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**Ethics Essentials: Managing Ethical Responsibility and Accountability  
in Government, Crown Agencies and Civil Society**

When

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Where

Holiday Inn Yorkdale  
3450 Dufferin Street

Hosted By

EthicScan

Topic

Session 7 (2:30 PM)

Best Practices Complaints Processes: Practical lessons learned on delivering optimal values and ethics program, a complaint resolution function or both, within a public organization.

**I am pleased and honoured to be with you today to discuss some of the practical lessons that we have learned in the Office of the Conflict of Interest Commissioner for Ontario on delivering an effective ethics oversight program for the Ontario Public Service.**

**Our office has been in existence since 2007, and in that time we have dealt with close to 900 matters. We have had an opportunity to develop and evaluate a philosophy and an approach to addressing ethical compliance and education, having regard to our mandate and legislative constraints. It has been a challenging and interesting time, and we continue to evaluate and refine what we do and how we do it.**

**The subject of ethics and conflicts generally has received a great deal of public attention in recent years. All levels of government have had experiences that have resulted in considerable public attention. Many questions have been raised regarding the systems that are in place to deal with these matters and whether or not they are adequate.**

**The Public Service of Ontario Act of 2006 modernized the ethics regime for the Ontario Public Service. It created a rather unique model and so far as we are aware, none of the other provinces have established a similar office dedicated to the subject of conflict of interest in the public service. Every province has an Integrity Commissioner to deal with elected officials. But conflict matters for the public service in the other provinces are generally dealt with in more distributed fashion, through a variety of offices and divisions of government. Some municipalities, definitely not all, have established an integrity commissioner for their public service, but these offices**

are generally provided with very limited resources and most have to struggle to be effective.

The Public Service of Ontario Act established a system for dealing with conflict matters that is comprehensive and inclusive. It covers almost all public servants, whether they are working in a ministry or agency. The system begins with the establishment of an 'ethics executive' who is the person responsible for providing advice and making determinations on ethics matters within an organization.

For public servants working in ministries, the ethics executive is the deputy minister. For people working in public bodies, the chair is usually the ethics executive for other appointees, but it may be the CEO for the staff. The deputy minister's ethics executive is the Secretary of Cabinet. I serve as the ethics executive for chairs of public bodies, as well as former public body chairs and former employees of public bodies. I am also the ethics executive for former deputy ministers as well as current and former secretaries of cabinet. The Integrity Commissioner is the ethics executive for elected MPPs, ministers and ministers' staff. The Integrity Commissioner is my ethics executive and in this way, every public servant in Ontario has an ethics executive who is responsible for assisting them to deal with ethical and conflict of interest questions when they arise. It should be noted that our office is an executive agency, rather than a legislative agency, and that has definite pros and cons.

**This is a somewhat decentralized framework, but it seems appropriate given our history and traditions. It means that every ministry and public body is responsible for dealing with ethics matters, and also for developing ethics awareness initiatives within their respective organizations.**

**Our office can become involved in a matter in a variety of ways. When it does become involved, our legal counsel makes inquiries and gathers relevant information. Although we have limited investigative capacity, we do conduct legal research, search the internet, make telephone calls and if necessary have in-person meetings. There is no statutory right to be heard, although we do follow basic principles of natural justice and procedural fairness. There is no right of appeal from our determinations, but we are subject to judicial review. If an ethics executive makes a finding that the rules have been contravened, there are remedies available to the government including disciplinary action or revocation of appointment. Ethics executives may consult us, or refer matters to our office to make a determination, but we usually only accept such referrals when a matter is significant or has precedential implications. In each case, we discuss the matter and decide the best way of dealing with it. We believe that this is important to keep accountability within the ministry or agency where it belongs and is in accordance with principles of good governance. All our determinations are made in writing and most of our advice is as well. So far as we are aware, our advice is taken, and there has never been push-back or resistance.**

**When our office was first established, public servants were concerned when someone from our office contacted them. In some respects this was similar to the reaction lawyers have when the Law Society calls.**

**This tension and even mistrust was not helpful to building the kind of relationships and confidence that we felt were necessary for our system to be successful.**

**Early on we decided that we would be more effective if we were not viewed as a so called “gotcha agency”, though we recognize that there is a legitimate role for more aggressive approaches in other situations.**

**Our belief was that such an approach would have been contrary to the spirit and philosophy of our Act and to the oversight model it established. We concluded that our objective would be – to be helpful and educational, and to concentrate on attempting to minimize and avoid conflicts wherever possible.**

**Conflicts of interest are unusual in the sense that they may range on a continuum from conduct that is quite minimal to that which is very serious, possibly even criminal. Clearly, allegations that approach criminality are properly referred to the Attorney-General or the police for investigation and prosecution as appropriate. In those cases, except for the referral, our office would have no further role.**

However, the reality is that conflict of interest is a fact of life in a complicated society. An active individual, who wishes to contribute to society through public service beyond the professional realm, may be involved with multiple bodies and organizations in his or her community. This kind of involvement produces better citizens and better public servants but, conflicts may arise quite casually and innocently. There may not be any so-called 'wrongdoing' involved and certainly not any criminal conduct. What is important is that public servants who become aware of potential conflict situations immediately disclose them to their ethics executive so that proper action can be taken to manage and avoid a real or more serious conflict. Public servants will be reluctant to consult with their ethics executive, and certainly with our office, if they fear that raising even the most trivial of conflicts will become exaggerated and possibly even magnified by the process. That's why we felt that establishing relationships and building trust and confidence were so important to the success of our office.

Honest, hardworking and conscientious public servants may find themselves in a potential conflict situation quite innocently in a variety of ways. For instance, a public servant who serves on a not-for-profit board might find the board making an application for funding to the ministry in which he or she works. Or, a senior public servant might find himself or herself running, or being transferred to, a division that also employs his or her child or spouse. Other important institutions in our society, like banks and large law firms, routinely run into conflict situations. They may have to build ethical

walls or decline to act in certain cases, but potential conflicts are not unusual.

We see our office as an ally for public servants, and as a resource to assist them in resolving questionable situations, thereby avoiding embarrassment to themselves and to the government. This approach minimizes reputational and integrity risks to the government, and enables public servants to do their jobs ethically and conscientiously.

We have often expressed our philosophy, and that of our office, as (1) to educate and assist public servants in understanding their ethical obligations, (2) to identify areas of concern when public servants bring matters to our attention, and (3) to assist them with compliance.

The onus is on the public servant to raise a matter and unless a matter comes, or is brought to, our attention, we do not launch investigations on our own initiative or issue findings or reports. If we do become aware of a situation, in any way, at any time that is relevant to our mandate, we will become involved but our system is not intended to be punitive and our process is not adversarial. I recall, for instance, presenting to a delegation of Chinese ethics officials, and they were quite clear about their investigation and enforcement mandate, which was often reflected in their titles or the names of their agencies.

**Our office recently completed a strategic planning exercise in which we chose as our vision “A province where people trust government”. This is a concise statement and it captures the essence of what we believe our purpose is. Obviously, achieving this vision is not something that our office alone can be responsible for. However, such a vision reinforces the importance of our contributing to a public service that fosters trust and confidence in the integrity of government as an institution, which is consistent with the rationale for the establishment of our office.**

**One could argue that the Ontario system is inherently risky, because it is so decentralized and lacking in that investigatory and punitive element that might deter unethical behaviour.**

**We recognize that risk and try to address it through outreach activities designed to foster awareness and understanding and to build relationships. We try to get our stakeholders to buy into the value of an ethics regime.**

**We have developed this awareness-building function in a number of ways.**

**First, through education: This is not a role that is defined in our Act, but we believe that it is quite consistent with the broader role of our office.**



**We provide orientation sessions for all newly-appointed and re-appointed agency chairs to promote awareness of the rules and of the functions of our office. We began these sessions small only meeting one-on-one with newly-appointed chairs. We have gradually expanded this activity to a series of quarterly orientation sessions for newly-appointed chairs, reappointed chairs, legal staff who advise ethics executives and other interested senior officials. In February, we conducted our latest classroom session and live video webcast for 22 participants from 17 public bodies. We have also developed a series of educational videos explaining the application of the rules which we expect will shortly be available on line.**

**One result of these sessions, aside from familiarizing chairs with ethics rules broadly, is that attendees gain some familiarity with our office and its role and philosophy. They hear our message about being an ally and a resource and hopefully, this will lead to a greater inclination to come forward and bring matters to our attention. Ethics executives also have an opportunity to learn from each other that they might not otherwise have had. The Integrity Commissioner, who has a responsibility for whistle blowing and several other mandates affecting public servants directly, has joined us in hosting these sessions.**

**We were also invited to assist the Ontario Labour Relations Board in determining the types of private arbitrations their public service arbitrators could engage in without compromising the board's independence.**

**Second, we try to address the ethics risk inherent within organizations. Our office has the benefit of being able to observe the types of conflict issues that arise across government over a period of time. Some government agencies have inherent ethical risks that may simply be the result of the mandate of the organization and its operating context. For instance, there are obvious built-in conflicts whenever a municipal councillor is statutorily required to serve on a provincial board or public body, such as, for example, the Niagara Escarpment Commission. Clearly, it is not appropriate for a councillor to participate in a provincial board discussion of a matter on which he or she has previously taken a public position as municipal councillor. We helped this commission – and the Niagara Parks Commission that had a similar problem – develop a protocol providing for appropriate recusal in these situations.**

**It seems to make sense that our office can and should be involved proactively with finding solutions to these systemic risks, in addition to dealing with specific situations. Allowing known systemic risks to go unmitigated could obviously result in more serious problems.**

**Such involvement is not specifically provided for in the legislation, but once again, we believe that it is consistent with our broader role.**

**In another example, our office was invited to assist the LCBO in determining the types of third-party sponsored travel that would be appropriate to the wine regions of the world seeking access to the Ontario market.**

**Third, we try to communicate our interpretations to our stakeholders. We have developed anonymized summaries of some of our decisions, and we publish them in our annual report and on our website. Each year, we publish a number of summaries that public servants can use to assist them to understand the rules and how they have been interpreted. We know that other agencies do this as well, and we are often told how helpful these summaries are.**

**One area of interpretation that has been helpful to public servants concerns the prohibition on gifts. There is a narrow exception that permits public servants to accept gifts of nominal value, given as an expression of courtesy or hospitality. The Act provides no definition for the term “nominal”, so we developed our own standard of approximately \$50. This is not a hard-and-fast rule but it is a guideline, and once we started using it, we began to see it being used fairly consistently across the government.**

**Fourth, our office provides helpful resources. Many public servants and ethics executives are still unfamiliar with how our office operates or the procedures that we follow.**

**Accordingly, our office has published a series of fact-sheets that outline how it operates. Available in print or electronically from our website, these resources answer questions such as:**

**Who may seek a conflict of interest determination or advice from the commissioner?**

- **How is the process initiated?**
- **Who will have an opportunity to provide comments to the commissioner?**
- **What might the determination include?**
- **Does the commissioner's advice or determination have to be followed?**

**We often send these fact sheets along with requests for more information to public servants to help them understand how the information they are providing to us will be used.**

**Finally, we have created an advice-giving function. The PSOA does not provide much guidance about how we should conduct ourselves when we become aware of a potential conflict situation that does not amount to a request for a determination.**

**So we decided to offer not only determinations, but also formal written advice in response to questions about ethical issues. Again, this is not something that is explicitly provided for in the Act, but it is clearly consistent with the broader role of our office. The advice function has been formalized and is reflected in our fact sheet. Our advice letters provide information on previous decisions we have**

**made, possible interpretations of the Act, and suggestions for a course of action, or what we like to call a "road" map, to reduce risk.**

**The advice function enables us to provide a more proportionate response to a situation. But more importantly, it encourages public servants to approach us with ethically awkward situations as soon as they suspect a possible conflict. It makes our office more approachable and less intimidating. If a public servant knows he or she can seek advice, and not just a determination, it makes them more likely to consult with us. This fits our objective of preventing problems and finding solutions, not publicly embarrassing people who may just be trying to do the right thing and may just need some assistance.**

**Clearly, we can do better and we should continue to strive to do so.**

**The Ontario model of ethics oversight envisions a broad diffusion of ethics expertise throughout the public service. This suggests that ethical oversight is not simply the concern of one office, but rather of senior management generally. Hopefully, this should foster an ethically-aware public service culture, top-down. The key to the success of this model is for the entire cadre of ethics executives, in both ministries and public bodies, to achieve a relatively comparable level of ethics awareness and commitment.**

**Our educational function has so far been limited to public bodies and we have not included deputy ministers. The Ministry of Government Services does offer orientation sessions for newly-appointed deputy ministers and assistant deputy ministers, as well as ethics courses, an ethics website and a Guide to Public Service Ethics and Conduct. As a statutory agency, we could collaborate more closely with the ministry on some of these initiatives without compromising our substantive independence.**

**We are also exploring the possibility of developing a program of “Sharing of Experiences”. As indicated, deputy ministers, the Secretary of Cabinet, and chairs of public bodies make determinations as ethics executives concerning ethical issues on a regular basis. However, the results of these determinations are not available as a resource to other ethics executives.**

**If all ethics executives provided anonymized summaries of their determinations to our office, we could add them to our own experiences, and share them across the government with other ethics executives. The resulting database could be made more accessible and searchable on our improved website. This would expand the reference resources available to ethics executives and public servants, and allow deputy ministers, for example, to see how other deputy ministers have dealt with similar situations. This would not only promote consistency across the government, it would also provide our office with an ability to identify and analyse trends using**

**a significant database of information. Other provinces, and some municipalities, might find this information helpful as well.**

**Finally, we are enhancing our electronic resources. We are re-designing our website, which will include an interactive blog where current ethics issues can be discussed in real time. We have already piggy-backed on the excellent work done by the ministries of education and of training, colleges and universities in producing several short video clips that dramatize a variety of ethical situations that public servants might face in their day-to-day work. We have modified those videos to suit our needs, and they will soon be available on our website.**

**No doubt, resources for training and education will always be scarce, but we are trying to change culture and attitudes, and all of us here know how difficult this is to do and to measure.**

**In conclusion, I feel confident in saying that Ontario's unique ethics oversight system for public servants – although not perfect by any means – seems to be working as was intended.**

**The system is conducive to a helpful, non-adversarial approach to addressing ethical issues, to the diffusion of ethics oversight expertise throughout the public service, and to the development of an ethically-aware public service.**

**This approach can only work through proactive awareness-raising, through building relationships, and by making our office and its procedures as transparent as possible.**

**Thank you for your time, and I welcome your questions.**