

Public Service Ethics, Monitoring Assets and Integrity Testing

The government either has integrity or it does not. You can't just have a little integrity. An administration stands or falls with the integrity of the government; any diminution of the integrity of the government means that the government loses the confidence of the public. And without the confidence of the public, democracy cannot work. Then there is no more democracy. That is a frightening picture.

Catherine I. Dales, Minister of the Interior, in an address to the Annual Conference of the Union of Dutch Local Authorities, June 1992.

Increasingly, the need to foster and sustain high levels of ethics in the public sector has come into focus. There is, almost universally, a lurking suspicion in many countries that public servants (both members of the public service and their political masters) have been lining their pockets at the public's expense, and calls for the monitoring of assets of senior public sector decision-makers in particular, are now heard on all continents. These suspicions are fuelled by scandals with serious moral implications, revealed almost daily, and in developed countries no less than the developing.

In developed countries, pressures on the public service come from varied quarters. Increasing privatisation and the contracting out of traditional government functions; the devolvement of responsibility, including financial responsibility, within public service organisations; greater pressures for openness and more intensive media scrutiny of the public sector; a greater and growing intensity of lobbying by those anxious to capture government business; and an increased willingness on the part of members of the public to complain when the quality of service is poor – all these have contributed to this increase in awareness of the need to take steps to bolster the ethical basis on which the public service functions.

Recent public management reforms involving greater devolution of responsibility for public servants and new forms of delivery of public services, have challenged traditional values in the public service. With more senior staff on contract, and other changes in the public service environment, qualities of loyalty can be more elusive. Ethics may not have changed, but in managing a modern civil service, areas of discretion in many areas have widened.¹

In developing countries, and in countries in transition, the problem is all the greater. There, the public service has tended to be dysfunctional to begin with, and not infrequently deeply flawed by systemic corruption. There would be cause enough to justify a proactive approach on the ethical front, even without the additional pressures created by attempts to “modernise”

¹ See An Ethics Framework for the State Sector, August 1999 by the State Services Commission, Wellington, New Zealand

Uncoordinated, unsystematic, unilateral, non-participatory...

A Portuguese Cabinet Secretary has described the state's traditional response to ethics as being "uncoordinated, unsystematic, unilateral, non-participatory" and as being exploited for partisan political purposes:

Intervention was not coordinated, because no plan was drawn up in advance and no single centre of responsibility for action was designated. Neither the timing of initiatives nor how those initiatives might interact was taken into account, and the various centres of power administered their reforms with no co-ordination between them. Although the department responsible for administrative modernisation was behind most of the initiatives, there can be no doubt that the latter often ran counter to the sensibilities, and at times the methodology, of other government departments.

Another characteristic of the authorities' intervention is that it was not systematic. The measures enacted were taken individually and were unconnected, with no follow-up in the field: all of them, and even those taking the form of laws and standards, were carried out in the hope that public servants would embrace them spontaneously, on their own initiative. It was basically the same for all of the main ideas of administrative modernisation, which, once again, were passed along as a matter of course, with no regard for whether or not the people involved were taking them to heart. While it is true that intensive familiarisation and staff training efforts went into the introduction of the Code of Administrative Procedures, which, as a vehicle to convey professional ethics, was equally if not more important than the Public Service Code of Conduct, it would appear that this training focused more on operational procedures than on conduct-related principles of administrative action.

The third feature is that action was unilateral. As the need to do something about ethics became clearer, the political authorities responded by imposing specific measures on particular sectors without consulting the people involved. A good example of this is the Public Service Code of Conduct, which was drawn up in Ministerial private offices and only later handed down to the people for whom it was intended, who were thus deprived of any role in preparing so essential a document. Values were defined not from the bottom up, but were dictated to the public service by the political authorities.

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a public service that was not performing adequately even under the old rules.²

Underpinning concern in all countries is an increasing suspicion - frequently without more than anecdotal evidence to support it - that standards in public life are declining. This suspicion may be fuelled, at least in developed countries, by a change in the way the public views public administration. What was once a purely administrative relationship has been transformed into a commercial one: public administration has come to be viewed as a producer and provider of certain goods and services, with the citizens transformed into customers. In so doing, the spotlight has been cast on aspects such as efficiency, products and quality, perhaps diverting attention away from matters less capable of measurement, such as attitudes and convictions.³ Moreover, public servants live in the real world, and the changing attitudes in their own communities, and particularly any growing ambivalence as to what is, and what is not, acceptable conduct, serves only to make the task of ethics management both more difficult and more necessary.

Why an ethics-based approach?

Integrity can come under pressure in a variety of ways, not only stemming from straightforward corruption but also, and above all, from an improper use of power. And the "improper use of power is a broad concept, one that embraces degeneration, decay and erosion of standards of conduct...[escalating] into fraud and corruption."⁴

Preventing misconduct is thus as complex as the phenomenon of misconduct itself. Among the integrated mechanisms needed for success are sound ethics management systems. This is as true for the public sector as it is for the private.

Most people would prefer to be, and to be seen to be, honest and respected for their personal integrity by themselves no less than by their family and friends. If this assumption is correct, then it provides the starting point for an ethics management system that has the potential to make serious inroads into ethical misconduct - bearing in mind the fact that transgressions can be as much the result of misunderstandings and misperceptions as of blatant illegality.

An ethics based approach is essentially preventative, and so a much more profitable route than one which relies on the big stick of enforcement and prosecution. A well-motivated public service is much to be preferred to one which operates in fear and apprehension - and where any exercise of personal initiative, however well-intended, invites investigation and possible censure.

2 e.g. The annual letter to Chief Executives setting out the expectations for the [New Zealand] State Service's Commission's Review of Departmental Performance 1997/98 included the expectation that departments would have a customised code of conduct and conflict of interest policy. In particular, the Commission expected to see evidence of:

- a customised code of conduct that addressed the nature of the business;
- development of strategies to inculcate, reinforce and monitor ethical conduct - e.g. plans that address issues of integrity in mission/vision/value statements; human resources strategies; information policies;

- systematic approaches to consultation with the public;
- guidelines for contracting;
- processes for dealing with conflicts of interest;
- effective means of communicating with the public;
- developing clear understandings of statutory and regulatory obligations; and
- developing a shared understanding of what is meant by the public interest in the context of the organisation.

3 Vargas Moniz, Portugal: The Management of Ethics and Conduct in the Public Service, 1995, OECD

4 Johan Maas, The Netherlands: The Management of Ethics and Conduct in the Public Service, 1995, OECD.

Such a course can also deal more appropriately with the position in which public servants can find themselves in some developing countries, where traditional societies expect those in positions of power to use it to promote the interests of their family or clan, rather than the wider public interest.

Two African commentators have noted that much of the research into the causes of administrative corruption on their continent has focused on the persistence of traditional values and customs (usually forms of nepotism) which conflict with the requirements of modern bureaucracies. They observe that African bureaucrats (as in other developing countries) frequently seem to be faced by two sets of values.

Although the public official has been trained in the norms of modern organisations, the weight of tradition is such that even when the bureaucrat himself does not profess a public belief in traditional values, he is still subject to constant pressure to give in to them. For example, in order to avoid accusations of ingratitude, politicians and top civil servants must surround themselves with members of their clan as well as with their more immediate relatives. This situation leads some civil servants to experience difficulty in adjusting to the impersonal, disinterested, legalistic requisites of the modern bureaucracy.⁵ Clearly, an ethics-based route is the appropriate one.

It is important, too, that the ethical code is tailored to the conditions of the society it is designed to serve. While it may make sense in a developed country to preclude a public official from engaging in private sector activity, in some developing countries this is wholly unrealistic. Private sector activity of some sort can be a necessity where public sector remuneration is very low. The challenge then becomes one of how to manage effectively a situation where public officials are frequently engaged in private sector activities.

As one writer on Africa has commented:

Ethical Codes must be of such a nature that leaders are not turned into poverty-stricken missionaries and as poor as Church mice, nor should they be so harsh and impracticable as to frighten would-be leaders from assuming leadership roles.⁶

The essential features of an effective ethics management system

Increased concern about corruption and the decline of confidence in public administration has prompted many governments to review their approaches to ethical conduct. To assist these processes, a set of principles has been developed by the OECD to help countries review the institutions, systems and mechanisms they have for promoting public service ethics.⁷

The principles can be adapted to national conditions, and countries can find their own ways to balance the various aspirational and compliance elements so as to arrive at an effective framework that suits their own circumstances. The principles are, of course, not sufficient in themselves but provide a means for integrating ethics management into the broader public management environment.

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This brings us to the fourth characteristic: non-participation. The government and the public service did not engage in a back-and-forth discussion of professional ethics. The guidelines that were laid down had not been discussed or worked through together; in other words, there was no real give-and-take with the people most directly concerned.

Lastly, we come to partisan exploitation. Unethical conduct is not limited to any one profession or segment of power, but is seen by public opinion as all-pervasive, tainting all areas of government and all parties. It has always been obvious that there is no dichotomy between "incorruptible" public servants and parties and "corrupt" ones. It is for this reason that politicians of all colours have tried to use corruption charges as a major weapon in their campaign arsenals. The ethics of public servants and the highest-ranking public officials have long provided fodder for political contests, first used by the opposition against the government and then vice versa. The fact that in five years there have been five separate laws on conflict of interest and concurrent office-holding speaks for itself.

Vargas Moniz, Cabinet Secretary, Portugal: in The Management of Ethics and Conduct in the Public Service, 1995, OECD

Public service organisations are different

A public service organisation differs from most other institutions to the extent that upon its integrity and performance public confidence in governments may rest. It is special because public service officials are entrusted with managing public funds and resources, and may act as defenders of constitutionality and probity in governance.

Introduction to the Principles, Conventions and Practice Guidance Series, OECD (1995)

5 Fraud and Corruption: Experiences of Other African Countries, a paper by N. Mhembere and C. Rukobo of the Zimbabwe Institute of Public Administration and Management, 1992.

6 C. H. M. Barlow, "Ethical Codes for African Administrations: Nature, Content, Limitations and Required Improvements," in Ethics and Accountability in African Public Service, by Sadig

Rasheed and Dele Olowu (United Nations Economic Commission for Africa and African Association for Public Administration and Management, 1993), p. 270.

7 Improving Ethical Conduct in the Public Service: Principles for Managing Ethics in the Public Service, OECD Council Recommendation, 23 April 1998.

1. Ethical standards for public service should be clear.

Public servants need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie.

A concise, well-publicised statement of core ethical standards and principles that guide public service, for example in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community.

[Note⁸: The emphasis here is on broad statements of principle. The statement should not be written in detail or resemble legislation, or simply be a list of prohibitions and restrictions. The core values should be the focus. These are higher values than the minimum and minimal thresholds prescribe, for example, by the criminal law. There is scope here for aspirations. Codes of conduct are discussed below, and in the context of the private sector, in the chapter entitled The Private Corporate Sector.]

2. Ethical standards should be reflected in the legal framework.

The legal framework is the basis for communicating the minimum obligatory standards and principles of behaviour for every public servant. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action and prosecution.

[Note: This is the converse of the above. When legislating, the aspirational aspects of a code can be stated to reinforce the values being protected by the laws and regulations which follow.]

3. Ethical guidance should be available to public servants

Professional socialization should contribute to the development of the necessary judgement and skills enabling public servants to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which public servants are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace.

[Note: A code without a mentor or an adviser is a rudderless boat adrift on a tempestuous ocean. Public servants need to know where, and to whom to turn, when they are confronted with potential difficulties. These need to be persons in whom they have trust, and in whom they can confide in confidence.]

4. Public servants should know their rights and obligations when exposing wrongdoing.

Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public

⁸ The Notes have been inserted by the author and do not form part of the text.

servants also need to know what protection will be available to them in cases of exposing wrongdoing.

[Note: A core value of public service is commitment to the law and to the Rule of Law. This is of higher value than any duty to superiors, colleagues or subordinates, and likewise it overrides any claim to loyalty on the part of the political party in power.

The subject of “whistleblowing” is discussed in the chapter on Giving Citizens a Voice. It should never be necessary, other than in the most exceptional of cases, for a public servant to feel compelled to go outside the system in order to draw attention to wrongdoing. This is an area, too, in which the private sector is taking an increased interest. Although previously, senior managers would prefer not to know about problems, the more progressive managers of today are eager to ensure that staff feel comfortable in raising their concerns, so that matters can be put to rights, or mistaken impressions corrected.

It is therefore important that official channels for complaint be trustworthy (so that staff can use them without feeling exposed to reprisals by more senior staff on whom they may be reporting) and effective (so that staff will use them confident in the belief that their complaints will be taken seriously, and not just ignored).]

5. Political commitment to ethics should reinforce the ethical conduct of public servants

Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level, for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing, by providing adequate support and resources for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

[Note: Unless political leaders demonstrate high standards they have no moral authority upon which to draw when they wish to reprimand others who step out of line. It is a truism that “the fish rots from the head”, and experience certainly suggests that where the behaviour of superiors is seen to be incorrect, similar indiscretion is fostered among subordinates. It is important that political leaders clearly articulate their unqualified support for, and insistence upon, high ethical standards.]

6. The decision-making process should be transparent and open to scrutiny

The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.

[Note: A corrupt and/or inefficient administration will wish to shield its shortcomings through denying access to information. The provision of channels for information, and rights of access, are important antidotes to this malaise. The greater the transparency, the fewer the shadows.]

7. There should be clear guidelines for interaction between the public and private sectors.

Clear rules defining ethical standards should guide the behaviour of public servants in dealing with the private sector, for example regarding public procurement, outsourcing or public employment conditions. Increasing interaction between the public and private sectors demands that more attention should be placed on public service values and requiring external partners to respect those same values.

[Note: Much of the “grand corruption” that mars today’s administrations around the world takes place on the interface between the public and the private sectors. Special attention is given to this in the chapter entitled Public Procurement: Where the Public and Private Sectors Do Business. The question of respect for shared values is not exclusive to the public service. Leading players in the private sector, too, are increasingly concerned to ensure that its own private sector partners respect and share the core business principles to which they subscribe.]

8. Managers should demonstrate and promote ethical conduct.

An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public service values and ethical standards. Managers have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, other public servants and citizens.

[Note: This principle reflects, in the context of managers, the same concerns as are contained in Principle 5, above.]

9. Management policies, procedures and practices should promote ethical conduct.

Management policies and practices should demonstrate an organisation’s commitment to ethical standards. It is not sufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage some public servants simply to function on the edge of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only delineate the minimal standards below which a government official’s actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to.

[Note: This Principle stresses the importance of the aspirational aspects of ethical conduct, and the need to avoid a minimalist, rule-bound approach under which everything which is not expressly forbidden is implicitly allowed.]

10. Public service conditions and management of human resources should promote ethical conduct.

Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behaviour. Using basic principles, such as merit, consis-

tently in the daily process of recruitment and promotion helps operationalise integrity in the public service.

[Note: Ethical conduct can be fostered, just as unethical conduct can be contagious. If nepotism, favouritism and the selective application and waiver of rules are taking place, the standards of all can be expected to come under pressure.]

11. Adequate accountability mechanisms should be in place within the public service.

Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on compliance with rules and ethical principles and on achievement of results. Accountability mechanisms can be internal to an agency as well as government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls while allowing for appropriately flexible management.

[Note: Corruption and inefficiency flourish in an environment devoid of accountability. In this regard, the Office of Ombudsman has a particularly potent role to play.]

12. Appropriate procedures and sanctions should exist to deal with misconduct.

Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should exercise appropriate judgement in using these mechanisms when actions need to be taken.

[Note: Mechanisms need to be fair and trustworthy. They should protect the innocent and the naïve, just as they should detect and publish the culpable. Penalties, where applicable, should be proportionate and should be consistently applied. A sanctions regime which is idiosyncratic and viewed as untrustworthy by staff can seriously undermine efforts to raise and to protect ethical standards generally.]

Creating codes of conduct in the public sector

Codes of conduct in the public sector, as they are in the private sector and in the professions, are playing an ever-increasing part in the development of national integrity systems. They afford a way in which to develop preventive strategies.⁹ Obviously, if officials act properly and with understanding from the outset, any problems will be minimised.

However, as we have noted, public sector codes tend to be drafted at the top, by senior public officials or managers, and then passed down to more junior staff. All too seldom are the staff at all levels actively involved in the preparation of a code. The result is not only does the code fail to reflect adequately the situations and aspirations of staff at all levels, but there is also a complete absence of ownership. In some respects, the way a code is prepared is just as important as the code itself.

⁹ Codes of conduct can cover, for example, Ministers, parliamentarians, the whole of the public service, individual departments or agencies, and a particular profession within the public service. Examples of codes are to be found in the Best Practice sec-

tion of the Internet version of this Source Book, at <http://www.transparency.org>. Codes of conduct are also discussed in the chapter, The Private Corporate Sector.

It is also important that a code be aspirational in tone, at least in part, rather than be simply a long list of prohibited actions. This is to give it a positive character, rather than the somewhat forbidding appearance of a criminal statute.

Once a code is finalised, many regard the process as being at an end. However, to be effective, codes should be publicised throughout an organisation and its external stakeholders (including the general public), so that everyone is aware of its contents. More than this, there should be regular training, so that groups of officials come together from time to time to talk through dilemmas drawn from real life.

The interpretation of the code, too, is important. It should protect the staff who comply with it. For this reason, an effective code will generally have designated a source of advice and guidance for staff who have difficulty in determining what their position is. Even if the advice the official is given turns out to be misconceived, where full disclosure of relevant facts has been made and where the advice has been followed, he or she should be regarded as blameless.

An 'Office of Government Ethics' – the US approach¹⁰

To be effective, over-all responsibility for public ethics development and training must be vested clearly in a particular agency of government. Frequently this is within the Ministry for Government Administration.

However, in a novel experiment (and in the wake of the Watergate scandal) the United States in 1978 created the Office of Government Ethics (OGE).¹¹

The OGE provides policy leadership and direction for the ethics programme in the Executive branch. This system is a decentralised one, with each department or agency having responsibility for the management of its own ethics programme. This responsibility rests with the head of each agency who, in turn, designates a Designated Agency Ethics Official or "DAEO" who is responsible for the day-to-day management of the ethics programme.

The OGE has issued a uniform set of Standards of Ethical Conduct for Employees of the Executive Branch that apply to all officers and employees in Executive branch agencies and departments. These regulations contain a statement of fourteen general principles that should guide the conduct of Federal employees. Central to these principles is the concept that public service is a public trust. Federal employees must be impartial in their actions and not use public office for private gain. These regulations also contain specific standards that provide detailed guidance in a number of areas: gifts from outside sources, gifts between employees, conflicting financial interests, impartiality, seeking employment, misuse of position and outside activities. The rules are enforced through the normal disciplinary process.

The Office has also implemented uniform systems of financial disclosure. These systems, public and confidential, are enforced throughout all agencies and are subject to periodic review by the OGE.

10 The description is taken from Stuart Gilman, *The United States Federal Government: The Management of Ethics and Conduct in the Public Service*, OECD, December 1995.

11 The office was established by the Ethics in Government Act of 1978, as an office within the Office of Personnel Management. It was upgraded in 1989, when Congress established the Office of Government Ethics as a separate agency within the Executive branch. The OGE is administered by a Director who is

appointed by the President, with the advice and consent of the Senate, for a five-year term. A complete description of the OGE's organisational scheme, including the Standards of Conduct, Principles of Ethical Conduct, financial disclosure system descriptions and forms, informal advisory letters and memoranda, training materials and relevant ethics legislation, is available on the Internet at [www://usoge.gov](http://www.usoge.gov).

The OGE maintains a close liaison with the ethics officials at the 129 agency ethics offices throughout the Executive branch through its desk officer system. Each OGE desk officer has a portfolio of client agencies that he or she serves by providing information, advice and programme assistance. The OGE also regularly conducts reviews of agency ethics programmes and makes appropriate recommendations for improvement of financial disclosure systems, counselling and advice, training and other programme matters.

The OGE regularly conducts training workshops for ethics officials both in Washington, DC and in cities throughout the United States. The OGE has established an ethics information centre at its office that makes educational materials available to Executive branch agencies. It has a newsletter and it holds an annual ethics conference to exchange information and build a strong ethics community. An electronic bulletin board provides an abundance of information to the ethics community in a fast, convenient and direct way.

At the same time, individual agencies may supplement the Executive branch-wide standards with limited rules, tailored to meet specific agency needs. Areas addressed in supplemental agency standards include prohibited financial interests, prohibited outside activities and prior approval for outside activities.

In recent years a number of other countries have followed the US lead, including Argentina and South Africa.

The Queensland approach¹²

The Public Service Act 1996 in Queensland underscores the traditional expectation of the state's Ministers, namely that that professional public servants will be apolitical, and responsive to the Government of the day and sensitive to its programme objectives. A decision to reinforce the "career service" aspects of employment in the Public Service was articulated in 1997, and is supported by employment, deployment and appeals provisions in the Act.

Separately, the framework of values which defines Public Service integrity – professionalism, ethicality (for example, personally disinterested conduct in office), and service to the community - are defined by the Public Sector Ethics Act, enacted in 1994.

Queensland is the only jurisdiction in Australia, and one of few in the world, to have enacted specific legislation for ethical conduct in public management. The Public Sector Ethics Act 1994, and its companion piece, the Whistleblowers Protection Act 1994, are Australia's first examples of specific ethics legislation which aim to ensure high professional standards in the public sector by requiring Chief Executives of Departments to develop codes, to have them accessible to staff and to the public, to institute training, and to include an implementation statement in the department's annual report. The legislation clearly acknowledges the necessity for public management to be ethical, professional, and accountable.¹³

The Public Sector Ethics Act explicitly articulates a set of professional expectations – "socialisation" values – which had been in Queensland, until 1988, the subject of convention alone. Both Acts were responses to an explicit demand by employees and managers for greater certainty about what was expected of them in the workplace. This demand was driven by every-

¹² Howard Whitton, *The Ethics of Managing Risk: A Public Sector Ethics Perspective*, (mimeo) July, 1999. Discussions with Howard Whitton inform much of this section.

¹³ Both are to be found in the Best Practice section of the Internet version of this Source Book: <http://www.transparency.org>.

day concerns about fairness, equity, responsiveness, and integrity, and by community expectations that official wrongdoing would be effectively countered by the system itself.

The Public Sector Ethics Act 1994 (Queensland)

The Act, as passed, declares five principles to be the basis of “Ethics Obligations”, also specified by the Act, and required to be the basis of the agency-specific Codes of Conduct which individual public sector agencies are required to develop, in consultation with affected staff and the relevant community interests.

The framework values are:

- respect for the law and the system of (parliamentary) government;
- respect for persons;
- integrity;
- diligence; and,
- economy and efficiency.¹⁴

The obligation of integrity is expressed in the following terms:

Integrity

In recognition that public office involves a public trust, a public official should seek:
(a) to maintain and enhance public confidence in the integrity of public administration;
and
(b) to advance the common good of the community the official serves.

Having regard to [that obligation], a public official:

- (a) should not improperly use his or her official powers or position, or allow them to be improperly used; and
- (b) should ensure that any conflict that may arise between the official’s personal interests and official duties is resolved in favour of the public interest; and
- (c) should disclose fraud, corruption, and maladministration of which the official becomes aware.¹⁵

In practice, this obligation requires that officials should, for example, not disclose official information improperly; should not abuse the powers or resources available to them as officials; should avoid any conflict between personal interest and official duties; or where a conflict cannot be avoided, should resolve such a conflict in favour of the public interest.

The obligation also requires officials to avoid conduct which could undermine public confidence in the government or the system of public administration, for example, failure to disclose to a relevant authority known fraudulent or corrupt conduct, or “maladministration” by another official.

The obligation of diligence is defined thus:

Diligence

In performing his or her official duties, the official should exercise proper diligence, care and attention, and should seek to achieve high standards of public administration.¹⁶

In practice, this obligation requires that officials should, for example, provide “a fair day’s work”, observe the procedural fairness (“natural justice”) requirements of good administrative decision-

14 Section 4(2).

15 Section 9.

making, make all reasonable efforts to provide high standards of service to clients, act in accordance with relevant “duty of care” requirements, avoid negligent conduct, provide expert and comprehensive advice to Ministers, and seek to maintain high standards of public administration.

There is, too, the obligation of economy and efficiency:

In performing his or her official duties, a public official should ensure that public resources are not wasted, abused, or used improperly or extravagantly.¹⁷

In practice, this obligation requires that officials should manage all forms of public resources (for example human, material, and financial resources, intellectual property and information) in the interests of safeguarding public assets and revenues and ensuring efficient programmes and service-delivery.

Chief Executives' Obligations

The Ethics Act requires Chief Executives of public sector agencies to ensure that the Act is implemented in their agency, that training in ethics is undertaken, and, of signal importance, that the agency’s “administrative practices and procedures” are consistent with the Act and with the agency’s Code of Conduct.

Failure to do so could result in sanctions under the Chief Executive’s contract of employment, or (potentially) in a private legal action for compensation resulting from breach of statutory duty. Such an action might arise - in an ethics context - where the interests of a citizen or client of the agency suffered damage from the foreseeable and preventable unethical conduct of an employee - for example, in a contract negotiation or tendering process involving the Chief Executive’s agency.

The Role of the Public Official

Clearly, the legislation establishes a “role ethic” based on a traditional version of the role of the appointed public official in a system of responsible Parliamentary Government.

The Guidelines issued to Queensland public sector agencies in 1995 went further in reinforcing this traditional view of the appointed official’s responsibility and accountability, and the official’s relationship to delegated power and the community at large. The Guidelines include the following statement:

Public employment involves a position of trust.

The standards of conduct which may be expected of public officials at all levels are therefore a matter for legitimate and continuing concern by the Government of the day, public sector organisations, and the community.

Public officials control, in various ways, the use of financial and other valuable resources provided by the community. The use, and misuse, of those resources raises important questions of professional ethics for administrators.

It is similarly expected that those public officials who control the financial and other resources provided by the community have an ethical obligation to ensure that those resources are used efficiently and appropriately.

16 Section 10.

17 Section 11.

Such a traditional view of the role of the public official is not at odds with the modern focus of the public service on customers, efficient service delivery, accountability, and on effective risk assessment and risk management. However, ethical management is more challenging in today's world.

As the OECD's Public Management Service (PUMA) observed, the increasing interaction between the public and private sectors is:

... creating more situations where existing rules and guidance on the conduct of public officials may be inadequate, for example in relation to possible conflicts of interest. They also raise more ethical dilemmas for public officials, where guidelines and rules cannot provide all the answers and officials may need to be able to make sound ethical judgements. There are, moreover, concerns that with the blurring of boundaries between the public and private sectors, essential public sector values may be diluted, to the detriment of the public interest.¹⁸

Rather than blurring the distinctions which exist, the Queensland Legislature has set down a 'benchmark' position in relation to public sector integrity, to highlight what is at issue when public and private sector value systems interact.

The Canadian approach

In Canada, a number of Provinces – and the Federal government – have introduced posts to provide guidance on ethical issues to parliamentarians and senior public officials. These positions are variously titled – “Ethics Commissioner” (Alberta), “Integrity Commissioner” (Ontario); “Conflict of Interest Commissioner” (British Columbia, Saskatchewan, Nova Scotia, New Brunswick, Northwest Territories and Yukon), “Commissioner of Members' Interests (Newfoundland) or “Ethics Counsellor” (Federal Government).¹⁹

These Offices all recognise that, in the area of ethics, there are two major risks when relying wholly on a strictly legalistic system. Firstly, public office holders can often forget what truly ethical conduct actually is in the real world of public life, and instead defend themselves by dwelling on what they understand to be the legal technicalities of words and concepts.

Secondly, rules are often extremely detailed about matters that should be self-evident to anyone with sound moral judgement, leaving the average citizen with the impression that those appointed to public life have no moral sense whatsoever. When this happens, it can do more to corrode public confidence than enhance it.

Canada's Federal government has taken an approach that assumes that public office holders do want to take ethical actions. It assumes they do want to earn a higher level of respect among citizens. For this reason it has chosen not to take the other major approach to ethics – that is, rigidly codifying ethical behaviour, usually through a series of “Thou shalt not's.”²⁰

The Canadian approach to building and managing an ethics structure turns on avoiding possibilities for conflict of interest well before the fact. It focuses on working *with* people, based on the assumption that they *do* want to do the right thing.

The Federal Ethics Counsellor's Office deals with potential conflicts of interest and other ethical issues for those most likely to be able to influence critical decisions in the Federal gov-

18 In a discussion document prepared for PUMA's November 1997 Seminar on Ethics in the Public Service.

19 For links to relevant web sites see <http://www.ontla.on.ca/Library/BPs/offices/o5.htm>.

ernment. This covers all members of the Federal Cabinet, including the Prime Minister. It covers their spouses and dependent children; members of Ministers' political staff; and senior officials in the Federal Public Service. The Office handles the monitoring of the assets, incomes and liabilities of those it oversees.

The Office is also responsible for the Lobbyists Registration Act and the Lobbyists' Code of Conduct.²¹ These are designed to bring a level of openness to lobbying activities and ensure strong professional standards for the people involved in that work.

The Office, of course, does not replace the role of the police, prosecutors and judges when it comes to suspected breaches of the criminal law. Rather it deals with the grey area of situations that could realistically appear wrong to citizens, without ever being illegal.²²

Its role is designed to provide advice and counsel to those in government, not to act as prosecutor, judge and jury. In practice, the Office works closely with those covered by the Code. They come with questions about how a given asset or interest should be treated, and the Office offers advice. It is also asked by the Prime Minister to investigate and comment on specific issues as and when these arise.

Does this seem to work? The present office-holder believes it does:

"Does this work? I would say it does. The people that I deal with recognise that making the right decisions helps to ensure their long-term political health. They recognise that Canadians expect high standards of conduct and rightly so. They have generally gone out of their way to meet those standards."²³

Bulgarian parliament approves law to fight corruption among officials.

The parliament on 26 April approved a law that would make public the income, expenses, and property of senior state officials, AP reported, citing BTA.

Under the law, the Chamber of Accountancy, Bulgaria's central auditing institution, will compile and produce records of the income and expenses of the country's president, premier, ministers, deputies, senior government and judiciary officials. The records will be made public in the media.

Radio Free Europe, 27 April 2000

Monitoring of assets, incomes and liabilities

As suspicions of public officials has grown – fed by revelations of the ways some have looted their countries treasuries or suspicions about the origins of funds for the cars they drive – so, too, has grown the belief that the assets, incomes and liabilities of public officials ought to be monitored. In the past, in developed countries it was considered sufficient for cabinet ministers simply to disclose their investments to the head of government on an informal basis. In today's somewhat more suspicious world, the head of government himself or herself is, as often as not, an object of suspicion. Something more rigorous seems to be called for, and with an independent agency to monitor the position if the returns were not to be open entirely to the public.

In many parts of the world, the argument is heard that one of the key instruments for maintaining integrity in the public service should be the periodic completion, by all those in positions of influence, of returns of their and their immediate family members' incomes, assets and liabilities.

20 This section draws on "Ethics and Governance", Notes for a presentation by Howard R. Wilson, Ethics Counsellor to the Federal Government of Canada, made to the "II Global Forum: Democratic State and Governance in the XXI Century", Brasilia, Brazil, 29 May 2000.

21 For both, see the Best Practice section on the Internet version of this Source Book: <http://www.transparency.org>.

22 For example, what of the case where a Cabinet minister makes a representation to a quasi-judicial body, an appointed tribunal, on behalf of a constituent? It could involve, e.g. an application for a broadcasting licence; a pensions appeal; or a claim for refugee status. A tribunal is part of the executive government,

not a part of the judiciary. The Canadian Federal Ethics Counsellor pointed to a broader constitutional reason why this would be inappropriate. The members of the tribunal are appointed by Cabinet or by a Minister, and their integrity would be at risk were they to be receiving submissions from those responsible for giving the tribunal members their jobs. "Principles respecting government contacts: Backdoor communications: Principles respecting government contacts with judicial and quasi-judicial bodies", Notes for a presentation by Howard R. Wilson, Ethics Counsellor, to the 15th Annual Administrative Law Seminar, Ottawa, Ontario, 2 April 1998.

23 Ibid.

Although the disclosure of assets and income will, of course, not be accurately completed by those who are taking bribes, it is thought that the requirement that they formally record their financial positions, lays an important building block for any subsequent prosecution. It would, for example, preclude them from suggesting that any later wealth that had not been disclosed was, in fact, acquired legitimately.

Disclosure, the argument runs, should also extend to a certain post-service period, as a deterrent to the receipt of corrupt payments after retirement. Studies have suggested that it is unlikely that corrupt payments are made more than three years after a person has retired.

But does it work? Sri Lanka is one of a number of countries which has tried to combat corruption through the ordinary criminal law, but found it inadequate. As the Attorney-General of Sri Lanka told Commonwealth Law Ministers in 1990, this approach was found to be "insufficiently comprehensive." Sri Lanka therefore made it compulsory for all public servants and all those in public office, including politicians, to make a declaration of assets upon assumption of office and from time to time thereafter to make fresh declarations. Once the declarations were made, they were available to the Attorney-General, or to any member of the public on payment of the requisite fee. The question of gifts and hospitality was also controlled.²⁴

Sadly, if public confidence and newspaper headlines in Colombo are anything to go by, the problem is, if anything, more severe than it was ten years ago. It is true that monitoring can be intrusive, and affect the privacy of an individual, especially if it extends beyond public servants to members of their immediate household. There are traditionalists who argue against disclosure rules and prefer to rely on the Westminster tradition of informal, largely unwritten rules. These rules were believed to guide an elite in living up to high ethical standards - standards higher and more flexible than the demands of black-letter rules. However, all the evidence today points to the utter inadequacy of this informal system. Corruption today can only be reduced if it is made a high risk and a low profit undertaking. Informal rules do not work nor do they wash with the public.²⁵

Having accepted the argument in favour of disclosure, several questions follow: To whom should disclosure be made? What matters should be included? How wide should coverage of members of the household be? How often should disclosures be made? What access should the media and members of the public have to these declarations? And, in the case of career civil servants, what levels of seniority must be required to submit to this process? There are no simple answers to any of these questions.

The tricky part of this process is not so much deciding on the categories of assets to be disclosed, and the categories of the officials who should be making disclosure, but rather on deciding the extent to which there should be public access to the declarations. The litmus test must be whatever is needed to achieve public peace of mind - not whatever is wanted by the noisiest of the opponents of disclosure. Nor are matters always as simple as they may seem. A Minister of Finance from Colombia has been quoted as saying that for a politician to make his or her wealth known to the public would be an open invitation to kidnappers to move in and claim the sums disclosed as a ransom.

In Australia, a system whereby officials make written disclosures to the head of their department annually has been seen as being effective. These are not made public. Similar disclosures

24 Minutes of the Meeting of Commonwealth Law Ministers, Christchurch, New Zealand (Commonwealth Secretariat, London, 1990).

25 See Michael Atkinson and Maureen Mancuso, "Edicts and eti-

quette: regulating conflict of interest in Congress and the House of Commons", in *Corruption and Reform*, Vol. 7, No.1, 1992: pp. 1-18.

are managed by the ethics offices in Canada, referred to above. However, in most countries it has been the practice to introduce wholly sham arrangements for these sorts of disclosures.

In Nigeria, the Code of Conduct Commission was empowered, from 1979 onwards, to require the filing of returns by all public officials. However, they had neither the resources nor the legal powers to actually check the contents of any of these. As a consequence, throughout a prolonged period of looting by public officials, the only prosecutions ever mounted were against public officials who failed to file an annual return – not for filing a false one. In Tanzania, the sleight of the law draftsman's hand was such that, although the legislation appeared to require the declaration of all property held by a public official, by the time all the exceptions to this requirement had been listed there was virtually nothing left. The legislation, enacted in the dying days of a particularly corrupt presidency, was clearly for public consumption only. During Yeltsin's presidency in Russia there was a proposal that every single public official, from the President to the street cleaners, should make written declarations to the tax police, arguably the most corrupt arm of the Russian administration. The whole proposal was a logistical impossibility, and not surprisingly came to nothing.

As timid and ineffective are the new rules on disclosures of assets introduced in 1999 for the members of the in-coming European Commission. These were prepared following the abrupt departure of their predecessors amidst a cloud of allegations about nepotism and corruption. Carefully framed, the provision makes the Commissioners judges in their own cause – and they need only declare what they *think* might at some future time give rise to a conflict of interest. Full disclosure is not required. The resulting declarations displayed on the EU website make most of the Commissioners, and their spouses, look impoverished by any European standards, and it is doubtful whether these declarations would have helped avert the scandals that so engulfed their predecessors. The provision reads:

Financial interests and assets

Commissioners must declare any financial interest or asset which might create a conflict of interests in the performance of their duties. On taking up their duties, and whenever there is any change during the term of their office, they shall make, according to the model in the Annex, a declaration of such interests. The declaration shall include any holdings by the Commissioner's spouse which might entail a conflict of interests. Declarations shall be scrutinised under the authority of the President and with due regard for Members' areas of responsibility. These declarations shall be made public.

In today's world, however, increasingly governments are introducing more meaningful public disclosures, Bulgaria and Thailand being just two. South Africa is a third, which has introduced a scheme for the monitoring of all parliamentarians (including Ministers). There, a compromise has been reached in an effort to meet legitimate claims to privacy. Certain disclosures are made openly and publicly; some are made as to the substance of the interest but the actual value is disclosed privately; and the interests of family members are disclosed, but in confidence. The argument for the last is that members of a parliamentarian's family have a right to privacy, and it should be sufficient for the disclosure to be made on the record, but not on the public record.²⁶

The development of effective and fair regimes for the monitoring of the incomes, assets and liabilities of senior public officials will be followed closely by anti-corruption activists, for if they can be made to work – and there are obvious difficulties – then they could serve as a valuable tool in restraining abuses of office.

26 For details of the South African arrangements, see the Best Practice section of the Source Book on the TI web site:

<http://www.transparency.org>.

“False” assets declaration claims Thai minister

Thailand’s tough and powerful interior minister resigned today after a newly formed anti-corruption agency charged that he had concealed his assets by fabricating a million-dollar loan. The resignation of the minister, Sanan Kachornprasart, is a severe blow to the ruling party at the start of an election year during which Mr. Sanan had been expected to play a major role. “I am innocent,” Mr. Sanan said in his resignation statement. “I will prove the truth in the Constitutional Court.” If the court rules against him, he could be banned from any political activity for five years, whether or not he holds any office.

Mr. Sanan is the most powerful public official that the National Counter-Corruption Commission has targeted since it was formed in 1997 as part of a wide-ranging attempt to reform Thai politics. According to the counter-corruption commission, Mr. Sanan falsely claimed to have borrowed 45 million baht - the equivalent of \$1.21 million - from a private company in an attempt to conceal his assets. Whatever the truth of the charges against him, the fact that an independent body was able to topple one of the most influential figures in Thai politics was a sign that the landscape has begun to shift in the nation’s deeply corrupt political system. A separate commission that was also formed under Thailand’s new constitution to monitor electoral fraud has in recent weeks disqualified 78 of the 200 winners in an election last month to the newly formed Senate. One of those disqualified was Mr. Sanan’s wife.

New York Times, 29 March 2000.

Integrity testing

Unless a corrupt act is exposed, how do we know that an official is corrupt? And more importantly, how can we ensure that these officials are not promoted to positions where they can wreak even more damage? And, in handling allegations of corruption made against officials, how do we ensure that morale is not adversely affected? And that complainants – and innocent parties – are protected. Such allegations are easily made. If they are not based on truth, they can be morally damaging.

A further complication can be where those making allegations have a history of criminal involvement, especially where their complaints are made against the police. This gives such a complainant a low personal credibility. So how can reliable evidence (either of integrity or of corrupt tendencies) be produced, in ways consistent with the constitutional rights of officials as citizens, and in ways in which neither the complainant nor the person complained of is unduly “threatened”?

Integrity testing has now emerged as a particularly useful tool for cleaning up corrupt police forces – and for keeping them clean.

In various parts of the developed world, police corruption scandals have come in cycles. Rampant corruption has been exposed; clean-up measures have been implemented; corrupt police have been prosecuted or dismissed. But within a few years, a bout of fresh scandals has emerged. This, it is now

realised, is because whole reform strategies have been misplaced. They have been founded on a belief that getting rid of “rotten apples” in the form of corrupt officers would be sufficient to contain the problem. It is now clear that it is not enough to “clean up” an area of corruption when problems show. Rather, systems must be developed which ensure that there will be no repetitions. It is in the essential field of follow-up and monitoring that integrity testing really comes into its own.

Integrity testing in New York City

Since 1994, the New York City Police Department (NYPD) has been practising a very intensive programme of integrity testing.²⁷

Simply stated, this means that the Internal Affairs Bureau creates scenarios based upon known acts of police corruption, such as the theft of drugs and/or cash from a street level drug dealer, to test the integrity of NYPD officers. The tests are carefully monitored and recorded using audio and video electronic surveillance as well as the placement of numerous “witnesses” at or near the scene.

The NYPD strives to make the scenarios as realistic as possible and they are developed based upon extensive intelligence collection and analysis. All officers are aware that such a programme exists and that their own conduct may be subjected, from time to time, to such tests (although they are not told about the actual number of such tests which has produced a sense

27 The following section benefits from discussions with the London Metropolitan Police anti-corruption unit and with Kevin Ford, a Director of Goldman Sachs and formerly the Deputy

Commissioner of Investigation for the City of New York (1994-98). He spent a total of more than 25 years investigating and prosecuting corruption in the United States.

that they are far more frequent than they are in practice).

Integrity tests are administered on both a targeted and a random basis. That is, certain tests are directed or “targeted” at specific officers who are suspected, usually based upon one or more allegations from members of the public, criminals or even other officers, of having committed corrupt acts.²⁹

In addition, certain tests are directed against officers selected at random based upon the knowledge that they are engaged in work which is susceptible to certain acts of theft or corruption. All of the tests are carefully planned to avoid entrapment, and no officer is “enticed” into committing an act of corruption. The scenario merely creates realistic circumstances in which an officer might choose to engage in a corrupt act.

More than one thousand five hundred (1500) integrity tests are administered each year among a force of 40,000 officers. The data produced by these tests provides reliable, empirical evidence of the rate of corruption among NYPD officers. The results have been both useful and instructive.

The rate of failure (i.e., when the subject engages in a corrupt act) in the “targeted” tests is significant. About 20 per cent of the officers tested on this basis fail the test, are prosecuted and removed from the force. This would seem to validate both the reliability of carefully analysed public complaints and allegations of police corruption and the efficacy of the specific integrity tests employed.

The introduction of the system has also seen the number of reportings of attempts to bribe police officers soar. Where previously offers of bribes may have been laughed off and not taken seriously, they now seem to be reported. No police officer can now know whether or not the offer made to him or her is an “integrity test”, and it is better to be safe and to report the incident than risk treating it as an irrelevance – let alone accept it.

By contrast with the comparatively high number who fail the “targeted” test, only about one per cent of the officers who are subjected to “random” tests fail. This would seem to support the long held view of senior NYPD management that the vast majority of its officers are not corrupt.

In addition to providing valuable empirical evidence about the rate of corruption among police officers, integrity testing has produced very useful lessons about the strengths and weaknesses of the supervision and control of police officers in the field. Such lessons are used to develop better training and more effective policies to insure

The story of a corrupt Police Commissioner...

In 1988, the Government of the Australian State of Queensland became aware that its Police Commissioner was corrupt. Not only that, but he had been corrupt over a long period time and throughout a career previously considered to have been outstanding.

During this period he had risen through the police ranks, leaving behind him a tangled web of deceit and extortion. For nearly 12 years he had been presiding, as the state's senior police officer, over a systemically corrupt organisation. One which honest officers had either left in disgust or despair, or where they had been posted to such innocuous territory as conducting crime prevention classes for school children.

In return for a share in the proceeds, he “ensure[d] that corrupt policemen were appointed to positions of authority and influence in the police force which would facilitate the deliberate non-performance of the duties of police officers with respect to people paying bribes,” including regular monthly payments of “protection money” from those involved in illegal gambling activities and prostitution.

Perhaps most remarkably, he even agreed (for a sum of \$US15,000) to make an official report to the State Government recommending against the introduction of poker machines into Queensland – not to protect the public interest but in order to protect the interests of those who were operating machines throughout the State illegally!

The judgment of the High Court of Queensland (in which the court ordered the forfeiture of the pension of the by-then-imprisoned Commissioner) makes instructive reading. So, too, does the judge's outright rejection of the Commissioner's wife's claim to be an innocent victim and thereby (as a person “not aware of the conduct”), entitled to be considered for some protection from the financial impact of any court order.

She had handled some of the brown paper envelopes containing illicit payments (but claimed to be unaware of their contents); her husband often returned home after a night out with her and a particular colleague with “two or three pockets filled with large bundles of cash”; and she must have known that there was no way in which her husband could afford their life style, or to take her on the expensive overseas holidays they had enjoyed, if he was relying solely on his legitimate income as a policeman.

*See Re Terence Murray Lewis, Supreme Court of Queensland O.S. No.156 of 1994; judgment of B.W. Ambrose J., 28 April 1995.*²⁸

28 There is a pattern of “innocent wives”, of marital “break-ups” and of “matrimonial property settlements” being made at about the time that scandals have broken, which at times seem designed to try to ensure that the ill-gotten gains are seen to be in the hands of an innocent third party, and therefore beyond recovery. Some legal systems will need to review their practices in this area as it is clearly open to abuse. It ought to be possible, or to be made possible, for the proceeds of corruption to be traced and recovered from anyone other than a bona fide purchaser for value.

29 In the United Kingdom, police unions initially objected to ran-

dom testing on the basis that tests should only be conducted for “cause”. However, they changed their position when it was pointed out that to pass an integrity test should be a positive mark of honour and this would only be possible where the tests were random, and not only targeted at officers who were under suspicion. Otherwise, to have passed a integrity test would be an indication that a serious accusation of corruption had been made against an officer, but that he or she had happened to survive the subsequent “test”. Furthermore, the passing of an integrity test should be one sign (among others) of fitness for possible promotion.

that police services are provided effectively and honestly.³⁰

There can also be no question that integrity testing is a tremendous deterrent to corrupt activity. The NYPD has seen a dramatic rise in the number of reports by police officers themselves of bribe offers and other corrupt conduct by members of the public and/or other officers since the integrity-testing programme was initiated. Some of this rise is undoubtedly attributable to the fact that NYPD police officers are concerned that their actions may be subject to monitoring and that even the failure to report a corrupt incident could subject them to disciplinary action.

Since then the London Metropolitan Police has initiated a similar programme of integrity testing, and early reports indicate that they are obtaining some of the same benefits.

Wider uses of integrity testing

The concept need not be confined to police activities. In some countries hidden television cameras have been used in the ordinary process of criminal investigations to monitor the illicit activities being conducted in the chambers (or private offices) of judges, capturing corrupt transactions between judges and members of the legal profession. The “integrity testing” technique might therefore be developed in the context of judicial integrity testing. It would also seem to have potential for use in other areas where the public sector is engaged in direct transactions with members of the public, particularly in customs.

It would be interesting, too, to see the effect of this same approach in the area of international government procurement contracts. One could arrive at a situation where major international corporations bidding on government contracts in a developing country had to contend with an integrity testing programme, knowing that the payment of any bribe (or even the failure to report the solicitation of a bribe) would subject them to instant exposure as a corrupt company, and to public blacklisting.³¹ It would seem to be a simple matter to use integrity testing to cull out junior staff who are taking a large number of small bribes. Yet junior officials do not lie at the heart of the corruption problem. It will be more difficult to adapt the methodology to counter those senior officials who are involved in a small number of highly-lucrative transactions.

The possibilities the technique presents for the developing world have yet to be thoroughly explored. However, on face value there would seem to be considerable merit in establishing a system that is known to all officials (be they police, customs or elsewhere in the system), at the very least, as a means for tackling and reducing levels of petty corruption.

Undercover investigations

Undercover investigations are closely related to integrity testing, but lack the random element. These investigations are only looking for what is wrong, and not to establish what is going well, and who is honest.

There are a number of risks which must be minimised, and countries should have clear guidelines for these types of investigations. The risks can include:

30 In New Zealand, evidence of an abuse of authority on the part of the Police Commissioner (although not as a result of an integrity test) was being used the very next day in the training of police officers. It was this use that led to publicity of the events and the resignation of the Commissioner in January, 2000.

31 Suggested by Kevin Ford in the context of the 1999/2000 Internet Development Forum on Anti-Corruption Strategies co-ordinated by the World Bank et al.

- harm to undercover employees;
- harm to private individuals and businesses, and the risk of liability of other losses being incurred by the government;³²
- invasion of privacy;
- the activity resulting in entrapment (i.e. creating an offence where one would otherwise have been unlikely to occur, such as offering a very large bribe); and
- the propriety of undercover employees or cooperating individuals actively participating in the activity being targeted by the operation.

It is usually thought advisable for those who are likely to be the prosecutor in a case – if there is one – to be involved in the oversight of the investigation. This can ensure that the evidence obtained is both relevant and admissible in court proceedings and of a quality which is likely to bring a conviction.³³

A cautionary note

Integrity testing has to be developed and conducted very carefully. It is essential, for instance, that the temptation placed in the way of an official is not so great as to tempt even an honest person to succumb. The object is to “test” the integrity of the official, not to render an honest one corrupt through a process of entrapment. More than this, most countries have “agent provocateur” rules in their criminal codes, which act as a judicial check on what is permissible. These rules vary from jurisdiction to jurisdiction, but they obviously have to be borne in mind. It is important to ensure that the degree of temptation is not extreme.

That said, there is no doubt that the New York experience has shown that integrity testing, properly and fairly conducted, is potentially a highly effective weapon for the launching of a campaign to confront systemic corruption in many public agencies.

Some indicators as to the effectiveness of an ethics policy in support of a national integrity system

Ethics

- Is the approach to promoting ethics characterised by participation so that a back-and-forth discussion takes place on professional ethics, with give-and-take between those most affected?
- Are public service ethics depoliticised, in the sense that the raising of ethical standards is something to which all shades of legitimate political opinion can subscribe and in which they can participate meaningfully?
- Are there codes of conduct in the public sector?
- If so, are they built on values from the bottom up, not just from the top down? Are they aspirational in character?
- Do regular ethics training sessions take place for public servants at all levels? Do these include role playing and the discussion of real-life situations (as opposed to simply being printed hand-outs and/or lectures)?

32 Paying a bribe to a planning commissioner to rezone land in an inappropriate way may be a means of identifying a corrupt local official, but the consequences for those living in the neighbourhood could be so severe as to make such an approach unwise.

33 Conversations with Denis Fitzgerald in Vilnius, Lithuania, during 1998/99 informed much of this and the preceding sections.

Monitoring of assets

- Are there arrangements for the regular monitoring of the assets, incomes and liabilities of public officials in decision-making positions? If so, are these seen as being effective by the general public?
- Are the life-styles of public officials seen by the public as being broadly in line with official salaries?

Integrity testing

- Has the introduction of integrity testing been considered?
- If it has not been introduced, are there valid reasons why it should not be?