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The Queensland Integrity Commissioner

Role and functions: Conflicts of Interest matters and examples

In 1994, the Queensland Parliament passed legislation called the *Public Sector Ethics Act*. This was an Act which called upon all those in Queensland involved in public administration to behave with ethics and integrity, and set out a number of basic principles in relation to the performance of public office.

In 1998, amendment to the Act was passed which created the Office of Integrity Commissioner. The Parliamentary Debates leading up to this amendment focused upon a recognition from both sides of the Parliament that measures needed to be taken to improve the image and standing of politicians in the eyes of the community. There was agreement that some sounding board should be introduced to enable politicians and other senior public officials to seek advice as to appropriate behaviour before engaging in conduct which could result in adverse public perception.

The amendment created the Office of Integrity Commissioner with the first incumbent, the Honourable Alan Demack, a former Supreme Court Judge, holding the office until June 2004, whereupon I succeeded him. My term has been extended once and expires in June 2009.

I will not trouble you with any minute detail as to the statutory provisions surrounding the Office of the Integrity Commissioner. These are available on the Integrity Commissioner's website (<http://www.integrity.qld.gov.au/>). In broad outline, the position is a part-time one, occupying the equivalent of two days per week. It has, besides myself, a staff of only one person.

The role of the Integrity Commissioner is to, when requested, give advice to what is termed "designated persons" in relation to a possible conflict of interest issue. "Designated persons" are essentially Members of Parliament in Government or other Members of Parliament who are members of parliamentary committees, public servants of the level of Senior Officer and above, and appointees to statutory offices by the Governor in Council or a Minister. All told, there are some 5,000 "designated persons" in Queensland.

The role is an advisory one only and all advice is confidential. It is not susceptible to disclosure under *Freedom of Information* legislation and there are obligations of secrecy in relation to material held in the Integrity Commissioner's Office. Those who receive the advice may publish it as widely or as narrowly as they choose.

Whilst "designated persons" are limited to seeking advice on a conflict of interest issue, the Premier is able to seek advice from the Integrity Commissioner on any issue involving ethics or integrity.

The Act provides immunity from civil or administrative action to “designated persons” who follow the advice of the Integrity Commissioner.

The statute also includes in the functions of the Integrity Commissioner the role of contributing to public understanding of public integrity standards by contributing to public discussion of policy and practice relevant to the Integrity Commissioner’s functions.

The role of the Integrity Commissioner is one of a confidential confidant and advisor. It has no investigative power or function and its obligation of confidentiality appears to me to be an important one. It seems to be regarded as of high priority by those who come to seek my advice. I think this aspect is soundly based in the Queensland system of public administration, having as we do the Ombudsman and the Crime and Misconduct Commission who are amply skilled and resourced to conduct investigations and engage in other proactive initiatives to combat misconduct or corruption.

By the statute, both the request for advice and the formal advice must be in writing. The history of formal requests per year from the inception of the Office has risen gradually from 14 in the first year to 39 in the year just passed.

The concept of conflict of interest potentially covers a wide area and this is reflected in the breadth of issues raised in requests for advice. I will confine my comments today to just a small number of issues to which I have had to give my attention and which I feel are topical matters in current public administration.

Before doing so, I will refer to some fundamental principles which my experience has led me to observe, need to be recognised and taken into account if there is to be a proper approach to managing and avoiding conflicts of interest. These issues are:

- The test as to whether an unacceptable conflict of interest exists is the view of a reasonable member of the public, properly informed.
- This is an objective test and means that self-righteousness in the mind of the person having the potential conflict is not to the point. Perception is reality.
- The person involved in the potential conflict is not in the best position to judge what action should be taken to manage or avoid it. This is because of the obvious interest which he or she has in the matter.
- Leaders have a paramount responsibility. The example, (not merely the words) of a leader is vital to the building of respect. Conversely, a bad example set by a leader is destructive of goodwill previously established.

The first of the issues I propose to discuss is the Trojan horse of the receipt of gifts by a public official.

This area, in Queensland at least, is one where the time is opportune to review what is required as proper conduct. Over time, there has in Queensland, grown to be a widespread approach to the acceptance of gifts which, in part, appears to sacrifice principle on the altar of expediency.

In my view, certain fundamental principles must attend any informed discussion of desirable conduct in this area. These include:

- A decision to devote one's career to the service of the public bespeaks selflessness. It embodies the acknowledgement that actions will be governed by the public interest and not self interest.
- Any gift acquired by a public official in the light of performance of his or her office is never the property of the public official, but is always the property of the department or the State. In turn, such department or government is obliged to deal with the property in the public interest and not for the benefit of an individual.
- A gift to a decision-maker by a person or organisation likely to contend for favourable consideration will raise a reasonable public perception of placing the decision-maker in an inappropriate position of conflict.

Historically, there has developed an attitude finding expression in certain Queensland departmental codes, that gifts under a certain value are capable of acceptance without

question. In other cases, it is provided that gifts up to a certain higher pecuniary value may be retained by their recipient, if reported, without any reimbursement to government. Further, there is often found an additional gradation that a gift over the previously mentioned threshold of value may be purchased by the recipient for its value less the threshold (usually about \$250-300). There appears to be some difference in interpretation as to whether the value in question should be wholesale or retail.

In my view, such an approach does not give proper recognition to the fundamental principles mentioned above. It ignores the fact that in any case the first question must be whether it is appropriate to accept any gift in the circumstances. A gift, even of small value, to a decision-maker, by a person who may hope for later favourable treatment can justifiably evoke a perception of an unacceptable conflict.

One does not have to be particularly sceptical to realise that commercial organisations have an obligation to shareholders, and are not in the business of expending their funds in the provision of benefits to others without the expectation of some return. There is no Father Christmas. It must also be acknowledged that it is a component of ethical behaviour to feel obliged to reciprocate when a kindness or gift is provided.

In the all important field of public perception, it is this perceived obligation to reciprocate that gives rise to the unacceptable conflict, heightened greatly when the relationship is one of actual or potential decision-maker and actual or potential candidate for a beneficial decision.

Any codification has its inherent limitations, and in the field of ethics, literal reliance upon the particular words of a code is not universally to be encouraged. What is important is recognition of, and adherence to, the underlying principles. The question of whether it is appropriate for a public official to accept a gift can never universally be answered by mere reference to categories of values.

It is well to recognise that ethical behaviour includes consideration of the feelings of others. There is an understandable reluctance not to offend by appearing to be rude or ungracious in declining a gift. This has been put forward in discussion as a reason why stringent restrictions should not be placed upon public officials. However, in my view, such a difficulty can be overcome by a polite acknowledgement of the goodwill apparent in offering the gift, but also a polite declining to accept it on the basis of the requirements of a code by which the intended recipient is bound.

Whilst, in my view, there is a need to be quite restrictive of the circumstances in which it is proper for a public official to accept a gift, I do not think it necessary to extend the restriction to rule out a memento or token of small value for the marking of an occasion or the giving of some service. Especially is this so when there is no possible relationship of decision maker and a contender for a favourable decision. Beyond this, I consider that the circumstances where public officials can accept gifts should be quite rare, either because acceptance could lead to the public perception of placing the decision-maker under an obligation or, alternatively, from the standpoint that it is never the individual that comes to own the gift but

always the department or government which acquires the gift on the basis that it is obliged to use it in the public, and not a private, personal interest.

Another area to which I would like to refer is the ever increasing tendency of the private sector to seek and recruit talented senior people from the public service.

In understanding the issues involved I suggest it is helpful to have resort to the notion of “capital”. For present purposes, “capital” can be regarded as that store of information and proposed (not yet public) policy initiatives which aggregate through the work of public officials. It is owned by the Government to be used for the benefit of the community. It is not for sale by any individual for their personal benefit or advancement. Nor should it be available for purchase or otherwise to any single entity to the exclusion of others.

The ethical and legal obligations on the person departing are clear, but to further an approach based on integrity in public administration, it would be beneficial if binding steps were taken to reassure the public that those on both sides were aware of and propose to adhere to, these obligations.

Here we come face to face with an interesting new development. The term “good corporate citizen” has crept into our vocabulary only in recent times. Commercial organisations seeking to espouse this description should have no difficulty in confirming that they will respect the notion of “capital”, just discussed. Whilst the talent and expertise of the recruit can be acquired, the confidential information and the policy or planning knowledge that the

new recruit might well hold is a capital asset the property of the government and the community, and not for sale to any commercial organisation. The environment of the new recruit must be such that he or she is never placed under any pressure or put in any circumstances where such obligations can be compromised.

The adoption and increasing reference to the concept of a “good corporate citizen” seems to evidence an acknowledgement of public interest in appropriate corporate behaviour. This, of course, goes to the area of informed public perception. It is a quite interesting development and it seems that the pendulum has just begun to swing. Although the development is encouraging, caution needs to be exercised to correctly perceive the nature of this development. The concept and all that it embodies is greatly to be encouraged to the extent that it is evidence of a determination to act ethically. The caution relates to a recognition of the realities of the commercial world. These include competition, sometimes ruthless; the profit motive, sometimes all consuming; and the danger that some may seek cynically to ride on the band wagon of this expression as a mere commercial marketing tool, to be disregarded at will in the quest for profit. If the desirable aspects of this concept are to be advanced, public perception must recognise when it is real and when it is illusory, and visit commercial consequences on the organisation concerned as a result of the determination. Such a process will insulate those who choose to follow the desirable path from the danger of their competitors stealing a commercial march upon them through unethical conduct.

In conclusion, I raise another development for your consideration.

The past year has also seen a very public attempt in the area of political debate to use ethics as a bludgeon to belabour an opponent. An example is the taking to task of certain persons demonstrated to have an association with a Western Australian public figure who had fallen into disrepute.

This crescendo fell strangely silent, and there appeared to be a ceasefire on both sides, when in the same time period it was revealed that the Federal Police were conducting investigations into the financial accountability of certain members of the side who threw the first stone.

Whilst the bringing of ethics to the forefront of public discussion is a desirable thing and a useful tool to advance informed public perception, it is instructive to observe that what was thought to be a cudgel can quickly transform into a boomerang, returning with devastating effect to the place from which it is was first launched.

The ultimate outcome appears to be that discussions of ethical conduct as a political strategy appears an arrow that has been returned to its quiver and other weapons of political strategy have been resorted to.

Such events create a barometer, and these circumstances perhaps tell us that there is some distance to travel along the true ethical road, when there appears to be a ceasefire on using ethical conduct or values as an indicator that one party should be preferred to another.

The situations about which I have spoken today, although disparate, can be drawn together to demonstrate the pivotal role of public perception in relation to the conduct of public officials. The media has a key responsibility to enable the public to be properly and objectively informed. The community also must not be reticent in making its voice heard, and visiting its displeasure on those who do not measure up to the standards rightly expected from those elected or appointed to serve it.

Thank you for the opportunity to further the debate on the importance of this issue with you today.