

“Framing the Debate – why the governance of the relationship between ministers and chief executives is important and what are the current issues and tensions.”

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Introduction

A presentation on the governance of the relationship between Ministers and Chief Executives by a former Chief Executive will inevitably bring some obvious biases. My experiences in two countries: one, New Zealand, that defines practice by statute wherever possible; and another, the United Kingdom, that can rely on strong institutions, a second chamber, a powerful press, and which rests more on convention and common law; although the outcomes are not that different, if anything the robustness of public administration rests on persons rather than convention..

While a lot of my presentation is critical, I would not want to diminish the very extra-ordinary things we have achieved in our wee country, whether is the achievements of the Waitangi Tribunal, a trusted Judiciary and public administration, through to a national culture founded on trust and a fair go - a trusted place people from almost everywhere want to live.

What is the relationship between the minister and the chief executive? We gone a long way from the view espoused by Sir William Harcourt - a nineteenth century British Liberal politician – when summarising the different roles of Ministers and civil servants he said; "*The Minister exists to tell the Civil Servant what the Public will not stand.*" Keynes observed that, "*There is nothing a politician likes so little as to be well informed; it makes decision-making so complex and difficult.*"

Statutory basis/ conventions that determine nature of relationship

The cabinet manual section 3.5 states that:

Ministers decide both the direction and the priorities for their departments. They should not be involved in their departments' day-to-day operations. In general terms, Ministers are responsible for determining and promoting policy, defending policy decisions, and answering in the House on both policy and operational matters. Officials are responsible for:

- a. supporting Ministers in carrying out their ministerial functions;*
- b. serving the aims and objectives of Ministers by developing and implementing policy and strategy; and*

implementing the decisions of the government of the day.

¹ Len Cook was Government Statistician from 1992 to 2000, then National Statistician of the United Kingdom from 2000 to 2005. He was President of the New Zealand Institute of Public Administration from 2009 to 2013.

A relationship that is difficult to measure – some retrospective observations

One of the more provocative comments by a top official about his Minister came from comments by Sir Andrew Turnbull, former Cabinet Secretary and head of the UK civil service, in talking about his former Minister, Gordon Brown. He said:

“You can choose whether you are impressed or depressed by that, but you cannot help admire the sheer Stalinist ruthlessness of it all.” He said “the chancellor has a Macavity quality. He is not there when there is dirty work to be done”. He added that what surprised him about the Treasury was “the more or less complete contempt with which other colleagues are held”.

At one extreme, Ministerial dissatisfaction with the Chief Statistician of Argentina in 1981 led to him being dropped out of an airplane – “missing in action”. Just this year, Mr Andreas Georgiou, a former top official in the IMF, was hired as chief statistician to bring Greece's debt statistics in line with European norms. Now, he faces jail time for allegedly producing inflated budget deficit numbers. He says he was merely being honest, and he has plenty of support in Europe.

I recall watching Minister of Finance the Hon R D Muldoon say of my new boss, Government Statistician Jack Lewin, that “The Government Statistician is not this government’s statistician”. Such open differences are not new. We have had several open disputes: between Minister Collins and Barry Mathews, head of Corrections; Minister Benson-Pope and Hugh Logan, head of Environment; Minister Maharey and Christine Rankin, head of WINZ; Minister McCully and the Tourism Board in 1999, the head of MFAT in 2012, and the head of Housing in 1995; and Minister Cooper and Perry Cameron, Head of DIA. Just two years ago the Chief Statistician of Canada resigned because his Minister told the Commons in Canada that an unpopular action he was undertaking had the full support of this top official.

Characteristics of a good relationship/ bad relationship

Several things at least determine the quality of a relationship. These would include:

- a) The willingness to give and receive free and frank advice
- b) The capacity to foresee and manage risks in advance
- c) Trust in third party relationships formed
- d) The value of Parliamentary contacts of the department recognised by the Minister
- e) The acceptance of Independent professional contributions by senior staff
- f) Trust in appointments

As Government Statistician, my Minister at the time accepted that it was sensible to meet with the opposition spokesperson on statistics once a year. Sometimes officials can become inadvertently complicit in political decisions, or appear as partners. My worst experience of this was in the UK over the institutional classification of National Rail. The national accounts experts in the office, with peer review from Eurostat (The European Statistical Office), had determined that the particular arrangements of the UK Treasury would make National Rail in future a non-government body. After that decision was made, the UK Treasury and Chancellor only ever referred to that classification when defending the status of National Rail – we were left holding the baby.

Are there things which influence the likelihood of a good relationship?

There is a reduced likelihood of a courtship process, through earlier stages of working, when most (six out of seven) new appointments to Chief Executive come from positions outside of their new department. Particular things that can influence include:

- a) The depth of knowledge of the public sector system
- b) How much is the CE media/ parliamentary savvy?
- c) Experience in the business of the department
- d) Does the new CE have something particular to offer?
- e) What is the level of Ministerial maturity/ experience?

There is no “Good old days” - but some things are changing!

- A. The management of complexity and risk is making increasing demands on public sector leaders. “*She’ll be right*” may have got us through the past, - but not for a small 21st century economy with its eggs in a few baskets, little strategy and rather lazy at looking around us. For example:
 - a) The depth of evidence behind policy decisions (shift to anecdote and one-off) that may have been tolerable long ago is no longer adequate for the complex society and changing institutions that are instruments for action
 - b) The commitment to evaluation and discovery has been found deficient on many grounds (Scott review of policy-making)
 - c) The quality of social science is poor
 - d) There are questions about the willingness of Ministers and officials to give, and receive, free and frank advice
 - e) Policy and programmes are challenged by the instantaneity and scale of anecdote and personal experience that need addressing by the media and Parliamentarians
 - f) The global scale of sources of comparative advice
 - g) The place of non-traditional markets and relationships
 - h) The new era in information availability, associated with huge uplift in interest in the current policy climate:
 - o (Booth to Nightingale) = lighthouse era
 - o (sampling, frameworks of 20th century) = radar era.
 - o (real-time, mass access, user driven, graphic, multidimensional) = GPS era
- B. How government is organised has become less fit for the programmes being put in place, and the risks and problems that governments face. For example:
 - a) There has been an excessive multiplicity and complexity of inter-agency arrangements post 1988
 - b) Ministerial obligations to account have expanded, while responsibility for increasingly distant operations has been transferred further away by contracting, State Sector Act and autonomy of agencies.
 - c) A great increase in management responsibilities has reduced the time departmental heads have to focus on high-quality policy advising.
 - d) The generic manager, and selection processes have diminished the place of business knowledge and knowledge of how to get things done in government
 - e) The high cost of managing the collective impact of multiple partners in programmes has never been resolved
 - f) The expanding scale of last minute policy compromises after coalition formation
 - g) The inexperience of specialists in key areas (Law, Human Resources, Communications)

- C. Ensuring accountability has been undermined, rather than enhanced by, many reforms. For example:
- a) Parliament selects the executive, then becomes an agent of it. With rare exceptions (Dr Lockwood Smith) the Speaker does not hold Ministers accountable in Parliament, Select Committees in NZ have much less authority and standing than in other Westminster Parliaments)
 - b) Cabinet can be led by the Prime Minister as a loose association of Ministers or as a tight group
 - c) New Zealand's usual haphazard allocation of ministerial portfolio diminishes accountability
 - d) Outputs-based performance measures do not challenge collective impact of government on citizens, of the guardianship of key resources, system risk management, strategic focus, or value network capability

Government performance in New Zealand is hindered by four key constraints, despite having one of the most responsive systems of government that is elected democratically. The constraints are:

- A. The opportunity cost from not exploiting the potential of New Zealand political system
- B. The performance loss from not ensuring relevance for the future
- C. The resource loss from poor management of change
- D. The economic loss from failure to capture the full potential of the public sector functioning as a system

The elements of a constitution that affect public administration

While there are fundamental elements in the constitutions of many countries that ensure the oversight of the executive by Parliament, many of these are missing in NZ. As a consequence, this increases the risk that the political/ professional boundary has to be managed by individuals rather than the system of government, and that the boundary becomes invisible.

Protecting the Sovereignty of Parliament is not only about the supremacy of this Parliament over other institutions, but also about the constraints that are needed to ensure that future Parliaments are not severely diminished in their capacity to govern by deliberate acts of a past Parliament. Protections that would be expected in a Westminster system include:

- a) An independent speaker
- b) Strong well-resourced select committees
- c) A second chamber
- d) A strong press
- e) A strong non-government capacity to challenge the executive

The Rule of Law is about those who make laws not being involved in their administration. This includes having:

- a) Specific statutory independent roles
- b) Separation of law making from administration of statutes
- c) Fair treatment of all under law
- d) Laws not made for single beneficiary

There is quite a variety of potential determinants of the relationship between CE and Minister.

External necessity

- Confidence of international partners in global elements of tax, public health, customs, police, statistics services
- Retain assessment as a trusted trading partner
- International implications/ oversight of scientific/ professional standards and practices

Domestic necessity

- Statutes of public administration, and particular departmental statutes
- Nature of CE employment contracts (public service separate from usual 6 months' notice, post Perry Cameron)
- Integrated nature of the sector and the role of department in integrating the activity of agencies
- Public trust
- Extent to which the agency provides scientific/ professional advice and/or imposes obligations on citizens where public compliance requires high levels of trust (health vaccines, population census, road safety)

Obligation

- Convention
- Policy/ operations balance in role of agency
- Intensity of public interest in the sector
- Ever expanding management responsibilities has reduced the time departmental heads have to focus on high-quality policy advising.

Expectation/ aspiration?

- Nature of autonomy enabled through statutory delineation of roles
- The nature of the external imperatives that drive policy, and the integrity of the evidence base.
- Accumulated experience, recent history, recent relationships, history of failure
- Recognise place in election cycle (first 100 days, versus year 4 – 6)

Personalities

- Roles and personalities of central agency heads [observer, evaluator or mentor]
- The way that cabinet functions [centralised order or Brown's cows] , and the mana of the Prime Minister
- Relationships between Ministers
- The leadership style and experience of the Minister, and the extent of their quest for evidence and policy alternatives
- The professional/ department knowledge of the departmental head (the rise of the generic manager), and impact on leadership group in departments

What is a good relationship? Are there distinct characteristics common to all good relationships. Can we measure health of relationship?

What are signs of relationship quality?

- a) Quality of departmental performance
- b) Existence/clarity/ respect for well-articulated conventions
- c) Visibility of gatekeepers (State Services Commissioner, Controller and Auditor-General)
- d) Independence of appointments, of CE and deputies, staff in key roles (e.g. M Setchell in the Logan/ Benson-Pope affair)

- e) Management of events/ crises
- f) Capacity for open retrospective review of major matters
- g) Public accounts transparency (risk)
- h) CE as independent representative
- i) Relationships with the public
- j) Relationship with HM opposition
- k) Informal professional interactions
- l) Inter-agency relationships
- m) Management of media attention during adverse events and system failures
- n) CE participation in cabinet committees
- o) Relationship with select committees by department
- p) Nature and role of governance boards

How the potential areas of difference between CE and Ministers are usually managed, with varying effectiveness and reliability

Contributor	Aspect
Parliamentary questions	Ministers need to account honestly for their/ departmental performance (Statistician completes answers)
Select committees	Departments answer questions from parliament directly, respecting Parliament's right to a proper answer.
State Services Commissioner	Special relationship with Prime Minister on matters relating to Minister/ Department interaction
Ombudsman	Obligation to address official information act enquiries
Parliamentary Commissioners	Reporting on issues independent of Ministerial direction
Briefings for incoming Ministers	Departmental heads providing advice they consider necessary for a new Minister to receive, usually after a general election
Behaviours of holders of key statutory roles	Clarity with which those with clear statutory autonomy in roles manage independence from Ministers
Treasury Fiscal Responsibility report	Statutory obligation to provide informed analysis of long term outcome of policy settings

Conclusion

For much of the last century, the choices available for political action were narrowly channelled to support markets, relationships and products we have stayed familiar with, while major policy initiatives were more founded on ideological beliefs than deep analysis.

Since the 1960s, these bulwarks of our future have evaporated, and we have yet to develop the enquiring, engaging and interdependent relationships and linkages necessary for leadership of the value networks in our core products, and the capacity to recognise strategic shifts to our benefit. Rather than New Zealand enterprise going out to the world, a chronic balance of payments deficit suggests that OECD comparisons that point to us steadily losing ground are unlikely to be reversed.

To bring about the obligation to do things well, through challenge independent of Ministers, we need to:

- i. Hope that the revisions to the State Sector Act enable more wisdom at centre

- ii. Strengthen capacity of higher levels of public administration to be a source of top level leaders
- iii. Enhanced scope of role of the Controller and Auditor-General
- iv. Proper review of serious things that go wrong (e.g. leaky homes)
- v. Reframe the accountability of public administration to Parliament
- vi. Strengthen the capacity of Parliament
- vii. Training of Ministers
- viii. Find ways of the public taking over more of political parties
- ix. Shift the interests of the baby boomers from their pensions to the quality of people who provide public leadership