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Some considerable time has past since I was asked to speak to the Institute. Since then my circumstances have changed and I am to leave office as Clerk of the House preparatory to taking up appointment as an Ombudsman. So my reflections on the changing nature of parliamentary practice, especially in regard to the impact of mixed member proportional representation (MMP) on select committees, take on something of the nature of a valedictory address reflecting on how parliamentary practice has evolved over the decades of my association with Parliament from a ‘pre-modern’ to a ‘modern’ system. I will end by speculating whether, in some respects, even a ‘post-modern’ epoch can be envisaged.

Thirty years ago when I was a junior parliamentary official I accompanied a delegation to the European Parliament, then meeting in Luxemburg. Our host at a dinner given in honour of the delegation was one of the European Parliament’s Vice-Presidents, Senator William Michael Yeats of Ireland (the son of the famous poet, and who died recently). During my parliamentary career I must have listened to thousands of speeches but Senator Yeats’ remarks on the New Zealand Parliament have remained with me.

According to Senator Yeats, if one wished to learn how the British House of Commons worked in 1922, one should visit the Dail (the Irish Parliament); and if one wished to learn how the House of Commons worked in 1865, one should visit the New Zealand House of Representatives.

I have no idea where Senator Yeats drew this reflection from (he did not say) but I was struck by it and reminded of the saying about how many a true word is spoken in jest.

At the time of Senator Yeats’ speech the New Zealand Parliament was in many respects unchanged in its practices from the previous century. This was especially so in the parliamentary sitting programme. This still operated on the basis of members assembling in Wellington late in the year (after gathering in the harvest), transacting business in a continuous block of sittings, and then adjourning in late spring for six months or more. Thus the parliamentary session extended from May/June to November/December. The organisation of business through the session ranged from the leisurely to the frenetic. On meeting, Parliament would embark on a three- or four-week Address in Reply debate during which all members would speak. This would be almost immediately followed by the Budget and a further three-week debate, again with all members participating. Apart from Budget legislation, little progress at all would be made on the legislative programme before the session was half over.

But, in contrast, the second half of the session was extremely pressurised. This was because the legislative programme was concentrated into it and because legislation that would not come into effect until the following 1 April or 1 July had to be passed before the House rose for Christmas, since the House would not sit or have time to attend to it closer to its commencement. In this way legislation that was not to take effect for another eight or nine months was regularly passed under urgency. Urgency was a parliamentary staple. It was invoked virtually every day for the last two months of the session. It also involved far more onerous consequences than does urgency today. Once urgency had been taken the House did not rise until the business concerned had been completed (or the Government decided to pull out) or 12 midnight on Saturday was reached. There were no meal breaks, for example. This, combined with the fact that individual stages on bills were not subject to the time limits applying today and that members expected debates to last much longer than they do now, meant that it really was legislation by exhaustion.

All of this and much else changed, not with the 1996 introduction of MMP, but with reforms to procedure adopted in 1985. Indeed it is 1985 that I would identify as the year in which Parliament became ‘modern’. After 1985 what Senator Yeats had said about the New Zealand Parliament ceased to be true. Today, although the British House of Commons and the House of Representatives are recognisably of the same genus (and the same can be said of other Commonwealth legislatures) and an observer familiar with one would not find it difficult to
find his or her way around the other, they do operate in quite different ways.

Before focusing on select committees, it is as well to remind ourselves what changed in overall parliamentary organisation from 1985.

First, the reforms introduced a pre-announced programme of parliamentary sittings. This comprises a sitting programme for the coming year identifying the days on which Parliament will be sitting. This hardly sounds dramatic today, but it was in 1985. When parliamentarians adjourned for the Christmas recess they did not know precisely on which date Parliament would reassemble in the following year. (Though they could surmise that it would be in May or June and certainly before 30 June, the last day of the government’s financial authority granted under the Public Finance Act.) Not only did they not know the date at that time, the Prime Minister would keep them guessing for as long as he could. Labour members in opposition up to 1984 used to joke that they really fixed the day for the opening of Parliament because invariably the Prime Minister called Parliament together during the Labour party conference so as to inflict maximum inconvenience on them!

Parliament now had an announced sitting programme and sittings were held more evenly throughout the year. Sittings organised around the farming calendar were abandoned in favour of a system (never entirely consistently applied) of ‘three weeks on, one week off’—that is, some three weeks of sitting followed by a one-week adjournment. This arrangement of sittings was applied from February through to December, thus leaving only January free. An immediate consequence was that legislation could be programmed for parliamentary consideration closer to the time that it would be needed. There was no longer a hiatus in parliamentary activity. This did not mean that urgency became obsolete. It was still a frequent component of parliamentary management and could be used ferociously on occasion. But it did mean that it was no longer necessary to use it consistently day after day in the run-up to a recess. Urgency tended to be taken on fewer occasions, and last for longer individual periods when taken.

This leads to a further major change arising out of the 1985 reforms. Urgency was made more ‘humane’. Indeed, it was this change that enabled individual bouts of urgency to run for longer periods on average than previously. A practice of not sitting beyond midnight (except in exceptional circumstances) was made the rule in 1985. Instead of urgency being an uncompromisingly unbroken stretch of sitting, meal and rest breaks and an overnight suspension of the sitting were introduced. This, together with fixed-time debates on individual stages of bills, mean that urgency is a much milder parliamentary infliction today than it was before 1985. (The changed political culture introduced by MMP has further ‘humanised’ or blunted, depending upon taste, urgency’s use as a parliamentary weapon.)

1985 was also the start of the modern era for select committees, though not quite as dramatically as for the floor of the House because committees had been quietly modernising themselves before then. There were three main ways in which committees changed.

### Comprehensive select committee structure

First, a comprehensive select committee structure of general purpose committees was established for the first time. Up to 1985 the Standing Orders required that a few named committees be established (Statutes Revision, Local Bills, Petitions etc). A number of other committees were also regularly established by convention and in this way a structure of committees covering most subject areas existed. But in 1985 the committees were reorganised into 13 subject committees that between them explicitly covered the field as far as government activity was concerned. Each committee was assigned a slate of portfolios to monitor. At first committees’ terms of reference were expressly tied to government departments. This could be limiting in some circumstances if a committee wished to look into a matter with no departmental connection. Within a few years this was changed to a general ‘subject’ responsibility that encompassed government departments but extended to anything to do with that subject (health, defence, local government etc) regardless of whether a government department had an involvement.

The decision to make committees ‘general purpose’ was more problematic, though probably inevitable given the size of the House.

It is always a difficult decision whether to organise one’s committee system on subject or functional lines. In practice, most systems will have elements of both. New Zealand’s is today heavily subject-orientated. There are a few committees whose jurisdiction is determined by function. The main example is the Regulations Review Committee which considers all delegated legislation according to specialist scrutiny criteria, without any limitation to legislation relating to a particular subject area. But most committees perform the full range of legislative and scrutiny functions in the subject areas assigned to them. In 1985, ‘functional’ committees on petitions and local bills were abolished and their functions divided among the new subject committees. The new committees consider bills, petitions, estimates and treaties and conduct reviews and inquiries relating to their subject areas.

In 1985 there was some debate about whether specialist ‘legislation’ committees separate from scrutiny committees should be established. Ultimately it was determined that the resource in terms of members available to serve on committees was not great enough to support the number of committees this would entail. Thus, for example, estimates and treaty review functions that in other parliaments might be carried out by specialist committees are in this Parliament carried out by committees that have a range of other functions to perform, particularly the consideration of legislation.

There are advantages in this form of organisation, of course. Members are able to gain a comprehensive sectoral view of issues, without distinctions based on the type of parliamentary business (bill, petition, estimates etc) that is being transacted. On the other hand, some topics can be more effectively performed by a committee familiar with the function being carried out. Arguably examinations of international treaties fall into
this category. Scrutiny of delegated legislation has been accepted since 1985 as doing so.

**Initiating inquiries**

The second major change in select committee practice introduced in 1985 is the conferring of power on committees to initiate their own inquiries.

It may seem strange today to reflect that there was a time when committees were wholly passive in the work they could undertake, acting only on referral from the House. Yet (with a limited exception for the then Public Expenditure Committee) this was the case. The House regularly referred bills to committees (petitions and estimates were considered by functional committees). In theory, it could refer anything else to a committee for inquiry but in practice it rarely did so. The reasons it did not were partly formal: a reference to a committee entailed a motion on the floor of the House thus involving debate and the expenditure of valuable parliamentary time that could otherwise be used for passing legislation. But mainly they were political: why would a Government use its majority to refer a subject off to a committee for investigation when most such subjects could be potentially embarrassing for it? In general, opposition members advocate for parliamentary inquiries whereas governments prefer to avoid them. In Parliaments with inbuilt government majorities, few matters were referred for inquiry up to 1985.

Conferring the power on committees to initiate inquiries meant that committees could now decide for themselves whether to launch inquiries into a matter falling within their subject area. At a stroke the potential cost in parliamentary time was eliminated. The decisions were taken in the committees and not on the floor of the House. On the other hand, political constraints still existed. Until MMP, Governments still had majorities on committees and could use those majorities to block use of the inquiry power. In practice, this was not such a problem as it might have appeared. Having been given the power of inquiry there was some political expectation that it would be used, and Governments were not immune to this. Blocking inquiries by inertia in the House was one thing; actively blocking them in committee was another. Government backbenchers serving on committees were wholly passive in the work they could undertake. Committees could now decide for themselves whether to launch inquiries into a matter falling within their subject area. At a stroke the potential cost in parliamentary time was eliminated. The decisions were taken in the committees and not on the floor of the House. On the other hand, political constraints still existed. Until MMP, Governments still had majorities on committees and could use those majorities to block use of the inquiry power. In practice, this was not such a problem as it might have appeared. Having been given the power of inquiry there was some political expectation that it would be used, and Governments were not immune to this. Blocking inquiries by inertia in the House was one thing; actively blocking them in committee was another. Government backbenchers serving on committees had their own views and could not always be persuaded to oppose inquiries.

The main obstacle to using the power was practical. Committees simply did not have time to devote to inquiries. This comes back to their general-purpose roles. Committees had a heavy legislative workload. The political imperatives in Parliament are and have always been to process legislation. It is in legislation that Governments invest their time and aspirations. Processing legislation will always take priority over other desirable tasks. Of course, not all committees have the same legislative workloads and this did lead to variations in inquiry take up. The justice committee was particularly weighed down with legislation and found it hard to find time for inquiry work. (It was subsequently effectively split into two when a law and order committee was established.) The foreign affairs committee, on the other hand, had traditionally had a relatively low legislative workload (this may since have changed somewhat) and had more time to devote to inquiry work. Consequently, that committee quite soon began to produce reports on inquiries that it had initiated.

But the relatively low initial use of this power may have derived from its novelty. Committees did take some time to become used to being able to inquire into whatever they chose to look into. The advent of MMP changed the inquiry climate radically. Governments no longer had assured majorities on committees and therefore were less able to resist calls within a committee for an inquiry to be held – an important political factor had changed. Also by the time MMP came along committees were beginning to find their feet in inquiry terms and to be much more ready to embark on an inquiry. Political discourse now embraces select committees inquiries as expected and common events. This is a major change to 20 years ago when such inquiries were rarities. It is worth noting, however, that, in contrast to their legislative work, inquiries by select committees in New Zealand are still developmentally in their infancy as compared to overseas legislatures. Consequently, a distinctive inquiry culture and consistent performance in executing it is yet to emerge in this aspect of parliamentary business.

**Ministers not serving on committees**

The third major change affecting select committees that was made in 1985 was the exclusion of Ministers from membership of them.

Until 1985 Ministers (including senior Ministers) were fully participating members of select committees. In 1985, ostensibly with the object of making committees more ‘independent’, Ministers generally ceased to be members of the subject select committees. The exclusion of Ministers was not total. Ministers continued to participate in the work of the ‘domestic’ select committees such as Privileges and Standing Orders. Furthermore, from the 1980s Ministers began to be appointed who were not made members of Cabinet. These Ministers were appointed to serve on the subject select committees, the Government caucuses not being of sufficient size to permit the luxury of excluding them from carrying our committee work.

The expansion of select committees’ jurisdiction in 1985 from being predominantly legislative committees into general-purpose committees did necessitate a re-examination of the role of Ministers on committees. As committees came increasingly to exercise scrutiny over the performance of departments and other government agencies, it would have been incongruous for the Ministers responsible for those departments and agencies to have participated in such examinations (though the Scottish Parliament seems to manage this). But the loss of ministerial participation in select committee consideration of legislation has always seemed to me unfortunate.

The consideration of legislation by a legislature is not a judicial proceeding. It is not the consideration of a problem by an apolitical and impartial umpire. That is not how democracy works. Legislation is advanced by a Government that believes in its efficacy and makes a political commitment to its enactment. It, and the members of Parliament who support it, are not neutral as to the outcome of the legislative process. The Government may, as a result of its experiences in that process,
be persuaded that the legislation was a bad idea and should be dropped. This occurs, though comparatively infrequently. (If it occurred frequently that would suggest that there was something seriously wrong within the government machine itself.) More often, the parliamentary process will identify problems with the legislation that can be addressed by amendments to it. Generally, its form will be improved by parliamentary consideration of it.

In these circumstances it seems perverse that the one parliamentarian who is deliberately excluded from active participation in its consideration during the most significant stage in a bill’s passage – the select committee stage – is the member who is promoting it, the Minister. Consideration of bills by select committees is the most distinctive feature of the New Zealand parliamentary system. Enlisting public participation in the legislative process is second-nature to us but is not common in overseas legislatures. It is unfortunate that the Minister in charge of the bill no longer engages directly in this process and is not party to the exchanges of views that go on between witnesses and members and between members themselves at the stage at which Parliament gives its closest consideration to the legislation. That Ministers only receive reports of the exchanges at committees (from committee members and departmental officials) rather than experiencing them as participants is significant. Inevitably, they are less well informed about opinion on their bills. Solutions to problems and changes that they may have been open to if they had been present and participating, may not be appreciated or may appear less desirable when considered at one remove from the actual committee hearings.

In sum, my contention is that ministerial participation is the legislative work of select committees (and Ministers are members of Parliament) and could only enhance, not inhibit, the process. Such participation would help to ensure that select committees were more often (though inevitably not always) where the real decisions on the bill are taken.1 Mixed member proportional representation (MMP)

The advent of MMP can, in these terms, be seen to have added a new layer of complexity to parliamentary practice (resulting from the multi-party make up of Parliament) rather than having marked a fundamental break with the past. Parliament had substantially modernised itself in 1985 and it was this exercise that enabled it to cope quite successfully with the challenges of MMP a decade later. Without that earlier exercise, accommodating MMP into parliamentary practice would have been much more difficult.

MMP brought explicit recognition of parties in Parliament for the first time. Of course, parties already existed and parliamentary practice while ostensibly treating each member of Parliament as an autonomous agent did tacitly recognise that they operated as members of parties. In an essentially two-party system this could be managed in terms of ‘Government’ and ‘Opposition’. By using these concepts, a rough accommodation could be reached between rules that regarded members as operating solely as individuals and the reality of political practice wherein they operate in groups. (Third parties such as Social Credit and New Zealand First posed severe challenges for traditional parliamentary practice – ‘traditional’ in the sense of post-1920s practice. Their advent led to a number of contorted rulings attempting to accommodate their presence in Parliament.) But multi-party Parliaments could not operate without explicitly recognising party groups, and this is what the changes devised in the run-up to MMP did.

The changes also embraced a strict theory of proportionality – that each party would get its just deserts in terms of debating time, questions, committee positions etc based on its proportion of members of the House. This was a departure from pre-MMP practice when an ‘alternation’ principle had favoured the Opposition party by awarding it more time, questions and committee places than its numbers strictly warranted. At general elections in 1972, 1975 and 1990, parties had been elected with huge parliamentary majorities. Yet in speaking times and questions the opposition had had as much parliamentary attention as the governing party (indeed, in practice, often more speaking time since government whips invariably prevail on their members to be brief in their speeches). Since MMP, a facility with mathematics has been much more important in parliamentary practice and parties are jealous to receive and only concede parliamentary opportunities that are strictly consonant with party numbers in Parliament.

There have also been at least two select committee developments that are specifically MMP driven.

**Non-voting members**

One rapid growth that occurred under MMP was the development of non-voting memberships on committees. This concept began to develop organically quite outside the Standing Orders, though it has now been recognised and regularised within them.

The demand for membership rights on a non-voting basis arose because the smaller parties now represented in Parliament did not have members on every committee. This meant that those parties were not automatically advised of notices of meetings, agendas and other papers circulated to members of those committees. Nor did members of those parties have any right of access to that information. The Standing Orders allow a Minister in charge of a bill to participate in select committee proceedings on the Minister’s bill and allow committees to accord participating rights to any other member, but they do not allow committees to confer membership right on other members. Participatory rights do not give right of access to committee information, only membership does. Consequently, in order not to be shut out of knowing what is going on in those other committees and thus being able to participate in them effectively if they wished to do so, smaller parties came increasingly to request ‘non-voting’ membership on committees on which they would not otherwise be represented. Without affecting the voting position on committees, smaller parties are thus able to keep themselves informed of committee work across the board.

Non-voting membership takes a number of different forms. It can be non-voting membership for all purposes thereby
increasing the membership of a committee accordingly but without disturbing voting rights. But most non-voting appointments are not general. They are for a bill, inquiry or other piece of parliamentary business, such as a particular estimates examination. A half-way house between non-voting membership for a specific item and general membership is non-voting membership for any particular type of legislation that may be introduced, such as broadcasting legislation, for example.

Non-voting membership is conferred by the Business Committee on request. It thus requires unanimous agreement. Requests are rarely declined, though they often need to be clarified in regard to what business they are intended to apply to.

Minority/differing views

There is only one report from a select committee on a bill or other matter before it. Technically this reflects the views of the committee as a whole whether or not each individual member agrees with all aspects of it. There is no such thing as a ‘minority report’.

However, under MMP there has been an increasing demand from the various parties represented on committees to include in reports views that specifically represent their perspectives on the issues examined by the committee rather than for these to be wholly coalesced into a committee view. This desire has been accommodated in the House’s rules which permit committees to reflect the differing views of members in their reports. While different report writing techniques can be used to reflect these various views, increasingly they are being clearly signposted as the views of the party or parties that are explicitly identified.

Members themselves are undoubtedly more content with the greater liberality with which differing views are reflected in reports today compared to pre-MMP days when they were a comparative rarity. In a multi-party Parliament some growth in the comparative frequency of differing views in reports views that specifically represent their perspectives on the issues examined by the committee rather than for these to be wholly coalesced into a committee view. This desire has been accommodated in the House’s rules which permit committees to reflect the differing views of members in their reports. While different report writing techniques can be used to reflect these various views, increasingly they are being clearly signposted as the views of the party or parties that are explicitly identified.

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The procedural liberality that has been conceded to committees in reflecting differing views has removed an important incentive on them in attempting to reach a consensus. Before MMP, not to reach a consensus was to risk not having one’s view reflected at all in the committee’s report. Now that all views can be reflected in the report, the temptation is for parties simply to insist on their views without making much effort to craft a committee view. In these circumstances select committee reports can sometimes take on the appearance of being recitations of each party’s view, rather than being a reflection of the committee’s view. Members seem content with this, but it may undermine the authority with which committee reports are invested. It is interesting, for example, that a court in using a select committee report to assist with statutory interpretation has discounted the authority of a report in which there were differing views reflected. Rules cannot guarantee desirable outcomes but they can provide incentives for them. In this case an incentive has been removed that encouraged committees to reach committee-wide views.

The future

I have traced the development of parliamentary procedure from a ‘pre-modern’ to a ‘modern’ state. In my view MMP, though it has undoubtedly changed the way in which Parliament operates, has done this by building on modernisation of parliamentary procedures that had already been undertaken a decade or so before. But are there indications that Parliament as an institution is to change more fundamentally in the way in which it operates? Is it about to enter a ‘post-modern’ era?

I would suggest that an important way in which Parliament is changing fundamentally is in how members participate in parliamentary proceedings or rather how they are able to participate remotely or virtually.

In its ‘pre-modern’ state parliamentary life demanded almost constant attendance at Wellington while Parliament was in session. This was partly because of geography. Members had to live in Wellington for six months of every year. It was possible for some to travel back to their constituencies each weekend but this was quite an ordeal. One member’s daughter in her biography of her father (who represented Kaipara) describes his travel home each weekend in the 1940s: overnight train on Friday afternoon, pick-up at Auckland station on Saturday morning, and then motoring out to his home. All of this done in reverse on the following Monday evening.

As communications improved it became possible for members to reach their constituencies and homes more easily. To accommodate this, Friday sittings were cut back to mornings only (as late as 1974 the House still sat until 4 pm on Fridays) and then eliminated altogether except under urgency. But members still had to be in attendance on Parliament to participate. Their parties needed them present to punch their full weights.

This is no longer the case. The rules that required personal attendance to ensure participation have been relaxed. The need to maintain a quorum has been abolished, the House readily tolerates one member acting on behalf of an absent member and, crucially, members do not need to be present in person to have their votes recorded. Most votes are ‘party’ votes in which the whip of the party casts a figure representing the votes of those members of the whip’s party – a card vote. Up to 25 per cent of the party’s members do not even need to be in Wellington to have their votes recorded on their behalf in this way. Those who are in the parliamentary precincts when a vote is recorded are unlikely to be in the Chamber or to be aware that a vote is in progress. Even personal votes on conscience issues are mostly recorded by proxy.

These developments of proxy voting have removed the most important incentive for members to attend Parliament. They have posed their own problems for whips, for they have undermined their control of the movements of their members. If a member’s vote will be counted even if the member is not present, why should the whip’s permission be needed for the member to be absent? They have also been picked up by persons and groups outside Parliament as removing good excuses that members had for not attending meetings or functions to which they were invited. It was formerly a convinc-
ing excuse that a member could not accept an invitation because they had to be present in the House. That does not wash any longer. Members grumble that they are now criticised if they put parliamentary attendance ahead of functions in their constituencies. This partly reflects a change of values, but it has been encouraged by members themselves, making it possible for them to participate in parliamentary proceedings while being elsewhere.

Technology encourages ‘remote’ participation. Teleconferencing and more latterly videoconferencing is used for select committee hearings. Hitherto these have been confined to examinations of witnesses. Rather than the witnesses having to travel to Wellington, members hear their submissions over a teleconference or videoconference link. But the question will arise of members themselves participating in committee meetings from different locations by teleconference or videoconference, something that has not been permitted thus far. Legislation these days commonly provides for public bodies to hold meetings by teleconference, if not videoconference. Select committees cannot be far behind. While there are obvious arguments in favour it will increase the tendency for members to participate in parliamentary proceedings remotely rather than directly.

The concept of representation has changed. Members are more strongly party representatives than representatives of electors. This is not to say that members are not representatives of electors, indeed the electoral interests that members represent are more complex under MMP, with parties and individuals on party lists appealing to specific sections of the populace. But, to a greater extent than in the past, members’ parliamentary conduct is organised and channelled through parties. MMP has given an enormous fillip to this. One feature of this development is the increased frequency of resignations from Parliament, a practice that had become uncommon for over a century. Now, list members often resign during the course of the parliamentary term and are effortlessly replaced by the next member on the party list.

I see these developments whereby parliamentarians increasingly operate remotely, interchangeably and without forming strong collective identities as parliamentarians as being major challenges for the institution of Parliament and for how it functions.

Notes

1 I concede that this is not how our system is universally understood to function. Thus a recent article discussing the enactment of the Terrorism Suppression Act states: ‘In theory, the Committee should be free from the influence of the Executive: The Minister who promotes the Bill is not supposed to be involved in the Committee’s business.’ Ministerial and department involvement with the select committee raised a question of ‘constitutional propriety’ in regard to the ‘independence’ of the committee. I need hardly say that I profoundly disagree with this view of our constitutional arrangements. See Isabel Jenner, ‘More of the Same?’, New Zealand Students’ Law Journal, Vol. 1, p. 150.

2 Vela Fishing Ltd v Commissioner of Inland Revenue [2001] 1 NZLR 437 at [131]. Later reversed but without reference to the select committee material.


David McGee was appointed an Ombudsman on 19 November 2007. David joined Parliament’s Office of the Clerk in 1974 and worked in several roles including with select committees.

He was appointed Clerk of the House of Representatives in 1985. In that capacity he was the principal advisor to the Speaker and Members of Parliament on parliamentary law and practice. He was a member of the committee which reported on New Zealand’s constitutional arrangements and devised the legislation that became law as the Constitution Act 1986. He was also a member of the panel which arranged and oversaw the public information campaigns organised for the electoral referendums held in 1992 and 1993.

David is the author of ‘Parliamentary Practice in New Zealand’, now in its third edition, the authoritative guide to parliamentary procedure in New Zealand. He has also written extensively in the area of parliamentary and constitutional studies. He was admitted as a barrister and solicitor in 1977 and appointed a Queen’s Counsel in 2000.

In 2002, David was made a Companion of the New Zealand Order of Merit (CNZM).
**Introduction**

United States Supreme Court Justice Louis Brandeis wrote in ‘Other People’s Money’ that ‘daylight is the best antiseptic’. The matters surrounding the initial employment of Madeleine Setchell by the Ministry for the Environment, and her subsequent departure under agreed (and confidential) terms, have certainly been the subject of a great deal of daylight (and political heat). But is not clear that the result has been an antiseptic one for the body politic and administration. Time will no doubt tell.

The Setchell case has raised a number of issues, including but not limited to:

- nature of conflicts of interest in the public service, and how best to manage perceived and/or real conflicts of this kind.
- respective roles of chief executive and Minister in respect of employment decisions that are formally – by virtue of the State Sector Act – the domain of the former.
- nature of the obligations on a chief executive pursuant to the ‘no-surprises’ convention.
- role of political staff in ministers’ offices.

**Political staff**

Starting with the last of these, this is a matter that we have been researching for some time, and on which we have published a number of articles (see Eichbaum & Shaw, 2003, 2005, 2006, 2007a, 2007b, 2007c). The research has involved the dissemination of a questionnaire containing 125 items, and including both open-ended and forced-choice questions to senior public servants, ‘political’ staff in Ministers’ offices, and former and present Ministers. We received coded and analysed responses from 188 senior officials, 32 ministerial advisors, and 22 Ministers.

On balance our research has identified that:

- There is a clear, and broadly accepted role for political staff in Ministers’ offices – Ministers (but in our sample not all Ministers) view them as adding value, as do a clear majority of senior officials.
- The move to a mixed member proportional representational (MMP) environment has added to the complexity of governance, and has also created spheres of activity (for example, inter-party negotiation over policy) which, if they were to be involved, would compromise the political neutrality of officials. Ministerial staff of the political kind are better suited to this kind of role.
- There are risks associated with the advent of political staff in Minister’s offices, and some evidence that this development has created problems from time to time. These risks include the funnelling of advice, problems in officials gaining direct access to Ministers, and ministerial staff sometimes exceeding their authority. To the extent that it occurs, however, it appears that the risk of politicisation lies in matters of process rather than those of policy substance.
- There is presently a significant gap in the accountability arrangements for political staff in Ministers’ offices. In theory they are covered by the State Services Code of Conduct, although in practice their role – in part at least – is at variance with the principle and practice of political neutrality. There is significant support on the part of both the advisers themselves and on the part of public servants for a dedicated code of conduct for political staff in Ministers’ offices.
This final matter was one that we commented on in a presenta-
tion to an IPANZ seminar on 21 February 2007.71

In that presentation we recommended that serious considera-
tion be given to developing a code of conduct for political staff
employed in Ministers’ offices (as a first step, with considera-
tion also to be given to specific codes for other classes of employee
employed within the ‘public service’ broadly defined, but not
required to fully meet the standard tests of political neutrality).

There is, as we noted in that seminar presentation, considerable
support both from public servants and political advisers
themselves, for such a code – only 4% of the public servants
surveyed for our research recorded some measure of disagree-
ment with the proposition that ‘there should be a special code
of conduct for ministerial (political) advisers’, and only 16% of
the advisers themselves disagreed.

In concluding our February 2007 presentation we recommended
that the Department of Internal Affairs (which has responsibil-
ity for the employment of ministerial staff through the Execu-
tive Government Support Branch) should issue a code of
conduct covering political staff employed on ‘event-based’
contracts. We also recommended that specific reference should
be made to that code of conduct in the Cabinet Manual. As to
the kind of procedural remedies that might be included in any
such code, we suggested that any breach or alleged breach of the
code be brought to the attention of the relevant Minister
by a departmental/agency chief executive and/or to the atten-
tion of the Minister responsible for Ministerial Services (since
1999 this has been the Prime Minister) by the Chief Executive
of the Department of Internal Affairs.

For the sake of clarity, the role played by political staff in the
matters surrounding the recruitment and employment of Ms
Setchell appears to have been relatively minor (i.e., simply as the
conduit for the views of Ministers) and – so far as one can tell
from the public record, not inappropriate. But in the New
Zealand context this case, perhaps more so than any other, has
brought the role (and accountability) of such staff to public
light and made them a matter of public debate.

One senses that there is a view within the Government that to
invite officials to draft advice on a code of conduct would be to
admit that the actions of political staff (in respect of this matter
or some other) had been inappropriate. Whether that is the case
or not, it is regrettable that the opportunity has not been taken
to address a deficit in the accountability arrangements for
political staff. A recent Australian study on the role of ministere-
tial staff in Australian Federal and State governments is entitled
‘Power without Responsibility’ (Tierman, 2007); and in the
absence of a code of conduct there is the risk that the power of
political staff – who are at the end of the day public servants,
albeit of a particular kind – will not be the subject of the
necessary guidance, oversight, and redress that a code might
offer. It is our view that a dedicated code would assist in
addressing the present accountability gap that exists here.
Moreover a code may provide a platform for other actions – for
example, induction or in-service education and training relating
to ethics, or to the relationship between (and specific responsi-

Employment decisions, Ministers and chief executives

Of the issues raised by the Setchell case this is perhaps the
most significant, and much of the initial debate centred on
whether it was appropriate for a Minister to venture a view on
such matters, and whether a chief executive should feel
obliged to advise his or her Minister in respect of an employ-
ment decision which may involve some measure of political
sensitivity or risk (and indeed whether advising a Minister is
tantamount to inviting a view on the part of the Minister).
The Institute of Public Administration/Institute of Policy
Studies seminar on 30 August 2007 addressed these issues in
some detail.72

Ross Tanner proffered the view that:

… since a Minister will have views to express about the performance
of a department, and of particular people within that department,
then on occasion it may be useful, and even necessary, for the chief
executive to advise the Minister before deciding on a particular senior
appointment. It will be up to the chief executive to take the
initiative and to determine the nature of the discussion, not the
Minister: in this as with other situations the chief executive is
required to ride the boundary between the political role of the
Minister and the administrative role of the department. This sort of
situation has previously been described as ‘managing in the purple
zone’ (Tanner, 2007 p. 7).

For his part, Jonathan Boston suggested that:

… there are circumstances where it would be both prudent and
appropriate for a CE to consult a minister prior to making a key
appointment; he went on to say that, ‘such circumstances are
likely to be relatively rare, limited to senior positions in the
department, and restricted to those cases where there are potential
political risks or issues associated with the appointment (Boston,
2007 p. 11; emphasis in the original).

Rob Laking was less inclined to entertain an active role for
ministers:

Chief executives may well do their Ministers the courtesy of
advising them of any significant appointments – but the word used
in the Cabinet Manual is indeed ‘advise’ and not ‘consult’. So in
making appointments chief executives have to have in mind their
general duty to run the department efficiently and effectively; but
they have no specific duty to Ministers on who they appoint. … The
consequence is that Ministers should keep out of passing judgment on
their decisions (Laking, 2007 p. 13).

While more ‘black and white’ than ‘purple’, in our view the
Laking interpretation of the guidance provided by the Cabinet
Manual is the correct one.

In early August 2007, the State Services Commissioner an-
nounced the terms of reference of his investigation into the
recruitment and employment of Madeleine Setchell73 and that he
would be assisted in this investigation by an ‘independent
inquirer’. The Commissioner appointed Don Hunn as the
The Commissioner’s report and that of Don Hunn were made public in November 2007 (SSC, 2007a, 2007b)

It is clear from Don Hunn’s report that the Chief Executive of the Ministry for the Environment did much more than ‘advise’ his Minister, that the Minister did express a view, and that this view influenced the subsequent actions of the chief executive. The following extract from Mr Hunn’s report speaks volumes (and raises the interesting question as to why the chief executive was not prepared to adopt the tenor of the ‘colourful’ advice on offer from the Deputy Commissioner):

1 June. The CE called the Deputy Commissioner, SSC, to inform her he had decided the perceived conflict of interest was such that he must offer the Communications Manager another position where that issue would be more manageable. The Deputy Commissioner noted that this was a decision for the CE to make and advised him to seek legal advice: he confirmed he was doing so. The CE mentioned that one of the reasons for his decision had been the Minister’s reaction to the Communications Manager’s relationship with her partner. The Deputy Commissioner responded along the lines – ‘Well if the Minister does display concern, just tell him to get over it’. (The CE did not find this particularly helpful: the remark may have been a little colourful but the CE could not have had a more succinct encapsulation of the SSC view of where the Minister’s and the CE’s responsibilities began and ended) (SSC, 2007b p. 24).

Colourful indeed the advice may have been, but, again, more black and white perhaps than purple.

Turning now to the State Services Commissioner’s report and the ‘lessons learned’ (see box below), the eighth of these provides that, ‘A Minister’s request that they have no surprises does not override the Chief Executive’s good employer responsibility to handle employment matters with discretion.’

The State Services Commissioner’s conclusions on this particular point are worth quoting at length:

Requests by Ministers that they be kept informed on a ‘no surprises’ basis cannot and do not mean that Chief Executives must inform Ministers of everything they do. Much of what Chief Executives do is not the business of Ministers and both efficiency and propriety dictate that such matters should not be brought to Ministers. Chief Executives should keep Ministers informed of anything with significance within their portfolio responsibilities, but there should be good and particular reason why the Chief Executive would bring matters that are the Chief Executive’s statutory responsibility to the attention of Ministers.

The fact that different judgments have been made in this case is a reminder that standards and conventions need constant reinforcement. I will continue to ensure that opportunities are provided for public servants to absorb and discuss the conventions and guidelines relating to political neutrality in the Public Service, and to relations between public servants and Ministers. I intend to discuss such matters further with Public Service Chief Executives and, if necessary, in the New Year, I may issue further guidance on a ‘necessity test’ to assist in deciding when to inform or consult a Minister about an employment matter (SSC, 2007a).

It remains to be seen whether guidance on a ‘necessity test’ will indeed be necessary. The State Services Commissioner’s comments on the actions of the Chief Executive of the Ministry of Agriculture and Forestry do seem to suggest that Ministers might in

The SSC Report – the nine ‘broad lessons’

- The political views of public servants are generally not a relevant factor in their employment; it is their behaviour that matters.
- For a small number of public servants in key jobs, any political alignments create a conflict with the job.
- There is nothing unique about communication positions, including communications manager positions, which sets them apart from the standard political neutrality considerations applying to all public service jobs.
- Family connections are relevant in considering conflict.
- All conflict must be managed, including political conflict.
- The management of conflict (especially involving family members) demands special sensitivity from employers.
- When managing a conflict (or any other employment issues) employers should only involve those who need to know.
- A Ministers request that they have no surprises does not override the Chief Executive’s good employer responsibility to handle employment matters with discretion.
- There is an obligation on good employers to handle their relations with their employees with discretion, but sometimes employee confidentiality may be overridden by the public interest.
certain circumstances be provided with advice relating to an employment decision, but after the event – advice from Ministers should not be sought in advance of decisions, properly those of a chief executive, being made (see SSC, 2007a pp. 6–7).

The other side of the ‘bargain’

Rising above the specific issues that are raised by the Setchell case, at the core the principal issue here is the nature of the Public Service Bargain (Hood & Lodge, 2006) that exists in New Zealand, or more to the point that in a normative sense should exist. Bargains change over time, but in the New Zealand context one can argue that since 1913 (and the passage of the Public Service Act) a variant of the Shafferian bargain has been in place for much of that time. Hood & Lodge characterise the Shafferian bargain in the following terms:

[B]roadly … civil servants gave up some of their political rights (such as the right to openly criticise the government of the day) in exchange for permanence in office. And for their part, elected politicians in their role as departmental ministers gave up their right to hire and fire civil servants at will in exchange for loyalty and competence (2006 p. 19).

In the New Zealand context the public service side of the bargain has been less about giving up political rights (although this was the case until the passage of the Political Disabilities Act 1936) and more about a duty of service to the government of the day (and to any future government) captured by the notion of responsive competence. If there is a purple zone it is perhaps more at the point at which responsiveness (to the government of the day) and responsibility (to provide advice that the government of the day ‘needs to hear’, as much as ‘wants to hear’) intersect.

Viewed in this light, the actions of the Chief Executive of the Ministry for the Environment were more responsive (and less responsible) than they might have been. On the responsiveness measure, the chief executive acted perhaps, ‘not wisely but too well’. Australian Treasury Secretary Ken Henry used the distinction between responsiveness and responsibility particularly effectively in an address to his staff (Henry, 2007), (one of the slides that he used with that presentation is included at the end of this article). The essence of Henry’s argument is that, while responsive to the government of the day is necessary, it is by no means a sufficient feature of the required Public Service bargain. To be clear – the government of the day has a legitimate expectation that the orientation of the public service will be one of responsive competence. Our research suggests that ‘departmentalism’ is still alive and well in the New Zealand public service – while an overwhelming majority of the ministerial advisers we surveyed (88%) agreed with the proposition that ‘officials generally try to facilitate Ministers’ policy objectives’, a sizable majority, (53%) was inclined to agree with the view that ‘officials are selective in the advice they tended to Ministers’ and ‘officials assert departmental priorities at the expense of the government’s agenda’. Equally the public service needs to operate with the legitimate expectation that it will be permitted to meet its obligation to tender free, frank, and comprehensive advice.

In a constitutional sense a sound, principled, and transparent Public Service Bargain is of fundamental importance. The Setchell case centers in large part on the allegation that both political and administrative players acted at variance with the kind of bargain suggested by long-standing constitutional and administrative rules and conventions.

Clearly the State Services Commissioner’s responsibilities – while they extend to good government and governance writ large – are confined in the main to the administrative branch of executive government, in effect to one side of the bargain. Matters relating to Ministers are typically the province of the Prime Minister, and at various times that particular demarcation line has been strictly policed. But the kinds of issues raised by the Setchell case are, as Ross Tanner observed on 20 August, on the ‘boundary between the political role of the Minister and the administrative role of the department’ (Tanner, 2007 p. 7). And so whatever the opportunities for public servants, ‘to absorb and discuss the conventions and guidelines relating to political neutrality in the Public Service and to relations between public servants and Ministers’, there is still the issue of how best to ensure that ministerial principals, as well as their administrative agents, are clear on the nature of the Public Service Bargain that delineates appropriate spheres of action, responsibility, and accountability for both parties.

There is, as the State Services Commissioner notes in his report, considerable advice available to public servants on the kinds of issues raised by the Setchell affair:

None of the lessons outlined above are new. None of these reflect any new understandings of public service. None of them have been affected by any change in society, political processes or technology. They can all be found in guidance offered in recent and earlier years by myself or predecessors, by the Auditor-General and in the Cabinet Manual. A review of the websites of those three organisations will find reference to all of these areas (SSC, 2007a p. 13).

What of advice and guidance to Ministers? Clearly the Cabinet Manual is the principal and paramount source of such guidance (in a formal sense – and in the best of all possible worlds Ministers might seek advice from their ministerial colleagues, or indeed the Cabinet Office). But if we approach these boundary issues from the perspective of a Public Service Bargain, the need for both sides of the ‘bargain’ to be explicitly articulated has been raised, and in recent times. In March 2001 the former Minister of State Services, the Hon Trevor Mallard, announced that, in response to the first report of the State Sector Standards Board, the Government had decided to set out its expectations of the State sector in a reciprocal Statement of Expectations and Commitment.¹
The Statement of Expectations (by the Government of the State sector) includes reference to the following principle:

To Serve the Government by:

• implementing its decisions effectively and with commitment;
• providing free, frank and comprehensive advice;
• keeping the Government advised of issues likely to impinge on its responsibilities; and
• being aware of and reflecting the Government’s priorities.

The Statement of Commitment (by the Government to the State sector) reads as follows:

• The Government recognises the performance of the State Sector will be substantially influenced by the actions and processes of Ministers, acting collectively and individually.
• In its working relationship with the State Sector, the Government and its Ministers will:
  – acknowledge the importance of free, frank and comprehensive advice;
  – provide clear guidance about policy directions and outcome priorities;
  – participate effectively in accountability processes; and
  – treat people in the State Sector in a professional manner.

Signed:

Minister of State Services  Responsible Minister

What of the current status of the reciprocal statement? In October 2006, following an Official Information Act request, the State Services Commission advised that:

The Statement of Expectations and Commitment was published as an enduring document, and the content has been accessible on the State Services Commission website. In March 2001, the Statement was sent by Ministers to the agencies for which they were responsible. The Statement has not been withdrawn, although to some extent the purpose of the Statement was superseded by enactment of the Crown Entities Act 2004 which specified duties for Crown entity board members, and the 2004 amendments to the State Sector Act which extended the integrity and conduct mandate of the State Services Commissioner.

The Statement has not been addressed by the current Government. It was sent by Ministers to the agencies for which they were responsible, and unlike the Cabinet Manual was not formally endorsed following the 2005 general election. As a consequence there are no copies of the Statement signed by members of the current Cabinet.

A December 2006 letter from the Minister of State Services recorded her view that a collective reconsideration of the Statement of Government Expectations and Commitment by Ministers would not have been appropriate following the 2005 election.

The Minister concluded by suggesting that:

… the State Services Commissioner has announced that he will issue a new code of conduct next year which sets minimum standards of integrity and conduct for the State services. It may be unhelpful therefore, if public interest in the trustworthiness of the State services were to be diverted by a renewed focus on the concerns of 2001 which led to the recommendations of the Standards Board.

Perhaps in the light of the Setchell case it would be entirely appropriate to revisit the recommendations of the State Sector Standards Board, particularly those in its first report that resulted in the Government issuing the reciprocal statement. We are not suggesting that had the reciprocal commitment, or a more recent iteration of it, been in place, that the events surrounding the recruitment and employment of Ms Madeleine Setchell might not necessarily have occurred. But perhaps an individual minister signing up to a reciprocal statement of expectations and commitment may have given pause for thought. For their part, chief executives might have been prompted to be clearer on the nature of their responsibilities (and on the balance between responsibility and responsiveness), to take independent decisions, and to be prepared to remind ministers (‘with respect …’) of the boundaries that do need to be policed from time to time.

References


**Notes**


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**Chris Eichbaum** is a Senior Lecturer (Public Policy) in the School of Government at Victoria University of Wellington where he teaches a range of undergraduate and graduate courses in Public Policy, Public Administration, and Political Science. His current research interests focus on political and administrative actors in executive government, governance and public administration reform, and the politics of central banking.

chris.eichbaum@vuw.ac.nz

**Richard Shaw** is a Senior Lecturer (Politics) in the School of People, Environment and Planning, Massey University, Palmerston North. Richard is particularly interested in electoral systems, relations between Ministers and bureaucrats, the public sector, and citizens’ engagement with politics.


r.h.shaw@massey.ac.nz
Slide depicting the distinction between responsiveness and responsibility used by Australian Treasury Secretary Ken Henry in an address to his staff in March 2007

### Dimensions of advice

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Source: Henry, 2007
I start from a story and a mental image.

A routine traffic police patrol discovered a truck carrying a high load which had misjudged the height of an overbridge and found itself well and truly stuck.

‘Bit high are we?’

‘No, I was delivering this new bridge and ran out of petrol.’

I have at times felt that the School of Government was loaded with too much superstructure and given an unduly narrow passage to navigate.

Origins

Success has many patrons, while failure is an orphan. I am therefore glad that there are numerous versions of the origins of the School of Government.

The path that was obvious to me included a report which Ministry of Foreign Affairs Chief Executive Simon Murdoch wrote when he was a visiting university fellow, and a working party which former pro vice-chancellor Matthew Palmer chaired and in which I participated. There were intervening steps but while they kept alive the idea of a school of government, they did not have a direct influence on the effective decision-making.

Matthew Palmer, working directly to the then vice-chancellor, Stuart McCutcheon, managed the creation of the School of Government.

They responded, of course, to several stimuli. More than once I have heard State Services Commissioner Mark Prebble remark that senior public servants were impressed that after they had commented on how difficult it was to relate to the university, Victoria reorganised itself and provided an appropriate mechanism.

Matthew’s report established a mission and vision for the School. I have usually simplified it to something like bringing academic expertise and knowledge to bear on the problems of the public sector as perceived by the public sector. I always had it in mind that we might assist the public sector to perceive what we think important, but we would rest on persuasion, not on any independent authority to determine what is important. We used the even simpler slogan, ‘building capability in the public sector’, which is not a matter of deep learning or precision, but which captures the core of what we are about.

Objectives

When I accepted the position of Head of School, I spelled out in a letter to Matthew of 2 December 2002, how we should understand the mission of the School. This included:

1. The position is for five years from 1 January 2003. It may be reviewed on grounds of satisfactory performance, and it may be revised or renewed by mutual agreement.

2. The overall objective of the appointment is to develop a thriving School of Government which attracts a field of appointable candidates to be the second Head of School in five years’ time.

3. … [This dealt with the trivial matter of my salary.]

4. In elucidating the term, ‘thriving’ in clause 2 above, attention will be focused not only on the ambitions of Victoria University as the university in the capital city, but also on the very real constraints on the investment which the University is able to make in the School of Government. … university decisions which affect the income of the School of Government from EFTS$ will affect equally what is expected from the School.

5. Pro vice-chancellor (government relations) and Head of School of Government will negotiate operational budgets and financial delegations … On issues like staff leave, research funding and staff promotions, the Pro vice-chancellor (government relations) may seek advice from appropriate committees, whether of the Faculty of Commerce & Administration or otherwise, but the Pro vice-chancellor (government relations) will consult the Head of School directly and retain direct responsibility for decision-making.

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Reflections on the partnership between the School of Government and the State services: where to from here?

Gary Hawke FIPANZ

School of Government, Victoria University of Wellington

This article is an expansion of the fellowship address Professor Hawke gave to the Institute in Wellington, 8 November 2007, after the announcement of his retirement from Victoria University.

Editor
6. The vice-chancellor is committed to facilitating the development of the School of Government as a key element in the university’s strategic vision and accepts that this requires personal support in developing and maintaining relationships with the public sector and in assisting the School to be an effective gateway for the public sector to all the resources of the university. (I accept that we do not want a cumbersome set of institutions which require the vice-chancellor’s time and will look for appropriate streamlining.)

In relation to clause 1, I am glad to report that I have not found it necessary to terminate the appointment on the basis of the University’s failure to achieve ‘satisfactory performance’ although I have been tempted from time to time.

On clause 2, Matthew’s successor, Professor Tony Smith, has assured me that the objective was achieved. Certainly the appointment of incoming Head of School, Professor Terry Stokes is consistent with that.

On clause 6, I am grateful for the support which the School has received from successive vice-chancellors. Clauses 4 and 6 establish the important external objective of the School, and that is what I am going to concentrate on in this paper. Clause 5 defines the biggest internal issue which the School has faced and continues to face; it will be a major concern for my successor, but here I will deal with internal university management only insofar as it bears on how the university relates to the State services.

However, there were other important conditions specified in the same letter, including:

i. There will be a dedicated car park for the Head of School of Government at Rutherford House or Old Government Buildings at a cost to me no more than the minimum charged elsewhere for reserved outdoor car parks on the Kelburn or Old Government Building campuses.

ii. The university will maintain Macintosh computing facilities for the Head of School while I occupy the position.

These too were (eventually) achieved.

External focus

The School of Government was founded with the intention that it should have an external focus. We can claim considerable success in achieving this. It would be very easy to underestimate how unusual this is. Universities have long been based on the notion that the test of their quality is their ability to reproduce themselves. This stretches throughout the history of universities in New Zealand, and back to their origins in scholars associated with religious foundations dependent on voluntary recruits and donations (at least until they had built an endowment). In more recent times the key has been the reliance of universities as evidence for the quality of their work on the ability of their graduates to secure entry to the most prestigious graduate schools overseas and employment in highly reputed universities here and elsewhere. Research outputs could generate independent reputations, but even the research achievement of a university’s staff contributes to the same quality assessment process by influencing the decisions of overseas universities on graduate admissions and appointments.

Public expenditure on New Zealand universities has been based on a different proposition. Universities contribute to the innovation system, but above all they provide appropriate training for professions, and more recently contribute to ‘lifelong education for all’ reflecting the greater importance of cognitive abilities in modern economic, social and political life. The mismatch between university views of how they should be judged, and conventional notions of accountability is not absolute; if there is a correlation between the quality of the teaching which assists top graduates to secure entry to overseas graduate schools and the teaching which best disseminates skills and attributes throughout the population, then the two objectives can co-exist. I have no doubt that the correlation is positive, but I suspect it is also weak. The rhetoric we hear about excellence and compliance costs on one side and inadequate accountability on the other might be taken as evidence of precisely that.2

Within the teaching and learning functions of universities, all management processes are guided by providing progression through courses to ‘majors’ in a discipline, and to selection of students for advanced study in those disciplines as progress towards qualification to be employed as academics. Reproduction is what student admission offices are shaped to facilitate; it determines what infrastructure is built and how it is allocated among schools.

In the School of Government, we have not achieved entirely the intended focus outside the university. Every so often we all feel that it would be easier just to go along with what the university wants. Staff members have their own careers to think about. In any case, there is something to be said for the traditional university stance – the pursuit of knowledge for its own sake is exciting and it gives the satisfaction of genuine craft if not artistry – and who does not occasionally think that somebody else should pay us to do what we want to do?3 Given the strength of the forces against achievement of an external focus, I think we can claim a considerable degree of success.

Not all success has been due to our efforts. We owe a lot to support from the State services themselves. The willingness of the Prime Minister to annually comment on our efforts – with independence and insight – has been noticed by our colleagues. So has the support of the State Services Commissioner and senior public servants, especially of course when it takes the tangible form of cash. But in any case, we have a tide flowing with us. ‘Learning for Life’ is not a fad, and internationally as well as in New Zealand, universities are recognising that they need more direct evidence of the quality of their work across the student population and not only among the highest achievers. Connectedness with graduates and how they manage their own lifetime learning is assuming greater importance. We will hear complaints about ‘skills’ being the concern of a low-level activity and about misguided managerialism and instrumentalism betraying the values of true scholarship for many years yet. But there is no real enthusiasm for returning universities to the
small-scale oasis of reflection which is all that public expenditure would support if they really sought to implement their own rhetoric. We will therefore see a gradual decline in the traditional focus on reproduction and greater concern with outcomes for all graduates. The School of Government has benefited from confidence that the university would eventually seek to emulate it. What was required was patience as much as innovation.

A focus on public sector problems may seem unproblematic. However, it means that most attention must be given to problems and not to disciplines. Problems do not arise in neat boxes with clear connections to the current preoccupations in the international disciplines which define the leading issues in a discipline. Our success has not been unqualified, but recent discussion within the Australia and New Zealand School of Government (ANZSoG) showed how much we have achieved. Practitioners and academics in the networks of ANZSoG explored the divergent cultures of public servants and researchers and realised how wide the gap could be – one Australian practitioner observing that it was easier to reason with terrorists than with researchers – and how it needs conscious effort if it is to be bridged.

Our first efforts were not directed towards research. Rather, under the guidance of then State Services Commissioner, Michael Wintringham, we looked to how our teaching and learning could best serve capability development in the public service. The result was a non-exclusive, strategic alliance between the University and the State Services Commissioner on behalf of all public service chief executives. It was clearly a statement of intent, the objective being to facilitate capacity building in the public service, and it was clearly to be something other than ‘exclusive’ – it might be a ‘preferred provider’ kind of relationship but departments and individual public servants would be free to secure teaching and learning wherever they thought appropriate.

It took a while to establish further parameters of the strategic, non-exclusive relationship. Some thought that the School of Government might function as a clearing house for information about courses relevant to the public sector, but ‘relevant to the public sector’ is hardly a precise or a confining notion given the range of tasks for which the public sector has to be equipped, and information management is itself a specialist skill, the electronic age having made redundant old-fashioned ideas of course catalogues. So what was developed was another sense of ‘an effective gateway for the public sector to all the resources of the university’ and other universities, the tertiary education system, and international resources. Information-brokering on that scale is demanding, but it is a feasible objective for a School of Government. It requires networking beyond what is normal within universities and there will always be demands that resources used for such a purpose be justified against conventional academic jealousies. The information requested may not always be available ‘on tap’ but the School of Government should be able to get it in a timely fashion. I think we have done a reasonable job of developing and maintaining that capacity in our first five years.

It can work only as a ‘gateway’ operation. The School will never be big enough to have within it all the knowledge and expertise that will be sought by the State services. We have to manage expectations. ‘School of Government’ is sometimes understood to suggest something grander than we can be – the School would have to absorb much of the university and, while that has attractions, it is not going to happen. So our external stakeholders must understand that we can provide information and advocacy, but we cannot manage our colleagues. In its recent drafting of its distinctive characteristics, the university has recognised what is sought from it by the State services, and the School of Government will be active in delivering on what is envisaged, both directly and indirectly. But many will be involved from elsewhere in the University. Similar comments apply with even more obvious force when we think of the School recruiting capacities from further afield.

The non-exclusive strategic alliance can work in both directions. The School of Government draws all the time on information and capabilities held within the State services. There have always been intermittent secondments and visiting appointments from the State services to the university. The School of Government is slowly developing the expectation that there should be more rather than less, and that the School provides a convenient mechanism even when there are clear disciplinary links with some other parts of the university. We are hoping that developments in climate change, in both the university and in Crown Research Institutes will exploit this possibility. But the first real achievements is a Chair of e-Government in which the School has joined with the School of Information Management within the university, and with State Services Commission, and a number of private sector firms, Datacom, FX Systems and Cisco. It is easy to identify information technology as likely to have a major impact on what state servants do and how they do it, and that is the focus of the Chair of e-Government, about which I am sure a great deal more will be heard by all members of IPANZ in the near future.

The second major development is an Adjunct Chair in Official Statistics in which the School has combined with Statistics New Zealand in a determined effort to enhance the capability of the State services in using official statistics in policy development and public management. It may be worth saying that ‘official statistics’ is a wider term than many people realise, and essentially encompasses all statistics which have a public policy or public management role; the endeavour therefore is essentially about improving the quantitative basis to the work of the State services – and that includes making good judgments about when quantitative techniques should be involved and when qualitative research is appropriate for adding the knowledge which the State services requires.

I therefore claim a reasonable degree of success in focusing the teaching and learning activities of the School on problems as perceived in the public sector, and I perceive indications that the School is well placed for recruiting resources through partnership with the public sector. But I do not claim unqualified success. It is my view, formed as a privileged observer of the public sector and using the standard skills of an economic historian, that the single biggest barrier in New Zealand to the effective deploy-
ment of social sciences in policy development and public management is the limited ability of social scientists to provide convincing evidence that they provide knowledge independent of advocacy of their own views. I am aware of all the debate about ‘objectivity’ and it is in full consciousness of the difficulties involved that I say that social scientists will be influential to the extent that they persuade audiences that they have knowledge as well as preferences. I would have liked to see the School develop the capacity to promote effective deployment of social sciences in policy development and public management, but that is an opportunity for the future.

We have not been as successful as I wished in building a partnership with the public service’s Leadershıp Development Centre (LDC). We have collaborated in various ways, but we have not been able to locate and exploit synergy as I would wish and as I think the chief executive of LDC also sought. There are some issues of personality and working styles which do not always find easy agreement, but I think there are deeper issues. Our view is that our understanding of a partnership model is not really shared by LDC, which really works with a model of commercial suppliers of services. We are interested in working together to find a way of developing and delivering services which fit what LDC wants while also fitting our academic mission which must be guided by the university purpose of ‘the advancement of knowledge, and its dissemination and maintenance by teaching and research’. LDC actually has no doubt that it already knows what services it should provide and it wants suppliers who can efficiently deliver them. No doubt, from LDC’s point of view we are just typical academics who want to indulge our own interests instead of delivering on a contract which it intends to be relational rather than transactional. So there is still work to be done to reach an optimal relationship.

Something of the same can be said about the relationships among the School and human resource managers in departments in general. We have worked with those creating and growing the Development Goals for the State Services which are a sound basis for the capability development to which we seek to contribute. We have not developed the easy relationships we sought with the public sector human resource profession. No doubt, we appeared at times to hanker for central human resource management directing public servants to our courses. We knew that is not going to happen, and it was never part of our conscious strategy, nor I think, even a minor part of our subconscious desires. For our part, we sometimes thought human resource managers had a simplistic idea of competencies and an empty minds and work with public servants to ensure effective learning.

from working together. We have a good relationship with the Institute’s executive committee, and are seeking to exploit common interests in Public Sector and Policy Quarterly: the School co-operates with the Institute’s initiatives for New Entrants, Māori, and other minorities so that it would be natural to look at wider collaboration in human resource development as a whole.

I intend to continue to accept invitations to participate in policy processes – if any are extended. But I want most of my time to return to exploring the role of ideas in economic and social development. I see no tension within these intentions. Recently, in the course of a review of a book by Stephen Pinker, William Saleton commented

Pinker warns, ‘…the machinery of conceptual semantics makes us permanently vulnerable to fallacies in reasoning.’

On the other hand, we are not imprisoned by them. The dialectic of creativity and reality-testing has taken us far beyond other animals and can take us farther. The next step is to dump our most natural and mistaken metaphor – education as the filling of empty minds – and recognise that we learn by extrapolating, testing, modifying and recombing mental models of the world.

As an economic historian, I naturally turn to the dialogue between present and past as the best way to extrapolate, test, modify and learn. But no single discipline has a monopoly on methodology, and what is important in the School of Government is that we eradicate the idea of teaching as the filling of empty minds and work with public servants to ensure effective learning.

Other areas for development

Connecting with the tangata whenua is another area in which the School could improve. We have examined our courses with the aid of a colleague from another part of the university and are doing reasonably well. We have sought to work especially with Ngāi Tahu. It is principally interested in skill development through other parts of the education sector but there is a demand for university learning too. But we have not yet found precisely the right vehicle to do more than ensure access to our courses. Ngāi Tahu has an intense interest in greater understanding of the optimal relations between Crown and iwi in a post settlement era, and in developing vehicles that reconcile public sector accountability requirements with institutions which are genuinely part of the iwi traditions and practices. There is no lack of common interest or of goodwill, but these are difficult issues, and I am confident that it is only time which is required for the relationship to flourish.

The whole area of internationalisation is another where we have so far had only limited success. University thinking is dominated by attracting overseas students which I regard as a welcome but shallow mechanism for internationalisation. I expect much more to come from the building into learning programmes of specific periods of overseas study rather than from movement of students to acquire overseas qualifications – and I am...
thinking of both New Zealand students and students coming to New Zealand. Accordingly, I have been more interested in finding areas of common interest with overseas institutions while not entirely neglecting the university’s interest in recruiting overseas students. We have had some success with the Australian National University, the National Academy of Public Administration in Vietnam, some Islamic universities in Indonesia, and the Chinese University of Politics and Law in Beijing, as well as a mass of other interactions that might yield fruit in the future—in Singapore, Pakistan, Canada, the UK, and the Pacific. We are conscious that our focus is on the problems of the New Zealand public sector, but they are shared by many other jurisdictions. Others want to learn from our experience, we learn by seeing ourselves in a wider context, and more and more of the problems of the public sector have a substantial international component.

We benefit from our role in the Australia and New Zealand School of Government, including in thinking about internationalisation—although it is galling to see ANZSoG developing courses for Pasifika public servants simply because AusAID and the Commonwealth Government directly pour resources into an area which the mandate of NZAID makes marginal, even though New Zealand knowledge, interest, and acceptability outweighs Australia. As a member of the board of ANZSoG, I have found myself addressing issues of strategy and institutional issues which have a lot in common with our own. It is easier for us than it is for Australian universities. This is not only because we are the only New Zealand university which is a member of ANZSoG whereas there are two in most Australian jurisdictions. It is not only because we have a relationship of trust with the State Services Commission which goes beyond anything found in Australia, important though both of these points are. Most important is that we are a School of Government with an external focus whereas the Australian universities relate to ANZSoG through discipline-based departments.

My vision for the teaching and learning activities of the School of Government is that it should make academic knowledge and expertise available when and where state servants want it. To achieve that, a good deal is left to my successor, but we have made a reasonable to good start.

**Advancement of knowledge**

I referred above, as I am inclined to do, to the statutory university mission, ‘the advancement of knowledge, and the maintenance and dissemination thereof, by teaching and research’. The School of Government takes all its parts seriously. Nevertheless, as academics, we are inclined to give priority to the ‘advancement’ component, the most obvious link with research, although the drafter of the clause was careful to balance ‘advancement, dissemination and maintenance’ with ‘teaching and research’ suggesting that research is just as concerned with maintenance and dissemination as with advancement, while teaching can also be a vehicle for the advancement of knowledge. That is certainly the view I have tried to foster in the School of Government. But it is probably no accident that we have been even more successful in achieving a focus on the problems of the public sector in our research and networking activities than in our promotion of teaching and learning.

Teaching is where patch-protection is strongest within the university. Research has strong components of individual effort, both solitary research and individuals forming associations in many directions. Organisational units within the university simply have less control of research. We have therefore had less difficulty persuading colleagues elsewhere in the university that we are not a threat to their existence. It might not be too cynical to say that our obvious links with the public sector hold out the prospect of access to information and resources that make the School of Government valuable to academics in other departments and schools.

The School generates a range of research. It was formed by bringing together an existing teaching activity with the Institute of Policy Studies (IPS) and its satellite research centres. In five years, we have made progress towards aligning the incentives and interests of the component parts, more slowly than some of our public sector stakeholders thought appropriate, and more rapidly than some of my colleagues wished.

I think we were right to preserve the brand of IPS but increasingly we have presented ourselves as the School of Government. In my view, we should work towards IPS being an arm of the School that does research of a ‘public good’ character—activities including publication which is aimed at the public, while the School also engages in consultancy, practice-based teaching which includes the creation and dissemination of new knowledge, and conventional academic research and publication.

Some time ago, we stopped seeing the research centres as components of IPS, although we still see a family of centres led by IPS which are available for promoting the university’s activities in social science based research relevant to policy issues. But understandings of ‘policy’ vary a great deal, from researchers seeking to draw policy implications from their work for immediate implementation by Cabinet, to claimed intuitive knowledge about what government should do. In general we want to confine ourselves to advancement, maintenance and dissemination of knowledge about how the policy process can best contribute to the welfare of New Zealanders.

Individuals within the School vary in their commitment to its distinctive mission and vision. I have tried to provide an array of options for how individual interests can be aligned with those of the School and I have obviously varied in the degree of success I have had. I am sure I have not always appreciated what capabilities were available to me and I regret that.

We have however, achieved a great deal. This is especially important in having led to the Emerging Issues Programme, and to the Victoria University of Wellington School of Government Trust. The former is a research programme funded by contributions from all public sector departments, and governed by a Steering Committee of departmental chief executives who can report to the Chief Executives Forum. It has generated research on the relationship between public servants and parliament, on the Pacific, on ageing, and on climate change, and...
more new knowledge on emerging issues important to the public sector is currently under way.

The Government has noticed our success in both teaching and research, and has established a trust fund of $4 million to finance those aspects of the School of Government which are not readily provided for through conventional funding of university teaching and research. It gives a source of finance for research which does not lend itself to publication in academic journals, and to practice-based teaching and learning. At the same time, the government provided a capital endowment to ANZSoG, and trans-Tasman issues will be prominent in the activities funded by the Victoria University’s School of Government Trust.

Conclusion

Christopher Pollitt recently wrote:

Not every step forward in theory or technique comes from the quiet contemplation of existing scientific publications, or from meticulous fieldwork, financed by ‘pure’ academic funding. On the contrary, quite frequently advances come from academics being exposed to something unusual or unexpected while conducting advice work of one kind or other.

I’d go further. Most disciplines prize not the perfection of a line of thinking reported in the journals but the initiation of a new line of enquiry, and that is more likely to come from the world around us than from any other source (with apologies to philosophers and I do know that the mind-body distinction cannot be sustained).

I will maintain my interest in the School of Government and in the intellectual basis of public policy and public management. I want to turn to the role of economic ideas in our public life, and aim for a late flowering. I am aware that I may be fooling myself. When he reviewed Sebastian Faulks/Engleby, Terrence Rafferty drew attention to the following passage:

‘Late work’. It’s just another way of saying feeble work. I hate it. Monet’s messy last waterlilies, for instance – though I suppose his eyesight was shot. ‘The Tempest’ only has about 12 good lines in it. Think about it. ‘The Mystery of Edwin Drood.’ Hardly ‘Great Expectations,’ is it? Or Matisse’s paper cut-outs, like something from the craft room at St. B’s. Donne’s sermons. Picasso’s ceramics. Give me strength.

Rafferty wondered whether the character or the novelist was speaking. Either way, while it is a challenging statement of a thesis which is worth considering, I think it is wrong, but then I would, wouldn’t I? There are however the Beethoven late quartets, the final clarinet sonatas of Brahms, the remarkable operas of the aged Janacek and much else to give me reassurance – or consolation if Faulks is right.

You will notice that I do not contemplate any continuing university management. I wish my successor well, but suggest that it does not pay to read ‘deans’ too restrictively in the experience of a prominent economist who wandered into university management (and I say this as a dog-lover):

One weekend during the 1980s he escaped to a family retreat in Maine where he went skinny-dipping by moonlight in a local pond. He was attacked by a group of beavers that drove him to shore and required him to receive rabies shots. But then nothing compares to the attacks deans receive from irate faculty members. Alfred Kahn, long time Dean at Cornell, once remarked that ‘a dean is to a faculty what a fire hydrant is to a pack of dogs.’

Notes

1 Equivalent Full-Time Study, a definition used to measure student numbers at New Zealand educational institutions and primarily used within the sector to make funding decisions (see www.tec.govt.nz)


4 The history of the Australian National University suggests that even Australia is not large enough to support a university which is focused on research and scholarship alone. Only large university systems can support Institutes of Advanced Studies. Furthermore, it is increasingly recognised that most ranking systems are influenced by size above all.


8 The Pacific Economic Co-operation Council, PECC, and the Association of Pacific Rim Universities, APRU, are engaged in a joint study of Asia Pacific education markets which can be expected to add significantly to our knowledge in this area.
Gary Hawke was until recently Professor of Economic History and the inaugural Head of Victoria University’s School of Government. He has held several posts in university management, notably those of Dean of Arts 1985–88, Director of the Institute of Policy Studies 1987–98 and Head of the School of Government 2004–07.

Professor Hawke has been a member of the Institute for many years and a keen supporter of its activities.

In retirement Gary intends to maintain his interest in the School of Government but wants for the most part to return to exploring the role of ideas in economic and social development.

gary.hawke@vuw.ac.nz

News

School of Government

Professor Gary Hawke retires

The inaugural Head of School, Professor Gary Hawke retired from Victoria University of Wellington at the end of 2007.

Gary began teaching at Victoria University in 1968 and has held several posts in senior university management, notably that of Dean of Arts 1985–88, Director of the Institute of Policy Studies 1987–98 and Head of the School of Government since 2004.

At the 10 October annual prize awards at the School, the Prime Minister the Rt Hon Helen Clark said:

Gary’s legacy is a School which is well connected with its external stakeholder community, and is respected for being able to combine a high degree of responsiveness to practitioner concerns with the best traditions of independence and excellence in teaching and research. Thank you Gary for what you have contributed as Head of the School.

New Head of School appointed

Professor Terry Stokes was appointed as the new Head of School from January 2008.

A graduate of Macquarie University and the University of Melbourne, Terry has taught at Deakin University and the University of Woolongong, and was the Pro Vice-chancellor at Central Queensland University. In 2001 he joined the Victorian Government as General Manager, Higher Education and Regulation for the Victorian Government, and most recently he has been a consultant working in the Australian tertiary education sector.

In announcing Terry Stokes appointment Victoria’s Vice-chancellor Pat Walsh said:

Terry will bring a wealth of experience from across both the public and tertiary education sectors and we’re delighted to have the opportunity to benefit from this.

His appointment is a significant gain for the School, which recently celebrated its fifth anniversary. Dr Stokes’ strong background in the Australasian tertiary education sector and in the Victorian public sector will particularly benefit the School’s research and teaching programmes that focus on public policy and public sector management.
IPANZ’s submission to the investigation into the Public Service recruitment and employment of Madeleine Setchell

On the 6 August 2007, the State Services Commissioner, Mark Prebble announced the appointment of Don Hunn as an independent inquirer to assist him with the investigation into the public service recruitment and employment of Madeleine Setchell.

The following is the Institute’s submission made to Mr Hunn, at his request, to assist him in this investigation. A research paper prepared by Board Member that covered many of the areas covered by Mr Hunn’s investigation was attached to the Institute’s submission. This is also shown in the following.

29 August 2007

Mr D.K. Hunn
c/- Dr David Collins QC
Solicitor General
Crown Law Office
Wellington

Dear Mr Hunn,

Thank you for your invitation to IPANZ to prepare a submission that might assist you in terms of your investigation into Public Service recruitment and employment of Madeleine Setchell.

The Institute of Public Administration New Zealand (IPANZ) is a voluntary, non-profit organisation committed to promoting improvements in public policy and in administration and management in the public sector in New Zealand, and to increase public understanding of the work undertaken in the public sector. Our interest in this investigation is a reflection of our aims, which include being:

- a guardian and champion of the core values of the public service; and
- an authoritative voice and source of reasoned opinion, including providing leadership on public sector issues where matters of principle are concerned.

One of our Management Board members has been carrying out research in the areas covered by your investigation, and that paper is attached. The Board found it useful in its consideration of these areas and in preparing its submission, and considers that you too may find it a useful resource. In this covering letter, I have set out three key issues that the Board has approved as our submission to you as you undertake your investigation.

The Management Board was also aware of course that IPANZ and the Institute of Policy Studies had organised a seminar on 20 August to explore in a general sense the issues of political neutrality and conflict of interest that had been raised by the case under investigation. I have already sent you a copy of the presentations made at that seminar. The IPANZ Board would also be grateful if you could regard those documents as further background material to be taken into account in your deliberations.

Our submission is focused on the principles behind this particular case. It explores issues arising from the interplay of New Zealand Public Service law, the public service principles of serving the Government of the day in a politically neutral manner, guidance around managing actual or perceived conflicts of interest, and practice as it relates to the matter of public service employment.

There are three key areas, which I would like to highlight for you here.

1. There is a balance to be found between the need for Ministers to be advised or consulted about certain employment matters, and the need to preserve the political neutrality of the Public Service

The attached paper notes (page 6) that in section 85 of the State Sector Act, a distinction is drawn between what might be termed appropriate and inappropriate input to employment matters. The situation can be set out as follows:

- a chief executive must make the final call on public service employment matters
- no one – including a Minister or political advisor in a Minister’s office – should directly or indirectly solicit or endeavour to influence a chief executive with respect to employment matters
- if a chief executive requests it, a person – such as a Minister – may give information or advice, or make representations, to the chief executive in relation to employment matters.
The chief executive may in certain situations decide that he or she should ‘consult’ the Minister about an employment matter. There is a distinction to be understood here as well in terms of what would occur if the Minister is to be consulted about, as opposed to being informed or advised of, a particular decision. If the Minister is consulted there will be a corresponding obligation for the chief executive to consider and take the Minister’s view into account in his/her deliberation on the decision. The attached paper includes (page 12) some guidance dating back to your own time as State Services Commissioner that we consider helpful in this respect. Importantly, it is clear that the chief executive should initiate any such consultation and need to be clear of its purpose before doing so.

2. Conflicts of interest will occur in the New Zealand context and will have to be managed appropriately in each case

It probably goes without saying that we are a small population and that the number of people who work in the Public service and the wider State Services are few. Conflicts of interest do and will occur frequently in our small community. They happen from time to time in terms of personal and family relationships. There is however a self-regulating ethos readily apparent in the Public Service whereby individual public servants (particularly in senior positions) maintain strict confidentiality and discretion in terms of their work and business dealings, keeping them very well protected and separated from their personal lives. This degree of trust in individuals needs to be reinforced (with appropriate publicity and training) but also respected. There is equally a danger in terms of being seen to overreact to particular incidents or situations. Above all there needs to be guidance both available and spoken about within departments to ensure that incoming staff understand and respect the required code of conduct.

3. Any consultation with Ministers on an employment matter should be undertaken before the decision is taken, not afterwards

The consultation should be an opportunity to signal intent about a possible course of action or likely decision, and be guided by an appreciation as to why the consultation is necessary. To try to fix a difficulty after a decision has been taken will inevitably put the chief executive in a difficult – even embarrassing – situation and will also likely affect the parties to the decision. That is exactly what occurred in the situation relating to Ms Setchell.

The Minister concerned may also be affected by poor or non-existent information and may act inappropriately, with implications for his/her own position and reputation. That certainly appears to have happened in this particular case. There is therefore a need to restate for public service chief executives and also Ministers the available guidance on the subject and to remind them of the importance of anticipating, not having to respond after the event, to such issues.

**Conclusion**

Finally, may I note that the attached paper also suggests options in terms of a way forward, which are designed to maintain and strengthen trust and confidence in the process of government. Work in the area of public service ethics suggests that there is a choice between two different approaches to ethics: integrity-based versus compliance-based ethics management. The integrity-based approach to ethics management is consistent with a focus on results. While there are clear rules against illegal behaviour, and sanctions applied when those are breached, the focus is on the actions or effects that should be achieved, rather than the behaviour that should be avoided.

At the other end of the scale is an approach to ethics that is compliance-based. This focuses on strict adherence to administrative procedures and rules (often detailed in legislation), which define what public servants should do and how. In this context, codes of conduct often consider the negative; i.e. what public servants should not do, and what sort of behaviour they should avoid. A natural reaction when things go wrong is to create a new rule, to ensure it does not happen again. A compliance-based approach would see new rules and guidelines being issued.

We propose that the New Zealand State Services should continue with an integrity-based approach, based around aspirational goals and encouraging good behaviour. It is worth stating again that public servants are, due to the nature of the principles and conventions they work under, in a unique position. The longstanding values that are respected and observed in the New Zealand Public Service context are integrity, honesty, political neutrality, professionalism, and respect for the rule of law combined with a commitment to serve the Government of the day. We consider that public servants in New Zealand are – or should be – comfortable with an integrity-based approach. While the existing guidance, of which there is a considerable amount, in this area should undoubtedly be reinforced, there is no need to create new rules or guidelines.

Please let me know if there is any further advice or information you would like or if you would wish us to clarify any of the points made in the submission.

Yours sincerely

Ross Tanner
President IPANZ
Maintaining and strengthening trust and confidence in government: the practical application of Public Service law, principles, conventions and practice in the case of the employment of Madeleine Setchell by the Ministry for the Environment

Background Paper

Summary

The decision of the Ministry for the Environment to employ Madeleine Setchell, and then her decision to leave that employment following attempts to find a way to manage what her chief executive identified as a conflict of interest, has resulted in an investigation by the State Services Commissioner. This research project explores two interrelated issues arising from this case: the role of Ministers in relation to the employment of public servants; and the impact of conflicts of interest guidance on the Public Service. An analysis of the relevant provisions of the State Sector Act suggests that, at the instigation of chief executives, Ministers can have an input to employment decisions, as long as it is clear that the final decision is for the chief executive to make. The application of guidance on conflicts of interest to this case suggests some important issues in terms of the elevation of concerns over public perception, and theoretical risk, to a higher level than what can be seen as the balancing forces of public service values. It is suggested that it may well be time to re-examine and reassert the importance of what is described here as the self-regulating ethos of public service.

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Introduction

The State Services Commissioner, Dr Mark Prebble, announced on 3 August 2007 that he was undertaking an investigation into the public service recruitment and employment of Madeleine Setchell as Communications Manager at the Ministry for the Environment. The chief executive of the Ministry concluded that, in employing Ms Setchell, there was the potential for a conflict of interest that required management. As a result of discussions over the perceived conflict of interest, in the end Ms Setchell left the employment of the Ministry. While the State Services Commissioner has commented that ‘the central issue here is a public service employment one’ (State Services Commissioner (a), 3 August 2007, p. 1), the matter which has attracted most attention is what issues this case raises relating to ‘the management of actual or perceived conflicts of interest and the duty to maintain political neutrality’ (State Services Commissioner (b), 2 August 2007, p. 1).

The brief facts of the matter are these:

- Madeleine Setchell, a public servant who had previously worked in the Ministry of Agriculture and Forestry and the Department of Labour, applied for a senior position as Communications Manager with the Ministry for the Environment.
- Ms Setchell’s partner works in the Office of the Leader of the Opposition.
- When this fact was brought to the attention of the Chief Executive of the Ministry for the Environment, Mr Hugh Logan, via a telephone call from the Office of the then Minister for the Environment, he concluded that this situation created a conflict of interest for Ms Setchell that required management.
- The then Minister for the Environment, Hon. David Benson-Pope, did comment to the chief executive that ‘from the point of view of my office, I would likely be less free and frank in meetings with such a person. That was a statement of the obvious’ (Hansard, 26 July 2007, Question 6).
- After discussions with Ms Setchell on options which would have involved the offer to her of an alternative position, Ms Setchell decided to leave the Ministry.

This matter has brought to the fore the sorts of issues and concerns that arise each time the public, or media, or Opposition parties, perceive that the Government or individual Ministers within it have overstepped ‘the line’ (whatever that line may be) in terms of political input to the management of the New Zealand Public Service. While the facts of the case tell a particular story, and bring into play practical considerations such as the correct application of employment law, it is the principles that lie behind what happened that will be explored here. This research project will explore issues arising from the interplay of New Zealand Public Service law, the public service principles of serving the Government of the day in a politically neutral manner, guidance around managing actual or perceived conflicts of interest, and practice as it relates to the matter of public service employment. Whether they are well-informed views or not, incidents such as the Setchell employment case do arouse questions and concerns in the minds of the public and commentators:

‘Collectively, Mr Prebble, Mr Logan and Mr Benson-Pope’s office have undermined both the right of people in relationships to be judged on their own professionalism and merits and the long-cherished independence of our politically neutral public service’ (Tracy Watkins, 23 July 2007, p. B5)

Given this, the research project will also suggest options in terms of a way forward, which are designed to maintain and strengthen trust and confidence in government.

Trust and confidence in government is key to the success of a democracy. In effect, the citizens of New Zealand are saying to Executive Government that, with the support of the Public Service, it has the power and resources to govern the nation. As the State Services Commission noted in the Introduction to the 1995 Principles, Conventions and Practice guidance series:

‘Any system of liberal, democratic government is finely balanced among competing interests. The essence for elected representatives is to reflect the will of the people and provide leadership and direction. Public administration is the business of supporting Ministers by providing the information, advice, continuity and institutional means for making the affairs of government work constructively so that effect can be given, through the democratic systems and processes, to the will of the people. It is about the provision of a dependable resource to translate words into deeds, and thoughts into action, for and on behalf of the government and the people it represents’ (State Services Commission (c), 1995, p. 4).

This notion of trust and confidence is reflected in support for our laws, the payment of taxes, relatively high voter turnout, and the level of respect there is for institutions such as the Governor-General, the House of Representatives, the Courts, the Government and the Public Service. Actions and events which weaken trust and confidence undermine all these things. It has been acknowledged over many years, by representatives of governments of differing political persuasion, that perceptions of and actions by the Public Service are a significant factor in determining that level of trust and confidence. Hon. Paul East, when Minister of State Services in 1995, stated:

‘We need to be reminded of the basis of our democratic system of governance and the shared values that support responsible government, lest we diminish a clear understanding of its purpose, or impair the trust and confidence of those to whom we are accountable. The integrity of those who work in Public Service, and the instilations of government, is crucial to sustaining effective government’ (State Services Commission (c), 1995, p. iii).

Hon. Trevor Mallard, when Minister of State Services in 2003, took up this theme in a presentation to a Chilean audience on New Zealand public management reform and ethics, values and standards, when he stated:
The lesson from this is that in all relationships – Executive Government to people, Public Service to people, Public Service to Executive Government, and Executive Government to Public Service – what is said and done can have an immediate and dramatic impact on trust and confidence, potentially far outweighing what ‘insiders’ would view as the practical realities of what happened. It is for that reason that issues around the practical application of Public Service law, principles, conventions and practice matter. However, there is also a need to be aware of the important constitutional context within which that law, and those principles, conventions and practice, operate.

The constitutional framework

The Cabinet Manual includes an essay by the Rt. Hon. Sir Kenneth Keith on the constitution of New Zealand and the underlying principle of democracy; that is, the Queen reigns, but the Government rules, so long as it has the support of the House of Representatives. Sir Kenneth goes on to note that:

‘In a broad sense, it is the ministry or government of the day which governs. The members of the ministry as a whole have the support of the House and must take collective and individual responsibility for their decisions, the decisions that are taken in their name, and the measures they propose. That is the position in law and in convention. That responsibility and power to take decisions results from the electoral process and the political contest’ (Cabinet Office, 2001, p. 3).

This affirmation of the responsibility and power of Executive Government is a useful point to bear in mind when tensions, as they inevitably do, arise between the actions of the Public Service as it goes about its business, and Executive Government. Even when the Public Service or the agencies that make it up have done nothing technically wrong, or illegal, if there is a dispute between it and Executive Government, then at the end of the day, it is expected that it will yield to the body that has been given authority through the electoral process and the political contest. Democratic government expects nothing less.

This does not, of course, mean that Executive Government should, or indeed can with very little effort, ride roughshod over the Public Service. The earlier discussion on trust and confidence demonstrates that there would be a significant cost to such an approach. The Public Service, too, does have its own in-built protections, designed to ensure that it can effectively play its part in advising the Government and implementing its policies and decisions. Sir Kenneth has noted that:

‘This public confidence in government is fundamental to a successful civil society. Citizens’ trust in government is a precious but fragile treasure, easy to shatter, and extraordinarily difficult to rebuild’ (Hon. Trevor Mallard, April 2003, Part 2, p. 1).

Public servants meet those obligations in accordance with important principles such as neutrality and independence, and as members of a career service’ (Cabinet Office, 2001, p. 4).

One of the more important pieces of legislation relating to the Public Service, and containing within it provisions directly relevant to the situation surrounding the employment and subsequent resignation of Ms Setchell, is the State Sector Act 1988.

State Sector Act 1988

The State Sector Act 1988 is – an Act

(a) To ensure that employees in the State services are imbued with the spirit of service to the community; and

(b) To promote efficiency in the State services [and other agencies]; and

(c) To ensure the responsible management of the State services; and

(d) To maintain appropriate standards of integrity and conduct among employees in the State services [and other agencies]; and

(e) To ensure that every employer in the State services is a good employer; and

(f) To promote equal employment opportunities in the State services; and

(g) To provide for the negotiation of conditions of employment in the State services [and assistance to other agencies on conditions of employment]; and

(h) To repeal the State Services Act 1962, the State Services Conditions of Employment Act 1977, and the Health Service Personnel Act 1983.

The Act achieves its aims through a number of mechanisms contained within it. It is interesting to note that, despite the acknowledged importance of the principles and conventions that underpin the operation of the Public Service, they are not to any significant extent emphasised or set out in the Act. This both reinforces their role as statements of convention, not law, but also raises issues when tensions arise as to the exact status of such conventions.

The Act does include a series of provisions relating to the employment of public servants, and some relating to the possible consequences for a Minister if they seek to get too
involved in employment matters. The Act asserts the independence of Public Service chief executives in employment matters:

**Section 33 Duty to act independently**

Notwithstanding anything in section 32 of this Act, but subject to sections 51 and 52 of this Act, in matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, disciplining, or the cessation of the employment of any employee, or other matters), the chief executive of a Department shall not be responsible to the appropriate Minister but shall act independently.

That is reinforced by making it an offence to attempt to influence a chief executive in making employment decisions:

**Section 85 Offence to attempt to influence Commission or chief executive**

(1) Every person commits an offence against this section who directly or indirectly solicits or endeavours to influence the Commission or any Commission or any chief executive or any other person or persons to whom the Commission or the chief executive has delegated powers under section 23 or section 41 of this Act with respect to decisions on the matters described in section 5 or section 33 of this Act.

(2) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding $2,000.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Commission or to the chief executive or to any other person or persons acting under delegation from the Commission or to the chief executive in respect of any matter at the request or invitation of the Commission or to the chief executive or to any other person or persons acting under delegation.

In section 85, then, a distinction is drawn between what might be termed appropriate and inappropriate input to employment matters. The situation can be set out as follows:

- a chief executive must make the final call on public service employment matters
- no one – including a Minister or political advisor in a Minister’s office – should directly or indirectly solicit or endeavour to influence a chief executive with respect to employment matters
- if a chief executive requests it, a person – such as a Minister – may give information or advice, or make representations, to the chief executive in relation to employment matters.

This is certainly a more fluid arrangement than the rather hands-off, ring-fenced process that is usually described when matters involving Ministerial comment on departmental appointments are reported on. A better appreciation of this fact would help explain some, but not all, of the actions that were taken in relation to the employment of Ms Setchell at the Ministry for the Environment.

It is this more fluid process that is well-encapsulated in the principles and conventions that govern so much of the behaviour of the Public Service. These principles and conventions have been highlighted by the State Services Commissioner in the terms of reference for his inquiry, when he talked about the management of actual or perceived conflicts of interest and the duty to maintain political neutrality. They are also an important base to the public management model we have here in New Zealand. Former Secretary to the Treasury, Dr Graham Scott, has commented that:

‘The New Zealand model of public management is founded on a clear distinction between the roles of politicians and civil servants. At its heart, this model is based on the difference between politics and non-partisan administration … There are long established conventions about the respective roles that guide the behaviour of the parties on a day-to-day basis … These conventions [are] so deeply embedded in the behaviour of experienced ministers and senior public servants that they are almost innate’ (Scott, G., 2001, p. 76).

**Principles and conventions**

**Rule of Law**

The New Zealand Public Service functions according to a well-established set of principles and conventions. The first, and perhaps most important, is the rule of law. Public servants are to act in accordance with the law; the Government and its agents can be held to account in the courts for any breach of the law in the performance of their duties. (State Services Commission (d), 1995, p. 6). Acting in accordance with the law is the fundamental bedrock upon which the operation of the Public Service sits. However, that does not mean a slavish adherence to the letter of the law, through reading and interpreting it narrowly. In the example above, section 33 of the State Sector Act needs to be read in concert with section 85.

The State Services Commission picked up this idea in its guidance series, when it noted:

>_The twin notions of service to the Crown, and stewardship of public interests and resources, are balanced by various duties or obligations (sometimes referred to as loyalties). Public servants, first and foremost, have a duty to the law - to uphold the law, and the principles of justice and fairness according to the law. (Ministers of the Crown also have that duty.) But, this duty to the law must be understood in the context of the principal duty of public servants to their Minister, and to the government of the day. That hierarchical accountability shapes and pervades the everyday activities of public servants_’ (State Services Commission (c), 1995, pp. 3-4).

What we see here is the reinforcement of the important constitutional distinction of the place of the elected Executive Government in relation to the Public Service.
The next two principles – political neutrality and serving the government of the day – are closely intertwined, but it is possible to separate them out to examine what relevance they have to the employment of Ms Setchell, and any lessons to be learnt from that going forward.

**Political Neutrality**

The principle of political neutrality has been a feature of the New Zealand Public Service since 1912. Hon. Trevor Mallard has talked about the ‘well-understood boundary’ between the business of politicians and that of public servants:

“One of the first major acts of public service reform in New Zealand was the Public Service Act 1912, which gave New Zealand’s Public Service a shape and culture that endured for 50 years. The essence of this culture was the separation of ‘political’ and ‘administrative’ functions, both in conduct of the government’s business and in management of the Public Service itself.

‘Political neutrality became integral to a career service dedicated to serve the government of the day, and ready to serve the government of tomorrow with the same professionalism and loyalty. Appointments and personnel decisions were made independent of political interests, and on both sides there developed a well-understood boundary between the business of politicians (policy development and advocacy, and ‘politics’ – with a public face); and the business of public servants (policy advice and implementation, and ‘administration’ - with a high degree of anonymity).

‘Those principles firmly established, scope continued to exist for friction in the areas where the two systems met, for example: around election times; and from day-to-day in support services for Ministers in the House (debates, select committees etc); in dealing with the public (speeches, correspondence etc); and in the provision of ‘free and frank’ advice. Practice from 1912 led to the development of a body of conventions and principles for the guidance of both Ministers and officials - and development of a mutual dependence, or a trust, that each side would fulfil its role with integrity’ (Mallard, T., 2003, Part 1, p. 2).

Mr Mallard makes an important point here; while the boundary may be well-understood (and even well-understood boundaries should be restated from time to time), this does not stop a degree of tension arising from the interplay of principles and conventions. For example, if a chief executive decided to employ as a senior manager someone who had previously stood for election under the banner of a different political party to that of the chief executive’s Minister, then while the boundary may be clear, there is a very strong possibility that tension may arise.

A former State Services Commissioner, Mr Michael Wintringham, commented in his 2002 Annual Report that he had ‘seen the way in which the principle of political neutrality is constantly tested, and appreciated its enduring value in our system of government’ (State Services Commissioner (f), 2002, p. 1).

Mr Wintringham then went on to set out a useful description of the history and implications of the principle of political neutrality:

“The theory is simple – a Public Service, free of political interference or patronage, serves the government of the day in a way that ensures not only that public servants maintain the confidence of Ministers, but also that they are able to establish the same professional and impartial relationship with future Ministers.

“The 1912 Act, therefore, established a politically neutral Public Service, dedicated to serving the government of the day and ready to serve the government of tomorrow with the same professionalism and loyalty, and with all appointments and personnel decisions made independent of political interests.

‘Statutory definitions of responsibilities and the principles and conventions that have developed from their practical application over time are essential but not sufficient to maintain an effective and politically neutral Public Service. A good working relationship between Minister and permanent head was as important in 1912 as it is today.

‘Senior public servants, although not 'party political', have always had to be politically astute and aware of the political environment in which they and their Ministers work’ (State Services Commissioner (f), 2002, pp 1-5).

Not only has Mr Wintringham noted the importance of the rule of law for the principle of political neutrality, but he has also highlighted the importance of good working relationships between a Minister and their senior public servant as critical to maintaining an effective and neutral Public Service. Public Service leaders have always had to have a well-developed understanding of politics, while not being practitioners of the art themselves. The ability to empathise and understand the impact of potential or actual departmental decisions or actions from the point of view of politicians from all sides of the House of Representatives is a skill which will enable senior public servants to avoid placing the principle of political neutrality under strain.

From an individual’s perspective, the principle of political neutrality will mean different things depending on what position someone holds within a Public Service department. Mr Wintringham has highlighted standing for political office, but even less significant actions, such as joining in on a protest march, or signing a petition, may become more politically-loaded for the senior public servant than for one who is more junior. What this means is that if an individual makes the decision to apply for and enter the more senior ranks of the Public Service, they will also need to review all aspects of their life, through the lens of the political contest, to see if there are any aspects that will leave them and their department open, to a greater degree than normal, to accusations from parties in the current or possible future governments of political partiality.

**Serving the Government of the day**

In his 2001 Annual Report, the then State Services Commissioner, Mr Wintringham, discussed the special relationship between a chief executive and their Minister. He wrote:
‘I quoted a well known commentator on public management matters in New Zealand who said that the ideal relationship between a Minister and chief executive ‘is one of trust between two people linked inextricably, at least for a time’. This is the quality of the relationship needed for good government’ (State Services Commissioner (g), 2001, p. 2).

A relationship of this quality is difficult enough to develop in any case (for example, following a change of government after an election), but would be even more challenging if there is not a sophisticated understanding of how to develop such a relationship while staying true to the principle of political neutrality. In order to advance their component of the Government’s programme, a Minister will be entrusting many of their most sensitive political secrets to their chief executive, and no doubt would expect in return that the chief executive would keep them informed of any management matters that would be of interest to them.

Then State Services Commission reinforced this point in the work they did on the Public Service Principles, Conventions and Practice Guidance Series:

‘Senior officials should aim to establish good working relationships with their Minister or Ministers based on mutual respect and recognition of the distinctive role, responsibilities and obligations of the other. Senior officials should not become involved in party politics but they do need to have a sensitive appreciation of the political pressures which apply to Ministers. Ministers also need to feel that their senior officials understand such things and that they are genuinely committed to serving government and Ministers efficiently and professionally …’

‘While maintaining their integrity at all times on matters of law and principle, officials should aim to avoid becoming too “precious” about their independence or place in the scheme of things. Above all, the office of the Minister, and the person holding such office for the time being, is entitled to respect and to the highest possible quality of service’ (State Services Commission (h), 1995, p. 22).

One area where the question of chief executive independence is sensitive is the area of employment of departmental staff. The Cabinet Manual provides guidance to chief executives on this:

‘A chief executive acts as the employing authority for the department to which he or she has been appointed. Under section 33 of the State Sector Act 1988, and subject to certain obligations to consult the State Services Commission, chief executives have a duty to act independently in matters such as appointment, promotion or disciplining of individual employees. They are not responsible to their Minister in such matters. If a staffing matter is likely to become an issue of public concern or affect the administration of the department, it may be appropriate for the chief executive to advise the Minister on the issue’ (Cabinet Office, 2001, p. 35).

Again, this shows that it is possible to manage any tensions that may arise from the interplay of Public Service principles and conventions. It would take delicacy, and a clear understanding of roles and responsibilities on the part of both the Minister and the chief executive. The Cabinet Manual is a very useful source of advice for both parties.

Cabinet manual

It is all too easy to fall into the trap of assuming that all those involved in government – for example, Ministers, their political advisers, chief executives and other senior public servants – are familiar with existing guidance on how to build and maintain the sort of relationship that Mr Wintringham talked about in his 2001 Annual Report. However, one of the observations that comes out of any study of when things go wrong for a department, or its Minister, is that many of those problems could have been sorted out much earlier, and with minimum fuss, if there was a good understanding of this guidance, combined with close and effective relationships between the key players.

The Cabinet Manual has set out some advice in this area:

The style of the relationship and frequency of contact between a Minister and departmental chief executive will develop according to the Minister’s personal preference. The following points, however, may be helpful:

The Cabinet Manual also sets out advice on the role of political advisers to Ministers:

- Ministers should ensure that staff and advisers in their offices understand the principles governing the Minister’s role and the Minister’s relationship with public service officials and entities in the wider state sector, as set out in this chapter. Like Ministers, staff in Ministers’ offices must take care to ensure that their actions could not be construed as improper intervention in administrative, financial, operational or contractual decisions that are the responsibility of the chief executive …

- Ministers should bear in mind that they have the capacity to exercise considerable influence. They should take care to ensure that their intentions are not misunderstood, and that they do not inappropriately influence officials, or involve themselves in matters that are not their responsibility. Particular care should be taken with officials who are unlikely to have frequent or direct contact with Ministers, because they are probably less aware of the principles, conventions and working guidelines that govern the interaction between the public service and Ministers’ (Cabinet Office, 2001, p. 36).

The interesting thing here is that, unlike most guidance which is written with the public servant in mind – setting out their obligations to the Government of the day and their Minister –
this guidance is directed to Ministers. As such, it would be useful if Ministers and their political advisers not only ensured they were familiar with it, but also discussed with their chief executives what it means for their relationship.

The Practical Application of Law, Principles and Conventions: Public Service Employment and Political Neutrality

The issues around the employment of Ms Setchell threw into sharp relief the sorts of matters discussed in this research project. One intriguing thing about the whole matter is that this was not a completely new situation for the Public Service, as a similar issue had arisen in relation to the employment by the then chief executive of the Department of Internal Affairs of Frank Sharp (see Jonathan Boston, 1994 On the Sharp Edge of the State Sector Act: The Resignation of Perry Cameron, Public Sector, Vol 17, No 4, p. 2.). Soon after that incident, the State Services Commission addressed this matter in its guidance series, noting:

‘In the interests of maintaining good working relationships between Ministers and officials, and in keeping with sound management principles, and prudence, it is appropriate for chief executives to consult their Ministers on any personnel matters of significance, or about those staffing matters likely to become an issue of public concern, or affect the administration of their departments.

Clearly any such briefings need to be undertaken carefully to avoid any suggestion that the chief executive has not acted independently in arriving at a decision relating to an individual employee.

‘Consultation with Ministers on personnel matters should be guided by a full appreciation as to why the consultation is necessary. In addition, there are two conditions that should apply:

• Initiative – the chief executive should initiate any such consultation and be clear of its purpose. It would be inappropriate for a Minister to do so, and a chief executive, or a State Services Commissioner as the case may be, should anticipate the need for consultation.

• Timing – the consultation should take place before decisions are made. That is, the consultation should be an opportunity to signal intent about a possible course of action or likely decision. In normal circumstances there are two points at which consultation is critical. In the case of the appointment of senior staff the Minister should be consulted a) before a position is advertised, and b) before an appointment is decided. In that way the Minister’s views may be known before the chief executive, or the State Services Commissioner as the case may be, exercises their authority in terms of the State Sector Act 1988.

‘While the desirability of such consultation is apparent in terms of maintaining close working relations between the department and its Minister, it must be equally apparent to all the parties concerned that the final decision on, and the ultimate accountability for, individual appointments must rest with the chief executive alone … Senior officials should think very carefully where an otherwise suitable prospective appointee is being considered for possible appointment to a senior or sensitive position (e.g. those involved in significant direct contact with Ministers) and the person concerned has been involved actively in party or pressure group politics in the past. Relevant considerations in such cases may include the potential value to the department of the prospective appointee’s skills and experience and the potential impact on the actual and perceived political and policy impartiality of the appointee and the department. Discussion with the prospective appointee about these matters may also be appropriate to test their grasp of the issues involved and to determine their views and intentions’ (State Services Commission (j), pp 12–14).

This approach is entirely consistent with the operation of section 33 and 85 of the State Sector Act 1988, as set out above. In addition, the Commission provides further guidance on how to go about this consultation in a manner that manages the tensions created by the duty to obey the law, to serve the Government of the day, and to be politically neutral. The first concerns timing; consultation should take place before decisions are made. Doing it afterwards smacks of a fait accompli for the Minister, and so would be doubly irritating if not only was it after, but also if the Minister had some serious, legitimate concerns about the successful applicant for the position.

The issue of Ministerial input to what has traditionally been regarded as a chief executive’s business has been canvassed by commentators on the Frank Sharp matter. Dr Graham Scott, reflecting on the fact that the chief executive, Mr Perry Cameron, chose to resign rather than review the appointment decision, commented that:

‘Mr Cameron’s actions in doing so can be judged as the right thing to do, in that he made his decision in observance of two fundamentally important principles. First, that he would not yield to political influence to reverse the decision he had made and which was his alone to make. Secondly, that his relationship with his minister had been damaged seriously regardless of the specifics of the issue at hand …

‘The decision to appoint Mr Sharp was one that many people regarded as unwise. Chief executives, however, are always making complex judgements and at some point all will make decisions that others, and even they, might subsequently think unwise.

‘This process [of ministerial input] should occur over a senior appointment where it is likely to have substantial political consequences. The decision, however, remains the chief executive’s … the minister will have to rely on the appointee to conduct their responsibilities to a high standard … [the minister] should never be in the position of being party to an appointment below the level of chief executive … what this means in effect is that the chief executive might think twice if the minister had a strong adverse view of the appointee, particularly if it was for legitimate reasons about which the chief executive was unaware … the non political focus should be the chief executive’s main concern when considering the appointment of senior staff, although the minister could reasonably expect to be consulted over the appointment process’ (Scott, G., 2001, pp.129-130).
There is a message here about accountability. In this case, it belongs with the person who had the legal authority and power to make employment-related decisions – not the Minister, but the chief executive. As with all actions, the degree of competence shown in dealing with what is a difficult situation will be reflected in the Chief Executive’s annual performance review.

There is an on-going argument about the nature of the sort of interaction a chief executive should have with a Minister in relation to an employment matter. The debate centres around whether it is an exercise in informing the Minister (for example, giving them enough time to ready themselves for the public announcement and any questions that may come their way), or whether it is about consultation (for example, seeking their views on the appointee). The State Services Commission is clear in its guidance that it is about consultation; the final decision remains with the chief executive, but the Minister does have an opportunity to be heard.

Jonathan Boston, in his article on the Perry Cameron/Frank Sharp matter, takes a slightly different approach:

‘A chief executive should, as a matter of courtesy and political prudence, inform his or her portfolio minister on all top-level appointments … such informing could include alerting the minister to the fact that there is a vacancy, explaining to the minister the kind of person being sought, and informing the minister once an appointment has been made … whether a chief executive should consult a minister about a forthcoming appointment – in the sense of seeking the minister’s views about a particular candidate or candidates – is less clear-cut. Arguably, the current constitutional conventions imply a general presumption against consultation. Despite this, there may be a case for consulting, rather than simply informing, a minister in two situations:

– when the appointment is likely to prove politically sensitive or controversial; and

– when the person holding the position in question is likely to have a good deal of contact with ministers’ (Boston, J., 1994 Public Sector Vol. 17, No. 4, p. 5).

It would seem inevitable that, if done properly and in a timely manner, any interaction with a Minister over an appointment is going to be of the nature of a consultation, and not just informing the Minister. Such an approach is consistent with law, and the principles of serving the Government of the day in a politically neutral manner. It is not a new convention, or a break with past traditions of a politically neutral public service. Ten years ago, the then State Services Commissioner was giving the same advice to Public Service chief executives via what has become known as the ‘standards letter’:

‘Statutory powers and discretion are assigned to chief executives under either the State Sector Act or legislation specific to their departments. While you have an obligation to act independently on such matters, this does not mean ‘alone’. It could be quite appropriate to seek advice, information, or representations from any other persons (including the Minister) before an independent decision is made. The duty to act independently on certain matters does not negate your responsibility to keep the Minister informed on matters of importance … At the same time, you need to ensure that the manner in which you inform your Minister does not compromise the Minister or yourself in terms of the proper decision-making process’ (State Services Commissioner (i), 1997, p. 5).

There is a balance that Public Service chief executives need to achieve, and while that may be difficult, particularly if there is some disagreement between the chief executive and the Minister over the final decision that will be made, it is achievable. As Dr Graham Scott has noted, ‘most chief executives, on occasion, irritate their ministers seriously and do not have to resign’ (Scott, G., 2001, p. 129). Decisions relating to public service employment that chief executives have to make from time to time are not about pleasing anyone, or smoothing the way; they are about consistency with law, principles and conventions, and demonstrating the leadership expected from the senior Public Service.

Conflicts of interest, political neutrality and serving the government of the day

Leaving aside the issues arising from whether, and to what extent, a Public Service chief executive should discuss an employment matter with their Minister, the other issue which arose in the context of the employment of Ms Satchell was the question of public servants and conflicts of interest.

The Deputy State Services Commissioner, Mr Iain Rennie, referred to the question of conflict of interest in his report to the Minister of State Services on this matter. Mr Rennie noted that:

‘Once the chief executive (of the Ministry for the Environment) clarified the position that Ms Satchell’s partner held he considered that there was the potential for a conflict of interest that required management. At this point he approached the State Services Commissioner for advice … The Commissioner’s advice was based on two principles:

• That public servants should be considered on their merits, and their political loyalties should not normally be questioned.

• That senior public servants have an obligation to maintain loyal service to the government of the day - including, sometimes, discreet support on politically sensitive matters - without compromising their ability to serve future governments.

The Commissioner encouraged Mr Logan to manage any perceived conflict of interest, and encouraged him to make a decision in the best interests of his department and of a politically neutral public service, and his obligations as a good employer, consistent with these principles’ (Deputy State Services Commissioner, 2007, p 2).

Matters of conflict of interest are complex and, more often than not, are not open to resolving through the simple application of guidance. The specifics of the case in hand can have a significant bearing on the application of any principles and judgements to be made. There is often no clear right answer, but instead the careful weighing up of differing views, in the light of principles. That said, there are those all too ready to make a quick judgement on the merits of a case, as demon-
strated by this article in the Sunday Star Times:

‘Benson-Pope was perfectly entitled to express such a concern. It’s not that Satchell would have acted unprofessionally. But the conflict of interest put her and the minister in an untenable position … if any information did leak to the National Party, suspicion would naturally fall on her. That is no reflection on Satchell personally. It’s just an uncomfortable fact.

For the bulk of government jobs, we can rely on the professionalism of bureaucrats. New Zealand is a small country and minor and manageable conflicts of interest are everywhere. In the case of Madeleine Satchell, the job was by its nature a special case’ (Sunday Star Times, 2007, p. A11).

As would be expected, the Public Service has developed its own guidance on matters to do with conflicts of interest. The Cabinet Manual states:

‘Public servants are obliged to serve the aims and objectives of the Minister as set out in departmental plans and other documents. They should ensure that their personal interests or activities do not interfere with, or appear to interfere with, this obligation’ (Cabinet Manual, 2001, p. 34).

The State Services Commission has also addressed the issue of managing conflicts of interest in a resource kit it has prepared on this matter:

‘A conflict of interest is defined in the New Zealand Public Service Code of Conduct as ‘any financial or other interest or undertaking that could directly or indirectly compromise the performance of a public servant’s duties, or the standing of their department in its relationships with the public, clients or Ministers. This would include any situation where the actions taken in an official capacity could be seen to influence or be influenced by an individual’s private interests (e.g. company directorships, shareholdings, offers of employment) …

‘The State Services Commission has also explored this matter in some detail in its Board Appointment and Induction Guidelines (State Services Commission, 1999). The Guidelines, referred to in the Resource Kit, state that:

‘The key question to ask when considering whether an interest might create a conflict is: does the interest create an incentive for the appointee to act in a way which may not be in the best interests of the Crown body? If the answer is ‘yes’, a conflict of interest exists. The existence of the incentive is sufficient to create a conflict. Whether or not the appointee would actually act on the incentive is irrelevant’ (State Services Commission (f), 2005, pp 6–8).

One interesting point to come out of this guidance is the question of incentives. Does the interest create an incentive for the appointee to act in a way which may not be in the best interests of the organisation to which they belong? This is not to say that they will do or say something; in most cases, a public servant’s adherence to the values of public service will ensure that they do not. However, it is the issue of perception that seems to matter more and more in the minds of the public and commentators.

This question of perception is also canvassed in the report of the Controller and Auditor-General on Managing Conflicts of Interest: Guidance for Public Entities. The report states that a conflict of interest exists where:

‘A member’s or official’s duties of responsibilities to a public entity could be affected by some other interest of duty that the member or official may have …

‘Another way of considering whether a conflict of interest may exist is to ask: Does the member’s or official’s other interest create an incentive for them to act in a way that may not be in the best interests of the public entity? …

‘The issue is not confined to considering the possibility of financial loss or other direct disadvantage to the public entity. Sometimes it can relate to the risk that a member or official could:

• use publicly funded resources or time to advance their own interests; or
• be influenced in their decision-making by a sense of loyalty or obligation to someone else, or by an unduly fixed view’ (Controller and Auditor-General, 2007, p. 13).

Questions of financial conflict of interest are usually more clear-cut, and have traditionally been regarded as more serious. For example, under the Local Authorities (Members’ Interests) Act 1968, a member of a council is disqualified from office if they are found to have had a financial interest in relation to a matter, and yet still took part in debating and voting on it. Financial conflicts of interest also do not arouse the same level of concern over perception versus reality in terms of a conflict. The Controller and Auditor-General has commented in his guidance on the question of perception, noting that:

‘The public entity needs to consider whether there is a reasonable risk that the situation could undermine public trust and confidence in the member or official of the public entity. Public perceptions are important. It is not enough that public sector members or officials are honest and fair; they should also be clearly seen to be so …

‘It must be remembered that this judgement [about the seriousness of a conflict] is not primarily about the risk that misconduct will occur. It is about the seriousness of the connection between the two [official and other] interests’ (Controller and Auditor-General, 2007, p. 13 and p. 30).

What we see here is the elevating of public perception, and theoretical risk, to a higher level than the balancing forces of public service values – integrity, honesty, political neutrality, professionalism, respect for the rule of law, and so on.

In considering existing guidance on conflicts of interest in relation to the employment of Ms Satchell, a number of questions can be posed:

• does a public servant who is the partner of someone working for an Opposition political party face a potential conflict of interest? (It should be noted on this point that the Controller and Auditor-General is clear that ‘the interests of any relative who lives with the member or official … must be treated as being effectively the same as
an interest of the member or official’ (Controller and Auditor-General, 2007, p. 19).

- can a public servant in such a situation maintain political neutrality, and not only be able to serve the Government of the day, but also future governments?

- does any future attack on the Ministry by that Opposition political party automatically mean that the party must have somehow got ‘inside information’?

- if a public servant has a relationship with someone working for an Opposition party, does that undermine their ability to serve the aims and objectives of their Minister? (In this regard, it is interesting to note that the Prime Minister, in an interview on the TVOne Agenda programme, stated ‘I wouldn’t have a clue what the political feelings are of the public servants who work directly to me, I don’t want to know, I expect that they will act professionally, and I like to think I act professionally’ (Prime Minister Helen Clark, 28 July 2007).

- would such a public servant disclose information without authorisation to that person working for the Minister's political opponent, through some sense of duty or gain? (It should be noted in this context that the former New Zealand Public Service Code of Conduct states:

'It is unacceptable for public servants to make unauthorised use or disclosure of information to which they have had official access. Whatever their motives, such employees betray the trust put in them, and undermine the relationship that should exist between Ministers and the Public Service. Depending on the circumstances of the case, the unauthorised disclosure of information may lead to disciplinary action, including dismissal’ (State Services Commission (m), 2005, p. 16).

- does such a public servant face an incentive to disclose information? (Again, it should be noted that the State Services Commission has made it clear in guidance that:

‘State servants taking part in any discussion which touches on policies which they were involved in developing or implementing must exercise careful judgement. In these circumstances, the best course is to explicitly make ‘no comment’ or change the subject. Sometimes this can be hard but State servants need to remember that political neutrality is a fundamental requirement of their job and that this requirement continues to apply outside working hours’ (State Services Commission (k), p. 3–4).

- could public trust and confidence in the department the public servant works for be undermined if they continue in their job while in this relationship?

- are there some roles in the public service that, due to their seniority, or involvement in delivering on the Government of the day’s most important goals and objectives, mean that higher standards in terms of managing conflicts of interest are expected?

- is it possible to satisfactorily manage any potential conflict of interest arising from this employment situation (for example, by providing some assurance in relation to the values that public servants work by) so that public trust and confidence is not undermined, and the aims and objectives of the Minister can be served?

It is a matter of regret that the New Zealand Public Service’s history of values and ethics does not provide a significant enough counterweight to balance out the potential conflict of interest created by this situation. Time and again, in the small community that is Wellington – or indeed New Zealand – similar situations arise and are successfully managed or dismissed as too distant to create a real conflict of interest situation. In this case, there was no possibility of financial gain or loss, there was no direct power relationship (for example, employer and employee) between the parties involved, and there was no reason to believe that the Government of the day’s agenda would be undermined.

It is apparent from the Deputy State Services Commissioner’s report that it did not prove possible to manage or discount the potential conflict of interest that had been identified in this case. This is also a matter of some regret and, without knowing the full extent of the efforts that were made, suggests a lack of flexibility and innovative thinking on the part of the Public Service. As the State Services Commissioner wrote when referring to his own conflict of interest situation involving his brother (the now former politician Richard Prebble):

'The lesson I have learned from this experience is not that perceived personal conflicts should be ignored in our small society. My lesson is the opposite; with care and flexibility of all involved, these conflicts can and should be managed’ (Dominion Post, 20 July 2007, p. B5).

If the State sector in New Zealand can manage this level of potential conflict, and indeed can manage or discount the conflicts that potentially exist in other spheres of government activity (and in this regard, the conflicts that those working in the State's economic and monetary policy agencies face – such as the Reserve Bank, the Treasury, and the Ministry of Economic Development – immediately leap to mind), then managing or discounting the potential conflict that exists between a Communications Manager in a government department and someone on the staff of the Leader of the Opposition should be an achievable task if there is willing from all parties.

A way forward

The issues discussed here create a reasonably sharp distinction in terms of choices going forward. Work in the area of public service ethics suggests that those choices are driven off two different approaches to ethics: compliance-based versus integrity-based ethics management. The State Services Commission has described the differences as follows:

‘At one end of the scale is the integrity-based approach to ethics management. This approach is consistent with a focus on results. While there are clear rules against illegal behaviour, and sanctions applied when those are breached, the focus is the actions or effects that should be achieved, rather than the behaviour that should be avoided. This suggests an emphasis on:
• the definition of overall aspirational ‘values’ for the public sector (the OECD calls this the ‘high road’);

• *what* is achieved rather than *how* it was achieved (that is, a focus on ends rather than means); and

• encouraging good behaviour rather than policing errors and punishing bad behaviour.

At the other end of the scale is an approach to ethics that is **compliance-based**. This focuses on strict adherence to administrative procedures and rules (often detailed in legislation), which define what public servants should do and how. In this context, codes of conduct often consider the negative; i.e. what public servants should not do, and what sort of behaviour they should avoid. The OECD calls this the ‘low road’ approach: setting minimum standards beyond which behaviour should not fall. The emphasis is on policing actions and catching wrongdoing, reinforcing the tendency to manage by rules because they provide a base-line for identifying error’ (State Services Commission (a), 1999, p. 5).

A natural reaction when things go wrong is to create a new rule, to ensure it does not happen again. This compliance-based approach would see new rules and guidelines being issued. For example, there could be an addition made to the principles and conventions that public servants work under, along the lines of:

> Public servants cannot occupy senior or sensitive positions (or any positions – imagine what the photocopy operator may see from time to time!) if they are in a personal relationship with someone who works for, or is an office holder of, a political party.

Such a principle could be extended to include a provision that no public servant can work in an area classified as ‘politically sensitive’ that relates to the area within which a family member works. So, for example, those working in the State’s economic and monetary policy agencies could not do so if their partners were working in the financial or business sectors. Those working in the Ministry of Agriculture and Forestry could not do so if they had a parent who owned a farm. It soon becomes clear that going down this path is not useful, as it seeks to make black and white that which is grey, and unique from circumstance to circumstance (and, furthermore, what is politically sensitive may change from time to time). A former State Services Commissioner has cautioned against piling new rules on old, in an effort to ‘fix’ problems, and has talked about:

> ‘… the importance of the State sector employing effective people with strong values because they can make an imperfect system work well (and resist the perverse incentives to over-elaborate the system within which they operate)’ (State Services Commissioner (g), 2001, p. 9).

The other option is to continue with an integrity-based approach, based around aspirational goals and encouraging good behaviour. It is worth stating again that public servants are, due to the nature of the principles and conventions they work under, in a somewhat unique position. Values like integrity, honesty, political neutrality, professionalism, and respect for the rule of law combined with a commitment to serve the Government of the day, mean public servants are – or should be – comfortable with an integrity-based approach.

In considering how to respond to the issues raised by the employment of Ms Setchell, and the challenge in doing so of ensuring that whatever happens as a result maintains and strengthens trust and confidence in government, the importance of what can be termed the self-regulating ethos of public service should be reinforced. The self-regulating ethos of public service suggests that motivations of public servants are different to those of other people. Those motivations, driven off law, principles and conventions, do mean public servants act and work in a particular way that should provide reassurance to whoever is the Government of the day, and indeed to those in Opposition, that:

> ‘the New Zealand Public Service, imbued with a spirit of service to the community, exists to advise the Government and implement the Government’s policies and decisions to the highest possible standards of quality and with the utmost integrity, in accordance with the principles of law and democracy, thereby enhancing the well-being and prosperity of all New Zealanders’ (State Services Commission (c), 1995, p. 8).

### Conclusion

The decision of the Ministry for the Environment to employ Madeleine Setchell, and then for her to leave that employment following attempts to find a way to manage what her chief executive identified as a conflict of interest, has resulted in an investigation by the State Services Commissioner. Matters to be reviewed as part of the investigation include the management of actual or perceived conflicts of interest and the duty to maintain political neutrality. The actions leading to the investigation have aroused concern in the minds of some that the political neutrality of the New Zealand Public Service has been harmed in some way, leading to a decline in trust and confidence in government. This research project sets out why this trust and confidence is so important, and the constitutional understanding of the roles of Executive Government and the Public Service, and explores two interrelated issues:

- the role of Ministers in relation to the employment of public servants other than departmental chief executives; and

- the application of conflicts of interest guidance to the Public Service and individual public servants.

An analysis of the relevant provisions of the State Sector Act suggests that, at the instigation of chief executives, Ministers can have an input to employment decisions, as long as it is clear that the final decision is for the chief executive to make. Chief executives, their Ministers, and their Minister’s political advisors, need to ensure they are familiar with the guidance that exists on how to go about this.

The Public Service regulates itself through a combination of law, principles and conventions. These include such things as political neutrality and serving the government of the day. These
principles mesh together to remind public servants of the importance of ensuring that their public and private actions, when viewed through the lens of the political contest, contribute to and do not undermine trust and confidence in government.

The application of guidance on conflicts of interest to this case throws up some important issues in terms of the elevation of concerns over public perception, and theoretical risk, to a higher level than what can be seen as the balancing forces of public service values – integrity, honesty, political neutrality, professionalism, respect for the rules of law, and so on. A rigid application of conflict of interest guidance does seem to discount other existing guidance on appropriate behaviour by public servants. It may well be time to re-examine and reassert the importance of what this research project describes as the self-regulating ethos of public service.

Bibliography


State Sector Act, 1988


Sunday Star-Times, *Minister had to go, but appointment was unfair*, Sunday Star-Times, 29 July 2007.

As a one-time journalist, it was an interesting experience last year to make news with the research which has prompted today’s seminar (Norman, 2006).

Perhaps inevitably, the carefully qualified phrases of the research were quickly simplified to headlines such as ‘PC directors weaken boards’ and ‘SOE boards “stacked with political cronies”’.

Such headlines have had the positive effect of prompting this well attended seminar to tackle an important area of public administration, which involves 10% of the Government’s net assets, yet has been little debated recently.

I initiated the research in response to a provocative analysis in 2004 by Rob Cameron, an investment banker, who was involved in the creation of State-owned Enterprises while working at the Treasury in the 1980s. Rob held the view that a long period of ‘prepare for sale’ had resulted in State-owned Enterprise (SOE) boards becoming overly controlled and compliance-focused (Cameron, 2005). This limited their ability to independently make the major strategic decisions, important for safeguarding the Government’s long-term returns from SOEs.

I used computer-assisted meeting software which enabled a sample of directors from the largest SOEs to volunteer views which they may not have offered if they were sourced individually. This was an exercise in making some ‘undiscussable’ issues discussable (Argyris, 1980). In previous research I have focused on the New Zealand model of public management, which is distinctive internationally for the extent of the freedoms delegated to public managers, and the extent of the accountability expected from them. With the SOE research, I was venturing into an associated but novel field, and at times have felt like the small boy in the story by Hans Christian Andersen who dared to question the Emperor’s new clothes. There’s a quote attributed to Sir Winston Churchill that’s a good reminder of the importance of the critique contained in the research: ‘Criticism in politics is to the body politic what pain is to the body – an essential warning system’.

Today, I will summarise the findings, raise some questions about the new economic transformation agenda for SOEs, and finish with reflections on three system changes which could tackle the issues raised by the research.

Summary of the research

Last year, no doubt in an effort to defuse the headlines, the Minister of State-owned Enterprises described the research as being based on a ‘self-responding not random sample representing just 22% of the 122 SOE directors.’ That’s a perfectly accurate statement, but the value of the research lies in its sampling of the views of no fewer than 40% of the directors of the nine largest SOEs. These companies, New Zealand Post, Genesis Power, Landcorp Farming, Meridian Energy, Mighty River Power, Transpower, Airways Corporation, Solid Energy and Transmission Holdings (now part of Kordia), account for more than 95% of Government’s net investment in this sector. The purpose of this exploratory research was to capture unfiltered perceptions from recognised experts rather than a random sample. The participants in the research averaged nine years directing experience, both public and private.

Responses were organised using a model of organisational architecture (Brickley et al., 2004), which portrays decision rights, performance evaluation and rewards as three legs of a stool that must be in balance for an organisation to be stable and successful. Decision rights focus on who gets to make decisions. When
asked about decision making and who sits on boards, two-thirds of directors felt that ‘the process for appointing board members is too politically influenced’. Eighty per cent thought ‘the process for appointing directors is too drawn out’, and almost all thought ‘boards and particularly their chairs should play an active role in recruiting and selecting new directors’. Two-thirds had concerns that board tenure of three years plus three years renewal was too short, while a 20% minority thought they were being reduced to the status of advisory boards with real decisions made elsewhere. Almost all of the directors thought they had the opportunity and capabilities to test strategic plans proposed by management, although I think this statement belongs in a file labelled ‘they would say that wouldn’t they’.

There was harsh but predictable feedback for officials on the issue of performance assessment. Just one director supported the statement that ‘strategy development is enhanced by the input of officials’, while two-thirds agreed that ‘Treasury’s focus on financial analysis and control compromises the ability of my board to focus on the longer-term maximising of shareholder wealth’. Treasury officials, as guardians of taxpayers’ interests, should perhaps regard such feedback as positive affirmation that they are playing their required role as the ‘incredible No-men’ of any government system.

On the issue of remuneration, when asked if compensation for directors’ roles was appropriate, two-thirds of directors disagreed. They were, however, evenly divided about whether ‘unattractive compensation levels limit the number of directors willing to make themselves available for appointment.’ It would undoubtedly be more appropriate to ask this last question of non-directors, rather than rely on the views of those who have already decided it is worthwhile to serve on an SOE board.

Table 1 contains comparisons of a sample of large organisations. Leaving aside for inevitable debate about what are valid comparison companies, it does appear that SOE directors for the 2005–06 year received considerably lower fees than private sector counterparts.

| Table 1. Comparisons of fees for chairs and directors (information gained from 2005–06 Annual Reports) |
|---------------------------------------------------------------|---------------------------------------------------------------|
| Company assets ($000)                                        | Meridian Energy                                              | Contact Energy                                              |
| Total                                                        | 5,339,300                                                    | 4,579,567                                                   |
| Net                                                          | 4,237,400                                                    | 2,552,243                                                   |
| Directors fees ($000)                                       |                                                            |                                                            |
| Average                                                      | 31                                                          | 91                                                          |
| Chairman                                                     | 65                                                          | 180                                                         |
| Total                                                        | 249.3                                                       | 547.5                                                       |
| Genesis Energy                                               |                                                            |                                                            |
| Total                                                        | 2,041.5                                                      | 1,435,464                                                   |
| Net                                                          | 1,453.2                                                      | 896,468                                                     |
| Directors fees ($000)                                       |                                                            |                                                            |
| Average                                                      | 35                                                          | 69                                                          |
| Chairman                                                     | 69                                                          | 112                                                         |
| Total                                                        | 315.4                                                       | 414                                                         |
| New Zealand Post                                             |                                                            |                                                            |
| Total                                                        | 3,773,800                                                    | 4,099,000                                                   |
| Net                                                          | 534,100                                                      | 1,800,000                                                   |
| Directors fees ($000)                                       |                                                            |                                                            |
| Average                                                      | 35                                                          | 93                                                          |
| Chairman                                                     | 66                                                          | 240                                                         |
| Total                                                        | 350                                                         | 649                                                         |
| Fletcher Building                                            |                                                            |                                                            |
| Total                                                        | 1,379,600                                                    | 1,704,898                                                   |
| Net                                                          | 1,144,200                                                    | 793,383                                                     |
| Directors fees ($000)                                       |                                                            |                                                            |
| Average                                                      | 25                                                          | 67                                                          |
| Chairman                                                     | 58                                                          | 135                                                         |
| Total                                                        | 227                                                         | 399                                                         |
| Landcorp                                                     |                                                            |                                                            |
| Total                                                        | 1,379,600                                                    | 1,704,898                                                   |
| Net                                                          | 1,144,200                                                    | 793,383                                                     |
| Directors fees ($000)                                       |                                                            |                                                            |
| Average                                                      | 25                                                          | 67                                                          |
| Chairman                                                     | 58                                                          | 135                                                         |
| Total                                                        | 227                                                         | 399                                                         |
| Infratil                                                     |                                                            |                                                            |
| Total                                                        | 1,379,600                                                    | 1,704,898                                                   |
| Net                                                          | 1,144,200                                                    | 793,383                                                     |
| Directors fees ($000)                                       |                                                            |                                                            |
| Average                                                      | 25                                                          | 67                                                          |
| Chairman                                                     | 58                                                          | 135                                                         |
| Total                                                        | 227                                                         | 399                                                         |
In sifting through directors’ views, I became very aware of the number of possible pieces of in-depth research that this topic area might support. Indeed the sector could no doubt support a number of pieces of PhD-length research.

For instance:

- How strategic can directors of such enterprises actually be, given that they are operating in long-term industries surrounded with regulatory requirements?
- How real is the decision making authority of boards compared with that of managers, when board members are changed reasonably regularly?

I tested the turnover issues by analysing the composition of boards between 2004 and 2006, as in Table 2.

While too short a period to be definitive about director turnover, this analysis shows that in 2006 compared with 2004, more than half the directors of Agriquality, Landcorp and Meridian were new. Ironically perhaps, given Meridian’s outstanding achievement of earning $800 million from its foray into Australia, only one member of the 2004 board was still there in 2006. Other boards were relatively stable with only a few members changing.

One more research question, likely to be appreciated by a Wellington audience, but dismissed in Auckland, is whether SOE directing roles require special skills and political sensitivity that are distinctly different from those sought in the private sector. Perhaps political experience is a positive value, not an example of cronyism, for enterprises which operate in a politically charged arena. The most notable contribution from a political appointee has undoubtedly been the defusing of criticism about Kiwibank after Jim Anderton and Jim Bolger became unlikely collaborators to bring stability to what for a period was known as the Jim Jim bank.

### Table 2. Turnover among SOE directors:

<table>
<thead>
<tr>
<th>SOE</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airways Corporation</td>
<td>One of seven new</td>
</tr>
<tr>
<td>Agriquality</td>
<td>Six of nine new</td>
</tr>
<tr>
<td>Genesis Energy</td>
<td>Two of eight new</td>
</tr>
<tr>
<td>KiwiBank</td>
<td>All board members the same as 2004, with one less board member.</td>
</tr>
<tr>
<td>Landcorp</td>
<td>Five of eight new</td>
</tr>
<tr>
<td>Meridian Energy</td>
<td>Six of seven new</td>
</tr>
<tr>
<td>MetService</td>
<td>Two of eight new</td>
</tr>
<tr>
<td>Mighty River Power</td>
<td>Two of eight new</td>
</tr>
<tr>
<td>New Zealand Post</td>
<td>Two of eleven new, on a board expanded from eight members in 2004.</td>
</tr>
<tr>
<td>Quotable Value</td>
<td>Two of eight new</td>
</tr>
<tr>
<td>Solid Energy</td>
<td>Three of eight new</td>
</tr>
<tr>
<td>Timberlands</td>
<td>Two of six new</td>
</tr>
<tr>
<td>Transpower</td>
<td>Two of eight new</td>
</tr>
</tbody>
</table>

Note: The analysis was based on information extracted from the companies’ Annual Reports which are available from their respective websites, and the following have not been included because their reports could not be retrieved in the time available:

- Animal Control Products
- Asure New Zealand
- Learning Media
- Ontrack.

### Successes of the SOE model

On the basis of reported financial data, it seems that the New Zealand State-owned Enterprises model has been a major success story. Before the creation of SOEs in 1987, Government enterprises, including many which have since been sold, were valued at more than $20 billion yet provided no net returns (Spicer et al, 1996, p. 9). In 1987, when the old Post Office was being restructured, the then chairman of what became New Zealand Post heard Sir Geoffrey Palmer saying before a committee meeting, ‘what are we going to do about poor old Post? Shall we give it away?’ (Smith, 1997, p. 67). In contrast, today’s SOEs generate profits of close to 10% on equity and between 1999 and 2005 contributed dividends of almost $1.8 billion to the Government. Only one relatively small enterprise, Terralink, has failed. It has subsequently become a success in private sector ownership. In sharp contrast to the ideology which drove state involvement in business in Britain, New Zealand governments have become involved in business for pragmatic reasons, to build the infrastructure of an isolated nation state and to protect citizens against high prices or poor service from overseas companies. The creation of Kiwibank with its advertising slogan ‘it’s ours’, is the latest example of such a response, prompted by a finance sector which is dominated by Australian ownership.

A large part of the steady performance of SOEs of course stems from these organisations largely being monopolies or near monopolies in sectors such as postal services, electricity and coal. But a comparison with private sector performance during the past 20 years does give grounds for wondering whether stable New Zealand ownership is a major factor. The history of publicly listed companies has been one of a relentless push towards ultimately unsustainable compound growth rates, a pressure which has prompted privatised companies such as Air New Zealand and Telecom (and indeed the Warehouse) into disastrous forays into Australia. A look at New Zealand’s largest publicly-listed companies when SOEs were created, raises serious questions about private sector performance and shows at a glance why a generation of New Zealanders have chosen to invest in property. There is a sobering contrast between the solid performance of SOEs and the experience of what were New Zealand State-owned Enterprises model have been a major success story.
Zealand’s largest publicly listed companies when the SOE model was launched in April 1987 (Table 3). Six of the fourteen companies experienced serious financial collapses, with shareholders losing heavily, and almost all of the remaining companies have passed largely into overseas ownership and control.

New Zealand faces a serious private sector problem resulting from the scale of our country, our remoteness from markets, and increasingly the ease with which large sums of Australian-based money can out price locally-based investors. The recommendation this week of directors of New Zealand’s largest listed tourism company to sell out to an Australian bid is just the latest in this trend. The challenge is well expressed in Gareth Morgan’s description of New Zealand as a ‘lifestyle block economy’ (Morgan, 2001), as well as the following quote:

“Small open economies are like rowing boats on an open sea. One cannot predict when they might capsize; bad steering increases the chances of disaster and a leaky boat makes it inevitable. But their chances of being broadsided by a wave are significant, no matter how seaworthy they are” (Stiglitz, 1998).

In this context, I hope debate about SOE directions and governance can move beyond predictable responses, such as those reproduced in the next section. Ministers and officials have the equivalent of files for views they classify as ‘they would say that wouldn’t they’, and I hope discussion today gets beyond the following types of responses.

‘They would say that, wouldn’t they?’

SOEs are not subject to normal market disciplines (such as share price performance and takeovers) and the ability to monitor them is weak.

“… Taxpayers have no way of knowing whether their investments in SOEs are yielding competitive returns. A 2002 Business Round Table study concluded on the basis of World Bank estimates that New Zealand could gain over $1 billion a year or around 1% of annual GDP by privatizing SOEs2.”

Possible duplication of product and services that compete with and displace the private sector is a major concern. The result could be

Table 3. Top ranking companies on the New Zealand Stock Exchange in April 1987, and their subsequent performance.

<table>
<thead>
<tr>
<th>Company</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brierleys</td>
<td>Major losses for investors, including the failure of Air New Zealand. Remaining assets are controlled out of Singapore.</td>
</tr>
<tr>
<td>BNZ Finance</td>
<td>Amalgamated into the Bank of New Zealand, itself owned by the National Australia Bank.</td>
</tr>
<tr>
<td>Chase Corporation</td>
<td>Collapsed into liquidation in 1989, then the largest loss in New Zealand’s corporate history.</td>
</tr>
<tr>
<td>Equiticorp</td>
<td>Collapsed after the 1987 sharemarket crash, with directors later serving time in prison.</td>
</tr>
<tr>
<td>Feltex</td>
<td>A subsidiary of Equiticorp, refloated in 2004 only to collapse into receivership in 2006, and be sold to Australian owned competitor.</td>
</tr>
<tr>
<td>Fletcher Challenge</td>
<td>Conglomerate sold off in the late 1990s, with Fletcher Building subsequently performing extremely well.</td>
</tr>
<tr>
<td>Lion Nathan</td>
<td>A controlling interest sold to the Japanese company Kirin in 1996.</td>
</tr>
<tr>
<td>NZI</td>
<td>Major loss in the late 1980s, now owned by Insurance Australia Group.</td>
</tr>
<tr>
<td>NZ Forestry Products</td>
<td>Merged into Carter Holt Harvey, since taken over by Graham Hart.</td>
</tr>
<tr>
<td>NZ Refining</td>
<td>Remains listed, but with only 13% of its shares tradeable.</td>
</tr>
<tr>
<td>NZ Steel</td>
<td>After collapse of Equiticorp, sold to Australian owned BHP, now part of the Australian listed company Bluescope Steel.</td>
</tr>
<tr>
<td>Waitaki International</td>
<td>Taken over by Alliance Freezing Company of Southland, 1990.</td>
</tr>
</tbody>
</table>
devastating to small and medium sized enterprises'.

...the policy is a throwback to the 1970s and 1980s.

‘It will squeeze out investment and lead to economic stagnation, not transformation,’ he said.

If the new policy does lead to more risks being taken, it is inevitable bad decisions will be made and money will be lost. Perhaps then risk-averse politicians faced with an angry tide of taxpayers upset at seeing their money squandered may be tempted to dispose of some of these enterprises after all.

New expectations for directors

The Government’s ‘be entrepreneurial’ policy introduced in June 2006 has undoubtedly increased the importance of decisions about appointments to boards, and critiques from business sector lobbyists such as those above underline this need. Boards now need skills to manage steady progress and the ability to diversify sensibly from core capabilities.

Bob Garratt, a major contributor to thinking about governance in Britain, used the following Chinese saying as the title of one of his books, ‘The fish rots from the head’ (Garratt, 1996). It graphically illustrates the importance of a well-functioning board of directors. In a challenge to British directors, Garratt asked ‘how many of your board, executive or independent directors, have had any training or development for their direction-giving role, rather than their management role, other than vaguely defined “experience”?’

He observes that there is a vast difference between ‘directing’ and ‘managing’ an organisation. Management is a hands-on activity thriving on crises and action, while directing is essentially an intellectual activity. ‘It is about showing the way ahead, giving leadership. It is thoughtful and reflective and requires the acquisition by each director of a portfolio of completely different thinking skills.’

A major reason for my interest in the subject of governance is that I once worked for a government enterprise in which the fish did indeed rot from the head, and in doing so provided a vivid illustration of the impact of a change of chairman and strategic direction. This organisation was the Development Finance Corporation (DFC), which in common with most of its private sector counterparts in the late 1980s, seriously overestimated New Zealand’s ability to cope with deregulated finance. For much of the 1980s, DFC was chaired by a cautious banker who had experienced a number of financial downturns, and liked nothing better than to tell staff (who mostly didn’t want to listen) that ‘any fool can lend money, the trick is getting it back’. When his term ended, he was replaced as chairman by an entrepreneurial engineer, who in his own business activities was experimenting with the exciting world of financial engineering. Tight controls on investment were replaced by performance incentives designed in one of the sayings of the era, to help ‘shovel money out the door’. A permanent reminder of such misplaced performance incentive and inadequate direction is the 30-storey Majestic Tower in Willis Street, Wellington, a building which was eventually sold for half the construction cost.

So I share the concerns of the private sector critics, and government advisers, that this next phase of SOE development should be handled as effectively as possible. But I also support the deeply-rooted and pragmatic New Zealand view that government has an important role in a small and dependent economy. The clear message of the last twenty years is that adherence to an economic model derived from the entirely different economic landscape of the United States is likely to result in New Zealand being a nation of branch offices.

Improving SOE governance systems

The research which triggered this seminar was based on the perceptions held by directors. If perceptions of directors and a wider public are to change, system changes such as the following are needed.

First, New Zealand would benefit from a much more transparent system for the appointment of directors, something which Britain adopted ten years ago, and which Karen Martin will describe in more detail. Currently the public perception, fairly or not, is that SOE and Crown Entity boards are the last bastion of political patronage in what is otherwise a strongly merit-based system of governance.

Second the New Zealand model of public management places enormous expectations on the ability of directors, in Crown Entities as well as SOEs, to handle commercial, operational and political risks. During the past four years, there has been a substantial reinvestment in public service capability through the Leadership Development Centre, the Australia and New Zealand School of Government, and the Victoria University School of Government. By comparison, directors of SOEs and Crown entities seem to be treated more as a pool of arms-length contractors, subject to relatively short fixed-term contracts. If boards are to be serious custodians of SOEs and of Crown entities which are responsible for delivering more than half of government services, a strategy of training and developing a pool of committed directors would surely be an effective investment. That would mean, as Karen will cover, a commitment to more than short courses of the ‘has attended’ variety.

Third State Owned Enterprises should be subject to independent and published analysis of their performance. The introduction, as advocated by Roger Kerr of the Business Roundtable, of a body similar to the Productivity Commission in Australia would go a long way to opening this area of public activity to fact- rather than perception-based analysis.

Conclusion

There is considerable international interest in our public management systems, particularly because devolved authority and accountability for results keeps challenging and enabling agencies to improve their performance. The system is considerably more open to innovation than the highly centralised controls that once prevented state enterprises from trading effectively. That old model of State Enterprise was examined by the Institute of
Public Administration through a convention and book published in the early 1980s (Mascarenhas, 1982). To my knowledge, the seminar today is the first substantial examination by the Institute of these issues in 25 years. Debate over the role of state enterprises brings into sharp focus the clash of cultures represented by public and private sector work experiences and values. Those different perspectives are represented among participants in this seminar. I hope the debate today gets beyond well known ‘they would say that’ restatements of position, and examines important issues for the future of this model.

References


Notes

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4 Phil O’Reilly, Dominion Post, 3 June 2006.


Richard Norman is a Senior Lecturer with the Victoria Management School, Victoria University of Wellington, where he teaches Human Resource Management and Training and Development topics. Dr Norman has focused his research on public sector reform, and published ‘Obedient Servants? Management Freedoms and Accountabilities in the New Zealand Public Sector’ (Victoria University Press, 2003). Before joining the university in 1994, he was a training manager with the State Services Commission, a role which sparked his interest in public sector performance.

richard.norman@vuw.ac.nz
Improving board selection and development: lessons from the private and public sectors

Karen S Martyn

Governance Training and Consulting Ltd, Wellington

Research into governance of State-owned Enterprises (SOEs) points to directors’ concerns that appointments are made for political or diversity reasons rather than merit and balance of skills (Norman, 2006). In another New Zealand study, directors who have served on public sector and private sector boards, including publicly listed companies, reported competency problems of board members who were seemingly appointed to the public sector boards on which they served to add ‘diversity’ (Martyn, 2006).

Interpersonal influence on director selection

The problems of flawed board appointment processes are not limited to the public sector, nor are they limited to New Zealand. Westphal & Stern (2006) have researched 350 large American companies and found that individuals who engage in a high degree of interpersonal influence, specifically ingratiatory behaviour directed at those who control access to board positions, have a significantly higher likelihood of gaining board appointments. Ingratiatory behaviour includes flattery, opinion conformity and favour rendering (Westphal & Stern, 2006, p. 172). Lest you doubt the efficacy of these behaviours, extensive research supports a wide range of beneficial outcomes resulting from engaging in ingratiatory behaviours. These include, but are not limited to: more favourable performance evaluations, higher salary increases, faster career advancement, enhanced likeability and inflated perceptions of competence (Gordon, 1996; Higgins, et al. 2003).

How does it work?

Ingratiation leads to feelings of indebtedness by the recipient. The recipient expiates the indebtedness by providing something of benefit to the ingratiator such as a board appointment. With pressures from stakeholders to increase demographic diversity, it is reasonable to expect fewer interpersonally-influenced appointments. Researchers found instead that those directors who engage in ‘especially deferential or submissive’ (Westphal & Stern, 2006, p. 171) behaviours toward those who influence board appointments.

Those who control access to board appointments may recognise and even disdain ingratiatory behaviour. However ‘people find it hard not to think highly of those who think highly of them’ (Heider, 1958; Jones, 1964, p.24 in Westphal & Stern, 2006, p. 172) and flattery is positively related to interpersonal attraction (Gordon, 1996). Whether findings from American companies and those who control their board appointments can be generalised to New Zealand SOEs and Ministers who control board appointments is questionable.

We are all human (even Ministers), so what can be done?

In the private sector internationally, calls for greater transparency of the director selection process have resulted in increased information to shareholders. This information will enable them to make informed decisions about whether directors standing for re-election and new director-candidates will improve board decision-making and organisational outcomes. Nomination committees are cautiously examining and re-aligning board composition, mapping board specialist expertise to critical organisational capabilities. Directors are being selected for their certification by assessment-based director training programmes. Institutional Shareholders (ISS), a Maryland based research organisation, tracks corporate behaviour and acts as accrediting agency for director education programmes. Passing an ISS-accredited programme boosts company Corporate Governance Quotient rating, an important reputational benchmark for corporate America, where ratings give shareholders greater comfort about the knowledge and skills of those directing the organisation. More on trends in director development will be discussed later in this paper.

An effective public sector model

One of the most successful responses to the call for transparency and accountability of public sector board appointments has been the establishment of The Commissioner for Public Appointments in the UK in 1995. The Commissioner’s role is to regulate, monitor and report on ministerial appointments to public bodies including their Nationalised industries, comparable to our SOEs. It is independent from the government and the public service. The Office of the Commissioner for Public Appointments (OCPA) is concerned with the public’s perception of the selection process and works to raise public confidence in director appointments. OCPA publishes a Code of Practice which has mandatory guidelines to the procedures that departments ‘must follow in order to ensure a fair, open and transparent appointments process that produces a quality outcome and can command public confidence’ (Code of Practice, p. 6). Although the Code and procedures allow flexibility, any significant departure from the prescribed process ‘must be discussed with OCPA in advance and the outcome of the discussion duly recorded’ (p. 6).
The seven OCPA principles which underpin public body board appointments are:

- Ministerial responsibility – The ultimate responsibility for appointments is with Ministers.
- Merit – All public appointments should be governed by the overriding principle of selection based on merit, by the well-informed choice of individuals who through their abilities, experience and qualities match the need of the public body in question.
- Independent scrutiny – No appointment will take place without first being scrutinised by an independent panel or by a group including membership independent of the department filling the post.
- Equal opportunities – Departments should sustain programmes to deliver equal opportunities principles.
- Prohibition – Board members of public bodies must be committed to the principles and values of public service and perform their duties with integrity.
- Openness and transparency – The principles of open government must be applied to the appointments process, its working must be transparent and information provided about the appointments made.
- Proportionality – The appointments procedures need to be subject to the principle of proportionality, that is they should be appropriate for the nature of the post and the size and weight of its responsibilities. (Code of Practice, p. 9).

The OCPA works closely with departments to advise them about the policy and the importance of retaining a clearly documented audit trail of the selection process. OCPA provides qualified, independent assessors who ensure independent scrutiny and offer general advice on the appointments process.

The Commissioner publishes an Annual Report providing details on appointments and re-appointments, compliance with the Code, complaints investigated and whether they were upheld or areas of good or not so good practice.

Not coincidentally statistical trends show a decrease in the number of appointments and re-appointments to public body boards of directors who declared recent political activity such as recordable donations to political parties totalling more than £5,000 in any calendar year and an increase in appointment to chair roles by persons categorised as female, ethnic minority or disabled (Eleventh Annual Report, p. 50).

The number of complaints investigated by OCPA for 2005–06 was 12 compared with 16 the previous year. Four of these were upheld or partially upheld for Code breaches relating to merit, probity or lack of openness and transparency (Eleventh Annual Report, p. 27). In the same year, Departments received 65 complaints compared with 92 in the previous year. Areas of good practice identified included the use of psychometric testing for a high-profile role which demanded specialist skills, review of whether the board's composition should be reviewed and changed before a re-appointment and the inclusion of emails on appointment files to ensure a full audit trail (Eleventh Annual Report, p. 11). These examples indicate trends in the right direction for improving perceived and actual board appointment processes.

**How do we address ineffective governance practices?**

Director education using evidence-based governance practices informed by the best available empirical evidence may improve and certainly cannot harm board decision-making. Evidence-based teaching looks at convergent evidence of pervasive cause-effect relationships. Board practices built around such evidence would consider the circumstances and ethical concerns governance decisions involve. There is an emerging consensus regarding the need for integrity and ethics as well as skills, knowledge and experience for effective governance practice (Dittmar, 2007). For the past 25 years evidence-based has guided teaching in fields as diverse as medicine, education, policing and psychology (Rousseau & McCarthy, 2007).

The best director development helps directors to think critically about their practice, develop new strategies and techniques to improve board process, and evaluate how new practices have affected board performance. Using factual and evidence-based training teaches substantive expertise rather than faddish, anecdotal and unsystematic beliefs currently espoused in the majority of New Zealand director ‘training’ programmes. Entertaining speakers and interesting case studies may have some value but governance education needs to help directors translate their learning into boardroom practice. A high profile director may be interesting on a personal or professional level but what will directors do with the subjective information that focuses on an exceptional instance when they find themselves without the same context or circumstances? How can we ensure that public sector company goals aimed at improving social and economic benefits drive director development and how can we help directors translate learning into improved boardroom practices? Research into other professions has shown unequivocally that professional development is most effective when it is embedded in the professional’s work (Kelleher, 2003). Continuing professional development, scrutinised by performance assessment norms in other professions, may be the same path needed to create higher standards of director performance (Sweeney, 2004; Melnick, 2004). Assessment based governance training programmes are popular (and in some instances, mandatory) in many other Commonwealth countries as well as the USA, UK, Canada, Malaysia, South Africa and Hong Kong.

Perhaps governance needs to create its own equivalent of the Millar Pyramid (Melnick, 2004), a key model in medical assessment. Applying the model to governance, teaching and assessing governance knowledge, i.e., ‘knowing’ is a necessary but not sufficient foundation for competence, i.e., ‘knows how’ which is necessary but not sufficient for performance, i.e., ‘can do in a monitored setting’. In the medical field this model has been confirmed in reviews of randomised controlled trials (Melnick, 2004, p. S42).
Conclusion

The media has drawn the public’s attention to the mis-steps of directors from private sector boards such as Feltex and Provincial Finance, and from Crown entity boards such as Terralink, TVNZ, New Zealand Post and most recently the Auckland District Health Board, where some directors claim they have done no wrong while taking actions that appeared incongruent with their roles as fiduciaries and professionals. Public sector governance issues may indicate a need to review, evaluate and update the public sector board appointment and development processes. In New Zealand, there are 25 Crown agents, 22 autonomous Crown entities, 15 independent Crown entities, 21 District Health Boards, 20 SOEs, all with boards charged with fiduciary responsibility. The majority of these board members are by appointment. In addition there are approximately 2400 school boards of trustees, 31 tertiary education institutions, at least 70 Primary Health Organisations, numerous local government bodies and tribunals, advisory bodies and other entities which have a broad range of powers and functions, all of which add up to a critical mass possibly large enough to justify government guidance and monitoring.

The principles of proportionality must be applied, i.e., the time and resources applied must be appropriate to the demands and risks associated with each post. The benefits of economies of scale would indicate grounds for exploring both the establishment of an appointments regulatory body similar to the UK’s Commissioner for Public Appointments and a director development certification programme focused on ensuring the skills and knowledge critical to effective governance in the Crown environment are learned.

The implementation of a Commissioner for Public Appointments, independent of both the government and the public service, has the potential to address many of the appointment issues raised in Dr. Norman’s findings. The issues of director performance and on-going professional development could be addressed by implementing international standards of governance training and certification tailored for Crown entity directors.

References


Notes

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3 Thanks to Mark Holman and Susan Howard, State Services Commission, for their assistance in providing these figures.

Karen Martyn is a corporate culture and governance advisor for commercial and non-profit organisations through Governance Training & Consulting Ltd, Wellington. She works throughout New Zealand as well as other Commonwealth countries, providing consulting and training to boards, CEOs and senior management teams. Dr Martyn lectured for nine years for the Institute of Directors (NZ), served as Research and Development Manager and lecturer for six years for the Commonwealth Association for Corporate Governance and has served as a leased executive for New Zealand companies.

Dr Martyn is an Associate Member of the Institute of Chartered Secretaries.

ks@docmartyn.com
Barry Gustafson's biography of Keith Holyoake was released in November 2007, and has received excellent reviews. It is detailed and comprehensive and deserves its acclaim, selling out the first print run within four weeks of its launch. Gustafson has authored an impressive range of New Zealand histories and biographies. His background has enabled him to draw on a range of sources to provide firsthand insights into Holyoake’s long career as politician and, for three years, Governor General.

A fourth generation New Zealander, Holyoake was apparently known from childhood to friends as ‘Kiwi Keith’ or just ‘Kiwi’ to distinguish him from his Australian-born cousin of the same name. The name stayed with him throughout his lifetime.

Holyoake was born in 1904 and died in 1983. From his first entry into Parliament in 1932, at the age of 28, to his eventual retirement in 1977, he was a force to be reckoned with. He lost his seat in Motueka in 1938 but was returned as the member for Pahiatua in 1941. He served Pahiatua continuously for 36 years, initially as Minister of Agriculture, Deputy Prime Minister and, from 1960, Prime Minister. (Although he took over as Prime Minister from Sidney Holland in 1957, National lost the election 10 weeks later to Labour’s Walter Nash. It was not until 1960 that Holyoake regained the position.) His period as Prime Minister from 1960 to 1972 made him New Zealand’s third-longest serving Prime Minister.

For those who were not involved in government in the Holyoake era, and who are looking for a quick résumé, the introductory chapter will provide a concise summary of his career and a glimpse of New Zealand through that period. Gustafson is a sympathetic biographer and presents a multi-faceted Holyoake persona.

For many, Holyoake as Prime Minister was thought to be pompous and pretentious, but Gustafson presents another side to the man. He is described as self-consciously nationalist, anti-nuclear and was reluctant for New Zealand to be involved in the Vietnam War, where he ‘personally and privately tried hard to prevent and then limit’ New Zealand’s involvement. He was also opposed to nuclear weapons testing in the Pacific.

His successes included getting the best deal for New Zealand when Britain joined the European Economic Community (now the European Union), and he was the first New Zealand Prime Minister to stop white All Black teams playing against apartheid South Africa. He was a transactional leader whose aims were efficient management of public affairs and cultivating majority support. ‘His aims were to advance his personal career, keep the National Party in office, maintain New Zealand’s security and prosperity, and grow and gradually improve its economy and society.’ It would seem that all these aims were achieved under his stewardship.

Ten of the 18 chapters are organised in themes which cover his period as Prime Minister from 1960 to 1972. The chapter on the Economy provides some interesting insights into the way Holyoake operated. Unlike some previous Prime Ministers, he left his Ministers of Finance (Harry Lake and later Muldoon) to manage the portfolio, but kept a close watch on spending. Although, according to Gustafson, more was spent on education than his Minister of Finance, and the Treasury, thought desirable. While some thought that Tom Shand would have been a more able Finance Minister, as a more junior Minister, Lake could be more easily dominated by Holyoake.

The insights into the workings of Cabinet and the way decisions were made, provided by informants and other published sources, add to the understanding of how Holyoake operated. In the view of Henry Lang, then Secretary to the Treasury, ‘Holyoake might not have gained a university degree but was still the cleverest man in New Zealand’. New Zealand joined the International Monetary Fund in 1961, which reduced the total dependence on Britain as a source of overseas loans. This move got Parliamentary approval and had the full support of Treasury but one new National MP opposed the move – Robert Muldoon. The preparation for the introduction of decimal currency extended over three years and the name ‘dollar’, rather than pound, was decided. Holyoake was reported to have favoured ‘zeal’. There was a negative reaction to the initial design of the coins and, with the Prime Minister’s approval, a nationwide poll was held to select the designs and the controversy was diffused.

The Social Transformation chapter is another mine of information. Gustafson notes that few would have predicted that the Holyoake government would ‘oversee and actively facilitate the transformation of New Zealand society’. In the social policy areas he was advised by more liberal colleagues – Ralph Hanan and Marshall are named – and in Education by Tennent, Kinsella and then Brian Talboys. Gustafson reports that all these Ministers have recorded that nothing they achieved could have been done without Holyoake’s active support. He also played a personal role in policy areas such as broadcasting and tertiary education creating the position of Ombudsman.

Holyoake was directly involved in the issue of...
overseas ownership of New Zealand newspapers and personally led the fight, culminating in legislation, to protect New Zealand ownership of television, radio and newspapers. He believed in the principle that New Zealanders should own their own industries wherever practicable.

Holyoake stood down as Prime Minister in 1972 (was earlier knighted in 1970) but stayed on in Parliament, becoming Minister of State in 1975. He left Parliament to become Governor-General from 1977 to 1980.

The overall production of the book is first class and the photos and cartoons add to the understanding of events at that time.

However, I found that detailed notes, located at the end of the book, were somewhat of a distraction. Wanting to delve into the interesting detail meant reading the book with a marker in the 'Notes to the pages' section at the end and flicking backwards and forwards as I read. While having the notes as footnotes would have clogged up the pages, locating them at the end of each chapter would have been an improvement for this reader.

Judy Whitcombe
Doctoral candidate
Victoria University of Wellington

News

Awards

Gary Hawke – New IPANZ Fellow

The Institute’s constitution provides that the Management Board may elect Fellows, from among persons who have been members for at least ten years, and who have rendered meritorious service to the public administration and management generally or to scholarship in this area. Each nomination for election shall be supported by two Fellows or Members having a personal knowledge of the applicant extending over a period of not less than ten years.

In May, Professor Gary Hawke, retiring Head of Victoria University’s School of Government was elected as a Fellow of the Institute and on the evening of 8 November IPANZ President Ross Tanner had the pleasure of presenting Gary with his Fellowship certificate and introducing Gary’s Fellowship Address, Reflections on the partnership between the School of Government and the State services: where to from here? Gary address is reported on pages x–y

Distinguished Service Awards

The outgoing members of Public Sector’s editorial committee and editor were honoured in December with the Institute’s Distinguished Service Award. IPANZ President Ross Tanner presented the Awards to committee chair Tom Berthold and committee members Associate Professor Ralph Chapman, Dr Chris Eichbaum, Geoff Lewis, Dr Allen Petrey (editor), Gaylia Powell, Michael Reid and Carol Stigley. Also honoured for their service to the journal were former long serving committee members Professor Claudia Scott and Rob Laking.

Mrs Hettie Barnard was also honoured in the December ceremony. Since May 1994 she has typeset the journal, under three editors, and until 2005 was the Executive Assistant to three of the Institute’s past Executive Directors.

New Ombudsman takes Office

David McGee was appointed an Ombudsman on 19 November 2007 after a long and distinguished career in Parliament’s Office of the Clerk.

He joined that Office in 1974 and was appointed Clerk of the House of Representatives in 1985. In that capacity he was the principal adviser to the Speaker and Members of Parliament on parliamentary law and practice. He was also Chief Executive of the Office of the Clerk (an Office of some 120 staff that acts as Parliament’s secretariat). Mr McGee was a member of the committee that reported on New Zealand’s constitutional arrangements and devised the legislation that became law as the Constitution Act 1986. He was also a member of the panel that arranged and oversaw the public information campaigns organised for the electoral referendums held in 1992 and 1993.

He has also written on parliamentary and legal subjects, including three books (one of them, Parliamentary Practice in New Zealand, now in its third edition, is the authoritative guide to parliamentary procedure in New Zealand).

David was admitted as a barrister and solicitor of the High Court of New Zealand in 1977 and appointed a Queen’s Counsel in 2000. In 2002 he was awarded a Companion of the New Zealand Order of Merit (CNZM).

And it’s good-bye from me

After 7 years as editor of Public Sector this is my last issue of the journal. Elsewhere the plans for the new style Public Sector have been reported.

It is only left for me to thank the members of the journal’s editorial committee for their assistance over this period as well as offering a very big thank you to the many contributors to the journal. Those submissions have promoted informed debate of issues of importance to New Zealanders and identified emerging issues on the sort of laws and public management that New Zealanders are prepared to accept.

Allen Petrey
The Institute notes with sadness the recent death of the Chief Ombudsman, John Belgrave. John gave a lifetime of service to his country in a variety of roles, latterly as Secretary for Justice, Chair of the Commerce Commission and, since 2003, as Chief Ombudsman.

Educated at Sacred Heart School in Auckland, and at Victoria University, where he received a Bachelor of Commerce degree in economics, John joined the Public Service in 1964, with the Department of Trade and Industry.

Promotion was rapid and he was posted to London, where he served as Second Secretary (commercial) at the High Commission for four years. He became Consul-General and Trade Commissioner in Melbourne in 1968.

In 1973, John became Director of the Price and Stabilisation Division in the then Department of Trade and Industry, a key role responsible for monitoring commercial price controls in the then highly-regulated New Zealand economy. In 1976, John was posted to Tokyo as Minister and Senior Trade Commissioner, where he served for four years.

In 1980, he was Assistant Secretary of Trade and Industry, moving to Assistant Director-General in the Ministry of Agriculture and Fisheries in 1982.

In 1985, John accepted his first of four positions as chief executive of a government department, as Comptroller of Customs. In 1988 he left the Public Service to become Chief Executive of the Bankers’ Association, before being attracted back in 1989 by State Services Commissioner Don Hunn as Secretary of Commerce, the successor department of the Department of Trade and Industry. During this time, the departmental responsibilities included competition policy, energy, consumer affairs, company regulation, tourism, information technology policy, minerals, and economic development.

In 1994, John was appointed Secretary of Justice. His mandate included the division of the Department of Justice into a separate policy unit, the Ministry of Justice, and the separate departments of Courts and Corrections. John retained responsibility for the Ministry of Justice, while the Departments for Courts and Corrections were established into separate structures. As Secretary of Justice, John was a member of the Electoral Commission.

In 1997, John left the public sector again, for the post of Executive Director of the Electricity Supply Association, where he was responsible for the implementation and reorganisation of the energy sector, during Max Bradford’s reforms of the electricity industry. In 1999, John became Chairman of the Commerce Commission, holding that post for two terms, before being appointed as Chief Ombudsman in 2003.

John was Chairman of the Board of Victoria University’s Institute of Policy Studies, and was a fellow of the Institute of Management, and the Institute of Directors. He was a long time stalwart of the Institute of Public Administration, actively sponsoring the activity of IPANZ.

As Chief Ombudsman, John was involved in several high-profile inquiries. In 2005, he ordered that the Minister of Finance Michael Cullen must release the costings of the interest-free student loan policy before the election, after the minister had refused to do so. In 2005, with fellow Ombudsman Mel Smith, he reviewed conditions at several prisons in New Zealand, following complaints about the prisoner treatment regime in prisons. In 2007, again with Mel Smith, he conducted an inquiry into the Department of Corrections’ policy for transporting prisoners, following the murder of 17-year-old Liam Ashley while being transported to Court in the back of a Corrections-contracted van. They described the Corrections’ policy of transporting prisoners as ‘inhumane’, and ordered a review of the prisoner transport system.

In the 2007 New Years Honours List, John was appointed Distinguished Companion of the New Zealand Order of Merit ‘for public services lately as Chief Ombudsman’.

He died in office in December 2007. In her tribute, Prime Minister the Rt Hon Helen Clark said: ‘John Belgrave was an outstanding public servant with a long and distinguished career of service to our country’.

John was a compassionate man who cared for those around him. The discipline he applied to his own work ethic was tempered with warmth and good humour towards others.

The Institute extends its sympathy to John’s wife Judith (Judy) and family.

A.P.

Obituary

Maurice (John) Belgrave DCNZM,
31 August 1940 – 3 December 2007
Obituary

Sir George Robert Laking KCMG,
15 October 1912 – 10 January 2008

The Institute notes with sadness the recent death of Sir George Laking at the age of 95.

Sir George was a most distinguished public servant who served New Zealand in many roles including Acting High Commissioner, London, Ambassador to the United States, Secretary of Foreign Affairs and Chief Ombudsman.

Educated at Auckland Grammar, Sir George began working in the Customs Department in 1929. He completed his LLB through part-time study, and served in Auckland and in Head Office before being awarded a Public Service Commission scholarship to study for the newly instituted Diploma of Public Administration (DPA) at Victoria University. The war intervened and after one year in the DPA programme Sir George was ‘manpowered’ into the Prime Minister’s Department and assigned to the Organisation for National Security (ONS) and the War Cabinet Secretariat. With the establishment of the Department of External Affairs in 1943 Sir George became increasingly involved in foreign affairs. He accompanied Peter Fraser on a visit to New Zealand’s island territories in 1944 and in 1946 attended the last meeting of the League of Nations.

In 1949 Sir George was appointed as Counsellor to the New Zealand Embassy in Washington where he remained for seven years (being promoted to Minister in 1954). After a short period in Wellington as Deputy Secretary of External Affairs, Sir George was posted to London in 1958 as Acting High Commissioner – a position he was to hold throughout the period in office of the Nash Labour Government (1958–60). He also became at the same time New Zealand’s first Ambassador to the recently formed European Economic Community.

In 1961 Sir George was appointed as Counsellor to the New Zealand Embassy in Washington where he remained for seven years (being promoted to Minister in 1954). After a short period in Wellington as Deputy Secretary of External Affairs, Sir George was posted to London in 1958 as Acting High Commissioner – a position he was to hold throughout the period in office of the Nash Labour Government (1958–60). He also became at the same time New Zealand’s first Ambassador to the recently formed European Economic Community.

In 1967, Sir George returned to Wellington to take up the post of Secretary of Foreign Affairs, and head of the Prime Minister’s Department, succeeding Sir Alister McIntosh who had headed these departments since 1943. (External Affairs became the Ministry of Foreign Affairs in 1969 and Sir George the first Secretary of Foreign Affairs.)

Retiring from the Public Service in 1972, Sir George was appointed an Ombudsman in 1975, working with Sir Guy Powles whom he succeeded as Chief Ombudsman in 1977, holding that post until 1984. During his time as Chief Ombudsman the Official Information Act 1982 became law, conferring an important role on the Ombudsman’s office. Sir George also carried out a significant investigation of the role of the Police during the 1981 Springbok Tour. He did much to establish the characteristics of the Ombudsman’s office: independence, flexibility and credibility. Sir George was Privacy Commissioner in 1977/78 and a member of the Human Rights Commission 1978–84.

Retirement from the office of Chief Ombudsman did not mean an end to Sir George’s public service. As chair of the Legislation Advisory Committee between 1986 and 1991 he played an influential part in the development of legislation. A major contribution was his chairmanship of the 1989 committee that recommended the present liquor licensing regime. Of particular personal interest to him, given his early employment in the Customs Department, was his review of the Customs Act. Sir George was also at various times chair of the New Zealand-USA Education Foundation, the Wellington Civic Trust, the New Zealand Oral History Archive Trust and President of the Institute of International Affairs.

Sir George was appointed CMG in 1969 and KCMG in 1985.

In her tribute, the Prime Minister the Rt Hon Helen Clark said, ‘Sir George Laking was a distinguished diplomat and public servant with an outstanding record of service to New Zealand’. Those privileged to work with Sir George will remember his wisdom, his mastery of the English language (written and spoken), his warmth and his dry sense of humour.

The Institute extends it’s sympathy to Sir George’s family.

Sources


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