

CHAPTER 13

Upholding Government Ethics: The Case of Preferential Treatment for Green Power Generation

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Rahim Jaffer appears before the Standing Committee on Government Operations and Estimates on Parliament Hill in Ottawa in June, 2010.

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Introduction

Introduction to Public Sector Ethics and Conflict of Interest

Citizens expect public sector employees, including ministers, their staff, and the non-partisan employees of public agencies, to fulfill their duties, use public resources, and exercise their authority in a manner that serves the public interest (Kernaghan & Langford, 2014). In particular, the ethical standards of the public sector—i.e., the norms that define good or morally appropriate behaviour by public employees—ask ministers, their staff, and public servants to refrain from using their position to further their own private interests or those of family members and friends. They are also asked to not further the interests of any other individual, when such action would result in favouritism and be motivated by granting private favours instead of pursuing the public good.

Historically, the law has prohibited the most egregious violations of these ethical standards. For example, bribery and the embezzlement of public funds have long been criminal offences in Canada. However, beyond the more obvious offences, whether a private interest conflicts with the public interest in particular circumstances, and, if so, what should be done about it, had long been left for politicians and public servants to decide for themselves. Mostly, they were expected to espouse public service values that gave primacy to the public interest. Honour, public-spiritedness, and personal integrity were thought to be the bedrock of ethical administration.

However, in recent decades, trust that the culture of government and internalized public values by themselves would be sufficient to ensure ethical public administration has become less prevalent. While a strong public service culture is still seen as a condition of ethical government, recurring highly publicized scandals and a decline in citizens' trust in government led many jurisdictions to adopt a more formalized compliance-focused approach to public sector ethics (Fleming & Holland, 2002; Saint-Martin & Thompson, 2006).

The Canadian federal government is a good example. Over the last 20 years, it has adopted a more detailed code of values and ethics that public servants must respect as a condition of employment, while ministers, their staff, and the administrative heads of federal agencies are now bound by a new *Conflict of Interest Act* and associated disclosure requirements designed to prevent or detect instances where private interests might conflict with their public duties (Juillet & Phélippeau, 2016). Moreover, new independent officers of Parliament—including the conflict of interest and ethics commissioner and the public sector integrity commissioner—were created to ensure external oversight and help with the enforcement of ethics rules.

Significance for Canadian Public Administration and Governance

The emergence of more codified norms of behaviour and the presence of independent oversight agencies represent a significant change in the public sector environment. It is increasingly essential for ministers and public employees to

understand the more precise norms of conduct that they are expected to uphold. However, as the case described in this chapter will illustrate, interpreting and applying these ethical standards in practice is not always easy and straightforward, nor is making sure that those who cross ethical lines are effectively held to account for their behaviour.

Case Study: Preferential Treatment for Green Power Generation

Background

Rahim Jaffer is a former Member of Parliament (MP) who represented the riding of Edmonton–Strathcona from 1997 to 2008. Born in Uganda, he moved to Canada with his family as a refugee when he was young. First elected as a member of the Reform Party when only 25 years old, he was the first Muslim Canadian to serve in Parliament. By the time the main right-wing parties merged into the Conservative Party of Canada in 2003, Jaffer had become a prominent Conservative MP. After the Conservatives formed a minority government in 2006, he was chosen to chair its parliamentary caucus, a position of leadership and some influence. During his chairmanship, he was in close contact with his parliamentary colleagues, including ministers.

Jaffer's political career came to a sudden end at the 2008 general election. While the Conservatives won enough seats to keep Stephen Harper's minority government in power, Jaffer was defeated by a narrow margin. The only Conservative member from Alberta not to be re-elected, he described his loss as "devastating" (Government of Canada, 2010a). Out of politics but still only in his 30s, he decided to pursue a second career in business and he joined Green Power Generation (GPG) in April 2009, a company created a few months earlier by his friend Patrick Glémaud. Glémaud, a former lawyer for the Department of Justice, had also run and lost as a Conservative candidate in the 2008 election. Following his defeat, he started GPG to help commercialize renewable energy technologies, an area where he had done some work as a public servant.

Green Power Generation was essentially a consultant and a "broker" for green technology companies. Its business plan was to find commercial opportunities for other companies and then work out compensation or partnership agreements with them as the opportunities came to fruition. GPG itself never developed or owned environmental technologies and it never operated any renewable energy generation facilities. In fact, by the time the corporation was dissolved in July 2010, it had never made any money and did not even have a bank account. Glémaud and Jaffer were its sole directors and its only employees. On his website, Jaffer described his role at GPG as using his expertise in industry financing to help clients "secure support from the Canadian government and to obtain contracts abroad" as well as helping with business development and marketing "through his countless relationships

developed from his former career as a parliamentarian” (Office of the Commissioner of Lobbying of Canada, 2011, p. 11).

Between April 2009 and April 2010, Jaffer and Glémaud approached several federal departments with ideas for renewable energy projects, often to discuss potential funding under existing government programs. For example, they approached the Department of Transport, Infrastructure and Communities with at least three different proposals requesting about \$178 million in funding under the department’s Green Infrastructure Fund (Office of the Commissioner of Lobbying of Canada, 2011, p. 46). When approaching departments, they would typically call or meet ministers, parliamentary secretaries (i.e., MPs appointed to assist ministers), or ministerial staffers as opposed to departmental officials. While their proposals were examined and considered, they were all eventually rejected. GPG never received any government funding for any of its projects.

Central Challenge

One of GPG’s ideas was to lease the rooftops of buildings owned by the federal government in Ontario in order to install solar panels and sell the resulting electricity to Hydro One, the utility distributing electricity across the province. To reduce air pollution and fight climate change by moving away from fossil-fuel electricity production, the provincial government launched a feed-in tariff program guaranteeing favourable prices to producers of renewable energy in 2009. Glémaud and Jaffer believed that they could use this program to secure advantageous rates for their electricity. Moreover, the federal government was publicly committed to encouraging renewable energy production and “greening” federal buildings. Using the building rooftops to generate renewable energy seemed economically promising, environmentally desirable, and in line with government policy objectives.

To pursue their idea, Jaffer decided to contact Christian Paradis, the minister of Public Works and Government Services (PWGSC). PWGSC (now titled Public Services and Procurement Canada) was the department responsible for managing government buildings and, as such, would be the key authority to decide whether the solar panel project had any merit and whether building rooftops could be leased by GPG. Jaffer knew Paradis from his time as Conservative caucus chair. During those years, he believed that he had become close to Paradis and his wife, partly through caucus social events, and he considered Paradis to be a friend (Government of Canada, 2012b, p. 6). As the responsible minister, he could surely help with their project.

However, before calling the minister, Jaffer contacted Sébastien Togneri, one of Paradis’s senior assistants. Glémaud and Jaffer both knew Togneri. He had worked for the Conservatives on Parliament Hill when Jaffer headed the caucus and Glémaud had met him when he was a Conservative candidate in the 2008 election. Now Togneri was director of parliamentary affairs in Paradis’ ministerial office.

So, on August 29, Jaffer called him to discuss the rooftop solar panel idea and ask if he could arrange for him to speak about the project with someone at PWGSC. Togneri told Jaffer that the Minister's Office would be looking into his idea and would see if they could set up a meeting with departmental officials.

The next day, Jaffer called Paradis directly on his cellphone. According to the minister, Jaffer mostly wanted to know if PWGSC could be interested in his idea and who were the right departmental officials to approach. Paradis said that they never discussed the project details. In fact, he said that he did not even understand it, but that it seemed innovative and could fit with government priorities. He told Jaffer that he would call his ministerial staff, who would make sure that GPG would meet departmental officials (Government of Canada, 2012b, p. 7). Paradis also said that he told Jaffer that if the project went ahead, GPG would have to go through a competitive bidding process, although Jaffer later did not recall the minister mentioning a competitive process.

After the call, Jaffer wrote to Togneri to convey the minister's support. In his email, he wrote:

I just spoke with Christian and we are going to try and get together for beers next week when he comes back to Ottawa. He also suggested that I coordinate with you the chance to find someone like the deputy minister to speak with to give more info about the solar proposal we are working on to see if there is a fit with Public Works. (Government of Canada, 2012b, p. 8)

After his conversation with Jaffer, Paradis also called Togneri to instruct him to organize a meeting for GPG to meet departmental officials.

Upon hearing of these instructions, Marc Vallières, the minister's chief of staff, feared that the decision might be unethical and he warned Paradis that it could amount to preferential treatment for GPG (Government of Canada, 2012b, p. 8). However, the minister replied that he was comfortable with his decision and that they should follow his instructions.

With a clear signal coming from his minister, Togneri forwarded Jaffer's email to the Deputy Minister's Office, asking them to set up a meeting and reminding them that Jaffer was a former MP. The Deputy Minister's Office promptly replied that while the deputy minister would not meet with GPG, the department's Real Property Branch had been instructed to meet with Jaffer. The Deputy Minister's Office was subsequently informed that two political staffers from the Minister's Office would also attend the meeting with GPG.

Despite the favourable reply from the Deputy Minister's Office, we know that several departmental officials had misgivings about meeting with GPG. According to one of his senior advisers, the deputy minister himself was "concerned about this type of request" because it could "contravene and disrupt" the "daily operational or program requirements" of the department (Government of Canada, 2010b). Some

departmental officials in the Real Property Branch also complained that the GPG proposal lacked sufficient technical details to allow for a meaningful discussion. They recommended to the Minister's Office to postpone or cancel the meeting, indicating that normally the department would not proceed with such a meeting without more information (Government of Canada, 2012b, p. 10).

Moreover, some departmental officials were concerned about providing or appearing to provide preferential treatment to GPG. In particular, the director general instructed to set up the meeting said that she normally looked unfavourably upon holding closed meetings with business people because it might lead to perceptions of favouritism. If the department were to meet with some corporations in a way that may not appear fair, transparent, and accessible to others, then it could be perceived to be giving them preferential treatment, which would be inconsistent with public service values. For this reason, the director general would normally "actively discourage" her staff from privately meeting with businesses and instead encouraged them to learn about products and services through publicly accessible trade shows (Government of Canada, 2012b, p. 14). The meeting with GPG clearly ran counter to this approach.

In September, further misgivings about the meeting arose when the news media reported that Jaffer had been arrested for drunk driving and cocaine possession. In a controversial decision, the Department of Justice eventually dropped those charges and allowed Jaffer to plead guilty to the reduced charge of careless driving. But at the time the arrest generated a lot of bad publicity, not only because Jaffer was a former MP but also because he had since married Helena Guergis, a sitting Cabinet minister. The spouse of a minister being arrested for cocaine possession is bound to attract attention. In light of the media coverage, the deputy minister of PWGSC met with Minister Paradis to confirm that, despite the arrest, he still wanted departmental officials to meet with GPG. At that meeting, Paradis said that Jaffer's legal troubles had nothing to do with the solar panel project and he again instructed the department to proceed with the meeting.

Hence, despite departmental misgivings and the public controversy surrounding Jaffer, the meeting with GPG finally took place on October 28, 2009. In fact, despite their ethical concerns, departmental officials even treated the meeting as a priority, as they would for any request coming from the Minister's Office (Government of Canada, 2012b, p. 19). Struggling with his personal problems, Jaffer did not attend the meeting, but Glémaud presented their proposal to departmental officials and ministerial staffers. The officials raised technical questions about the project and offered advice on how it could be presented to partners in the future. They also told Glémaud that, in contrast to what GPG believed, a competitive process would be required if the department ever went ahead with the project of leasing the rooftops of government buildings.

In fact, departmental officials did not consider GPG's idea to be feasible. The project never went further than this single meeting and GPG never received any funds from PWGSC. Moreover, while the Minister's Office promised Glémaud to follow-up, they never did. The minister never asked to be briefed on the meeting and his staff never informed him of its outcome. For all practical purposes, GPG's project to rent the rooftops of federal buildings for electricity generation was dead for the foreseeable future.

While the solar panel project itself appeared to come to an end by the fall of 2009, GPG's efforts to do business with the Government of Canada were just about to start coming under public scrutiny. In the spring of 2010, the media began to run stories about GPG's attempts to secure funding for its projects. The solar panel project was only one of many proposals reported in the news. Other proposals discussed with the departments of Industry as well as Transport, Infrastructure, and Communities were also questioned. Whether GPG had received preferential treatment was a recurring concern, but there were also allegations of illegal lobbying. Fuelled by media pundits and opposition politicians, a public controversy erupted.

Relevant Actors, Institutions, and Events

In light of media reports, the commissioner of lobbying, an independent parliamentary officer administering federal lobbying rules, opened an investigation. The investigation took about 18 months to conclude and found reasonable grounds to believe that Glémaud and Jaffer had violated the lobbying law on several occasions. However, the RCMP declined to prosecute, estimating that there was not enough evidence to prove the charges in court. The commissioner still blamed Glémaud and Jaffer for violating the *Lobbyists' Code of Conduct* (Office of the Commissioner of Lobbying of Canada, 2015) by failing to register as lobbyists and not disclosing some activities. However, the meeting held with PWGSC was not considered to be problematic because the *Lobbying Act* does not require in-house corporate lobbyists to disclose communications related to the awarding of a government contract (Office of the Commissioner of Lobbying, 2011, p. 21).

However, in April 2010, Opposition MPs were not about to wait over a year for the lobbying commissioner's conclusions. Moreover, in addition to the issue of illegal lobbying, MPs also wanted to know if ministers had behaved unethically by granting favours to a friend and former colleague. To get to these questions, the House of Commons Standing Committee on Government Operations and Estimates launched its own hearings on the GPG controversy. Between the end of April to mid-June 2010, the committee dedicated about a dozen hours to investigating these events, hearing from Jaffer, Glémaud, business persons who had dealings with GPG, some public servants, and some ministers, including Paradis. The national media closely followed the committee's work.

It is worth noting that at the time, Prime Minister Stephen Harper was still leading a minority government, with the Conservatives 12 seats short of a majority. Given that parliamentary rules ensure that parties hold the same proportion of seats in committees as they do in the House of Commons as a whole, the majority of the members sitting on the Government Operations and Estimates Committee were from opposition parties, a fact that helps explain why the committee voted to hold hearings on GPG's activities. In fact, given the state of party discipline in the Canadian Parliament, it is hard to imagine that hearings would have taken place if the Conservatives had held a majority of committee seats.

At the end of these hearings, which were at times very acrimonious, the committee did not come to any specific conclusion about whether Paradis or any other minister had behaved unethically. Committee members from all political parties, including the Conservative Party, strongly criticized Jaffer for his behaviour, accusing him of tarnishing the reputation of all politicians. The fact that Jaffer and Glémaud provided false information in their initial testimony, and that Jaffer had to be called back to try to correct the record, did not help with their credibility. It is hard not to conclude that their testimony and the intense media coverage severely damaged their reputation.

However, with regards to holding ministers to account for any potential ethical breaches, the committee's work was rather inconclusive. The three ministers asked to appear before the committee to answer questions about their communications with GPG simply refused to comply, arguing that, as parliamentarians, they could not be forced to appear. When the committee instead asked several of their ministerial staffers to appear in order to answer questions about "who knew what and when," the government forbade them to do so. They argued that ministers were ultimately responsible for the behaviour of their staff and that it would be a violation of the doctrine of ministerial responsibility for the committee to directly question ministerial staffers. In a somewhat surreal turn of events, on the day ministerial staffers were set to appear before the committee, the three ministers showed up instead of their staff, now insisting to be heard despite no longer being invited!

The committee meeting quickly descended into a shouting match, with ministers and MPs interrupting each other, criticizing the committee chair, attacking each other's characters and, through a flurry of points of order, debating whether the ministers should even be allowed to testify without being invited. When they eventually decided to proceed, in accordance with committee rules, each minister was given two minutes to make an opening statement and then two committee members each had eight minutes to ask some questions.

Unsurprisingly, the meeting did not shed much light on the ethics of the government's interaction with GPG. The ministers denied granting any preferential treatment to Jaffer and his company. As for the meeting held with PWGSC, Paradis confirmed taking a personal call from Jaffer and asking him to call his staff to set up

a meeting with departmental officials. According to Paradis, the conversation made it clear that the meeting would only serve to see whether the department saw some merit in the solar panel project. If so, any contract or funding would then need to be obtained through a standard competitive process.

When the committee finally ended its hearings, it did not publish a report stating any findings on whether there had been illegal lobbying or whether government ministers, their staff, or departmental officials had granted any preferential treatment. Just as it was under no obligation to look into these allegations, the committee did not have to report on its findings. Its hearings certainly contributed powerfully to publicizing some facts and allegations about GPG's dealings with the government, but it would be hard to conclude that they provided much clarity about the standards of conduct applied in government and whether such standards had been violated in this case.

Outcomes and Impact

While the committee hearings did not bring a clear resolution to the GPG controversy, they helped trigger another process meant to enforce ethical standards in the federal government. On June 10, 2010, as the committee's work was coming to an end, Marlene Jennings, a Liberal MP, wrote to the Conflict of Interest and Ethics commissioner. Quoting the testimony that he had given before the committee, she alleged that Paradis had violated conflict of interest rules by granting preferential treatment to Jaffer and using his office to improperly further a friend's or another person's private interests. She asked the commissioner to investigate these alleged contraventions to the *Conflict of Interest Act*.

The Conflict of Interest and Ethics commissioner is an independent officer of Parliament, created in 2004 to bring more independent oversight of the ethics rules covering MPs, ministers, ministerial staff, as well as a number of appointed public office holders, including deputy ministers (Juillet, 2004). The commissioner helps enforce the standards of conduct stipulated in the *Conflict of Interest Act*, provides advice to officials on how to conform to ethical norms, and manages a disclosure system that helps monitor whether public office holders place themselves in a conflict of interest. To enforce the act, the commissioner also has the power to investigate any allegations of ethical violations, either of his or her own volition or at the request of a parliamentarian. In fact, the office was created in good part to alleviate concerns that government officials could not be trusted to police themselves and be the judge of their own ethical conduct (Juillet, 2008).

Commissioner Mary Dawson's investigation lasted over 18 months. Her office reviewed documentary evidence and interviewed 21 witnesses, including Jaffer, Glémaud, members of Paradis's ministerial staff, and several departmental officials. Through his lawyer, Paradis first had the opportunity to respond to the allegations. Then, the commissioner interviewed him twice. All these proceedings were kept

confidential. Finally, on March 22, 2012, the commissioner publicly released her findings in a report that was posted on her website as well as sent to Marlene Jennings, the prime minister, and Paradis himself.

The commissioner's report concluded that the minister had violated sections 6(1) and 7 of the *Conflict of Interest Act*. According to the commissioner, by asking departmental officials to meet with GPG, Paradis made a decision that he should have known would place him in a conflict of interest and have the effect of granting preferential treatment to GPG based on the identity of its representative, Rahim Jaffer. The commissioner is not allowed to recommend, let alone impose, any sanction for violating the *Conflict of Interest Act*, so her report did not go beyond publicly reporting the facts, explaining her reasoning, and concluding that Paradis had contravened the law.

To come to her conclusion, the commissioner went through a lengthy and detailed process to establish the facts and analyze them in light of the specific language of the *Conflict of Interest Act*. For example, to ascertain whether Paradis was in a conflict of interest, she relied on the Act's definition, which states that:

For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests. (*Conflict of Interest Act*, s. 4)

The Act explicitly prohibits public office holders from making decisions that "they know or reasonably should know" would place them in such a conflict of interest (*Conflict of Interest Act*, s. 6(1)).

Since there was never any allegation that Paradis and his family had personally benefitted from GPG business, based on the Act's section 4 definition, the first question was whether he had placed himself in a position to advance Jaffer's interests as a "friend." Since the *Conflict of Interest Act* does not define the meaning of friendship, the commissioner had to come up with her own criteria, a task started in previous investigations. In this case, even though Jaffer told investigators that he had become "very close" to Paradis and considered him to be a friend, she concluded that, in fact, they were not friends. They did not see each other sufficiently outside of work-related events and they did not seem to share "a close bond of friendship, a feeling of affection or a special kinship," which she had previously decided should define friendship for the purpose of implementing the *Conflict of Interest Act*. Moreover, Paradis told the commissioner that, in his view, Jaffer was only a "good guy" with whom he had a warm but strictly professional relationship. The commissioner concluded that since they were not friends, Paradis could not be blamed for using his position to advance a friend's interest.

In the absence of friendship, the commissioner then set out to determine whether the minister had made a decision that, he should reasonably have known, would place him in a position to “improperly further” Jaffer’s private interests. The commissioner reasoned that if he had granted preferential treatment to Jaffer by allowing GPG to advance their proposal before departmental officials, such inequitable treatment would in itself be improper. Moreover, section 7 of the *Conflict of Interest Act* also explicitly prohibits public office holders from providing preferential treatment to any person or organization “based on their identity or the identity of the person or organization that represents them” in their dealing with the federal government.

However, to determine whether GPG had received preferential treatment required a clear standard, and the *Conflict of Interest Act*, while it explicitly prohibits it, does not actually define preferential treatment. So in order to determine whether Paradis had violated the law, the commissioner relied on a definition offered in a 1984 landmark task force on government ethics, which had defined preferential treatment as “treatment more favourable than might be accorded to anyone else in similar circumstances” (Government of Canada, 2012b, p. 21).

Reviewing the facts of the case, the commissioner noted that, while he was frequently approached by interested corporations, the minister would rarely ask his department to meet with them to discuss their projects and that he would never do so before asking his staff to assess whether their proposal warranted a meeting. There was no such review in GPG’s case. In fact, Paradis himself admitted that he did not really understand Jaffer’s solar panel idea when he instructed his staff to arrange a meeting with departmental officials. During the investigation, departmental officials also confirmed that it was not normal practice to meet business people to discuss such a sketchy proposal.

On this basis, the commissioner concluded that the decision to grant a meeting was indeed unusual and, because he knew him, the minister provided Jaffer with more favourable treatment than others could have expected in similar circumstances. By granting Jaffer preferential treatment, the minister also provided GPG with the opportunity to improperly advance its interests and he placed himself in a conflict of interest, as he should reasonably have known would be the case. In sum, the commissioner concluded that Christian Paradis violated the ethical standards of conduct established in the law for public office holders.

The media and Opposition MPs quickly picked up the publication of the commissioner’s investigation report. The following week, during Question Period in the House of Commons, Opposition MPs used the report to call for the minister’s resignation. For example, Guy Caron, an NDP member, emphasized the seriousness of having broken the *Conflict of Interest Act* and asked: “Is the Prime Minister really going to allow someone with such low ethical standards to be a member of his Cabinet?” (Government of Canada, 2012a). Scott Andrews, a Liberal member, also

questioned why a confirmed violation of conflict of interest legal standards seemed to have no consequences while other forms of ethical breaches, some of them unproven, had recently led to ministerial resignations:

A Tory MP is charged with DUI: he gets kicked out of caucus. There are rumours surrounding a female Cabinet minister: she gets the boot. Another Cabinet minister leaves briefs at his girlfriend's: he is shown the door. Now a Conservative Cabinet minister is convicted by the conflict of interest commissioner for blatantly breaking the rules and he gets to stay. The question is this: why are there no consequences for violating their own accountability act? (Government of Canada, 2012a)

In response, Minister Paradis gave his own interpretation of the commissioner's report:

Mr. Speaker, I accept the conclusions of the commissioner. The commissioner recognized that there was never an attempt to influence public servants. The company in question never secured a contract and there was never any prospect or question of an advantage on my part. However, in the future, I will take further precautions when approached by Canadians seeking more information about the services and programs delivered by their government. (Government of Canada, 2012a)

The commissioner's investigation reports, he argued, are simply "educational tools to help us understand how conflict of interest rules work" (Leblanc & Baluja, 2012).

The prime minister, Stephen Harper, also downplayed the significance of the Act's violation, arguing that no real harm had been done and that the minister meant well.

The minister didn't act with any ill intention of any kind, nor has any substantial harm of any kind occurred. I think the appropriate thing in this case is simply for the minister to learn and to conduct himself with greater precaution in the future. (Payton, 2012)

Unsurprisingly, the parliamentary opposition did not find the government's response to the commissioner's report to be convincing. Several newspaper columnists were also dissatisfied with the outcome, using the case to argue for a conflict of interest regime that would include some concrete sanctions (see, for example, Harper, 2012). However, despite this criticism, the investigation report's publication essentially marked the end of the controversy. Christian Paradis remained a Cabinet minister until November 2015, when he retired from politics.

Analysis and Conclusion

Key Tensions and Debates

In considering public sector ethics, three dimensions of the case are worth considering.

Understanding the Standards of Conduct in Government

The first issue concerns the difficulty of achieving a clear and common understanding of the standards to be upheld by public officials. In this case, Paradis always claimed that he had done nothing wrong. His views were not the result of ignorance: immediately after his decision to grant a meeting, his chief of staff warned him that it could be a breach of ethics. Clearly, while he was aware of the potential violation, he simply disagreed that his decision would create a conflict of interest or give Jaffer preferential treatment.

When interviewed by the commissioner, Paradis argued that there is nothing wrong in a minister helping a company get access to government. He said that he always tried to help businesses access government, especially companies from his riding. His goal was simply to bring innovative products and business information to the public service. Moreover, he claimed that GPG gained no advantage by accessing departmental officials since, if the project was deemed interesting, it would still have to go through a competitive process before obtaining a contract. Finally, he claimed that Jaffer was not his friend and that, in any case, departmental officials do not treat companies differently when their minister requests that they meet with them.

In the end, the commissioner soundly rejected most of his views. While she agreed that Jaffer was not his friend, she also concluded that he should reasonably have known that he was giving preferential treatment to GPG, thereby violating the law. However, in order to do so, the commissioner had to attribute precise meanings to some concepts that the law itself does not define, such as friendship, private interest, and preferential treatment. In sum, it is through her investigation that the commissioner decided what the norms mean in practice and how it could be empirically determined that they had been violated.

Under these circumstances, it would seem entirely possible that a well-meaning official, parliamentarian, or citizen would have, in good faith, reached a different but defensible interpretation of the appropriateness and legality of the GPG meeting. If this is so, we should consider what such a difficulty in interpreting standards could mean for the promotion and enforcement of public sector ethics.

Power, Hierarchy, and Ethical Conduct

A second issue to consider is the difficulties that public servants may encounter in living up to ethical standards in the “real world” of the public service, where respect for the administrative hierarchy and responsiveness to ministerial demands are highly valued and expected as part of the public service bargain (see Chapter 2). In this case, we saw that some PWGSC officials worried about real or perceived preferential treatment to GPG. Yet, despite those misgivings, everyone went ahead with the meeting, presumably considering that a ministerial request should trump their own ethical concerns.

In practice, it clearly would have been difficult for departmental officials to refuse to follow the minister's instructions. Ministers are legally appointed to lead their departments and democratic government requires that public servants be responsive to their legitimate instructions. For this reason, it is not surprising that PWGSC officials told the commissioner that, despite their misgivings, they actually treated the minister's request as a priority. However, in the context of public sector ethics, their behaviour raises some questions about what public servants should do when they are asked by their ministers and their administrative superiors to do something that they believe violates the ethical norms of the public service. Should they simply defer to the moral judgement of their superiors?

On the one hand, it is hard to imagine that one can develop a strong ethical culture in the public service if employees are expected to set aside their moral judgement every time their superiors give them instructions. On the other hand, refusing to implement instructions on ethical (but not legal) grounds could raise issues of administrative effectiveness and political responsiveness that should also be seriously considered. Moreover, given self-interest and the difficulty of contesting directives of powerful superiors, it is doubtful that an effective ethics system could rest on the willingness of lower-level employees to regularly contest instructions on moral grounds.

In sum, one of the difficulties associated with public sector ethics is that, in addition to making judgements about the right course of action in particular circumstances, public officials must also act on their judgement in an environment of power relations and organizational hierarchy that can make such action more difficult.

The Enforcement of Standards of Conduct

Finally, it is also worth considering the role of the commissioner in ethics enforcement. The Office of the Ethics and Conflict of Interest commissioner was established to ensure that office holders would no longer police themselves on matters of ethics. In the face of allegations of ethics violations, the public could not simply rely on senior officials to investigate themselves. As an independent officer, the commissioner would bring impartiality and expertise to ethics enforcement and help regain the public trust (Juillet, 2004).

In the GPG case, the commissioner indeed played a key role in uncovering the facts, assessing them, and telling the public that the minister had acted unethically. Neither the media nor the parliamentary committee that looked into these allegations could present a clearer picture of the events or come to a more authoritative conclusion. In contrast to both the media coverage and the parliamentary hearings, the commissioner's intervention was more dispassionate, impartial, and professional. Furthermore, through her report, the commissioner helped further define and publicize some of the ethics rules, serving an educational role and, hopefully, helping prevent future violations.

However, her investigation also took over 18 months, used significant resources, and ultimately had limited consequences. Under the *Conflict of Interest Act*, the commissioner could not impose any sanctions beyond publicly blaming the minister. In the GPG case, Paradis was undoubtedly embarrassed by the conclusion of her investigation, but he could also brush it off fairly easily, describing it simply as an opportunity to learn about ethics. The prime minister also minimized the importance of the violation by insisting that “no substantial harm” had been done because no funding had been granted to the project. In the end, beyond some public embarrassment, no one was ever formally sanctioned for violating the rules. We could legitimately ask whether this is sufficient to ensure accountability and deter future violations in matters of ethics.

Significance of the Case for Public Administration

The GPG case does not hold great historical significance for Canadian public administration. Unlike some major scandals, the GPG controversy did not lead to ministerial resignations, let alone a change in government. While the commissioner’s investigation helped clarify federal ethics rules, it’s not likely to prevent new problems of interpretation from arising in the future. But it is this mundane nature that partly makes it useful in understanding public sector ethics. Ethical standards do not exist solely to prevent large-scale corruption; they must inform the daily workings of public servants.

Public officials must make small decisions about how to treat outside interests almost on a daily basis. Upholding ethical norms requires them to think about how broad principles and standards of conduct should guide the decisions that they make as they go about their routine business. The GPG case illustrates some of the challenges involved in interpreting and applying these norms in practice as well as some of the challenges associated with building an effective compliance and enforcement system for ethics across public agencies.

Discussion Questions

Using the case presented in this chapter, we can start discussing public sector ethics by considering the following questions:

1. Do you think that the minister was wrong in instructing his department to meet with GPG? The prime minister argued that “no substantial harm” had been done because GPG never received any government grants or contracts. Do you agree?
2. Based on this case, do you think that a more detailed statement of what is meant by “conflict of interest” and “preferential treatment” is possible? Would more clarity have helped avoid this controversy and resulted in more ethical behaviour?

3. Given their stated concerns with favouritism, do you think that lower-level departmental officials acted properly by following the minister's and the deputy minister's instructions and holding a meeting with GPG? What would you have done?
4. How effective do you think that the commissioner was in ensuring compliance with standards of conduct in the GPG case? Based on this case, what would you change to improve the enforcement regime for public sector ethics?
5. The director general in the Real Property Branch told the commissioner that she usually "actively discourages staff from meeting with business representatives," except at public trade shows, in order to avoid the perception of favouritism. Given that it would seem to be in the public interest to have more exchanges with corporations, do you think that this is really necessary in order to ensure ethical public administration?

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