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## **A CODE OF CONDUCT FOR CIVIL SERVANTS**

THE REACTION of the Canadian Federal Government to the charges of corruption against two former executive assistants resulted in the appointment of a Commission of Inquiry headed by the Hon. Frédéric Dorion, Chief Justice of the Quebec Superior Court. The intensity of public feeling was so great that it ultimately resulted in the prescribing by the Prime Minister of a code of ethics for cabinet ministers and their assistants. Commenting on this action of the Prime Minister, an editorial in the *Globe and Mail* stressed the need for providing such a code for public servants because of a problem "that has been with us at every level of government and in a variety of forms".<sup>1</sup> This article deals with the same problem but with particular reference to civil servants.

Just as elected public servants (ministers and their assistants) need a code of ethics, similarly the civil service requires a code of conduct to maintain itself as a public service given entirely to public interests. The need to develop a code of ethics similar to that which has been prescribed by the Prime Minister for his colleagues and their assistants, arises from the involvement of civil servants in certain activities in which their integrity may be doubted. There are three main areas where such doubt may arise: future employment, private business activities, and acceptance of gifts and entertainment.

*Future employment.* When a person joins the federal Civil Service, his other gainful activities are restricted under Section 86 of the Civil Service Regulations, 1961, which provides in part:

No employee shall hold any office or position outside the civil service in which:

- (a) he exploits unduly and for personal gain his acquaintance with other employees or with persons with whom he has become acquainted in the course of his employment in the civil service;

- (b) there may be a conflict between the duties the employee is required to perform in that office or position and the duties he is required to perform in the civil service.<sup>2</sup>

No doubt this Section prohibits a civil servant from becoming involved in gainful employment outside the civil service, but at the same time it is also lacking in a provision whereby a civil servant may be punished should a case be reported to the Civil Service Commission. Since no penalty has been prescribed for a violation of this Section, it is equally doubtful whether such an offender can be charged under Section 2 of the Civil Service Act, 1961.<sup>3</sup> Moreover, although the enforcement of Section 86 is possible so long as a person is in the civil service, a civil servant remains under no restriction from the Government for accepting a job after retirement, removal, or resignation from the civil service. For this reason civil servants are sometimes tempted while they are in the government service to do some improper work to solicit such future employment. It is quite likely to happen, when the Government is pushing a case against a company, that it may be whispered to the senior civil servant who is dealing with the case that the company involved is looking for an officer like him and that when the case is finished he may leave the government service and accept some managerial post with the company with quite a handsome salary. Unless the officer has a very sturdy character, such approaches "soften him up" and make him inclined to find more merit in the opposing contentions than he was formerly able to discover. To restrict the activities of some senior civil servants while they are still in office, a time limit of at least two years should be imposed on all of them so that they may be required to obtain prior permission from their department heads before they can accept a position in a private firm after their retirement or resignation.

It has also been found that some persons are induced by business firms to join the civil service to acquire the experience and the inner working system of a particular department and then to come back to their original employer. If, for example, a two-year time limit were required, then many of the present abuses would be overcome. This suggestion is not intended to prevent an employee from obtaining future employment or re-employment, but rather to protect him against the use of public office for personal gain. It is not intended to penalize the lower-grade employees, who have practically no control over government decisions. It is intended, however, to prevent corruption in situations where a civil servant has considerable control and discretion which he can sell at a profit, or in which the civil servant has had access to confidential information which makes his services

and actions against the Government more valuable than would otherwise be the case.

*Private business activities.* Civil servants are under no legal restriction against taking part in private business or trade. The absence of this restriction creates a problem. There are a certain number of officials who are in close contact with industries, either acting on behalf of the Government, or, by the nature of their duties, required to exercise control over them. There is every possibility that a civil servant in such a position may be exposed to indirect corruption. He may favour a firm in one way or another by, for instance, awarding contracts or accepting tenders, or being less than vigorous in demanding compliance with the law. In such dealings there may be no question of money transaction, or of any other form of punishable corruption; but he may be given to understand that when he leaves his service or when he retires, a directorship on a board will be waiting for him. It is even possible to put this in terms in which there is no open element of pressure or inducement.

To examine this problem more specifically, it is necessary to look into some particular activities of civil servants in their private business dealings. These particular activities are shareholding, purchase or sale of property, and the involvement of their family members in private business.

*Shareholding.* The participation of a civil servant in the share market is very difficult to check. Also it is a feeling in the civil service that mere possession of a few shares is not likely to exercise any preponderant influence on the integrity or fairmindedness of a normally balanced civil servant; yet the remote possibility does exist. In case there is any scandal because of his failure to disclose his ownership of shares, it would be a difficult task for the Government to bring a case against him.

*Purchase or sale of property.* Civil servants, like other citizens, can acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, or otherwise, and no previous sanction of the Government is necessary. But no purchase can be made from, and no sale to, any civil servant without the express sanction of the Treasury in the case of government property. Moreover, it has been a custom not to permit civil servants to take part in the auction of government property if they are related to the department which is sponsoring the auction. Except for this informal restriction, there is no other restriction on the purchase or sale of property by civil servants. Because of the absence of any restriction, there may be a possibility of corruption among some senior civil servants. There have been a few cases where

civil servants managed to purchase costly land for a nominal price because they obliged the other party in some way by using their official status. To avoid this temptation among civil servants, it is necessary to impose some restrictions on their purchase or sale of property. They should be required to obtain permission from their deputy minister before buying or selling any piece of land.

*Business dealings by family members.* The family members of a civil servant are free to take part in any trade or business, to seek employment in any private firm or corporation, or to engage in any kind of commercial activities. On the surface there may appear to be no danger to the integrity of a civil servant, but it may just happen that the wife of a civil servant will appear before him as a representative of some firm or pressure group. Naturally her presence may prejudice the judgment of the officer, and if the other party is not satisfied with such a judgment, the Government may be blamed.<sup>4</sup> It is also conceivable that pressure may be brought by a company in which the wife of a civil servant is employed. And it is equally possible that a firm may seek to secure some favours with which the members of a civil servant's family have a commercial interest. It is, therefore, necessary that a civil servant should not only be restrained from engaging in any kind of trade or commercial activities where there is a danger of his official status being involved, but that he should also be further required not to permit his family members to do any commercial work likely to influence his decisions in an official capacity. Moreover, if he has occasion to come into contact with any matter concerning the world of industry in which he or members of his family have an interest, he should disclose that interest to his department head, and request that some other officer be appointed to deal with the case.

*Gifts and entertainment.* The several ways in which civil servants are weaned away from their integrity include gifts and entertainment. Gifts may begin in a very innocent form, such as the offer of a cigar. There would seem to be nothing wrong with this simple gesture of friendship, but, from a cigar, the gifts may lead on to a box of cigars, to a bottle of whisky, and to a case of liquor. From there, attempts are made to allure wives of civil servants by presenting them with gifts in the form of mouton or mink coats. No doubt the acceptance of gifts creates a real problem to civil servants. If they accept everything that comes their way, they are likely to have their independence undermined. On the other hand, if they reject all gifts, many friends will regard them as excessively cold and rude, and some may even take the refusal as an insult. Actually it is very difficult for civil servants to decide



which is a proper and which is an improper gift. Even the same problem was faced by the United States Senate Committee on Ethical Standards in Government which found that "The line between the proper and improper gifts begins to be less certain when one looks for a consensus of opinion as to favours, gifts, gratuities, and services. What is it proper to offer public officials, and what it is proper for them to receive? A cigar, a box of candy, a modest lunch? Is any one of these improper? It is difficult to believe so."<sup>5</sup>

This is a fair statement of the situation, and actually civil servants find difficulty in returning the gifts because these are usually a courteous gesture from their friends or close relatives; and moreover, they do not wish to hurt the feelings of their friends and admirers. But on the other hand, gifts from businessmen, from commercial concerns, or from contractors are not based entirely on friendship or some other social relationship. Gifts from these sources are sometimes expensive and sometimes include "lavish or frequent entertainment, paying hotel bills, or travel costs, discounts in purchasings."<sup>6</sup> Certainly such gifts are improper and, therefore, should be returned with a courteous note.

Many civil servants go wrong by accepting expensive entertainment. This generally begins innocently enough with an invitation to lunch. There would seem on the surface to be nothing wrong in this; but after the luncheons are the cocktail parties. One stage further along are the more elaborate dinners, which are sometimes seasoned with champagne. Following these come weekend invitations to summer resorts. And all this is done under the pretext of friendship. Now after accepting these invitations, the civil servant is under obligations to show favours and thus risks having his integrity undermined.

In order to avoid any extensive social involvement which may bring them into disrepute, it seems best for civil servants to keep themselves aloof from those persons who deal with the government in any capacity and also to return all gifts to such persons with a note, explaining their inability to accept.

The Canadian civil service is regarded as a unique product of British tradition and American experience; but in practice it appears to be far from both of them, at least in the field of codification of civil service conduct. Whereas the activities of American and British civil servants are governed by the Federal Personal Manual and by the Privy Council Order respectively,<sup>7</sup> there are no rules or regulations for Canadian civil servants to provide a sanction on their private activities related to business or future employment. The absence of such a code does not

mean that all civil servants do not believe in the ordinary code of ethics; but, human nature being as it is, some civil servants do get themselves involved in corrupt practices partly because of the absence of any legal sanction in a form of a code of conduct. In the absence of such a code, the attitude of civil servants towards ethical values is not as firm as it is expected of them.<sup>8</sup> No doubt it is difficult to codify every aspect of human behaviour; nonetheless, steps can be taken to protect the good name of civil-service impartiality by providing a code.

A code of conduct can be based on the following premises: (a) Civil servants should not be allowed to tamper with the wheels of government to the special advantage of themselves or to help an outsider. (b) Civil servants should not be allowed to use their office as a source of power or information for purposes of advancing their own economic interests.

Based on these two premises, a code of conduct should contain at least eight major substantive provisions dealing with: (1) holding a position, in addition to his position in the civil service, which may interfere with the proper discharge of his official duties; (2) holding investments (shares, etc.) which may interfere with the proper discharge of his official duties; (3) periodic disclosure of all sources of income and the nature and extent of any personal interest involved; (4) sale of information and speculation; (5) future employment; (6) acceptance of or soliciting of gifts or entertainment and favours; (7) representation by a family member, especially a wife, as an agent of a business concern negotiating with a civil servant; (8) abuse of official status in any other manner.

It is not necessary to amend the existing Civil Service Act to incorporate the provisions of a code of conduct.<sup>9</sup> An Order in Council would suffice, and it would also facilitate the changing of some sections of this proposed code in the near future according to the demands of time. Such a code can be enforced in the same manner as is being done by the medical and legal professions.

The Prime Minister, Mr. Pearson, has already taken a bold step in this direction by prescribing a code of ethics to ministers and their executive assistants. On December 17, 1964, the Minister for Defence Production announced that he is taking similar steps for some of his employees. The impasse has been already broken by the Pierre Lamontagne case. And now the time has come to enter into this remaining phase of civil service development.

#### NOTES

1. "Code of Morality Drafted", *Globe and Mail*, Toronto, December 5, 1964.
2. Canada, *Civil Service Regulations*, 1961, s.86.

3. Canada, *Civil Service Act, 1961*, s.2. Section 2 defines "misconduct", and a civil servant charged for misconduct can be suspended, demoted, or dismissed under Sections 56 and 60.
4. For instance, a few years ago, the wife of a senior civil servant who was in the Ministry of Trade and Commerce appeared before her husband as a representative of the Consumers Association of Canada. It was alleged later by the other party that the decision made by that officer was not fair.
5. U.S.A., Senate, *Report of the Committee on Labor and Public Welfare: Ethical Standards in Government* (Washington, 1951), p. 23.
6. Paul H. Douglas, *Ethics in Government* (Cambridge, Mass., 1952), p. 114.
7. The provisions of the U.S. Federal Personal Manual have been analysed by the Association of the Bar of the City of New York. See its report by the Special Committee on the Federal Conflict of Interest Laws, *Conflict of Interest and Federal Service* (Cambridge, Mass., 1960), p. 193. Further to restrictions as laid down in the Federal Personnel Manual, President Kennedy issued a booklet wherein ethical standards of civil servants have been discussed. The appendix of this booklet provides a text of all Conflict of Interests Statutes. See U.S.A., President, 1961-63, *Preventing Conflicts of Interests on the part of Special Government Employees* (Washington, 1963). For British civil servants, an Order in Council was passed on January 10, 1910, to regulate their private activities (Cited in N.E. Mustoe, *The Law and Organization of the British Civil Service*, London, 1932, p. 44). The British Treasury Manual regulates private activities of civil servants and works as a code of conduct.
8. For example, when a senior civil servant of the Department of Public Works was asked about his views on the "place of ethics in the civil service", his answer was: "Suppose I get the information that a particular corporation is going to be awarded a contract for some big construction work involving millions of dollars; and knowing well that the market value of the shares of that corporation is going to rise, I manage to purchase some shares. This does not mean that I have done any immoral act, or I have robbed the Canadian taxpayers of a single cent, or I have cheated the federal government". Although this statement should not be taken as the general thinking of all senior civil servants, nevertheless, it tells how civil servants may be tempted to earn extra money because of the absence of a code.
9. As suggested by the *Globe and Mail*, a code "need not necessarily be written into law, but it should certainly be set down in black and white" (December 7, 1964).