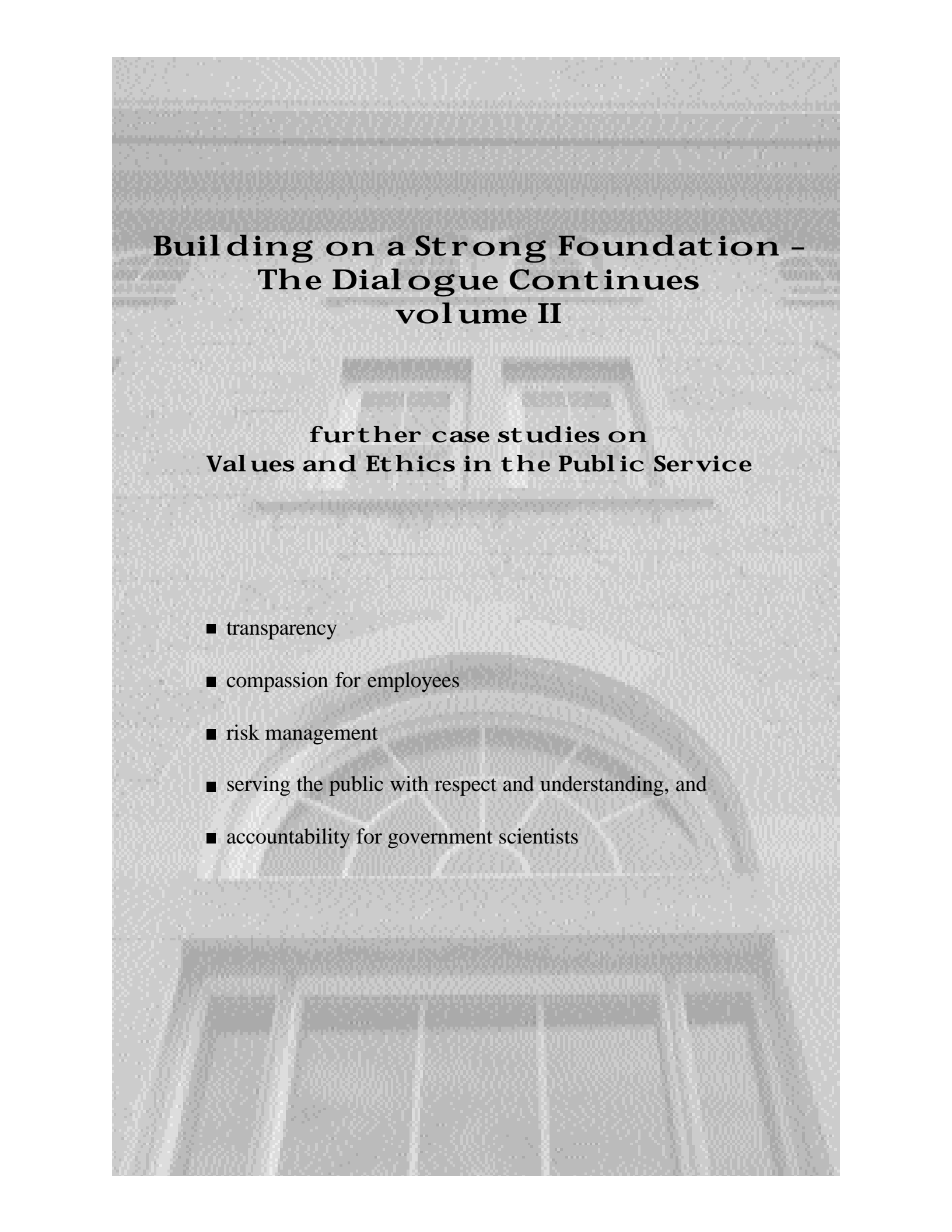




**BUILDING ON A STRONG FOUNDATION -
THE DIALOGUE CONTINUES
VOLUME II**

**further case studies on
VALUES AND ETHICS IN THE PUBLIC SERVICE**



Building on a Strong Foundation - The Dialogue Continues volume II

further case studies on Values and Ethics in the Public Service

- transparency
- compassion for employees
- risk management
- serving the public with respect and understanding, and
- accountability for government scientists

This handbook as well as the first handbook of case studies and other materials on values and ethics in the public service are available on the CCMD web site at:
<http://www.ccmd-ccg-gc-ca>

Information and contact information for guidance on values and ethics initiatives are also available on the web site of the Office of Values and Ethics, Treasury Board Secretariat at:
<http://www.tbs-sct.gc.ca/veo-bve> (Internet) and
<http://publiservice.tbs-sct.gc.ca/veo-bve> (Publiservice Intranet)

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FOREWORD

The Public Service of Canada continues to give the highest importance to sustained dialogue on values and ethics, as set forth by the guide entitled *Building on a Strong Foundation – The Dialogue Continues*, published in 2000.

Federal public servants in Canada increasingly realize that these values are the essential foundation of the public service, and that dialogue is an indispensable instrument for helping to resolve problems relating to values and ethics in the workplace.

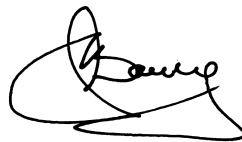
This publication provides a second series of case studies on values and ethics, and completes the collection of documents produced by the CCMD in this area. We hope that these studies will incite other departments and agencies to focus on their own dilemmas, and use dialogue as a privileged tool for finding joint solutions to their problems.

For its part, the Canadian Centre for Management Development will continue to promote dialogue by integrating ethics into courses and learning events aimed at increasing management abilities and leadership skills within the federal public administration.

We wish to extend our sincere thanks to the Values and Ethics Office of the Treasury Board Secretariat, our partner in this initiative, for its invaluable cooperation. We would also like to thank the organizations that were willing to present, candidly and honestly, their problems in values and ethics and the lessons they learned from their experiences. They are all models of frank and open dialogue worthy of being followed by the whole public service.

On behalf of Scott Serson and Janice Cochrane, the Canadian Centre for Management Development is pleased to make this second practical guide available to public service employees.

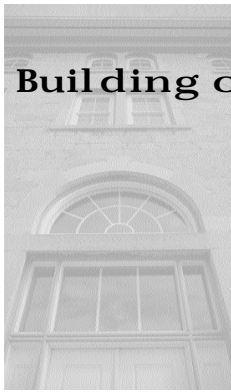
We encourage you and your colleagues to pursue the dialogue on values and ethics – the foundation of this great national institution – the Public Service of Canada.



Jocelyne Bourgon
President
Canadian Centre for Management Development

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Building on a Strong Foundation - The Dialogue Continues Volume II

INTRODUCTION

by the Co-Champions of Values and Ethics in the Public Service

*Janice Cochrane, Deputy Minister of Public Works and Government Services Canada,
and Scott Serson, President of the Public Service Commission of Canada*

We are pleased to report that more and more public service employees throughout the country are talking about the importance of values and ethics in their work. It is widely accepted that shared values and ethics are the essential foundation of the public service and provide a compass for navigating the rapid change we are now experiencing. It is also recognized that dialogue is a key tool, both to create shared understandings of public service values and ethics, and to help resolve dilemmas on values and ethics in the workplace.

The First Round of Case Studies

In September 2000, the Canadian Centre for Management Development and the Office of Values and Ethics, Treasury Board Secretariat published *Building on a Strong Foundation – The Dialogue Continues* (available on the CCMD Web site at www.ccmd-ccg.gc.ca). The handbook sets out the rationale for focussing on values and ethics, and describes in detail the case study approach to dialogue. The handbook also reports on the first five dialogue sessions, which dealt with concrete issues of concern to public servants:

1. transparency,
2. compassion for employees,
3. risk management,
4. serving the public with respect and understanding, and
5. accountability for government scientists.

The Second Round of Case Studies

Monthly case-study sessions continued after the publication of the first handbook. Each session lasted from 1¼ to 1½ hours. No attempt was made to reach a definitive resolution of the dilemma of the day; rather, there was a discussion of factors, values, options, consequences and the differing approaches of the stakeholders. Overall, the sessions attracted hundreds of participants from various federal departments, who discussed each case with passion and energy, first in small groups after the panel presentations, and then in plenary.

Handouts at every session included the case, biographical notes on the participants, the Office of Values and Ethics card called *Dialogue on Public Service Values and Ethics* (see Appendix), and a session evaluation form.

The present publication reports on these additional case studies. Sessions dealt with workplace dilemmas involving:

1. values-based staffing,
2. accountability for Ministers and Deputies,
3. conflicting interests in foreign relations,
4. dealing with a diverse clientele, and
5. managing new risks.

Then three departments sponsored further sessions together with CCMD and the Office of Values and Ethics:

1. Human Resources Development Canada (HRDC) led a dialogue on its experience with intense public scrutiny of its grants and contributions program during 2000;
2. Veterans Affairs Canada (VAC) led a case study involving the diversity of its front-line staff; and
3. Department of Indian Affairs and Northern Development (DIAND) led a case study on the financial accountability of a First Nation community.

All these sessions were models of frank and open dialogue on the values and ethics aspects of contentious issues of the day. The cases illustrate the wide range of topical issues that are of concern in the public service and to the public at large.

The last three cases also expanded our case study approach. The HRDC session did not use a written case study; instead, panellists described the problem situation. For their part, the VAC and DIAND sessions used case studies with similarities to real situations in the department, rather than generic situations across the public service.

Panellists and Participants

Each of the case studies was moderated by one or both of us, the co-champions of values and ethics in the public service. We would like to extend a sincere thank-you to the panellists who made the dialogue on these case studies such a resounding success (as the session evaluations handed in by the participants can attest).

Session 1	Jean-Claude Bouchard, Industry Canada Marie E. Fortier, Health Canada Dennis Wallace, Indian Affairs and Northern Development Canada
Session 2	Pierre Gravelle, former Deputy Minister Marcel Massé, former Minister Nick Mulder, former Deputy Minister
Session 3	Kathryn McCallion, Department of Foreign Affairs and International Trade Nicole Sénécal, Immigration and Refugee Board Robert Slater, Environment Canada
Session 4	Oro Bengio, Health Canada Michel Dorais, Citizenship and Immigration Canada Kay Stanley, Treasury Board Secretariat
Session 5	Janet M. Milne, Transport Canada Ian Shugart, Health Canada John Sims, Justice Canada
Session 6	Human Resources Development Canada: Claire M. Morris, Deputy Minister Alan Winberg, ADM Margaret Biggs, ADM
Session 7	Veterans Affairs Canada: Larry Murray, Deputy Minister Verna E. Bruce, Associate Deputy Minister Brian D. Ferguson, ADM Margaret Amoroso, Leadership Network
Session 8	Department of Indian Affairs and Northern Development: Dennis Wallace, Associate Deputy Minister W.J.R. (Bill) Austin, ADM William (Bill) Montour, Advisor Rod Monette, Treasury Board Secretariat

The sessions were opened and closed by Andrée LaRose, Michèle Jodouin or Christine Cloutier of CCMD, and Jeff Le Bane of the Office of Values and Ethics.

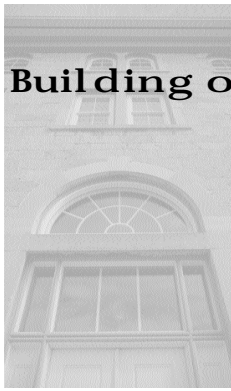
We would also like to salute the participants, who demonstrated an approach to dialogue that was consistently frank and respectful, but also probing and insightful.

Next Steps

We hope that this publication will stimulate other organizations and functional groups of employees to identify their own current dilemmas and conduct case studies as a way to find resolutions to these issues. The sessions at CCMD were focussed on managers and managers-in-training. However, values and ethics are relevant to the work of all public servants, and all need opportunities to discuss issues of concern to them.

If you wish to sponsor a dialogue session within your department or team, the Office of Values and Ethics, Treasury Board Secretariat can provide guidance. You can contact them through their web site (www.tbs-sct.gc.ca/veo-bve).

Dialogue on values and ethics is not a one-time initiative. Developing a shared understanding of the right thing to do is a never-ending process. We hope that our case-study initiative will help expand that process throughout the public service and beyond.



Building on a Strong Foundation - The Dialogue Continues

CASE STUDIES

CASE 1: “FAIR IS FAIR”

A Values-Based Approach to Merit

When Carole, a senior PS manager, needs to fill a job, she generally tries to avoid running a competition. More than anything else, she wants to preclude an appeal against her staffing decisions, given the extra work and delay an appeal can generate. She trusts her judgement of people, and strongly believes in networking. Thus, to find new staff members, she relies on her network of contacts developed through the years.

Her thoughts on this have not changed since moving to a new assignment in her department some 6 months ago. When an AS-7 position opened up unexpectedly in her new work unit, she considered who might be best to fill this important job. She checked with colleagues and her network to find the right person. In the end, she decided to deploy (transfer without competition) Roger, an AS-7 from a “sister” agency reporting to the same minister. Although Roger has never worked directly for her, they had worked together on a project a year ago. She had formed a good impression of Roger as someone who seems quite able to “hit the ground running” and confirmed this with Roger’s previous managers.

Wanda and other staff at the AS-6 level in Carole’s work unit disagree with the approach she used. Wanda believes that a competition would have permitted all interested employees to demonstrate their competence. As she has stated, “it seems that who you know is more important to Carole than what you know or can do”.

Are there conflicting values operating in this scenario? Whose views should prevail?

This generic case is hypothetical. It has been produced for discussion purposes only and does not refer to a particular instance of unethical conduct.

THREE PERSPECTIVES ON THE DILEMMA

Approach 1: Fill the Job Quickly

Two aspects of the approach must be distinguished: 1) the decision of a manager to use deployment in a particular case, and 2) the justification for introducing deployment as a staffing technique in the first place.

The Decision of the Manager

Modern organizations are leaner and face more issues than ever before. Therefore, organizations need to adjust quickly, but resources are not as abundant as in the past. As a manager (especially a manager in a new assignment), there are times when you cannot undertake a long staffing process, with the added danger of a possible appeal.

Deployments (at the same level) are a legitimate tool: the person is already qualified and known to the manager. This avoids a lengthy process of having someone serve in an acting capacity while a full competition is conducted. Persons filling acting positions may have false expectations of becoming permanent; these false expectations may turn into resentment if in the end the position is not filled at all.

Staffing by competition sometimes lead to appeals which are often upheld for technical reasons. The result of the appeal is often not to get a better person into the position, but to get the manager to start the process all over again. This is a flaw in the staffing system which gives too much emphasis to employee rights.

The Justification for Deployment

Looking back, we can see that the 1967 *Public Service Employment Act* set out the principle of merit, as well as values such as the creation of a professional and competent public service and the avoidance of nepotism. However, the public service has grown a great deal since then; merit was not defined with precision and zones of competition came to be very large. Recourse mechanisms also became highly developed. The system slowed down.

The analogy is that of a ship which in 1967 was very large and sleek but which then acquired numerous barnacles as court decisions led the Public Service Commission to modify its regulations and complicate the process. The ship slowed down and fewer resources were available to get it back up to speed.

Recently, flexibility was created for managers by the introduction of the deployment concept and the wider delegation of Public Service Commission responsibilities. It was also at this time that the public service was called upon to become more representative.

These developments created a better balance between the rights of individuals and the requirements of an agile organization. From this perspective, the manager's position to favour internal flexible deployment in this case is appropriate.

Approach 2: Larger Issues of Fairness

The manager's decision in this case is not the best at all. Important values in staffing should be transparency, the equal chance for employees to participate, and fair treatment for everyone.

In an organizational culture that supports efficiency over fairness to all, a way to achieve positive change is with measures like the Public Service Commission staffing regulations. Even with these regulations, we have a long way to go to make the public service representative as the Canadian public itself is becoming more diversified. We need a workforce which comes to internalize the values of diversity, impartiality and ethical behaviour. These values must guide our decisions as managers as we undertake contracting, dealing with outside groups, and dealing with elected representatives.

The performance of the public service as an institution is not judged like the performance of the private sector, where the bottom line is easier to measure and there is not as much outside scrutiny. The cumulative decisions of the public service are viewed in terms of being in the public interest and achieving the public good rather than the bottom line.

Staffing is only one part of human resources management which must also take into consideration appraisals, coaching, mentoring, training, and helping individuals manage their own careers. The manager in this case did not look more broadly at the team and the skill set available in the organization. The manager should see this staffing action as an opportunity for her staff. A decision which only reacts to the short-term operational needs of the unit is a bad decision because it misses the broader aspect of human resources management.

Approach 3: The Organizational Point of View

The values and ethics issues in this case revolve around fairness in deployment and the extent to which human resources policies are actually implemented in practice.

On its face the manager's decision appears to be good – it gives a quick and efficient result.

On the other hand, the members of the work unit feel that they do not have a chance for promotion when an outsider is brought in. The manager should have explained her staffing strategy to the team, indicating that she intended to use different approaches in future to provide greater fairness. The manager could have involved the work unit in a team decision on staffing and brought in human resources specialists to help. She could also have sought support from fellow managers, particularly Roger's manager, who should be pleased at this interesting opportunity for Roger. (Such support should not be sought only to save face.)

The manager's solution meets the principles of business need, but does not show fairness, equal access, and transparency. As such the decision may encourage employees to look elsewhere for work.

Departmental Human Resources Policies

The key questions are the following. Does the department have a values-based approach to staffing and human resources generally, and was the manager following the human resources policies of the department?

A values-based approach means working towards goals such as affordable staffing; a competent, motivated workforce; equity and equal access; employee mobility; and ethical decision making. Departments should establish such core values if they have not done so already and ensure that management is committed to these values.

Education in staffing issues is very important: all should know about equity and such matters as participation rates for target groups. Furthermore, human resources planning should be part of management training. Unions should be an integral part of initiatives to implement values-based staffing. The effective use of competency based staffing, of human resources planning, and of transparency make it easier to ensure fairness.

The Public Service Employee Survey showed the weakness in the manager's approach in this case – employees perceive deployment to be unfair. Recourse mechanisms such as ombudspersons and assessment tools such as audit and evaluation reports have not been referred to in this case but could assist in improving ways of approaching this case.

Technically the manager was right, but the department did not take the time to give her a broader perspective.

FACTORS CONSIDERED AND SOLUTIONS PROPOSED

CONTRIBUTIONS BY PARTICIPANTS

The key values in this case are transparency, fairness, and equity. It is critical to foster dialogue on the implementation of these values in staffing and in human resource planning and development as a whole.

There are compelling circumstances in a case like this to use deployment, but it is important to explain the rationale to the work unit and to remember that there is an issue of fairness to employees.

The deployment of Roger may demoralize the work unit – rather than hitting the ground running, he may be running into a wall when he arrives.

The manager has a poor track record – using the single tool of deployment. Furthermore, there is no evidence of human resource planning in the organization, and there is a lack of transparency in staffing. The manager needs to communicate to staff about the choice of staffing methods. Methods and techniques that emphasize values other than efficiency should be employed from time to time.

The issue in this case is not black and white. To resolve this case, more information is needed: How urgent, really, is the staffing action in this case? How viable is an acting appointment during a full competition in this case? Was deployment chosen simply because it is a comfortable, easy solution? If Roger, the deployed employee, were a member of a target equity group, this would change the case significantly.

This case and the question of transparency must be viewed in the context of the whole department and the talents in it. The use of full competitions should only be limited when it is essential to reduce the time available for staffing.

In staffing there must be a balance between pragmatism and a nurturing and transparent organizational culture. Employees' morale should be maintained with a plan for providing job opportunities for staff. In ninety percent of cases the full staffing process is appropriate; in ten percent of cases we recognize that we sometimes need to deploy staff quickly. Staffing in order to avoid an appeal is not a good approach and, in fact, goes against the underlying rationale of the appeal process.

The manager should also consider the interim possibility of having someone act in the position for less than four months during a full competition for the position.

While opportunities for staff in this unit are lost with Roger's deployment, there is still an opportunity for someone in Roger's old position.

A quick deployment may not be best for the department as a whole considering upcoming retirements and the fact that this position could perhaps be used to bring new skills into the department. Furthermore, the department as a whole receives little benefit when work units simply "raid" each other for staff. In any case, in a situation where staff is retiring but certain skills are not readily available from outside government, some individuals will eventually have to be promoted. Given this situation it is important to look at the big picture when staffing.

Wrap-up by moderators and panellists

This case presents a common, and tricky, dilemma for managers. The discussion has shown a remarkable convergence of opinion as well as some interesting twists to the case.

In cases like this there should be a balanced approach to staffing with emphasis on communication with the team and on the values and ethics of the public service. In both the public and private sectors it is essential to foster dialogue at every level in order to stay in business.

As far as human resources policies are concerned, it is important to note that large successful industries, such as the financial service industry, some of which are not heavily unionized, also have human resources rules similar to those in the public service. These rules are necessary in these highly competitive industries to make employees feel valued and in this way to retain their services.

One significant difference between the public service and the private sector is that the private sector does hire new employees directly at the mid-manager level rather than mainly at the entry level as in the public service.

Diversity is sometimes seen as distorting fairness in the workplace. However, if we in the public service express our common values clearly and managers are fully committed to implementing them fairly and transparently, then employees, in fact, will come to accept the role of diversity in staffing.

This has been the experience at Indian and Northern Affairs, for example, where fifty percent of positions should over time be filled by aboriginals. The Public Service Employee Survey did not reveal significant dissatisfaction with staffing in this department.

The challenge in staffing is to be creative and to use a variety of means to achieve a balanced result. One valuable process is to use an open competitive process to create pools of employees who can be staffed into individual jobs quickly.

In summary, managers must show leadership in achieving balanced approaches to staffing keeping in mind the larger interests of their branch and department on representativeness. It is important to note that competence does not merely trump representativeness – both values must be brought into harmony. Finally, it is impossible to overstate the importance of dialogue.

CASE 2: “WHO’S IN CHARGE HERE?”

Accountability from the Point of View of Ministers and Their Deputies

A Canadian company has developed product S, a unique chemical additive that increases the storage life and yield of a variety of seeds used for commercial crops. Testing by the company has found product S to be safe and effective when used as directed.

The company is located in the riding of a federal minister who has consistently supported agricultural improvements for the benefit of all Canadian consumers. The minister is, of course, also pleased with the company’s growth from this new business. However, several environmental lobby groups have criticized product S, which they claim may be harmful to human and animal health.

Product S was initially approved for use by seed suppliers, but given its success, the federal authorities for health and agriculture have allowed its use by farmers in situations where longer-term seed storage is difficult. The use of product S immediately increases dramatically. The number of inspectors in the field has been reduced over recent years, and the authorities know little about how product S is actually being applied.

Stories have been circulating in the media for several months about a closely related chemical that causes birth defects in animals, and odd health problems in farm animals where product S is being used. The federal authorities are concerned and have begun to design experiments to test for these side effects, but the government continues to support the use of product S.

Then a child becomes gravely ill on a farm making extensive use of product S, with symptoms like those the environmental groups have been warning about. A public outcry is raised. Users of product S mount a counter-offensive, showing that its side effects are negligible when the product is used as directed. The subject is raised in Parliament, and the national media demand a public inquiry into how products like this are approved and regulated.

The Ministers of Health and Agriculture feel badly let down by the public servants who did not warn them early enough about the health risks. On the other hand, several public servants have commented to colleagues that they would speak out publicly if the potential threat to public health is not dealt with expeditiously.

Cabinet is divided on whether to order an immediate halt to production and a recall of the product, as well as who must take the responsibility for this issue. The Ministers of Health and Agriculture are being called before Parliamentary committees of health and environment to explain their actions to date.

The Dilemma

The basic ethical question is, “What is the right thing for the government to do?”

An important accountability question is, “Who’s in charge here?” Specifically:

- What are ministers, their deputies and public servants each accountable for?
- To whom are they accountable – Parliament, the Prime Minister, the public, central agencies, public service organizations?
- What should be the personal consequences for ministers, deputies or public servant when the public is displeased with government action?

This generic case is hypothetical. It has been produced for discussion purposes only, and does not refer to a particular instance of unethical behaviour.

THREE PERSPECTIVES ON THE DILEMMA

Approach 1: Continue Manufacture of Product S While Research Continues

This is an interesting case study that has the key ingredients for a political and bureaucratic disaster:

- Public health is at risk. Public health issues are key.
- There has been vocal protest by the public and in the media.
- There is public concern over possibly dangerous chemicals.
- The public wants to know the facts.
- There is protest over a child’s health being put at risk.
- Two ministers feel let down because they have not received warning early enough.

There are two important side issues:

- The manufacturer of product S is located in the riding of a Cabinet minister who has consistently supported agricultural improvements for the benefit of all Canadians.
- Because of reductions in the number of inspectors, authorities have little knowledge of the actual use of product S.

The fact that the issue is before Cabinet shows its gravity and importance, and that there has been a major breakdown in the decision making process. Issues like this should never reach the Cabinet level.

In this case study four questions are of critical importance: 1) What went wrong? 2) What is to be done? 3) Who is responsible? 4) Who is to be blamed?

In order to consider this case, we should try to put ourselves in the shoes of the minister or the deputy ministers.

There is a regulatory issue of the testing and approval of a chemical product which may become part of the food chain; this testing and approval process is left to experts. The minister is responsible for seeing to it that the process designed to protect public health works.

In the shoes of the deputy ministers and their representatives we should want to know answers to the following questions about facts and chronology. Proper accountability can only be discharged after facts are clearly known.

- When were the deputy ministers apprised of issues and events? What did they do? Was the issue raised with their respective ministers?
- Are officials confident without a doubt that the product is safe?
- If the safety of the product is reduced by actual use, then what is the responsibility of the department to check actual use?
- Have the concerns of the environmental group been addressed?
- Have comparisons been made between product S and its dangerous relative?
- Have warnings and cautions been issued to the public and users?
- Can the departments, the ministers, and government in general afford to wait for results of
- Has product S been tested and approved in other jurisdictions?
- Have strategies of communication and communication plans been developed?
- Have consultations taken place between departments? There is a danger that, when such consultations do not take place, issues will fall through the cracks.
- Are ministers and deputy ministers satisfied that a process exists to identify, track, and manage emerging issues?
- Have officials briefed ministers sufficiently for ministers to report to Parliament?

Among critical elements in this case are transparency, timeliness, and credibility.

Advice to Ministers and Cabinet

More time is needed to study the relationship between product S and its dangerous relative. Product S offers strong benefits to agriculture. Maintain the product. Pacify the doomsaying environmental group. Situations like this may be new to some parliamentarians, but we have been through this kind of thing before. The problem will go away.

Approach 2: Restrict the Use of Product S

When you are in a mess, it is not necessarily your enemies that get you into it; likewise, it's not necessarily friends who get you out. In such a situation, you should keep a low profile and keep quiet.

There are four relevant considerations in this case:

- Common sense – Use it.
- Facts – Stick to the facts you know and keep emotions, opinions, and politics out of it.
Accountability – Who will take the next step?
- Leadership – Who is to deal with this situation?

The following facts are key in this case:

- **Product S was issued (with instructions) for seed suppliers only.**
- **Product S is now being used more widely than intended.**
- **The public and the media are now concerned with the safety of the product. Why has this concern not been raised in departmental discussions?**
- **Public health is always a big issue especially where children are involved.**
- **Are there additional facts available or even some sort of report that would help clarify the issue?**

As a deputy minister you should ask – who, what, when, where, why, how? For example, Who was involved? When did we know?

Recommended General Strategy

Fix the problem and later deal with the issue of blame. Develop a media line and get the main message out to users, the manufacturer, and the public within twenty-four hours.

Next Steps

Ministers are not involved in the regulatory process; elected politicians should be kept away from the regulatory process. Find a credible spokesperson who has technical knowledge and media skills – not a minister, perhaps not even a deputy minister. Because public health and a child are involved, restrict the product to its original intended use. Put out warnings to all users and then conduct further testing.

Approach 3: Ban the Manufacture and Use of Product S

This case will be immediately raised during question period. If the ministers have not been briefed and manage to evade the question during question period, they will be hit again during the media scrum.

A minister who loses it in the department may be a big loser in Cabinet, as the ‘tainted tuna’ case illustrated.

Someone may not have appropriately briefed the ministers, but now is not the time to lay blame.

We have to know the facts but must also know that Cabinet will not base its position on absolute certainties. Analyses may be incomplete. Procedures may be more or less accurate. There is no established link between product S and the illness of the child. Instead, ministers make decisions on the basis of perception and with a view to limiting political damage.

In this case Cabinet is divided and torn between concerns about economic costs to the manufacturer and the potential cost to government should the media later demonstrate a link between illness and product S.

Ministers will want to limit damage. They will move to stop the manufacture of product S. The government will try to portray this case as being one of a black or white, bad or good situation, and then decide in favour of the only acceptable or good option that the public will in turn support.

(This raises the ethical question – Should a decision be based on public relations or communications in an effort to present a good image of the government of the day? Or should Cabinet have a stiffer spine and wait for more facts?)

Who is to Blame?

Placing blame should be of secondary concern but must be addressed. Non-governmental organizations and the media will pursue the issue and demand answers. The manufacturer will want to resume production. The concerned parliamentary committees will also want to ask questions and get straight answers.

This raises questions that must be addressed:

- Do testing and approval procedures exist? Are they clearly laid out?
- If so, have the procedures been applied?
- If procedures exist, are clear, and have been applied, then how can we explain the warning signs?

Public servants are responsible for the existence and clarity of regulations and procedures as well as the application of these regulations and procedures. If public servants fail in these responsibilities, they should be blamed and dealt with according to the rules of the public service.

If the regulations and procedures are clear and have been adequately applied, then it is not a question of assigning blame at all, and there may be a design fault in the regulations and procedures themselves. Departmental regulations and procedures must be reviewed but not through public inquiries as demanded by the media. Such inquiries are expensive, inefficient, and time-consuming ways to get at the truth.

The manufacturer is legally responsible for the instructions related to product S. Users are responsible for following these instructions and using the product properly; users have no legal recourse in cases of improper use.

There is a difference between legal responsibility and the public's perception of responsibility.

A department may be blamed for not checking on the use of a product. However, the role of departments is to deal with problems but not necessarily to prevent them, depending on the money and resources available.

Four Warning Signs

When environmental non-governmental organizations indicate that a problem exists and protest, such indications may be unreliable; however, public servants should take note, treat such protests as warnings, and assess the validity of such warnings. The minister should have been alerted by repeated press articles about the issue.

If there were concerns about the product's safety within the departments, then these concerns should have been moved up the line to the deputy ministers. The deputy ministers would then decide whether to inform the ministers. The departments must act – ask the manufacturer to conduct more tests, warn the public, or review the product.

Reports in the media about a threat to animal and human health should have been noted by the media secretary and technical experts in the departments. Briefing notes should have been prepared.

The most important warning light is that a child is ill seemingly for reasons related to the product. Lawyers will tell you that there is no proven cause and effect connection between the child's illness and the product. Public servants, ministers and deputy ministers, however, work in a world of perceptions. The public will perceive the issue as one with a choice between the life of a child and the cost of stopping the production of a chemical. Under the circumstances the right decision can only be seen as stopping the production of the chemical.

FACTORS CONSIDERED AND SOLUTIONS PROPOSED

CONTRIBUTIONS BY PARTICIPANTS

This case is one that involves the conflicting claims of public health and economic benefits of a product.

The precautionary principle – stop all applications of product S immediately – should have been stressed, and should be applied in situations like the one in this case and in situations like that of ‘mad cow disease’ in Great Britain.

Public servants have roles both in getting products to market and in protecting public health by putting regulatory and control procedures in place and applying them. Public servants must determine potential risks and then advise ministers and the public.

Manufacturers have responsibilities too. In some cases they have voluntarily withdrawn or limited their products (for example, the withdrawal of Tylenol from the market).

In this case there is a potential conflict between the values of loyalty to the department and the public interest.

Should a decision be based on facts or perception? Basing decisions on perceptions alone (in the absence of facts) will have a paralyzing effect.

Should the product be removed from the market or should its use be restricted? Users (farmers) as well as the manufacturer should be involved in the decision of what to do next.

The crisis illustrated in this case must be managed (media plans, consultations with stakeholders, other response mechanisms), but it is difficult to step away from the immediate problems to tell what the critical issues are.

Cases like this raise the public’s awareness level but at the same time reduce its tolerance level for mishaps.

Ministers are responsible in the eyes of the public. They should take definite action and stop the manufacture and distribution of the product so as to buy time to gather more facts.

It is the deputy minister’s responsibility to allocate resources and to balance the public’s expectations about safety with the same public’s call for spending cuts.

A breakdown occurred when the product’s original use was extended. Users too have responsibilities but were they sufficiently informed and trained? Was there follow-up by inspectors or regulators?

Reducing risks to zero is extremely costly, so we must accept that there are risks and should provide compensation when warranted.

Wrap-up by moderators and panellists

In cases like this there is always a temptation to overreact, and there are always more potential crises waiting in the wings.

In this case there has been a real breakdown in communication. The deputy minister should pay more attention to articles in the press and ask more questions directed to the department.

In cases involving regulation, public servants (not ministers) should have the lead in responding. Ministers are responsible for resource levels.

Public servants are to deal with facts and give deputy ministers the best information possible based on the best facts available. It is the responsibility of deputy ministers to add further considerations about public perception and the public good.

There is a trade-off between applying the precautionary principle and overreacting.

The precautionary principle must be applied and a moratorium on the product declared until more facts are gathered and known because there is a clear perception of a threat to public health.

This situation should never have occurred, and the longer a situation is allowed to deteriorate, the stronger the action taken should be.

A profound and systematic post-mortem must be performed in order to determine what went wrong and how a re-occurrence can be prevented. Sharing information more quickly might have prevented this situation from occurring at all.

Problems like this will continue to occur because of product innovation, as for example in the areas of genetic manipulation and biotechnology, where secondary effects will be felt but relevant information is not available.

In fact, there are risks to human life and health in using innovative technology. The precautionary principle must be applied when using innovative technology but public servants should be aware that going too far in applying the precautionary principle will remove the benefits of innovation.

In order to deal with the inevitably increasing number of problems like this we will need to continue refining our skills in applying judgement and values. Information must flow freely and public servants must be in an environment where they can act on their responsibility to 'speak truth to power'. Public servants must ask questions when they hear that public health or safety is at risk.

Situations are more complex where values conflict. Issues and values in this case include:

- public perception vs. facts,
- citizen focus without overreacting,
- public health vs. trust and confidence in government, and
- transparency vs. the need for confidentiality.

These kinds of dilemmas can be resolved by frank dialogue and discussion about values and ethics among interested parties. We must create a safe space for these discussions to take place in all departments of government.

Case 3: “FRIEND OR FOE?”

Conflicting Interests in Our Foreign Relations

Officials of a host country have asked the Canadian government to co-ordinate the supply of a large commercial package to upgrade the local infrastructure. The project would involve organizing a large, high-profile trade delegation to visit the country, as well as loan guarantees and other forms of support from Canada. These efforts would open many doors for Canadian firms to do business with that country. The infrastructure improvements being proposed are widely seen as important pre-requisites for longer-term economic development.

Unfortunately, the host country has a poor human rights record. For example, the police and military routinely detain suspects without due process for engaging in non-violent political opposition. Many individuals have been seriously ill-treated and some have simply disappeared after a period in detention. International human rights groups have lobbied for years to have these abuses recognized and force the host country to end such practices.

Better relations with Canada might give Canadian authorities the opportunity to pressure the host country’s government to improve governance and democratic practices. As well, key Canadian firms are committed to recognizing basic human rights in the conduct of business and could have a positive effect on the situation. On the other hand, there is the possibility that with an opening up of relations, Canada would be identified internationally with the government of that country. As well, there could be a sizeable stream of refugee claimants coming to Canada to escape persecution. This would seriously strain further relations between the two countries as well as significantly diminishing the host country’s talent pool.

Events in the host country are the subject of considerable media attention in Canada from time to time – a trade delegation would likely set off another round of reports.

What is the ethical thing for the government of Canada and its business partners to do? What core public service values are at stake here?

This generic case is hypothetical. It has been produced for discussion purposes only, and does not refer to a particular instance of unethical behaviour.

THREE PERSPECTIVES ON THE DILEMMA

Approach 1: Proceed with the Trade Mission

This is a very old question that should not really have to be debated again. We are, as we have all learned since grade school, a trading nation. Our economic growth depends on foreign trade. Our domestic market is simply too small. In the competitive global economy the best place to increase exports is in the developing world.

We regularly send government trade missions all over the world to help improve the international marketing of our products. The business community appreciates these government-led trade missions. Ministers help to organize such missions both to raise their profiles and as a useful way to penetrate markets.

The ethical question is whether ethics is the responsibility of government or of business. Key Canadian firms say that they are ethical: they have their own codes of conduct. As well, the ethics practices of larger companies provide a good example for smaller companies engaged in trade. The business community feels that it is best suited to manage ethics in trade relationships without government regulation.

However, trade loans for example are government-backed so the government clearly has some role to play in trade-related ethics. Business should conform to a degree to government rules in situations where there is government participation. Both government and business have an interest in reinforcing Canadian values (for example, no bribes, no influence peddling). We should not confuse these business ethics issues with larger human rights questions which are best dealt with government-to-government.

We should move ahead on the trade mission as quickly as possible.

Approach 2: Human Rights Are Paramount

The Canadian government should be very careful before giving visible support in the form of a trade mission to a country that has a questionable reputation in the area of human rights. Such a mission with high media profile would be seen as tacitly supporting abusive activities in the host country.

The actions of the Canadian government should not impede democratic development. The promotion of human rights in the international arena is an essential part of the foreign policy of Canada. In 1994, the government reaffirmed the importance of human rights not only as a fundamental value, but also as an essential element of stable democratic and prosperous societies at peace with one another.

As public servants we must bear in mind our own core values such as democracy, rule of law, fairness. We must also bear in mind our international commitments such as various United Nations conventions related to human rights.

In addition, it is important to note that Canada accepts refugees from the host country. Typically, levels of acceptance of refugees escaping persecution are high. It would not appear logical to give tacit approval to a repressive regime with a trade mission while also accepting a large number of refugees escaping from it.

The Canadian public at large is more and more recognizing the importance of the role of international banks and corporations in improving human rights — this is not just a government responsibility (witness the protests in Seattle and Montreal).

We should not accept unquestioningly the idea that trade and other forms of engagement are the best way to influence states to improve their human rights records. Corporations, non-governmental organizations (NGO's) and other non-state actors have a useful and critical role to play. However, this should not discourage governments from using all the levers of power at their command: challenge other states on their human rights records, trade measures, sanctions.

Before proceeding with the trade mission Canada should:

- consider whether some human rights violations are the result of weak state institutions and whether they are committed by state or by non-state actors,
- seek commitment to progress on human rights,
- establish monitoring mechanisms, and
- urge the host country to progress in multinational fora.

If there is progress in these areas, then the Canadian government could consider moving ahead cautiously on trade.

Action on human rights is required by corporations. In Approach 1 above, we heard that most corporations have adequate codes covering basic issues in health, environment, child labour, and wages. However, Ed Broadbent, when he was head of the Human Rights Centre in Montreal, maintained that the existence of codes is not good enough – corporations and their codes must be monitored independently. As well, a portion of corporate profits should be directed to the work of human rights groups. Corporations should be playing a role in such areas as literacy, education and health.

In the meantime, CIDA and other government institutions should be helping international corporations to support improved governance and democratic institutions. These institutions should also be helping NGO's to support civil society.

Human rights is a vital concern which Canada, given its reputation in this area, must continue to promote.

Approach 3: Balance – Work with Business for Human Rights

The public servant's role is to locate a compromise, avoiding mediocrity, between 'the cutting edge' and 'bleeding hearts'. It must be noted that it is very difficult to raise fundamental issues on a specific project. The fundamental issues should be dealt with on their own.

It is also important to note that 40% of our GDP is derived from trade; this is the highest level in the OECD. As well, the population of the world is growing at an extremely rapid rate. Almost all of this growth is occurring in the developing countries.

There is a values gap here between what is done in developing countries and what Canadians are comfortable with. Management of the gap has been left mainly to the private sector composed mainly of corporations that are essentially nationless. However, where public funds are involved, public officials must reflect the cultural and spiritual values of their countries. It is, therefore, necessary to learn how to straddle the gap on a particular project.

Ministers are experts at straddling the gap between national values and foreign projects. Of course, if the gap is too wide, then straddling it becomes painful. In the words of Sir Humphrey in "Yes, Minister", the Minister will have to be either bold or courageous – if he is bold, he may lose his seat; if he is courageous, the government may fall.

Values gaps do not just occur between developed and developing countries. In the case of the Lockheed bribery scandal, the Japanese government fell. This in fact led to the development of ethics codes by major American corporations. Most major leading corporations are doing well in this area. Establishing an international auditor general to monitor these corporate codes is not a good idea because it would impose yet another set of values.

The values gap should be recognized as inevitable – it cannot simply be removed by creating an international set of values. The gap must be managed through open dialogue to create understanding.

The private sector has an important role to play in economic development that supports the emergence of human rights and so narrows the gap. The imposition of human rights by governments by themselves will not work. On the other hand, industry should not be given free reign and public funds. Corporations should establish common values **before** they become critical issues in a project. Human rights issues are essential and form a legitimate part of such values statements.

A practical, pragmatic middle ground involving government and private sector action does exist, but must be discussed in public to form a broad base of understanding. The values gap must be understood and managed.

FACTORS CONSIDERED AND SOLUTIONS PROPOSED

CONTRIBUTIONS BY PARTICIPANTS

This case resonates with our work experience. Such cases occur now and will increase in number in the future. They cannot be avoided.

Contrary to what a panellist implied, the volume of our trade with developing countries is low – most is with the United States – so why can't we in Canada be more rigorous in insisting on human rights improvement from our trading partners? Canada has high human rights standards now – Canada is number 4 or 5 on the Transparency International Corruption Perceptions Index. That means that 95% of countries would not meet our standards.

We should talk not only about human rights but also about environmental impact. We should avoid giving subsidies without appropriate rules to cover environmental and other areas. These rules would vary by the types of goods involved – nuclear power plants requiring stricter rules than consumer products, for example.

On the role of the politician vs. the role of public servant – the public servant must be good at analyzing risk and communicating options to let the Minister decide.

Trade missions to such countries should be decided on a case by case basis examining factors such as reasons for going there in the first place. Can Canada augment its influence in the region? Have other countries done more to pressure the government of the host country to improve its human rights record? What is the potential for change in the host country? In this case, it seems preferable to wait to see if the country will begin to improve its human rights record before jumping in.

It is not clear what the fundamental values in such projects should be. Canada should not act as a missionary and impose a change of values on the host country. We should be very sensitive in promulgating Canadian values and ethics on others and avoid ethnocentrism.

Insistence on purity in values and ethics in international trade is a luxury of the developed countries. We cannot await pure values and ethics. We need to act according to some internationally acceptable values – we should use international instruments that we sign as the basis of the values we insist on from our trading partners.

Using the human rights issue to cut ties with this country would hurt both Canadian and host country workers and their families. Such cases call for soft diplomacy on the government side – in fact, businesses have themselves implemented useful codes on such things as child labour.

All levels of government must work together with the private sector to promote Canadian values abroad. We do this in trade missions and longer-term contacts. Trade missions always involve more than trade; they also encourage economic development of the host country. The doors open slowly and several types of action should be undertaken simultaneously.

However, while we may be able to downplay the human rights issue for a time, it is critical for long-term relations with the host country – there are lines that simply cannot be crossed where international sanctions and even the use of force come into play.

In this case there is no right answer. It is a grey zone where our main tool is to try to influence the practices of the host country and where we must always take into account the political realities of government and the economic situation. In fact, we need to negotiate. We need to influence our partners as best we can and meet on a middle ground. Here the democratic and economic sides of human rights cannot be separated.

Economic development does not always mean good development – developing effective local institutions and human rights are equally important. This task will require various means. For example, NGO's should be supported in order that they can establish bridges with their civil society counterparts.

It may be difficult to evaluate conditions in various countries – we should focus our efforts on countries where we won't get into trouble and where we can make a difference. We should also be pro-active using our political leverage directly.

We can conclude that now is not the time for a large mission since this puts too much emphasis on the specific problems existing in the host country. We should start small. We should lead by example showing other countries how we do things in Canada.

The 'right answer' in this case is that we should balance our values and get better at human rights and humanitarian assistance to refugees, and help Canadian companies create jobs. On the other hand, the 'real answer' in this case is that the situation is very messy – domestic politics must be considered; it is hard to move forward in the host country; the initiative may not work.

Wrap-up by moderators and panellists

The crucial element for the future of Canadian trade is the emerging markets – for example, Brazil where half the population is under 16. In emerging countries there may be human rights issues of great importance – for example, Nigeria where at one point Canada had to close its mission to protest abuses. This shows that there is a human rights bottom line even in a hard pro-trade position.

The reason we do not talk to the U. S. about ethics is that the gap is comfortable (whether this gap is considered as foreign or domestic). In fact, since the signing of NAFTA, we must consider the American market (80% of our trade) as part of a greater domestic market.

It would be useful to collect the values and ethics statements of multinational corporations. It must be noted that their commercial interest is very sophisticated – they seek a 'public license' to operate (i.e. with the approval of workers and citizens) which for them is better than a 'government license' to operate. In the area of the environment, the codes of the multinationals appear to be at the highest standard in the world and ahead of most governments.

An anecdote: A refugee from Africa who heard that a discussion on ethics was coming up in a forum of public servants remarked that given Canada's good name, it is entirely to be expected that such discussions are being held.

Cases like this reflect the fact that when two or more values conflict, an ethical dilemma exists. We face such situations in our everyday working lives. We should examine such situations and the key values in conflict in them, and then act. Dialogue, as in this session today, between people of different backgrounds and points of view is very illuminating and helpful.

There is no right answer in cases like this. No matter which course is taken, some harm may be caused, hence the importance of dialogue to minimize the harm.

CASE 4: “THAT’S NOT FAIR”

The Diversity Challenge for Public Servants

A potentially troubling situation has been developing in a front line unit of a department with extensive contact with the Canadian public. Several allegations have recently been made that the members of the unit are singling out members of visible minorities for closer scrutiny than normal, asking these clients to undertake additional measures before they get the benefits to which they are entitled.

The unit’s manager happens to be retiring, so the department sends in manager N. on special assignment. N. has extensive experience with diversity policies and procedures, aside from being very knowledgeable about the work of the department. As part of the assignment, N. is asked to take a close look at what is going on in contacts with visible minorities and the public in general.

In the course of the first few days after arriving, N. observes P., a senior officer, serving a number of clients with calm efficiency. Then N. sees P. instructing a client from a visible minority to bring in additional documentation, which N. knows is not usually required of clients.

The client protests that this will require visits and letters to several institutions to collect the information, as well as a new appointment with P. and a significant delay in receiving benefits. The client says that a relative in another city did not have to provide this information. P. is adamant that the additional documents are required before further work on the case can be done. Several other clients and staff observe the confrontation. After further protest, the client leaves.

Later in the day, manager N. meets P., and in the course of a discussion about a number of issues, asks P. whether they should discuss that morning’s exchange with the displeased client. P. indicates that this individual has a history of questionable claims and unreliable documentation. P. indicates that there are several clients who have recently begun to make unsubstantiated claims for benefits, using similar techniques. These clients are, in fact, related to one another.

From experience, P. sees the goal as upholding the law and the regulations, and stopping these practices wherever they occur. This may require some extra vigilance with members of this community, but the principle would be the same for any client or group clients. How should manager N. approach this situation? How might P., the senior officer, react? What values are at stake?

This generic case is hypothetical. It has been produced for discussion purposes only, and does not refer to a particular instance of unethical conduct.

THREE PERSPECTIVES ON THE DILEMMA

Approach 1: The Traditional View

This case is typical of situations encountered in the public service. The senior official P. can be seen as a typical traditional public servant who is ‘going by the book’.

Seen in this light nothing in P.’s behaviour is strictly speaking wrong. An evaluation of P. by the outgoing manager would likely have included such characteristics as: thorough knowledge, dedicated, committed to due diligence and detailed and accurate records, avoids unnecessary risks by following rules, an example to peers. P. might receive a rating of fully satisfactory or above with perhaps some performance pay.

Putting a values and ethics lens on P.’s performance might lead to different conclusions. P. certainly manifests the virtues of respect for the rule of law, due process, fidelity to the public trust, probity and prudence. P.’s behaviour does not constitute a violation of the public trust in that unit: client service has traditionally been done in that way and met unit standards and the outgoing manager’s expectations.

On the other hand, seen from the perspective of modern public management set out in John Tait’s *A Strong Foundation*, a different view emerges. Public servants should be moving from a rules-based orientation to a more results-based approach based on a framework of common values. New directions include: judgement, flexibility, initiative, local adaptability, innovation, creativity, and empowerment. The public service should become more responsive, with employees who care.

In assessing the specific situation in this case, it is important to realize that no blame should be attributed. P. is a solid citizen but P.’s approach needs to be realigned to modern public management and its values. We must remember when retooling the public service that the traditional culture was itself created at one time to encourage officers to behave like P. The manager N. must take action to help P. more in the new directions using coaching, leadership training and so on.

The model here is the Treasury Board’s new management framework *Results for Canadians* which sets out four sets of values: democratic values, professional values, ethical values, people values. These values must guide service to the public and other public service activities like a compass. P. and others in the unit must learn to adapt this new recalibrated compass.

Approach 2: More Respect for Diversity

From the point of view of fostering the goal of diversity in government the situation in this case study is unacceptable. The problem in this case should be seen as an opportunity to change. Two principle elements should be considered: 1) policies and 2) people skills.

1. **In the federal government, service to the public policy must be consistent and evenhanded, transparent as far as the public is concerned, and with no apparent bias. We must re-examine and rewrite the policy to make it more fair and equitable, enabling front-line officers to apply the values of fairness and equitability.**
2. **Employees must demonstrate better people skills in their service to the public. These skills involve showing acceptance, respect, and understanding as well as listening actively and empathetically. To this end a useful activity is diversity awareness training for all those serving the public. We must explore how biases affect service. We must also look at improving both general communication skills and especially cross-cultural communications skills. We must engage in dialog where differences in values create problems.**

Maintaining the status quo with respect to diversity is not a viable option in this case.

Approach 3: Balancing the Traditional and the New Orientation

In considering this case a number of factors must be taken into account.

1. Public servants who serve the public must **search for balance**: categorical positions and decisions are inappropriate; there are no absolutes in our work.
2. In a case like this we must **begin by getting the facts**. Just how to get the facts is sometimes a problem needing work. (For example, does the client in this case actually have a history of fraud?) Don't rely on anecdotal information. Don't reach conclusions too fast.
3. **Don't use just a single criterion** such as visible minority to make a decision. It may become necessary to take action on a problem, especially when the number of clients is very large, using a series of objectively required criteria perhaps assembled into a client profile. All persons meeting the profile are then treated the same way.
4. Where minority communities are concerned, remember always to **act with the community, not against the community**. Always be open to discussing problems of a single minority group and base these discussions on mutually held values.
5. Where a problem seems to be persistent, remember that **experts on visible minorities are available** to help.

By considering all these factors we maintain a balance of organizational needs, the rule of law, and respect for diversity.

FACTORS CONSIDERED AND SOLUTIONS PROPOSED

CONTRIBUTIONS BY PARTICIPANTS

This case contains both ethical problems and management problems. The principal ethics problem is in how the client is being treated, and several management problems exist within the unit, including communications and accountabilities.

There are situations in which asking for additional documents (as was done in this case) could be highly discriminatory. For example, educational equivalency documents from certain countries can be extremely difficult to acquire and interpret.

With reference to senior officer P., it is important to determine whether P. needs to learn to apply rules with more emphasis on people values or whether more fundamental patterns of thinking are the problem.

P. seems to feel particularly responsible for upholding the law as a gatekeeper; however, a better system for spreading legal checks and balances around the unit should be introduced and P. should become more sensitive to the community involved.

P.'s perspective should be broadened by providing parameters of responsibility. It should be noted that P.'s traditional approach may come back to haunt him in litigation.

P. needs to feel comfortable about implementing the new approach and in taking reasonable risks. P. needs to know that employees will be protected when mistakes are made. Without such support P. would naturally get overcautious in dealing with clients.

In fact, in the case of P. we have only allegations and a single instance of questionable behaviour; there is no definite case against P.

This case is actually an excellent opportunity for interchange between N. and P. They have clearly missed opportunities for exchange in the past. The situation requires a balanced approach. P. seems to seek perfection but is there actually a problem?

As well there may be conflicting standards in the application of rules: how is the problem of conflicting standards handled with other communities? Management should examine the situation together with all officers. This process should be undertaken in such a way that P. and the other officers have a sense of being supported, and a single individual is not isolated.

Elements of this case apply to, for example, police profiling. To help resolve this case management should improve internal communications and also seek to communicate with the communities.

What is and what is not a 'fact' is in itself an important issue, which can be described as follows. Society teaches us values. We use values in the interpretation of situations. We then treat these interpretations as facts forgetting that they are really interpretations.

Managers must ensure the use of discretion in deciding when to treat an individual as an individual or as a member of a group. Furthermore, managers must be aware that the targeting of groups can reinforce stereotypic treatment of individuals and groups.

In a case like this we have to balance the requirements of the law and regulations with the requirements of good service to the public. The only way to achieve this balance is through common sense. The problem becomes how to ensure that common sense is brought to bear on the issue. There is no miracle solution.

The department's relationship with the visible minority group in this case would be more credible if a member of that group actually worked in the department.

There is a risk management dimension to this case. What is the tolerance for an officer making a questionable demand of a client? Should additional resources be devoted to reducing the risk of such questionable demands? Those involved must seize this opportunity to discuss the issues and examine the environment including tools and support.

There do not seem to be rules to guide P. when P. suspects fraud or collusion. Perhaps there should be additional rules for cases like this, but this will add additional bureaucratic process. In any case, P. should be trained in dealing with communities when fraud is suspected. P.'s stereotyping may be a factor.

P. should strive to avoid getting upset and getting the client upset.

There is a lot of information missing in the description of this case, information we need to find a resolution. Some facts are described in an emotional way, for example, in using the word "confrontation". There is no hard evidence to suggest that P. always behaves "by the book". In fact, P. exercises judgement based on a history with this particular client.

Equity is not about treating everyone the same – it is about treating everyone fairly. The platinum rule is: do NOT treat others as you would want them to treat you – their tastes may be different!

Canada has had many minority groups, so it is useful for public servants to become increasingly sensitive to cultural differences. In fact, P.'s actions may be based on a knowledge of cultural differences – the case description does not make this clear. Cultural bias may not, in fact, be the issue. There is a danger of being further biased if we try to identify cultural groups and make stereotypic ways to treat individual community members.

When faced with conflicting values, different people balance them in different ways – we need to dialogue to resolve these differences. This incident provides an ideal opportunity for the work unit to engage in a discussion of equity and fairness regardless of the community of the claimant.

Wrap-up by moderators and panellists

It is important to note that there is as much diversity within minorities as in the majority culture.

P. may be going by the book because there is no support in the work unit for making mistakes. We must accept that there are no perfect people.

It must be noted that public servants do not need to learn specific different ways to talk to each and every group they encounter. As well, one individual committing fraud does not mean that the whole group is fraudulent.

Interesting lessons from the contributions by participants include the recognition of acceptable and unacceptable patterns of thinking and the recognition of the importance of making the public service more representative of its clients in order to ensure fairness of treatment.

Equity is treating people fairly, not equally. Fairness may differ in individual cases although it is not always possible to treat clients on an individual basis (at border crossings we need to impose some forms of categorization).

In this case study, there is an element of risk in taking liberties with the strict application of the law. However, we cannot have a rule for every situation: decision making must be based on values instead of rules. We must tolerate some reasonable level of error. As participants noted, common sense is the key. The challenge is that common sense does not mean the same thing for all. Dialogue is a good way to test our differing conceptions of common sense.

CASE 5: “LET’S TRY SOMETHING DIFFERENT”

Managing Risks and Maintaining Values

The government has decided to go ahead with a series of new initiatives – one project is particularly high profile and urgent. The ADM responsible decides to call on Y., a seasoned manager in this area, to lead this project.

The ADM and Y. agree that to deliver on expectations it will be necessary to try an approach that breaks with some well-established policy principles and guidelines. These policies cannot simply be removed, since they continue to be important to most of the work of the branch. However, for the new project to be effective, it will have to be based on a revised set of principles.

Clearly, there will be new sorts of risks in the revised approach that the branch has not had to deal with before. Y. is uncomfortable with the apparent level of risk, but the ADM indicates they must proceed as best they can. Some careful preparations will be necessary, on an urgent basis.

To make a success of this project, Y. will need the help and support of employees and colleagues more than ever before. Y. has earned a high level of respect from these individuals as an honourable and responsible public servant who always puts public interests first. However, some individuals can be expected to resist changes to traditional ways of doing business. Y. does not want to lose their trust at this crucial time.

What fundamental values are at play in this situation? What sorts of risk management preparations would you undertake if you were Y.? How would you maintain the trust of your employees and colleagues?

This generic case is hypothetical. It has been produced for discussion purposes only, and does not refer to a particular instance of unethical conduct.

THREE PERSPECTIVES ON THE DILEMMA

Approach 1: Let's Get On With It

There are three key aspects to the problem:

1. **We must get cracking; we must get the job done.**
2. We must find the cracks in the plan; we must manage the risks, including the ethical risks.
3. We must not crack up; we must manage change.

Get Cracking

We must move quickly and be more directly than usual. We must solve some problems on the fly. Some values and policies must be adjusted as we go; this is not the usual practice but is sometimes necessary.

We still need old-fashioned management to deal with disruption and the discomfort of some employees. We must paint a clear picture of the goal with a clear vision of why we are doing this. We must establish a common purpose to get buy-in and focus on outcomes and results. The new way of doing service delivery must be understood.

We must learn to make a virtue out of wrenching organizational change. We must instill pride in public service work as well as respect for elected office holders. We must celebrate the new public service values: innovation, initiative, resourcefulness, and courage to be tolerant. We must also maintain the traditional values: excellence, the ability to manage complex issues, speaking truth to power.

Find the Cracks in the Plan

The bold approach is riskier. When going too fast and abandoning tried and true policy, reputations can be damaged. It is important that the minister and deputy minister understand the risks and implications of the new approach.

We must minimize the risks, both operational and ethical, and discuss the rationale of the new approach and its consequences as well as the disadvantages of abandoning old policies.

Don't Crack Up

We must manage change including the ethical risks. When abandoning old policies there is a feeling of loss for certain employees. To counteract this we must tell employees the purpose of our actions. Continuing communication is the key. We must be open about ethical problems and employee discomfort.

Values are shifting with less emphasis on prudence and caution, and more emphasis on speed and a results-based orientation. However, we are not abandoning some values altogether. Fundamental values do conflict and we must learn to balance them. There are choices to be made, but the core is still the public interest.

All this requires strong leadership to manage the risks involved. Managers must be visible champions of new values, provide stability, and show commitment to the public interest.

Approach 2: We Must Use Caution

The above approach sounds good, but isn't. In fact:

- 1. We should not be so fast in getting cracking; we should use caution.**
- 2. The whole plan is cracked and wrong.**
- 3. The whole problem of cracking up can be avoided by not proceeding.**

Manager Y. is caught in the middle. There is bottom-up pressure to resist change. There is also top-down pressure to produce results and to reassure the deputy minister and the minister that all is well.

The objectives of this project may look good, but we can't forsake core values for ideas that look good. Public servants will be around longer than a particular government and they must serve the public.

There are three levels to be considered. 1) At the ADM level the objective must be assessed to determine if it is fundamental to serving the public interest. 2) At the level of managers like Y. there is concern with their reputation vis-à-vis supervisors and colleagues, and with determining risks and fundamental values. 3) At the level of other employees there may be resistance to change in the name of caution and probity.

Several key principles for risk management must be identified:

- 1. Senior players** have greater responsibility than other levels in seeing that fundamental values and the public interest are not sacrificed.
- 2. Internal trust** within the organization is important but not as important as the public trust, which is paramount.
- 3. The thorough analysis of options** is crucial. The options must be set out clearly in the light of the goals to be attained. Then with all concerned players the options are analyzed to determine which are viable and maintain fundamental values.
- 4. There must be lots of discussion.** Such discussion does not resolve all problems, but without discussion there can be no effective resolution.

Approach 3: The Balanced, Canadian Way

There are, in fact, a lot of commonalities between the previous two approaches. Trust is a fundamental element. There must be open and transparent discussion between management and employees as well as between the political and public service levels. We must distinguish fundamental values from the policies and processes that implement these values.

Transparency is a fundamental value – it is particularly important in enhancing public trust. Other fundamental and immutable values include honesty, integrity, and service to the public. Transparency is also important in obtaining the views of Canadians through focus groups, meetings, and surveys. Sometimes, we do not have time for these longer processes, so we must obtain people’s opinions by having shorter dialogues on shared core values and how to protect them.

In this case the conflicting values are innovation vs. prudence. Sometimes it seems that the ‘ends’ of innovation in a particular project is used to justify the ‘means’ of reduced attention to prudence. On the other hand, public servants are devoted to the public good and need to be shown that the outcome is worth the risk. Only then will they consider doing things differently.

We should dialogue with employees concerning risks, understand risks clearly and manage risks systematically, including the risks of political embarrassment and the misuse of public funds.

Tools to mitigate risk include: training, advice and coaching, improved management culture, open doors to managers, good planning, frequent checking back against plans, seeing whether risks are increasing or decreasing, and learning as one goes (learning organization).

The route of balance involves saying ‘yes’ to innovation and protecting fundamental values in a variety of different ways. This route requires resources and senior management commitment. Employees in the work units involved must be given an opportunity to say if they do not like the approach being taken. The route of balance also requires showing respect for employees’ past actions. We should not use the language of criticism.

FACTORS CONSIDERED AND SOLUTIONS PROPOSED

CONTRIBUTIONS BY PARTICIPANTS

Ethics are important but it is also important to ensure that the authority of managers is commensurate with their responsibilities, that there is support from senior management, and that there is trust between colleagues.

The tension between innovation and a more conservative approach should be seen more as an operational problem rather than as a choice at a high level of generality between two fundamental goals.

From another point of view, this case actually involves a communications issue disguised as an ethics issue. Therefore, more and better communication is needed.

Some people thought that more detail should have been provided in the case, while others thought they could talk about the case all day given the present level of detail.

Today's environment encourages speed, but we need to take the time to protect fundamental values such as the rule of law. Some values are immutable (e.g. integrity) and easy to identify, while others (e.g. flexibility) are more related to process and procedures.

It is important to have the right starting point on issues of values and ethics. Starting with risk assessment is a negative way to begin, focussing as it does on what could go wrong. It is better to begin by asking what positive values this project would serve and ask 'What could go right?'

Resolving this case requires meetings and dialogue with staff and identification of risk parameters and accountabilities at different levels. It is important to be realistic. It is also important to give employees the right to innovate and to make errors at acceptable levels when doing so. This is a learning process.

Whether or not this is an isolated case or whether the whole department is undergoing basic changes is important in discussing this case.

Manager Y.'s attitude to this project appears to be negative. Y. should acknowledge that dialogue concerning change is important. Public trust is the number one thing to be gained.

Important elements that were not included in the case description were:

1. Where in the list of departmental priorities is this project?
2. Where does the project fit in the general list of government projects?
3. Is the client in this project the public or other units of government?
4. What is the constitutional and legal impact of this project?

We must also ensure that employees want to be involved in the project – otherwise the option of giving them work elsewhere should be seriously considered. There must be open dialogue to build trust and establish benchmarks with all stakeholders.

Wrap-up by moderator and panellists

An excellent way to approach such cases is to ask, 'What could go right?'

Ultimately, we work in an organization governed by process, structure, accountability, and democratic authority. On the other hand, we have massive latitude in carrying out our mandates. In exercising our discretion responsibly, we base our actions on transparency, accountability, and people values. To this end we must communicate with each other on what we are doing and on why and how we are doing it.

In addition to basing our actions on values and communicating, we must tolerate reasonable dissent. We can minimize resistance through discussion. Managers must follow this approach in all their work. In the end, some people will disagree with this approach, but it's the right thing to do!

Another important element in respect for each other is allowing choice for those who have fundamental problems with a direction to be taken where possible.

The 'can do' philosophy is good, but in the public service we are ingrained in the belief that our processes embody values. However, there are different ways to implement and maintain values. We must find the right balance.

While some people have been critical of the abstract nature of this case, its generic nature allows readers to insert their own details from actual cases that they know. In this way commonalities in the presence and absence of values and principles emerge.

When cases involve competing values we must always use judgement to balance the values and need to understand risk in a systematic and explicit manner. This is part and parcel of the new way of doing things, particularly in mainly regulatory departments. Dealing with these matters intuitively as managers have in the past is no longer sufficient.

An important dimension of cases like this is the need to encourage speaking truth to power. We must consider how to create an environment where we can confidently speak truth to power, as well as how to enhance the personal commitment to do so.

Finally, values-based risk management is required to allow for the exercise of greater discretion on the front line of service to the public.

CASE 6: THE EXPERIENCE AT HUMAN RESOURCES DEVELOPMENT CANADA (HRDC)

Reflections by the Deputy Minister and Senior Officials

Note: Instead of discussing a generic case as was done in earlier sessions in this series, the subject of the present case was the recent experience in HRDC with intense public scrutiny of parts of its grants and contributions programs during the year 2000.

OVERVIEW (Claire Morris, Deputy Minister of HRDC)

The grants and contributions issue is almost too fresh to be used as a case study, but seeing it through the values and ethics lens has already been helpful in HRDC, and it is hoped that the present discussion will be helpful for a wider range of public servants.

Some context is necessary. HRDC has an overall annual budget of over \$60 billion dollars. About 95% of that is for legislated programs: employment insurance, old age security, and pensions. The remaining 5% (\$3 billion dollars) pay for all other departmental programs. Of this \$3 billion for grants and contributions, \$2 billion are paid directly to the provinces for labour market services or co-managed with them. That leaves \$1 billion for all other grants and contributions for the disabled, aboriginals, youth at risk, etc. The real focus of most of the debate has always been on the transitional jobs fund – about \$100 million a year, for three years.

HRDC has about 320 offices, 21 phone centres, and 25,000 employees across Canada. HRDC is the face of the federal government for a significant number of Canadians. The department is relatively new. It was formed in 1993 from parts of five different departments with different corporate cultures. A large number of HRDC programs are based closely on legislation and on specific rules and procedures. Other programs are not. HRDC had to integrate these different cultures into a single corporate vision. HRDC also had to take a series of decisions:

- be a key player in the push to emphasize quality service delivery;
- undergo major downsizing after program review;
- lose around around 2,000 additional experienced staff when labour market development agreements devolved many activities to the provinces;
- undertake major employment insurance reform; and
- launch new programs such as the transitional jobs fund (designed in part to ameliorate the employment insurance reforms).

All these factors contributed to the HRDC problem – the required balance between service and financial accountability was lost.

THE GRANTS AND CONTRIBUTIONS ISSUE (Alan Winberg)

In January 2000 HRDC issued an audit that showed weakness in grants and contributions administration. The audit was undertaken as part of the on-going process to improve management in the department, but it struck a nerve with Canadians. **The intensity and duration of their reaction showed that a major difference existed between public expectations and departmental practices.**

There followed a period of turbulent debate with a series of technical briefings for parliamentarians, many hundreds of questions during Question Period, and parliamentary committee appearances. Questions moved from details of the audit, to details about specific programs, to the actual value of the programs themselves.

During this time it emerged that managers lacked some basic information. The department had been focussing on quality service to clients while reducing some controls and accountabilities essential to good stewardship in the name of cost cutting. **This situation led to a frenzy of media stories, editorials and cartoons, many of which focussed on the inaccurate idea that large amounts of public funds had been lost.**

This scrutiny took its toll on the morale of all staff in the department, not just the 4,000 working on grants and contributions. HRDC then had to move quickly to design and implement corrective action subject to external audit to regain credibility. This involved an enormous new workload. Hundreds of access to information requests were received which required responses in the spirit of Canada's democratic values. Treasury Board, the Auditor General and outside experts had to be consulted in order to design the plan for corrective action.

Once issued, the Auditor General endorsed the action plan and included its application in his ongoing audit of the department. The minister appeared before a parliamentary committee, recognized that there were problems to be addressed, and presented a plan to address them. This gave the department some time to undertake all the work required.

In May, the minister presented the first progress report to the parliamentary committee, stressing that it was not true that \$1 billion dollars had been lost. HRDC was seen as being actively engaged in correcting problems.

The Auditor General's report in October recognized the department's efforts. 17,000 active files were reviewed. Managers had to countersign on all disbursements, driving home the importance of accountability linked with service. Training was instituted in program delivery, financial control, and modern comptrollership. An elaborate Web site was established for HRDC programs and activities. A performance-tracking directorate was established in order to improve control of grants and contributions.

Improvements to the administration of grants and contributions were made to the tune of \$50 million (\$20 million from improved efficiencies elsewhere and \$30 million from program funds). The department was restructured to separate nationally and regionally delivered grants and contributions programs. Post-program audits were initiated.

A number of steps have been taken to clarify decision making and accountability structures as well as quality control processes in the department. The Treasury Board also issued new guidelines for transfer payments. The successor of the jobs transition program, the Canada job fund, is winding down. There are now three progress reports on the HRDC Web site, and two PriceWaterhouseCoopers audits have been done on the implementation of the action plan.

Several lessons can be drawn from the HRDC experience to date. So-called administrative ‘overhead’ costs cannot be cut without consequences – sound administration is an essential part of program delivery. In fact, transparent, balanced administration of services has made the department stronger.

The Auditor General left us with a challenge – to make today’s extraordinary efforts tomorrow’s routine.

THE LEADERSHIP CHALLENGE (Claire Morris)

During the preceding year, the four core values of HRDC and its leaders have been sorely tested:

- 1. serving ministers and the public interest (democratic values);**
- 2. showing respect for people – clients and staff;**
- 3. acting with professionalism; and**
- 4. earning the public trust.**

An examination of these four areas follows:

1. The issue at HRDC became so large in part because we were not up to meeting the high expectations of Canadians in regard to government operations. **Canadians heard it said that the department had lost money, and since the department had become so decentralized, we at headquarters lacked basic information and could not reply to simple questions about our programs.** Corrective action was called for and we have tried to harmonize daily activities with the expectations of citizens.
2. A second lesson is that it is necessary to show confidence in the team and show the team support, rather than engaging in witch-hunts with the intent of laying blame. **Accepting responsibility for systemic problems and taking steps to correct such problems brought forward commitment from staff that has resulted in a stronger, committed department.**

3. At HRDC democratic and service values were out of balance. **Using the concepts in the Tait report, one could say that HRDC needed to balance old public administration values with new public management values.** Balance is the key concept.
4. A key issue at HRDC was public trust in the disbursement of grants and contributions and the management of files. It was finally shown that only a small amount in overpayments was actually made. **However, the department's inability to come up with timely answers to questions as a result of neglecting proper administrative procedures made the issue look worse than it was.** Financial management measures are now in place to prevent similar incidents in the future.

FUTURE DIRECTIONS (Margaret Biggs)

Looking through the values and ethics lens there are five key areas requiring attention in the future of HRDC: leadership, balance, accountability, results, and people.

Leadership

The department must reassert core public service values as the fundamental basis for behaviour in the department, given the high level of commitment to ethical behaviour of employees. In the past, accountabilities to the minister and parliament were not emphasized sufficiently, and activities were focussed on service to clients. A new balance is being created in which departmental staff works with clients, but always in the context of service to the minister. The messages from leaders must be clear and consistent.

Balance

There must also be a balance between doing the right thing and doing things right, particularly in regard to clients and partners, which is an essential part of good stewardship. Modern values-based comptrollership must be implemented throughout the department. This will require hard work – training on comptrollership and risk assessment, and achieving a balance between too little and too much comptrollership.

Accountability

Key aspects to achieving accountability include the tracking of the performance of managers in a transparent manner and the public reporting on progress, for example on the Web site.

Results

At the highest level of analysis, we must ask: Are our programs the right programs? Are they effective? Do we know what we want to achieve in each and every program? Program management must be increasingly results-based. Thinking through collectively what programs are trying to achieve is actually invigorating for staff, reinforcing a sense of values and purpose, and providing hope for the future.

People

Doing the right thing requires stamina and persistence. It also requires training in risk management, tools to do the work, and support from management throughout. Values and expectations must be communicated clearly. The administrative measures that were stripped away in the name of economy in the past must be replaced.

PANELLISTS ANSWER QUESTIONS FROM THE FLOOR

Question 1 **Looking back on the HRDC experience, what would you have done differently?**

Answer Internal audits are done to identify problems – the audit accurately pointed to difficulties, which we were moving to correct. However, our analysis of the environment was not sophisticated enough to predict the fierce negative reaction to the audits of the job transition program. Our risk assessment of the environment was simply inadequate. We would now consider going outside the government to acquire advice on the political and media environment. A second lesson is that senior managers coming into a new program should always first ask: ‘Show me the guts of this program!’ They should spend a lot of time learning these basics, but this has not been a usual practice.

Question 2 **Does the requirement that so many documents must be accessible to the public act as a serious hindrance to frank and open exchanges in the workplace so necessary to resolving major dilemmas?**

Answer The danger is that access to information rules will be used as an excuse to water down internal audits so that they no longer provide the essential information needed by management to improve government programs.

It must also be said that access to information has often been considered an overhead function that requires public servants to meet a basic compliance standard. This is a completely mistaken view. Access to information is at the heart of democratic values as set out by Tait and is a marvel of Canadian democracy from the point of view of other countries. Access to information costs must be considered to be part of the delivery cost of programs. It is hoped that revisions to the access to information legislation will find a means to allow frank exchanges of information between officials without the fear of release of premature or one-sided information.

Question 3 **What is the best way to communicate results of programs to citizens? We know that the Web alone is not sufficient, so what are other ways to communicate given so many decentralized services?**

Answer Yes, the Web alone is not enough. We must also find many other ways to show the public and the media that we recognize problems and are taking steps to change our way of doing business.

Question 4 It was pointed out that in order to re-establish the balance between effective service and sound comptrollership, program monies were diverted to improve program administration – is this a legitimate reduction of program services to citizens?

Answer As a public servant, you must never do what you cannot do well. Administrative costs are an integral part of any program. The private sector approach to cutting costs by minimizing record keeping has been shown not to work in the public sector.

Question 5 What should the relationship be between public servants and parliamentarians in service delivery programs to the public?

Answer It is important to recognize that parliamentarians have an interest in and a legitimate role to play in programs that serve the public – their constituents. It would be normal for MP's to have input on programs affecting jobs for Canadians. That being said, there is an issue about the number of different roles that MP's play: oversight, input to policy formulation, input to implementation decisions, etc. The problem arose in HRDC that the job transition program was very decentralized. As the Auditor General noted, the department should have ensured greater consistency and a common thread across Canada. Officials should work with a broad range of stakeholders to design the best program possible to meet the public interest. Where the rules for a program do not permit this, public servants have little option but to go back for new authorities,

Question 6 Should we have a policy to protect whistleblowers to prevent possible future debacles?

Answer Public servants must feel that they can freely raise concerns as they arise at every level of the department. In the past, program officers acted independently on many files. The quality assurance process now ensures that these decisions will be examined. If all these processes are working as they should, then there is no need for further whistleblowing protection policies.

FURTHER CONTRIBUTIONS FROM THE FLOOR

HRDC inadvertently did the whole public service a favour – it was good to have a public debate around the issue of good service to Canadians and accountability. Other departments in which functions and roles appear to clash, such as those promoting as well as regulating products or industries, can benefit from the HRDC experience.

An important lesson: public servants must take the time to review their own actions regularly – there can never be enough post-mortems.

CLOSING OBSERVATIONS BY THE MODERATORS

Conflicts between democratic and professional values and the new management values can be found in all federal organizations. The key to resolving these conflicts is to find a workable balance. To this end the public service needs training and tools, and above all dialogue and communication must be constantly encouraged. Public servants must feel safe to debate the questions of the day. There is no simple right or wrong answer in many cases, but effective solutions must nevertheless be found.

The public service has a particular challenge in maintaining effective leadership because public service managers carry out their work in a fishbowl. HRDC's leaders have been open and honest as they led the department through difficult times and are to be commended for their courage and dedication to improving the public service in continuing the discussion of their experience here today.

CASE 7: DIVERSITY AND HIGH-QUALITY CLIENT SERVICE

The Case of Veterans Affairs Canada (VAC)

As district director, you recently hired a 25-year-old male, Yuriko Hoshi as an area counsellor. Mr. Hoshi is a Canadian of Japanese descent. He holds a degree in social work and a diploma in gerontology from the University of Toronto. For the first two months, he is co-teamed with an experienced counsellor and everything appears to be working out fine.

Assigned his own territory, in the first week you receive a letter from an 84-year-old veteran, Robert Smith, who complains that he is offended by having a 'Jap' for his area counsellor and demands a 'Canadian' area counsellor. Mr. Smith is a former prisoner of war who had been incarcerated in a POW camp in Japan for 4 years. During this time he was subjected to harsh treatment that has left him severely disabled. He suffers from avitaminosis and post-traumatic stress disorder as a result of his wartime experiences.

What are the ethical issues? What would you do as a manager?

This is a generic case bearing some similarities to a real situation. It has been produced for discussion purposes only.

OVERVIEW (Larry Murray, Deputy Minister of VAC)

By way of background, VAC has a relatively small clientele, knows who its clients are (in fact has a close family-like relationship with many), and has a clear mission. However, VAC faces challenging values and ethics issues such as rising drug costs, needs of terminally ill clients and counsellors' workloads (being all things to all clients). It is clear that an ethical framework must be developed which allows counsellors to know when to limit the provision of services. VAC has an active on-going values and ethics program, including an advisory committee with a bio-ethicist. This committee considers emerging issues such as the naming of departmental staff in clients' wills and estates.

The case today has been developed on the basis of a situation faced in the department involving employee rights versus complex client needs.

THREE PERSPECTIVES ON THE DILEMMA

Approach 1: The Employee's Point of View

We begin by considering the case from the perspective of Mr. Hoshi's (the counsellor's) individual rights, and the public service objective of supporting a diverse workforce.

Mr. Hoshi's manager must consider the question of high quality, responsive service and management's responsibility to support employees equitably. The ethical dilemma arises from an apparent conflict between the 'service' and the 'people' values – no matter what decision is made, some harm may be caused.

Mr. Smith's (the veteran's) health could suffer if Mr. Hoshi (the counsellor) is not reassigned. On the other hand, if Mr. Hoshi is reassigned, the department would be acting unfairly on the basis of the apparent prejudices of its clientele.

It is important to use the whole ethics and values framework suggested by John Tait. (See TBS Office of Values and Ethics card.) The case involves not only professional values and people values but also democratic values and ethical values.

The manager should, in fact, begin with the democratic value of upholding the rule of law, in this case the department's enabling legislation and government-wide financial and public service employment legislation. Mr. Hoshi is a Canadian hired on the basis of merit and cannot be removed except for incompetence or incapacity, neither of which is at play here. Reassigning Mr. Hoshi on the basis of a client's unreasonable demands would also violate the public trust and our commitment to equity and fairness in the workplace. There is no legal case for unilateral reassignment.

There remains a troubling question. Mr. Smith, like others, sacrificed his health and four years of his life in the service of his country. Would refusing to reassign Mr. Hoshi really take the best interests of Mr. Smith into account? Refusing to transfer Mr. Hoshi unilaterally may be 'right' but is it 'just'? The views of other stakeholders must now be considered.

Approach 2: The Client's Point of View

From the client's point of view this case is more complicated than it at first appears to be. We need more information about Mr. Smith's medical and psychological condition. This information is in practice easy to obtain. The district director may also want to meet with Mr. Smith, although Mr. Smith is not likely to change his point of view as rational dialogue with him may be difficult.

Job 1 is the care of clients. We must therefore explore all options to serve the clients' needs. We may decide to find another counsellor for Mr. Smith, not because he has a right to this, but because he is not well enough to cope.

Approach 3: Seeking a Balance

This case should be examined with respect to a number of issues that have not yet been put on the table. VAC is built around respect for veterans who gave us our freedoms. Mr. Smith was 24 when he was captured. His experience as a prisoner of war has left him physically and mentally damaged. Veterans are special Canadians deserving the best, and perhaps more than other Canadians. There are serious quality of life and end of life issues at play here.

The clients of VAC are not diverse in ethnicity or gender. However, the public service is committed to diversity reflecting the Canada that it serves in order to better serve all Canadians.

The real question in this case is whose ‘rights’ take precedence, Mr. Smith’s or Mr. Hoshi’s. VAC’s workforce is very professional. It would seem that the best course of action is for the manager to consult Mr. Hoshi on what to do. Mr. Hoshi may decide to talk to Mr. Smith indicating that he (Mr. Hoshi) is a proud Canadian too and is proud of Mr. Smith. If such a conversation does not produce a resolution or is not possible, Mr. Hoshi may voluntarily withdraw.

FACTORS CONSIDERED AND SOLUTIONS PROPOSED

CONTRIBUTIONS BY PARTICIPANTS

VAC must clarify the criteria for assigning counsellors to clients. These criteria must be based on the departmental mandate for service. If someone else can serve the client better, then a professional steps aside. The manager must facilitate this process and work to eliminate prejudice. It is important to note that having a medical condition is one thing, but prejudice is another.

Managers must show respect for and support their employees. However, we must also try to do what is best for the client. Meeting with the client may not be such a good idea. To resolve the case, the manager should open a discussion with the employee. If the employee will not step aside, the manager must find an alternative solution.

In reality most cases in VAC cannot be reassigned. Managers must educate staff and clients on the fact that both groups have rights.

A bureaucratic letter of explanation to the client is a bad idea. A visit to the client might make some sense but is likely to be emotional rather than rational. The letter to the client should contain a real solution as well as an indication that the language of Mr. Smith’s original complaint was unacceptable.

An important point is that employees are respected by striving to provide them with a harassment free environment. As well, clients are respected by giving them the best possible service.

In this case some questions suggest themselves: What is the extent of Mr. Smith's post-traumatic stress disorder? Has Mr. Hoshi met Mr. Smith and determined the extent of Mr. Smith's prejudice? What is Mr. Hoshi's reaction to the letter? Has the union been involved?

As a trained social worker Mr. Hoshi would be likely to offer to withdraw. On the other hand, it is important to preserve the best of Canadian values including respect for visible minorities.

Managers should not try to keep employees in situations where harassment is inevitable. If no amicable solution is possible, the case should be reassigned. Bringing together the disparate points of view of the client, the employee, the manager and the public is not a problem that is unique to the public service.

It may be desirable to reach outside the organization for assistance – a member of the clergy, a doctor, a brother or a sister might be asked to talk to Mr. Smith and even to re-introduce him to Mr. Hoshi.

This type of case plays out differently in different regions of Canada.

There is also an issue with regard to Mr. Hoshi. Was Mr. Hoshi's family interned during WW II? Does this case reawaken Mr. Hoshi's memory of previous discrimination?

Mr. Hoshi's professional reputation is important – both as he sees himself and as his colleagues see him. Will his overall work suffer as a result of Mr. Smith's letter about him and subsequent actions? A professional solution to this case is important because Mr. Hoshi is the future of the public service in Canada.

Employees have a right to have input into such decisions but the decision should not simply be downloaded onto Mr. Hoshi, who has only recently been hired.

In fact, in VAC, district directors would not typically be involved in resolving cases like this. There are intermediate layers of managers who would handle such cases with employees. It is to be hoped that the involvement of a district director does not imply that Mr. Hoshi cannot do his job.

Wrap-up by moderators and panellists

There is a danger to asking employees for input and then ignoring that input.

Another danger is in creating a precedent for treating employees arbitrarily on the basis of client prejudices, which could easily spin out of control.

It is very useful to see cases like this through the lenses of the different core values that apply. Values are lenses not absolutes. They are applied in turn to the client, the employee, the manager and the public.

This case is based on a real issue that arose in British Columbia. There were, in fact, at one time a group of clients like Mr. Smith who benefited from the services of a very experienced nurse who was a member of a visible minority. The district director was also a member of a visible minority. The issue was discussed with all staff and the employee decided to talk to the clients. Most clients decided to keep the services of the nurse to the satisfaction of all. One person could not agree to this solution and special measures were instituted.

Departments should provide an ethical framework for employees who are under the gun. Do not leave values and ethics just to managers. Values and ethics are every employee's business.

CASE 8: FINANCIAL MANAGEMENT AND ACCOUNTABILITY AT ORIGINAL FIRST NATION: A CLASH OF CULTURES

The Case of the Department of Indian Affairs and Northern Development (DIAND)

There has been recently a good deal of media coverage regarding allegations of financial mismanagement and a general lack of accountability at Original First Nation. This question of accountability appears to be with respect to both federal government departments which provide substantial program funding to the First Nation and between the First Nation Chief and Council and its community members.

Federal officials have confirmed that the First Nation has been delinquent in meeting many of its financial audit requirements, as outlined in funding agreements, is refusing to provide details on how program dollars are actually spent and is unwilling to provide performance reports outlining program outcomes.

Federal Ministers have publicly stated the need for accountability to Canadians through Parliament and have indicated they are prepared to take direct action to ensure proper management and accounting of federal funds. They have hinted strongly that they will consider stopping the provision of federal program funding to the First Nation if it is unwilling to be accountable and will deliver programs directly to the community.

The First Nation leaders have stated their view that federal program funds are monies owed to them flowing from treaties and promises made to them by the British Crown. They argue that, accordingly, they owe no obligation to account to the Canadian public. Their administrative officials have argued that once funds are transferred from federal government to the First Nation, they become the property of the First Nation and can be spent at the sole discretion of the First Nation government.

The leaders have said that the internal accountability procedures within the community follow their traditional ways and is no affair of outsiders. They stress that their exercise of self-government is of paramount importance to the First Nations people and they will vigorously defend this right.

The media reports that many community members do not accept the current level of accountability and have called for more openness in Council decision-making and seek avenues for public redress of decisions that go against the will of the people. They claim that the 'customs' defended by the Chief are self-serving, out-moded and are not in keeping with universal human rights for democratic societies. They have called upon the federal government to intervene and force the creation of modern, transparent, democratic governments which can also respect the cultural and self-government aspirations of First Nation people.

Questions for discussions

1. What values are reflected in each position?
2. What values seem to present the potential for conflict or the creation of an ethical dilemma?
3. What would you recommend as actions that would surface and resolve the ethical dilemma?
4. How can values be built into working relationships prior to the conflict?

This is a generic case bearing some similarities to a real situation. It has been produced for discussion purposes only.

BACKGROUND(Dennis Wallace, Associate Deputy Minister of DIAND)

Formal relationships of various sorts between Europeans and First Nations have been in existence for 300 years – even preceding the establishment of policing by the Northwest Mounted Police. Growing out of trading relationships and military alliances, by the 1870`s this relationship became one of wardens and wards of the State. Indian agents still existed into the 1970`s. After this time, service delivery was gradually transferred to First Nations. Indian agents became agents of change. At first, their position seemed to be ‘dump and run’ in order for government to pass on its responsibilities to First Nations or ‘drop and get out’ from the perspectives of First Nations who were seeking control over their own lives.

Meanwhile the *Indian Act* was not updated. Some First Nations’ members did not have the skills to carry out the devolved new tasks. The role of DIAND employees changed as they had to find ways to carry out their new duties while respecting treaties and honouring the fiduciary responsibilities of the Crown. Contributions were now made to programs with strings attached but the rules for administering the programs were not entirely clear. There are no governance provisions in the *Indian Act*.

Many departments have faced similar dilemmas of unclear rules in an environment of change. How is the employee to react with regard to: members of the First Nations community, chiefs and councils, the department’s fiduciary responsibilities, and advancing the First Nation’s capability to manage its own affairs. There is also the on-going need to keep long-term relationships with First Nations viable and mutually beneficial.

THREE PERSPECTIVES ON THE DILEMMA

Approach 1: Financial Accountability Perspective of the Comptroller General

ISSUES:

Recent media coverage related to allegations of financial mismanagement and a lack of accountability at the Original First Nation (OFN). These allegations must be seen in the context of a serious general loss of confidence in government. An ECOS survey has recently shown confidence levels at 25% (compared to 80% in the 1960's).

CONCERNS:

The media coverage is increasing the visibility of the issue; however, the core issue is accountability and comptrollership.

The 1999-2000 audit highlighted the auditor's finding which indicated serious deficiencies in the system of internal control over various expenditures.

A cumulative deficit of \$11 million has developed over the last seven years in relations to an \$18.7 million annual budget which is provided to ensure services such as social, education, capital, operation and maintenance, band support and economic development.

The process is not transparent and existing procedures do not seem to be followed by the Chief and Council. Specifically, the education budget seems to be out of control and should be taken over by the OFN finance staff to ensure appropriate procedures are followed.

Audits do not seem to be understood by the OFN. They do not realize that audits are a process of validation of procedures and sound financial management.

A recipient managed Remedial Management Plan (RMP) has been in place for the last six years; however, the indebtedness is worsening. In September 1999, the department placed OFN under control of a Third Party Manager (TPM). The RMP is still in place, however, there has been no appreciable reduction in the deficit.

Despite annual audits, a third party manager and a remedial management plan, the deficit has now reached a level of potential insolvency. Advances of funding do not work. In 1995-96 and 1997-98, \$1.5 million advances to cover indebtedness issues failed to reduce deficits.

Further financial intervention may be necessary. While is it not welcomed by the First Nation, it may be the only way to ensure financial stability and protect public interest and public trust. The preservation of the public trust is essential for larger public policy objectives as well. For example, the Canadian taxation system is based on voluntary compliance; if taxpayers feel that the playing field is not level for all, including First Nations, they will be less likely to report accurately and fully.

Approach 2: Perspective of the Chief of Council of the Original First Nation

ISSUES:

Recent media coverage related to allegations of financial mismanagement and a lack of accountability at the Original First Nation (OFN).

The underlying issue in this case is a pervasive lack of trust – between Canadians and First Nations, but also between First Nations and government. First Nations communities often trust only their Funding Service Officer (FSO), who may actually not always be supported fully by the Regional Office, even less by Headquarters.

The Comptroller General’s recommendations are unfair because they do not take the whole situation into account. The deficit was, in fact, inherited by the current Chief from previous leaders. Higher levels of government also have enormous deficits but these government bodies are not immediately subject to financial intervention. As well, we must recognize that there is pressure within the community for change. In fact, other new community leaders besides the Chief want change. However, the change they seek is not just financial, it is also political, administrative and adjudicative.

Historically, one must remember that the federal government for many years provided welfare, which made First Nations passive recipients – this mentality still exists among some. The community Council also has a long history of paying for personal short-term expenses for people in trouble, which perpetuates dependency and saps community resources. Some Council payments may not be properly administered, and so payments for attending college, for example, may not be used for the original purpose.

First Nations community managers are fully aware of the deficit. However, the Council has only a 2-year term and thus planning over 5- and 10-year spans is extremely difficult. The deficit must also be seen against the reality that funding for First Nations is the result of agreements made by our ancestors to share the land.

The European ship and the First Nations canoe are going down the river of life together. Our life together requires mutual respect, which leads ultimately to responsibility for each other. Unfortunately, the Chief, once elected, has less responsibility to those who elected him and more to the department, as set out in the *Indian Act*. Co-management is not the solution – in the past it has led to collusion. The involvement of third parties in community governance may be seen as insulting to the elected Council and community.

First Nations communities want change, but an audit does not look at historic causes leading to the present deficit situation. In fact, many in the community know only the subsistence economy, and do not understand the money economy at all. It is to be hoped that DIAND will say that ‘We have a problem’. Departmental policies were not established by First Nations. Their implementation requires a real partnership. We must build together for the seventh generation.

CONCERNS:

The media is driving the issue. Department of Indian Affairs and Northern Development seems more concerned about reports in the media than long term solutions for the OFN.

The principle of self-government is primary. The Chief and Council are democratically elected by OFN members and must have the autonomy to exercise leadership.

There is no question of the existence of a deficit, however, that is the legacy of previous Chiefs and Councils. This Council is committed to a five-year plan to reduce the deficit. However, debt-financing costs have risen beyond the assumption levels in the five-year plan. This is beyond the control of Chief and Council.

In any event, what we do with money from government is really none of its business. It is making payments owed from past promises.

Co-management is not acceptable. It is another paternalistic form of interference in self-government. It is the OFN's money. It is a right not a gift from the Department of Indian Affairs and Northern Development. The Council operates many services for members that provide employment. Not only will there be a loss of autonomy, there could be a loss of jobs, which will only worsen the economic situation.

The band council reflects the will of the members and any intervention is seen as being intrusive and unnecessary. Audits are a sign of disrespect.

Why is money the bottom-line for Department of Indian Affairs and Northern Development when issues of culture, self-government, respect and the environment are what truly counts?

Approach 3: Perspective of the Department of Indian Affairs and Northern Development (DIAND)

ISSUES:

Recent media coverage related to allegations of financial mismanagement and a lack of accountability at the Original First Nation (OFN).

CONCERNS:

The media coverage is unfortunate because the issues tend always to be in the area of deficits, mismanagement and conflict between Department of Indian Affairs and Northern Development and First Nations. No one seems to write about the economic development successes or the many, many governance success stories.

In fact, First Nations deliver a host of municipal-like services: educational, social, health, housing, water, sewer. Seventy-five per cent (75%) of these services are delivered within budget. Annual reports are provided to the federal government. Where problems arise, they are investigated. As for accountability, imagine yourself as a council member in a community with 200 people living in appalling conditions – your accountability to your constituents is immediate and daily.

It is clear that pouring more money into an issue is not a viable or politically acceptable solution. The Gathering Strength program is building towards a long-term approach to self-sustainability and Self-Government.

There is always a need to balance the rights and responsibilities of all concerned parties. While the Department of Indian Affairs and Northern Development is the major focus for the media, the reality is that HRDC, Industry Canada and Health Canada are major funding partners. For the Department of Indian Affairs and Northern Development, there is a role of providing macro-management for the OFN.

While departmental employees understand the need for financial controls, transparency and financial management, they do not believe this will create the long-term self-sufficiency that the OFN have stated as their goal. Counting and auditing transactions will not generate the jobs needed for self-sufficiency. Their work with OFN has, on the whole, been positive and the Chief is very supportive of a five to ten-year strategy for economic development.

There are three priorities for joint planning for improvement:

1. strengthen governance;
2. improve education, training and employment; and
3. enhance financial management.

Throughout, the sometimes competing interests of the various stakeholders must be balanced.

In the short term, the goal is to get the budget under control and improve spending controls quickly. The deficit caused by previous mismanagement is eroding programs. In the longer term, the dependency on federal resources must be reduced for the growing young First Nations population (40% under 25, 70% unemployed). DIAND must work with First Nations and possibly consultants to capture the aspirations of the First Nations.

To strengthen governance, further work is required in such areas as enhancing portfolio management, establishing conflict of interest guidelines, and setting up planning and priority-setting systems. As well, monthly meetings of the whole community should continue to review overall progress.

On the other hand, the drive to self-government is a complex matter requiring capacity development and understanding that aboriginal cultural values are real and important. How do you balance the support for self-government with the need for demonstrable accountability within the existing Canadian inter-governmental framework?

FACTORS CONSIDERED AND SOLUTIONS PROPOSED

CONTRIBUTIONS BY PARTICIPANTS

In such situations, this we should seek to find commonalities as a basis of consensus and agreement. The idea of simply using controls to protect taxpayers is a negative concept. Rather we should emphasize the more positive orientation of best practices and results.

The focus on comptrollership is a reduction of the real issues here. In some communities, maintaining the system and the status quo is actually seen as proof of good management. Rather, we should emphasize the values of transparency, accountability and responsibility along with a zero-deficit goal.

In this situation there are different short-term and long-term timelines in play. The short-term goal is control of the budget. The OFN's goal involving increased trust, respect and responsibility is long-term.

Partnership and other positive values should be emphasized in seeking long-term solutions and achieving short-term goals. A business model should be developed through a systematic consultation process. Better communication as well as long-term and short-term visioning should be stressed.

In this situation there appear to be different meanings attributed to different values. The values of public trust and respect for First Nations are not actually conflicting, though there is the perception of mistrust on both sides, which must be addressed. Very real expectations of accountability must also be addressed.

It is to be noted that DIAND values are not clear – DIAND speaks of partnership but their presentation on this case resembles that of a cautious politician. Both DIAND and the OFN should focus on flexibility. In international trade relations, debts are regularly forgiven. The debt here should be forgiven and both parties should move forward.

There is a disincentive to long-term planning in the *Indian Act*, which provides a term of office for the Chief of Council of only two years.

There is a danger in providing funding to the band without training in how to account for the use of the funding. The capacity of the band to perform the required work is key. Seventy-five per cent (75%) of bands handle this work very well. Lessons learned, exemplary cases and best practices should be identified, described and discussed – even if the media focuses on 'bad' stories of abuse of office.

Two similar situations involving different cultural values were described for comparison.

1. In Eastern Europe during a peacekeeping mission, Canadian military personnel contributed money to rebuild a school roof to allow local children to return to school. The community used the money to rebuild the roof of their village mosque believing this to be a priority over the school.
2. In an African society with a traditional culture of sharing, the development of oil production and a cash economy led to rampant bribery and corruption.

In this situation values of fiscal responsibility, and respect and non-interference in the First Nation's funding are to some degree in conflict. Emphasis should be placed on reaching mutual agreement and understanding of what social responsibility is in this situation. Both DIAND and the OFN are going down the river in the same boat.

Wrap-up by moderators and panellists

Employees should **want** to do things with respect to values and ethics, and not be forced to behave in an ethical manner. Moreover, if employees do not share the same values, how can they balance values?

There is still not enough management support for decision-making by front-line staff in the department. The DIAND Funding Service Officer is the only face of Canada that many First Nations communities see.

Understanding between First Nations communities and the rest of Canada requires more dialogue – more ‘good stories’ in both directions. While the Comptroller General justifiably argues for prudence, probity and performance, public opinion and political parties are exploiting the situation to focus on ‘bad stories’. To get everyone onto a positive track will take a lot of time.

In a well-run First Nations community, there is a brick wall between politicians and administrators – there should be no political interference in administrative matters.

The concept of self-government is different for different First Nations. Devolution of power from the federal government to First Nations communities is not a simple matter because the *Indian Act* recognizes treaty rights and many First Nations do not want to change these treaty rights.

All stakeholders should be working from the same business model. At present, there are many different practices in place. First Nations must build administrative capacities at the community level. Since there are no provisions in the *Indian Act* on governance, these issues should be dealt with by various terms and conditions in agreements with First Nations.

In a situation like this, it is critical to drop your (possibly racist) assumptions about each participant's position and to try to find common values that can form the basis for dialogue and agreement.

In considering this case, we must remember that the Chief is in a difficult situation – the Chief must protect the values of the community as well as those in the *Indian Act*, work within only a two-year term in office at a time, live with an inherited deficit, and do all that without a common management framework.

DIAND is looking for a new relationship with First Nations precisely to allow communities to participate in Canadian economic life.

In one of the real situations on which this generic case is loosely based, the Chief is working to reduce the deficit and a third party manager (an international accounting firm) has been appointed. Last year a 10-year financial recovery and capacity development plan was instituted. Front-line officers are being used to build front-line capacity in the department to improve support to First Nations. Management and accountability assessment as well as monthly reporting are being put in place.

DIALOGUE ON PUBLIC SERVICE VALUES AND ETHICS

WORKING DEFINITIONS

VALUES - are enduring beliefs that influence attitudes, actions and the choices and decisions we make.

ETHICS - is that dimension of human thought and behaviour which is guided by standards and principles of right conduct. It involves a commitment to do the right thing.

AN ETHICAL DILEMMA - is a situation in which:

- You are unsure of the right thing to do.
- Two or more of our values may be in conflict.
- Some harm may be caused, no matter what you do.

HOW DO YOU DECIDE WHAT TO DO?

- You consider your obligation to act.
- You consider the options you have.
- You choose the best option that considers:

AUTHORITY TO ACT	VALUES
CONSEQUENCES	CARE FOR OTHERS

- If unsure, you talk to others, to those you trust, to your friends, to your ombudsman (if applicable), to your superiors or authorities. Someone is prepared to listen and help, anytime you have a concern or problem.
- You decide. You act. You accept responsibility for your actions.

PUBLIC SERVICE VALUES AND ETHICS

Extract from A Summary of the Tait Report (February 97)

The four families of core values:

The *DEMOCRATIC VALUES* of:

Responsible government. Rule of law. Support for democracy. Loyalty. Respect for authority of elected office holders. Neutrality/non-partisanship. Accountability. Due process. Public interest/public good.

The *“TRADITIONAL” PROFESSIONAL VALUES* of:

Neutrality. Merit. Excellence. Effectiveness. Economy. Frankness. Objectivity and impartiality in advice. Speaking truth to power. Balancing complexity. Fidelity to the public trust.

The *“NEW” PROFESSIONAL VALUES* of :

Quality. Innovation. Initiative. Creativity. Resourcefulness. Service to clients/citizens. Horizontality (collaboration). Teamwork.

The *ETHICAL VALUES* of:

Integrity. Honesty. Probity. Prudence. Impartiality. Equity. Selflessness. Discretion. Public trust.

The *PEOPLE VALUES* of:

Respect. Concern/caring. Civility/courtesy. Tolerance. Openness. Collegiality/participation. Fairness. Moderation. Decency. Reasonableness. Humanity. Courage.

