

**Canadian Institute for the Administration of Justice (CIAJ)**

# **Ethical Issues for Legislative Counsel**

**WORKSHOP**

Facilitator for the English sessions: **Mark Audcent**  
Facilitator for the French sessions: **Louis Sormany**

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# Objectives

- To make you think about ethical issues you may face as legislative drafters, using a practical example
- To show that ethical problems are not easy to resolve and do not always have one solution
- To give you an opportunity to reflect on ethical concepts

# Definitions

- *Ethics*: the science of morality; the art of guiding conduct
- *Deontology*: the theory of moral obligations
- Ethics set out what is right and just.
- Deontology sets out our obligations, what we must do.
- Usually, ethics covers both of these concepts.

# Deontology

The aggregate of the legal rules of conduct based on ethical values that an organization applies to its members. Disregarding these rules may lead to sanctions.

- These rules cannot be set aside.
- They are stated in a general way.
- They cannot anticipate every situation.

# Ethics

What we adhere to thoughtfully, independently and responsibly. Implies that we refer to our fundamental values, what we hold dear. But also implies that we consider our environment, the context in which we work (shared values and expectations).

# Ethics, cont'd.

## Ethics:

- implies conduct that goes beyond simply following the rules;
- requires that we agree to follow the rules, even when no one is looking;
- is useful when there are no rules or when they are unclear or ill-suited to the circumstances;

# Ethics, cont'd.

## Ethics:

- guides our actions and calls on our judgment;
- is based on the organization's rules and values (the public service's statement of values; the mission and values of the organization);
- requires consistency between words and actions.

# Ethical Scenario

**“A BUMPY LEGISLATIVE PATH, EVEN  
FOR AN OFF-ROAD VEHICLE!”**



# You, the Drafter (1)

At first glance, what should you declare with regard to potential conflicts of interest?

Does your status as an active member of the residents' committee interfere with your duties as a drafter?

Does the fact that you are drafting legislation on this issue imply any limits on your ability to express your opinions?

# You, the Drafter (2)

- Does the mere fact that your brothers are snowmobile enthusiasts and members of the club put you in a conflict of interest?
- Aside from conflict of interest, does this fact entail other ethical problems?

# You, the Drafter (3)

Financial interests: which ones could create a conflict of interest?

- Interest in the family business;
- Inheritance possibility;
- Interest in the publicly traded company;
- Potential to benefit from the class action.

# You, the Drafter (4)

When all is said and done, what should you disclose and to whom?

How would you react if the senior official tells you that nothing in your case prevents you from taking on the job when you believe the opposite?

# The Drafting Instructions (1)

Who is your client? The government, the Department of Transport, the Minister of Transport, the Premier's Office, etc.?

Who is authorized to speak for the client? The project leader, the Minister, the Premier's Office, etc.?

# The Drafting Instructions (2)

If you turned down the Chief of Staff's request but agreed not to disclose it, what would you say if you were asked whether she had made such a request?

If you agreed to the Chief of Staff's request, what would you say if asked whether you were working on a second version?

# The Dinner

Is it appropriate to accept Adam's dinner invitation?

Was Adam right to introduce you as the drafter of the bill?

Are even minor gifts acceptable?

# The Confidence

Is there a rule that requires you to report Adam?

Assuming there is not, how do you feel about this?



# The Press Conference, the Convention and the Speech

Is it appropriate to appear in public at the press conference?

Is it appropriate for you to attend the party convention as an advisor, even in private?

Is it your job to prepare a speech for a minister during consideration of a bill?

# Issues to Consider (1)

## “You, the Drafter”

Conflicts of interest: Situations where there is a real potential, based on clear connections, that personal interest would supersede the public interest.

- The risk of this occurring is sufficient to create a conflict.
- The situation must be assessed objectively and logically.
- Accordingly, you cannot claim that your exceptional moral rectitude or ability to disregard your personal interests makes you immune to a conflict.
- Your interest can be moral, not necessarily financial.

# Issues to Consider (2)

## **“The Drafting Instructions”**

- Loyalty: Clearly identify to whom you owe your loyalty since conflicts are possible on many levels: client vs. hierarchical superior; department vs. government; public service vs. political power.
- Transparency: Related to loyalty; demanding secrecy often runs counter to loyalty in loyalty conflicts.

# Issues to Consider (3)

## “The Dinner”

Basically, ordinary gifts and invitations of modest value are acceptable.

But other factors must be considered:

- Who is offering me the benefit?
- What is the motive?
- What are the circumstances?
- In public or in private?
- Am I normally offered such a benefit?
- Is it money or something else?
- Could the benefit be perceived as affecting my independence?
- Could the benefit cause trouble for my department or organization?

# Issues to Consider (4)

## **“The Confidence”**

Conflicting values: loyalty to my colleague vs. loyalty to my department; privacy rights vs. the department's interest.

Even where there are rules for reporting someone, when is it mandatory?

# Issues to Consider (5)

## **“The Press Conference, the Convention and the Speech”**

Clearly distinguish government activity from partisan activity.

Drafting a law is part of policymaking and must not become a partisan political activity for the legislative drafter.

# Thanks

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