

## **Merit Systems in Western Democracies #1:**

### **An Introduction to Merit in Canada, the United States, Britain, Australia, and New Zealand**

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# Executive Summary

The Public Service Commission of Canada (PSC) is engaged in the promotion of Values-Based Merit which will provide the foundation for a staffing system that is both respectful of traditional values yet responsive and open to continuous improvement. In support of this initiative, the PSC Research Directorate is carrying out studies to foster a better understanding of merit values and their application.

This study is the first in a series which explore many aspects of merit systems in public services. Future topics will include, for example, the ways in which merit is institutionalised, merit and recourse, the effect of human resources trends on the application of merit, current problems and best practices, as well as selected merit tools.

This paper presents a comprehensive introduction to the value of merit both in the Canadian public service, and in other Western democracies: USA, Britain, Australia, and New-Zealand. It draws on many sources: government official publications and documents, contracted papers, and academic articles.

## Highlights

The point-of-departure is the observation that the Canadian public service has an explicit merit system, one which is based on the Public Service Employment Act (1967). In it, merit is defined as fairness, equity and transparency. Some interesting points of comparison with other countries are as follows:

- Like Canada, the United States and Australia are examples of an explicit merit system of employment: each legislates its merit principles, and assigns to a specific organisation the responsibility of ensuring compliance to them. By way of contrast, Britain has an implicit merit system which is based on documents published by the Office of the Civil Service Commissioners (OCSC), and the Office of the Commissioner for Public Appointments (OCPA). Interestingly, there is more discussion of ethical behaviour in New Zealand than there is of a (specific) merit system of employment.
- All of the countries that are discussed in this paper have identified and implemented a family of values with which they associate merit.
  - In the United States, these values include fairness, openness, equity, performance-based recognition of employees, integrity, efficiency, effectiveness, performance-based retention, and learning.
  - In Britain, the OCSC family of values to which merit belongs includes openness and fairness. And the OCPA's framework of associated values includes ministerial responsibility, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality.
  - In Australia, the group of values to which merit belongs includes apolitical, no discrimination, the highest ethical standards, accountability, responsiveness, service delivery, high quality leadership, cooperative workplace relations, a good workplace, a result focus, equity in employment, access to Australia Public Service employment, a career-based service, and review of employment decisions.

- And in New Zealand, the values of the State Services Commission Code of Conduct include, for example: impartiality, good communication, safe working conditions, equity, the opportunity to enhance individual abilities, the absence of harassment and discrimination in the workplace, appropriate disciplinary procedures, and fair redress mechanisms.
- Two initiatives are of particular interest to the PSC as it tries to formulate its own values framework. They both appear to be useful tools for specifying potentially ambiguous terms, and for making them relevant to a work environment:
  - First, Australia has just entrenched in law a Statement of Values in which a concrete definition of merit was included. Also, the new Public Service Bill provides a four-part definition of merit which emphasises the relative qualities of candidates for employment. It describes merit as the "primary consideration" in employment decisions, not the sole one. One stated concern is that as these additional criteria are not specified, they could later be manipulated for political purposes.
  - Second, Britain is presently conducting a survey on its public service vision and values and OCSC is providing an interpretation of the values that merit holds. This interpretation includes a commonsense explanation of the objectives of the merit principle, as well as the need for departments and agencies to provide further training to managers and assessors; it also emphasises concrete suggestions for applying the values throughout the selection process.
- Many countries make an explicit distinction between "process" and "results-oriented" values.
  - New-Zealand and Australia are the two countries which place the most emphasis on results-oriented values. In Australia, there has been an emphasis on creating a 'flexible operating environment' for Agency Heads.
  - Like Canada, the United States similarly argues that it should not be a question of emphasising 'results' to the detriment of 'process', but rather of balancing these two sets of values. Specifically, most people in the United States agree that managing for results is an appropriate objective. The Merit System Protection Board notes, however, that the transition from 'process' to 'results' is a difficult one. It also suggests that 'insufficient attention to regulatory compliance is both unfortunate and short-sighted'.
  - Lastly, there is a potentially useful comparison between the organisations which fall outside the definition of the Canadian public service, and the concern about Crown entities in New Zealand. Ethics or values frameworks such as the Code of Conduct do not apply to Crown entities—that is, non-departmental government organisations which are outside the legal Crown. Recent responses in New Zealand include a series of reforms entitled "the Crown entities initiative," as well as several discussion papers on this topic.

# An Introduction to Merit in Canada, the United States, Britain, Australia, and New Zealand <sup>1</sup>

## 1. Introduction

The framework in which public service decisions take place is generally referred to as a merit system. It is what gives decisions their unique character.<sup>2</sup> Nevertheless, merit systems vary from one country to another. Not only that, people often disagree with regard to the substance of their own merit system. Everyone knows that decisions should be made fairly. Yet the structure which supports these decisions remains unclear or vague. And this problem is exacerbated by the current emphasis on 'new' values, an emphasis which is masking the fundamental character of merit.

In more specific terms, the American Merit Systems Protection Board (MSPB) observes that the theme of 'let the manager manage' has given the concept of regulatory compliance negative connotations.<sup>3</sup> Similarly, the Tait Report notes that "the cumbersome nature of the appointment system designed to protect the principle of merit has been one of the chief sources of discontent and one of the primary motives for public service reform".<sup>4</sup> It argues, however, that while there is a trend towards giving front-line managers more human resources responsibilities, public sector organisations cannot have as much flexibility as private sector organisations. The reason is that there is a need to maintain public confidence in government institutions.

Taken together, then, these observations indicate the necessity to present a comprehensive introduction to merit both in the Canadian public service, and in other Western democracies. Given the ambiguity of certain important terms, however, as well as the looseness with which they are sometimes used, it is helpful to begin with a series of working definitions:

**Values:** The individual principles or standards that guide judgement about what is good and proper.

**Ethics:** A term which expresses the rules that translate characteristic ideals into everyday practice.<sup>5</sup>

**Merit:** A term which expresses the worth of a potential employee to a specific organisation. It combines his or her education, skills, experience, and background insofar as these things are relevant to performing a specific job well.

- **Relative Merit:** Evaluated competitively, i.e., in relation to other potential employees.
- **Individual Merit:** Evaluated individually, i.e., in relation to a defined standard of competence.

**Merit System:** An organisational structure through which merit is protected and promoted. There are two general types:

- **Explicit merit systems:** They have a legal foundation, and the organisations which are responsible for them have their origin in specific pieces of legislation.
- **Implicit merit systems:** They are based on customary or traditional behaviours, and are articulated through the publications of relevant organisations.

With the aid of these definitions, the following paper looks at the value of merit. More specifically, it examines the central merit documents, the values which are associated with merit, any relevant legislative change, the scope of coverage, as well as possible group preferences in Canada, the United States, Britain, Australia, and New Zealand. The first section of this paper presents Canada in a comparative light. Subsequent sections focus on the remaining countries; in doing so, they develop in greater detail certain important points.

## 2. Canada

The central merit document in Canada is the *Public Service Employment Act* (1967). It gives the Public Service Commission (PSC) the legal responsibility for protecting and promoting merit-based staffing.<sup>6</sup> This is similar to sections 2301 and 2302 of the **United States Code**, as well as the new Public Service Bill in **Australia**. All three countries are examples of an explicit merit system of employment: each legislates its merit principles, and assigns a specific organisation the responsibility of ensuring compliance to them.

The PSC defines merit in terms of three related values: fairness, equity, and transparency. Fairness refers to objectivity, and to not bestowing an unfair advantage upon any candidate; equity refers to the provision of “reasonable access to competitive opportunities to potential candidates”, and to greater representativeness; transparency refers to results

that are clear and easily explainable to everyone concerned.<sup>7</sup> In more general terms, the family of values to which merit belongs includes: non-partisanship, competency, representativeness, fairness, equity, transparency, flexibility, and efficiency or affordability. The PSC is responsible for the first six of these values, while individual departments are responsible for the last two. With a policy to delegate as many day-to-day staffing responsibilities to individual departments as possible, the PSC meets its responsibility through the accountability framework of individual *Staffing Delegation and Accountability Agreements*.<sup>8</sup>

With regard to these issues, there are several points of comparison. **All of the countries** that are discussed below have identified and implemented a family of values with which they associate merit. More precisely, **Australia** has just entrenched in law a Statement of Values, while **Britain** is presently conducting a survey on its public service vision and values.<sup>9</sup> Both of these developments are extremely pertinent to the PSC as it tries to formulate its own values framework. Also of interest is the concrete definition of merit that **Australia** has included in its Statement of Values. Both this definition as well as the interpretation of values that **Britain** provides appear to be useful tools for specifying potentially extremely ambiguous terms, and for making them relevant to a work environment.

Continuing with the same theme, it is interesting to note that the PSC makes an explicit distinction between ‘process-’ and ‘result-oriented’ values.<sup>10</sup> This distinction seems to follow the counsel of the Tait Report, which argues that

“there is clearly some kind of trade-off between due processes which protect merit, equity, and neutrality on the one hand, and speed or organisational responsiveness and performance on the other....Over the past two decades there has been a discernible shift in the public service appointment process to favour greater managerial discretion. We do not suggest that this is a harmful trend in itself. But we do think that if it goes too far, without appropriate safeguards, it could undermine the institution it seeks to serve by creating the appearance, if not the reality, of bureaucratic patronage.”<sup>11</sup>

It is also interesting to note that PSC does not have an explicit hierarchical order with regard either to ‘process-’ and ‘result-oriented’ values, or to the values as a whole.<sup>12</sup> It prefers instead to balance them on a case-by-case basis. The **United States** similarly argues that it should not be a question of emphasising ‘results’ to the detriment of ‘process’, but rather of balancing these two sets of values. **Australia** and **New Zealand** are



the two countries which place the most emphasis on 'results-oriented' values. With regard to **Australia**, however, its new Public Service Bill establishes the Public Service and Merit Protection Commission (PSMPC) as the arbiter in any future dispute over the relative importance of specific values.

The Canadian merit system applies to the public service as defined by the *Public Service Staff Relations Act (1967) (PSSRA)*. And "Schedule 2" of the *PSSRA* provides a list of the government organisations which fall outside the limits of this definition. These organisations include, for example, the National Research Council, the 'spin-off' companies that it creates, and the Parks Canada agency. The potential problem that they pose (in terms of merit protection) makes the concern about Crown entities in **New Zealand** relevant the PSC. Apart from this, the *Public Service Employment Act (1967)* establishes preferences for at least two different groups. The first is "disadvantaged persons", and may include women, aboriginal peoples, individuals with disabilities, and visible minorities.<sup>13</sup> The second group is war veterans, and may include ex-soldiers as well as widows (or widowers).<sup>14</sup> Both **Britain** and the **United States** similarly identify certain groups which deserve preferential treatment. The goal in **Britain**, at least, is 'to provide *flexibility* in order to meet the needs of the public service'.

### 3. The United States

The American merit system of employment is explicit. For it is based on legislation which outlines acceptable human resources practices in the federal public service. The central merit documents are sections 2301 ("Merit System Principles") and 2302 ("Prohibited Personnel Practices") of the *United States Code*. The first merit principle states that "recruitment should be from qualified individuals from appropriate sources in an endeavour to achieve a work force from all segments of society", or more generally that "all receive equal opportunity".<sup>15</sup> The second principle builds on the first, arguing that every individual "should receive fair and equitable treatment in all aspects of personnel management" (see Appendix #1).<sup>16</sup>

There are a range of values which are associated with, or which more precisely define, the concept of merit. These values include: fairness, openness, equity, performance-based

recognition of employees, integrity, efficiency, effectiveness, performance-based retention, and learning. The Office of Personnel Management (OPM) is responsible for ensuring that these values appear in human resources policies and practices. And the Merit Systems Protection Board (MSPB) provides further clarification through appeals decisions which are both “precedential and published”.<sup>17</sup> This division of tasks is based on the *Civil Service Reform Act* (1978). Most recently, the OPM created the Office of Merit Systems Oversight and Effectiveness (MSO&E) in order to ‘revitalise’ its oversight role.<sup>18</sup> This office is now responsible for reviews of agency performance in relation to established standards, it develops programs in partnership with them, and it supports research on merit-related topics.

There is currently a debate in the United States about the relative worth of ‘process-’ and ‘result-oriented’ values. Most people agree that managing for results is an appropriate objective. The MSPB notes, however, that the transition from ‘process’ to ‘results’ is a difficult one. It points to the following obstacles: current managers are conditioned to the old system of personnel management; agencies have additional procedural requirements which remain even when central ones are eliminated; it is difficult to measure results in the area of human resources; and finally, front-line managers have less support today because downsizing was proportionately greater in “central control functions”.<sup>19</sup> The MSPB argues, moreover, that it should not be a question of emphasising ‘results’ to the detriment of ‘process’, but rather of balancing these two strategies. It also suggests that “insufficient attention to regulatory compliance is both unfortunate and short-sighted, since one of the distinguishing features of a merit-based civil service is *the way in which* it achieves fair and equitable results through the consistent application of personnel laws, rules, and regulations”.<sup>20</sup> This is an important observation. For it is often overlooked in ‘the trend towards greater managerial discretion’.

In the United States, the ‘merit-based civil service’ includes executive agencies and the Government Printing Office; merit principles also apply in an indirect way to other entities in the executive branch which are not agencies.<sup>21</sup> The MSPB recently noted that there is a renewed effort to link the evaluation of all human resources policies and activities to these principles.<sup>22</sup> According to a recent study, however, in 1994 more than two-thirds of the employees were hired through ‘excepted’ or ‘special’ means—they were hired through practices that did not resemble the traditional public service model.<sup>23</sup> Beyond this, certain groups receive preferential treatment *within* the established merit system, including war

veterans and surplus employees. Taking the former group as an example, it applies to permanent and temporary positions in the executive branch (except for those within the Senior Executive Service); and it is open to ex-soldiers as well as spouses, widows (or widowers), mothers of deceased soldiers, and mothers of disabled soldiers.<sup>24</sup>

#### 4. Britain

The British merit system of employment is implicit. Certain codes of conduct guide the actions of federal employees. They continue a tradition which began in 1854 with a report to Parliament entitled *The Organisation of the Permanent Civil Service*; but they do not have the force of law. The central merit documents in Britain are the Office of the Civil Service Commissioners (OCSC) Recruitment Principles, and the Office of the Commissioner for Public Appointments (OCPA) Code of Practice (see Appendix #1). According to the former, “the fundamental principle is that appointments must be made on merit on the basis of fair and open competition”; thus “equality of opportunity must apply throughout the recruitment process”.<sup>25</sup> According to the latter, “all public appointments should be governed by the overriding principle of selection based on merit”, a principle which here is second only to that of ministerial responsibility.<sup>26</sup>

For the OCSC, the family of values to which merit belongs include openness and fairness. Merit itself is understood as the appointment of the best available persons; openness is understood as the accessibility of jobs in the public service through adequate advertisement of opportunities; and fairness is understood as the absence of bias in the assessment of candidates for employment.<sup>27</sup> The OCPA’s framework of associated values is broader. Apart from merit, it includes: ministerial responsibility, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality. One revealing point is that, for the OCPA at least, the first value is not merit; it is instead ministerial responsibility. The Commissioner of the OCPA emphasises this fact. For he describes his powers as limited, and says that “decisions on the knowledge, skills, and attitudes required in Quangos, or how a member should ‘represent’ the community, *lie with Ministers and rightly so*”.<sup>28</sup> In saying this, the Commissioner provides a clear illustration of the character of the British merit system. More generally, the current roles of the OCSC and the OCPA emerged from the *Civil Service Order in Council* (1995) and the Nolan

Committee on Standards in Public Life. The former outlined a new set of responsibilities for the OCSC, while the latter established the OCPA and provided guidance as to its future role. Both organisations are now responsible for promoting merit, auditing the performance of other bodies, and providing an appeals process.<sup>29</sup>

Focussing on the OCSC, it provides an interpretation of the above list of values.<sup>30</sup>

This interpretation appears to be a response to the potential problem of misunderstanding individual values or of misapplying them in a particular case. It includes a commonsense explanation of the two objectives of the merit principle, as well as the need for departments and agencies to provide further training to managers and assessors. The OCSC

**The two objectives of merit:**

1. nobody should be appointed to a job unless they are competent to do it; and
2. if two or more people meet the criteria for appointment, the job should be offered to the person who would best do it.

(source: 1997-98 OCSC Interpretation of the Recruitment Principles)

interpretation also provides concrete suggestions for applying the values throughout the selection process. For example, it draws attention to the consequences of advertising a position as a short-term appointment, namely, the inability to convert it at a later date into a permanent appointment; as well, it points out the lack of fairness in closing a job list before the advertised date simply because many applications have already been received.<sup>31</sup> This attention to the closing dates of job lists seems particularly important given the increased use of the internet for job postings, and thus the increased volume of applicants for positions.

OCSC recruitment principles—or more specifically, OCSC values—apply to the Home Civil Service and the Diplomatic Service. There are, however, a series of exceptions to these principles. These exceptions, in short, give preference to certain categories of employment and certain groups of employees. The goal is “to provide flexibility where it is genuinely necessary to meet the needs of the Civil Service”.<sup>32</sup> The use of exceptions is voluntary; departments and agencies are not required to use them, and they are free to develop and apply their own guidelines in this regard. The specific categories and groups to which exceptions apply are: short term appointments, secondments, re-appointment of former public servants, transfers into the public service, surplus acceptable candidates, and disabled candidates. The relevant Permanent Secretary or Agency Chief Executive is

responsible for the decision whether or not to use an exception to merit. And he or she can delegate this responsibility to other individuals in the organisation *unless* they are front-line managers.<sup>33</sup>

## 5. Australia

The Australian merit system of employment is explicit. For its structure is found in the new public service legislation of this country. The central merit document is the APS Statement of Values.<sup>34</sup> The key principles are that “employment decisions are based on merit”, and that the workplace “is free from discrimination and recognises and utilises the diversity of the Australian community it serves” (see Appendix #1).<sup>35</sup>

The group of values to which merit belongs includes: apolitical, no discrimination, the highest ethical standards, accountability, responsiveness, service delivery, high quality leadership, cooperative workplace relations, a good workplace, a results focus, equity in employment, access to APS employment, a career-based service, and review of employment decisions. There is a short description which accompanies each of these values. More importantly, perhaps, the values of merit, no discrimination, responsiveness, and a good workplace receive special treatment. Specifically, the new Public Service Bill provides a four-part definition of merit which emphasises the relative qualities of candidates for employment. This definition has received attention because it describes merit as the “primary consideration” in employment decisions, not the sole one.<sup>36</sup> The concern is that as these

**The APS definition of merit:** a decision relating to engagement or promotion is based on merit if

- A. an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process; and
- B. the assessment is based on the relationship between the candidates’ work-related qualities and the work-related qualities genuinely required for the duties; and
- C. the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- D. the assessment is the primary consideration in making the decision.

(source: section 10.2 of the *Public Service Act* (1999))

additional criteria are not specified, they could later be manipulated for political purposes.<sup>37</sup> Apart from the definition of merit, the Explanatory Memorandum which accompanies the new Public Service Bill provides further explanation of the values of no discrimination, responsiveness, and a good workplace (see Appendix #2). It states that section 3(j) of the *Workplace Relations Act* (1996) is the foundation for the concept of no discrimination, and that the *Guidelines on Official Conduct of Commonwealth Public Servants* provides a context for the notion of responsiveness. In addition, the Memorandum itself provides the framework for the principle of a good workplace.

The Commissioner of the Public Service and Merit Protection Commission (PSMPC) is required to issue written directions in relation to each of these values. Further, Agency Heads are required to protect and promote them (for a fuller explanation, see Appendix #3). This overlapping responsibility for the implementation of the APS values is one result of the new Public Service Bill, which after several abortive attempts was passed on October 20<sup>th</sup>.

One consequence of this new Bill is that the shift from 'process-' to 'result-oriented' values appears to be complete. The current Public Service Commissioner provides the following explanation of this transformation:

“until recently, the application of merit-based employment focussed on establishing and refining a process—setting specific selection criteria, correctly advertising the position, receiving written applications, convening a panel, short-listing, interviewing, obtaining referee reports, and making a recommendation to a delegate....In the new, more flexible operating environment, however, agencies can introduce more innovative recruitment promotion strategies to meet business objectives so long as these accord with the fundamental principle—the Value of merit-based employment”.<sup>38</sup>

In other words, there is no longer a single, central process which protects APS values. The emphasis is now on the differences that exist from one agency to another, the need to address them in developing specific policies, and the responsibility of individual agencies to develop innovative approaches and to ensure that their staffs are informed.<sup>39</sup>

Nevertheless, the Australian merit system as a whole applies to all department and executive agency employees. It excludes only two groups: first, individuals who work on an “honorary basis”;<sup>40</sup> and second, employees who are contracted to work a period of less than twelve months.<sup>41</sup>

## 6. New Zealand

The New Zealand merit system of employment is, in its own way, both explicit and implicit. The State Services Commission (SSC) has legislative authority to establish “minimum standards of integrity and conduct”.<sup>42</sup> On this authority it has published several important merit-related documents, including a *Code of Conduct*, a Vision Statement, and a letter outlining the standards expected of Chief Executives in particular. According to the *Code of Conduct*, the public service must use “impartial selection and appointment procedures”, and it must provide “equal employment opportunities, including recognition of the aims and aspirations of Maori and ethnic or minority groups” (see Appendix #1).<sup>43</sup>

More specifically, the first part of the *Code of Conduct* outlines a set of obligations or values that the government as employer must uphold: impartiality, good communication, safe working conditions, equity, the opportunity to enhance individual abilities, the absence of harassment and discrimination in the workplace, appropriate disciplinary procedures, and fair redress mechanisms.<sup>44</sup> The second part establishes three principles of conduct that all employees are expected to observe: fulfilment of lawful obligations to the government with professionalism and dignity; performance of official duties with honesty, faithfulness, and efficiency; and avoidance of private activities that would bring the government as employer into disrepute. Both the Chief Executives of agencies as well as the SSC may expand on the *Code of Conduct* as circumstances require.<sup>45</sup> In general, though, the former are directly responsible for maintaining and promoting its values or ethical behaviours, while the latter supports and monitors the actions of agencies.<sup>46</sup> These roles follow from the *State Sector Act* (1988), which (among other things) eliminated the traditional role of the SSC as the public service employer.

Interestingly, there is more discussion of ethical behaviour in New Zealand than of a (specific) merit system of employment. This is perhaps because public officials have more discretionary power than ever before.<sup>47</sup> The regime is described as “integrity-based”.<sup>48</sup> The focus is no longer on process, but instead on results; more precisely, it is on the goals that ought to be achieved rather than behaviour that must be avoided. In a similar way, there is an emphasis on unenforceable aspirations as opposed to punishable rules. This combination, however, is not as permissive as it may at first appear. One reason is that the departments and agencies themselves “apply more or less control according to the nature

of their business”.<sup>49</sup> This is seen, for example, in differences between delivery agencies and smaller policy organisations.

The real concern centres on the coverage of ethics or values frameworks such as the *Code of Conduct*. For they do not apply to Crown entities—that is, non-departmental government organisations which are outside the legal Crown.<sup>50</sup> At present, there are more than three thousand Crown entities. They dominate areas such as health, education, transport, and science; in addition, they control more than two-thirds of the government’s budget, and are responsible for more than half of its service connections to the public. The importance of Crown entities, then, in combination with the ambiguous position that they currently occupy, poses a potentially serious problem.<sup>51</sup> In response, the SSC is publishing several discussion papers on this topic;<sup>52</sup> and the federal government has just unveiled a series of reforms entitled “the Crown entities initiative”. It remains to be seen, however, what the outcome of this activity will be.

## 7. Conclusion

The Tait Report and the MSPB (among others) argue for a balance between traditional values such as merit, and new ones such as efficiency. Indeed, the Tait Report asserts that

“a choice between values does not always involve a choice between right and wrong....One may be more desirable than the other. One may arguably offer a better chance of good government than the other, but the choice is not in and of itself an ethical one”.<sup>53</sup>

Similarly, this paper has comparatively examined the content of merit, as well as the values that are associated with it. For example, it has presented the difference between explicit and implicit merit systems; it has distinguished between merit as fairness, equity, and transparency, and merit as ‘equality of opportunity’; it has outlined the trend away from process, and towards results; and finally, it has indicated the scope of coverage of the merit principles under consideration. With a clearer understanding of these options, it is hopefully now possible to make more informed choices about merit and its associated values within the Canadian setting.



## Appendix #1: Statements of Merit

### Canada:

#### *PSEA 1967*

10.1 Appointments to or from within the Public Service shall be based on selection according to merit, as determined by the Commission, and shall be made by the Commission, at the request of the deputy head concerned, by competition or by such other process of personnel selection designed to establish the merit of candidates as the Commission considers is in the best interests of the Public Service.

10.2 For the purposes of subsection (1), selection according to merit may, in the circumstances prescribed by the regulations of the Commission, be based on the competence of a person being considered for appointment as measured by such standard of competence as the Commission may establish, rather than against the competence of other persons.

.....

12.1 The Commission may review any qualification established by a deputy head for appointment to any position or class of positions to ensure that the qualifications afford a basis for selection according to merit.

.....

### The United States:

#### 2301. Merit system principles

.....

(b) Federal personnel management should be implemented consistent with the following merit system principles:

1. Recruitment should be from qualified individuals from appropriate sources in an endeavour to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, colour, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private

- sector, and appropriate incentives and recognition should be provided for excellence in performance.
4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
  5. The Federal workforce should be used efficiently and effectively.
  6. Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
  7. Employees should be provided effective education and training in cases in which such education and training would result in better organisational and individual performance.
  8. Employees should be
    - a. protected against arbitrary action, personal favouritism, or coercion for partisan political purposes, and
    - b. prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
  9. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences
    - a. a violation of any law, rule, or regulation, or
    - b. mismanagement, a gross waste of funds, an absence of authority, or a substantial and specific danger to public health or safety.

.....

## **Britain:**

### OCSC Recruitment Principles

In accordance with the Civil Service Order-in-Council 1995 every individual appointed to a post in the Civil Service must be selected on merit on the basis of fair and open competition, apart from the exceptional cases in Articles 6 and 7 of the Order. To this end:

- A. prospective applicants must be given equal and reasonable access to adequate information about the job and its requirements; and about the selection process;
- B. applicants must be considered equally on merit at each stage of the selection process;
- C. selection must be based on relevant criteria applied consistently to all the candidates;
- D. selection techniques must be reliable and guard against bias.

To comply with Civil Service policy, equality of opportunity must apply throughout the recruitment process.

## OCPA Code of Practice

### 1. Ministerial Responsibility

The ultimate responsibility for appointments rests with Ministers.

### 2. Merit

All public appointments should be governed by the overriding principle of selection based on merit, by the well informed choice of individuals who, through their abilities, experience, and qualities, match the needs of the public body in question.

### 3. Independent Scrutiny

No appointment shall take place without first being scrutinised by a panel without first being scrutinised by a panel which must include an Independent Assessor.

### 4. Equal Opportunities

Departments should sustain programmes to promote and deliver equal opportunities principles.

### 5. Probity

Board members of ENDPBs and NHS bodies must be committed to the principles and values of public service and perform their duties with integrity.

### 6. Openness and Transparency

The principles of open Government must be applied to the appointments process, its workings must be transparent, and information must be provided about appointments made.

### 7. Proportionality

The appointments procedures need to be subject to the principle of “proportionality”, that is, they should be appropriate for the nature of the post and the size and weight of its responsibilities.

## **Australia:**

### APS Values

1. the APS is apolitical, performing its functions in an impartial and professional manner;
2. the APS is a public service in which employment decisions are based on merit;
3. the APS provides a workplace that is free from discrimination and recognises the diverse backgrounds of APS employees;
4. the APS has the highest ethical standards;
5. the APS is accountable for its actions, within the framework of Ministerial responsibility, to the Government, the Parliament, and the Australian public;
6. the APS is responsive to the Government in providing frank, honest, comprehensive, accurate, and timely advice and implementing the Government’s policies and programs;
7. the APS delivers services fairly, effectively, impartially, and courteously to the Australian public;

8. the APS has leadership of the highest quality;
9. the APS establishes cooperative workplace relations based on consultation and communication;
10. the APS provides a fair, flexible, safe, and rewarding workplace;
11. the APS focuses on achieving results and managing performance;
12. the APS promotes equity in employment;
13. the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
14. the APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government; and
15. the APS provides a fair system of review of decisions taken in respect of APS employees.

## **New Zealand:**

### *The Code of Conduct*

...Public Service employers have the obligation to provide their employees with:

- impartial selection and appointment procedures;
- clear statements of employees' duties and employer expectations of them;
- appropriate feedback and communication on work performance;
- fair rates of remuneration for skill, responsibilities, and performance;
- good and safe working conditions;
- equal employment opportunities, including recognition of the aims and aspirations of Maori and ethnic or minority groups, and the employment needs of Maori, women, and people with disabilities;
- opportunity for the enhancement of individual abilities;
- freedom from harassment or discrimination in the workplace;
- appropriate disciplinary and dispute procedures, and opportunity for redress against unfair or unreasonable treatment by the employer.

In return, public servants have an obligation to their employers:

- to be present at work as required;
- to maintain expected standards of performance;
- to obey all lawful and reasonable instructions;
- to maintain proper standards of integrity, conduct, and concern for the public interest.

.....

The Code of Conduct establishes three principles of conduct which all public servants are expected to observe:

- I. Employees should fulfill their lawful obligations to Government with professionalism and dignity;
- II. Employees should perform their official duties honestly, faithfully, and efficiently, respecting the rights of the public and their colleagues;

- III. Employees should not bring their employer into disrepute through their private activities.

## Appendix #2: Australian Clarification of Selected Values

### No discrimination:

#### *Workplace Relations Act (1996)*

3. The principle object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by...
  - (j) respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, or social origin....

### Responsiveness:

#### *Guidelines on Official Conduct of Commonwealth Public Servants*

...Governments increasingly have to make their decisions and implement their programs in an environment of rapid social, economic, and political change, to which they need continually to respond and adapt in order to achieve their policy objectives.

To assist government in this, the public service itself needs to be able to act quickly and effectively, both in implementing policies and programs, and in providing advice to government in the process of policy development.

The main responsibilities of a public servant to the government are

- to carry out decisions and implement programs promptly, conscientiously, and effectively; and
- to provide advice which: represents the facts accurately; is impartial and maintains a high standard of professional integrity; is sensitive to the intent and direction of government policy; and is as comprehensive as practicable in setting out the advantages and disadvantages of the main options available and their consequences....

## **A Good Workplace:**

### *Explanatory Memorandum* to the new Public Service Bill

The APS provides its employees with:

1. fair and flexible remuneration and conditions of employment;
2. fair and consistent treatment, free of arbitrary or capricious administrative Acts or decisions;
3. an environment where, consistent with the *Workplace Relations Act* (1996), employees have the freedom to join industrial associations of their choice, or not to join industrial associations; and
4. opportunities for appropriate training and development.

## **Appendix #3: The Implementation of APS Values**

### **Implementation:**

The new Public Service Bill provides for the implementation of the APS Values in four ways. First, the Commissioner is required to issue written directions in relation to each of the values (sect. 11.1). These directions are intended both to ensure that the APS upholds them, and to determine their scope or application. In this way there is a mechanism for resolving conflicts that might arise between individual values, as well as for supporting programs for specific population groups. Second, the APS Code of Conduct requires that APS employees behave in ways that uphold the APS Values (sect. 13.11). This is a statutory Code, and is thus legally enforceable. As a result, its values reference seems to carry substantial weight. Third, Agency Heads are required to protect and promote APS Values (sect. 12). Fourth, and finally, members of the Senior Executive Service (SES) are also expected to promote them through a variety of means (sect. 35.2(c)).

### **Accountability:**

Broaching the question of accountability more explicitly, it is set within a framework of ministerial responsibility (sect. 10.1(e)). And in this framework, Agency Heads not only contribute by helping their minister meet his or her requirements to Parliament (sect. 66.2). They themselves also seem to be responsible to Parliament (sect. 66.3). The specific wording of this section is as follows: “The Head of an Executive Agency is accountable to the government, the Parliament and the public in the same way as the Secretary of a department”.



## Endnotes

1. This paper draws on many sources: government documents, articles posted on websites, information provided by the PSC library, contracted papers, and academic articles. Please note that the views of the author are not necessarily those of the Public Service Commission.
2. John Uhr, Symposium on Ethics in the Public Sector, “Integrating Ethics into Democratic Governance” (December 1998), p. 1.
3. Merit Systems Protection Board, “Civil Service Evaluation: The Evolving Role of the U.S. Office of Personnel Management” (July 1998), p. 15.
4. John Tait, Canadian Task Force on Public Service Values and Ethics, *A Strong Foundation* (Ottawa: Privy Council Office, December 1996), p. 30.
5. The definitions of ‘values’ and ‘ethics’ are drawn from “Ethics in the Public Service: Current Issues and Practice” (Organisation for Economic Cooperation and Development: Public Management Occasional Papers #14, 1996).
6. Government of Canada, *Public Service Employment Act* (1967), sect. 10.1.
7. Public Service Commission, “Staffing Reference Material” (April 1999), ch. 6 (Area of Selection: Policy Values).
8. *Ibid.*, ch. 1 (Delegation: Policy Statement).
9. The consultation process in Britain will continue until March 2000. The Cabinet Office will provide an interim report, however, in January.
10. See, for example, Public Service Commission of Canada, “Values in Staffing Workshop: Facilitator’s Manual” (January 1999), p. 32.
11. John Tait, Canadian Task Force on Public Service Values and Ethics, *A Strong Foundation* (Ottawa: Privy Council Office, December 1996), pp. 30-1.
12. Public Service Commission of Canada, “Values in Staffing Workshop: Facilitator’s Manual” (January 1999), p. 39.
13. Government of Canada, *Public Service Employment Act* (1967), sect. 13.2.
14. *Ibid.*, sect. 16.4.
15. Government of United States, *U.S. Code*, sect. 2301, title 5, b(1).

16. *Ibid.*, sect. 2301, title 5, b(2).
17. Merit Systems Protection Board, “Celebrating 20 Years: Building a Foundation for Merit in the Twenty-First Century” (January 1999), p. 6.
18. Merit Systems Protection Board, “Civil Service Evaluation: The Evolving Role of the U.S. Office of Personnel Management” (July 1998), p. v.
19. *Ibid.*, p. 18.
20. *Ibid.*, p. 15 (emphasis added). This suggestion reminds one of Angel Clare, who observes that “what are called advanced ideas are really in great part but the latest fashion in definition—a more accurate expression, by words in *logy* and *ism*, of sensations which men and women have vaguely grasped for centuries” (*Tess of the d’Urbervilles*, ch. 19).
21. Government of United States, *U.S. Code*, sect. 2301, title 5, a, c(2).
22. Merit Systems Protection Board, “Civil Service Evaluation: The Evolving Role of the U.S. Office of Personnel Management” (July 1998), p. 5.
23. Donald Kettl, Patricia Ingraham, Ronald Sanders, Constance Horner, *Civil Service Reform: Building A Government that Works* (Washington: The Brookings Institution, 1996), p. 17.
24. Office of Personnel Management, “VetGuide—Federal Employment Handbook: Veterans and the Civil Service” (October 1999), pp. 3-7.
25. Office of the Civil Service Commissioners, *Civil Service Commissioners’ Recruitment Code* (3<sup>rd</sup> edition, April 1998), sect. 1.1, Appendix to Part #1.
26. Office of the Commissioner for Public Appointments, *Code of Practice for Public Appointments Procedures: The Principles* (October 1999).
27. Office of the Civil Service Commissioners, *Civil Service Commissioners’ Recruitment Code* (3<sup>rd</sup> edition, April 1998), sect. 1.15.
28. Office of the Commissioner for Public Appointments, *Annual Report 1997-98*, p. 5 (emphasis added).
29. The OCSC concerns itself with the public service, while the OCPA concerns itself with executive and advisory non-departmental public bodies, health service bodies, nationalised industries, and public corporations.
30. Note that the OCPA publishes a comparable document for its list of values.
31. Office of the Civil Service Commissioners, *Civil Service Commissioners’ Recruitment Code* (3<sup>rd</sup> edition, April 1998), sects. 1.20, 22.

32. *Ibid.*, sect. 2.2.

33. *Ibid.*, sect. 2.4.

34. The Companion to this is the APS Code of Conduct. It emphasises, for example, behaviour which upholds the Statement of Values.

35. Government of Australia, *Public Service Act* (1999), sects. 10.1(b), (c).

36. *Ibid.*, sect. 10.2(d).

37. Government of Australia, *Parliamentary Debates: House of Representatives: Official Hansard* (27 September 1999, 39<sup>th</sup> Parliament), p. 7996.

38. Helen Williams, Public Service Commissioner, "APS Values at Work" (February 1999), p. 3.

39. The specific delineation of responsibilities between the PSMPC and agencies is described above. But note, for example, that according to the deck of a recent presentation by senior Australian officials, "the APS is not a single labour market".

40. Government of Australia, *Public Service Act* (1999), sect. 10.2(a).

41. Government of Australia, *Parliamentary Debates: House of Representatives: Official Hansard* (14 October 1999, 39<sup>th</sup> Parliament), p. 9282.

42. Government of Australia, *State Sector Act* (1988), sect. 57.

43. State Services Commission, *Code of Conduct* (October 1999), p. 1.

44. Note that the Code of Conduct also outlines a reciprocal set of obligations for employees.

45. *Ibid.*, p. 2.

46. Thus far, however, the *Code of Conduct* has had 'a quite limited penetration'. This will be discussed in greater detail in a future paper on merit (see n. 6).

47. State Services Commission, "Occasional Paper No. 15: An Ethics Framework for the State Sector" (August 1999), p. 7.

48. *Ibid.*, p. 11.

49. *Ibid.*, p. 13.

50. *Ibid.*, pp. 11, 19.

51.State Services Commission, *Annual Report 1998-99*, pp. 3, 4.

52.The titles of the discussion papers are: “Occasional Paper No. 17: Crown Entities: An Overview of SSC Developmental Work” (September 1999); “Occasional Paper No. 18: Crown Entities: Roles of Ministers, Crown Entities and Departments” (September 1999); “Occasional Paper No. 19: Crown Entities: Review of Board Appointment and Induction Processes” (September 1999); “Occasional Paper No. 20: Crown Entities: Review of Statements of Intent” (September 1999); “Occasional Paper No. 21: Crown Entities: Organisational Design” (still to be published).

53.John Tait, Canadian Task Force on Public Service Values and Ethics, *A Strong Foundation* (Ottawa: Privy Council Office, December 1996), p. 4.