

Applying the Ethics Principles in the *Public Sector Ethics Act 1994* to the Hearing of Appeals under the *Public Service Act 1996*

A paper presented by the
Honourable Alan Demack AO, Queensland Integrity Commissioner,
to Appeals Tribunal Delegates of the
Office of Public Service Merit and Equity (OPSME),
Wednesday 2 April 2003.

Part 7 of the *Public Service Act 1996* allows specified officers to appeal against specified decisions which affect them. It is not the purpose of this paper to discuss the matters in respect of which an appeal may be instituted. The purpose is to apply the provisions of the *Public Sector Ethics Act 1994* to the conduct of tribunal members who hear appeals.

Part 7 speaks of appeals being made to the Public Service Commissioner and s.33(k) recognises that hearing and deciding appeals under the Act is one of the Commissioner's functions. The Commissioner can delegate the Commissioner's powers under Part 7 to any person (s.40(1)). This is the normal practice as it would be impossible for the Commissioner to allocate time for the hearing of appeals.

Section 40(1) does not require the Commissioner to delegate the Commissioner's powers under Part 7 only to public service employees. So, in theory, a person who is not a public official within the meaning of the *Public Sector Ethics Act 1994*, could be appointed a delegate to hear appeals. That does not seem likely to happen, so that it is reasonable to assume that all delegates will be public officials.

It is therefore appropriate to examine the ethics principles in the *Public Sector Ethics Act 1994* in the light of the work tribunal members will perform. All of these members will have other roles in the public sector and, in performing that work, they will be bound by the appropriate code of conduct. The analysis I will undertake concentrates upon one specific part of their work.

It must be emphasised that the role of a tribunal member exercising the powers under Part 7 of the *Public Service Act 1996* is a particularly sensitive one. Most tribunals and courts deal with people who do not have an ongoing relationship. There are exceptions in the area of family law and industrial law. Appeals under Part 7 will involve people who usually will continue to work in the public service. The way in which appeals are handled can have a significant effect upon the workplace productivity and the efficiency of the people involved in the appeal.

Respect for the law and the system of government

Under this core value of the public sector the following obligations arise for tribunal members –

1. Following the provisions of Part 7 of the *Public Service Act 1996* and any directives of the Public Service Commissioner relevant to the hearing of appeals;
2. Adhering to the legislation, codes of conduct and directives which apply to the issues on appeal;
3. Beginning each hearing with a mind open to be persuaded either way by the material and arguments presented;
4. Allowing each party to present the evidence which is permitted under Part 7, and to answer any material or argument presented by the other party/parties;
5. Making the parties aware of any additional evidence available to the Tribunal which may influence the decision;
6. Preparing and delivering reasons which provide a rational basis for the decision.

These six concepts spell out what is involved in “the principles of natural justice” (s.100(a) of Public Service Act 1996). Consequently it is appropriate to think of them as being expressed in the ethics principle “respect for the law and the system of government”.

Respect for Persons

At the hearing of an appeal the tribunal member should be patient and courteous towards the parties, and behave in a way which upholds the dignity of the tribunal. In some instances this will not be difficult but dignified patience and courtesy has to extend to –

1. Parties with language difficulties. Behind the language barrier there may also be cultural attitudes and perceptions quite different from those of the tribunal member;
2. Timid parties;
3. Parties with physical and/or mental disabilities;
4. Parties who are unfamiliar with the tribunal's procedures;
5. Parties who are overfamiliar with the tribunal's procedures;
6. Parties whose cultural perceptions about tribunals are different from the way the tribunal actually functions;
7. Parties who want to use the tribunal as part of the hostilities being waged within an agency.

The way in which a tribunal member deals with these issues will have a significant bearing on the subsequent interaction of the parties in the work place.

Integrity

For the tribunal member this ethics principle will be expressed by -

1. A commitment to intellectual honesty, both in deciding what issues have been proved and in applying the law to those issues;
2. An acceptance of the obligation to reach a decision, the fundamental duty of a decision maker;
3. Refusing any gifts or favours which would raise the appearance of a conflict of interest in the mind of a reasonable person;

4. Disclosing to the parties any personal interest which the parties may think suggests partiality.

The fourth of these points can raise a significant issue. While the name of the appellant will be known when the hearing is listed before a particular tribunal member, the name of the person representing the agency may not be known to the tribunal member until the last minute. If the member knows this agency representative, this should be disclosed to all parties. If a party objects to the appeal proceeding, every reasonable effort should be made either to use a different tribunal member or a different agency representative. If this cannot be done with economy and efficiency, the nature of the relationship between the tribunal member and the representative needs to be considered. If the relationship is such that a reasonable person could conclude that it is likely to influence the outcome of the appeal, then the hearing must be adjourned to allow for the matter to be relisted before a different tribunal member.

Diligence

This core value involves a commitment to the completion of the hearing with a proper attention to detail. It is necessary to include “proper” because it is possible to lose sight of the real issue in an appeal if side issues are allowed to dominate. On the other hand, if the appeal should be thought to be “run of the mill”, the temptation is to cut corners.

It is most important that, at the end of the proceedings, the parties can see in the reasons for the decision that their evidence and arguments have been fairly considered.

Economy and Efficiency

These core values provide a reality check on proceedings. Both time and resources are limited and have to be used effectively. The careful balancing

which is required here is well described in the words of the *Public Service Act 1996* –

“The Commissioner (delegate) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues” (c.100(b)).

The words “fair” and “proper” call for a balancing of conflicting interests. Between those conflicting interests, the tribunal member must find an answer which reflects also the other four ethics principles. In doing this the member will not lose sight of the fact that both the successful and the unsuccessful party will be likely to continue in a working relationship.

This may sound a daunting task, but this ethics principle illuminates the tribunal’s pathway very efficiently, and there is no need to stray or to become lost. Confidence in the process and a commitment to doing one’s best can provide the fair and proper outcome.