

CONFLICT OF INTEREST

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Local Reference

- Aha, well this one is class
They charge a magistrate for
driving too fast (You mustn't
doubt me)
Well this one is class
They charge a magistrate for
driving too fast
But is one courthouse in the
district
He is the only magistrate there
to run it
If you see how the people
flock up he place
To see how the magistrate go
try he own case.
- Aha, he said, *"Go ahead, let
mih hear what happen."*
So the police said, *"Sah, if you
see how this man could
speed!"*
And he pointing at the
magistrate, Johnny Mead
The magistrate ask him who
he talking 'bout
"Is you/him ah mean!" the
policeman shout out
The magistrate pick up a
looking glass
And ask heself, *"Is it true you
were driving too fast?"*

With due apologies to Mr. Theophilus Philip (March 23,
1926 – December 24, 1960 aka the Mighty Spoiler

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- The specific obligations of Directors under the law.
 - Companies Act
 - Integrity in Public Life Act
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- Modern day higher level obligations of Directors of Companies – Business Ethics.

COMPANIES ACT 81:01

Companies Act 81:01

- Section 60 -
- Subject to the articles and any unanimous shareholder agreement the directors of a company shall
 - Exercise the powers of the company directly or indirectly through the employees and agents of the company and
 - Direct the management of the business and affairs of the company.

Companies Act 81:01

- Section 93 - 96
- A director or officer of a company who is party to a material contract or proposed material contract or who is a director or an officer of any body or has material interest in any body that is a party a material contract or proposed material contract with the company,
- Shall disclose in writing to the company or request to have entered in the minutes of the meetings of directors the nature and the extent of his interest

Companies Act 81:01

- Section 99 (1-6)
- Every director and officer of a company shall in exercising his powers and discharging his duties act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person exercise in comparable circumstances.

WHAT IS A CONFLICT OF INTEREST?

What is a Conflict of Interest?

- For the purposes of this Act, a conflict of interest is deemed to arise if a person in public life or any person exercising a public function were to make or participate in the making of a decision in the execution of his office and at the same time knows or ought reasonably to have known, that in the making of the decision, there is an opportunity either directly or indirectly to further his private interests or that of a member of his family or of any other person.

What is a Conflict of Interest?

- Where there is a possible or perceived conflict of interest, a person to whom this Part applies, shall disclose his interest in accordance with prescribed procedures and disqualify himself from any decision making process.
- Where he fails to so do, the person is considered to have committed **a conflict of interest.**

What is a Conflict of Interest?

- The concept of “Conflict of interest” forms part of the required Code of Conduct for all persons in public life and is spelt out in fine detail in the Act.
 - The Code imposes three duties on persons in public life as follows:
 - Not to afford undue preferential treatment to any person;
 - Not to use one’s office for the improper advancement of any person’s interest
 - To be fair and impartial in exercising public duty.

THE ROLE OF THE INTEGRITY COMMISSION

Role of the Integrity Commission

- The Integrity Commission is required whether of its own volition or as the result of some complainant or “whistle blower” to establish whether there is a prima facie case for such an occasion and after due process, reports its findings to the Director of Public Prosecutions for his action.
- The Commission must follow specific processes and procedures in determining whether there has been a breach of the Code of Conduct.

Role of the Integrity Commission

- The process requires the Commission to:
 - Determine through investigation whether there is a prima facie case that the Code has been breached
 - Inform the person with a notice of the alleged breach and afford him with a full opportunity to be heard
 - Consider such representations and reach a conclusion that on a “balance of probabilities” that a breach of the Code of Conduct has occurred
 - Refer each breach to the DPP.

Role of the Integrity Commission

- It is possible that there is significant overlap between the possible breaches of the Code of Conduct and possible criminal offenses. The Commission must then provide such person with the notice of each allegation and a full opportunity to be heard in relation thereto.
- The Commission can then reach a conclusion based on the person's representations that there are reasonable grounds to suspect that one or more criminal offences have been committed.
- If so, the Commission must make a report to the Director of Public Prosecutions.

Role of the Integrity Commission

- Misconduct in Public Office is a common law offence.
- The elements of the offence involve :—
 - a public officer acting as such;
 - a breach of duty by that officer, either wilfully neglecting to perform his duty and/or wilfully misconducting himself;
 - the officer commits such a breach serious enough to amount to an abuse of the public's trust in the public officer, without reasonable excuse or justification.

Role of the Integrity Commission

- The following are examples of misconduct in public office.
 - Conduct which involves a fraudulent or dishonest motive;
 - The refusal to perform a function which the official is obliged to do as a duty of office;
 - The wilful misuse of official power, for example displaying favouritism in the award of contracts, licenses, to an individual or a group – where the person has personal, family, economic or political affiliation with that individual or group;
 - Wilful abuse of position where the official, having no actual authority in a matter, nonetheless uses his or her position so as to subvert the interests of the public or to harm a member of the public.

Role of the Integrity Commission

- The Commission in its deliberations must ensure that there has been a serious departure from proper standards – the threshold is a high one requiring conduct so far below acceptable standard as to amount to an abuse of public trust in the office holder.
- In addition, the motive with which the public officer acts may be relevant to the decision whether the public trust is abused by the conduct.
- Finally the Commission would have to be satisfied that the accused had an intent either to pervert the course of justice or to do something which, if achieved, would pervert the course of justice.

Fish does rotten from the head!

Need for a philosophy of business ethics in conducting the affairs of the Enterprise.

WHAT IS BUSINESS ETHICS?

This Section relies heavily on the website [Complete Guide to Ethics Management: An Ethics Toolkit for Managers](#), and [Free Complete Toolkit for Boards](#)

What is Business Ethics?

- Business Ethics is the behaviour that a business adheres to in its daily dealings with the world.
- The ethics of a particular business can be diverse. They apply not only to how the business interacts with the world at large, but also to their one-on-one dealings with a single customer.

DESIGNING A COMPREHENSIVE ETHICS PROGRAMME

Designing a Comprehensive Ethics Programme for your Company

1. DIAGNOSIS & EVALUATION

- Organizational Values – What do employees, especially managers, perceive as the stated and operational values of the organization based on formal documents, formal and informal training, reward systems
- Organizational Conduct – What is the perception about the congruence of stated and operational values and the prevalence or frequency of questionable, improper or illegal conduct?
- Personal Values – What are the personal attitudes, opinions and beliefs of individuals, especially managers, and how compatible are these with the stated or operational values?
- Personal Conduct – How consistent is the personal conduct of individuals within the organization, especially managers, with their own values and those of the organization?

Designing a Comprehensive Ethics Programme for your Company

2. STRATEGY DEVELOPMENT

- Goals for Change – What changes are desirable and necessary in the operational values and behavior of the organization and individuals?
- Stakes – Clarify the stakes; what are the potential risks and rewards relating to the desired changes?
- Commitment – How committed is the leadership of the organization to accomplishing these changes?
- Time Frame – What is the time frame in which meaningful changes must be accomplished?
- Resources – What resources, expertise, credibility, personal and financial are needed to accomplish the goals in the required time?

Designing a Comprehensive Ethics Programme for your Company

3. STANDARDS OF CONDUCT

- Draft and promulgate standards of conduct & policies
- Articulate organizational values
- Provide guidelines for dealing with potential value conflicts
- Standards for specific functional contexts
- Mechanisms for dealing with improper conduct

Designing a Comprehensive Ethics Programme for your Company

4. RECRUITING & HIRING

- Integrate value and behavioural goals into recruiting and hiring process so new employees are:
- Disposed to honour those goals
- Clear as to the expectations of the organization

5. EDUCATION & TRAINING

- Educate new and veteran employees about organizational values and standards of conduct, principled reasoning and ethical decision making to:
- Provide an understanding of the nature and reasons for the organization's values and rules
- Provide an Opportunity to question and challenge values for sincerity/practicality
- Teach ethical decision making skills related to commonly encountered issues
- The more specific and customized the training, the more effective it is likely to be

Designing a Comprehensive Ethics Programme for your Company

6. STAFF EVALUATION & PROMOTION

- Integrate value and behavioral goals into:
 - Performance review process
 - Employee counseling
 - Promotion decisions

7. SUPPORT SYSTEMS

- Mechanisms for allowing employees to get additional instruction, clarification and guidance on how to deal with issues concerning organizational values and standards of conduct

8. DISSENT/FEEDBACK CHANNELS

- Process for reporting misconduct without fear of retaliation
- Information learned through complaints and investigations should be fed back to managers and integrated into annual training programs and follow-up audits

Designing a Comprehensive Ethics Programme for your Company

9. AUDITING & MEASUREMENT

- Establish ongoing mechanism audit actual behaviors adherence to values
- Isolate cases that require action or discipline
- Deter improper conduct by creating likelihood that it will be discovered and appropriately sanctioned

10. COMMUNICATIONS REINFORCEMENT

- Various methods of organizational communications should reinforce both commitment to ethical principles and the core values of the organization

END OF STORY

End of Story

- Aha, then Mister Caruth, he came up and he started to prosecute
The magistrate then call his lawyer to defend the defendant, who is your honour
And all the time that the lawyer talking
The magistrate serious, sometime he laughing
Ah time the magistrate tell he own self, "*Look, I have a great mind to take 'way your license book.*"
- Aha, yes ah nearly drop when the man take out he pen and start to sum up
Partner, I start to study if he going to put his own self in custody
I was wrong because again he took out the mirror
Heself tell heself to pay twenty dollar
He bus out a cry, he turn round and say,
"*Give me chance, ah want a lil time to pay.*"

With due apologies to Mr. Theophilus Philip (March 23, 1926 – December 24, 1960 aka the Mighty Spoiler

End of Story

- Heseft told himself, *“You are charged for speeding.”*
Himself told himself, *“The policeman lying!”*
Himself tell himself, *“All right, I will be kind.*
Ah giving you five years to pay the fine.”

With due apologies to Mr. Theophilus Philip (March 23, 1926 – December 24, 1960 aka the Mighty Spoiler