

Respect for the law and the system of government as an ethics principle.

A paper read by the
Honourable Alan Demack AO, Queensland Integrity Commissioner,
at the meeting of the
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At the November 2002 meeting of the Queensland Public Sector Ethics Network (QPSEN), Howard Whitton, who was involved with the drafting of the *Public Sector Ethics Act 1994*, spoke of his initial reluctance to use legislation to encourage ethical behaviour. This is a natural reaction because good ethical behaviour goes beyond compliance with laws. Also, if law and ethics are too closely identified there is a tendency to assume that compliance with law is enough to satisfy all ethical demands.

We use the word “ethics” to embrace four different, but closely related, concepts: -

- ? the core values we express in our behaviour,
- ? the study of the effect of those core values on human existence,
- ? the obligations and expectations these values create, and
- ? the application of all these three concepts in our decision making.

Once this is realised it is obvious that law and ethics are closely related because both influence the decisions we make day by day. Both law and ethics provide standards of behaviour for us.

Having been a judge for twenty-eight years, one of my main interests is in decision making. Our decisions involve the recognition of facts, and the application of standards of behaviour to those facts. We make many decisions every day, and a significant percentage of those decisions affect our relationship with other people. Sometimes we can make decisions with no thought for others. If the facts change, our standards of behaviour may demand that we give considerable weight to the effect of the decision on others.

Suppose I desire a cup of tea. If the tea caddy is full of tea bags, and there is plenty of water in the urn, I may make my cup of tea without a thought for others. If the caddy

has but one tea bag and the urn is down to the last cup, our standards of behaviour urge me to find out if anyone else present would like the last cup.

Sometimes the same set of facts keeps recurring. If the standards of behaviour are constant, then the decisions concerning those same facts will be the same and will harden into a custom which most people observe. If it becomes desirable that all people make the same decision, a law to that effect will be made. Let us try to imagine the first time two vehicles, being driven on the left hand side of the carriage way, approach a right angled intersection at approximately the same speed, one from the north, the other from the west. There is a likelihood of collision. One must slow down or stop. The driver travelling from the north can see the vehicle on his right more easily than he can be seen by the other driver. To avoid a collision he gives way. As traffic increases, this decision becomes a custom, and then a law.

This helps to identify the purpose of law. Within the traditions that have shaped our community, three concepts are central to the purpose of law:

- ? providing some certainty to the relationships which exist in a community, whether between individuals, or between Government and individuals, or with commercial entities
- ? providing restraints upon behaviour which is damaging to relationships in the community
- ? educating people in their community obligations.

If these three concepts are analysed, it will be seen that our ethics, that is, our core ethical values, provide both the foundation for law, and also the vision which allows the application of law to produce justice.

Take, for example, the following set of core values – honesty, fairness, responsibility, respect and compassion - a set identified in the *Commentary in Ethics Newslines*, August 19, 2002¹.

Assume that you have agreed to sell your car to a friend for \$10,000. The friend has arranged finance and comes to you with a bank cheque for \$10,000, expecting to receive the car. You say, “I know I agreed to sell my car to you for \$10,000, but Joe Dealer has offered me \$12,000 and I am going to sell to him.” Your decision will cost you a friend. It is clearly neither honest nor fair, and denies your responsibility to complete the bargain which you have made. In other words, it is unethical conduct. The bargain is also a contract, and the law of contract requires you to keep your bargain. Our laws relating to the sale of goods provide some certainty to the commercial relationships that exist between people, and between people and trading entities, because we buy and sell things.

Suppose that, instead of speaking of a better deal, you take the cheque, saying you want to cash it before you hand over the car. You then cash the cheque, but keep the car. You can expect to be charged with stealing. Your conduct has gone beyond merely breaking a contract. It is clearly dishonest and so is unethical. It also merits punishment, because theft is one of the activities which damages relationships within a community.

There is, hopefully, the possibility that when you tell your friend of your better deal, the friend will tell you that she understands that the law will hold you to your bargain. You may then realise that what you have been contemplating is ethically indefensible. You admit your error, complete the bargain, retain your friendship and wake next morning a happier and wiser person. The law of contract has taught you, or perhaps reminded you, of the need to act ethically.

¹ Ethics Newslines Commentary Business Ethics: Should We Give It Up? by Rushworth M. Kidder August 19, 2002 Volume 5 Number 33
[://www.globalethics.org/newsline/members/pastissue.tpl?id=08190214462794&issueid=8/19/2002](http://www.globalethics.org/newsline/members/pastissue.tpl?id=08190214462794&issueid=8/19/2002)

These three little stories, well removed from public sector ethics, illustrate that, within the threefold purpose of law, ethics has an essential place.

Ethics provides standards of behaviour that influence our relationship with others, so that laws which provide some certainty to the relationships which exist in the community will be based on the ethics which the community, by and large, accepts. Similarly, laws which restrain behaviour which is damaging to relationships in the community will be shaped by the ethics which the community, by and large, accepts. Such laws will be part of the process of community education which sustains a common set of ethical values.

Yet it requires only one other addition to the story to show how good ethical behaviour goes beyond what the law requires. You know that your friend has had to struggle very hard to raise the \$10,000, so that, as a mark of compassion, you go beyond anything agreed about the condition of the vehicle, and have it serviced and the tank filled with petrol. Compassion, or mercy, or altruism have a significant place in a healthy community, but these values are difficult to embody in law.

May we leave your attempts to sell your car and turn to the *Public Sector Ethics Act 1994*? That Act identifies five ethics principles. It then expands those ethics principles so that the ethics obligations that arise from them are made clear. It then requires public sector entities to produce codes of conduct which express both these ethics obligations and the performance obligations that flow from them. This three step process, ethics principles which expand into ethics obligations which give rise to performance obligations, is the foundation for decision making in the public sector.

You will have noticed that these three steps coincide with the first three concepts in the word “ethics”. The ethics principles are the core values which are expressed in the behaviour of public officials. The ethics obligations express the effect of these core values upon public administration. The performance obligations are the obligations and expectations the core values create.

It has seemed to me for some time that there is a need to look at the first ethics principle in the Act – respect for the law and the system of government. How can this be an ethics principle? Ethics principles are generally concerned with our attitudes of heart and mind which determine how we behave towards people, and, more recently, toward the environment. These are the standards of behaviour which shape the decisions we make. I have demonstrated in a limited way that our laws are based on ethical values, but is it not those values that are our ethical principles, rather than the laws themselves?

Two things need to be kept in mind. First, the ethics principles are declared by the *Act* to be fundamental to good public administration (s.4(1)). Second, it is respect for the law and the system of government which is the ethics principle. The law has not been turned into an ethics principle.

It is convenient to look first at what is involved in “the law and the system of government”. The system of government in Queensland is now a little more clearly defined since the *Constitution of Queensland 2001* came into operation on 6 June 2002. The Parliament of Queensland consists of the Legislative Assembly which has the law-making power in Queensland. The public business of Queensland is distributed among the Premier and Ministers who constitute the Cabinet. There is also a court system and local government. These three arms of government, the legislative, the executive and the judicial, together with local government, constitute our system of government.

The public business of Queensland is distributed among the Premier and Ministers by the Governor in Council. This is done by publishing administrative arrangements which declare which administrative units are to be administered by each Minister, and which Acts are to be administered by each Minister. In this way, all of the laws passed by Parliament are administered by Departments which are also established by the Governor in Council.

Laws are made by Parliament and local government. They are administered by public officials and enforced by the courts. It is this combination of institutions and laws to which respect is due.

It would be unrealistic to ignore the fact that across the community there is widespread disrespect for some aspects of these institutions and laws. However, people working in the public sector are a part of the system of government and intimately involved with both the institutions and the laws, so that respect correctly identifies the appropriate attitude of mind. Part of any difficulty we may feel arises from the fact that the word “respect” has shades of meaning. For example, when we show respect for our elders, we show them deference. When we respect the traffic regulations we heed them, or have regard to them. It is in this latter sense that public officials are required to respect the law and the system of government.

Also, it is the law and the system of government which is to be respected, that is heeded or regarded. This is not the same as showing respect or deference to law makers or lawyers. Many people express some disdain for law and lawyers because they appear to represent a restriction on our freedom of thought and action. Once the purpose of law is properly understood this disdain may be diluted.

Why should respect for the law and the system of government be an ethics principle for public officials? Public officials are an integral part of the system of government. I have been using the phrase “public official” which is taken from the *Public Sector Ethics Act* 1994. In that Act it means an officer or employee of a “public sector entity” which is defined to include a department and a commission, authority, office, corporation or instrumentality established under an Act or under State or local government authorisation for a public, State or local government purpose. It is through these public sector entities that the business of the State is carried out. The employees of such entities are carrying out the business of the State. In so doing, they apply the law that relates to their task. Respect for the law and the system of government is fundamental to their work.

This then brings us back to the first point we noted – that the ethics principles are declared to be fundamental to good public administration. The word ‘fundamental’ is important. The *Public Sector Ethics Act 1994* does not describe the ethics principles as aspirational. Rather it describes them as foundations upon which good public administration is built.

Once this is realised, heeding the law and respecting the system of government is seen in its proper context. Indeed, equating respecting with heeding seems inadequate, and we are thankful that the ethics obligations which describe the ethics principle, respect for the law and the system of government, say that a public official should uphold the laws of the State and Commonwealth. “Uphold the laws”, now that imposes a serious obligation on public officials. A public official may think that it is enough to uphold whatever laws apply to the tasks that arise in the course of employment.

Suppose that a cashier at an office of Queensland Transport finds one Monday morning that the first customer for renewal of vehicle registration and third party insurance is a friend. The friend explains that he wanted to be the first customer that morning because the registration and third party insurance had expired on Friday and he hoped the receipt could be back dated to that day. The cashier explains that it is not possible because the computer program issues receipts for the day on which payment is received. The customer is disappointed, and explains that on Saturday he had driven through a stop sign and knocked down a cyclist. He hoped to make his third party insurance policy current at the time of the accident. The cashier’s unhelpful attitude draws the comment, “Well you’re a hypocrite because I saw you drive through a stop sign earlier in the week!” The cashier realises that people whose job requires them to uphold the law, need to uphold all the laws which apply to them.

But what is to be done if laws appear to conflict? This issue is raised in some of the codes of conduct as if it involves an ethical issue. It does not. It is a legal issue which can be resolved by the application of well established rules, many of which are stated in the *Acts Interpretation Act 1954*. If you have a concern about an apparent conflict between laws, it is best to obtain legal advice. However, some familiarity with the *Acts Interpretation Act 1954* will provide mind calming information.

For example, it is now common for legislation to include examples of how a particular section in an Act is to be applied. What happens if it appears that the example contradicts some part of the section it is supposed to illustrate? First, “an example in an Act of the operation of a provision of the Act is part of the Act” (s.14(3) of the *Acts Interpretation Act 1954*). However, “the example and the provision are to be read in the context of each other and the other provisions of the Act, but, if the example and the provision so read are inconsistent, the provision prevails” (s.14D(c)). This emphasises that the provision in the Act is dominant, and the example merely an aid in interpreting the Act.

Suppose you have not been familiar with the *Act Interpretation Act 1954*, and this paper stirs a thirst for knowledge, what happens if you find a definition of a word in that Act which is inconsistent with the definition of the same word in the legislation under which you habitually work? In such a case, the definition in the *Acts Interpretation Act 1954* is displaced (s.32AB). You continue to use the definition in the Act with which you are familiar. I have abbreviated the steps set out in s.32AB, so, if this situation arises, that section should be followed in detail.

Inconsistencies between laws is something which the drafters of legislation and the courts have dealt with for centuries, and every conceivable issue has been made the subject of a rule that resolves the conflict. The application of these rules may involve difficult intellectual issues and, on occasion, equally informed minds may disagree. However, this does not present an ethical issue.

If, however, a law requires a public official to perform a duty which is inconsistent with that official’s ethical principles, a very different situation arises. For example, if Parliament passed a law to the effect that any person over a certain age and suffering from a terminal illness may receive a lethal dose of an approved drug at a general hospital, one would expect that some medical personnel would have strong ethical objections to being involved in the implementation of such a law. One would expect that, if such legislation were passed, it would permit medical personnel with conscientious objections to such a procedure to be able to refuse to perform the

procedure without prejudice to their employment. If that were not the case, the individual would need to raise the issue with supervisors. Ordinarily a public official's deeply held ethical beliefs must be respected under the ethics principle, respect for persons.

By far the most difficult situation arises if there is an apparent conflict between the provisions of an Act and a stated Government policy. A public official who detects such a conflict may feel some reluctance about raising the issue. After all, the *Public Service Act 1996* requires a public service employee to give effect to Government policies (s.25(c)). But there is also an obligation to provide sound and impartial advice (s.25(d)).

It is important that policies do conform to legislation. Legislation can be amended if it does not accurately reflect policy, although policy cannot override legislation. The Bills presented to each sittings of Parliament include ones which suggest that policy and legislation have not been congruent.

For example, the *Environment Protection And Another Act Amendment Bill 2002* followed the receipt of legal opinion that some mining and petroleum environmental authorities may be invalid because they did not have a development approval under the *Integrated Planning Act 1997*. The Bill was passed and became Act 10 of 2002. It amends the *Integrated Planning Act 1997* to make a "mining activity" and a "petroleum activity" an exempt development. Legislation and policy are now congruent.

In summary, public officials have the responsibility of carrying out Government policy, usually expressed in legislation, and of providing sound and impartial advice to the Government. This can only happen if such officials have respect for the law and the system of government. Consequently, it is appropriate that one of the ethics principles which are fundamental to good public administration is respect for the law and the system of government.