

Redrawing the Lines

Service Commissions and the Delegation of Personnel Management

Managing the Public Service
Strategies for Improvement Series: No.2

Charles Polidano
Nick Manning



Commonwealth Secretariat

Managing the Public Service: Strategies for Improvement

A Commonwealth Secretariat publication series

This major publication series provides guidance to public service managers and policy-makers in areas of current concern. *Managing the Public Service: Strategies for Improvement*, provides the reader with access to the experiences and the successes of those many elected and appointed officials who are working with similar problems within comparable structures, and who are determined to make improvements. The lead publication for the series, *From Problem to Solution*, sets the scene and illustrates the remarkable commonality of both the pressures for change and the responses, and draws conclusions for sustainable impact. Subsequent publications in the series examine topical issues in detail.

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The publication of both series is funded by the Commonwealth Fund for Technical Co-operation.

Mohan Kaul
Director
Management and Training Services Division

Redrawing the Lines:
Service Commissions and the
Delegation of Personnel Management

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FOREWORD

A strong and achieving public service is a necessary condition for a competitively successful nation. The Management and Training Services Division of the Commonwealth Secretariat assists member governments to improve the performance of the public service through action-oriented advisory services, policy analysis and training.

Commonwealth co-operation in public administration is facilitated immeasurably by the strong similarities that exist between all Commonwealth countries in relation to the institutional landscape and the underlying principles and values of a neutral public service. In mapping current and emerging best practices in public service management, the Management and Training Services Division has been able to draw on the most determined, experienced and successful practitioners, managers and policy-makers across the Commonwealth. Their experiences are pointing the way to practical strategies for improvement.

This new publication series, *Managing the Public Service: Strategies for Improvement*, provides the reader with access to the experiences and the successes of elected and appointed officials from across the Commonwealth. The lead publication for the series, *From Problem to Solution*, sets the scene and illustrates the remarkable commonality of both the pressures for change and the responses. This publication and its companion volumes examine topical issues in detail.

The series complements other Management and Training Services Division publications, and very particularly the *Public Service Country Profile* series which provides a country-by-country analysis of current good practices and new developments in public service management. Our aim is to provide practical guidance, and to encourage critical evaluation. The *Public Service Country Profile* Series sets out the **where** and the **what** in public service management. With this new *Strategies for Improvement* series, I believe that we are providing the **how**.

Mohan Kaul
Director
Management and Training Services Division
Commonwealth Secretariat

ACKNOWLEDGEMENTS

This publication owes much to a remarkable working group meeting held in Malta in May 1995. The central question for the working group was how, at a time of rapid change in the public service, personnel management systems and structures can be developed which are consistent both with the need for responsive and efficient services, able to change rapidly with little lead time, and with the need to maintain public confidence in the impartiality of the service.

The working group meeting brought together politicians, chairpersons of Public Service Commissions, and senior officials with responsibility for public service personnel management, from across the Commonwealth. The issues are common to most Commonwealth countries, but the meeting provided a particular focus for the concerns of small states. A full list of the participants is appended.

Charles Polidano of the Staff Development Organisation in Malta prepared the material from the working group for inclusion in this publication and I am grateful to him for his enthusiasm and his analytical ability in moving between complex constitutional questions and specific managerial options.

Very particular thanks are due to the Government of Malta for hosting the working group meeting, and to the many senior officials who gave so freely of their time and resources in planning and contributing to the discussions. Mr Joe Sammut, Head of the Civil Service, and Mr Joe Curmi, Director General of the Management and Personnel Office, were particularly helpful in all aspects of the meeting. Dr Kenny Anthony, General Counsel for the Caribbean Community Secretariat, has also been of immense assistance in providing additional material and in commenting on drafts as they have been developed. Thanks are also due to Greg Covington and Roy Chalmers for their assistance in the production of this publication.

The conclusions of the Malta working group have been broadened by reference to the many other public service seminars and workshops which the Secretariat has facilitated, and in discussion with the many senior officials and managers in the public service across the Commonwealth with whom we are working daily. Although in editing every attempt has been made to retain the accuracy of the contributions, final responsibility for any introduced errors or inaccuracies rests with myself. The inclusion of any statement within this publication does not imply that it is an exhaustive analysis of current trends or that it is the official policy of any government.

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INTRODUCTION

PERSONNEL MANAGEMENT IN THE PUBLIC SERVICE: THE PRESENT

Throughout the Commonwealth, personnel management in the public service has traditionally followed a highly centralised pattern. Central agencies have played an extensive role in staffing, classification, and the setting of pay levels. Traditionally, line ministries and departments have been somewhat passive recipients of centrally recruited and administered staff.

Contemporary pressures on management are challenging this centralised model but it is not simply a question of reallocating responsibility from the centre to the line. Change must take account of the distribution of powers among central agencies, and in particular the role played by autonomous Service Commissions in appointments, promotions and discipline. In response to such pressures, some Commonwealth countries – notably Australia, Britain, Canada and New Zealand – began redistributing responsibilities at the centre and delegating central agency powers to line departments during the 1970s and 1980s. In many other countries, however, personnel management remains highly centralised.

In countries retaining a centralised model, selection and disciplinary decisions are taken by Service Commissions which, in essence, were established to keep politics out of public service staffing. The role and powers of Service Commissions are constitutionally entrenched. This constitutional base of Service Commissions was considered necessary to protect the integrity of public service management at a time when the onset of independence brought many uncertainties with it. Changing circumstances have created some tensions between fixed constitutional provisions and the need for change in the public service. In many cases, the result has been complex and sometimes tense relationships between the key actors involved in managing personnel in the public service – a less than ideal foundation for the very necessary debate concerning the future of the public service.

THE CHALLENGE OF CHANGE

Service Commissions face a particular challenge at a time of rapid change in the public service. Driving change in the public service requires an organisational base able to respond to political concerns while co-ordinating managerial reforms. The constitutional entrenchment of the Service Commissions makes them intrinsically unsuited to this task. However, sustaining change in the public service, maintaining standards and identifying emerging concerns, requires a strong central agency

removed from operational responsibilities and insulated from political pressures, and here Service Commissions must take the leading role.

The distinctive nature of autonomous Service Commissions provides them with distinct competencies but equally distinct limitations in assisting programmes of public service reform. This is the case for all the agencies involved. However, Commissions are purposefully and quite properly orientated towards resisting pressure. The particular challenge which they face is to adapt and prepare themselves for a new role, while releasing some of their current responsibilities to others. Their task is to champion merit, integrity, neutrality and excellence in the public service, not to protect a particular organisational form.

SCOPE AND AIMS OF THIS PUBLICATION

This publication discusses these difficulties and explores possible solutions. Specifically, it looks at the decentralisation of personnel management, the implications this has for the role and powers of Service Commissions, and how Commissions have responded to delegation proposals. It attempts to shed light on possible divergencies in governments' and Commissions' views on public service management issues. Finally, it explores options for achieving change.

The publication includes a particular focus on small and island states within the Commonwealth, drawing comparisons with a broader range of countries. It draws particularly on the experience of countries represented at a working group meeting entitled "Managing Human Resources for Results: The Strategic Options," which was held in Valletta, Malta, from 15 to 17 May 1995. Participants at this meeting came from Australia (State of Victoria), Barbados, Britain, Canada, Malta, Mauritius, Singapore, South Africa, and Trinidad and Tobago. A full list of participants is appended.

Background information was obtained by way of a questionnaire sent to participants prior to the working group meeting. Acknowledgements are due to respondents for the comprehensiveness of their responses. The paper also draws on the proceedings of the meeting itself. Except where otherwise specified, however, the views expressed should not be ascribed to particular participants or the institutions they represent.

The views of the participants at the working group meeting have been supplemented with the observations and experiences of many senior officials and managers responsible for public service reform across the Commonwealth.

TERMINOLOGY

A note needs to be made on the use of terminology. Some public services interpret terms such as selection, appointment, recruitment and promotion in very specific ways. Nuanced interpretations are avoided here for simplicity. *Selection* is taken to mean the process of choosing someone to fill a vacancy, whether by internal *promotion* or external *recruitment*. An *appointment* is the act of placing that person in the vacant position.

Similarly, some academic writers draw distinctions among terms such as delegation, devolution, and decentralisation. Here they are taken as synonymous and used interchangeably for variety's sake.

COMMON DIRECTIONS FOR CHANGE

NEW PRESSURES ON THE PUBLIC SERVICE

At the time of drafting the constitution for independence, in most former colonies the public service was fairly small and performed a relatively limited set of functions. This situation has changed dramatically. Public service management now faces pressures from five directions.

<i>Size</i>	The public service is many times larger and performs a greater diversity of tasks than at independence, placing strain on the original centralised management structures.
<i>Complexity</i>	The responsibilities of the public service are no longer restricted to the core functions of law and order and basic infrastructure development. Social, economic and technological developments require public services of growing complexity and sophistication, placing further strain on management structures.
<i>Turbulence</i>	The growing sophistication of the economy requires that government departments keep up with constant and accelerating change in both technology and policy. Flexibility and responsiveness are paramount in this environment.
<i>Expectations</i>	The public expects more. The service's performance in areas such as service standards, cost-efficiency, equity and transparency faces increasingly critical evaluation.
<i>Workforce</i>	Social change, increased mobility, and the development of the private sector have produced an increasingly fluid labour market. This poses problems to the public service in attracting and retaining qualified staff, particularly as growing complexity means that the need for specialist staff is greater in many sectors. Centralised management makes it difficult to adjust personnel policy in step with the changing labour market.

If the public service is to play its vital role in achieving and maintaining national competitiveness for the 21st century, it must be equipped with management structures that will enable it to meet these challenges. It must also develop a value base which encourages responsiveness and welcomes change. Changing values and attitudes are fundamental to changing the roles of all agencies involved in public service personnel management.

CHANGING VALUES

Traditionally, the public service has assumed that uniformity, a hierarchical chain of command, and a lifetime career, support the key public service values of probity and integrity, and selection by merit. Current pressures on the service – and in some cases the service's failure to respond adequately to those pressures – have produced new values. These include accountability for results rather than process, responsiveness to policy directions and client needs, a commitment to efficiency, quality and transparency.¹

The new values have led to some of the old ones being questioned. Does uniformity mean consistency or stifling rigidity? Does hierarchy allow for effective control or multiple layers of red tape? Does a lifetime career make for impartiality or obsolete skills and comfortable sinecures? These values are under particular challenge when comparisons are made between management styles in the public service and the private sector.

Although traditional public service values such as probity and merit remain unquestioned, they are being redefined under the influence of the new ones. Merit, for example, used to be interpreted largely as non-politicisation in staffing. Promotion by seniority could be counted as an expression of the merit principle under this interpretation, since it ensures near-absolute objectivity. By contrast, merit is now increasingly taken to mean selecting the best candidate for a position, even at the cost of some subjectivity. This interpretation denies any intrinsic connection between seniority and merit.

In emphasising achievement, newer public service values embody some tensions.² Nevertheless, they have powered a set of reform initiatives with many common elements which have been taken up across the Commonwealth.³

NEW INITIATIVES IN PERSONNEL MANAGEMENT

Current reform initiatives in personnel management centre around five themes:

¹ Nick Manning, unpublished background paper prepared for the working group meeting (London, Commonwealth Secretariat, 1995).

² Peter Aucoin, "Administrative Reform in Public Management: Paradigms, Principles, Paradoxes and Pendulums," *Governance* vol. 3 (1990) pp. 115-137.

³ See other publications in this series.

- a move away from promotions by seniority towards other, more merit-based selection mechanisms;
- the opening and widening of career paths in order to enlarge the field of competition for positions;
- the use of effective performance appraisal systems underpinning the development of performance rewards and enabling career advancement to be linked to good performance;⁴
- improvements in incentives and reward systems for top management to make departments more responsive to policy direction;
- a concern to make the composition of the public service more representative of social diversity, both as an end in itself and to deliver greater equity in the service's treatment of different social groups.⁵

Reform initiatives stemming from these moves are an expression of governments' desire to become more efficient, effective and equitable in their operations, and to be seen to do so by the public. More immediately, they can reflect governments' dissatisfaction with the type of public servants promoted under current arrangements, and the political pressures for change triggered by frustration.⁶

All these personnel management reform initiatives have an impact on the work and responsibilities of the Service Commissions. The delegation to departments of some responsibilities for selection, promotion and discipline is widely seen as a key device for ensuring that merit is assessed very directly in relation to the work at hand. This is a frequent source of concern for Service Commissions and they can resist such changes on the basis that they represent an attempt by government to

⁴ The experience of Malta and Trinidad and Tobago indicate that the second step – linking performance appraisals to rewards – is more difficult than introducing the appraisal system itself.

⁵ Nick Manning, op. cit. See also Sandford Borins, "Government in Transition: A New Paradigm in Public Administration," report on the inaugural conference of the Commonwealth Association for Public Administration and Management, Charlottetown, Canada, 28-31 August 1994 (Toronto: CAPAM, 1994), esp. pp. 4-10.

⁶ In Britain during the 1980s, the Prime Minister became actively involved in senior level selections – until then an in-house affair – to ensure that appointees had the dynamism she sought. Her involvement raised fears of politicisation. See Royal Institute of Public Administration, *Top Jobs in Whitehall: Appointments and Promotions in the Senior Civil Service* (London: RIPA, 1987).

set a policy direction in an area which the constitution has established as the sole prerogative of the Commissions.

BROADER ASPECTS OF PUBLIC SERVICE REFORM

The pressure for improvements in the performance of the public service are impacting on all aspects of its functioning. Financial management, organisational design, and very particularly the size and cost of its operations, are under question in most settings. Other publications in this series explore the common elements of public service reform programmes in some detail⁷, but in summary it can be observed that reform programmes require a clear focal point for change with the capacity to drive some practical strategies at all levels in the public service. This raises some key questions for the Service Commissions.

On the one hand, their constitutional position orientates them towards stability rather than towards change. Quite correctly they respond uneasily to political pressure. As public service reform is always driven to some extent by political concerns, the Service Commissions are unlikely to act as the focal point for change in public service reform programmes. On the other hand, changing the policy framework for personnel management underpins most areas of reform.

In effect, change is required but the key lever to effect that change lies with the Service Commissions which are, quite properly, wary of using it.

⁷ See *From Problem to Solution, Strategies for Improvement Series: No.1*, Commonwealth Secretariat, 1995.

The Service Commissions at independence

Even in those settings where there was little apparent disagreement between Whitehall and the colonies, preparations for independence masked a multi-layered debate with inevitable tensions between paternalistic concern for a new democracy, and determination that real power should be passed to a local administration. At independence, the Constitutions of many Commonwealth countries reflected these tensions by enshrining several ideas in the Service Commissions which do not sit easily with each other.

At face value, Service Commissions simply continue the tradition established in the 19th century by the U.K. Civil Service Commission which was created ostensibly to protect "the English public from unfit appointees"⁸ by testing the qualifications of persons entering the public service. In a sense, the British were merely handing down the benefit of experience.

There was, however, another strand of thinking. A second set of ideas saw the Commissions, as established prior to independence, as interim institutions likely to be developed further as independence matured and national self-confidence developed further. "Under this legal arrangement, the locus of power clearly remained with the executive representatives of the Crown. Nevertheless, it represented an effort, albeit a cautious effort informed by a policy of constitutional gradualism, to decentralise control over the public service."⁹

Paternalism completes the complex picture. In constituting Commissions so that "no question of nepotism or political wire-pulling can arise"¹⁰, the Commissions were intended to deal with a concern that the new national leaders were likely to be less self-controlled than their colonial predecessors. "English governors could be entrusted with the care of the Civil Service, but not local elected officials".¹¹

These three dynamics – maintenance of a successful British tradition, a concern to avoid sudden and unmanageable change, and paternalism – were inevitably ingredients in the independence mix. Service Commissions embody the continuing tensions that these, not entirely compatible, ideas produce.

⁸ Some notes on Public Service Commissions in the Commonwealth Caribbean, Collins B.A.N., 1967, Vol. 16 No. 1, Social and Economic Studies, pp 1, published by the Institute of Social and Economic Research, University of the West Indies, Mona, Jamaica.

⁹ Dr Kenny Anthony, General Counsel, Caribbean Community Secretariat, in an unpublished communication to the Commonwealth Secretariat.

¹⁰ Report of the Commission of the Unification of the Public Services of the British Caribbean Area (1948-49), Holmes, Sir Maurice (chairman), p.43.

¹¹ Collins B.A.N., op. cit.

PUBLIC SERVICE PERSONNEL MANAGEMENT

THE KEY PLAYERS

The main actors in public service personnel management can be placed in three broad categories: Service Commissions, the central personnel office, and line ministries or departments.

Service Commissions usually have broad responsibility for staffing and discipline. They are autonomous from government. A Commission usually consists of a small number of commissioners backed by a permanent organisation staffed by public servants.

Precise arrangements vary from one country to another. Some countries, including Australia, Britain, Canada, Malta and New Zealand, have a single Commission covering the entire public service. The Australia and New Zealand Commissions consist of a single commissioner rather than a board.

Other countries, such as Mauritius, Singapore and Trinidad and Tobago, have a number of Commissions working in parallel with the Public Service Commission and covering specific areas of government. These are the police (all three countries), law and the judiciary (Mauritius, Trinidad and Tobago), and education (Singapore, Trinidad and Tobago). Mauritius also has a Local Government Service Commission. In each of these countries there is a degree of cross-membership among Commissions. Parallel Commissions may be serviced by a common secretariat such as Trinidad and Tobago's Service Commissions Department.

South Africa has yet another arrangement in which there are no parallel commissions, but the federal Public Service Commission sets rules and standards to which its provincial counterparts are subject.

The extent to which Commissions actually undertake staffing and discipline, as opposed to overseeing or monitoring these functions, varies widely. Britain and New Zealand are the most decentralised in the Commonwealth.

Despite the broad similarity of their responsibilities, Service Commissions vary considerably in terms of the methods by which they operate. An indication of this can be found by comparing the staff resources at their disposal.

The central personnel office is distinct from the Service Commission. It is part of the executive and fully accountable to the government, usually falling within the portfolio of the prime minister or minister responsible for public service affairs (where there is a separate

Staffing the Public Service Commissions*

At the lowest end of the scale, the Public Service Commission of Malta has 12 staff. Its counterpart in Mauritius falls in the middle of the range with 118. At the opposite end, the federal Public Service Commission in Canada has 1,950 employees across the country.

**Data on staff numbers are derived from questionnaire responses provided by the Public Service Commissions of Malta (Edwin J Borg Constanzi), Mauritius (Vishvaneden Sooben), and Canada (Michelle L. Veilleux).*

minister for this area). It is usually responsible for those aspects of personnel management that do not fall within the Service Commission's jurisdiction.

The basis for the existence of a separate central personnel office is the doctrine – common to many countries – that aspects of public service personnel management are the prerogative of the government as employer and should remain outside the Service Commission's jurisdiction. These aspects usually include position creation and classification, staff training and development, and determination of terms and conditions of employment, including the formulation of disciplinary codes of conduct, salaries and benefits.¹²

The central personnel office manages most of these areas, usually also acting as the government's agent in collective bargaining with unions. Of necessity, too, the central personnel office works closely with Service Commissions on matters such as selection criteria and procedures. The central personnel office may, with the Commission's approval, issue administrative guidelines that elaborate on the Commission's rules and procedures in these areas.

Not all Commonwealth countries make the distinction between the roles of Service Commissions and the central personnel office. In Canada, the Public Service Commission provides staff training to departments on behalf of the Treasury Board (the central personnel office). In Australia and New Zealand, both roles are performed by the Service Commission: there is no separate central personnel office.

¹² This doctrine is most clearly stated in the judgement emerging from a 1982 constitutional court case in Trinidad and Tobago (Endell Thomas v. Attorney General), [1982] A.C. 113 (P.C.).

Line ministries and departments are the third set of players in public service personnel management. Their precise role depends on the degree of centralisation or decentralisation within the system. At the very least, they will initiate selection processes, make requests for complement increases, and so on. It should also be noted that, even in a highly centralised system, ministries or departments may have a substantial degree of *de facto* power over selection, classification and the creation of career paths where specialist grades are concerned.

Ministries and departments themselves may be structured in various ways. In some countries, such as Britain and Canada, the terms “ministry” and “department” are synonymous. In other settings, departments are separate units subordinate to ministries – that is, ministerial offices. In those situations, however, ministries and subordinate departments can be unrelated to each other for administrative purposes, each organisation dealing separately with the central personnel office regarding its own staff.

This pattern is now changing as attempts are made to develop a line personnel management function. In many situations, human resource management units have been or are being created at ministry level to cater for the needs of both the ministry and its departments.

THE THREE PLAYERS

The roles of these three main actors are shaped both by principle and by pragmatism. The principle enshrined within the Commonwealth public service tradition is that some fundamental values, particularly those of merit and integrity, must be monitored by a body immune to short-term political pressures. The Service Commissions are the institutional expression of this concern.

The Commonwealth tradition is also pragmatic. Politicians have a duty to account to their electorate and, increasingly, an unavoidable requirement to report to the major financial institutions on the numbers, costs and structures within the public service. They will, and must, find methods to exercise control in these areas. If their ability to exercise that control is too severely circumscribed then official, or in the worst case, unofficial methods for exercising political control will emerge. The central personnel office and the personnel management units within line ministries reflect this pragmatic need for managerial authority to connect with political realities.

In the real world of public service, principles and pragmatism are necessary counterweights. It is the alignment between Service Commissions and the personnel management functions at the centre and in the line which can provide the necessary balance.

Extract from The Report of the Public Service Review Commission of Zimbabwe, May 1989

There are two broad clusters of responsibilities relating to the human resources of government, i.e. the public service. These are:

- ensuring the operation of the merit system in appointments, promotions, discipline and maintaining uniformity of standards throughout the service; and
- managing and developing the public service as a major instrument for economic and social development and for improving the quality of life of the citizens of the country.

These two clusters of responsibilities must aim to provide government with its most important resource: the people who make it work. They can be performed in a single structure. They can also be performed under two structures, for example:

- (a) a body, usually called a Public Service Commission, with responsibility for merit, standards and uniformity in the public service; and
- (b) a central personnel agency of government in the form of a Ministry or a Department of Personnel Management which has executive responsibility for managing and developing the service.

CURRENT ALLOCATION OF PERSONNEL MANAGEMENT FUNCTIONS

The precise distribution of staffing and disciplinary functions between the three sets of actors varies from one jurisdiction to another. In most former colonies, however, where there has not been significant public service reforms there is a common pattern which is outlined below.¹³

Where **staffing** is concerned,

- *Service Commissions* regulate the selection process, choose (or approve) selection criteria for specific grades or positions, conduct or oversee selections, and, for junior and middle-level staff, make final selection decisions;

¹³ This section looks at who carries out the functions rather than who has legal responsibility for them. In Malta, for instance, the Prime Minister is formally responsible for staffing and discipline while the Public Service Commission provides binding advice. In other countries the Commission has direct responsibility. In practice, however, this makes surprisingly little difference in the way staffing and discipline are carried out.

- the *central personnel office* manages the classification structure, creates grades and career paths within that structure, pegs positions to grades or pay levels, and approves the creation of positions;
- *line departments* initiate selections, make requests for the creation of positions or the alteration of specialist career paths, (sometimes) carry out selections under the Commission's supervision, recommend candidates for selection to the Commission, and conduct their own selections for positions below the line of delegation (where this exists).

Where **discipline** is concerned,

- *Service Commissions* regulate disciplinary procedures, determine penalties for misconduct, decide cases (usually following reports by sub-committees set up to investigate the cases), and hear appeals (although not in the case of Commonwealth Caribbean countries);
- the *central personnel office* draws up the code of conduct which defines correct or incorrect behaviour (but does not determine penalties);
- *line departments* initiate disciplinary cases and hear and decide minor cases under delegated authority.

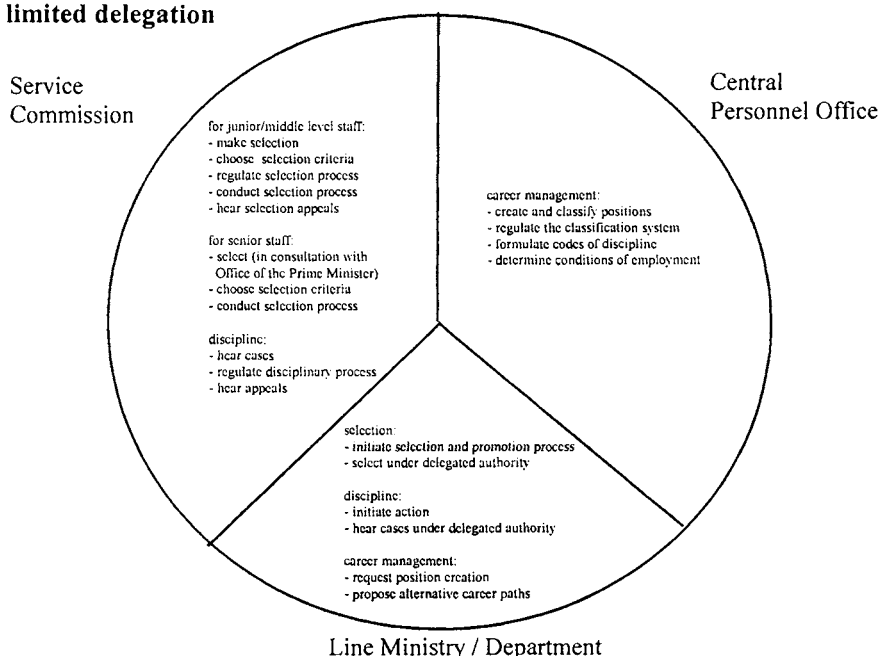
Appendix A summarises the actual distribution of functions between Service Commissions, the central personnel office, and line ministries and departments in selected countries.

DELEGATION OF PERSONNEL RESPONSIBILITIES

DELEGATION HAPPENS

Delegation refers to the re-allocation of responsibilities within the central agencies, from the Service Commissions to the central personnel office, and from the centre to the line ministries and departments.¹⁴ Despite the difficulties, there is very significant delegation in personnel management responsibilities in many settings in the Commonwealth. The diagrams below reflect the observation that successful arrangements have been made in diverse settings for very significant delegation of key aspects of personnel management.¹⁵

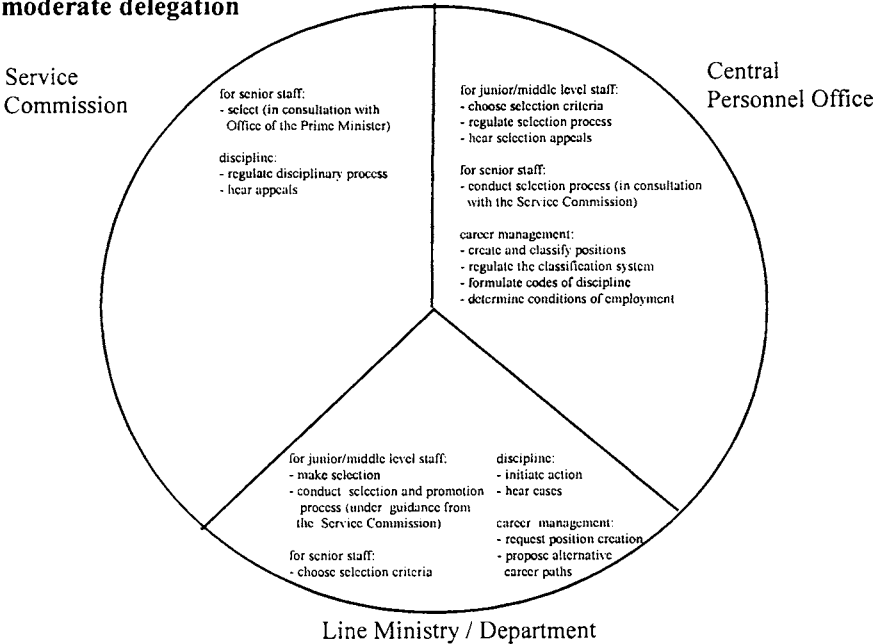
Distribution of Personnel Functions: limited delegation



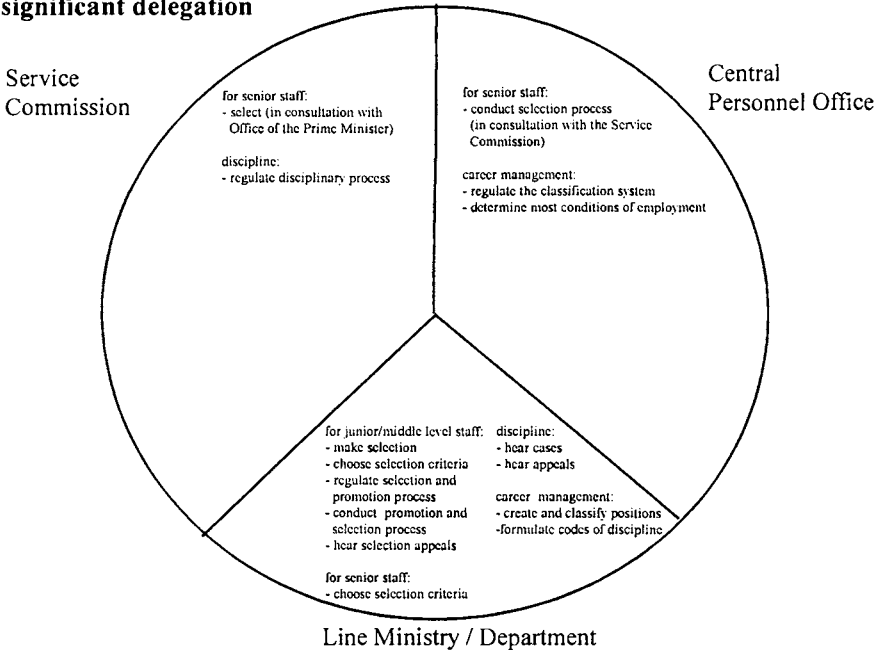
¹⁴ A more limited form of delegation occurs *within* the Service Commissions when they establish sub-committees or delegate authority to the chairperson.

¹⁵ Appendix B provides the data which underpins these diagrams, drawing on the countries described in Appendix A. Note that in the Commonwealth Caribbean, Service Commissions do not hear disciplinary appeals. The Constitutions of all Commonwealth Caribbean countries have established separate appellate tribunals. Accordingly, under the current constitutional framework, the references on the summary charts to the delegation of disciplinary appeals to line ministries and departments do not apply in the Commonwealth Caribbean.

**Distribution of Personnel Functions:
moderate delegation**



**Distribution of Personnel Functions:
significant delegation**



Broadly, there are three sources of pressure for delegation: operational efficiency; transparency; and strategic change. These three areas are considered in more detail below.

DELEGATING FOR OPERATIONAL EFFICIENCY

The first operational pressure for delegation stems from the need for a single focus for personnel management responsibilities. *Centralised* personnel management is not synonymous with *co-ordinated* personnel management. Large and growing public services have produced large and growing centres. Central personnel management offices and Service Commissions may have many departments and working units.¹⁶ An enquiry to the centre may require contact with many disparate units. Fragmentation of responsibilities is quite compatible with centralisation.

Delegation can be a short-cut to the unification of responsibilities by bringing them together within the ministry or departmental personnel management office.

Second, against the background of a general re-orientation of the public service – away from an over-riding concern with process and towards a concern for results – there is a growing need to strengthen the accountability of managers. Managers can only reasonably be held accountable for results over which they had control. If control over their staff, estimated frequently to amount to some 80 per cent in cash terms of the total resources of the public service, is held elsewhere it is unreasonable to hold managers fully to account. Perhaps more significantly, it is implausible that managers will themselves feel fully motivated to succeed.

Third, there is the increasing need for local flexibility. The overall pressures for change in the public service were noted above. Within those broad pressures, there are several reasons why local conditions are increasingly significant in staffing decisions:

- many national labour markets are increasingly complex, with significant variations in skill availability and remuneration rates throughout the country;
- the nature of work within the public service is increasingly diverse, with many highly specialist functions being carried out by small units;

¹⁶ For example, Mauritius and Canada both have autonomous bodies other than the Service Commissions with responsibility for some aspects of staffing and of discipline.

- the nature of organisations in the public service is increasingly fragmented, with organisational design tailored to suit local conditions and the needs of the specific task; and
- the workforce is increasingly appraised at local level, providing local managers with a more reliable assessment of the skills and competencies of individual workers.

Locally-specific labour markets, diverse and highly specialist functions, one-off organisational design, and locally-monitored staff competencies all point towards the need for managers at local level to be able to make key appointment, promotion and reward decisions.

DELEGATING FOR TRANSPARENCY

To some extent, delegation of public service personnel management responsibilities is unavoidable. This can be seen by looking beyond constitutional and legal provisions, and examining selection processes in more detail.

Clearly, a handful of commissioners cannot personally involve themselves in all the selections that take place within a large and diverse public service.¹⁷ A Commission can seek to overcome this constraint in two ways: first, by holding service-wide selections for grades common to several departments; and second, by appointing *ad hoc* selection boards for specialist grades (which far outnumber the common service grades). The key questions become who sits on the *ad hoc* selection boards, by whom they are nominated, and what rules they follow.

It is frequently the case that staff from the relevant line department or ministry dominate the board. They may be nominated by their department or ministry, with the Commission having little realistic opportunity to vet nominations. Because the boards are *ad hoc*, members may have little idea of how to conduct selections professionally. The selection criteria employed may be vague and loosely defined, ensuring that an inexperienced board has maximum opportunity to interpret the criteria idiosyncratically.

Additionally, although the selection board would be formally accountable to the Commission, board members may remain fully open to influence from their

¹⁷ It would be easier for a Teaching or a Police Service Commission to keep up with selections than a Public Service Commission dealing with the bulk of the public service. But cross-membership would limit even the specialised Commission's capacity.

minister. It may be fully within the minister's competence in the first place to give directions about the board membership. Subsequently, the Commission may be required to vet the board's selection decision solely on the basis of a list of candidates with a score next to each name and very little, if anything, by way of written information explaining how the board arrived at that score.

In this way, *de facto* decentralisation can develop within a system that is, at face value, highly centralised. However, the development of a system by default rather than by design establishes an erratic system in which decision-making is devolved with inadequate quality assurance mechanisms – authority over selection boards, the development of selection criteria, reporting requirements and audit mechanisms will not have received adequate attention. Unintentional delegation also fundamentally incorporates duplication of effort within the process as verification of vacancies, approval of recruitment, and preparation of job descriptions will almost inevitably remain subject to central controls.

Above all else, delegation by default is opaque as it obscures responsibility for quality in recruitment and promotion.

DELEGATING TO ASSIST STRATEGIC CHANGE

Driving major change in the public service requires a focal point, an organisational centre with the capacity and determination to undertake several key tasks:

- to co-ordinate related reform initiatives while maintaining a credible pace of change;
- to monitor the sense of ownership of large reforms by those who must implement them;
- to ensure that developments are not seen as an end point, ensuring that they allow for further changes; and
- to respond to, and to encourage, strong political commitment.

The constitutional entrenchment of the Service Commissions makes this a difficult role for them to fill. Their constitutional position, with their emphasis on protecting systems from the unwanted attentions of politicians and others, orientates them towards stability rather than towards change. The inevitable political involvement in major reform programmes sits uneasily with the enshrined constitutional independence of the Commissions.

However, Service Commissions cannot sit back and watch as major reform programmes are developed. Such programmes require them to make some profound changes in order to fulfil their overarching mandate of protecting the principles of merit, probity and integrity in the service. In essence, the Commissions must give up some responsibilities in order to assume others.

The pattern of delegation described above, can be summarised as a movement of operational responsibilities from the Commission to the central personnel office, and to the line ministries. Delegation to the line ministries is the consequence of the operational pressures already examined. Delegation to the central personnel office can be partly an interim step, a stopping point en route to full delegation to the line, and partly a deliberate change to ensure that the focal point for reform has access to some key levers of change.

To create that focal point for public service reform a special agency may be established, generally with the title of Reform Co-ordinating Unit or similar, or it may be created by adding responsibilities to an existing department such as the Ministry for the Public Service or Prime Minister's Office. In either case, the focal point for change is most commonly found in, or adjacent to, the central personnel office as both need close linkages with the political drivers or supporters of reform programmes. Delegating to the central personnel office some selection responsibilities for junior and senior staff and some responsibilities for career management, provides that focal point with some controls during a period when it must assist in driving managerial and structural change.

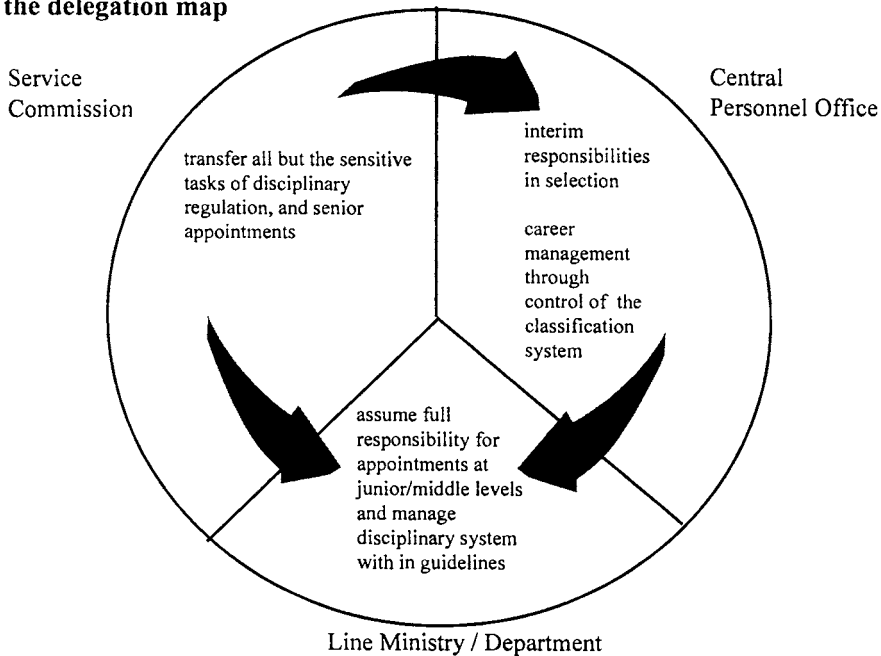
In the longer term, the central personnel office is subject to the same operational pressures to delegate as the Service Commissions. For this reason, delegation to the central personnel office is likely to be an interim position, particularly appropriate during a period of major reform, in the longer term movement towards providing comprehensive delegated authority to line ministries.

The delegation of personnel management responsibilities from the Service Commissions also assists strategic change over the longer term. Sustained performance improvements in the public service rest on two foundations:

- a strategic professional lead to which public servants can look for guidance at a time of continuing open-ended change.
- modernised regulatory frameworks for personnel management which are kept under constant review.

The Service Commissions are ideally placed to provide the professional lead, issuing guidance, hosting seminars and leading discussions on new developments,

Distribution of Personnel Functions: the delegation map



and to keep the regulations under constant review. This will, however, only be possible if they have delegated many of their operational tasks.

THE LONG VIEW

Delegation from the centre to the line is about empowering managers, enabling them to achieve results within a framework of public service values. In this sense, delegation is about the line taking on more responsibility. Delegation is, however, more about the centre doing something *different* than it is about it doing *less*.

Underneath the practical discussions about the location of particular responsibilities and the constitutional possibilities, the outlines of a new policy theme for the public service can be seen emerging across the Commonwealth. That policy theme is the development of *trust*. The public service of the 21st century must:

- inspire trust in the public that it will always deliver quality services – rising consumer expectations will allow no less;
- ensure that its managers can trust their staff – organisational efficiency is limited by the need to police staff; and

- trust its suppliers as it moves from a producer of services to a co-ordinator and purchaser – tight contract management can only go so far in ensuring compliance.

Managerial delegation is part of that process of developing trust. Behind the technical debate, there is a need to clear a strategic space at the centre of the public service to develop the excellence of the future, by looking for emerging trends, by correcting identified professional weaknesses, and by constantly nurturing public service values. These tasks will not be achieved by a centre which is preoccupied with detailed management.

Delegation in personnel management is a particularly important strand within this policy theme. Delegation to line ministries and departments is the organisational expression of a more profound delegation which is beginning – the delegation of responsibility to the individual. Public servants of the future will:

- want to work to the best of their abilities;
- take pride in their achievements;
- identify personally with organisational goals;
- be strongly self-disciplined;
- respond to opportunities to develop an understanding of the part which they play in the organisation;
- take responsibility for improving organisational performance; and
- be willing to be held accountable for their actions.¹⁸

Organisational delegation is a precursor of the larger movements to come.

THE LOGIC OF DELEGATION

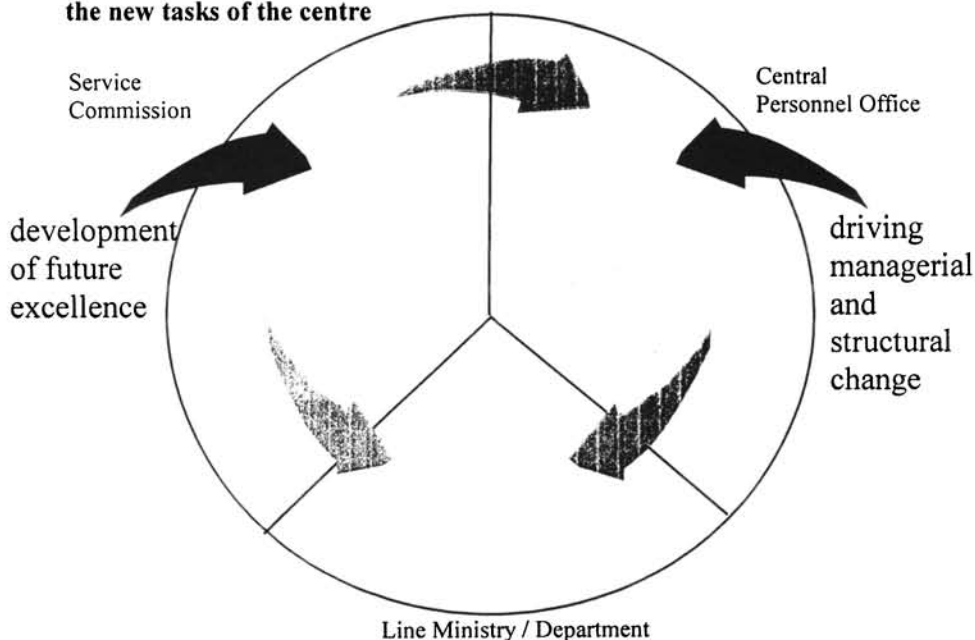
In summary, the delegation of personnel management responsibilities from the Service Commissions to the central personnel office in some specific areas, and to the line ministries and departments more generally, serves several purposes:

¹⁸ This characterisation owes considerably to material prepared by the Public Service Commission of Australia.

- it relieves operational pressures in the line ministries;
- it provides line managers with more control over their human resources, providing the basis for holding them more accountable for results;
- it renders a *de facto* delegation more transparent;
- it provides the focal point for public service reform with access to key levers of change during a period of major development; and
- it allows the Service Commissions themselves to assume the more strategic responsibilities which must be undertaken if performance improvements in the public service are to be maintained.

Delegation can be seen as the means by which the space is created at the centre for two important new tasks. In moving operational pressures away from the Service Commission, it provides an opportunity for the Commission to adopt a more strategic role concerned with the long-term improvement of professional standards and the development of future excellence. In delegating some powers to the central personnel office, it provides an opportunity for the central focal point for public service reform to operate the levers which drive managerial and structural change.

**Distribution of Personnel Functions:
the new tasks of the centre**



There is, however, an important caveat. The overall logic pointing towards delegation does not remove the constitutional duty of the Service Commissions to maintain the principles of merit, probity and integrity in the service. Delegation requires the creation of secure systems outside the Service Commissions prior to the transfer of personnel management responsibilities. Delegation does not, of itself, create such systems. The challenge for all three key players, the Service Commissions, the central personnel office, and the line ministries and departments, is to ensure the development of systems which are sufficiently robust before, rather than after, the pressures for delegation have become overwhelming.

DIFFERENT PERSPECTIVES ON DELEGATION

A VALUE GAP?

The earlier discussion of public service values is far from theoretical. Service Commissions experience very real pressures impinging on the public service and are daily conscious that the 'traditional' public service values of probity, integrity, and selection by merit, are not maintained by chance.

Change agents at other points within the public service may take these values for granted, or at the least assume that little can be done to strengthen them. Their perspective may allow them to focus on the needs to instil the values of accountability for results rather than process, efficiency, quality and transparency. This value gap then provides fertile ground in which miscommunication may grow. Terms such as 'responsiveness', or 'equity', emerging from concerns to improve the performance of the public service, can be seen from the Commission's perspective as code words for the introduction of a political spoils system. Does accountability for results mean making public servants' careers dependent on the whims of their managers? Will delegation open the floodgates to abuse in recruitment and promotions?

These different perspectives stem from the different institutional bases of the Service Commissions and the public service.

Service Commissions were created in the first place to insulate the public service from political patronage, in other words to protect the service *from the government*. Reform programmes necessarily entail a high degree of political involvement and to some extent they are led by the government. Small wonder then if Commissions react warily to some proposed changes. This basis for the Commissions is stated quite clearly in a 1982 Privy Council judgement relating to a Trinidad and Tobago court case:

The whole purpose of Chapter VIII of the Constitution which bears the rubric: "The Public Service" is to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence exercised directly upon them by the government of the day. In respect of these autonomous Commissions the Constitution contains provision to secure their independence from both the executive and the legislature.¹⁹

19 Per Lord Diplock, *Thomas v Attorney General* [1982] A.C. 113 (P.C.). See also Carla Herbert "Caribbean Public Service Reform: A Legal Perspective from Trinidad and Tobago," *Commonwealth Law Bulletin* vol. 20 (1994), pp. 690-720.

Commissioners are implicitly guardians of the constitution. This means not only keeping politics out of public service staffing, but also – by extension – preserving the autonomy of the Commission itself. This too is part of the commissioner's constitutional mandate. A commissioner may hesitate to consider government proposals on the Commission's role and functions because that would be putting the Commission's autonomy at risk. The commissioner may feel compelled by his or her constitutional role to rebuff the government's embrace.

COMPARING ACROSS THE COMMONWEALTH

This stress on the autonomy of Commissions and the insulation of the public service from untoward political influence is less pronounced in Commonwealth countries which achieved independence earlier. The Public Service Commissioner for the State of Victoria, Australia, says that "Although the function of the Office [of the Public Service Commissioner] in carrying out Statutory Responsibilities is autonomous, *the OPSC is a central agency implementing Government policy and its primary client is the Victorian Government.*"²⁰

This typifies a marked difference in approach between countries which gained independence in the post-war period and others. There are three possible reasons for this difference.

First, Commissions in countries with a longer history of independence may themselves be the product of reform. In Australia, the federal and Victorian Commissions are both successors to Public Service Boards which played more of a traditional role. The federal government passed a law replacing its board with the current commission in 1987. Victoria followed suit in 1992. A similar process took place in New Zealand during the late 1980s.

In each case, this was done as part of a wide-ranging public service reform initiative that included extensive delegation of administrative powers. The new Commissions are explicitly tasked with supporting and facilitating reform. Victoria's Office of the Public Service Commissioner defines its mission thus: "To provide leadership in best personnel management practice and protect merit and equity to ensure that the Victorian public sector workforce is well managed and prepared to meet current and future demands."²¹

²⁰ Peter Salway, response to author's questionnaire, p. 11. Emphasis added.

²¹ Salway, op. cit., p. 3.

Second, in some settings there is a degree of tension between the public service and the political executive. In Malta, for example,

... the development of democratic institutions and the progressive polarisation of politics have greatly affected the public service. With independence, the Service came under the direction of a democratically elected Executive. It would appear that neither the public service nor politicians have appreciated the implications of this development, and have not fully adjusted their expectations and perceptions of one another.

Politicians, who are subjected to diverse pressures, have succumbed to the temptation to factor the Service into the strategies of power politics. Willingly or unwillingly, the public service came to be associated with the use of public resources for partisan or private gain. As a result, trust between the political authorities and public officers on the one hand, and between the Service and its customers on the other, has been seriously eroded.²²

It is unlikely that such a lack of trust would leave relations between Service Commissions and the government unaffected.

This points to the third reason: public perceptions of public service conduct in matters such as recruitment and promotions. In some countries which became independent in the post-war period, a tradition of public confidence in the public service has yet to develop securely.²³

Whether such public perceptions are accurate or not, in small and island states a number of factors do add further pressure on norms of conduct. These factors include a tendency to deal with people on the basis of kinship or personal acquaintance rather than formal office; the development of informal networks through which part of the business of formal organisations is transacted; and a

²² Public Service Reform Commission, *A New Public Service for Malta: A Report on the Organisation of the Public Service* (Malta: Department of Information, 1989), p. 1.

²³ In Mauritius, the Police Service Commission had to wage a public campaign against swindlers who were trying to persuade prospective recruits to the police force that they could pay money to gain entry. Where norms are weak, public officers have to struggle against the perception – however false – that they are open to influence. See the *Report of the Public and Police Service Commissions (1986-89)* (Mauritius: Public and Police Service Commissions, 1991), pp. 35-36.

perceived willingness to seek preferential treatment through such informal networks.²⁴

The upshot is that perceived pressures contributing to the occurrence of selection abuses are greater in the more recently independent countries of the Commonwealth, and this may give rise to correspondingly greater fears about delegation of personnel management.

²⁴ Edward Warrington, "Taking Account of Small Scale and Insularity in Administrative Reform Strategies: The Case of Malta 1988-1990," *Economic and Social Studies* [Malta] vol. 5 (1990), pp. 25-37. See also Charles Farrugia, "The Special Working Environment of Senior Administrators in Small States," *World Development* vol. 21 (1993), pp. 221-226.

OPTIONS FOR CHANGE

WORKING WITHIN THE CONSTITUTION

In Britain, Canada, Australia and New Zealand, Service Commissions were set up by ordinary law rather than the constitution (necessarily so in Britain and New Zealand, which have no written constitutions). Provisions relating to Service Commissions were written into the independence constitutions of most other Commonwealth countries.

Although the distribution of human resource management functions is based on the constitution, the delegation of Commission functions does not necessitate constitutional change: provisions for delegation are a standard element in the constitution. Section 89 of the Mauritius constitution provides a typical example:

1. Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.
- 2.(a) The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or to any public officer.
 - (b) The Public Service Commission may, subject to such conditions as it may prescribe, delegate by direction in writing, its powers under this section to enquire and report to it:
 - (i) in the case of any professional misconduct or negligence committed by a public officer in the performance of his duties, to any appropriate statutory disciplinary body;
 - (ii) in the case of a public officer who has been seconded for duty or transferred to a body corporate established by law for public purposes, to that body corporate.

Besides entrenching the Commission's powers, the constitution usually gives the Commission power to regulate its own procedures (albeit with the Prime Minister's consent). The relevant provision of the Maltese constitution states that:

- 121.** (1) Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister as may be authorised in that behalf by the Prime Minister, by regulation or otherwise, regulate its own procedure and

confer powers and impose duties on any public officer or authority of the Government of Malta for the purpose of the discharge of its functions.²⁵

This type of provision generates some potential for impasse. The chairman of Trinidad and Tobago's Public and Police Service Commissions notes that if a Prime Minister does not agree "with the policy direction of the Commissions he may withhold his consent to any proposed delegation or procedural regulations. This latter can undoubtedly have the effect of sterilizing or nullifying the ability of Commissions to exercise their constitutional functions." Very similar concerns are expressed by the chairman of Malta's Public Service Commission.²⁶

Prime ministerial consent notwithstanding, Service Commissions clearly have sole prerogative to initiate changes to their own procedures.

AMENDING THE CONSTITUTION

Delegation can be achieved by amending the constitution. This is the approach Singapore has chosen. Its Commissions are now at the head of a tiered system of personnel boards staffed by senior ministry and departmental officials. Each board is responsible for selection at particular levels within a department or group of departments. The boards were set up by constitutional amendment.²⁷

However, usually the constitutional provisions establishing the Service Commissions are deeply entrenched. Unless the government is assured of a large enough parliamentary majority, the route to constitutional change can end in embarrassing failure. Additionally, the incorporation of precise arrangements for delegation in the constitution can build new rigidities into public service staffing and sow the seeds of future problems.

²⁵ Section 89 (2) (a) of the Mauritius constitution and section 121 of the Maltese constitution find close parallels in all Commonwealth Caribbean constitutions, among others, though in the Caribbean the delegation of powers to a public office requires the Prime Minister's approval.

²⁶ Kenneth Lalla, response to questionnaire, p. 3; Edwin J Borg Costanzi, similar source p. 1.

²⁷ Trinidad and Tobago has also sought to amend its constitution. A bill currently before parliament is intended to give the Police Service Commission responsibility for personnel management reform, make it accountable to a joint parliamentary committee, and devolve disciplinary powers to the Commissioner of Police. But the bill has yet to be passed (Gordon Draper, response to questionnaire).

Delegation in Singapore – The Organisation

With effect from January 1995, staffing and discipline in the Singapore public service have been delegated not directly to departments but to a hierarchy of personnel boards. There are three levels of boards: a Special Personnel Board, Senior Personnel Boards, and Personnel Boards.

The Special Personnel Board consists of a number of permanent secretaries and is chaired by the head of the civil service. It is responsible for promotions to upper levels (to Superscale E1) and all promotions within the Administrative Service.

The next tier down consists of six Senior Personnel Boards. Each consists of the permanent secretaries of a group of ministries. Each takes care of recruitment and promotions at mid-upper levels (Division I) for the group of ministries.

The lowest tier consists of several Personnel Boards (one for each ministry). Each board consists of senior Division I officers and is chaired by a Superscale officer from the ministry. It is responsible for the recruitment and promotion of Division II, III, and IV officers within the ministry.

Personnel boards can appoint recommending panels – comprising, for example, heads of department – to assess officers and recommend candidates for promotion. Line managers are also involved in the process. The boards are required to apply selection criteria and procedures drawn up by the Public Service Division of the Prime Minister's Office.

Service Commissions continue to recruit to the Administrative Service and promote to top levels (Superscale D and above). They also serve as a final authority for appeals against decisions by the personnel boards.

The system has worked well so far – though better in some ministries than in others. The Public Service Division's short-term role is to refine procedures and provide support to the personnel boards. In the longer term, it is expected that the boards will be taking on a more extensive and proactive role in ministry personnel management.

Source: Lim Hup Seng, Deputy Secretary in the Office of the Prime Minister, Singapore, response to questionnaire, 14 April 1995, p. 12.

LEGISLATING FOR CHANGE

An alternative to constitutional change may be to enact ordinary legislation. In Malta, for example, the government drew up a bill which sought, among other things, to set clear terms of reference for the Public Service Commission and define a number of constitutional terms which were being interpreted differently by the Government and the Commission. However, the draft ran into problems over the

constitutionality of its attempt to define the Commission's terms of reference. It is currently being rewritten. Constitutional provisions put strict limits to what can be achieved by way of ordinary legislation.

Appendix D describes the legislative and constitutional situation in the Commonwealth Caribbean. It notes that some legislative action to define the status of public servants can underpin delegation of personnel management.

CHANGING THE COMMISSION'S PERSPECTIVE

The government can try to indirectly shift the Commissions' policy direction by appointing commissioners who share its views on decentralisation. It would, of course, take time before enough vacancies could be filled for the strategy to have effect. However, as discussed above, differences in views between Service Commissions and government are not simply ascribable to the personal views of Commission members.

Commissioners' actions are shaped by the institutional milieu within which they operate. Commissioners must act with reference to the constitution which requires a particular focus on tradition, continuity and protecting the merit principle. The government may be primarily concerned with its operational needs. Commissioners may also feel compelled to safeguard their Commission's constitutionally-prescribed sphere of autonomy.

As the saying goes, where you stand depends on where you sit. Once appointed, commissioners' actions will in part be dictated by the requirements of their new position and making strategic appointments to Service Commissions may prove of limited value.

CORPORATISATION AND AGENCY CREATION

Statutory and non-statutory corporations and authorities have been a standard element in government organisation since independence. However, governments are increasingly entrusting new public functions or activities to corporations or agencies rather than government departments. In addition, a number of existing government organisations staffed by public servants have been corporatised. The

best known example is New Zealand, which adopted a wholesale strategy of corporatisation in the late 1980s.²⁸

Corporatised entities and agencies have more managerial room for manoeuvre than government departments. In addition, staffing and discipline in corporatised organisations are not normally subject to a Service Commission.²⁹ Corporatisation thus provides a significant opportunity to achieve delegation in public service personnel management.

The disadvantage of this approach is that it is incomplete. Corporatisation offers benefits, but it is no substitute for dealing with the service's problems on a service-wide basis and indeed it may divert attention from such efforts.³⁰

²⁸ *A Profile of the Public Service of New Zealand: Public Service Country Profile Series No. 5*, Commonwealth Secretariat, 1995. See also *From Problem to Solution: The strategies for improvement series No. 1*, Commonwealth Secretariat 1995, pp 29-31.

²⁹ Trinidad and Tobago has hitherto been an exception as it had a Statutory Authorities' Service Commission established by the Statutory Authorities Act. This Commission is now to be abolished (Draper, response to questionnaire).

³⁰ Charles Polidano, "Of Bureaucrats and Businessmen: The Growing Role of Public Enterprises and Authorities in Maltese Administration," *Institute of Public Policy and Administration Newsletter* [Malta] no. 7 (1991), pp. 3-8. In a similar vein, concerns have been expressed in Australia that the withdrawal of agencies from the public service impedes a whole-of-government approach to certain personnel issues. See Public Service Commission, *Submission by the Public Service Commissioner to the Review of the Public Service Act 1922* (Canberra: PSC, 1994).

A BLUEPRINT FOR SUCCESS

GET THE BIG PICTURE CLEAR

Public servants, Service Commissioners, and politicians are under pressure as never before. The pace of change within the service, rising public expectations about service quality, and increasing resistance from tax-payers are challenging all players to produce more, quicker, with less. At times of pressure, bigger pictures are harder to see.

This publication has noted the public service personnel management tasks which must be undertaken, and has noted that there are key values which must be upheld and that this requires strong institutions with real commitment to those values. It has also explored the nature of the key players in public service personnel management.

Within the Commonwealth tradition all the tasks, all the values, and all the key players are necessary. They constitute the building blocks of a neutral and effective public service. At a time of rapid change, many officials and policy-makers can lose track of this larger picture. Certainly, many public service reform debates take place from a position of determined myopia in which any change is scored according to the degree to which it represents a win for one institution or a loss for another.

Win/lose debates are inevitable, but they are also inevitably harmful. Any genuine debate on the future of the public service must begin with an acknowledgement that it is the strength of the public service in its entirety, the values it espouses, and its ability to underpin national development, which must serve as indicators of the worth of any proposed change.

At times of change, win/lose debates cannot be avoided, but they can be minimised. They must be put in a larger context – and this might require a determined programme of awareness-raising discussions involving the highest levels of government.

ESTABLISH THE DIALOGUE

Within the Commonwealth, incremental change is the most commonly favoured approach to public service personnel management delegation. Successful incremental developments must meet the requirements of all stakeholders.

The first step is to establish a mechanism for on-going dialogue between the Service Commissions and the central personnel office. Representatives should ideally be at the highest level: Commission chairpersons on the one hand and on the other the head of the public service, together with the head of the central personnel office.

The relationship between the central personnel office and the Service Commissions inevitably raises issues of co-ordination relating to detailed aspects of selection and discipline. These should be dealt with at a lower level. The top-level meetings should serve primarily as the forum where both government and Service Commissions – particularly Commissions – can define their requirements in relation to a decentralised personnel management system. Under what conditions would a Commission be willing to begin delegating its powers? What sort of support would a Commission require from the government? What sort of safeguards would it want to maintain within a decentralised system?

An additional set of considerations may have to be addressed where ethnic and social diversity is a particularly sensitive issue. Public perceptions may be that selection decisions under a decentralised system would be biased against one group, particularly where the upper echelons of the service are perceived to be dominated by a different group. Where there are centrally-administered mechanisms to balance group representation within the public service, there will be particular pressure to retain these mechanisms in force.

A necessary solution in this situation may be to delegate at least some staffing powers from the Service Commission to the central personnel office rather than directly to departments. In any event, it is the regulatory framework that is managed and updated by the Service Commission which must ensure that ethnic representivity is safeguarded. For example, the Australian federal government sets representation targets for departments.³¹

IF DELEGATION IS TO HAPPEN – START NOW

Constitutional change may or may not be a requirement in the long term, but the government should pursue any progress that can be achieved under existing arrangements. Whereas delegation from the Service Commissions may have constitutional implications, it is within the gift of government to amend the rules and regulations administered by the central personnel office and the Ministry of Finance which act as central controls and restraints on line ministries. In addition

³¹ See Public Service Commission (Australia), *op. cit.*

to the managerial benefits associated with delegation, reallocating responsibilities from these units at the centre to the line can facilitate the broader debate in several ways.

First, it sends a signal throughout the public service that the government intention is to empower managers and line ministries – not to disempower the Service Commissions.

Second, it establishes that it is not government intention to replace one central control agency, the Service Commission, with another, the central personnel office. A clear marker is placed that the overall intention is to delegate powers to the line

The path of delegation in the United Kingdom

Delegation in the British civil service has been a very gradual process. It began in 1964 when the recruitment of clerical staff was devolved to departments, though the Civil Service Commission (which was responsible for external recruitment) still continued to approve appointments. Clerical recruitment was devolved to departments altogether in 1983. Internal promotions had never been under the purview of the Civil Service Commission.

In 1991, all recruitment below Grade 7 was also devolved, and in 1995 the cut-off point was further raised to Grade 5 (a senior management level). In addition, the centre is also in the process of delegating power over pay and grading to departments: the idea of a single, centrally-maintained classification structure for the civil service is coming to an end in Britain.

The role of the Civil Service Commission is now to issue standards of conduct, to make external appointments down to Grade 5, to hear appeals, and to commission selection audits. The centre makes internal appointments at Grades 1 to 5, issues broad rules or guidelines on selection, and promotes best practice within departments.

Within the line, managers are responsible for selection, discipline, performance rewards and career development. Personnel management units have come into their own as contributors to departmental personnel strategies and policies, and providers of support services to line managers. These units are responsible for pay and grading below Grade 5, succession planning, auditing and monitoring line performance, and providing services in connection with selection, discipline, and training as requested by line managers.

Source: Hugh Taylor, Head of Management Development Group, Cabinet Office, U.K., presentation to working group meeting, Malta, 15 May 1995.

– not to reallocate them within the centre. There are some cautions to be noted here, very particularly, the need for secure systems in the line ministries capable of assuming the delegated responsibilities and the points raised earlier concerning

the need to be seen to be exercising tight central control over staffing in situations where questions of ethnic and social diversity are highly politicised.

Finally, as in any change management exercise, the most difficult aspect of change is to establish that any change is possible. Institutional habits become deeply engrained quickly, and change appears to be all but impossible. Small incremental changes indicate that change is possible and achievable.

Maximising the opportunities existing within the current constitutional arrangements as an initial step is a crucial pragmatic step. To emphasise the possibilities that exist, Appendix D provides an analysis of the constitutional position in one region, the Caribbean, to illustrate the degree to which rapid change is possible.

BUILD A CONSTITUENCY FOR CHANGE

Support from interested parties and the general public is crucial. The creation of a broad consensus in favour of delegation will provide impetus to the process and make it harder to justify reluctance to accept change.

This inevitably requires that the concerns of the various stakeholders are dealt with sensitively and accommodated where possible. The degree to which issues such as ethnic and social representation may influence the course of delegation has already been noted.

Gaining support from the general public calls for a different approach. The public have no reason to be concerned with the precise distribution of functions between Service Commissions, the central personnel office and line departments. The public's concerns centre around the speed and quality of service and value for money: administrative procedures only receive attention when they are seen to be getting in the way of these requirements. In these circumstances, making a public case for delegation will mean explaining in as simple and graphic terms as possible how procedural changes can make it easier for managers to offer more efficient services or save money.

ALLOW FOR THE POSSIBILITY OF RETREAT

To be acceptable to Service Commissions, agreement on a programme of delegation would probably depend on there being provisions for retreat. The Commissions would want to "test the waters" and retain the option of reversal if initial delegations do not work out well.

This possibility could be introduced through instruments of delegation that are time-limited and can only be renewed by the Commission's explicit decision. Alternatively, delegation agreements might provide for revocation by the Commission if it appears that the delegated powers are not being used well.

This may seem unsatisfactory to the government on the tactical grounds that the Commissions will insist on a retreat at the first sign of difficulty, rather than working through any short-term implementation difficulties. However, such a risk must be accepted by government if it is to offer any reassurance to the Commission that it has a pragmatic rather than ideological commitment to delegation as a route towards service improvement.

INTRODUCE A POSITIVE FRAMEWORK FOR CHANGE

Shifting responsibilities is unsettling, for agencies at the centre and for line ministries and departments. Both the removal and the addition of powers cause concern and resistance. The ideal change model is one in which the overall process for reallocating responsibilities is clear and well understood. For the reasons discussed in this publication, delegation is unlikely to attract unanimous support, but procedural transparency will assist.

A positive framework for change consists of a set of safeguards showing how the risks associated with delegation are to be managed and minimised. Delegation requires re-regulation, not de-regulation. Delegation of personnel management within the public service is not the establishment of a free-for-all in which line ministries and others choose local procedures while the centre looks on powerlessly. A positive framework will signal to the public service that delegation will happen as and when certain conditions are met.

A positive framework is the guarantee that when and where delegation happens, safeguards will be in place. The framework might indicate that delegation will be accompanied by:

- clear definition of lines of accountability between departmental heads, heads of ministries, and Service Commissions, establishing explicitly how responsibilities are allocated;
- comprehensive guidance to line ministries on the development and application of selection criteria;
- guidance on the composition, operating procedures and reporting relationships of selection boards;

- unambiguous guidance on appeal mechanisms.
- a clear framework of accountabilities ensuring that appointments and promotions are made on merit and within allocated budgets.

Selection methodology is one of the most widely criticised aspects of central personnel management. Appendix C provides a model methodology which might be issued to line ministries and departments within a positive framework for delegation.

BUILD LINE MANAGEMENT CAPACITIES

As delegation proceeds, it will become important to ensure that ministries and departments have the capacity to exercise their new powers competently and effectively. Many countries have found that this means creating specialised personnel management units in the departments and equipping them with the necessary expertise.

Trinidad and Tobago is setting up human resource management units in ministries, to be staffed by professionally qualified public servants. Malta too is setting up model human resource branches in some ministries as a prelude to establishing dedicated units in all ministries.

In Malta, ministry human resource units will cater to the needs of departments within the ministerial portfolio. They are part of a developing administrative structure in each ministry which is headed by a director of corporate services. The reason for locating the decentralised personnel function in ministries rather than departments is to gain economies of scale. Some departments have little more than a handful of staff and clearly could not sustain an upgraded personnel function.

There are two considerations to bear in mind in establishing ministry personnel units. First, such an initiative entails a risk of re-centralisation within the line even as delegation from the centre is sought. Delegated powers should be placed in the hands of line managers not personnel units: these units should play a supporting and enabling role.

Second, consideration should be given to the stage at which it is most appropriate to introduce ministry personnel units. Existing personnel offices may be quite capable of handling the powers that are likely to be included in the first stages of a programme of delegation. More sophisticated personnel units would be required at a later stage. Delegation in Britain has followed such a gradual course, with departmental personnel offices taking on significant new roles only at a relatively late stage in the process.

Stages of Delegation			
<i>Stage of Delegation</i>	<i>Role of Commissions</i>	<i>Role of other main actors</i>	<i>How standards are monitored by Commissions</i>
limited	Specification of rules, procedures for selection and discipline	Central agencies specify rules; line managers take delegated decisions; Department HR units play limited role as yet	Detailed monitoring to ensure that rules and procedural requirements are followed
moderate	Shift from specification of rules to setting of standards, values, guidelines	Central agencies set standards; Department HR units begin to take on importance	Auditing of selection processes to test against standards
significant	Setting of core values, standards only	Department HR units play central role in departmental personnel management	More general auditing; constant review of regulatory framework

CREATE AVENUES FOR ACCOUNTABILITY

Delegation will require the gradual development of an accountability structure by which line managers can be held accountable for the management of their staff. In its fully developed form, this structure operates at three levels: individual, organisational, and service-wide.

- At the *individual* level, targets, goals or standards are set in order to evaluate the line manager's ability to use his or her delegated authority well. This implies the existence of an effective performance management system which includes the management of staff as one of its key areas of assessment.
- At the *organisational* level, a department needs to ensure that the personnel decisions taken by line managers and the policies set by its personnel unit are directed to the attainment of the department's organisational goals. This means a system of organisational planning that links objectives to overall goals and ties these to individual performance targets for managers.

- At the *service-wide* level, Service Commissions and other central authorities which are delegating their powers must monitor the exercise of delegated powers by departments and take some form of corrective action where deficiencies are identified. Central monitoring may also be backed up by a requirement to report to the legislature on the exercise of delegated powers.

Compliance costs must be borne in mind and these accountability requirements may be unnecessarily elaborate at an early stage of delegation and should be developed as a delegation programme proceeds.

The introduction of formal accountability structures carries a risk that preoccupation with written reporting obscures the underlying aim, which is to monitor and improve performance.

TRAIN USERS OF THE NEW SYSTEM

Training will play an essential role in the introduction of any new system. Line managers must be familiarised with the system and given guidance on how to operate it. A “critical mass” of specialists capable of advising line managers and handling the more technical aspects must be built up within line departments, the central personnel office, and the Service Commission’s permanent staff.

In addition, special senior-level seminars will assist as a prelude to discussions about change between the government and Commissions. Participants would include the most senior public servants in the prime minister’s office and the Commissions’ Secretariats, as well as Commissioners themselves.

The purpose of the sessions would be to familiarise participants with the value to and potential role within the system of modern, well-designed selection mechanisms. They could provide valuable common ground for the discussions.

ENCOURAGE THE DEVELOPMENT OF A NEW ROLE FOR COMMISSIONS

The role of Service Commissions is significantly different in a decentralised personnel management system. One stage removed from the management detail, the Commissions will focus on the monitoring of staffing and discipline, the periodic updating of procedures and guidelines, the renewal of delegation agreements, and the exploration of further delegation of powers once the initial system is refined and evaluated.

Monitoring the Use of Delegated Powers

In Canada, the federal Public Service Commission delegates its authority to heads of department (known as deputy ministers) by means of formal delegation agreements. Each agreement is a legal instrument agreed between the Commission and the deputy head. It defines what authority is delegated and establishes performance standards according to which the deputy head's exercise of the delegated powers will be reviewed. Examples of such standards include:

Limited use of non-permanent appointments

- 80 per cent of term employees to have less than two years' continuous service with the department;
- 95 per cent of acting appointments to last less than twelve months.

Employment equity

- recruitment rates for specific social groups to be consistent with labour market availability;
- promotion rates for specific social groups to be consistent with internal availability.

Competitiveness in selections

- term and permanent recruitment to be by competition except for specific exceptions;
- reclassification of positions to occur only where incumbents have held the position for at least six months.

Quality of selection process

- qualifications to be linked to job responsibilities, to be consistent with Standards for Selection and Assessment, and to be measurable;
- assessment tools used to judge competency of candidates to be appropriate to position, qualifications, and chosen selection methods.

Reviews are carried out periodically on the basis of an exchange of information with the Commission. The Commission gathers additional information through special audits and evaluations. Each review analyses the deputy head's performance according to the established indicators. It can establish standards or targets to be met by the deputy and state any concerns the Commission may have regarding the deputy's exercise of his or her delegated powers. It may also include an agreement between the Commission and the deputy on services to be provided by the former to assist the deputy in his or her management of staffing.

The Public Service Commission also prepares an annual report to parliament which assesses the exercise of delegated powers throughout the public service using service-wide performance indicators. The report would assess departmental achievements, highlight areas of continuing concern to the Commission, and establish objectives relating to those concerns.

Source: Michèle Veilleux, response to questionnaire, 26 April 1995, p. 12.

More profoundly, however, Service Commissions must strengthen their role as the guardians of key values within the public service. Public services increasingly need a centre of concern about long-term institutional issues: professional standards; the sense of *esprit de corps*, and the development of organisational means by which such concepts can be given practical significance.

This role has been taken up by Commissions in Canada, Australia and New Zealand. They fulfil it by, among other things, issuing leading-edge publications, holding seminars, identifying and disseminating examples of best practice in personnel management, and involving themselves in staff training and development. Commissions in these countries have taken a position at the forefront of administrative reform.

Service Commissions' autonomy allows them freedom of movement in dealing with professional issues which makes them ideally suited for the task. Service Commissions are likely to remain constitutionally mandated to preserve the values of the public service. Increasingly, they must find the long-term strategies which will guarantee excellence in the public service of the 21st century. Those strategies will rest on influence and leadership, not on detailed control.

AN OVERVIEW

This publication has examined the new pressures facing the public service, and suggested that the logic of the changes is to encourage a movement of responsibilities between the key actors in personnel management.

There is no iron law at work, and there will always be reasons why specific situations require distinctive approaches, but the overall movement can be summarised for each of those actors.

- **Line ministries and departments** will increasingly take responsibility for selection, appointment and discipline within a framework set by the central personnel office and the Service Commission.
- **The central personnel office**, where this is separate from the Service Commission, will increasingly set that framework, translating broad directions from the Service Commission into detailed guidelines, and will take a lead role in driving managerial and structural change.
- **The Service Commission** will use a lighter touch in setting the overall regulatory framework, but will increasingly focus its attention on the longer term issues of professional standards and commitment.

This movement of responsibilities is, at the very least, challenging for all involved and will inevitably bring with it the full diversity of organisational reactions to change ranging from enthusiasm to determined resistance. However, the changing climate created by rising public expectations and labour mobility is forcing a new look at traditional personnel management practices throughout the public sector and some change is all but inevitable in all settings.

There can be no better conclusion than to recap the lessons learnt from the experiences of the seven countries whose contributions to a unique meeting hosted by the Government of Malta have underpinned this publication. As explored in the previous chapter, there are ten lessons:

1. The only hope of minimising sterile win/lose debates is to ensure that **the big picture is clear** – there must be a sense of direction and some strategic targets which all can recognise.
2. Incremental change is more probable than revolution, and even if the revolution happens that will not be the end of the story – **dialogue must be established between the three key players**.

3. **Start sooner rather than later** – some movement can be achieved despite the complexity of constitutional entrenchment.
4. Change will be extremely difficult and support will be hard to find – **build a constituency for change** from the public, from politicians, and from within the public service.
5. No one wants to build in failure, but it is against all experience to assume inevitable and continuous success; given the significance of the public service to national development, some attention must be focused on refining the changes and even on the **possibility of retreat** where major problems are emerging.
6. Create some sense of safety for all involved by **introducing a positive framework** in advance of the changes, guaranteeing that safeguards are in place.
7. **Build the line management capacities** – new tasks require new skills and new outlooks.
8. The changes imply new tasks requiring a new balance between powers and accountabilities – **develop the avenues of accountability** in step with the reforms.
9. Training is no panacea, but all must understand the new arrangements and the outlook it implies – **train the users of the system**.
10. Delegation does not leave a vacuum at the centre, there is a strategic gap and the Service Commissions are in the best position to fill it – **encourage the development of a new role for the Service Commissions** in which they are looking beyond the immediate horizon.

The Management and Training Services Division of the Commonwealth Secretariat is able to link senior public service managers who are focusing on similar issues within comparable settings, to share experiences and refine strategies. The Division welcomes comments on this publication and on the issues which it raises. Contact details are provided inside the back cover.

Appendix A

**Distribution of personnel management functions in
Canada, Victoria (Australia), Gauteng Province (South Africa),
Malta, Mauritius, Trinidad and Tobago, and Singapore**

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
1 The actors			
<i>Coverage of Service Commissions</i>	Public Service Commission covering entire federal public service	Office of the Public Service Commissioner (OPSC) covering Victorian public service	Gauteng Provincial Service Commission (GPSC) covering Gauteng provincial administration
<i>Central personnel office</i>	Treasury Board	OPSC combines roles of service Commission and central personnel office	GPSC combines roles of service commission and central personnel office
<i>Other actors in personnel management</i>	<ul style="list-style-type: none"> — Canadian Centre for Management Development — Public Service Staff Relations Board — Privy Council Office (PCO, or cabinet secretariat) 	N.A.	National Public Service Commission (PSC), which sets norms and standards applicable to the public service nationwide, including the provinces
2 Selection of junior/ middle level staff			
<i>Recommendations re staff selections</i>	Ad hoc selection board established by department head (recommendations binding)	Departments	GPSC (recommendations are binding subject to rejection by the Premier within six months)
<i>Actual Selection decisions</i>	Department head (authority may be further sub-delegated)	Departments	Departments

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
Public Service Commission (PSC) covering entire public service	<ul style="list-style-type: none"> — Public Service Commission — Police Service Commission — Judicial and Legal Service Commission 	<ul style="list-style-type: none"> — Public Service Commission — Police Service Commission — Judicial and Legal Service Commission — Teaching Service Commission 	<ul style="list-style-type: none"> — Public Service Commission — Education Service Commission — Police and Civil Defence Services Commission — Legal Service Commission
Management and Personnel Office (MPO)	Ministry for Civil Service Affairs and Employment (MCAE)	Chief Personnel Officer	Public Service Division (PSD) in Prime Minister's Office
<ul style="list-style-type: none"> — Senior Appointments Advisory Committee — Board of Local Examinations 	Pay Research Board (PRB)		Personnel Boards
PSC to Prime Minister (recommendations binding)	Ministries/departments to respective Commissions (recommendations not binding)	Ministries/departments to respective Commissions (recommendations not binding)	Ministerial or departmental selection panels recommend to respective Personnel Board (recommendations not binding)
Prime Minister (on recommendations of PSC)	Commissions	Commissions	Personnel Boards

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
<i>Choice of selection criteria</i>	Department head (within framework set out by PSC)	Departments (within OPSC's guidelines)	GPSC in consultation with departments and subject to national norms and standards
<i>Regulation of selection process</i>	Commissions	Departments set own rules within framework of OPSC guidelines	GPSC in consultation with departments and subject to national norms and standards
<i>Conduct of actual selection process</i>	Departmental selection board	Departments	Departments
<i>Position creation and classification</i>	Department head	Departments	GPSC subject to national norms and standards
<i>Regulation of the classification system</i>	Treasury Board	OPSC	National PSC with inputs from GPSC, line departments
<i>Delegated authority (where above arrangements do not apply)</i>	Not applicable: delegated arrangements as above apply to all selections except general service categories and special cases	Not applicable: delegated arrangements as above apply to all selections	Not applicable
<i>Hearing of appeals re selection decisions</i>	Commissions	Departmental Review Tribunals, with possibility of further appeal to OPSC	GPSC

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
PSC (following submissions by line department via MPO)	Commissions, assisted by PRB, MCAE	Chief Personnel Officer decides on eligibility requirements (years of service, qualifications), use of exams as selection mechanism; Commissions decide on other selection mechanisms, criteria, weightings	PSD following submissions by ministries and departments
PSC (rules can be further elaborated by MPO with PSC's approval)	Commissions	Commissions	PSD
Selection boards nominated by departments and approved by PSC; exams conducted by Board of Local Examinations	Commissions	Commissions (or sub-committees including ministry or department representatives)	Ministries and departments
MPO	MCAE together with PRB and Ministry of Finance	Office of the Prime Minister/Chief Personnel Officer	Finance Ministry approves position creation; PSD approves position classification
MPO (in consultation with unions)	MCAE, PRB, Commissions	Chief Personnel Officer	PSD
— Below Inspector level in the Police Force only — Group A (lowest level) industrial staff — All external recruitment by public exam (undertaken by Board of Local Examinations)	All daily rated workers (30 per cent of public service)	Minor grade staff (45 per cent of the public service)	Not applicable: system as described here follows delegation of powers to personnel boards
PSC with additional possibility of appeal to Ombudsman	Commissions (Supreme Court may review legality of decisions)	Commissions	Special Personnel Board in the case of decisions taken by Personnel Boards; appeal can proceed to Commissions

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
3 Selection of top-level staff			
<i>Recommendations re selection</i>	Committee of department heads advise PSC re appointments at assistant department head level only; Cabinet Secretary advises Prime Minister on appointments to department head level	OPSC advises Premier on selection of staff at department head level	GPSC subject to national norms and standards (recommendations normally binding)
<i>Actual selection decisions</i>	Commission (except for departmental headships, which are filled by the Prime Minister)	Premier	Ministers
<i>Choice of selection criteria</i>	Department in concert with Commission	Departments in conjunction with OPSC	GPSC in consultation with ministers and departments, and subject to national norms and standards
<i>Conduct of selection process</i>	Jointly by department and Commission	OPSC, with involvement of ministers	Ministers and heads of department, subject to GPSC direction
<i>Position creation and classification</i>	Treasury Board (above EX-03 level)	OPSC (above EO-4 level)	GPSC subject to national PSC
4 Discipline			
<i>Formulation of codes of discipline</i>	Treasury Board (can be elaborated by departments as needed)	OPSC	GPSC subject to national norms and standards

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
Senior Appointments Advisory Committee to Prime Minister via PSC (recommendations not binding)	Head of civil service, ministry/department heads (recommendations not binding)	Ministry/department heads (recommendations not binding)	N.A.
Prime Minister after consultation with PSC, SAAC	Commissions in consultation with Prime Minister; latter's concurrence needed for appointments at permanent secretary level	Commissions in consultation with Prime Minister	Commissions (at Superscale D level and above)
SAAC (within eligibility limits set by constitution)	Commissions (in consultation with head of civil service, ministry/dept heads)	Commissions	N.A.
SAAC	Commissions	Commissions	N.A.
Permanent Secretary, Office of the Prime Minister, following MPO evaluation	MCAE, PRB, Ministry of Finance	Chief Personnel Officer	N.A.
PSC with Prime Minister's consent (in so far as procedures and penalties are concerned)	Commissions	Code of conduct (determination of correct behaviour); government; establishment of penalties applicable; Commissions	PSD formulates codes of discipline; Commissions set penalties applicable to infringements

	CANADA	VICTORIA (AUSTRALIA)	GAUTENG (SOUTH AFRICA)
<i>Hearing and decision of cases</i>	Departments	Departments	Departments
<i>Regulation of disciplinary process</i>	Treasury Board/Public Service Staff Relations Board	OPSC	GPSC subject to national norms and standards
<i>Hearing and decision of appeals</i>	Appeals can be made to department, then Public Service Staff Relations Board, then Federal Court of Appeal	OPSC (the Industrial Relations Commission is another avenue of appeal in cases of dismissal)	GPSC

MALTA	MAURITIUS	TRINIDAD & TOBAGO	SINGAPORE
Heads of department hear and decide minor cases; PSC's Disciplinary Board hears more serious cases and reports to PSC, which then decides cases	Ministries/ departments hear and decide minor cases; more serious cases heard and decided by Commissions	Tribunals appointed by commissions hear facts and report to commissions, which decide cases. Police also have a "one-man tribunal" to hear and decide minor cases	Investigating Officer or Committee or Committee of inquiry investigates case; Commissions impose penalty
PSC with Prime Minister's consent	Commissions	Commissions	Commissions
PSC	Commissions; Supreme Court can review legality of Commissions' own decisions	Appeal Board set up for the purpose under the constitution	Commissions can review cases on request by aggrieved party

Appendix B

Analysis of the degree of delegation of personnel management function

Analysis of the degree of delegation of personnel management function

This table draws on the description of the distribution of personnel management functions provided in Appendix A to indicate the range of delegations for each of the functions.

	limited delegation	moderate delegation	significant delegation
Selection of junior/middle level staff			
<i>Selection decisions</i>	Made by Commission following appointment of ad hoc selection boards (various countries)	Made by ministerial personnel boards following appointment of ad hoc selection panels (Singapore)	Made by departments (Canada, Victoria/Australia)
<i>Choice of selection criteria</i>	Commission (various countries)	Central personnel office (Singapore)	Departments within framework set by Commission (Canada, Victoria/Australia)
<i>Conduct of selection process</i>	Commission (Mauritius, Trinidad and Tobago)	Ministerial Personnel Boards (Singapore)	Departments (Canada, Victoria/Australia)
<i>Regulation of selection process</i>	Commission (various countries)	Central personnel office (Singapore)	Departments within guidelines set by Commission (Victoria)
<i>Position creation and classification</i>	See right	Central personnel office (most countries) or Commission, where the latter acts as central personnel office	Departments (Canada, Victoria/Australia)
<i>Regulation of the classification system</i>	See right	Commission or central personnel office (all countries) -- degree of centralisation here depends on flexibility of classification system itself	See left
<i>Hearing of appeals re selection decisions</i>	Commission (most countries)	Special Personnel Board (Singapore)	Initial appeal to departmental review tribunal (Victoria/Australia)

	limited delegation	moderate delegation	significant delegation
Selection of senior staff			
<i>Selection decisions</i>	Commission in consultation with Prime Minister (Mauritius, Trinidad and Tobago)	Prime Minister following consultation with Commission (Malta)	Prime Minister, advised by Cabinet Secretary (Canada)
<i>Choice of selection criteria</i>	Commission (Mauritius, Trinidad and Tobago)	Departments in conjunction with Commission (Victoria)	Government's Senior Appointments Selection Committee (Malta)
<i>Conduct of selection process</i>	Commission (Mauritius, Trinidad and Tobago)	Jointly by department and Commission (Canada)	Senior Appointments Selection Committee
<i>Position creation and classification</i>	See right	Central personnel office or Commission, where the latter acts as central personnel office (all countries)	See left
Discipline			
<i>Formulation of codes of discipline</i>	See right	Central personnel office and/or the Commission in most countries	Central personnel office, but with possibility of further elaboration by department (Canada)
<i>Hearing and decision of cases</i>	Commission or their appointed tribunals (Trinidad and Tobago)	Minor cases heard by departments (Malta, Mauritius)	Departments (Canada, Victoria)
<i>Regulation of disciplinary process</i>	See right	Commission (most countries)	Departments as first avenue of recourse (Canada)

Appendix C

Facilitating delegation of personnel management through appropriate selection methodologies

Charles Polidano
Staff Development Organisation
Malta

Facilitating delegation of personnel management through appropriate selection methodologies

Charles Polidano
Staff Development Organisation
Malta

Delegation of personnel management is dependent on robust systems at departmental and ministerial level. The Achilles' heel of public service staffing is often the selection interview. Interviews are used as the main selection instrument for a wide range of positions but are frequently characterised by weak procedures and vague selection criteria.

In Malta, for example, selection interviews are routinely scored on the basis of criteria which include references to suitability for the post, personality, or aptitude. No definition of these criteria or guidance on how to apply them are provided to selection boards. In some cases, the weighting given to such loose criteria is enough to make up the selection pass mark. The presence on boards of staff without training in selection further opens up the possibility of poor selections even with the best of intentions.

In Trinidad and Tobago, a set of six selection criteria – knowledge of the job, required skills, work experience, physical characteristics, personality characteristics, and qualifications – are standard for selections at different levels. Only the points weighting varies from one position to another. Here also, the criteria are very loosely defined.

Mauritius, on the other hand, appears to have well-developed, job-specific interview selection criteria. Even here, however, it appears that a standard form is used to score interviews and this is based on criteria such as appearance, mental alertness, communication ability, motivation, and stability. There is no apparent relationship between these and the job-specific criteria.

Poor interview techniques are a serious weakness at the very heart of public service staffing leading Service Commissions to the conclusion that delegation would unacceptably restrict their already limited ability to control abuse.

The long-term remedy lies in clarity of procedures, not in centralisation. Clear procedures, guidelines, reporting relationships and accountability mechanisms are a prelude to delegation. Selection criteria that are specific and focused on job

requirements can assist in redressing current deficiencies within the context of a delegated system.

This appendix provides the basic framework for a robust selection methodology. The framework consists of three steps:

- (i) preparing a task-specific job description;
- (ii) deriving position-focused selection criteria;
- (iii) preparing a selection plan linking selection criteria to appropriate selection instruments (curriculum vitae, examination, specialised tests, interview, etc.).¹

The framework is best outlined by providing an example of each of these three steps. The examples relate to the director of a public service training organisation.

1. PREPARING A TASK-SPECIFIC JOB DESCRIPTION

Job descriptions written in task-oriented format are simple to write while offering the clearest picture of the actual content of the job and its duties.

Manage delivery of output

- Assign work in accordance with spheres of responsibility and existing workloads.
- Ensure that course design and delivery take place promptly and in accordance with agreed training requirements.
- Respond to departmental requests for training promptly, subject to overall training policy and resources available.

Plan work programmes

- Define training requirements in accordance with overall public service personnel policy and requests from line departments.

¹ Credit for the methodology belongs to Professor Jack Duffy of the School of Business Studies, Dalhousie University, Halifax, Canada.

- Develop programme of work in accordance with agreed training requirements and resources available.
- Prepare and submit multi-year business plan and annual budget.

Assure quality

- Develop performance standards (quantitative and qualitative) relating to the organisation of training courses.
- Develop means to monitor organisational performance against set standards.
- Set organisational and staff performance targets and monitor and evaluate accordingly.

Meet internal organisational needs

- Ensure that spheres of responsibility and reporting relationships are clear and relevant to the organisation's role and requirements.
- Anticipate human and other resource needs and act on them in good time.
- Ensure that the organisation operates within financial parameters.
- Provide periodic reports to higher authorities.

2. DERIVE POSITION-FOCUSED SELECTION CRITERIA

Selection criteria can be drawn up for each task dimension as shown in the example below. The relationship between job requirements and selection criteria is clear.

The task dimensions set out here are the basis of a common core in position descriptions at the same level throughout the public service. Correspondingly, the same applies to the selection criteria derived from them. The second and third criteria relating to the first case dimension are position-specific; the rest would apply to most other directorships.

<i>Task dimensions</i>	<i>Selection criteria</i>
Manage output delivery	Ability to get results. Strong academic background in management/public administration. Experience in management of training.
Plan work programmes	Ability to identify and act on opportunities.
Assure quality	Commitment to pursuit of higher standards.
Meet internal needs	Knowledge of administrative procedures in public service.

3. PREPARE A SELECTION PLAN

Although the selection criteria developed above are qualitative, the selection plan can still convert them into a set of tangible indicators. It does this by way of three selection instruments: CV, interview, and references (performance reports, testimonials etc.). The latter are important in assessing applicants' track records: this is possible since applicants are likely to have several years' experience in the public service, whereas one has to find means to assess *potential* in the case of a clerical position.

<i>Criterion</i>	<i>CV</i>	<i>Interview</i>	<i>References</i>
Ability to get results	Evidence of career progression	Responses re past achievements	Performance in previous positions
Academic background	University or professional training	—	—
Experience in training management	Any previous training-related positions	Responses re experience in training (if any)	—

Ability to identify and act on opportunities	—	Responses re new activities developed	Evidence of new activities developed, initiatives taken
Commitment to higher standards	—	Responses re use of performance measures etc.	Evidence of development, use of performance measures
Knowledge of administrative procedures	Any previous administrative positions	Responses to procedure-related questions	—

The benefits of such a selection methodology, particularly where interviews are concerned, are that:

- it gives interviews a clear purpose and role within the selection process;
- by giving selection board members clear criteria to assess, it results in greater consistency and objectivity in interviewing;
- it produces better selection decisions;
- it provides a procedural basis for post-audits of the selection and interview process;
- it provides a clear basis for the defence of selection decisions, as well as selection criteria themselves, in the case of contestation;
- it gives newcomers to selection boards a clear guide to follow in preparing for interviews.

In practice, the methodology would ideally be supplemented by guidelines specifying which selection criteria are admissible, which to use for specific levels, and which selection instruments are best used to test for them. Developing these guidelines would be a task for either Service Commissions or the central personnel office.

Appendix D

The Public Service Commissions of the Commonwealth Caribbean: the constitutional context

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* This appendix is based on material prepared previously by the author for CARICOM

The Public Service Commissions of the Commonwealth Caribbean: the constitutional context

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INTRODUCTION

Under the colonial regime, the public service usually fell under the prerogative of the Crown and was exercised by the colonial Governor. During the period of decolonisation, the prerogative gradually gave way to legislation. In most states, Service Commissions were created by statute to advise the Governor on matters of appointment, discipline and removal of public officers. The Independence Constitutions absorbed, with modifications, the model which was in force prior to independence. This meant that most states entered into independence with many of the deformities of the colonial period.

The Independence Constitutions did three things:

- (1) First, they conferred authority on Parliament to impose restrictions on the fundamental rights of public officers, primarily, freedom of speech and freedom of association. Some Constitutions require these restrictions to be reasonably required for the proper performance of the functions of Public Officers,¹ others do not.²
- (2) Secondly, they created independent and autonomous Service Commissions to govern the appointment, discipline and removal of nearly all public officers.
- (3) Thirdly, they redefined the nomenclature to describe employees of the state. Instead of the terms "civil servant", "civil service" or "crown servant", "crown service" the Constitutions employed the terms "public officer" and "public service". Strictly speaking, therefore, employees of the state/crown should be described as "public officers".

¹ See for example, s. 12(4) (b), s. 13.(2) (b), Antigua Constitution; x. 10 (2) (c), s. 11 (2) (c), St. Vincent Constitution.

² S. 20(2) (c), s. 21(2) (c), Barbados Constitution; s. 12(2) (c), s. 13(2), Belize Constitution.

Despite the new constitutional order, most countries continued to apply rules and practices fashioned by the colonial regime. The real challenge is to modernise the public service in accordance with constitutional prescriptions.

THE NATURE OF THE PUBLIC SERVICE IN THE COMMONWEALTH CARIBBEAN

It is crucial to recognise that the composition of public service has altered. Public Services have been compelled to employ persons of different skills, training and experience. It is likely that the division of skills will become even sharper in the years ahead. Existing legislation emphasises uniformity rather than diversity.

The disciplined services are governed by a separate body of laws. However, in most cases, one body of law governs all other public officers. Admittedly, such an approach is convenient. It may also be justified on the basis that it expresses the principle of equality before the law. However the terms and conditions of employment often differ among and between categories of employees. The offences which attract disciplinary action in respect of nurses are clearly not identical to the offences which may attract disciplinary action against teachers.

A modern legal framework should attempt to respond to the different sections of public service. Different regimes should exist to govern the conditions of employment of teachers, medical personnel, officers in the disciplined services, and other public officers employed in central government.

CRITICISMS OF SERVICE COMMISSIONS

Some of the most frequent criticisms of public services of the region have been directed at the composition, powers and procedure of the Service Commissions established by the various Constitutions. These Commissions were created to insulate members of the public service from political influence exercised upon them, by the government of the day.³ Many have doubted that this original rationale remains relevant. Nunes contends that Service Commissions are "counter-productive anachronism[s] and should be abolished".⁴ Where they "are weak they fail to protect [public officers] from political interference and where they are strong they undermine the managerial duties of senior [public officers]".⁵ Collins has long

³ *Thomas v. Attorney General of Trinidad and Tobago* (1982) A.C.113 (P.C.); *Carl Smith et al v. Attorney General of Belize* (1985) LRC (Const.) 431.

⁴ F.E. Nunes, *The Public Service Commission and Modern Management*, unpublished, 1984.

⁵ *Ibid.*

dismissed Service Commissions as "anomalous constitutional relics".⁶ More recently, George Eaton et al, reporting on the Grenada Public Service, declared the concept of an "impartial" Commission to be "anachronistic" and inconsistent with "the norms of modern personnel management or of professionalism".⁷ They argued that commissioners who are "drawn exclusively from outside the service cannot be fully conversant with personnel practices and subtleties of job requirements within the public service".⁸

On that ground, they recommend that,

"the prohibition against the appointment of serving public officers to the PSC be removed and that the membership of the Commission be reconstituted to accord membership to at least one but preferably two of the senior Permanent Secretaries on a one-year rotating basis to represent executive management of the civil service... We can find no good reason also why the members of the PSC who are appointed on the advice of the Prime Minister after consultation with the appropriate representative bodies, cannot be serving public officers."⁹

Interestingly, the above approach was embraced by the Grenada Constitution Review Commission. They recommended that:

"the Chairman be appointed by the Governor-General acting in accordance with the advice of the Prime Minister for a term of 3 years. The Commission also recommends that two members be appointed for a term of 3 years by the Governor-General, acting in accordance with the advice of the Prime Minister, after the Prime Minister has consulted the appropriate representative bodies – provided, that no appointment shall be made unless the bodies consulted are in agreement. At least one of these two commissioners should be from outside the Service. The Commission recommends that the remaining two members of the

⁶ B.A.N. Collins, "Some Notes on Public Service Commission in the Commonwealth Caribbean", (1967) 16; 01 Social and Economic Series, No. 1.

⁷ G. Eaton et al, "The Public Service Commission in Grenada", in S. Ryan and D. Brown (eds), *Issues and Problems in Caribbean Public Administration*, I.S.E.R., U.W.I., Trinidad and Tobago, 1992, at p.15.

⁸ Ibid.

⁹ Ibid., at p. 16.

Public Service Commission be appointed from the ranks of Permanent Secretaries by the Governor-General in his own deliberate judgement."¹⁰

Further afield, the Belizean Constitution has made provision for permanent secretaries to be included in the membership of the Public Service Commission. Section 105 (1) of the Constitution provides as follows:

"There shall be for Belize a Public Service Commission which shall consist of a Chairman and eighteen other members who shall include as ex officio members the Chief Justice, the Solicitor General, the Permanent Secretary, Establishment, the Permanent Secretary to the Ministry of Home Affairs, the Permanent Secretary to the Minister of Defence, the Permanent Secretary to the Ministry for the time being responsible for the Prison Service, the Superintendent of Prison Service, the Director, Security and Intelligence Service and the Commandant of the Belize Defence Force."

The Constitution assigns the permanent secretaries according to the functions to be performed. Thus, in the exercise of its functions the Commission shall be so organised that the Permanent Secretary, Establishment shall be an ex officio member and that of the eighteen members other than the Chairman, five:

"...shall be responsible for matters relating to the public service other than the judicial and legal services, the Police Force, the Security and Intelligence Service, the National Fire Service, the Prison Service and the Military Service..."

Other divisions of membership exist for the performance of function in relation to judicial personnel, military personnel, police and fire service officers, security and intelligence personnel and prison officers.¹¹

¹⁰ Report of the Grenada Constitution Review Commission, 1985, at p. 77.

¹¹ The functions are performed by the Commission in the following divisions of membership:

- " (a) two being ex-officio the Chief Justice and the Solicitor General, shall be responsible for matters relating to the judicial and legal service;
- (b) four, of whom the Permanent Secretary to the Ministry of Defence and the Commandant of the Belize Defence Force shall be ex-officio members shall be responsible for matters relating to the military service;
- (c) three, of whom the Permanent Secretary to the Ministry of Home Affairs and

It is extremely doubtful that the inclusion of permanent secretaries on the membership of Service Commissions will help to professionalise the public service. Permanent secretaries are more likely to protect the narrow interest of the public service and where appropriate, the interests of the Executive. Beyond that, serious conflicts of interest could arise. Consider for a moment, the Belizean approach. The Permanent Secretary, Establishment, will be required to tender advice to other permanent secretaries on a range of personnel matters including disciplinary control. Yet, by virtue of his office, the Permanent Secretary, Establishment is a member of a Commission which may well have to determine cases in which the same Permanent Secretary may have given advice and directions.

It is true that permanent secretaries who are members of Commissions could, in the words of Eaton et al, sensitise other members to "personnel practices and subtleties of job requirements within the Public Services".¹² But this alone cannot justify their membership of Service Commissions. Placing permanent secretaries on Commissions will simply not confer greater accountability on permanent secretaries and Head of Departments to "guide the efforts of their staff towards successful achievement of objectives or realization of goals".¹³ These changes can only occur on re-organisation of the personnel function within public services.

THE DIFFICULTY OF CHANGE

In most Commonwealth Caribbean states, the chapter of the Constitutions which deals with the public service is heavily entrenched, usually at the deepest level. For example, in the case of Dominica, a bill to amend the section which creates the Public Service Commission requires on its final reading in the House, the votes of

the Commissioner of Police shall be ex-officio members, shall be responsible for matters relating to the Police Force and the National Fire Service;

- (d) three, of whom the Permanent Secretary to the Ministry of Home Affairs and the Director, Security and Intelligence Service shall be ex-officio members, shall be responsible for matters relating to the Security and Intelligence Service; and
- (e) two, being ex-officio the Permanent Secretary to the Ministry for the time being responsible for the Prison Service and the Superintendent of Prisons shall be responsible for matters relating to the Prison Services.

¹² George Eaton et al at 1, *supra* n. 8 at p. 16.

¹³ *Ibid.*

three-quarters of all the elected members of the House.¹⁴ Additionally, the bill is subject to a delay of ninety days between its first reading and its second reading.¹⁵ The bill must also receive a majority of the votes validly cast at a referendum.¹⁶ These formidable requirements do not exist in all states.¹⁷

Unless governments are prepared to effect constitutional amendments, then the only viable alternative is to utilise, in a creative manner, the existing provisions of the Constitutions to achieve greater efficiency in the management and administration of the public service.

WORKING WITH THE CONSTITUTION

It is conceded that there is considerable force in the argument that Service Commissions of the Commonwealth Caribbean are inefficient, insensitive and dilatory. It is well known that their procedures are cumbersome. Some have over-centralised the personnel function. Delays in responding to charges of indiscipline have contributed to the undermining of the morale of the public service. Public service managers are denied control over employees and this has encouraged them to abdicate their responsibility to maintain discipline in the public service.

Some of the difficulties may be traced to the continuing confusion over the respective roles and functions of the Executive and the Service Commissions. The Constitutions contemplate that the governance of the public service is a shared responsibility. In *Thomas v. Attorney General of Trinidad and Tobago*,¹⁸ the Privy Council confirmed that the Service Commissions are entrusted with the following powers:

- (a) The appointment, discipline, transfer and removal of public officers.
- (b) The enactment of rules to govern their procedure in respect of the exercise of the powers named above. For example, Commissions may establish

¹⁴ S. 42(2), Dominica Constitution.

¹⁵ S. 42(3), Ibid.

¹⁶ S. 42(3), Ibid.

¹⁷ For example, only a two-thirds majority is required in both Houses in Barbados. See s. 49, Barbados Constitution.

¹⁸ [1982] A.C. 113 (P.C.).

procedures for disciplinary proceedings and for the selection and appointment of recruits to the public service.

In turn, it is the constitutional responsibility of the Executive and/or Parliament to:

- (a) lay down terms of service for public officers. Terms of service include,
 - (i) determining the duration of the contract of employment, e.g. for a fixed period, ending on attaining retiring age;
 - (ii) remuneration and pensions;
 - (iii) the physical and educational qualifications for recruitment into the public service; and
- (b) the enactment of a code of conduct, to include, inter alia, the offences which render public officers liable to disciplinary action by a Service Commission.

In effect, the Service Commission are not employers of public officers. They merely appoint, discipline and remove public officers on behalf of the State/Crown in accordance with the Constitution.

It is possible for the Executive to compromise public officers by the nature of the terms and conditions of employment which they establish. For example, the Executive may specify that the term of employment should be no more than x years or y months. In that event, the relevant Commission is compelled to appoint a public officer for a duration of time specified by the Executive. Clearly, in this situation the ability of the Commission to protect the public officer is severely compromised.

The prevailing deformities and weaknesses of Services Commissions have often led to attacks on the constitutional arrangements which govern their composition and functions. However, the simple truth is that no Commonwealth Caribbean government has modernised its public service in accordance with the constitutional prescriptions. No government has yet exploited the promise of the Constitutions by enacting the statutory regime contemplated by the Constitutions.

The behaviour of some Services Commissions have not been helpful. Some Commissions seem preoccupied in jealously protecting their independence and neutrality. Consequently, they define their agenda narrowly. Others behave as rubber stamps and abdicated their constitutional responsibilities to the Executive. Most Service Commissions are unwilling to decentralise their authority to the extent permitted by the Constitutions.

THE SCOPE FOR DELEGATION

All the Constitutions provide that the Service Commissions "may, by directions in writing and subject to such conditions as they think fit, delegate, any of their powers [to control] to any one or more members of the Commission or with the consent of the Prime Minister [or Head of State], to any public officer".¹⁹ Yet, few Commissions have utilised these powers in a creative way.

Some authority could be delegated to permanent secretaries and heads of departments by appropriate "Delegation Orders" to strengthen their professional control over public officers. There is no reason why permanent secretaries cannot be conferred with delegated authority to appoint and discipline public officers in specified cases. Likewise, the Service Commissions could constitute themselves into committees to handle matters pertaining to specific areas of the public service. For example, where no Teaching Service Commissions exist, the Public Service Commission could delegate to a sub-committee its power and authority in relation to members of the Teaching Service. The sub-committee could then meet on a regular basis to deal with matters pertaining exclusively to the Teaching Service. A similar approach could be taken in respect of the nursing staff.

Another power that is available but hardly ever utilised relates to the power of some Service Commissions, with the consent of the Prime Minister, to confer powers or impose duties on any public officer or any authority of the government for the purpose of the exercise of its functions.²⁰ The Grenada Constitution Review Commission is of the view that section 83(3) of the Grenada Constitution which

¹⁹ Antigua and Barbuda Constitution, s. 100 (2).
Bahamas Constitution, Art. 110.
Barbados Constitution, s. 92 (1).
Belize Constitution, s. 106 (5).
Grenada Constitution, s. 84 (2).
Dominica Constitution, s. 84 (13).
Guyana Constitution, Art. 20 (2).
Jamaica Constitution, s. 127 (1).
St. Christopher & Nevis Constitution, s. 77 (12).
St. Lucia Constitution, s. 86 (2); s. 93 (2).
St. Vincent Constitution, s. 78 (2).
Trinidad and Tobago Constitution s. 127 (1).

²⁰ Antigua and Barbuda Constitution, s. 99 (13).
Grenada Constitution, s. 83 (13).
Dominica Constitution, s. 84 (13).
St. Christopher & Nevis Constitution, s. 77 (12).
St. Lucia Constitution, s. 85 (13); s.
St. Vincent Constitution, s. 77 (13).
Trinidad and Tobago Constitution, s. 129 (1).

expresses a similar power allows the Public Service Commission to use the Ministry of the Public Service as its "executive arm".²¹ Unfortunately, the Commission failed to specify the nature of the executive powers which could be entrusted to the Ministry of the Public Service. Notwithstanding, the recommendation demonstrates a possible use of the provision.

THE LEGAL CHARACTER OF THE EMPLOYMENT RELATIONSHIP

Delegation would be facilitated if there were greater clarity concerning the nature of the employment relationship between public officers and their employers. Is the relationship "contractual" or is it better described as "a relationship of status"?

The relationship appears to have four of the five dimensions of a contract, namely, (a) offer; (b) acceptance; (c) capacity; and (d) consideration. The fifth requirement, the intention to create legal relation, is often said to be absent on the grounds that the Crown/State never intended to enter into contractual arrangements with its employees. Indeed, the General Orders of some countries deny that the Orders constitute or form a contract between the Crown/State and its employees.

It does appear anomalous to suggest that the relationship is contractual when a substantial body of the terms and conditions is defined by statute. Subject to the Constitution, Parliament is free to alter those terms at its pleasure. In other words, there is no contractual equality between the Crown or State and its employees. Public officers have little freedom to regulate the incidents arising out of the employment relationship. The relationship is *sui generis*, largely governed by statute. The legal compulsion as to the fixing of the terms appears to be inconsistent with the creation of a contract. For this and other reasons, the courts of some countries have concluded that the relationship is one of status.²² It is, however, true to say that the courts in the Commonwealth Caribbean appear to be moving in the direction of treating the relationship as contractual.²³ English courts appear to be moving in a similar direction.²⁴ In the final analysis, it may be necessary to enact legislation to resolve the issue. This would help public officers

²¹ Report of the Grenada Constitution Review Commission, 1995 at p. 38.

²² *Roshan Lal v Union of India* (1967) S.C. 1889.

²³ *Thomas v Attorney General of Trinidad and Tobago* (1982) A.C. 113 (P.C.) at p. 127D; *Bernadette Hood-Caesar v the Prime Minister and Minister of Finance and Economy and Attorney General* (Unreported, No. 3015 of 1987, 7 June 1988, H. Ct., Trinidad and Tobago).

²⁴ *R v. Lord Chancellor's Department, ex parte Nangle* [1992] 1 All E.R. 897.

to understand properly the nature and character of their relationship with their employers, and would enable a more coherent debate concerning the appropriate framework for personnel management in a modern public service.

The uncertainties in the employer relationship are compounded by the larger uncertainties in the legal regime for the public service. The provisions of the Constitutions which established public services were never supported by the enactment of appropriate and comprehensive statutory regimes. Some Service Commissions have not enacted rules to govern their procedure. Some states have not enacted Regulations pertaining to the conduct of public officers. Reliance is placed on General Orders which were introduced by the colonial authorities. Many of the provisions of these General Orders are unconstitutional. Barbados, Jamaica, and St Lucia have modernised their General Orders but it is exceedingly doubtful that these Orders enjoy the force of law. Commonwealth Caribbean Courts are not unanimous in their treatment of the legal status of these Orders.²⁵ In any event these Orders use archaic language and are of little use in a modern public service.

A legal regime for the public service should comprise the following:

- (i) A Public Service Act with provisions, *inter alia*, for a modern personnel department, creation and abolition of public officers, and treating with the public service. The Act should also empower the minister to make regulations governing the conditions of employment including the code of conduct.
- (ii) Regulations made by the minister to govern conditions of employment. Separate regulations should be enacted for (a) The Teaching Service; (b) The Police Service; (c) The Fire Service; and (d) The Nursing Service. These Regulations should be made by the responsible minister under authority conferred by the appropriate Act. For example, in the case of teachers, the minister should enact regulations under the authority of the extant Education Act.
- (iii) Regulations enacted by Service Commissions under the appropriate provisions of the Constitutions to govern their procedure in respect of matter of appointment, disciplinary procedure and removal of public officers.

²⁵ Evelyn v. Chichester (1970) 15 W.I.R. 410; Sheik Mohammed Hyder Ali v. Public Service Commission (Unreported, No. 37 of 1974 C.A. – Guy); Fahie v. Attorney General of Guyana (Unreported, No 10 of 1983, 16th Nov., 1984, H.Ct. – Anguilla); Winton Campbell v. Attorney General and Chief Personnel Officer (Unreported, No. 134 of 1990, Feb. 20, 1991, H.Ct., Barbados).

MODERNISATION OF PERSONNEL DEPARTMENTS

Save, to some extent, the cases of Jamaica, Trinidad and Tobago and possibly Barbados, Commonwealth Caribbean countries have not modernised their personnel departments.

In a recent report to CARICAD on *The Role of the Public Service Commission In Management of Human Resources*, Sir Carlisle Burton and associates advocated the strengthening of human resource management systems in the public services of the Commonwealth Caribbean. Sir Carlisle advised that the following issues need to be addressed:

- the development of appropriate human resource policy statements;
- review of existing orders, rules and regulations;
- the development of human resources information systems (already begun in some countries);
- the strengthening of training and development functions, and the provision of more management training for middle- and senior-level managers;
- the development of a core of personnel technicians to work in line ministries.²⁶

Legislative reform to the public service should aim at enhancing the human resource management capabilities of the public service. The personnel department should be recognised in legislation, preferably in a Public Service Act, and could be renamed and re-designed as the Public Service Human Resources Development Department. Legislation should provide that the functions of that department shall be the administration and management of the public service and, without limiting the generality of those functions, should include:

- (a) promotion of efficient service to the public;
- (b) conducting management audits of departments by reviewing the organisation of the business of government, including the organisation of ministries and departments of government, and providing advice and making recommendations regarding the organisation;

²⁶ Carlisle Burton, Report on the Role of the Public Service Commission In Management of Human Resources, Nov. 1992, at p. 12.

- (c) promotion of the efficient use of the human resources of the public service;
- (d) reviewing the classification, re-classification and nomenclature of offices and providing and making recommendations respecting the classification, re-classification and nomenclature of offices;
- (e) development and maintenance of an integrated human resource information system of personnel records and training profiles to aid in the making of training decisions in the public service;
- (f) conducting personnel and training needs assessments, establishment of areas of priority based on the findings of the assessments and on resource constraints and taking appropriate action to satisfy those needs;
- (g) compilation and dissemination of personnel-related information and policy decisions to authorised officers for the efficient administration and management of the public service and the efficient performance of officers;
- (h) ensuring the maintenance of a safe and development-oriented working environment for officers;
- (i) promotion of a high-level of performance and productivity, setting of work standards, development of results-oriented job descriptions, and techniques that contribute to high morale, motivation and job satisfaction amongst officers;
- (j) reviewing the terms of service, including salaries and allowances for officers, providing advice to the minister and officers and making recommendations to the minister regarding those terms;
- (k) reviewing legislation, collective agreements and directives affecting officers and making recommendations to the minister respecting the legislation, collective agreements and directives;
- (l) co-ordination of the work of any committee established by the minister;
- (m) effective management of any housing provided by government to public officers or to other persons who serve the government in a civil capacity.

SUMMARY: THE AGENDA FOR REFORM

In the legislative domain, reforms to the law of the public service should aim to:

- (a) update existing laws to reflect the Independence Constitution;
- (b) utilise the plentitude of powers conferred by these Constitutions to modernise the public services;
- (c) cure existing gaps in some Constitutions; and
- (d) introduce appropriate legal regimes to control and regulate the employment of public employees who fall outside the jurisdiction of Service Commissions.

A modern legal framework should recognise the diversity of the public service. Different statutory regimes should be enacted to govern the conditions of employment of the separate categories of public officers.

The public services of the region should operate on a philosophy of partnership between the executive, the Service Commissions, public officers, representative organisations and the public at large. Every effort should be made to reform the legislative framework on the basis of shared consensus.

The Service Commission must be enticed to participate fully in any process of legislative reform. Specifically, they should modernise the legislation which governs procedural matters pertaining to the appointment, discipline and removal of public officers. The legislation should emphasise speed and efficiency of decision-making. Equally, the new regime should decentralise decision-making wider use of powers of delegation to the chairpersons of the Commissions, committees of the Commissions and to permanent secretaries and heads of departments. In order to improve the efficiency and independence of Service Commissions, consideration should be given to increasing the financial resources of Service Commissions to enable them to meet, inter alia, the costs of employing their chairpersons on a full-time basis, to secure the services of independent counsels if and when the need arises, and to computerise their records and other correspondence.

As far as possible, efforts should be made to eliminate any misunderstanding arising out of the failure of the State/Crown to clarify its legal relationship with its employees. In this regard, it seems necessary to clarify the nature of the employment relationship by determining whether it is one of status or of contract.

The role of the personnel department is critical to the reform process. Considerable care should be exercised in staffing these departments. Adequate provision should

be made in the Public Service Act to provide these departments with the legal powers to reform and transform the public service over time.

Appendix E

Managing human resources for results in the public service: the strategic options

Working Group Meeting, Malta, 15 to 17 May 1995

List of Participants

List of Participants

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