation of existing legal measures.

Reference to such statutes as the Criminal Code and the penalties for such crimes as fraud and bribery or a simple statement that fraud and bribery are criminal offences punishable under the Criminal Code could be included. In the private sector where insider trading is a major concern, reference to the Combines Investigation Act and the penalties for noncompliance would be of value. Imperial Oil prepared its own version of the Act (without the legalese) for its employees, which sets out in very clear terms what the Act will and will not allow. (See Appendix J) The public sector organizations could include copies of appropriate guidelines.
found in the collective agreements or other relevant regulations.

14. Include a statement warning employees not to assume that any unethical activities not covered by or specifically prohibited by the code are permissible.

Although some codes of conduct have been grouped in the same category as the Ten Commandments most organizations would not see the need to include such statements as 'thou shalt not murder thy supervisor'. The chances of this situation occurring are minimal of course but to cover all possibilities include a statement such as when in doubt consult your supervisor, ethics counsellor or whatever mechanism is in place to deal with the administration of the code.

15. Remain current as codes should be living documents.

Provide a mechanism that will allow for changes in the code. Codes of ethics must remain current; therefore, provisions must be made for periodic revision to reflect changing environmental conditions, community standards and evolving organizational policies.

16. Provide a mechanism for administering the code.

Some mechanism must be in place to administer the code. This may take the form of an ethics advocate, ombudsman, ethics counsellor, designated supervisor or a senior staff person. The employee must know whom to consult if an actual or perceived problem arises.

17. After the code has been drafted seek the input of those who were initially consulted, (See 3) for their views on the form and content of the code.

It is important for all actors within an organization to
have input into such a document. Meaningful input tends to produce an ownership type of response by employees, which can result in employee compliance with the document.

10. Make revisions if necessary and get some expert advice on how to package your code.

If budget allows, expert advice on the actual layout and printing of the document could be of value. The finished product does not have to be elaborate but it should reflect the image of the organization. A well designed and professionally printed booklet says far more to the employee and the public about management's commitment to the code than a few mimeographed pages in a policy and procedure manual. This is a statement of the organization's beliefs; therefore, it should be presented in that light.

RECOMMENDATIONS FOR THE ADMINISTRATION OF A CODE OF ETHICS

After a code of ethics has been developed the real work, that of administering the code, begins. The administration of a code of ethics falls into the following three broad areas: communication; monitoring; and enforcement.

COMMUNICATION

This is one area that is often neglected. Dagler and Spader argue that "formally stated codes of ethics and self-policing procedures are only as good as the ability of the people to understand, interpret and apply them." 13

1. If possible get expert advice on how to promote the code and how to go about educating the public.

A code of ethics is of very little value unless management, employees and the public are informed and
reminded of its existence and contents.

2. An in-house, ongoing education program should be instituted.

The following suggestions could be incorporated into an in-house education program:

- include a session on ethics at department meetings;

- build an ethics component into the orientation program for new employees;

- discuss ethics briefly in employee newsletters;

- include a discussion of ethics at the annual review or job evaluation meetings with employees;

- circulate articles (newspaper, magazine, journal) on ethics to employees; and

- provide seminars on ethics.¹⁶

The last suggestion, that of providing seminars, may sound very 'academic' but those organizations that have provided seminars felt that it was worth the effort and expense. In 1985 Imperial Oil held a well attended workshop on business ethics using the case study method.¹⁷ IBM and Xerox Corp. have sent their executives to seminars on ethics, acknowledging the importance of management's leadership role in this area. Bell Canada has a somewhat different approach. It provides video cassettes to all supervisors for employee viewing. These cassettes review the existing code of ethics and remind employees what is expected of them. This is an excellent vehicle for employee education for those organizations with a large number of employees working on an 'around the clock' basis.
2. MONITORING

1. An ongoing review of the operation of the code of ethics is essential.

Whatever the mechanism that is in place to administer the code, be it in the form of an ombudsman, ethics counselor, designated supervisory or senior staff person, or even a corporate ethics committee, that person or committee must monitor the code to insure that its objectives are being met. As noted previously, codes of ethics must remain current and should reflect the changes in the organization's environment (administrative, legal and community). An ongoing review of the operation of a code of ethics enables an organization to identify, and correct if possible, certain problem areas such as a change in views as to appropriate ethical conduct (fewer restrictions on political activity for certain public servants), unforeseen problems, or even difficulties in the actual administration of the code. ¹⁸

3. ENFORCEMENT

The job of monitoring the code will also overlap with the enforcement component of the code.

1. Hold employees to the code. If a violation occurs take the appropriate action as described in the enforcement section of the code.

Kernaghan argues that the enforcement of a code of ethics has both a preventative and a punitive aspect.¹⁹ Preventative enforcement includes such measures as: requiring financial disclosure by employees to prevent a possible conflict of interest situation from arising; requiring an oath of office or secrecy, or a statement of confidentiality in
order to prevent unauthorized disclosure of confidential information; and requiring that permission and/or leaves of absence be sought by employees to participate in such activities as political activity and partisan public comment. Preventative enforcement, if handled by a person or committee of competence and integrity, can be one of the most important aspects of administering a code of ethics. If an employee is in doubt, clarification of a problem or potential problem can occur at this point.

Punitive enforcement will include such measures as reprimands, fines, transfers, dismissal, or even the initiation of legal action. Punitive measures should be applied in accordance with the gravity of the offence. If such measures are outlined in the code of ethics an employee will be well informed as to the consequences of noncompliance with the code.

2. Provide a grievance procedure for those who have been charged with noncompliance to appeal their case.

A grievance procedure should be in place as it provides an opportunity for the employee to be heard.

The final recommendation for administering a code of ethics is taken from Neil Differ's suggestions for codes of ethics.

3. "Be patient, maintain your perspective, and don't lose your sense of humor."}

THE ROLE OF EDUCATION

One additional factor should be considered when addressing the matter of codes of ethics; namely, the role of
education. Along with those who argue that a code of ethics is window dressing or a fad there are those who will say that "ethics can't be taught." There may well be some people who cannot differentiate between what society dictates is 'right and wrong' but this is no excuse to ignore the rest of the population.

RECOMMENDATIONS AS TO THE ROLE OF EDUCATION IN ETHICS

1. Ethics should be taught at all levels of socialization.

   Individuals will go through different socialization processes during their lives. The first occurs at an early age in the home. The second occurs during the school years, and the third occurs within the workplace.

2. Parents have an obligation to society to instill ethical values in their children.

   One of the most effective means of accomplishing this is by setting an example.

3. Ethical studies programs should be introduced at the primary and secondary school levels.

   In the primary and secondary levels of education ethics could be and has been incorporated into the curriculum. As a result of the recommendations of a provincial task force set up in the wake of the charges against former teacher James Keegstra of promoting hatred against the Jews, the Alberta education system added a series of ethical studies programs to its curriculum. The programs promote various family and societal values. A high school civics class provides an excellent opportunity to generate a 'public conscience' in students.
4. Courses in ethics for business and public administration students at the university level should be mandatory and preferably first year courses.

At the post-secondary level courses in ethics have and are being introduced. The University of Manitoba, University of Toronto, Brock University, York University and the University of Western Ontario offer courses in ethics to business students. A recent survey of university courses on public sector ethics indicates that only Brock, Manitoba, Victoria and Winnipeg have courses dealing solely or primarily with public sector ethics. This situation is quite different from public administration programs in the United States where courses on public sector ethics are common. In most Canadian public administration programs, coverage of ethics issues is woven into other courses on public administration. It should be noted that training and development units within the federal and provincial governments do offer programs or courses on public sector ethics. Most business ethics courses are offered in the final year and only as electives. Educators and non-academics feel that if ethics training is to be taken seriously on par with basic courses of accounting, marketing etc., it must be offered in first year when students' minds are most open to new ideas. The ethics course must also be mandatory. David Olive argues that "making it an elective renders it a 'holy course' taken by students already interested in the subject and ignored by those who need it most."
5. The private sector should consider providing funds to universities to finance studies of ethical issues.

This is now the trend in the United States. The University of California (UCLA) recently received $225,000 in corporate donations to develop a business ethics curriculum. If the private sector has a sincere interest in ethics it should be prepared to provide funds to assist since it will eventually reap the profits from such an investment.

6. There is a need for appropriate curriculum material to be developed for the teaching of ethics at all levels of education.

There appears to be a lack of appropriate curriculum material. Ethics is a new course for most teachers. As Max Clarkson of the University of Toronto notes "if you're a PhD in marketing the last thing you've been trained to teach is ethics." What does he teach? He teaches four basic commandments: don't kill; don't steal; don't lie; and don't oppress. The corollaries are respect life, respect property, be honest and share power.

One would have to agree with Kernaghan that the 1970's may aptly be described as the 'ethics decade'. Although he used this term in reference to public administration around the world it certainly does apply to the Canadian situation in both the public and private sectors. As a result of the sustained public and academic interest in ethics both the public and private sectors have responded by producing codes of ethics.

Along with the various codes of ethics, Canadians also received the the Charter of Rights and Freedoms. Both public
and private sector employees have expressed the need for less regulation. Although regulations have not changed—"Senior Civil Servants Can't Run for Office Supreme Court Rules"^{31}, "Immigration Officer Fired for Complaining in Public"^{32}, "Conflict of Interest Code Called a Risk for Privacy"^{33}, "Fleet Employee Doesn't Want Fund to Pay Lawyers for Wrongful Dismissal Case (whistleblowing)"^{34},---the fact that these regulations are being questioned is significant. Both public and private sector managers are having to assess their regulations regarding these issues. The 1980s may become known as the 'humanizing the workplace decade'. This statement does not imply that employees will or should have 'carte blanche' for managers must reserve their rights to manage and even the Charter of Rights and Freedoms recognizes that certain rights are subject to limitations provided they are "such reasonable limits prescribed by law as can be justified in a free and democratic society."^{35}

Ethical codes could also be enforced by the courts. A recent case involving Foster Winans, the Wall Street Journal columnist who was convicted of fraud in 1986 (in connection with a scheme to divulge the contents of his influential column before publication to brokers in return for a share of their profits) resulted in a ruling by the courts that Winans was guilty of breaching his publication's written set of ethical rules. The conviction is now under appeal to the United States Supreme Court, which must decide whether an employee who breaches a company's written ethical rules is also criminally culpable. If the Supreme Court does not
reverse the decision, codes of ethics and even corporate bylaws would be elevated into the criminal code. Diane Francis argues that such a decision would affect Canada because the large proportion of United States ownership and the copycat nature of corporations "almost guarantees that such a decision will translate into similar proscriptions."^e

Whatever transpires in the remainder of this decade, let us hope that one may find that ethical issues will not be viewed as being black and white but that the grey areas will be recognized and addressed. June Callwood sums up the present situation as follows:

The American myth that goodness and evil are absolutes, readily identified by the colour of the horse they ride, is a reflection of the universal yearning for clarity and simplicity. Morality's compulsion to impose whiteness and blackness on a field which is a hundred shades of grey ends up a kind of obtuse madness. In most ethical choices, there are degrees of rightness in each possibility. The dilemma that lies beyond the influence of rule books is to decide which option is less wrong."^7
ENDNOTES


5 It should be noted that the Court did not grant Mr. Fraser the right to engage in whatever partisan political activities he wanted to but it did extend the range of permissible activities in which Nova Scotia public servants can engage.


10 Kernaghan and Dwivedi, op. cit., p. 4.


13 Kernaghan, op. cit., p. 48.
1. S. Dagher and P. Spader, "Improving business ethics...Poll of top managers stresses education and leadership-by-example as strong forces for higher standards", in Management Review March 1980, pp. 56-57.


5. Ibid., p. 50.


12. Ibid., p. 37.


15. Ibid., p. 34.


See Section 1.


SECTION 110 - CRIMINAL CODE OF CANADA
FRANDS UPON THE GOVERNMENT - Contractor subscribing to election fund - Punishment

110. 1 Every one commits an offence who
   a directly or indirectly
   i gives, offers, or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or
   ii being an official, demands, accepts or offers or agrees to accept from any person for himself or another person, a loan, reward, advantage or benefit of any kind as consideration for co-operation, assistance, exercise of influence or an act or omission in connection with
   iii the transaction of business with or any matter of business relating to the government, or
   b a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,
       whether or not, in fact, the official is able to cooperate, render assistance exercise influence or do or omit to do what is proposed, as the case may be;
   b have dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind upon an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies upon him;
   c being an official or employee of the government, demands, accept or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies upon him;
   d having or pretending to have influence with the government or with a minister of the government or an official, demands, accepts or offers or agrees to accept for himself or another person a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with
       i anything mentioned in subparagraph (a)(iii) or (iv), or
       ii the appointment of any person, including himself, to an office;
   e offers, gives or agrees to offer or give to a minister of the government or an official a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with
       i anything mentioned in subparagraph (a)(iii) or (iv), or
       ii the appointment of any person, including himself, to an office; or
   f having made a tender to obtain a contract with the government
       i gives, offers or agrees to give to another person who has made a tender, or to a member of his family, or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or
       ii demands, accepts or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind as consideration for the withdrawal of his tender.
   2 Every one commits an offence who, in order to obtain or retain a contract with the government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration
       a for the purpose of promoting the election of a candidate or a class or party of candidates to the Parliament of Canada or a legislature, or
       b with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Parliament of Canada or a legislature.
   3 Every one who commits an offence under this section is guilty of an indictable offence and is liable to imprisonment for five years.
Bribery of Officers.

109. Every one who

(a) being a justice, police commissioner, peace officer, public officer, or officer of a juvenile court, or being employed in the administration of criminal law, corruptly

(i) accepts or obtains,

(ii) agrees to accept, or

(iii) attempts to obtain,

for himself or any other person any money, valuable consideration, office, place or employment with intent

(iv) to interfere with the administration of justice,

(v) to procure or facilitate the commission of an offence, or

(vi) to protect from detection or punishment a person who has committed or who intends to commit an offence, or

(b) gives or offers, corruptly, to a person mentioned in paragraph (a) any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in sub-paragraph (a)(iv), (v) or (vi),

is guilty of an indictable offence and is liable to imprisonment for fourteen years. 1953-54, c. 51, s. 101.

Breach of Trust by Public Officer.

111. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. 1953-54, c. 51, s. 103.

Municipal Corruption—Influencing municipal official—"Municipal official".

112. (1) Every one who

(a) gives, offers or agrees to give or offer to a municipal official, or

(b) being a municipal official, demands, accepts or offers or agrees to accept from any person,

a loan, reward, advantage or benefit of any kind as consideration for the official

(c) to abstain from voting at a meeting of the municipal council or a committee thereof;

(d) to vote in favour of or against a measure, motion or resolution,

(e) to aid in procuring or preventing the adoption of a measure, motion or resolution, or

(f) to perform or fail to perform an official act,

is guilty of an indictable offence and is liable to imprisonment not exceeding five years. 1985, c. 19, s. 16(1).

(2) Every one who

(a) by suppression of the truth, in the case of a person who is under a duty to disclose the truth,

(b) by threats or deceit, or

(c) by any unlawful means,

influences or attempts to influence a municipal official to do anything mentioned in paragraphs (1)(c) to (f) is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years. 1985, c. 19, s. 16(2).

(3) In this section "municipal official" means a member of a municipal council or a person who holds an office under a municipal government. 1953-54, c. 51, s. 104.
APPENDIX B

CODE OF CONDUCT FOR EMPLOYEES OF THE METROPOLITAN CORPORATION

INTRODUCTION

As a major government, the Municipality of Metropolitan Toronto is involved in operations which affect the rights, well being and activities of over two million of its inhabitants. These activities also impact countless businesses and other bodies both within and outside the borders of Metropolitan Toronto. Since its inception, the Corporation has maintained high standards of honesty and integrity in its business activities. This has only been possible because of similar standards of behaviour which have been exercised by its employees. This document simply attempts to summarize and consolidate these standards and present them as formalized policies and practices of the Corporation in respect to the conduct of its employees.

It is probably unnecessary to state that employees should be bound by legal rules which govern their conduct. These rules generally require that employees exercise honesty in their business dealings and failure to comply with them can render an employee open to prosecution. However, such rules are not generally sufficiently detailed to provide guidelines as to conduct on a day-to-day basis.

In performing their day-to-day responsibilities, Metropolitan employees are expected to exercise honesty, integrity and diligence in their duties for the Corporation. This includes a responsibility to avoid interests, activities or influences which might conflict with these obligations, either directly or indirectly such as might occur where members of his or her family were involved. This type of conflict, generally termed "Conflict of Interest", refers to a situation in which an employee's private interest or personal considerations may affect or be detrimental to the employee's independent judgement in acting in the best interests of the Corporation.

In this context it is essential to avoid any situation which would:

- knowingly involve the employee in any illegal or improper activity relating to the Corporation's affairs;
- impair the employee's judgement, initiative, or efficiency in their job;
- be harmful or detrimental to the Corporation's activities or reputation.
Potential conflict of the sort outlined is not limited to the employee alone. It also occurs where the interest benefits members of the employee's family or a business enterprise with which the family is associated.

Conflict of interest is not limited to specific actions. It can also include the use of position, confidential information or corporate time and facilities for private gain.

Some activities which cannot strictly be called conflict of interest are nevertheless unacceptable practice. For example, employees do have obligations in respect of handling and releasing information. The Corporation as a general practice attempts to make as much information available as possible to the public, however, the release of specific information should generally be subject to guidelines laid down at a departmental level. This particularly applies where the release is selective or where it involves information about individuals dealing with the Corporation.

Many employees are members of professional organizations which provide their own specific codes of ethics governing the activities of their members. In addition, many individuals (such as auditors, planners, etc.) who are not actual members of such organizations have job responsibilities in fields which are subject to the rules of these organizations. The Corporation requires such employees to conform to such codes in carrying out their job responsibilities, in addition to the general rules of conduct which apply to all employees.

It is difficult to define every circumstance that could cause conflict of interest or represents unacceptable practice. The Corporation must depend to a large extent on the sound judgement and moral integrity of its employees in assessing such situations. On the following pages some of the more common situations which may occur are set out to provide some guidance to employees. These will not cover every situation which may arise. In the last analysis each employee must assess the potential for conflict and consider whether his or her actions fall into the category of unacceptable behaviour in any given situation. Where doubt or questions arise, the situation can and should be resolved by making the issue known to his or her supervisor.
GUIDELINES

The following are examples of activities which place employees in position of conflict or constitute unacceptable practice.

1. Engaging in any business or transactions or having a financial or other personal interest which is incompatible with the discharge of their responsibilities.

2. Placing themselves in a position where they are under obligation to any person who might benefit from special consideration or favour on their part or who might seek in any way preferential treatment.

3. Giving preferential treatment to relatives or personal friends or to organizations in which they or their relatives or personal friends have an interest, financial or otherwise.

4. Placing themselves in a position where they could derive any direct or indirect benefit or interest from any Metropolitan contracts about which they can influence decisions.

5. Benefitting or appearing to benefit from the use of information acquired during the course of their official duties which is not generally available to the public.

6. Engaging in any outside work or business undertaking:
   a) that interferes with the performance of their duties as Metropolitan employees;
   b) in which they have an advantage derived from their employment in the municipality;
   c) in a professional capacity that will, or is likely to, influence or affect the carrying out of their duties as a Metropolitan employee.

7. Using or lending Metropolitan property of any kind for activities not associated with the discharge of their job, without the express permission of any individual authorized to give such permission.
8. Demanding, accepting or offering, or agreeing to accept from a person who has dealings with the Metropolitan Corporation, a commission, reward, advantage or benefit of any kind, directly or indirectly, by themselves or through a member of their family or through anyone for their benefit.

9. Accepting from persons having dealings with the Metropolitan Corporation, sporadic or casual benefits such as small gifts or entertainment without the knowledge and consent of their Department Head or the Metropolitan Chairman.

In this context, the nature of operations varies from department-to-department to such an extent that individual Department Heads may formulate specific rules in respect of these matters. Such rules would be no less restrictive than the following examples covering gifts and entertainment.

- It is appropriate in most circumstances to accept token gifts from business contacts such as souvenirs, desk diaries or advertising momentoes. However, it is inappropriate to accept such things as hotel accommodations, airline or other travel tickets, loans, labour or materials below fair value from such persons or organizations.

- Entertainment accepted from a business contact or supplier must have an appropriate business reason and should only be accepted when in the best interest of the Corporation. Such entertainment may be inappropriate if it is excessive or extravagant, giving consideration to the circumstances in which it arises.
10. Releasing to unauthorized persons information, such as information relating to personnel matters, matters under negotiation or litigation or potential litigation, to which they have access only by virtue of their employment, where the release of the information could be prejudicial to the interests of the Metropolitan Corporation or could infringe on the right to privacy of others.

11. Releasing information on individuals (e.g., employees, taxpayers, recipients of payments, etc.) except where required by law or authorized by the Department Head.

12. Making files or documents of the Corporation available to any unauthorized person without the specific consent of the Department Head.

13. Using any information acquired by virtue of their positions for their personal or private financial benefit or for that of their friends or relatives.

14. Breaching particular rules regarding confidentiality or privacy prevailing within their department or division.
CODE OF ETHICS

The Code of Ethics is intended as a guide for civic employees in their conduct in certain specified areas. It is not intended to be exhaustive or to provide specific guidelines in every circumstance.

INTRODUCTION

Civic employees have an obligation not merely to obey the law, but to act in a manner that is so scrupulous their conduct will bear the closest public scrutiny.

Private interest must not provide the potential for, or the appearance of, an opportunity for benefit, wrongdoing, or unethical conduct.

A. Private interests are all those aspects of an employee's activity outside those connected with official civic duties. These include:
   1. financial interest
   2. paid and unpaid activities beyond official duty
   3. relationships with third parties who may be:
      — employed by the City
      — doing business with the City
      — seeking employment or benefits from the City.

B. It is important to emphasize that conflict of interest relates to the potential for wrongdoing as well as to actual or intended wrongdoing.

OUTSIDE EMPLOYMENT

A. As a general rule, no employee may engage in outside work or a business undertaking as an employee or shareholder —
   1. that interferes with the performance of duties in the civic employment
   2. in which an advantage is derived from civic employment
   3. that is likely to influence or affect the carrying out of civic duties
   4. that is the same as, or parallel to, the function in which the individual is employed by the City of Calgary.

B. Employees may take supplementary employment, including self-employment unless such employment —
   1. is performed in such a way as to appear to be an official act, or to represent a civic opinion
   2. unduly interferes with regular duties
   3. constitutes an additional full time job.

C. Senior managerial and supervisory employees shall obtain permission from their Director before engaging in any non-civic part-time employment. NOTE: If the employment is of a controversial nature, the matter should be referred to the Board of Commissioners for approval.

D. Non-supervisory staff shall obtain permission to engage in part-time employment from their Director through the appropriate Supervisor.

GIFTS, FAVOURS AND SERVICES

A. A civic employee shall not accept a gift, favour or service from any individual or organization in the course of the performance of civic duties other than —
   1. the normal exchange of hospitality among persons doing business
   2. tokens exchanged as a part of protocol
   3. normal presentations made to persons participating in public functions.

B. Monetary or other payment may not be accepted for the performance of any service connected to civic government.

C. Employees shall not use the name The City of Calgary to obtain discounts for privately purchased goods and services. Likewise, goods and services shall not be purchased by employees through any civic purchasing agency and using payroll deduction for personal use.

D. Employees shall not receive or demand preferential treatment in the use of civic facilities or services unless it is a requirement of formal duties or as provided for under the authority of the Board of Commissioners.
DISCLOSURE OF PROPERTY OWNERSHIP

A. Motions passed by Council - September 25, 1972:

1. “That a Real Estate Registry be established in the City Clerk’s Office in which each member of Council and each Commissioner and Department Head and all supervisory employees of the City shall be required to disclose any interest in real estate within the City of Calgary.”

The Commissioners ruled that for the purpose of the Real Estate Registry the definition of “Supervisory Personnel” shall mean only “Management/Exempt Personnel.”

2. “That the Registry of Real Estate to be held by the City Clerk be made available for inspection only upon receipt of written application and further that this Registry not be printed and/or made available for sale to anyone.”

B. Motion passed by Council - May 26, 1975:

“That the Real Estate Registry requirements for elected people on City of Calgary Council be extended to include land interest within the Province of Alberta.”

MISUSE OF PROPERTY AND INFORMATION

City property, including vehicles, equipment and material, shall be used only in the performance of civic duties and shall not be used or converted for personal benefit or non-City use.

A. Use of City property for other than civic purposes may be construed as theft and may result in disciplinary action.

B. Every employee is held responsible for exercising all reasonable care to prevent abuse to, excessive wear of, or loss of City equipment or material, entrusted to the employee’s care.

1. Loss of, damage to, or unusual wear of such equipment or material may be interpreted as evidence that adequate care has not been exercised.

2. Loss or damage may be recovered by the City through payroll deduction or otherwise and the employee responsible may be subjected to disciplinary action.

C. Civic employees are entrusted with information and data used for the administration of the civic service and not generally available to the public. Moreover, certain employees have access to information of a sensitive or confidential nature, which is not to be made known to others in the civic service. Both types of information must be distributed on a need to know basis only.

D. Systems, procedures, reports and information developed by the civic service shall not be given or loaned to, or shared with any other person, company or organization without the permission of the appropriate department head. NOTE: The approval of the Director of Data Processing Services must be secured before information regarding computerized systems is divulged.

E. Indiscriminate or negligent disclosure of information may cause:

1. embarrassment to individual civic employees
2. betray a trust or confidence
3. create false impressions for the public or civic employee —
   a) such action may result in disciplinary action being taken;
   b) disclosure of information for personal gain or advantage is a form of theft.

F. Misuse of the City’s telephone system is a serious offence and offenders will face disciplinary action up to and including dismissal.

POLITICAL ACTIVITY

A. Civic employees may run for and serve in elective offices providing no conflict of interest exists between the elected office and the employee’s responsibilities to the City.

1. Employees must understand that serving in elective capacity could have a detrimental effect on work performance and on promotional opportunities.

2. The employee will continue to be paid regular pay for periods of absence as long as it does not exceed a maximum of sixteen (16) days in any calendar year. Department Heads are responsible for maintaining accurate records of such absences.

B. All requests for leave of absence for running for School Trustee will be forwarded by the Department Head to the Board of Commissioners who, in determining a recommendation, will consider if such action is:

1. likely to impair public confidence in the existing or subsequent performance of the employee’s official duties;
2. likely to interfere with the time and attention the employee is required to devote to the Civic position;
3. in affiliation with or sponsored by a Provincial or Federal political party;
4. the leave and number of employees applying or already granted leave of absence.
C. No employee shall be permitted to run for office of Alderman or Mayor.

D. A Civic employee will be entitled to a leave of absence without pay during candidature for a Provincial or Federal election.
   1. Upon election the employee must resign from the civic service.
   2. An employee who is not elected will be entitled to return to the same or similar employment effective the day after the election.

E. Any employee may:
   1. join a Provincial or Federal party or other political organization;
   2. participate actively in the internal affairs of a Federal or Provincial political party or organization;
   3. hold an office in a Provincial or Federal party or organization;
   4. solicit financial or other contributions for Federal, Provincial or trustee elections or campaigns.

PUBLIC STATEMENTS
A. The department head is responsible for making any statement concerning his department to the news media.
   1. In large departments this responsibility may be delegated to subordinates.
   2. No statement on City policy or future planning may be issued without prior clearances from the Board of Commissioners.
B. Statements to the news media shall be confined to the topic at hand and —
   1. only factual information will be included, no personal judgements;
   2. statements should be written rather than oral.
C. Employees will not give information or opinions to the news media.

CRIMINAL CODE OFFENCES
Any employee charged with an offence under the Criminal Code of Canada may be suspended from employment dependent on the nature of the offence and its relationship to the duties of the employee.
   1. Circumstances will dictate whether the suspension is with or without pay.
   2. Conviction of any moral offence may result in dismissal from the civic service.

DEALINGS WITH RELATIVES
An employee will not, without permission from City Council, allot any work to, or order supplies from:
   1. an immediate relative;
   2. a firm or partnership in which an immediate relative alone or with other relatives holds more than 25% interest;
   3. an incorporated company in which an immediate relative alone or with a spouse, parents, children, brothers or sisters holds more than 25% of the issued capital stock of the company.

PENALTIES AND APPEALS
A. Any infraction or transgression of the Code of Ethics may result in management taking the following action:
   1. instruct the employee to divest himself of the outside interest or transfer it to a blind trust;
   2. transfer the employee to another division of the department or arrange a transfer to another department;
   3. remove the employee temporarily from the duties which brought about the conflict of interest;
   4. accept the resignation of the employee;
   5. initiate disciplinary action in the form of:
      a) an oral or written reprimand;
      b) suspension without pay for a period of time;
      c) an appropriate financial penalty;
      d) a recommendation that the employee be dismissed.
   6. press criminal charges.
B. The employee may appeal as prescribed in union contracts and the Management Exempt policy statement.
APPENDIX C

THE CITY MANAGER’S CODE OF ETHICS

To achieve effective and democratic local government, the council-manager plan
provides that policies shall be determined by the governing body elected by the people
and that the administration of such policies shall be vested in the city manager who
shall be appointed by and responsible to the governing body. The purpose of the
International City Managers’ Association, the professional organization of city man-
gagers, is to increase the proficiency of city managers and to aid in the improvement of
municipal government. To further these objectives, the Association believes that
certain ethical principles should govern the conduct of every professional city man-
ger:

1. No member of the profession accepts a position as city manager unless he is fully in
   accord with the principles of council-manager government and unless he is confident
   that he is qualified to serve to the advantage of the community.

2. The city manager has a firm belief in the dignity and worth of the services rendered
   by the government. He has a constructive, creative, and practical attitude toward
   urban problems and a deep sense of his own social responsibility as a trusted public
   servant.

3. The city manager is governed by the highest ideals of honor and integrity in all his
   public and personal relationships in order that he may merit the respect and confidence
   of the governing body, of other officials and employees, and of the public which he
   serves. He believes that personal aggrandizement or profit secured by confidential
   information or by misuse of public time is dishonest.

4. The city manager as a community leader submits policy proposals to the council and
   provides the council with facts and advice on matters of policy to give the council a
   basis for making decisions on community goals. The city manager defends municipal
   policies publicly only after consideration and adoption of such policies by the council.

5. The city manager realizes that the council, the elected representatives of the people,
   is entitled to the credit for the establishment of municipal policies. The city manager
   avoids coming in public conflict with the council on controversial issues. Credit or
   blame for policy execution rests with the city manager.

6. The city manager considers it his duty continually to improve his ability and his
   usefulness and to develop the competence of his associates in the use of management
   techniques.

7. The city manager keeps the community informed on municipal affairs. He em-
   phasizes friendly and courteous service to the public. He recognizes that the chief
   function of the local government at all times is to serve the best interests of all the
   people on a nonpartisan basis.

8. The city manager, in order to preserve his integrity as a professional administrator,
   resists any encroachment on his responsibility for personnel, believes he should be
   free to carry out council policies without interference, and deals frankly with the
   council as a unit rather than with its individual members.

9. The city manager handles all matters of personnel on the basis of merit. Fairness and
   impartiality govern the city manager in all matters pertaining to appointments, pay
   adjustments, promotions, and discipline in the municipal service.

10. The city manager carries no favors. He handles each problem without discrimina-
    tion on the basis of principle and justice.
GUIDELINES FOR PROFESSIONAL CONDUCT

CONFLICT OF INTEREST

Gifts. A member should not directly or indirectly solicit any gift, or accept or receive any gift whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.

It is important that the prohibition of unsolicited gifts be limited to circumstances related to improper influence. In such de minimus situations as cigars, meal checks, etc., some modest maximum dollar value should be determined by the member for his guidance. The guideline is not intended to isolate members from normal social practices where gifts among friends, associates, and relatives are appropriate for certain occasions.

Confidential Information. A member should not disclose to others, or use to further his personal interest, confidential information acquired by him in the course of his official duties.

Representation. A member should not represent any outside interest before any agency public or private, except with the authorization or at the direction of the legislative body of the governmental unit he serves.

Investments in Conflict with Official Duties. A member should not invest or hold any investment, directly or indirectly, in any financial, business, commercial, or other private transaction which creates a conflict with his official duties.

In the case of real estate, the possibility of the use of confidential information and knowledge to further a member's personal interest requires special consideration. This guideline recognizes that a member's official actions and decisions can be influenced if there is a conflict with his personal investments. Purchases and sales which might be interpreted as speculation for quick profit ought to be avoided. The appearance that confidential information has been used to further his personal interest (as in the section headed “Confidential Information” above) is a special possibility for a member in the case of real estate.

Recognizing that personal investments may prejudice or may appear to influence official actions and decisions, a member may, in concert with his governing body, provide for disclosure of such investments prior to the acceptance of his position as municipal administrator or prior to any official action by the governing body that may affect such investments.

Private Employment. A member should not engage in, solicit, negotiate for, or promise to accept private employment or render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of his official duties.

Teaching, lecturing, writing, or consulting are typical activities which may not involve conflict of interest or impair the proper discharge of his official duties. Prior notification of the governing body is appropriate in all cases of outside employment.
1. Introduction

The people of Alberta have a right to public service which is conducted with efficiency, impartiality and integrity. It is this special obligation which demands that there not be, nor seem to be, any conflict between the private interests of employees and their responsibility to the public.

The range and complexity of government activities is such that it is not possible to produce a list of prohibitions which permits uniform application; the following sections are therefore issued as guidelines to departmental administrators and employees. The sections are not intended to be exhaustive and if other questions arise, they should be settled in accordance with the general principles in this code.

2. Administration

2.1 This code applies to:
(a) all employees appointed pursuant to section 18 of The Public Service Act including deputy ministers, and
(b) all persons hired as wage employees pursuant to section 43 of The Public Service Act, and
(c) all persons employed on a contractual basis pursuant to section 46 of The Public Service Act, unless exemptions are specifically made in and the term “employee” wherever it is used in this code shall include all of the above.

2.2 The responsibility for administration of this code, and for issuing the instructions necessary to implement it rests with the deputy head of each department.

2.3 The responsibility for administration of this code with respect to deputy heads rests with the Executive Council.

2.4 A deputy head may issue instructions to employees of his department, which modify, vary or add to matters dealt with in this code, provided that they are not more permissive than this code.

3. Outside Employment

3.1 Employees may take supplementary employment, including self-employment, unless such employment:
(a) causes an actual or apparent conflict of interest, or
(b) is performed in such a way as to appear to be an official act, or to represent a Government opinion or policy, or
(c) unduly interferes through telephone calls, or otherwise, with regular duties, or
(d) involves the use of Government premises, equipment, or supplies, unless such use is otherwise authorized.

3.2 Where it is evident that a conflict of interest might arise in taking supplementary employment, it is the duty of employees to notify their supervisor in writing as to the nature of the employment.

3.3 Employees shall not accept monetary or other payment in addition to normal salary or expenses for duties which they perform in the course of their public service employment.

3.4 Employees may, with the consent of their deputy head, teach courses at institutions for a fee during normal working hours provided that:
(a) acceptable arrangements can be made for the employee to perform all regular duties, and
(b) course preparation and marking is done on the employees’ own time, and
(c) no other conflict arises.

3.5 Where infringement upon normal duties is unavoidable the deputy head may require that all or part of the fee received under 3.4 be paid to the Provincial Treasurer.
4. Investment and Management of Private Assets

4.1 Where the business or financial interests of employees, their spouses or of their children under the age of eighteen, are affected or appear to be affected by actions taken or decisions made in the course of their public service employment, the employees shall disclose those interests to their deputy head, in writing.

4.2 If an actual or potential conflict of interest situation exists as a result of disclosure under 4.1 the business or financial interests may, with the approval of the deputy head, be placed in a blind trust.

4.3 A deputy head may require that employees in specific positions disclose specific types of business interest which would, in the opinion of the deputy head, create a conflict of interest.

4.4 No employee who is involved in the decision making process for the acquisition or sale of assets for the Crown or for the provision of services to the Crown, shall acquire such assets from or sell such assets to the Crown or provide such services to the Crown unless the Treasury Board approves the transaction.

5. Political Activity

5.1 Subject to sections 5.2 and 5.3 there is no restriction upon participation in political activity by employees save that they must not participate directly in the solicitation of contributions within the meaning of The Election Finances and Contributions Disclosure Act or the Canada Elections Act.

5.2 Employees who occupy positions in the Executive Officer classes of the Management Compensation Plan and those referred to in O.C. 912/77 as amended may not seek nomination as a candidate in a federal or provincial election nor hold office in a political party or constituency association.

5.3 Employees who wish to run as candidates in a provincial or federal election must take leave of absence without pay commencing on the day after the writ for the election is issued or on the day that their candidacy is publicly announced whichever is the later, and the restriction of solicitation in section 5.1 shall not apply to such employees once a public declaration of candidacy has been made.

5.4 An employee who is elected to federal or provincial office shall resign effective the last day before the commencement of leave of absence without pay.

5.5 An employee who seeks election and is not elected shall be entitled to return to the same or similar employment, effective the day after the election.

5.6 An employee who is a candidate for municipal office shall, if elected, be subject to the provisions of this code regarding outside employment.

5.7 Employees described in section 5.2 may be permitted to be candidates in a municipal election if the Public Service Commissioner, having regard to the general principles of this code, so approves.

6. Public Statements

6.1 Employees who speak or write publicly are responsible for ensuring that they do not release information in contravention of the oath of office set out in section 20 of The Public Service Act.

6.2 The responsibility for maintaining the confidentiality of information or documents includes the responsibility for ensuring that such information or documents are not directly or indirectly made available to unauthorized persons.

7. Acceptance of Gifts

7.1 An employee shall not accept a gift, favour or service from any individual, organization or corporation, other than: the normal exchange of gifts between friends; the normal exchange of hospitality between persons doing business together; tokens exchanged as part of protocol; or the normal presentation of gifts to persons participating in public functions.
8. Dealings with Relatives

8.1 Employees who exercise a regulatory, inspectional, or other discretionary control over others shall, wherever possible, disqualify themselves from dealing with relatives, including parents, parents-in-law, brothers and sisters, and grandparents, with respect to those functions.

9. Penalties

9.1 This code is additional to any statute pertaining to the actions of employees.

9.2 An employee who does not comply with any provisions of this code may be subject to dismissal or other disciplinary action pursuant to section 25 of The Public Service Act.

10. Review of Decision

10.1 Where a difference of opinion exists as to whether a conflict of interest exists as a result of a declaration under section 3.2 or 4.1, or under a similar section of a departmental code an, employee may request that the decision of the deputy head be reviewed by the Treasury Board.
P.C. 1973-4065
18 December, 1973

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Treasury Board, is pleased hereby to approve the issue of the annexed guidelines to be observed by public servants concerning conflict of interest situations.

Certified to be a true copy
R. G. ROBERTSON
Clerk of the Privy Council

GUIDELINES TO BE OBSERVED BY PUBLIC SERVANTS CONCERNING CONFLICT OF INTEREST SITUATIONS

SHORT TITLE

1 These guidelines may be cited as the Public Servants Conflict of Interest Guidelines.

GUIDELINES

2 It is by no means sufficient for a person in a position of responsibility in the public service to act within the law. There is an obligation not simply to obey the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. In order that honesty and impartiality may be beyond doubt, public servants should not place themselves in a position where they are under obligation to any person who might benefit from special consideration or favour on their part or seek in any way to gain special treatment from them. Equally, a public servant should not have a pecuniary interest that could conflict in any manner with the discharge of his official duties.

3 No conflict should exist or appear to exist between the private interests of public servants and their official duties. Upon appointment to office, public servants are expected to arrange their private affairs in a manner that will prevent conflicts of interest from arising.

4 Public servants should exercise care in the management of their private affairs so as not to benefit, or appear to benefit, from the use of information acquired during the course of their official duties, which information is not generally available to the public.

5 Public servants should not place themselves in a position where they could derive any direct or indirect benefit or interest from any government contracts over which they can influence decisions.

6 All public servants are expected to disclose to their superiors, in a manner to be notified, all business, commercial or financial interest where such interest might conceivably be construed as being in actual or potential conflict with their official duties.

7 Public servants should hold no outside office or employment that could place them demands inconsistent with their official duties or call into question their capacity to perform those duties in an objective manner.

8 Public servants should not accord, in the performance of their official duties, preferential treatment to relatives or friends or to organizations in which they or their relatives or friends have an interest, financial or otherwise.
APPENDIX F

Circular No.: 1973-183
File No.: 7000-4-4
OTTAWA, Ontario, K1A 0R5
December 31, 1973
TO: Deputy Heads of Departments and Heads of Agencies

SUBJECT: STANDARD OF CONDUCT FOR PUBLIC SERVICE EMPLOYEES

INTRODUCTION
For many years the Public Service of Canada has operated with very few formal
published rules of conduct. There have no doubt always been generally accepted
assumptions about what a Public Servant could do and what he should not do without
prejudicing his usefulness as an employee of the federal government. However, the
increasing complexity of modern government has blurred the line between public and
private matters to such an extent that a systematic and public set of standards is now
required.

In recent months the government presented to Parliament certain proposals to
courage public and parliamentary debate on the issue of conflict of interest as it
applies to Members of Parliament and Ministers of the Crown. On July 18, 1973, the
Prime Minister announced that a set of guidelines pertaining to conflicts of interest as
they apply to public servants would be promulgated. On December 18, 1973 the
Governor in Council approved a set of guidelines on this matter and revoked PC
3/1440, dated 21 March 1951. This development provides a timely occasion to repub­
lish the various existing authorities pertaining to the conduct of Public Service em­
ployees.

BASIS IN LAW
The basic authority to determine rules governing the conduct of employees in the
Public Service stems from Section 7 (1) (f) of the Financial Administration Act which
states that the Treasury Board may "establish standards of discipline in the public
service"... etc.

CONFLICT OF INTEREST
The guidelines on conflict of interest for Public Servants which have been recently
approved by the Governor in Council are attached at Annex A. As the title indicates,
the guidelines cover only situations of actual or potential conflict of interest, i.e.,
situations where an individual's duties could permit or appear to permit gain or
advantage for the individual or his friends or relatives. It is expected that departments
will want to supplement these guidelines with more specific provisions pertaining to
their own operations. Examples of areas requiring particular attention are purchasing
agents, persons involved in hiring employees, persons involved in the allocation of
grants or the awarding of contracts. However, these are only general examples and
each department is in the best position to identify those particular areas about which
more specific indications are required. It will be important for departments and
agencies, after developing more specific guidelines, to consult with their unions as to
their application.

In developing any guidelines, the first question to be faced was how comprehen­
sive and detailed they should be and whether much detail would help employees to
identify potential areas of conflict. It is believed that a detailed set of guidelines in the
Order in Council would not be appropriate nor desirable. Any attempt to identify the
totality of potential areas of conflict would be a task of great magnitude, could never be
totally comprehensive and would require constant review and interpretation. Instead a
more workable approach has been taken to identify certain principles, the violation of
which would clearly establish a situation of conflict of interest. With these published
principles, the overall intent is established and actual situations can be scrutinized to
determine whether the principles are respected.

DISCLOSURE
Paragraph Number 6 of the Order in Council requires the disclosure by all public
servants of all holdings of a business, commercial or financial nature to their superior,
where such holdings might conceivably be construed as being in actual or potential
conflict with the employee's duties. To implement this provision, all public servants
will, after discussion with their superior, provide their superior by 30 June 1974, details
of their personal holdings which might conceivably be construed as being in actual or
potential conflict with his or her duties.
Such disclosure under confidential cover, will be passed to deputy heads who will on receipt advise the employee of the steps to be taken to avoid being placed in a position of having to defend a charge of actual or potential conflict of interest. To encourage full compliance, when an employee prefers not to make disclosure to his immediate superior, his deputy head will designate a person at a higher managerial level to whom the employee may make disclosure.

Prior to accepting a new appointment, employees are expected to make a disclosure of actual or potential areas of conflict involving the new position, as well as at any later date when new personal holdings are acquired or functions or activities of the position are modified. In case of potential conflict, departmental management will, after consultation with the employee, determine what steps must be taken to avoid a conflict of interest situation. Failure to disclose or follow the advice provided subsequent to disclosure will be considered as a breach of conduct.

OFFERS OF REWARD, ETC.

It is an offence under Section 110(1)(c) of the Criminal Code for an official or employee of the government to demand, accept or offer, or agree to accept from a person who has dealings with the government, a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through anyone for his benefit, unless he has the consent in writing of his Deputy Minister or Head of Agency.

CASUAL BENEFITS OR ADVANTAGES

The acceptance by public servants from persons having dealings with the government of sporadic or casual benefits such as hospitality or small gift items may usually be consented to by Deputy Ministers or Branch heads where such benefits or advantages are within the bounds of propriety, are a normal expression of business courtesy or advertising or are within the normal standards of hospitality and are not such as to bring suspicion upon the public servants’ objectivity.

COLLECTIVE AGREEMENTS

Some collective agreements contain provisions pertaining to certain aspects of the conduct of employees. Care should be exercised in developing instructions to employees to ensure that such provisions of collective agreements are respected.

POLITICAL ACTIVITY

The standard of conduct on matters involving political activity stems from Section 32 of the Public Service Employment Act and has been published from time to time by the Public Service Commission in its Bulletins as follows:
1967-16 of 9 Aug 67  "Administration of Section 32 of the Public Service Employment Act – Political Partisanship"
1970-23 of 14 Jul 70  "Political Partisanship in connection with Municipal Elections"
1971-30 of 7 Oct 71  "Section 32 of the Public Service Employment Act – Political Partisanship"

EMPLOYEE ORGANIZATION ACTIVITIES

Sections 8, 9 and 10 of the Public Service Staff Relations Act identify certain limitations placed on public servants’ participation in employee organizations and unions. Also contained in those Sections are provisions against discrimination and intimidation of members involved in the formation or administration of employee organizations or solicitation of membership in employee organizations.

DISCRIMINATION

The subject of discrimination is covered by certain provisions of the Public Service Employment Act (Section 12) and by virtue of the Government’s policy of applying to the Public Service the principles of Part I of the Canada Labour Code (Fair Employment Practices). More recently, by PC 1972-2569 dated 9 November 1972, ... the Public Service Commission was assigned responsibility to investigate any complaint of alleged discrimination on the grounds of sex, race, national origin, colour or religion in respect of the application or operation of the Public Service Employment Act.
DISCIPLINE

On February 13, 1967 Treasury Board delegated to departments and agencies the responsibility of developing a formal code of discipline to deal with misconduct where such a departmental code was not in existence, or of revising an existing code in order to ensure effective standards of discipline based on the specific requirements of each operational situation. Departments and agencies will now find it necessary to review their codes of discipline to ensure there is no ambiguity between such codes and the departmental guidelines necessary to implement the contents of this Circular Letter.

OTHER ASPECTS OF PERSONAL CONDUCT

It is not intended at this time to attempt to publish any directive on aspects of personal conduct of public service employees on such matters as appearance, dress or general deportment. The responsibility for developing such standards continues to rest with the management of individual departments.

CONTINUITY

Departments should review and update their existing codes to ensure compliance with the content and the spirit of this Circular Letter, subject to any relevant provisions of collective agreements.

CANCELLATIONS


INQUIRIES

Inquiries concerning the subjects covered in this Circular Letter should be directed to the Personnel Policy Branch, Treasury Board Secretariat, except for inquiries concerning political activity and discrimination, which should be referred to the Public Service Commission.

G. F. OSBALDESTON
Secretary of the Treasury Board.
POST-EMPLOYMENT GUIDELINES FOR OTHER PUBLIC OFFICE HOLDERS

The post-employment policy for public servants generally is set out in guidelines which are in fact made up of the following five separate appendices dated April 24, 1978, embodying the principles, rules and procedures.

Appendix I: Principles Regarding the Activities of Holders of Public Office

1) Current and former holders of public office must ensure by their actions that the objectivity and impartiality of government service are not cast in doubt and that the people of Canada are given no cause to believe that preferential treatment is being or will be unduly accorded to any person or organization.

2) Current and former holders of public office must ensure by their actions that there is no reasonable ground for belief that it is possible to have privileged access to government personnel or services.

3) Current and former holders of public office must exercise care in the management of their private affairs so as not to benefit, or to appear to benefit, from the use or communication of confidential information acquired in the course of their official duties.

Appendix II: Guidelines for Holders of Public Office During Their Employment with the Government

1) No Minister, Parliamentary Secretary, Governor-in-Council appointee, public servant or exempt staff member ("office holder") should allow himself to be influenced in his pursuit of official duties by plans for or offers of outside employment:

a) the office holder should disclose to his superior all serious offers of positions outside government service which in his judgement put him in a position of a real or apparent conflict of interest;

b) the office holder should disclose to his superior any job offer under serious consideration that has been received from an individual, organization or interest group with a commercial orientation in the private sector and with which the office holder has official dealings;

c) the office holder should within a reasonable time disclose all offers of employment outside government service that have been accepted;
d) the office holder should, in seeking employment outside government service or in preparing himself for commercial activities after he has left the employ of the government, take great care to ensure that these endeavours do not lead to real or apparent conflicts of interest or in any way interfere with his official duties, and do not in the absence of the permission of his superior involve commercial negotiations with other government employees.

2) Office holders have a duty in any official dealings they have with former office holders to ensure that they do not provide grounds or the appearance of grounds for allegations of improper influence, privileged access or preferential treatment.

NOTE: "Governor-in-Council appointees" denotes persons appointed by or with the approval of the Governor-in-Council or a Minister, or in receipt of remuneration fixed by the Governor-in-Council who are in full-time positions with government departments, Crown corporations and autonomous agencies, but not those persons who are members of bodies with primarily judicial or quasi-judicial functions.

Appendix III: Guidelines Applying to Employment and Commercial Activities of Former Holders of Public Office

The following guidelines are provided to give content to the principles in Appendix I, and are to be applied in accordance with those principles and with the aim of protecting the individual liberty of each public servant and former public servant to the fullest extent possible.

The guidelines apply to arrangements made before and after office holders leave government service. Former Ministers, deputy ministers, heads of agencies and exempt staff at the equivalent level of deputy head are requested not to engage in the activities described in category A for a period of two years, and to delay for one year any participation in activities described in category B. The corresponding delay period for parliamentary secretaries, other full-time Governor-in-Council appointees and public servants and exempt staff at the SXI equivalent level or above is one year for category A and six months for category B. The guidelines do not apply to persons hired under Interchange Canada. The policy gives individual Ministers the right to designate other public servants, Governor-in-Council appointees and exempt staff, including those whose principal, though not exclusive, employment is with the government or one of its agencies, as being subject to the guidelines. The advisory committees may, upon request from a Minister or deputy minister and with the approval of the Prime Minister (in the case of deputy heads) of
the minister responsible (in the case of other full-time Governor-in-Council appointees and of exempt staff) and of Treasury Board (in the case of public servants) exempt any position or set of positions from the application of the guidelines in any case where the committees believe that such an exemption is in the public interest.

Category A

1. An office holder must not, within the relevant time period, accept appointment to a board of directors of a commercial corporation which was, as a matter of course, in a special relationship with the department or agency with which he was last employed, where "special relationship", means regulation of the corporation by the department or agency, receipt by the corporation of subsidies, loans or other capital assistance from the department or agency, and contractual relationships between the corporation and the department or agency.

2. An office holder must not, within the relevant time period, change sides to act for or on behalf of any person or commercial corporation in connection with any specific proceeding, transaction, case or other matter to which the Government of Canada is a party and in which he had a personal and substantial involvement on behalf of a department or agency of the government.

3. A former office holder, must not, within the relevant time period, lobby for or on behalf of any person or commercial corporation before any department or agency with which he was employed or with which he had a direct and substantial official relationship during the period of two years prior to the termination of his employment.

Category B

1. An office holder must not, within the relevant time period, accept employment with a commercial corporation with which he had significant direct official dealings during the last year of his employment.

2. An office holder must not, during the relevant time period, change sides to act for or on behalf of any person or commercial corporation in connection with any specific proceeding, cause, transaction or other matter which fell under his authority as an employee of the government during the period of one year prior to the termination of his employment.
specific circumstances. The Committee will report its advice to the Prime Minister and to the individual involved. The Prime Minister will in turn report to the House any known failure of former Governor-in-Council appointees or exempt staff to abide by advice given by the Committee.

Appropriate arrangements have been made similarly to advise public servants appointed under the Public Service Employment Act. In addition, all Crown corporations and autonomous agencies are urged to adopt similar guidelines and mechanisms for those of their senior employees who are neither public servants nor appointees of the Governor-in-Council. A special request has been made to ensure that members of the Armed Forces and the Royal Canadian Mounted Police will also be covered.

The policy will apply to all persons appointed to new positions within the government and its agencies, who will be expected to conform to it as a matter of honour and of personal choice. Before being sworn in, individuals will be asked to read the guidelines and to govern themselves accordingly. While the policy does not officially apply to present incumbents until such time as they accept new appointments in the public service, it is expected that they will continue to abide by it.

Appendix V: Rules of Practice of Hiring of Former Public Servants by the Government

1) In order to reduce the possibility of conflict of interest, a former Governor-in-Council appointee or public servant who has entered into the practice of lobbying on behalf of clients or of giving counsel for commercial purposes about government activities, will not, while so engaged, be considered to be eligible for appointment to the Board of Directors of a Crown corporation or of any agency in which the government of Canada has a majority interest.

2) Individual Ministers and the Treasury Board, as may be appropriate, will approve all personal service contracts involving payments by the government of $2,000 or more to former Governor-in-Council appointees or public servants who are in receipt of a government pension and in so doing will consider carefully the total annual benefits to accrue to the individual as a result of his pension entitlement and of personal service contracts with the Government or its agencies.
3. A former office holder must not, within the relevant time period, give counsel for commercial purposes concerning the programs or policies of the department or agency with which he was employed or with which he had a direct and substantial relationship during the period of one year prior to the termination of his employment.

Where, pursuant to disclosure of an offer of employment under guidelines 1(a) or 1(b) of Appendix II, the advice of an advisory committee is sought with respect to the application of guidelines A1 and B1 the committee may advise that the time period for the purposes of these guidelines begins on the date the disclosure was made or on any date subsequent to the date of disclosure, that is before the date on which the office holder leaves government service.

Note: "Office holder" includes former "office holders", as defined by Appendix II, and "Governor-in-Council appointee" has the same meaning as in Appendix II.

Appendix IV: Administrative Arrangements

Advisory committees have been established to determine the application of the guidelines in specific instances and to help Ministers, Parliamentary Secretaries, appointees, public servants and exempt staff understand how the guidelines apply to their particular cases. The committees also advise on the operation of the guidelines and recommend changes where necessary. The committees are authorized to recommend exemptions from the guidelines in any case where fairness to individuals or the public interest requires. Such recommendations will be made to the Prime Minister (in the case of Ministers, Parliamentary Secretaries, and deputy heads) to the Minister responsible (in the case of other full-time Governor-in-Council appointees and of exempt staff) and to the Treasury Board (in the case of public servants).

An Advisory Committee chaired by the President of the Treasury Board and composed of selected Ministers has been established to advise all Ministers and Parliamentary Secretaries who require assistance in interpreting the application of the guidelines to specific circumstances.

An Advisory Committee made of the Clerk of the Privy Council and the Secretary to the Cabinet, the Secretary for Federal-Provincial Relations, the Secretary to the Treasury Board, the Chairman of the Public Service Commission and the Deputy Minister of Justice has also been established to advise all appointees of the Governor-in-Council and exempt staff who require assistance in interpreting the application of the guidelines to
APPENDIX H
THE CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR THE PUBLIC SERVICE

Introduction
1. This Code for the Public Service is designed to bring to the attention of all public servants for whom Treasury Board represents the government as the employer the provisions of the recently announced Conflict of Interest and Post-Employment Code for Public Office Holders, which was tabled by the Prime Minister in the House of Commons on September 9, 1985.

2. For the purposes of the Code for the Public Service, "employee" means:

(a) an employee of a department for whom the Treasury Board represents the government as employer; and

(b) a head of mission as defined in the Department of External Affairs Act.

3. For employees listed in (a) and (b) above, "designated authority" means the Treasury Board; and "designated official" means the deputy head of the employee’s department.

PART I
PRINCIPLES AND ADMINISTRATION

Objects
4. The objects of the Code are to enhance public confidence in the integrity of employees and the Public Service:

(a) while encouraging experienced and competent persons to seek and accept public office;

(b) while facilitating interchange between the private and the public sector;

(c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all employees; and

(d) by minimizing the possibility of conflicts arising between the private interests and public service duties of employees and providing for the resolution of such conflicts in the public interest should they arise.

Application
5. In keeping with the principles described below, each employee is responsible for taking such action as is necessary to prevent real, potential or apparent conflicts of interest. The employee is also required to observe any specific conduct requirements contained in the statutes governing his or her particular department and the relevant provisions of legislation of more general application such as the Criminal Code, the Canadian Human Rights Act, the Privacy Act, the Financial Administration Act and the Public Service Employment Act.

Principles
6. Every employee shall conform to the following principles:

(a) employees shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;

(b) employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;

(c) 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;

(d) on appointment to office, and thereafter, employees shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising, but if such a conflict does arise between the private interests of an employee and the official duties and responsibilities of that employee, the conflict shall be resolved in favour of the public interest;

(e) employees shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the employee;

(f) employees shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person;
(g) employees shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public;

(h) employees shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities; and

(i) employees shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

Certification Document

7. Before or upon appointment, employees must sign a document certifying that they have read and understood this Code and that, as a condition of employment, they will observe this Code. Employees appointed prior to the coming into force of this Code shall sign the document not later than January 1, 1986.

Annual Review

8. All employees are required to review their obligations under the Code at least once a year.

Contracts

9. Every employee:

— **negotiating a personal service contract** must include in the contract appropriate provisions with respect to the Code in accordance with such directives as the Treasury Board may issue;

— **negotiating a government contract** must ensure that the contract includes safeguards, in accordance with such directives as the Treasury Board may issue, to prevent a former employee or other former public office holder who is not complying with the requisite post-employment measures, as set out in Part III of this Code, from receiving benefit from the contract.

Education and Resource Centre

10. The Assistant Deputy Registrar General (ADRG), Consumer and Corporate Affairs, in consultation with the Secretary of the Treasury Board, will prepare informational and educational material about this Code for public office holders, including employees and the general public, and make appropriate arrangements for the preparation and implementation of training of public office holders on conflict of interest and post-employment behaviour.

The ADRG will also establish a resource centre of print, film, videotape and other material related to conflict of interest, post-employment behaviour and other ethical matters of concern to public office holders and to government.

Supplementary Compliance Measures

11. The deputy head of a department may augment the compliance measures set out in Parts II and III with supplementary procedures and guidance:

— respecting conflict of interest and post-employment situations peculiar to the unique and special responsibilities of the department; and

— reflecting any special requirements relating to employee conduct or interests contained in statutes governing the operations of the department.

These measures require Treasury Board approval before coming into force.

Dealing With Former Public Office Holders

12. Employees who have official dealings, other than those that consist of routine provision of service to an individual, with former employees or other former public office holders who are or may be governed by the post-employment measures set out in Part III must report this fact to the designated official in accordance with departmental procedure. The designated official shall determine immediately whether the former public office holder is complying with the prescribed measures.

13. Employees shall not have official dealings with former employees or other former public office holders deemed, pursuant to section 12, to be acting in violation of the compliance measures in the specific transaction involved.

PART II

CONFLICT OF INTEREST COMPLIANCE MEASURES

Objects

14. The compliance measures set out the procedural and administrative requirements to be observed by public servants in order to minimize the risk of conflict of interest and to permit the resolution of such conflicts of interest in favour of the public interest, should any arise.
Confidentiality

15. Information concerning the private interests of employees provided to the designated official is treated in complete confidence. The designated official is required to ensure that this information is placed in special personal files (i.e. distinct from regular personnel files) and in secure safekeeping. Departments shall establish a central repository for such information and place it under the responsibility of the Senior Personnel Officer, who shall ensure that the privacy of the individual is fully respected.

Methods of Compliance

16. An employee complies with the Code in the following ways:

(a) Avoidance: by avoiding or withdrawing from activities or situations that would place the employee in a real, potential or apparent conflict of interest relative to his or her official duties and responsibilities;

(b) Confidential Report: by providing a written statement to the designated official indicating ownership of an asset, receipt of a gift, hospitality, or other benefit, or participation in any outside employment or activity; and

(c) Divestment: where continued ownership by an employee would constitute a real or potential conflict of interest with the employee's official duties and responsibilities, the employee may elect to sell the asset "at arm's length" or place that asset in trust.

17. Employees must not sell or transfer assets to family members or others for purposes of circumventing the compliance measures.

18. A Confidential Report will usually be considered as compliance with the conflict of interest measures. However, there will be instances where "withdrawal from the activity" or "divestment" will be necessary. The designated official will make this decision and communicate it to the employee. Where there is doubt as to which method is appropriate in order that an employee may comply with the Code, the designated official will determine the appropriate method and, in doing so, will try to achieve mutual agreement with the employee taking into account:

(a) The employee's specific responsibilities;

(b) The value and type of the assets and interests involved; and

(c) The actual costs to be incurred by divesting the assets and interests, as opposed to the potential that the assets and interests represent for a conflict of interest.

19. Employees are required to make a Confidential Report to the designated official of all assets prescribed by the Code other than those assets and interests which are for their private use or that of their families and assets that are not of a commercial character. Examples of such "exempt assets" are described in the following section.

Exempt Assets

20. Assets and interests intended for the private use of employees and assets that are not of a commercial character are not subject to the compliance measures. Such assets include:

(a) residences, recreational property and farms used or intended for use by employees or their families;

(b) household goods and personal effects;

(c) works of art, antiques and collectibles;

(d) automobiles and other personal means of transportation;

(e) cash and deposits;

(f) Canada Savings Bonds and other similar investments in securities of fixed value issued or guaranteed by any level of government in Canada or agencies of those governments;

(g) registered retirement savings plans that are not self-administered;

(h) registered home ownership savings plans;

(i) investments in open-ended mutual funds;

(j) guaranteed investment certificates and similar financial instruments;

(k) annuities and life insurance policies;

(l) pension rights;

(m) money owed by a previous employer, client or partnership; and

(n) personal loans receivable from members of the employee's immediate family and small personal loans receivable from other persons where the employee has loaned the moneys receivable.

Confidential Report

21. Employees must, within 60 days after appointment, make a Confidential Report to the designated official of all assets other than exempt assets as described in section 20 and of all direct and contingent liabilities of such
assets and liabilities might give rise to a conflict of interest in respect of the employee's official duties and responsibilities.

**Assets and Liabilities**

**Subject to Confidential Report**

22. Assets and liabilities covered by the above include:

(a) publicly traded securities of corporations and foreign governments and self-administered registered retirement savings plans composed of such securities;

(b) interests in partnerships, proprietorships, joint ventures, private companies and family businesses, in particular those that own or control shares of public companies or that do business with the government;

(c) farms under commercial operation;

(d) real property that is not an exempt asset;

(e) commodities, futures and foreign currencies held or traded for speculative purposes;

(f) assets that are beneficially owned, that are not exempt assets and that are administered at arm's length;

(g) secured or unsecured loans granted to persons other than to members of the employee's immediate family;

(h) any other assets or liabilities that could give rise to a real or potential conflict of interest due to the particular nature of the employee's duties and responsibilities; and

(i) direct and contingent liabilities in respect of any of the assets described in this section.

**Divestment of Assets**

23. Employees must divest assets where it is determined by the designated official that such assets constitute a real or potential conflict of interest in relation to the duties and responsibilities of the employee. Divestment, where required, must take place within 120 days after appointment. Divestment of assets is usually achieved by selling them in an arm's length transaction or by making them subject to a trust arrangement. The Schedule attached to this Code contains information on the more common trust arrangements.

24. The trust arrangements established must not leave in the hands of the employee any power of management or decision over the assets placed in trust. The Assistant Deputy Registrar General (ADRG) has the responsibility for determining that a trust meets the requirements of the Code. Before a trust is executed or when a change from one trust option to another is contemplated, a determination that the trust meets the requirements must be obtained from the ADRG. The ADRG may serve as trustee of a frozen or retention trust, but not of a blind trust.

25. On the recommendation of the ADRG, the department may reimburse the employee for trust costs incurred in an amount set out in the Schedule.

**Outside Activities**

26. Involvement in outside employment and other activities by employees is not prohibited if such activities do not place on them demands inconsistent with their official duties and responsibilities or call into question their capacity to perform their official duties and responsibilities objectively. It is the responsibility of the employee to make a Confidential Report to the designated official of involvement in any outside activity that is directly or indirectly related to the employee's official duties and responsibilities. The designated official may require that such activity be curtailed, modified or cease when it has been determined that a real or potential conflict of interest exists.

**Gifts, Hospitality and Other Benefits**

27. Gifts, hospitality or other benefits that could influence employees in their judgement and performance of official duties and responsibilities must be declined. Employees must not accept, directly or indirectly, any gifts, hospitality or other benefits that are offered by persons, groups or organizations having dealings with the government.

28. Notwithstanding, acceptance of offers of incidental gifts, hospitality or other benefits arising out of activities associated with the performance of their official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:

(a) are within the bounds of propriety, a normal expression of courtesy or within the normal standards of hospitality;

(b) are not such as to bring suspicion on the employee's objectivity and impartiality; and

(c) would not compromise the integrity of the government.
29. Where it is impossible to decline unauthorized gifts, hospitality or other benefits, employees must immediately report the matter to the designated official. The designated official may require that a gift of this nature be retained by the department or be disposed of for charitable purposes.

Avoidance of Preferential Treatment

30. Employees must not accord preferential treatment in relation to any official matter to family members or friends, or to organizations in which the employee, family members or friends have an interest. Care must be taken to avoid being placed, or appearing to be placed, under obligation to any person or organization that might profit from special consideration by the employee.

31. Employees must not, without the prior permission of their supervisor, offer assistance in dealing with the government to any individual or entity where such assistance is outside the official role of the employee.

Failure to Agree

32. Where an employee and the designated official disagree with respect to the appropriate arrangements necessary to achieve compliance with the Code, the disagreement shall be resolved through the established grievance procedures.

Failure to Comply

33. An employee who does not comply with the measures described in Parts I and II is subject to appropriate disciplinary action up to and including discharge.

Subsequent Changes

34. Employees must forthwith inform the designated official of any changes in their assets, liabilities and outside activities that would be subject to a Confidential Report.

Transitional Provision

35. Where an employee was, immediately prior to the coming into force of the Code, subject to any conflict of interest or post-employment guidelines of the government, the employee shall continue to be subject to those guidelines, in lieu of the Code, until a review of his or her compliance measures is completed by the designated official. The designated official must complete the review within one year after the date the employee signs the Certification Document.

PART III
POST-EMPLOYMENT COMPLIANCE MEASURES

Objects

36. Post-employment compliance measures are designed to minimize, without unduly restricting former employees in seeking employment, the possibilities of (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for employees while in public office; (b) obtaining preferential treatment or privileged access to government after leaving public office; (c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and (d) using public office to unfair advantage in obtaining opportunities for outside employment.

Application

37. The post-employment compliance measures apply to all positions at or above the level of Senior Manager (SM). Treasury Board may, on the recommendation of the Minister responsible for a department, designate positions at a level below Senior Manager as being subject to these measures, where the position involves duties and responsibilities that raise post-employment concerns.

38. In special circumstances, Treasury Board may, on the recommendation of the Minister responsible for a department, exclude positions from the application of sections 41 and 42 of the post-employment provisions. Such circumstances would include those where certain knowledge and skills in the public interest should be transferred rapidly from the government to private and other governmental sectors.

Before Leaving Office

39. Employees should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for, or offers of, outside employment. Employees must: disclose, in writing to the designated official, all firm offers of employment that could place the employee in a conflict of interest situation; and disclose immediately the acceptance of any such offer.

40. Where the designated official determines that the employee is engaged in significant official dealings with the future employer, the employee shall be assigned to other duties and responsibilities as soon as possible. The period of time spent in public office following such an assignment shall be counted toward the limitation period on employment as described below.
After Leaving Office

Prohibited Activities

41. At no time shall a former employee act for or on behalf of any person, commercial entity, association, or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the government is a party:

(a) in respect of which the former employee acted for or advised a department; and

(b) which would result in the conferring of a benefit not for general application or of a purely commercial or private nature.

Limitation Period

42. Former employees shall not, within a period of one year after leaving office:

(a) accept appointment to a board of directors of, or employment with, an entity with which they had significant official dealings during the period of one year immediately prior to the termination of their service;

(b) make representations for or on behalf of any other person or entity to any department with which they had significant official dealings during the period of one year immediately prior to the termination of their service; or

(c) give counsel, for the commercial purposes of the recipient of the counsel, concerning the programs or policies of the department with which they were employed, or with which they had a direct and substantial relationship during the period of one year immediately prior to the termination of their service.

Reduction of Limitation Period

43. On application from an employee or former employee, the designated authority may reduce the limitation period on employment. Decisions to reduce the limitation period will be made taking into consideration:

(a) the circumstances under which the termination of their service occurred;

(b) the general employment prospects of the employee or former employee making the application;

(c) the significance to the government of information possessed by the employee or former employee by virtue of that employee's position in the Public Service;

(d) the desirability of a rapid transfer from the government to private or other governmental sectors of the employee's or former employee's knowledge and skills;

(e) the degree to which the new employer might gain unfair commercial advantage by hiring the employee or former employee;

(f) the authority and influence possessed while in the Public Service; and

(g) the disposition of other cases.

44. Decisions made by the designated authority will be in writing to the applicant and to all departments affected by the decision.

Advisory Panels

45. The Treasury Board may convene advisory panels to advise on the application of the compliance measures in particular cases, and to help employees or former employees understand how the compliance measures apply in their particular case.

Exit Arrangements

46. Prior to an employee's official separation from public office, the designated official will communicate with the employee to review the post-employment requirements in order to facilitate their observance.

Reconsideration

47. An employee or former employee may apply to the Treasury Board for reconsideration of any determination respecting his or her compliance with the post-employment measures.

Failure to Comply

48. An employee who does not comply with the measures set out in this Part is subject to appropriate disciplinary action up to and including discharge.

PART IV

COMPLIANCE MEASURES FOR PUBLIC OFFICE HOLDERS WHO ARE NOT SUBJECT TO PARTS II AND III

Interchange Canada

49. Before entering into an Interchange Canada agreement to accept a person on assignment, the parties to the agreement shall satisfy themselves that there is no risk of conflict of interest or that the risk of conflict of interest is not significant. If the parties determine that the risk of conflict of interest is significant, the parties shall make such provisions as are necessary to prevent the conflict of interest from arising.
50. Persons entering the Public Service on an Interchange Canada assignment shall not act, after they leave such office, in such a manner as to take improper advantage of that office.

SCHEDULE — TRUSTS

1. The following trusts are examples of the most common trusts that may be established by employees for the purpose of divestment under the Code.

(a) Blind Trust
A blind trust is one in which the trustee makes all investment decisions concerning the management of the trust assets with no direction from or control by the employee placing the assets in trust.

No information is provided to the employee (settlor) except information that is required by law to be filed. An employee who establishes a blind trust may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.

(b) Frozen Trust
A frozen trust is one in which the trustee maintains the holdings essentially as they were when the trust was established. Employees who establish a frozen trust are entitled to any income earned by the trust.

Assets requiring active decision-making by the trustee (such as convertible securities and real estate) or assets easily affected by government action are not considered suitable for a frozen trust.

(c) Retention Trust
A retention trust is one in which the trustee maintains rights in holding companies, established for estate planning purposes, essentially as they were when the trust was established. The settlor makes arrangements to have third parties exercise his or her voting rights in relation to the shares in the holding company as long as such arrangements will not result in a conflict of interest. Retention trusts usually do not generate income for the settlor.

This form of divestment is useful for an employee who has assets to be held under special proper management through a holding company for estate planning purposes.

Provisions Common to All Trusts

2. Provisions common to all trusts are:

(a) Custody of the Assets:
   The assets to be placed in trust must vest in the trustee.

(b) Power of Management or Control:
   The employee (settlor) may not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the employee concerning the management or the administration of the assets.

(c) Schedule of Assets:
   The assets placed in trust shall be listed on a schedule attached to the trust agreement.

(d) Duration of Trust:
   The term of any trust is to be for as long as the employee who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.

(e) Return of Trust Assets:
   Whenever a trust agreement is dismantled, the trustee shall deliver the trust assets to the employee.

Trustees

3. Care must be exercised in selecting trustees for each type of trust arrangement. If a single trustee, other than the ADRG, is appointed, the trustee should be:

(a) a public trustee;

(b) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or

(c) an individual who performs trustee duties in the normal course of his or her work.

4. If a single trustee is appointed he or she shall clearly be at arm's length from the employee.

5. If more than one trustee is selected, at least one of them shall be a public trustee or a company at arm's length from the employee.

Trust Indenture

6. Acceptable blind, frozen and retention trust indentures are available from the ADRG. Any amendments to such trust indentures shall be submitted to the ADRG before being executed.
Reimbursement for Costs Incurred

8. On the recommendation of the ADRG, the following reimbursements for costs of trusts established to comply with the Conflict of Interest Compliance Measures set out in this Code may be permitted:

(a) reasonable legal, accounting and transfer costs to establish the trust;

(b) reasonable legal, accounting and transfer costs to dismantle the trust; and

(c) annual, actual and reasonable costs to maintain and administer the trust, as follows:

(i) up to a maximum of $500 for a portfolio with a market value of $100,000 or less, or

(ii) up to a maximum of $5,000 for a portfolio with a market value over $100,000, 1/2 of 1% on the first $400,000 and 1/4 of 1% on the remaining value.

The employee is responsible for any income tax adjustment that may result from the reimbursement of trust costs.

Filing of Trust Documents

7. Under the trust options available, employees are required to file with the ADRG a copy of any trust instrument. Except for the fact that a trust exists, detailed trust information will be kept in the employee’s confidential file and will not be made available to anyone for any purpose.
APPENDIX I

CANADIAN COMPETITION LAW

Canada’s competition law is contained in the Combines Investigation Act, a federal law of general application throughout the country. The basic purpose of the Act is to maintain competition in the marketplace. Imperial fully subscribes to the purpose of the Act and follows a policy of strict compliance with it.

The Act contains a number of criminal offences which are summarized below under the heading “Criminal Prohibitions.” It also deals with a number of trade practices that are not illegal as such but are subject to review and prohibition by the Restrictive Trade Practices Commission.

With the exception of the offence of price discrimination, which applies only to goods, the Act applies both to goods and services. The word “product” is used in the Act and in this statement to mean both goods and services.

SPECIFIC PROVISIONS OF THE LAW

(A) CRIMINAL PROHIBITIONS

CONSPIRACY

It is an offence to agree or arrange with another person:

- to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any product,
- to prevent, limit, or lessen unduly the manufacture or production of a product,
- to prevent or lessen unduly competition in the production, manufacture, purchase, sale, storage, rental, transportation, or supply of a product,
- to otherwise restrain or injure competition unduly.

The Act permits arrangements between competitors regarding:

- exchange of statistics
- defining of product standards
- exchange of credit information
- definition of terminology
- cooperation in research
- restriction of advertising
- sizes or shapes of containers
- adoption of the metric system
- adoption of measures to protect the environment

so long as the arrangement does not lessen competition unduly in respect of:

- prices
- quantity or quality of production
- markets or customers
- channels or methods of distribution

or by restricting persons from entering into a business. Although agreements on the subjects listed above and on exports are permitted, none should be entered into without approval from the law department.

J OINT BIDS

An offence known as bid-rigging occurs when one person agrees with another not to submit a bid in response to a request for tenders, or submits a bid previously agreed upon between tenderers, unless the agreement is made known to the person calling for the bids or tenders.

PRICE MAINTENANCE

1. No person who:

- supplies a product, or
- extends credit by a credit card, or
- has exclusive rights under a patent or trade mark, shall, directly or indirectly:

- by agreement, threat, promise, or any like manner attempt to influence upward, or to discourage the reduction of, the price at which another person supplies or advertises a product, or
- refuse to supply a product to or discriminate against a person because of that person’s low pricing policy.

2. This prohibition does not apply as between

- affiliated companies, or
- principal and agent.

3. A suggestion of a resale price by the supplier of a product is, in the absence of proof that the supplier made it clear to the retailer that he was under no obligation to accept the suggestion and would in no way suffer in his business relations with the supplier or with any other person (over whom the supplier has control or influence) if he failed to accept the suggestion, proof of an attempt to influence the retailer in accordance with the suggestion.

4. The publication by a supplier other than a retailer an advertisement that mentions a resale price for product is an attempt to influence upward the selling price of the product by a reseller unless the price is so expressed as to make it clear that the product may be sold at a lower price.

5. Subsections 3 and 4 do not apply to a price that is marked on a product or its container.

6. No person shall attempt to induce a supplier, as a condition of his doing business with the supplier, refuse to supply a product to another person because of that person’s low pricing policy.

Source: Imperial Oil Limited
MERGERS AND MONOPOLIES

It is an offence to be a party to a merger or monopoly. A "merger" means the acquisition of any control over another person's business where competition is lessened to the detriment of the public. "Monopoly" means a situation where one or more persons substantially or completely control the class of business in which they are engaged and have operated such business to the detriment of the public.

ILLEGAL TRADE PRACTICES AND PROMOTIONAL ALLOWANCES

Price Discrimination

It is an offence to make a practice of selling a product to one customer at a discount, rebate, allowance, price concession, or other advantage that is not made available to competitors of that customer who at the time of the sale are purchasing product of like quality and quantity.

Predatory Pricing

It is an offence to engage in a policy of selling products:
- at lower prices in one area than in another, or
- at prices that are unreasonably low,
if the effect or tendency is to lessen competition substantially or eliminate a competitor.

Promotional Allowances

An advertising or display allowance must be offered on proportionate terms to all customers who are competitors of a customer granted the allowance. "Proportionate terms" means in proportion to the volume of sales to the particular customer.

MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES

Misleading Representations

It is an offence to make a representation to the public by advertising or any other means for the purpose of promoting the supply of a product or a business interest, if the representation is false or misleading in a material respect. Any representation in the form of a statement of the performance of a product that is not based on a proper test is prohibited. A representation that purports to be a warranty of a product that is materially misleading is prohibited. Any materially misleading representation as to the price at which a product is ordinarily sold is prohibited.

Tests and Testimonials

No person shall, for the purpose of promoting the sale of a product or any business interest:
- make a representation that a test as to the performance, efficacy or length of life of the product has been made by any person, or
- publish a testimonial with respect to the product, unless he can establish that the test or the testimonial was in fact made or given.

Double Ticketing

It is an offence to sell a product at a price that exceeds the lowest of two or more prices marked on the product, its container, or display material.

Pyramid Selling and Referral Selling

Pyramid selling and referral selling are prohibited unless permitted by a province. "Pyramid selling" means a scheme for selling a product whereby one person pays a fee to participate and receives the right to receive a fee for the recruitment of other persons into the scheme or in respect of sales made by other persons recruited into the scheme. "Referral selling" means a scheme for selling a product whereby a person is induced to purchase the product on the representation that he will receive a commission based on sales made to persons whose names he supplies.

Bait and Switch Selling

It is an offence to advertise at a bargain price a product the advertiser cannot supply in reasonable quantities having regard to his business, the advertisement and the market. The advertiser, however, will not be liable if he can establish that the non-availability of the product was due to circumstances beyond his control, or that the demand surpassed his reasonable expectations, or that he offered a rain check when his supplies were exhausted.

Promotional Contests

Any contest or lottery that does not disclose the number and value of prizes or any information relating to the chances of winning in the contest, that does not select participants or distribute prizes on the basis of skill or on a random basis, or in which the distribution of prizes is delayed is prohibited.

(B) REVIEWABLE TRADE PRACTICES

The trade practices described below are subject to review and prohibition by the Restrictive Trade Practices Commission. The practices are not illegal in themselves and do not become so unless and until the commission prohibits them. To date none of the company's practices have been prohibited.

REFUSAL TO DEAL

If a person's business is substantially affected because he cannot obtain adequate supplies of a product due to insufficient competition in the market, and he is able to meet the usual trade terms of suppliers and the product is in ample supply, the commission may order one or more suppliers to accept the aggrieved person as a customer on usual trade terms. A supplier need not supply his branded product unless it occupies a dominant position in the market.

CONSIGNMENT SELLING

Where the commission finds that the practice of consignment selling has been introduced by a supplier
of a product who ordinarily sells the product for resale, for the purpose of:

- controlling the price at which a dealer supplies the product, or
- discriminating between consignees or between dealers to whom he sells the product and consignees.

the commission may order the supplier to cease to carry on the practice of consignment selling of the product.

EXCLUSIVE DEALING AND TIED SELLING

"Exclusive dealing" means any practice whereby a supplier requires a customer to deal only or primarily in products supplied or designated by the supplier.

"Tied selling" means any practice whereby a supplier, as a condition of supplying one product to a customer, requires the customer to acquire some other product from the supplier.

Where the commission finds that exclusive dealing or tied selling, because it is engaged in by a major supplier in a market or because it is widespread in a market, is likely to:

- impede entry into or expansion of a firm in the market;
- impede introduction of a product into or expansion of sales of a product in the market; or,
- have any other exclusionary effect in the market;

with the result that competition is or is likely to be lessened substantially, the commission may make an order prohibiting all or any of such suppliers from continuing to engage in exclusive dealing or tied selling and containing any other requirement that in its opinion is necessary to restore or stimulate competition in the market.

MARKET RESTRICTION

"Market restriction" means any practice whereby a supplier requires a customer to supply any product only in a defined market.

Where the commission finds that market restriction, because it is engaged in by a major supplier or because it is widespread, is likely to substantially lessen competition in relation to a product, the commission may make an order prohibiting all or any of the suppliers from continuing to engage in market restriction and containing any other requirement that in its opinion is necessary to restore or stimulate competition in relation to the product.

(C) FOREIGN JUDGMENTS, LAWS AND DIRECTIVES

In addition to the powers granted to the Restrictive Trade Practices Commission to review the trade practices described above, the commission is empowered to deal with the following matters:

FOREIGN JUDGMENTS

Where the commission finds that a foreign judgment or order would, if implemented in Canada, adversely affect competition in Canada or adversely affect Canada's foreign trade, the commission may direct that no measures be taken in Canada to implement the foreign judgment or order.

FOREIGN LAWS AND DIRECTIVES

Where the commission finds that a decision has been or is about to be made by a person in Canada as a result of a foreign law or a directive from a person outside Canada for the purpose of giving effect to a foreign law, and the decision would if implemented adversely affect competition in Canada or adversely affect Canada's foreign trade, the commission may by order direct that no measures be taken in Canada to implement the foreign law or directive.

(D) RECOVERY OF DAMAGES

Any person who suffers loss or damage as a result of:

- conduct contrary to any criminal prohibition in the Act, or
- the failure of a person to comply with an order of the commission,

may sue for and recover from the wrongdoer an amount equal to the loss or damage proved to have been suffered together with the full cost of any investigation and of legal proceedings.

WHAT TO DO IF FACED WITH A POSSIBLE INFRACTION OF THE COMBINES LAW

Any question as to the legality of any conduct or action should immediately be discussed with the employee's supervisor, the supervisor's superior, or the local employee relations/human resources representative, who would then refer the matter to the law department without delay.
APPENDIX J

PRIVATE SECTOR COMPANIES

NATURAL RESOURCE COMPANIES:

Inco
Dome Petroleum Ltd.
Suncor Inc.
Alberta Oil and Gas Co. Ltd.
Imperial Oil Limited

Alcan
Trans Canada Pipelines
Sulpetro Limited*
Norcen*
Husky Oil Operations Ltd.

FINANCIAL COMPANIES

Bank of Montreal
The Royal Bank of Canada
The Toronto Dominion Bank
Sun Life Assurance Co. of Canada

Touche Ross **
Clarkson Gordon **
The Bank of Nova Scotia

PRIMARY INDUSTRY COMPANIES

IPSCO *
Dofasco Inc.
C.I.L. Inc. ***

FOOD AND HOSPITALITY COMPANIES

Steinberg
George Weston Ltd.
Burns Food Ltd. *

UTILITIES

Bell Canada

MANUFACTURING COMPANIES

Ortho Pharmaceutical (Canada) Ltd.
Rothmans of Pall Mall Canada Ltd.
Labatts Brewing Company Limited
Warner-Lambert Canada Inc.
Benson Hedges (Canada) Inc. (Philip Morris Inc.)

MANAGEMENT COMPANIES

Imasco Limited

MULTINATIONAL COMPANIES

Norton Company

Lavalin

* denotes companies without codes of ethics or conflict of interest policies
** Professional code of ethics - Rules of Professional Conduct, The Institute of Chartered Accountants of Ontario
*** policy on political activity only
APPENDIX K
CRIMINAL CODE OF CANADA
PART VIII
FRAUDULENT TRANSACTIONS
RELATING TO CONTRACTS AND TRADE

Interpretation

DEFINITIONS—"Goods"—"Trading stamps".

337. In this Part
"goods" means anything that is the subject of trade or commerce;
"trading stamps" includes any form of cash receipt, receipt, coupon,
premium ticket or other device, designed or intended to be given to the
purchaser of goods by the vendor thereof or on his behalf, and to repre-
sent a discount on the price of the goods or a premium to the purchaser
thereof
(a) that may be redeemed
(i) by any person other than the vendor, the person from whom
the vendor purchased the goods, or the manufacturer of the
goods,
(ii) by the vendor, the person from whom the vendor purchased
the goods, or the manufacturer of the goods in cash or in goods
that are not his property in whole or in part, or
(iii) by the vendor elsewhere than in the premises where the goods
are purchased; or
(b) that does not show upon its face the place where it is delivered
and the merchantable value thereof; or
(c) that may not be redeemed upon demand at any time;
but an offer, endorsed by the manufacturer upon a wrapper or container
in which goods are sold, of a premium or reward for the return of that
wrapper or container to the manufacturer is not a trading stamp. 1953-
54, c. 51, s. 322.

Fraud

FRAUD—Affecting public market.

338. (1) Every one who, by deceit, falsehood or other fraudulent
means, whether or not it is a false pretence within the meaning of this Act,
defrauds the public or any person, whether ascertained or not, of any
property, money or valuable security,
(a) is guilty of an indictable offence and is liable to a term of impris-
onment not exceeding ten years, where the subject-matter of the
offence is a testamentary instrument or where the value of the
subject-matter of the offence exceeds one thousand dollars; or
(b) is guilty
(i) of an indictable offence and is liable to imprisonment for two
years, or
(ii) of an offence punishable on summary conviction,
where the value of the subject-matter of the offence does not
exceed one thousand dollars. 1985, c. 19, s. 55(1), (2).

(2) Every one who, by deceit, falsehood or other fraudulent means,
whether or not it is a false pretence within the meaning of this Act, with
intent to defraud, affects the public market price of stocks, shares, mer-
chandise or anything that is offered for sale to the public, is guilty of an
indictable offence and is liable to imprisonment for ten years. 1953-54,
c. 51, s. 323.

USING MAILS TO DEFRAUD.

339. Every one who makes use of the mails for the purpose of trans-
mitting or delivering letters or circulars concerning schemes devised or
intended to deceive or defraud the public, or for the purpose of obtaining
money under false pretences, is guilty of an indictable offence and is liable
to imprisonment for two years. 1953-54, c. 51, s. 324.
FRAUDULENT MANIPULATION OF STOCK EXCHANGE TRANSACTIONS.

340. Every one who, through the facility of a stock exchange, curb market or other market, with intent to create a false or misleading appearance of active public trading in a security or with intent to create a false or misleading appearance with respect to the market price of a security,

(a) effects a transaction in the security that involves no change in the beneficial ownership thereof,

(b) enters an order for the purchase of the security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the sale of the security has been or will be entered by or for the same or different persons, or

(c) enters an order for the sale of the security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the purchase of the security has been or will be entered by or for the same or different persons,

is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c. 51, s. 325.

GAMING IN STOCKS OR MERCHANDISE—Oms.

341. (1) Every one is guilty of an indictable offence and is liable to imprisonment for five years who, with intent to make gain or profit by the rise or fall in price of the stock of an incorporated or unincorporated company or undertaking, whether in or out of Canada, or of any goods, wares or merchandise,

(a) makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the purchase or sale of shares of stock or goods, wares or merchandise, without the bona fide intention of acquiring the shares, goods, wares or merchandise or of selling them, as the case may be; or

(b) makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of shares of stock or goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or received, and without the bona fide intention of making or receiving delivery thereof, as the case may be;

but this section does not apply where a broker, on behalf of a purchaser, receives delivery, notwithstanding that the broker retains or pledges what is delivered as security for the advance of the purchase money or any part thereof.

(2) Where, in proceedings under this section, it is established that the accused made or signed a contract or agreement for the sale or purchase of shares of stock or goods, wares or merchandise, or acted, aided or abetted in the making or signing thereof, the burden of proof of a bona fide intention to acquire or to sell the shares, goods, wares or merchandise or to deliver or to receive delivery thereof, as the case may be, lies upon the accused. 1953-54, c. 51, s. 326.

BROKER REDUCING STOCK BY SELLING FOR HIS OWN ACCOUNT.

342. Every one is guilty of an indictable offence and is liable to imprisonment for five years who, being an individual, or a member or employee of a partnership, or a director, officer or employee of a corporation, where he or the partnership, or corporation is employed as a broker by any customer to buy and carry upon margin any shares of an incorporated or unincorporated company or undertaking, whether in or out of Canada, thereafter sells or causes to be sold shares of the company or undertaking for any account in which

(a) he or his firm or a partner thereof, or

(b) the corporation or a director thereof,

has a direct or indirect interest, if the effect of the sale is, otherwise than unintentionally, to reduce the amount of such shares in the hands of the broker or under his control in the ordinary course of business below the amount of such shares that the broker should be carrying for all customers. 1953-54, c. 51, s. 327.
FRAUDULENT CONCEALMENT OF TITLE DOCUMENTS—Consent required.

343. (1) Every one who, being a vendor or mortgagor of property or of a chose in action or being a solicitor for or agent of a vendor or mortgagor of property or a chose in action, is served with a written demand for an abstract of title by or on behalf of the purchaser or mortgagee before the completion of the purchase or mortgage, and who

(a) with intent to defraud and for the purpose of inducing the purchaser or mortgagee to accept the title offered or produced to him, conceals from him any settlement, deed, will or other instrument material to the title, or any encumbrance on the title, or

(b) falsifies any pedigree upon which the title depends,
is guilty of an indictable offence and is liable to imprisonment for two years.

(2) No proceedings shall be instituted under this section without the consent of the Attorney General. 1953-54, c. 51, s. 328.

FRAUDULENT REGISTRATION OF TITLE.

344. Every one who, as principal or agent, in a proceeding to register title to real property, or in a transaction relating to real property that is or is proposed to be registered, knowingly and with intent to deceive,

(a) makes a material false statement or representation,

(b) suppresses or conceals from a judge or registrar or any person employed by or assisting the registrar, any material document, fact, matter or information, or

(c) is privy to anything mentioned in paragraph (a) or (b),
is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c. 51, s. 329.

FRAUDULENT SALE OF REAL PROPERTY.

345. Every one who, knowing of an unregistered prior sale or of an existing unregistered grant, mortgage, hypothec, privilege or encumbrance of or upon real property, fraudulently sells the property or any part thereof is guilty of an indictable offence and is liable to imprisonment for two years. 1953-54, c. 51, s. 330.

MISLEADING RECEIPT.

346. Every one who willfully

(a) with intent to mislead, injure or defraud any person, whether or not that person is known to him, gives to a person anything in writing that purports to be a receipt for or an acknowledgment of property that has been delivered to or received by him, before the property referred to in the purported receipt or acknowledgment has been delivered to or received by him, or

(b) accepts, transmits or uses a purported receipt or acknowledgment to which paragraph (a) applies,
is guilty of an indictable offence and is liable to imprisonment for two years. 1953-54, c. 51, s. 331.

FRAUDULENT DISPOSAL OF GOODS ON WHICH MONEY ADVANCED—Saving.

347. (1) Every one who

(a) having shipped or delivered to the keeper of a warehouse or to a factor, agent or carrier, anything upon which the consignee thereof has advanced money or has given valuable security, there after, with intent to deceive, defraud or injure the consignee, disposes of it in a manner that is different from and inconsistent with any agreement that has been made in that behalf between him and the consignee, or

(b) knowingly and willfully aids or assists any person to make a disposition of anything to which paragraph (a) applies for the purpose of deceiving, defrauding or injuring the consignee,
is guilty of an indictable offence and is liable to imprisonment for two years.
(2) No person is guilty of an offence under this section where, before disposing of anything in a manner that is different from and inconsistent with any agreement that has been made in that behalf between him and the consignee, he pays or tenders to the consignee the full amount of money or valuable security that the consignee has advanced. 1953-54, c. 51, s. 332.

FRAUDULENT RECEIPTS UNDER BANK ACT.

348. Every one is guilty of an indictable offence and is liable to imprisonment for two years who

(a) willfully makes a false statement in a receipt, certificate or acknowledgment for anything that may be used for a purpose mentioned in the Bank Act; or

(b) willfully,

(i) after giving to another person,

(ii) after a person employed by him has, to his knowledge, given to another person,

(iii) after obtaining and endorsing or assigning to another person, a receipt, certificate or acknowledgment for anything that may be used for a purpose mentioned in the Bank Act, without the consent in writing of the holder or endorsee or the production and delivery of the receipt, certificate or acknowledgment, alienates or parts with, or does not deliver to the holder or owner the property mentioned in the receipt, certificate or acknowledgment. 1953-54, c. 51, s. 333.

The words “receipt, certificate or acknowledgment for anything that may be used for a purpose mentioned in the Bank Act” have the same meaning in both paras. (a) and (b) and refer to documents which are evidence of title to property and which may be transferred by endorsement or delivery: R. v. DUBOIS (1979), 45 C.C.C. (2d) 531 (Ont. C.A.).

SAVING.

349. Where an offence is committed under section 346, 347 or 348 by a person who acts in the name of a corporation, firm or partnership, no person other than the person who does the act by means of which the offence is committed or who is secretly privy to the doing of that act is guilty of the offence. 1953-54, c. 51, s. 334.

DISPOSAL OF PROPERTY TO DEFRAUD CREDITORS.

350. Every one who,

(a) with intent to defraud his creditors,

(i) makes or causes to be made a gift, conveyance, assignment, sale, transfer or delivery of his property, or

(ii) removes, conceals or disposes of any of his property, or

(b) with intent that any one should defraud his creditors, receives any property by means of or in relation to which an offence has been committed under paragraph (a),

is guilty of an indictable offence and is liable to imprisonment for two years. 1953-54, c. 51, s. 335.

FRAUD IN RELATION TO FARES, ETC.—Idem—Fraudulently obtaining transportation.

351. (1) Every one whose duty it is to collect a fare, toll, ticket or admission who willfully

(a) fails to collect it,

(b) collects less than the proper amount payable in respect thereof, or

(c) accepts any valuable consideration for failing to collect it or for collecting less than the proper amount payable in respect thereof,

is guilty of an indictable offence and is liable to imprisonment for two years.
(2) Every one who gives or offers to a person whose duty it is to collect a fare, toll, ticket or admission fee, any valuable consideration for failing to collect it, or for collecting an amount less than the amount payable in respect thereof, is guilty of an indictable offence and is liable to imprisonment for two years.

(3) Every one who, by any false pretence or fraud, unlawfully obtains transportation by land, water or air is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 336.

FRAUD IN RELATION TO MINERALS—Seizure and forfeiture.

352. (1) Every one is guilty of an indictable offence and is liable to imprisonment for five years who

(a) being the holder of a lease or licence issued

(i) under an Act relating to the mining of precious metals, or

(ii) by the owner of land that is supposed to contain precious metals,

by a fraudulent device or contrivance defrauds or attempts to defraud any person of any precious metals or money payable or reserved by the lease or licence, or fraudulently conceals or makes a false statement with respect to the amount of precious metals procured by him;

(b) sells or purchases any rock, mineral, or other substance that contains precious metals or unsmelthered, untreated, unmanufactured, or partly manufactured precious metals, unless he establishes that he is the owner or agent of the owner or is acting under lawful authority; or

(c) has in his possession or knowingly has upon his premises

(i) any rock or mineral of a value of fifty-five cents per kilogram or more,

(ii) any mica of a value of fifteen cents per kilogram or more, or

(iii) any precious metals, that there is reasonable ground to believe have been stolen or have been dealt with contrary to this section, unless he establishes that he is lawfully in possession thereof. 1985, c. 19, s. 186.

(2) Where a person is convicted of an offence under this section, the court may order anything by means of or in relation to which the offence was committed, upon such conviction, to be forfeited to Her Majesty in right of the province in which the proceedings take place. 1953-54, c. 51, s. 337.

SEARCH FOR PRECIOUS METALS—Power to seize—Appeal.

353. (1) Where an information in writing is laid under oath before a justice by any person having an interest in a mining claim, that any precious metals or rock, mineral or other substance containing precious metals is unlawfully deposited in any place or held by any person contrary to law, the justice may issue a warrant to search any of the places or persons mentioned in the information.

(2) Where, upon search, anything mentioned in subsection (1) is found, it shall be seized and carried before the justice who shall order

(a) that it be detained for the purposes of an inquiry or trial, or

(b) if it is not detained for the purposes of an inquiry or trial,

(i) that it be restored to the owner, or

(ii) that it be forfeited to Her Majesty in right of the province in which the proceedings take place if the owner cannot be ascertained.

(3) An appeal lies from an order made under paragraph (2)(b) in the manner in which an appeal lies in summary conviction proceedings under Part XXIV and the provisions of that Part relating to appeals apply to appeals under this subsection. 1953-54, c. 51, s. 338.
OFFENCES IN RELATION TO MINES—Presumption.

354. (1) Every one who

(a) adds anything to or removes anything from an existing or prospective mine, mining claim or oil well with a fraudulent intent to affect the result of an assay, test or valuation that has been made or is to be made with respect to the mine, mining claim or oil well, or

(b) adds anything to, removes anything from or tampers with a sample or material that has been taken or is being or is about to be taken from an existing or prospective mine, mining claim or oil well for the purpose of being assayed, tested or otherwise valued, with a fraudulent intent to affect the result of the assay, test or valuation,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) For the purposes of proceedings under subsection (1), evidence that

(a) something has been added to or removed from anything to which subsection (1) applies, or

(b) anything to which subsection (1) applies has been tampered with, is, in the absence of any evidence to the contrary, proof of a fraudulent intent to affect the result of an assay, test or valuation. 1953-54, c. 51, s. 339; 1968-69, c. 38, s. 92.

Falsification of Books and Documents

BOOKS AND DOCUMENTS—Privy.

355. (1) Every one who, with intent to defraud,

(a) destroys, mutilates, alters, falsifies, or makes a false entry in, or

(b) omits a material particular from, or alters a material particular in,

a book, paper, writing, valuable security or document is guilty of an indictable offence and is liable to imprisonment for five years.

(2) Every one who, with intent to defraud his creditors, is privy to the commission of an offence under subsection (1) is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c. 51, s. 340.

FALSIFYING EMPLOYMENT RECORD.

356. Every one who, with intent to deceive, falsifies an employment record by any means, including the punching of a time clock, is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 341.

FALSE RETURN BY PUBLIC OFFICER.

357. Every one who, being entrusted with the receipt, custody or management of any part of the public revenues, knowingly furnishes a false statement or return of

(a) any sum of money collected by him or entrusted to his care, or

(b) any balance of money in his hands or under his control,

is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c. 51, s. 342.
FALSE PROSPECTUS, ETC.—“Company”.

358. (1) Every one who makes, circulates or publishes a prospectus, statement or account, whether written or oral, that he knows is false in a material particular, with intent

(a) to induce persons, whether ascertained or not, to become shareholders or partners in a company,
(b) to deceive or defraud the members, shareholders or creditors, whether ascertained or not, of a company,
(c) to induce any person to entrust or advance anything to a company, or
(d) to enter into any security for the benefit of a company,

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) In this section, “company” means a syndicate, body corporate or company, whether existing or proposed to be created. 1953-54, c. 51, s. 343.

OBTAINING CARRIAGE BY FALSE BILLING—Forfeiture.

359. (1) Every one who, by means of a false or misleading representation, knowingly obtains or attempts to obtain the carriage of anything by any person into a country, province, district or other place, whether or not within Canada, where the importation or transportation of it is, in the circumstances of the case, unlawful is guilty of an offence punishable on summary conviction.

(2) Where a person is convicted of an offence under subsection (1), anything by means of or in relation to which the offence was committed, upon such conviction, in addition to any punishment that is imposed, is forfeited to Her Majesty and shall be disposed of as the court may direct. 1953-54, c. 51, s. 344.

TRADER FAILING TO KEEP ACCOUNTS—Saving.

360. (1) Every one who, being a trader or in business,

(a) is indebted in an amount exceeding one thousand dollars,
(b) is unable to pay his creditors in full, and
(c) has not kept books of account that, in the ordinary course of the trade or business in which he is engaged, are necessary to exhibit or explain his transactions,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) No person shall be convicted of an offence under this section
(a) where, to the satisfaction of the court or judge, he

(i) accounts for his losses, and
(ii) shows that his failure to keep books was not intended to defraud his creditors; or
(b) where his failure to keep books occurred at a time more than five years prior to the day on which he was unable to pay his creditors in full. 1953-54, c. 51, s. 345.

Personation

361. Every one who fraudulently personates any person, living or dead,

(a) with intent to gain advantage for himself or another person,
(b) with intent to obtain any property or an interest in any property, or
(c) with intent to cause disadvantage to the person whom he personates or another person,

is guilty of an indictable offence and is liable to imprisonment for fourteen years. 1953-54, c. 51, s. 346.
PERSONATION AT EXAMINATION.

362. Every one who falsely, with intent to gain advantage for himself or some other person, personates a candidate at a competitive or qualifying examination held under the authority of law or in connection with a university, college or school or who knowingly avails himself of the results of such personation is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 347.

ACKNOWLEDGING INSTRUMENT IN FALSE NAME.

363. Every one who, without lawful authority or excuse, the proof of which lies upon him, acknowledges in the name of another person before a court or a judge or other person authorized to receive the acknowledgment, a recognition of bail, a confession of judgment, a consent to judgment or a judgment, deed or other instrument, is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c. 51, s. 348.

Forgery of Trade Marks and Trade Descriptions

FORGING TRADE MARK.

364. For the purposes of this Part, every one forges a trade mark who
(a) without the consent of the proprietor of the trade mark, makes or reproduces in any manner that trade mark or a mark so nearly resembling it as to be calculated to deceive, or
(b) falsifies, in any manner, a genuine trade mark. 1953-54, c. 51, s. 349.

OFFENCE.

365. Every one commits an offence who, with intent to deceive or defraud the public or any person, whether ascertained or not, forges a trade mark. 1953-54, c. 51, s. 350.

PASSING OFF.

366. Every one commits an offence who, with intent to deceive or defraud the public or any person, whether ascertained or not,
(a) passes off other wares or services as and for those ordered or required, or
(b) makes use, in association with wares or services, of any description that is false in a material respect as to
(i) the kind, quality, quantity or composition,
(ii) the geographical origin, or
(iii) the mode of the manufacture, production or performance of such wares or services. 1953-54, c. 51, s. 351.

INSTRUMENTS FOR FORGING TRADE MARK—Saving.

367. (1) Every one commits an offence who makes, has in his possession or disposes of a die, block, machine or other instrument, designed or intended to be used in forgining a trade mark.

(2) No person shall be convicted of an offence under this section where he proves that he acted in good faith in the ordinary course of his business or employment. 1953-54, c. 51, s. 352.

OTHER OFFENCES IN RELATION TO TRADE MARKS.

368. Every one commits an offence who, with intent to deceive or defraud,
(a) defaces, conceals or removes a trade mark or the name of another person from anything without the consent of that other person, or
(b) being a manufacturer, dealer, trader or bottler fills any bottle or siphon that bears the trade mark or name of another person, without the consent of that other person, with a beverage, milk, by-product of milk or other liquid commodity for the purpose of sale or traffic. 1953-54, c. 51, s. 353.
USED GOODS SOLD WITHOUT DISCLOSURE.

369. Every one commits an offence who sells, exposes or has in his possession for sale, or advertises for sale, goods that have been used, reconditioned or remade and that bear the trade mark or the trade name of another person, without making full disclosure that the goods have been reconditioned, rebuilt or remade for sale and that they are not then in the condition in which they were originally made or produced. 1953-54, c. 51, s. 354.

PUNISHMENT—Forfeiture.

370. (1) Every one who commits an offence under section 365, 366, 367, 368 or 369 is guilty of
      (a) an indictable offence and is liable to imprisonment for two years, or
      (b) an offence punishable on summary conviction.

(2) Anything by means of or in relation to which a person commits an offence under section 365, 366, 367, 368 or 369 is, unless the court otherwise orders, forfeited upon the conviction of that person for that offence. 1953-54, c. 51, s. 355.

FALSELY CLAIMING ROYAL WARRANT.

371. Every one who falsely represents that goods are made by a person holding a royal warrant, or for the service of Her Majesty, a member of the Royal Family or a public department is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 356.

PREJUDICION FROM PORT OF SHIPMENT.

372. Where, in proceedings under this Part, the alleged offence relates to imported goods, evidence that the goods were shipped to Canada from a place outside Canada is, in the absence of any evidence to the contrary, proof that the goods were made or produced in the country from which they were shipped. 1953-54, c. 51, s. 357; 1968-69, c. 38, s. 92.

Wreck

OFFENCES IN RELATION TO WRECK.

373. Every one who
      (a) secretes wreck, or defaces or obliterates the marks on wreck, or uses any means to disguise or conceal the fact that anything is wreck, or in any manner conceals the character of wreck, from a person who is entitled to inquire into the wreck,
      (b) receives wreck, knowing that it is wreck, from a person other than the owner thereof or a receiver of wreck, and does not within forty-eight hours thereafter inform the receiver of wreck thereof,
      (c) offers wreck for sale or otherwise deals with it, knowing that it is wreck, and not having a lawful authority to sell or deal with it,
      (d) keeps wreck in his possession knowing that it is wreck, without lawful authority to keep it, for any time longer than the time reasonably necessary to deliver it to the receiver of wreck, or
      (e) boards, against the will of the master, a vessel that is wrecked, stranded or in distress unless he is a receiver of wreck or a person acting under orders of a receiver of wreck,
      is guilty of
      (f) an indictable offence and is liable to imprisonment for two years, or
      (g) an offence punishable on summary conviction. 1953-54, c. 51, s. 358.
Public Stores

DISTINGUISHING MARK ON PUBLIC STORES.

374. The Governor in Council may, by notice to be published in the Canada Gazette, prescribe distinguishing marks that are appropriated for use on public stores to denote the property of Her Majesty therein, whether the stores belong to Her Majesty in right of Canada or to Her Majesty in any other right. 1953-54, c. 51, s. 359.

APPLYING OR REMOVING MARKS WITHOUT AUTHORITY—Unlawful transactions in public stores—"Distinguishing mark".

375. (1) Every one who,

(a) without lawful authority, the proof of which lies upon him, applies a distinguishing mark to anything, or

(b) with intent to conceal the property of Her Majesty in public stores, removes, destroys or obliterates, in whole or in part, a distinguishing mark,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) Every one who, without lawful authority, the proof of which lies upon him, receives, possesses, keeps, sells or delivers public stores that he knows bear a distinguishing mark is guilty of

(a) an indictable offence and is liable to imprisonment for two years, or

(b) an offence punishable on summary conviction.

(3) For the purposes of this section, "distinguishing mark" means a distinguishing mark that is appropriated for use on public stores pursuant to section 374. 1953-54, c. 51, s. 360.

SELLING DEFECTIVE STORES TO HER MAJESTY—Offences by officers and employees of corporations.

376. (1) Every one who knowingly sells or delivers defective stores to Her Majesty or commits fraud in connection with the sale, lease or delivery of stores to Her Majesty or the manufacture of stores for Her Majesty is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) Everyone who, being a director, officer, agent or employee of a corporation that commits, by fraud, an offence under subsection (1),

(a) knowingly takes part in the fraud, or

(b) knows or has reason to suspect that the fraud is being committed or has been or is about to be committed and does not inform the responsible government, or a department thereof, of Her Majesty,

is guilty of an indictable offence and is liable to imprisonment for fourteen years. 1953-54, c. 51, s. 361.

UNLAWFUL USE OF MILITARY UNIFORMS OR CERTIFICATES.

377. Every one who without lawful authority, the proof of which lies upon him,

(a) wears a uniform of the Canadian Forces or any other naval, army or air force or a uniform that is so similar to the uniform of any of those forces that it is likely to be mistaken therefore,

(b) wears a distinctive mark relating to wounds received or service performed in war, or a military medal, ribbon, badge, chevron or any decoration or order that is awarded for war services, or any imitation thereof, or any mark or device or thing that is likely to be mistaken for any such mark, medal, ribbon, badge, chevron, decoration or order,
Section 377—Continued

(c) has in his possession a certificate of discharge, certificate of release, statement of service or identity card from the Canadian Forces or any other naval, army or air force that has not been issued to and does not belong to him, or

(d) has in his possession a commission or warrant or a certificate of discharge, certificate of release, statement of service or identity card issued to an officer or person in or who has been in the Canadian Forces or any other naval, army or air force, that contains any alteration that is not verified by the initials of the officer who issued it, or by the initials of some officer thereto lawfully authorized,

is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 362.

MILITARY STORES—Exception.

378. (1) Every one who buys, receives or detains from a member of the Canadian Forces or a deserter or absentee without leave therefrom any military stores that are owned by Her Majesty or for which the member, deserter or absentee without leave is accountable to Her Majesty is guilty of

(a) an indictable offence and is liable to imprisonment for five years, or

(b) an offence punishable on summary conviction.

(2) No person shall be convicted of an offence under this section where he establishes that he did not know and had no reason to suspect that the military stores in respect of which the offence was committed were owned by Her Majesty or were military stores for which the member, deserter or absentee without leave was accountable to Her Majesty. 1953-54, c. 51, s. 363.

EVIDENCE OF ENLISTMENT—Presumption when accused a dealer in stores.

379. (1) In proceedings under sections 375 to 378, evidence that a person was at any time performing duties in the Canadian Forces is, in the absence of any evidence to the contrary, proof that his enrolment in the Canadian Forces prior to that time was regular.

(2) An accused who is charged with an offence under subsection 375(2) shall be presumed to have known that the stores in respect of which the offence is alleged to have been committed bore a distinguishing mark within the meaning of that subsection at the time the offence is alleged to have been committed if he was, at that time, in the service or employment of Her Majesty or was a dealer in marine stores or in old metals. 1953-54, c. 51, s. 364; 1968-69, c. 38, s. 92.

Breach of Contract, Intimidation and Discrimination Against Trade Unionists

CRIMINAL BREACH OF CONTRACT—Saving—Consent required.

380. (1) Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be

(a) to endanger human life,

(b) to cause serious bodily injury,

(c) to expose valuable property, real or personal, to destruction or serious injury,

(d) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or

(e) to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway that is a common carrier,

is guilty of

(f) an indictable offence and is liable to imprisonment for five years, or

(g) an offence punishable on summary conviction.
(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(a) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or,

(b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization.

if, before the stoppage of work occurs, all steps provided by law with respect to the settlement of industrial disputes are taken and any provision for the final settlement of differences, without stoppage of work, contained in or by law deemed to be contained in a collective agreement is complied with and effect given thereto.

(3) No proceedings shall be instituted under this section without the consent of the Attorney General, 1953-54, c. 51, s. 365.

INTIMIDATION—Exception.

381. (1) Every one who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he has a lawful right to do, or to do anything that he has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his spouse or children, or injures his property,

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted upon him or a relative of his, or that the property of any of them will be damaged,

(c) persistently follows that person about from place to place,

(d) hides any tools, clothes or other property owned or used by that person, or deprives him of them or hinders him in the use of them,

(e) with one or more other persons follows that person, in a disorderly manner, on a highway,

(f) besets or watches the dwelling-house or place where that person resides, works, carries on business or happens to be, or

(g) blocks or obstructs a highway,

is guilty of an offence punishable on summary conviction.

(2) A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section. 1953-54, c. 51, s. 366; 1980-81-82, c. 125, s. 22.

THREAT TO COMMIT OFFENCE AGAINST INTERNATIONALLY PROTECTED PERSON.

381.1 Every one who threatens to commit an offence under section 218, 245, 247 or 247.1 against an internationally protected person or who threatens to commit an offence under section 387.1 is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years. 1974-75-76, c. 93, s. 33; 1983, c. 19, s. 56.

OFFENCE BY EMPLOYERS.

382. Every one who, being an employer or the agent of an employer, wrongfully and without lawful authority

(a) refuses to employ or dismisses from his employment any person for the reason only that the person is a member of a lawful trade union or of a lawful association or combination of workmen or employees formed for the purpose of advancing, in a lawful manner, their interests and organized for their protection in the regulation of wages and conditions of work,
(b) seeks by intimidation, threat of loss of position or employment, or by causing actual loss of position or employment, or by threatening or imposing any pecuniary penalty, to compel workmen or employees to abstain from belonging to a trade union, association or combination to which they have a lawful right to belong, or

(c) conspires, combines, agrees or arranges with any other employer or his agent to do anything mentioned in paragraph (a) or (b),

is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 367.

**Secret Commissions**

SECRET COMMISSIONS—Privity to offence—Punishment—Definitions.

383. (1) Every one commits an offence who

(a) corruptly

(i) gives, offers or agrees to give or offer to an agent, or

(ii) being an agent, demands, accepts or offers or agrees to accept from any person,

a reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal; or

(b) with intent to deceive a principal gives to an agent of that principal, or, being an agent, uses with intent to deceive his principal, a receipt, account, or other writing

(i) in which the principal has an interest,

(ii) that contains any statement that is false or erroneous or defective in any material particular, and

(iii) that is intended to mislead the principal.

(2) Every one commits an offence who is knowingly privy to the commission of an offence under subsection (1).

(3) A person who commits an offence under this section is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years. 1985, c. 19, s. 57.

(4) In this section “agent” includes an employee, and “principal” includes an employer. 1953-54, c. 51, s. 368.

**Trading Stamps**

ISSUING TRADING STAMPS—Giving to purchaser of goods.

384. (1) Every one who, by himself or his employee or agent, directly or indirectly issues, gives, sells or otherwise disposes of, or offers to issue, give, sell or otherwise dispose of trading stamps to a merchant or dealer in goods for use in his business is guilty of an offence punishable on summary conviction.

(2) Every one who, being a merchant or dealer in goods, by himself or his employee or agent, directly or indirectly gives or in any way disposes of, or offers to give or in any way dispose of, trading stamps to a person who purchases goods from him is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 369.
The Hippocratic Oath

I swear by Apollo the healer, invoking all the gods and goddesses to be my witnesses, that I will fulfill this Oath and this written Covenant to the best of my ability and judgment.

I will look upon him who shall have taught me this Art even as one of my own parents. I will share my substance with him, and I will supply his necessities, if he be in need. I will regard his offspring even as my own brethren. and I will teach them this Art, if they would learn it, without fees or covenant. I will impart this Art by precept, by lecture and by every mode of teaching, not only to my own sons but to the sons of him who taught me, and to disciples bound by covenant and oath, according to the Law of Medicine.

The regimen I adopt shall be for the benefit of the patients according to my ability and judgment, and not for their hurt or for any wrong. I will give no deadly drug to any, though it be asked of me, nor will I counsel such, and especially I will not aid a woman to procure abortion. Whatever house I enter, there will I go for the benefit of the sick, refraining from all wrongdoing or corruption, and especially from any act of seduction, of male or female, of bond or free. Whatever things I see or hear concerning the life of men, in my attendance on the sick or even apart therefrom which ought not to be noised abroad, I will keep silence thereon, counting such things to be as sacred secrets. Pure and holy will I keep my Life and my Art.

If I fulfill this Oath and confound it not, be it mine to enjoy Life and Art alike, with good repute among all men at all times. If I transgress and violate my oath, may the reverse be my lot.

The Geneva Convention Code of Medical Ethics

Adopted by the World Medical Association in 1949

I solemnly pledge myself to consecrate my life to the service of humanity;

I will give to my teachers the respect and gratitude which is their due;

I will practice my profession with conscience and dignity;

The health of my patient will be my first consideration;

I will respect the secrets which are confided in me;

I will maintain by all the means in my power, the honour and the noble traditions of the medical profession;

My colleagues will be my brothers;

I will not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient;

I will maintain the utmost respect for human life from the time of conception; even under threat, I will not use my medical knowledge contrary to the laws of humanity;

I make these promises solemnly, freely and upon my honour.
Political Partisanship

32. (1) No deputy head and, except as authorized under this section, no employee, shall

(a) engage in work for, on behalf of or against a candidate for election as a member of the House of Commons, a member of the legislature of a province or a member of the Council of the Yukon Territory or the Northwest Territories, or engage in work for, on behalf of or against a political party; or

(b) be a candidate for election as a member described in paragraph (a).

(2) A person does not contravene subsection (1) by reason only of his attending a political meeting or contributing money for the funds of a candidate for election as a member described in paragraph (1)(a) or money for the funds of a political party.

(3) Notwithstanding any other Act, upon application made to the Commission by an employee the Commission may, if it is of the opinion that the usefulness to the Public Service of the employee in the position he then occupies would not be impaired by reason of his having been a candidate for election as a member described in paragraph (1)(a), grant to the employee leave of absence without pay to seek nomination as a candidate and to be a candidate for election as such a member, for a period ending on the day on which the results of the election are officially declared or on such earlier day as may be requested by the employee if he has ceased to be a candidate.

(4) Forthwith upon granting any leave of absence under subsection (3), the Commission shall cause notice of its action to be published in the Canada Gazette.

(5) An employee who is declared elected as a member described in paragraph (1)(a) thereupon ceases to be an employee.

(6) Where any allegation is made to the Commission by a person who is or has been a candidate for election as a member described in paragraph (1)(a), that a deputy head or employee has contravened subsection (1), the allegation shall be referred to a board established by the Commission to conduct an inquiry at which the person making the allegation and the deputy head or employee concerned, or their representatives, are given an opportunity of being heard, and upon being notified of the board’s decision on the inquiry the Commission,

(a) in the case of a deputy head, shall report the decision to the Governor in Council who may, if the board has decided that the deputy head has contravened subsection (1), dismiss him; and

(b) in the case of an employee, may, if the board has decided that the employee has contravened subsection (1), dismiss the employee.

(7) In the application of subsection (6) to any person, the expression “deputy head” does not include a person for whose removal from office, otherwise than by the termination of his appointment at pleasure, express provision is made by this or any other Act. 1956-67, c. 71, s. 32.
APPENDIX N

Sec. 38 (4) MUNICIPAL ACT Chap. 302

DISQUALIFICATION

Sec. 38.—(1) The following are not eligible to be elected a member of a council or to hold office as a member of a council:

1. Except during a leave of absence granted under subsection (4), an employee of the municipality or of a local board thereof as defined in the Municipal Affairs Act, except an employee of a school board, and a commissioner, superintendent or overseer of any work, whose appointment is authorized under section 252.

2. A judge of any court.

3. A member of the Assembly as provided in the Legislative Assembly Act or of the Senate or House of Commons of Canada.

4. A Crown employee within the meaning of the Public Service Act who is a deputy minister or who is in a position or classification designated in the regulations made under that Act for the purposes of section 11 thereof.

5. A person who is an undischarged bankrupt or insolvent within the meaning of any bankruptcy or insolvency Act in force in Ontario.

(2) In addition to the persons that are not eligible to be elected a member of a council or to hold office as a member of a council under paragraph 1 of subsection (1), and except during a leave of absence granted under subsection (4), an employee of a metropolitan, regional or district municipality or of any area municipality within that metropolitan, regional or district municipality is not eligible to be elected a member of the council of any area municipality within that metropolitan, regional or district municipality or to be elected a member of the council of that metropolitan, regional or district municipality or to hold office as a member of any such council.

(3) For the purposes of subsection (2), a county that has been restructured to provide that it is composed of area municipalities shall be deemed to be a regional municipality.

(4) Any employee of a municipality or a local board thereof other than a school board and other than a commissioner, superintendent or overseer of any work whose appointment is authorized under section 252 who proposes to be a candidate to hold office as a member of the council of that municipality or the council of a municipality in the circumstances to which subsection (2) applies shall apply to the council of the municipality or to the local board, as the case may be, of which he is an employee for leave of absence without pay for a period.
(4) not longer than that commencing thirty days before the beginning of the period during which candidates may be nominated under the Municipal Elections Act and ending on polling day; and

(5) not shorter than that commencing on the last day of the period during which candidates may be nominated under the Municipal Elections Act and ending on polling day,

and every such application shall be granted.

(5) Where an employee of a municipality or a local board thereof other than a school board and other than a commissioner, superintendent or overseer of any work whose appointment is authorized under section 252 who is a candidate for office as a member of the council of that municipality or the council of a municipality in the circumstances to which subsection (2) applies under a leave of absence granted under subsection (4) is elected he shall forthwith resign his position as such employee.

(6) Where an employee of a municipality or of a local board has been granted leave of absence under subsection (4) and was not elected, the period of leave of absence shall not be computed in determining the length of his service for any purpose, and the service before and after such period shall be deemed to be continuous for all purposes.

(7) A person is not ineligible to be elected or to hold office as a member of council only by reason of being a volunteer fire fighter as defined in the Fire Departments Act and subsections (4), (5) and (6) do not apply to a person who is a volunteer fire fighter but who is not otherwise employed by the municipality or a local board thereof. R.S.O. 1980, c. 302, s. 55.

Chap. 302 MUNICIPAL Sec. 55

(3) The council of a municipality may cause to be published in a newspaper having general circulation in the municipality or to be mailed or delivered to each ratepayer in the municipality such information concerning the activities of the municipality as, in the opinion of the council, would be of interest to the ratepayers. R.S.O. 1980, c. 302, s. 55.

MUNICIPAL

[Section 412]

DECLARATION OF APPOINTED OFFICE

I,........................................

do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of [insert name of office, or offices in the case of a person who has been appointed to two or more offices that he may lawfully hold at the same time], that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office to which I have been appointed in this municipality, that I have not received and will not receive any payment or reward, or promise thereof, for the exercise of any partiality or malversation or other undue execution of such office (or offices), and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the corporation except that arising out of my office as clerk (or my office as treasurer, collector, etc., as the case may be),
APPENDIX D

CIVIL SERVICE ACT 1961

Political Partisanship

61. (1) No deputy head or employee shall

   (a) engage in partisan work in connection with any
election for the election of a member of the House
of Commons, a member of the legislature of a
province or a member of the Council of the Yukon
Territory or the Northwest Territories; or

   (b) contribute, receive or in any way deal with any
money for the funds of any political party.

   (2) Every person who violates subsection (1) is liable to be
   dismissed.

   (3) No person shall be dismissed for a violation of
   subsection (1) unless the alleged violator has been
given an opportunity of being heard, personally or
through his representative.
(1-a) The restrictions on critical comment should apply to critical comment in the literal sense of the words, importing either approbation or reprobation;

1-b) The restrictions on critical comment by Crown employees should apply only to comment that is public in the sense that, whether oral or written, it is disseminated in such a way as to make it clear that the views expressed are those of the speaker in circumstances where the speaker is known to be a Crown employee. Therefore, private or anonymous expressions of opinion should not be restricted; it is only where the expressions of opinion have a direct and public impact on the speaker's employment in the service of the Crown that the restrictions should become operative;

(2) A Crown employee in the restricted category should not engage in critical comment on government policy or government action that identifies the Crown employee or the comment with a political party;

(3) A Crown employee should not engage in critical comment on government policy or government action where such a comment creates a direct conflict with the interests of the Crown in connection with the performance of the employee's duties;

(4) A Crown employee whose duties include adjudicative, allocative or evaluative decision-making should not engage in critical comment on government policy or government action where such comment creates a reasonable apprehension of bias in the performance of the employee's duties in relation to such decision-making;

(5) A Crown employee should not engage in critical comment on government policy or government action, or express such critical comment in such a way, so as to create a reasonable apprehension that working relationships within the public service involving the employee, or the employee's ability to perform his duties effectively, will be significantly impaired;

(6) A Crown employee should not engage in critical comment on government policy or government action that involves the employee’s own ministry or agency, except where the policy or action directly affects the employee in his or her personal capacity.

(7) The restrictions on critical comment should apply only to critical comment by Crown employees in their private capacities, and not to employees carrying out their duties as Crown employees;

(8) The restrictions on critical comment should be subject to an express exception for the participation by Crown employees in the lawful activities of a bargaining agent or employee association;

(9) The procedural approach for the restrictions on critical comment should be the same as those for the restrictions on political activity;

(10-1) Crown employees should be able to seek advice, in confidence, from the Special Counsel in relation to any proposed exercise of critical comment about which the employee is unsure;

(10-2) At the employee’s option in respect of subsequent disciplinary action, the Special Counsel’s advice should be admissible as a fact before the tribunal, as evidence that the employee acted in good faith, to be considered by the tribunal to whatever extent it is found to be relevant to the proceeding before it.
1. Lawyers in their public appearances and public statements should conduct themselves in the same manner as with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in his professional capacity. The mere fact that his appearance is outside of a courtroom, a tribunal, or his office does not excuse conduct that would otherwise be considered improper.

2. A lawyer's duty to his client demands that in contemplating a public appearance by him concerning his client's affairs, he must first be satisfied that any communication by him is in the best interests of the client and within the scope of his retainer. His duty to his client requires that he be qualified to represent effectively his client before the public and he must not permit any personal interest or other cause to conflict with that of the client.

3. The lawyer should, when acting as an advocate, refrain from expressing his own personal opinions as to the merits of his client's case.

4. The lawyer should, where possible, encourage public respect for and try to improve the administration of justice. In particular, the lawyer should treat his fellow practitioners, the courts, and tribunals with respect, integrity, and courtesy. Lawyers are subject to a separate and higher standard of conduct than that which might incur the sanction of the court.

5. Public communications should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that the lawyer's real purpose is self-promotion or self-aggrandizement.

Commentary

1. The media has recently shown greater interest in legal matters, which is reflected in more comprehensive coverage of the passage of legislation at the national and provincial levels and of those cases before the courts affecting the social, economic, and political life of society. This interest
has been heightened by the enactment of the Charter of Rights and Freedoms. Media reporters have accordingly sought out the views, not only of lawyers directly involved in particular Court proceedings, but also of lawyers who represent special interest groups or have recognized expertise in the field in order to obtain information and provide commentary.

Where the lawyer, by reason of his professional involvement or otherwise, is able to assist the media in conveying accurate information to the public, it is proper that the lawyer do so, so long as there is no infringement of his obligations to his client, the profession, the Courts or the administration of justice.

2. The lawyer is often involved in a non-legal setting where contact is made with the media with respect to publicizing such things as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations, or in acting as a spokesman for organizations which, in turn, represent particular racial, religious or other special interest groups. This is a well-established and completely proper role for the lawyer to play, in view of the obvious contribution it makes to the community.

3. The lawyer is often called upon to comment publicly on the effectiveness of existing statutory or legal remedies, on the effect of particular legislation or decided cases, or to offer his opinion with respect to cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

4. The lawyer is often involved as advocate for special interest groups whose objective it is to bring about changes in legislation, governmental policy, or even a heightened public awareness about certain issues. This is also an important role that the lawyer can be called upon to play.

5. Given the variety of cases that can arise in the legal system, particularly so far as civil, criminal, and administrative proceedings are concerned, it is simply impossible to set down guidelines which would anticipate every possible circumstance. There are going to be
circumstances where the lawyer should have no contact with the media and other cases where he is under a specific duty to contact the media to serve properly his client - the latter situation arising more often in the context of administrative boards and tribunals where a given tribunal is an instrument of government policy and hence is susceptible to public opinion.

6. Lawyers should be conscious of the fact that when a public appearance is made or a statement is given the lawyer will ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used, or under what headline it may appear.

April 26th 1985
RULE 9

The lawyer who holds public office should, in the discharge of his official duties, adhere to standards of conduct as high as those which these Rules require of a lawyer in the practice of law.¹

Commentary

1. The Rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government regardless of whether or not he attained such office because of his professional qualifications.² He must bear in mind that he is in the public eye and therefore the legal profession can more readily be brought into disrepute by failure on his part to observe its ethical standards of conduct.

2. The lawyer who holds public office must not allow his personal or other interests to conflict with the proper discharge of his official duties. If he holds a part-time public office, he must not accept any private legal business in which his duty to his client will, or may conflict with his official duties, and if some unforeseen conflict arises, he should terminate the professional relationship, explaining to his client that his official duties must prevail. The lawyer who holds a full-time public office will not be faced with this sort of conflict, but he must nevertheless guard against allowing his independent judgment in the discharge of his official duties to be influenced by his own interest, that of some person closely related to or associated with him, that of his former or prospective clients, or that of his former or prospective partners or associates.³

3. Subject to any special rules applicable to the particular public office, the lawyer holding such office should, when he sees that there is a possibility of a conflict of interest, disqualify himself by declaring his interest at the earliest opportunity, and he should not take part in any consideration or discussion of or vote with respect to the matter in question.⁴

4. When the lawyer or any of his partners or associates is a member of an official body such as, for example, a school board or municipal council, he should not appear professionally before that body. However, subject to the rules of the official body it would not be improper for his partner or associate to appear professionally before a committee of such body if such partner or associate is not a member of that committee, provided that in respect to matters in which his partner or associate appears, the lawyer does not sit on the committee and takes no part in the discussion of such committee's recommendations nor votes upon them.⁵
5. The lawyer should not represent clients or advise them in contentious cases with respect to which he has been concerned in an official capacity if there may be a conflict of interest. 

6. After leaving public employment the lawyer should not act in connection with any particular matter in which he had substantial responsibility prior to his leaving. However, it would not be improper for the lawyer to act professionally in such a matter on behalf of the particular public body or authority which he served during his public employment.

7. By way of corollary to Rule 4, confidential information acquired by the lawyer by virtue of his holding public office should be kept confidential and should not be divulged nor used by him merely because he has ceased to hold such office.

8. Generally speaking, the Society will not be concerned with the execution of the official responsibilities of a lawyer holding public office, but if his conduct in office reflects adversely upon his integrity or his professional competence, he may be subject to disciplinary action.
4. (1) Every person is guilty of an offence under this Act who, having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document or information that relates to or is used in a prohibited place or anything in such a place, or that has been made or obtained in contravention of this Act, or that has been entrusted in confidence to him by any person holding office under Her Majesty, or that he has obtained or to which he has had access while subject to the Code of Service Discipline within the meaning of the National Defence Act or owing to his position as a person who holds or has held office under Her Majesty, or as a person who holds or has held a contract made on behalf of Her Majesty, or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract,

(a) communicates the code word, pass word, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate with, or a person to whom it is in the interest of the State his duty to communicate it;

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State;

(c) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code word or pass word or information.

(2) Every person is guilty of an offence under this Act who, having in his possession or control any sketch, plan, model, article, note, document or information that relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State.

(3) Every person who receives any secret official code word, or pass word, or sketch, plan, model, article, note, document or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document or information is communicated to him in contravention of this Act, is guilty of an offence under this Act, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document or information was contrary to his desire.

(4) Every person is guilty of an offence under this Act who

(a) retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government department or any person authorized by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable. R.S., c. 198, s. 4.
Sometimes the need to safeguard secrets is more than just a matter of upholding a customer's right to privacy.

Bell employees have in their possession a lot of confidential information about the company's business and its plans for the future. Many employees also have access to information that has a government security classification.

In these days of rapid technological change and growing competition, it is very important for all employees to know what information is confidential and needs to be protected.

The basic rule is that no information which is not clearly in the public domain should be released without authorization. In particular, there are two kinds of information which should only be released in accordance with authorized Bell practices: company proprietary information, which includes anything the company does not wish to disclose, such as the details of Bell innovations that would have a competitive market value, and government classified information.

Employees who deal in design or development work, planning and selling of telecommunication products and services could have information of particular value and sensitivity in the competitive environment. They are required to sign an agreement to protect Bell Canada proprietary information.

As a result of its role as a provider of access to the public telephone network, the company has available to it certain customer-related information. This information should be strictly controlled and no employee should use such information in any manner so as to give the company or its subsidiaries a preferential advantage.

Proprietary information may be marked with a classification such as "Bell Canada Private" or "Bell Canada Restricted". Or it may simply be information that could have a value to unauthorized persons. Either way, it should not be released without proper authority.

Proprietary information should be protected even after one's employment is terminated. All documents and records belonging to Bell should be turned in when an employee leaves the company.

Government classified information covers subjects, documents and equipment which have been assigned a government security classification.

Bell employees who have access to government classified information have to have a valid security clearance granted by the government. Anyone in this position should be aware that the Official Secrets Act provides stiff penalties for failure to safeguard government classified information, whether carelessly or willfully.

Items likely to attract the interest of industrial or military spies or saboteurs include such things as security procedures, design processes, circuit layouts, business plans, emergency rerouting and restoration routines, data stored or being transmitted or any classified defence information.

Employees should not discuss proprietary or classified information (the company's or the government's) with or in the hearing of anyone not entitled to have such information. Any attempt by unauthorized persons to obtain classified information or to enter restricted company premises should be promptly reported to your supervisor or as per instructions in the General Circulars.
RULE 4

The lawyer has a duty to hold in strict confidence all information acquired in the course of the professional relationship concerning the business and affairs of his client, and he should not divulge any such information unless he is expressly or impliedly authorized by his client or required by law to do so.1

Commentary

1. The lawyer cannot render effective professional service unless there is full and unreserved communication between him and his client. At the same time the client must feel completely secure and he is entitled to proceed on the basis that without any express request or stipulation on his part matters disclosed to or discussed with his lawyer will be held secret and confidential.2

2. This ethical rule must be distinguished from the evidentiary rule of lawyer and client privilege with respect to oral or documentary communications passing between the client and his lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.3

3. As a general rule, the lawyer should not disclose that a particular person has consulted or retained him about a particular matter unless the nature of the matter requires it.

4. The lawyer owes the duty of secrecy to every client without exception, regardless of whether he is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client whether or not differences may have arisen between them.4

5. The fiduciary relationship between the lawyer and his client forbids that the lawyer use any confidential information covered by the ethical rule for the benefit of himself or a third person or to the disadvantage of his client. Should the lawyer engage in literary works such as his autobiography, memoirs and the like he should avoid disclosure of confidential information.5

6. The lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another and he should decline employment which might require him to do so.6
Rules of Professional Conduct

Rule 4

7. The lawyer should avoid indiscreet conversations, even with his spouse or family, about a client or his affairs and he should shun any gossip about such things even though the client is not named or otherwise identified. Likewise the lawyer should not repeat any gossip or information about his client’s business or affairs that he overhears or that is recounted to him. Apart altogether from ethical considerations or questions of good taste, indiscreet shop-talk between lawyers, if overheard by third parties able to identify the matter being discussed, can result in prejudice to the client. Moreover the respect of the listener for the lawyers and the legal profession will probably be lessened.7

8. The rule may not apply to facts which are public knowledge but nevertheless the lawyer should guard against participating in or commenting upon speculation concerning his client’s affairs or business.

9. Confidential information may be divulged with the express authority of the client or clients concerned, and, in some situations, the authority of the client to divulge may be implied. For example, some disclosure may be necessary in a pleading or other document delivered in litigation being conducted for the client. Again the lawyer may (unless the client otherwise directs) disclose the client’s affairs to partners or associates in his firm and, to the extent necessary, to his non-legal staff such as secretaries and filing clerks. But this implied authority to disclose places the lawyer under a duty to impress upon his employees, students and associates the importance of non-disclosure (both during their employment and thereafter) and requires him to take reasonable care to prevent their disclosing or using any information which he himself is bound to keep in confidence.8

10. Disclosure by the lawyer may also be justified in order to defend himself or his associates or employees against any allegation of malpractice or misconduct, or in legal proceedings to establish or collect his fee, but only to the extent necessary for such purposes.9

11. Disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed.10

12. When disclosure is required by law or by order of a court of competent jurisdiction, the lawyer should always be careful not to divulge more information than is required of him.11
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