

Three Years Later

An address to the Queensland Public Sector Ethics Network (QPSEN)
Brisbane on 4 November 2003 by the
Honourable Alan Demack AO, Queensland Integrity Commissioner.

In Praise of the *Public Sector Ethics Act 1994*

Having been the Queensland Integrity Commissioner for more than three years, I am very conscious of the debt I owe to the Queensland Parliament for the *Public Sector Ethics Act 1994* (the *Act*). We live at a time when members of Parliament receive little or no praise for the legislation which they pass. Indeed, very little attention is given to legislation except by the departments which administer particular Acts and the lawyers who give citizens access to the rights Parliaments have given them in legislation.

In the case of the *Act*, this is a great pity. It merits reading and quiet reflection, not only within the public sector, but in the community at large. It is drawn in a way that gives meaning to the word “ethics”, a word now used so indiscriminately that it communicates only confusion. The following illustrates this confusion:-

“All the more reason then, for public leaders to develop the ethics of warning. Finding the balance between bland dismissal and terrifying overstatement may be one of the more important and courageous acts of leadership”.¹

The *Act* recognises that the word “ethics” covers four distinct but interrelated concepts:-

- ✍ The core values we express in our behaviour;
- ✍ The study of the effect of those core values on human existence;

¹ Institute for Global Ethics, Ethics Newsline 28 April 2003

- ✍ The obligations and expectations these values create;
- ✍ The application of these three concepts in our decision-making.

The plea for an “ethics of warning” seems to be using the word “ethics” to refer to decision-making. But balance is only possible if there are competing core values. “Bland dismissal” and “terrifying overstatement” do not identify any core values.

The *Act* recognises these four concepts in the following way:-

- ✍ The core values it calls ethics principles;
- ✍ The effect of these values it calls ethics obligations;
- ✍ The obligations and expectations are to be expressed in codes of conduct which contain both ethics obligations and conduct obligations;
- ✍ The codes of conduct are also required to give guidelines for the application of these obligations.

This means that the *Act* is an excellent teaching tool as well as a true foundation upon which good public administration can be built. It is important to recognise that the *Act* is a foundational document, not an aspirational one. Its core values should be an integral part of the daily work of the public sector, not fond hopes of what might happen on one of our better days.

It has been a pleasure to work with such a well drawn piece of legislation.

A Sound Foundation

I am also aware of the privilege I have had by being the first Integrity Commissioner. This has encouraged me to seek out information that would not have otherwise been of interest. For example, I was impressed by Governor Bowen’s proposal for the organisation of the Civil Service considered by the Executive Council on 21 January 1860.²

² Queensland Government Gazette 1860 Vol.1

At that time the Executive Council consisted of the Governor, Sir George Bowen, the Colonial Secretary, RGW Herbert, the Colonial Treasurer, RR Mackenzie and the Attorney General, Ratcliffe Pring. Elections for the Legislative Assembly were not held until May 1860. Nonetheless, a civil service had to be established.

The Governor's proposal, which was accepted by the Executive Council, required the civil service to be established on the following principles:-

- ✍ Appointment and promotion are to be based on merit;
- ✍ Good character, sound information, ability and efficiency are necessary personal qualities;
- ✍ Faithful and diligent discharge of duties is required.

The words have changed a little since 1860, but the general thrust is the same. Indeed, this is hardly a surprise, because nineteenth century England educated its leaders in the classics of Rome and Greece, and public administration is an ancient skill. However, our obsession with novelty often stops us from seeing that we are re-processing old ideas. This allows us to keep making the same mistakes our progenitors made.

Law and Ethics

Soon after I had been appointed it became obvious that one of the tasks I had to address was the close relationship between law and ethics. There seemed to be a culture that reduced law to a big stick and elevated ethics to an aspirational carrot. I endeavoured to explain my position in a paper I read to QPSSEN in February this year³ and I do not wish to repeat what I said then. In brief, my thesis is that the core values we hold as "ethics" are also the foundation of our laws. If this is not recognised, law is debased and ethics elevated to the point where it may be beyond reach. Such an approach denies society its essential structures, a point made unwittingly by a speaker at the Seoul International Anti Corruption Conference, who said, "law is the floor and ethics the ceiling".

³ Respect for the Law and the System of Government as an Ethics Principle.

There was a recent discussion by an American ethicist about the problem of downloading music. The issue was why did American teenagers acknowledge that cheating is bad and yet accept that downloading music is good? One of the suggested remedies was:-

“Help young people understand the legal concept of intellectual property. That's a complex idea for our materialistic society, where value resides in stuff rather than in thought. But teenagers can learn to distinguish the thing they bought (a CD or DVD) from the artistic expression it contains and which still belongs to somebody else. They can also learn to appreciate the role of royalties in encouraging the creation of new music”.

The other two remedies were, develop new technologies to inhibit file sharing, and raise the ethical issues at every turn.

“Which of these has the best chance of helping? Understanding a legal concept doesn't guarantee legal behaviour. As for technological fixes, bright teenagers will find ways to circumvent them -- and will tell all their friends how to do it, too. Only the last one -- focusing on the underlying ethics -- has any real staying power”⁴.

My concern is that the attempt to explain the concept of intellectual property does not refer to the ethical principle underlying intellectual property law. In the terms of the *Act*, it is respect for persons. There needs to be respect for the artists and for the creative activity expressed on the CD or DVD. To download without paying is as much a theft as stealing a CD or DVD from a music store.

Of course, knowing that a law is based on sound core values does not guarantee the law will be universally obeyed.

⁴ Institute for Global Ethics, Ethics Newsline 29 September 2003

Indeed, knowing the ethical dimensions of an issue will not mean that every decision about that issue will be ethically sound. There are many subtle influences which distort our decision making even when we know the core values which should shape our thinking.

Conflict of Interest and Conflict of Duty

When the *Act* talks about a conflict of interest, it speaks of a conflict between a person's personal interests and the person's official duties. The phrase "conflict of interest" is used much more broadly than that in popular speech. This means that it is often difficult to identify the problem that needs to be addressed.

For example, it has been suggested that, because the Commonwealth Government is both the owner of shares in Telstra and the regulator of the telecommunications industry, it has a conflict of interest. While the Commonwealth is required by the *Telstra Corporation Act 1991*, s. 8AB, to retain the majority ownership of the shares in Telstra, this is not a personal interest. It represents an interest that the nation has, and is not in any sense personal to the Minister or a member of the Cabinet or the Government. They may own some of the shares held by members of the public, but that is different for the Commonwealth's ownership of the majority of shares.

However, the Commonwealth has a number of relevant duties which must be discharged and which may well be in conflict, or at least in competition. These duties include its legislative responsibilities in respect of corporations and communications as well as the administrative responsibilities that arise from its legislation. Balancing these different duties is at the heart of the business of government. The issue concerns conflicting duties not a conflict of interests.

If the distinction between personal interest and official duty, which the *Act* makes, could be used more generally, this would not only make the resolution of difficulties much less complicated but would also enhance communication in public debate.

One issue which has engaged attention in the USA has been a proposed US\$22 billion contract between Boeing Co. and the US Air Force under which the Air Force would lease, rather than buy, 100 Boeing aircraft. It has been reported that a former Air Force official, who helped negotiate the contract, subsequently left the Air Force to work for Boeing. It is also said that she sold her home to the Boeing lawyer working on the lease deal. Her daughter and son-in-law are also employed by Boeing. The official said she had disclosed any possible conflicts of interest ahead of time and did nothing wrong.

Such an approach puts too much emphasis upon her interest and not enough emphasis upon her duties. As an employee negotiating on behalf of the Air Force her duty was to advance the interests of the Air Force. While it is understandable that people who are engaged in protracted negotiations may become friends, entering into financial relationships creates the impression that the duty to the Air Force has been prejudiced. Friendship has been expanded to include mutual financial and property interests.

It is worth noting that the *Queensland Civil Service Regulations 1890* included:-

“17.....monetary transactions between officers should be avoided and all officers are strictly forbidden to come under pecuniary obligations to their subordinates”.

Honesty

One of the issues that has caught our attention in October has been the disclosure of the number of children who have benefited from first home owner grants. Letters to newspapers have questioned the honesty of the people involved in such a practice.

One of the strengths of the *Act* is that it places “honesty” within the ethics obligation developed from the ethics principle “respect for persons”. Often enough we think of honesty as doing the right thing when no one is looking. It is a private virtue. The *Act* reminds us that honesty is as much concerned with our relationship with others as is courtesy. Every dishonest act has its effect on other people.

We seem to have a significant social problem with honesty. If we allow “not being caught” to become an embedded core value, we will ensure that dishonest conduct will become normal. This is something that will have serious social consequences. Normal social and commercial interaction requires honest behaviour from all citizens. It is, of course, an essential virtue for public officials.

QPSSEN – Queensland Public Sector Ethics Network

It has been a pleasure to attend the quarterly meetings of QPSSEN. When I began to attend, I was not sure how I could contribute or what I could expect to learn. Over the past three years, I have learned a great deal as representatives from various agencies have explained initiatives and raised issues of common concern. This has helped me gain a sector-wide perspective, and I have tried to respond to this perspective through the papers I have presented.

The Office of the Public Service Commissioner has prepared a draft paper entitled, “Queensland Accountability Frameworks”. This document shows how complicated the public business of government has become. It reminds us how easily service delivery by government can become fragmented. Against this background, it seems to me that QPSSEN has a very significant role to play.

The *Act* is concerned with a broader band of the public sector than that part with which the “Queensland Accountability Framework” deals. It seems to be the case that, when QPSSEN began, it sought representatives from the wider public sector. However, it has not been able to gain or retain the interest of such a broad band of public sector entities. It is necessary within the narrower band of entities covered by the “Queensland Accountability Framework” that there be a body that integrates ethical issues. It is undesirable that the approach to ethical issues be fragmented. QPSSEN is well placed to achieve integration. Consequently, it seems to me that it should limit its membership to those entities, but should strive to gain the active involvement of all those entities. There is no convenient description of the entities

because some are not departments of government, although most are. The list forms annexe 2 to the report.

May I thank each of you for your patience and openness, and wish you success in your pursuit of integrity in the public sector.