

CHAPTER 5

PROMOTION OF THE CONDITIONS FOR BEE/BBBEE IMPLEMENTATION THROUGH ETHICS AND RISK MANAGEMENT

5.1 INTRODUCTION

The previous chapters highlighted a number of legislations and other sources that sought to make the BEE through PPPs a possibility. A number of challenges were highlighted. The multidisciplinary approach, which is evident in this chapter, will be manifested in the employee/employer relationship. Poverty alleviation and partnership formation might be problematic for these goals to be realised without checks and balances put in place. The checks and balances encapsulate building awareness through policy advocacy, corrective measures such as discipline as well as introducing risk management strategies. The foregoing measures play a role in the promotion of the conditions for BEE/BBBEE implementation.

In analysing the utilisation of public-private partnership in South Africa, it is important to define *public-private partnership* in the context of BEE/BBBEE. An attempt has been made to analyse the strengths and weaknesses of public-private partnership.

The study encapsulates the utilisation of PPPs in the management of finances towards the realisation of public-private partnership in South Africa with reference to the realisation of black economic empowerment. The management of finances as referred to here presupposes a particular relationship between employer and employee, employee and the regulations as well as the employee and the customer. This chapter focuses on these relationships as they have a bearing on the study of ethics and accountability. What has been manifested in this study is the interdisciplinary nature of public administration as it deals with aspects of codes of conduct and disciplinary procedures for deviant behaviour.

5.2 CORRUPTION AND THE LEGAL FRAMEWORK

Of vital importance is the postulate that this study, as stated above, takes the form of an interdisciplinary approach. Every workplace is characterised by the relationship between the employer and the employees, among employees themselves, and between the client and the supplier of service. This statement is pursued further in the later paragraphs that will address the relationships that the employee has.

These relationships may either take a form that would require to be defined either psychologically or sociologically. In this form of relationship, aspects of quality management come into play in as far as the customer, whether internal or external, would expect a particular standard of service to be rendered at a particular time. It is difficult to imagine how the private sector would be willing to partner with an uncaring Public Sector in the delivery of service. The private sector can make its resources available for the improvement of the living standard of the citizenry, if the conditions for this to happen are ideal.

For BEE to be implemented and to thrive, an environment for this to happen should be created, where officials are not only well trained but also that their behaviour is beyond reproach. This is the behaviour that calls for commitment and selflessness. South Africa, like any other country, should observe the rule of law. It is for this reason that South Africa has subscribed to a number of international conventions as mentioned in paragraph 2.6. The environment for poverty alleviation forms part of global imperative. Any form of law or practice that undermines human development should therefore be considered unacceptable and counter-productive.

The focus will be on whether service in the Public Sector is provided equitably and fairly in line with the political mandates encapsulated in manifestos and relative pieces of legislation. Anything to the contrary will have to be treated in line with the provided procedures. In order for the employees to know what is expected of them to do and how to do it, it will be necessary that a set of rules and regulations is clearly spelt out for

employees. In this regard, the Constitutional Principles of the Public Service Commission as stated by Sangweni (2004:3) will be used as reference.

As the aspects of relationship are analysed, specific administrative principles will have to be observed to ensure quality service delivery. The principles of *batho pele*, the Code of Ethics for public servants and other relative policies are analysed in this chapter. It is further of interest to investigate whether institutions or departments do have risk management plans and how these plans are being implemented to avoid rampant corruption in the Public Sector. These plans play a critical role at the level of procurement where aspects of BEE through PPP come to the fore.

The Swedish International Development Agency, referred to as SIDA (2004:5), defines *corruption* as manifested in the following:

- i. undermines the law;
- ii. demoralises political systems and democracy;
- iii. results in the inefficient allocation of scarce resources;
- iv. affects the poor disproportionately;
- v. undermines respect for human rights;
- vi. contributes to environmental degradation;
- vii. affects the will to invest; and
- viii. destroys predictability and hope for the future.

An environment where the rule of law does not apply hampers equitable service delivery. The focus of this study is poverty alleviation through BEE, where the designated group of people is a priority beneficiary. If resources are not allocated in a manner that benefits the poor, the poor would remain poor forever and the objective of poverty eradication would become difficult to achieve.

SIDA's Anti-Corruption Regulation (2004:9) stipulates strategies to counteract corruption in its partner countries. These countries include South Africa. According to

SIDA (2004:10), it may not be sufficient to simply define what *corruption* is without spelling out measures to counteract it. It is for this reason that the following strategies are considered relevant:

- i. support for civil society (including local chapters of Transparency International or local networks of the Global Compact);
- ii. general promotion of transparency;
- iii. support for the media;
- iv. support for good governance;
- v. support for an independent judicial system;
- vi. capacity building in financial management; and
- vii. institution building in general.

The role played by the media in exposing corruption where it happens cannot be underestimated. It was mentioned in the previous chapters that an environment for the implementation of BEE is supported by a variety of acts that seek to promote and foster good governance.

Sangweni (2004:3) posits that the government has made efforts in the promotion of social development and that social development can be sustained in an environment of good governance. He further states that poverty alleviation projects do not follow good development practice and that they are poorly integrated into local development plans and strategies. The foregoing borders on the organisational deficiencies, which will be analysed later. This is considered an administrative challenge that will be discussed both in this chapter and in Chapter 6 of this study. Poorly developed plans and strategies hamper development and economic growth, thereby hampering the realisation of black economic empowerment.

The use of these concepts and application might seem to pose challenges for both the administration and policy-makers in the South African administration domain. Managing PPP related processes requires a high level of discipline and responsibility. A lack of

common understanding of concepts such as *corruption* will always pose a major challenge as referred to in paragraph 4.6.3. The question can be posed whether the value systems that influence the thought processes of individuals should be taken into consideration when determining what is corruption and therefore unethical. The existing body of knowledge does not give a clear definition of *corruption* except to say it must be eradicated. In other words, the practice that is perceived to be corruption must be eradicated irrespective of whether it expresses a particular value system of a particular society. Transparency International (2010) in its Global Coalition against Corruption posted a corruption perception index, where South Africa has not scored favourably, compared with countries such as the United Kingdom, the United States of America, New Zealand, Australia and Denmark, with the latter ranked as the least corrupt country in the world. The index further states that corruption must be prosecuted and prevented and that anti-corruption bodies must be established. The majority of African countries, except Botswana seem to have scored badly in the index. The question of values and beliefs needs to be taken into cognisance when defining *corruption*.

5.3 ETHICS AND ACCOUNTABILITY

Geuras and Garofalo (1999:4) define *public* as meaning that the ethical value in the standard of the public interest applies to every member of the political community. The catchword in this definition appears to be *member of the political community*. The definition of *public* without reference to government or political environment is difficult. The question that can be posed is: what is that which is of public interest in South Africa? The answer to this question is found in the former president Mbeki's address at the second joint sitting of the third democratic Parliament in February 2005, when he stated that the victories that have been registered during the first 10 years of freedom laid the foundation for new advances. Former president Mbeki (2005) further mentions that the following should be done:

- i. further entrenchment of democracy in the country;
- ii. transforming the country into a genuinely non-racial society;

- iii. transforming the country into a genuinely non-sexist society;
- iv. eradicating poverty and underdevelopment, in the context of a thriving and growing First Economy and the successful transformation of the Second Economy;
- v. opening the vistas towards the spiritual and material fulfilment of each and every South African;
- vi. securing the safety and security of all our people;
- vii. building a strong and efficient democratic state that truly serves the interest of the people; and
- viii. contributing to the victory of the African Renaissance and the achievement of the goal of a better life for the people of Africa and the rest of the world.

The need for poverty alleviation for the material fulfilment should indeed be the pursuit of the Government. It is through BEE that these ideals can be achieved. Accountability is vital in pursuit of the above ideals.

The former minister of finance, Manuel (2004:1), argues that South Africa has achieved many things in ten years of democracy and states further that the need to eradicate poverty and to drive development remains utmost. He referred to the following as setting the agenda for the development he referred to in his address, being:

- i. health care for all;
- ii. quality education for all;
- iii. safe water and sanitation for all; road, rail, sport communications infrastructure that will stimulate growth;
- iv. black economic empowerment;
- v. a justice system that works;
- vi. sport and cultural facilities that build pride; and
- vii. the protection of South Africa's biodiversity heritage.

The areas referred to above resonate to a larger extent the ideals encapsulated in former president Mbeki's address. It is important for those who violate the law to be referred to the law enforcers for them not to act with impunity. The education system should be such that the poor are made to benefit from the economy of this country through BEE.

Manuel's address (2004:2) largely agrees with what the former president mentioned in his two speeches. The challenges they elicit are common as they centre on the strong economy and the need for development. Paragraph 5.2 defined *corruption* as any practice that stands in violation of the principles outlined by SIDA, which are accepted internationally. The point at issue here is that *corruption* is defined purely on the basis of practice *i.e.* the manifestation of it. The challenge facing all the citizens in South Africa is the embracement of ideals of good practice by everybody. The goals of poverty alleviation through BEE may not be maintained in an environment of ill-discipline and indolence.

Mafunisa (2002:192) defines *ethics* as that branch of philosophy dealing with values that relate to human conduct with respect to what is right and what is wrong. What is right refers to what ought to be or what is acceptable. What is wrong is that which is not to be or what is unacceptable. Ethics can, simply put, be that which is in agreement with the norms of propriety. By the very nature of human beings it is acceptable that unethical behaviour by political office bearers and public officials might occur. The challenge raised here is that in the event unethical behaviour occurs, what should be done? This has been addressed in paragraph 5.4 of this study. It should, however, be advisable to read the catalogue of unethical behaviour against the definition of *corruption* as highlighted in 5.2 of this study.

Mafunisa (2002:193) provides a catalogue of unethical conduct as follows:

- i. inefficiency and ineffectiveness;
- ii. corruption, meaning unethical use of public office for personal or private gain;
- iii. conflict of interest;

- iv. election rigging;
- v. subjective and arbitrary decisions;
- vi. tax evasion;
- vii. discrimination;
- viii. protection of incompetence;
- ix. unauthorised disclosure of confidential information;
- x. nepotism;
- xi. bribery;
- xii. theft;
- xiii. misuse of public property;
- xiv. victimisation;
- xv. sexual harassment;
- xvi. fraud;
- xvii. extortion;
- xviii. influence peddling; and
- xix. speed money.

The practices spelt out above hamper development and perpetuate suffering among the poor who stand to benefit from BEE initiatives in that, aspects such as theft, bribery, fraud and extortion for instance; promote self-enrichment among those who happen to have access to the resources. Under normal circumstances, the private sector would prefer to invest where there is a potential for positive return on investment rather than channeling resources into a situation of anarchy and lawlessness, which is underpinned by crass materialism. A case in point is those countries where human rights are violated with impunity, *e.g.* Zimbabwe and Swaziland.

Mafunisa (2002:194) outlines causes of unethical behaviour. He asserts that corruption as a form of unethical behaviour would differ from one society to another. He however sums up the corruption within public functionaries as caused by greed and dishonesty.

He outlines causes of corruption as follows:

- i. psychological factors, manifested in craving for power, avarice, covetousness etc.;
- ii. social factors such as large numbers of people competing for inadequate services;
- iii. economic factors, caused by low salaries where the standard of living is high;
- iv. organisational factors, where supervision is insufficient;
- v. complex legislation, caused by incorrect interpretation, which often leads to inconsistencies;
- vi. lack of an ethical awareness as a result of ineffective communication; and
- vii. deficient control and accountability, which often leads to employees exploiting a lack of control and accountability.

Chapter 3 of this study outlined the responsibilities of various officials who are at the forefront of policy implementation. Should these officials be found to be not keeping the code of conduct and be found to be enriching themselves by way of collusion with other dodgy service providers, it will be difficult to succeed in pursuit of a better life for all through BEE initiatives. The aspect of empowering the empowered continues unabated in an environment where corruption reigns supreme. Conflict of interest promotes corruption and fraud and provides no incentive for the private sector to want to do business with the Government in an environment of lawlessness. The Report on Financial Misconduct (2004:4) outlines the levels of officials charged with financial misconduct. Employees at Salary Level 6, which constitutes the lowest-paid clerical staff in the hierarchy, are found to have committed the highest number of financial misconduct cases (25%) while those in salary level 13 to 15 that have been charged with financial misconduct has increased from 1% in the 2001/2002 financial year, to 4% in the 2003/2004 financial year. These figures show that financial misconduct is pervasive across all levels in the Public Sector.

Mafunisa (2000:80) maintains that if superordinate public officials were able to elicit in subordinates a sense of identification with their work and their employer, there would be the possibility of unleashing a sense of commitment rather than compliance. Unlike compliance, commitment implies that the public official produces more than is expected. The most urgent duty facing the Public Sector is not only to get public officials to comply with a code of conduct, legislation or administrative law, but also to transform the compliant workforce into a committed workforce geared towards effective and efficient performance. McIntosh (1999:8) states:

As young people, we want to work in an environment that has the creative and productive potential of business. Yet, we fear that while the surface of a company may look beautiful, its core may be rotten. We want to be able to state our values openly, and not have to compromise those values in our day-to-day jobs. Increasingly, we will be looking beyond a company's petals and stem and even its soil. Instead we will be scrutinizing the seeds of its values, visible through the increasingly transparent soil. And, we see ourselves as partners and customers, rather than as employees. When entering into a contract of employment, we are forming a partnership. And we believe that all partnerships should be based on shared values.

The quotation above stands in marked harmony with Mafunisa's postulate above. Though it may sound rather ideal, it remains an objective that the 21st century employee should pursue. It is a marked epitome of commitment that is in stark contrast with compliance.

Flowing from Mafunisa's (2002:16) postulate, it is of importance to make reference to the Report on Managing Conflicts of Interest in Public Service (2006) as far as the report mentions three categories of conflict of interest, namely, perceived conflict of interest, potential conflict of interest and actual conflict of interest. A public official is in a position to appear to be influenced by his or her private interests when doing his job, which makes him or her perceived to have a conflict of interest. Potential conflict of

interest manifests itself when a public official is in a position where he or she may be influenced in the future by his or her private interest when doing his or her job. Actual conflict of interest manifests itself when a public official is in a position to be influenced by his or her private interests when doing his or her job.

Davies (2005:5) identified the following eight fundamental principles underlying an effective conflict of interest:

- i. the system/policy should promote both the reality and the perception of integrity in government;
- ii. the focus should be on prevention, not punishment;
- iii. the honesty of the majority of public officials must be recognised;
- iv. morality should not be regulated;
- v. the system/policy must be tailored to the particular nation, society and culture;
- vi. it undergirds the essential values of the nation;
- vii. government money should be saved; and
- viii. ensure that the public have an interest in the system.

Davies' (2005:5) argument though it may have areas of controversy, it creates a platform for further debates in as far as the system must be tailored to the particular nation, society and culture. It stands to reason that taking into consideration proverbial expressions rooted in certain African societies and cultures, Davies's assertion holds water; e.g. in Sotho, Tswana, Zulu and Swazi, these are *he who strives, strives for his own* (direct translation) and *One hand washes another* (direct translation).

Manuel (2004), states that the question that is often asked is 'how to?' The answer is attributable to the availability of resources. It is against this backdrop that Manuel argues in favour of public-private partnership by stating that public-private partnership would come in handy to address these challenges. The public gets better, more cost-effective services; while the private sector gets new business opportunities. It is advisable to take

into consideration the ethical practices or a lack thereof in implementing the ideals of PPP.

Former president Mbeki (2005), in his address has elaborately stated what he perceives to be of public interest. The same is echoed in the previous references made with reference to Geuras and Garofalo (1999:4). It can further be argued that Mbeki (2005) in his address has already implicitly outlined the purpose of public private partnership in as far as it aims at addressing the challenges facing the South African Economy. Mbeki (2005) continues to state that a programme of action of Government to achieve higher rates of economic growth and development has been set out. He states that this was meant to improve the quality of life of all people and consolidate social cohesion.

The challenge remains the equitable management of resources in the manner that all citizens benefit from them, not only a select few. Normally corrupt practices take place at the level of management where tenders often get directed to friends and relatives, as raised in the previous chapters. When corruption occurs, the poor and the public at large experience hardships. This may take the form of a lack of service delivery or general neglect by those wielding power.

In discussing this challenge, it is not uncommon to come across sporadic statements that underpin, what appears to be a lack of willingness on the part of senior management and politicians in high places to implement policies that deal with matters of discipline and to take appropriate steps where such deviations have become self-evident. By *senior management* here, the study refers to the management in the Public Sector, ranging from director upward. Resolution Number 9 of 2001 refers to the Senior Management System (SMS) as referring to those individuals at Salary Level 13 or higher. It remains the responsibility of management to implement policies around matters of discipline and to promote ethical behaviour in and outside the workplace.

The recommendation and conclusion in this study will suggest strategies and procedures of managing discipline in the Public Sector for the conducive condition for PPPs to

thrive. The need for offenders to be brought to book does not only encourage private companies to form partnerships with the Government, but also build confidence from the ordinary citizens of South Africa. Central to the implementation of ethical standards is leading by example. The senior management, including political heads need to exemplify ethical standards in their behaviour at all times. It will be of interest to note that in spite of the availability of many policies and legislations, the Public Sector still remains fraught with disciplinary problems. It will be explained later on why the public service continues to find it difficult to promote sound discipline in the departments. Paragraph 5.16 provides a statistical representation of cases referred to the CCMA, which serves as an indication that those committing misconduct are not left unscathed.

Jefkins (1998:56) defines *public* as a group of people, internally and externally, with whom an organisation communicates. What has been brought to bear in this definition is the multiplicity of disciplines at play in the study of Public Administration. The very definition above, presupposes the relevance of sociology in the study of Public Administration. The system of thesis, antithesis and synthesis will come into play where employees interact and interphase. This chapter is about the promotion of the conditions for BEE/BBBEE implementation in public administration perspective where ethics and risk management form important features towards the realisation of public private partnerships, through which BEE will be achieved. What may be seen in this definition is the interaction of human beings in a particular relationship, best defined as the departments and members of the public, who happen to be the recipients of the service rendered, hence the *internal* and external customers.

Pursuant to accountability and ethics, the following aspects are highlighted: efficient and effective use of resources, public administration as developmental process, impartiality, fairness, equitability and unbiased practices, responding to people's needs, accountable public administration and good human resource management. The poverty alleviation process should be based on sound democratic principles that seek to elevate the plight of the poor.

5.4 EFFICIENT, ECONOMIC AND EFFECTIVE USE OF RESOURCES FOR THE PROMOTION OF THE CONDITIONS FOR BEE/BBBEE IMPLEMENTATION

Resources as discussed in this paragraph may refer to human, physical or financial resources. The most neglected of the resources in the Public Sector is time. Time management plays a critical role in the delivery of service. Time determines the turnaround period in the supply chain management. The Gauteng Provincial Government has introduced the GSSC as a means to address the turnaround time in service delivery. This implies the speedy delivery of service to those requiring it. Compounding the problem of encouraging people to start business in South Africa, is turnaround time. This goes with the time it takes to make an application with the Department of Trade and Industry (DTI) for business as well as the issuance of tax certificate by South African Revenue service.

The need to ensure that effectiveness is continually sought cannot be reputed. Sangweni (2004:3) states that the Public Service Commission proposes the adoption of an integrated national performance management framework. At face value this may not be a bad idea. The challenge is whether this framework will really deliver the expected results given that it presupposes that all provinces in the country are equal in terms of resources and that they share common cultural practices. Some provinces such as the Eastern Cape require a unique framework that will have to be customised to the needs of that province. Provinces such as Gauteng and the Western Cape with their rich HR skills require a different approach altogether from the rest of the struggling provinces, for instance. It is for this reason the globalisation of standards becomes problematic.

Operational plans consist of the following: objectives, activities, outputs, measures, resources, responsibility and timeframes. For example, the Gauteng Education Department in this province follows the structured system of reporting called *Matlotlo* (Sotho name for revenue) (2008). This is the forum where directorates or units in education would present the financial situation of their various units. The exercise helps in the promotion of transparency and efficiency in the use of public funds. The forum is

used to ascertain if the department uses the budget in accordance with the political mandates identifies for that particular financial year.

There are a number of cases where public servants have been prosecuted for non-delivery and rendering services in a manner that was not transparent, for instance, paragraph 5.14 of this study refers to this. The forums such as *Matlotlo* would help to identify deviations at an earlier stage. It may not be an acceptable practice if the entire budget allocated goes towards personnel, for instance, with nothing spent to uplift the poor through BEE initiatives. To manage the budget effectively, efficiently, economically and with transparency requires efficient reporting and reporting tools, which is referred to in Chapter 6.

Accounting officers may be held accountable for not complying with the provisions of *PFMA*, (1999) in as far as *effectiveness*, *efficiency* and *economical* are concerned. One can ask, who qualifies a particular practice as efficient, effective or economical? Which standard is used? These terms are critical in as far as taking disciplinary action against employees is concerned. The challenge here is as far as a lack of compliance with the above is often regarded as nepotism, the term which does not exist in the African vocabulary and which may be interpreted differently by those who practise it. The environment of nepotism may be viewed by potential partners as lawlessness. An environment where the laws and policies of the Government are not observed may create a lack of confidence from the potential private partner. For example, if Edu-Solution as the sole supplier of stationery in Gauteng feels the Gauteng Provincial Government might not pay for the services it has rendered, it might be difficult for Edu-Solution to continue in this form of partnership.

What is considered to be corrupt practice in the black culture, where one should direct resources to his or her own is often supported by a number of proverbial expressions such *when you strive you need to strive for your own closest of kin* (direct translation), *children of the family share a locust's head*, (direct translation) and reference can also be made to the English idiomatic expression that says: "*blood is thicker than water*". These

expressions might have been taken too far, but the gist of the matter here is that nepotistic practices are not of necessity without cultural roots and practices. Paragraph 4.6.3 and 5.2 referred to this practice, though in different context. Perhaps what is considered *corruption* needs to be located within a particular cultural context. Considering countries such as Japan where tipping is outlawed and India and other countries where it is permissible or even enforced, one wonders if culture and ethical behaviour should not form part of the definition of *corruption*. The promotion of conditions for BEE/BBBEE implementation in the absence of a conscious effort to abide by the laws and policies of government will become a challenge. There has to be common understanding between partners in terms of partnership conditions and procedures for the achievement of a common goal of BEE through PPP.

5.5 PUBLIC ADMINISTRATION MUST BE DEVELOPMENT ORIENTED

The daily practice of public administration should seek to improve the quality of life of all citizens, especially those who are disadvantaged and most vulnerable. This should form part of the public administration's main objectives. Sangweni (2004:18) continues to argue that in order to address poverty, a comprehensive planning, participation and budgeting are required to facilitate the success of poverty alleviation projects. Perhaps this is what the Expanded Public Works Programme (EPWP) seeks to address. The Expanded Public Works Programme forms part of BEE through PPP, for example when a group of local residents are employed by a local contractor to help build bridges or repair roads. Equally, a BEE company may, for example, be contracted to provide food for prisoners or patients in hospital. In so doing, the quality of the life of citizens and their well-being improves.

Sangweni (2004:18) maintains that social security is a major instrument for redressing poverty. This is manifested in child support grants and old age pensions, for instance. Both national and provincial departments have implemented poverty alleviation programmes. Having implemented these programmes should not be seen as an end in itself. In the light of the many challenges of fraud and corruption in this area, it may be

advisable for instance, to consider a voucher system, where the participants are forced to spend the money for what is worth. The establishment of the voucher system should require a BEE/PPP initiative, for instance. The disbursement of the fund to the needy should take the form of strict supervision to avoid fraud and corruption.

5.6 SERVICE MUST BE PROVIDED IMPARTIALLY, FAIRLY, EQUITABLY AND WITHOUT BIAS

In order to promote the conditions for BEE/BBBEE implementation for the realisation of black economic empowerment, service must be provided impartially, fairly, equitably and without a bias. Tenders must, for example, not be given to people on the basis of their political affiliation or without considering if these tenders have been awarded to people with requisite skills.

According to Sangweni (2004:3) the Government has adopted legislation and policies intended to improve service delivery. He argues that this is rarely understood and implemented. He goes on to explain that impartiality demands that factors such as race, ethnicity and family connections play no part in the delivery of service. Equity according to Sangweni (2004:21) is more challenging in as far as it relates to even-handedness and fair play.

The historical perspective in making service delivery decisions is crucial. Equity often requires that certain groups be given affirmative treatment or preferential access to services, which creates a dynamic tension with the principle of impartiality. The difficulty with this principle is that its implementation is often regarded as discrimination in reverse. The need to apply some form of affirmative action was analysed in Chapter 2 of this study. It cannot be expected that the implementation of programmes that seek to empower blacks will not be without challenges. The challenge is to create a balance between fair play and blatant nepotism.

A number of questions can be raised as to why it seems as if the understanding of government legislation and policies in the area of BEE is problematic. It may be that employees are trapped in a rut of antiquated cultural mold of glorified nepotism, which seems to be gaining momentum in the Public Sector. The challenge here might be that people who come from a cultural background that does not see nepotism as an offence, may need to be made to understand and accept it as an offence.

There is a need for a debate around the cultural connotation of what *nepotism* actually implies in relation to the specific beliefs of cultural groupings in the Republic of South Africa. Some cultural groups may understand impartiality and fairness to be foreign practice. The same goes with the allocation of resources to those who are seen to be politically connected. What is of concern is that this practice may be construed to be contrary to the codes of business ethics by international standards. Reference to SIDA in paragraph 5.2 in this regard has been made for the purposes of understanding what the international community understands by ethics and ethical practices. Taking the international practices into consideration should also be done with great caution as countries differ in terms of a variety of cultural practices. The Gauteng Provincial Government in pursuit of equitable and efficient procurement system introduced the Gauteng Shared Services Centre (GSSC) to deal with matters of procurement. Paragraph 6.6 of this study focuses on the role of the GSSC in this regard.

5.7 PUBLIC ADMINISTRATION MUST BE ACCOUNTABLE

Sangweni (2004:26) explains *accountability* as taking responsibility for one's actions. It is a key corollary of being given a mandate by an electorate. By acting responsibly, the Public Sector holds itself up to public scrutiny. This the Public Service does in full recognition of the principles of *batho pele* (DPSA, 2009) mentioned as follows:

- i. regularly consult with customers;
- ii. set service standards;
- iii. increase access to services;

- iv. ensure higher levels of courtesy;
- v. provide more and better information about services;
- vi. increase openness and transparency about services;
- vii. remedy failures and mistakes; and
- viii. give the best possible value for money.

Accountability denotes being able to account for the resources allocated under one's supervision. It is here where the term *accounting officer* as used in the *PFMA*, (1999) derives its meaning. The absence of accountability suggests the existence of corrupt practices and fraud. The implementation of PPP through BEE may not thrive under an environment where corruption and fraud are rife.

The accountable utilisation of resources implies the ability to be able to account for each and every cent that is spent and to ensure that the allocated budget is spent in a transparent manner. Any form of deviation or departure from the generally accepted accounting practice may be punishable by law. It is for this reason for instance, that some of the provinces find it difficult to spend the allocated funds.

Capital expenditure plays an important role in bridging the gap between the rural poor and the rich in the cities. It is against this background that Mpumalanga Provincial Government spent only R1,6m out of capital expenditure budget of R112 million, the Eastern Cape only R330 000 of the year's capital budget of R8 million, the Free State R1,5 million out of R23 million, Gauteng R3 million out of R8 million and Kwazulu Natal R13,4 million out of R74 million (Unspent budgets in Provinces, Anon, 2006:3). It is not only unacceptable but also counter-productive, given the broader objective programmes of Government on poverty alleviation through BEE.

According to MECs of Agriculture and Social Development, these misdemeanors are linked to R15,6 million land deal which was authorised unlawfully. The charge sheet states that the MEC, on behalf of the provincial government entered into a sale agreement to buy 49% of the share of Kangela citrus farm for R15, 6 million. The MEC received

R360, 000 in kickbacks from Cape Town businessman in the form of cash and a bond payment of R2,7 million for his home (Face Six Counts of Fraud and Corruption Anon, 2006:7).

In as far as the promotion and management of discipline is concerned, the role played by the Auditor-General may not be undermined. The Auditor-General, according to Sangweni (2004:27), is the key institution that promotes accountability in South Africa's Public Sector. It is unfortunate that recommendations made by the Auditor-General are not always implemented, which may undermine the equitable, economical and transparent distribution of resources, which could be used to promote BEE through PPPs.

5.8 TRANSPARENCY MUST BE FOSTERED BY PROVIDING THE PUBLIC WITH TIMELY, ACCESSIBLE AND ACCURATE INFORMATION

The *Promotion of Access to Information Act 2000* (Act 2 of 2000) is meant to address the problem of a lack of information on matters of public interest. It will be difficult for the Government to be considered accountable if it does not practise the principle of transparency. In practising the principle of transparency, the National Assembly and legislature debates are often made open to the public. Annual or quarterly reports are the key public documents through which transparency is achieved.

Transparency involves disclosure of business interest for employees in the Public Sector. There still exist weaknesses in this area in that in some instances this may be regarded as an invasion of privacy. Transparency could as well imply regular reporting of the state of finances of a particular institution or department. All the departments should either by way of public hearings or annual reports disclose how much of the budget was allocated towards the promotion of PPP and a number of people who benefited from BEE programmes in a particular financial year. Transparency underpins public disclosure.

It is not easy to determine how many of the senior management in the Public Sector have or have not completed the declaration of interest forms in compliance with the *SMS*

Handbook (2006). Compounding this problem is the fact these forms are confidential. It further stands to reason that the completion of these declaration forms may turn out to be of no use if those directed to complete them may include false information about themselves and their business interests. The completion of these forms may just be dependent on people's good-will. The difficulty here may be as a result of a lack of proper communication and feedback. Employees have been made to complete declaration forms without a full understanding of the reason behind the completion of these forms. It is for this reason they prefer to keep their interest to themselves. It further must be borne in mind that the feeling of these forms at the present moment is not enforceable by law.

A lack of the legal framework to enforce the completion of declaration forms may be problematic for many years to come, unless properly managed. The legal implication of this exercise needs to be thoroughly scrutinised to ensure that people's privacy is not violated. Perhaps this is the reason senior managers in the Public Sector remain reluctant to fill in declaration forms. It may as well be that some of the senior managers are benefitting in one way or another in BEE companies, which render service to the Government, either as shareholders or directors of these companies, hence completing declaration forms would expose them. The reluctance of senior management to complete declaration forms may as well be attributable to a lack of reinforcement tool for compliance. This is an administrative omission that would only serve to swell the levels of corruption and fraudulent practices on the part of Senior Management Service (SMS).

The new term that is commonly used to portray those with business interests and who continue to benefit from this is *invisible partners*. It is difficult for authorities to track them down as they are not registered anywhere, though they are sure of extra remuneration from the companies that they give tenders to. The above being the case, it might require a new measure to control the behaviour of employees in the awarding of tenders. These should perhaps include providing a workable risk management strategy that would help minimise the irregular and unethical behaviour of employees. Perhaps a

life-style audit of employees should be conducted to discourage unethical behaviour of employees, where employees' life styles would be measured against their income.

5.9 PUBLIC ADMINISTRATION MUST BE BROADLY REPRESENTATIVE OF THE SOUTH AFRICAN PEOPLE

The *Constitution* (1996) promotes equality and human rights. Race and position should not be seen to be benefiting anyone in the democratic government. Sangweni (2004:36) argues that the desire for ability, objectivity and fairness should be seen as criteria on which personnel practices should be based. The best finance managers may be found in all racial groups.

The new challenge facing South Africa is the willingness as mentioned in the introduction, to perform what the *Constitution* (1996) dictates. The country is no longer fighting racial war, neither is it grappling with challenges of racial integration as it used to be 10 years ago. The energy should now be channeled towards the improvement of the poor through BEE programmes, the success of which is dependent on good management skills.

The new challenge perhaps is ethnicity and ethnic intolerance, more especially in the area of recruitment and service delivery as mentioned earlier on; tenders should not be an exception in this regard. South Africa is still faced with racial challenges (Radio 702 July 2006). The nature of this racism, it was said; is perpetuated by blacks against other blacks, including indians, who are said to have been on the receiving end. The country has just seen the resurgence of xenophobia in the townships where black foreign nationals were subjected to brutality.

Sangweni (2004:36) maintains, 10 years ago, until the democratic transition, the South African State was the preserve of specific groups within the white population who benefited enormously from their control of the public purse. These groups, he maintains, were not only the beneficiaries of state activities, but also gained easy access to

employment. This has led to the introduction of *Employment Equity Act, 1998* (Act 58 of 1998) that outlaws discrimination and promotes affirmative action in the workplace. It seems as if the similar challenge is emerging where the new form of discrimination based on class has posed a phenomenal concern among the society. It does not seem like the *Employment Equity Act, 1998* (Act 58 of 1998) has the capacity to address these challenges in its present form as it has the propensity to be abused to the extent of excluding even the most capable and efficient employees who may not necessarily be black.

The very practices that were regarded as repulsive and unfair continue in a different form and shape and tend to hamper economic development and retard the implementation of the Government's BEE programmes. What the country experiences is the consistent elevation of a particular ethnic grouping in the Public Service to the positions of power. Perhaps laws will have to be rewritten to address these new challenges. The challenge here is that there will have to be a new paradigm shift from, purely addressing injustices of the past characterised by racial discrimination, to the injustices of today which manifest themselves in ethnicity and class.

Having discussed the constitutional principles of the Public Sector in the previous paragraphs, it is necessary to bring to bear the disciplinary measures and procedures that follow in the event of expressed violation of these principles. In the paragraphs that follow, the focus will be on the disciplinary processes that have to be followed to redress shortcomings and shortfalls experienced during the service delivery processes. It is necessary to look into the procedures that have to be followed when meting out discipline.

As mentioned earlier on, discipline if being an option for correction, has to be in compliance with the disciplinary procedures laid out in the Acts and codes of conduct. It is believed that, though disciplinary measures should be considered as deterrent to misconduct, its implementation to meet the desired outcome remains a challenge. This being the case, it cannot be imagined how the broad goals of poverty alleviation that are

supposed to be driven by the Public Sector functionary could become realisable under the circumstances. The government that cannot punish devious behaviour stands in marked contrast to what is expected of it to do, namely to serve its citizenry. It must be pointed out that this function is not only delegated to the courts of justice to address, but entities such as Commission for Conciliation, Mediation and Arbitration (CCMA). The fact that misbehaviour is hampering quality service delivery and serving as a hindrance to development and economic empowerment cannot be denied. In the Public Sector, the nature of misconduct is normally in the form of fraud and corruption. Under the circumstances, resources would only be concentrated in the inner circle of those who are connected to those holding the purse rather than being equitably shared among those who deserve them, in this context the beneficiaries of BEE programmes.

5.10 DISCIPLINARY PROCEDURES

A mention has been made in the previous paragraphs that the promotion and management of discipline in the public sector should strive towards achieving lasting labour peace in the Public Service. The BEE/BBBEE is implementable in an environment where any form of deviation from the policy is checked and corrected. Discipline forms part of risk management. Paragraph 3.8 states that SCM must be applied fairly and equitably. It has to be said that this can take different forms and shapes. Employees may in pursuit of labour peace, be subjected to disciplinary procedures for having not, for example, applied SCM fairly and equitably. This may result with misconduct. *Misconduct* is the intentional or negligent breach of a legitimate and known work requirement. The outcome of the process may include dismissal. Dismissal if being an option, must comply with labour regulations and procedures. In most cases, dismissals in the Public Sector fall short of compliance with labour regulations. In the absence of any form of corrective measure, employees may for example, allocate tenders to their own companies or the companies of their closest of kin. The absence of discipline may for instance, result in anarchy under these circumstances.

The aspect of discipline remains relevant to the objective of this study as the contractual employer/employee relationship presupposes the possibility of conflict and conflict resolution procedures. The equitable and effective implementation of government policies such as BEE cannot be left to chance as long as the possibility for misdemeanors such as those discussed in the previous paragraphs where misappropriation of funds by senior officials of the Government has become rampant, threaten the Government's effort to provide for the poor.

In a communication with Cilo (2006), reference was made to the case of a school where the principal was said to have mismanaged funds. He pointed out that though the principal is employee he may not be charged as he is not the accounting officer. The School Governing Body (SGB), according to the *South African Schools Act, 1996* (Act 84 of 1996) Section 21 states that the SGB of a school is responsible for the finances as part of its function; this effectively makes SGBs accountable for finances of the institution. Though evidence may exist, it would be difficult to charge the principal as there will be no legal basis to charge him. This exposes a serious loophole in as far as holding principals accountable for finances at schools is concerned. One would expect principals to be the chief financial officers of schools, where they would be held accountable for any misappropriation of funds. The funds that schools raise or receive as an allocation from the Gauteng Department of Education for instance, need to be managed according to Circular 34 of 2004 where the budget is allocated as follows; 60% for learning support materials, 28% for services, e.g. electricity and water and 12% for maintenance. Though these funds are deposited in one account, need be that they are spent according to the regulated percentages. The mismanagement of school funds can for example hamper the delivery of essential services such as repairs and renovations and in the end hamper the establishment of school-based BEE through PPPs. Normally schools would enter into partnership with service providers for a variety of services including the supply of writing materials, teaching aids and learning aids, for instance.

The paragraphs that follow discuss in detail procedures that have to be followed whenever a public employee violates of the Code of Conduct or the laws governing his or

her condition of service. It must be borne in mind that any government employee is accountable for the equitable and unbiased delivery of service, including a fair and equitable consideration for allocation of tenders to promote BEE policies. It would pose serious administrative problems if employees are not held accountable for their behaviour.

A number of pieces legislation that focused on the disciplinary processes for educators have been discussed. Though educators are also public servants, it stands to reason that their conditions of service are regulated slightly differently. The education sector has (ELRC) Education Labour Relations Council as the body that adjudicates over disciplinary procedures and the Public Sector uses Public Service Co-coordinating Bargaining Council (PSCBC). Focus will be on how discipline is conducted in the Public Sector, looking at the principles of discipline. The *discipline* as analysed below, does not necessarily focus on discipline in respect of specific misdemeanours but broader offences. The promotion of the conditions for BEE/BBBEE implementation is possible where employees flouting the rules and procedures are disciplined.

5.11 THE NEW DISCIPLINARY CODE AND PROCEDURES FOR THE PUBLIC SERVICE

The principles of the code as encapsulated in the PSCBC Disciplinary Chart state the following:

- i. the code is a corrective measure not a punitive one;
- ii. the code must be applied in a prompt, fair, consistent and progressive manner;
- iii. the code is a management function;
- iv. the code is necessary for the efficient delivery of service and the fair treatment of public servants; and
- v. the code must be understandable to all employees (*Explanatory Manual on the Code of Conduct for the Public Service*, 2002:20).

The challenges faced by the Public Sector in general are that in some cases these procedures are flouted to the extent where the constitutional rights of the employee to privacy become completely eroded as a result of the delay in prosecution. Some cases take longer than is required before they are prosecuted. This practice makes members vulnerable to media intrusion and other stressors. The longer it takes to finalise cases of misconduct, the more the service delivery is hampered more especially in the area where there is a dearth of skills, such as finance and procurement.

Misconduct that is a criminal offence may undergo a separate procedure; internal disciplinary procedure and external criminal procedure. The difficulty with this process is that the courts may acquit an employee only for the employer to fine him or her, or vice versa. Some employees are often found guilty in the court of law for having committed acts of violence, theft or sexual abuse in the workplace only to get away with a slap on the wrist in the internal disciplinary proceeding. This is one area that needs some attention.

The question can be asked: what stage does an employee have to face suspension as a censor? The following conditions will have to be complied with when the employer suspends an employee:

- i. the member must be considered to have committed serious offence;
- ii. the employer believes that the presence of the member at the workplace might jeopardise any investigation into the alleged misconduct or endanger the well-being or safety of any person or state property;
- iii. suspension of this nature must be on full pay; and
- iv. if the employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month. The chairperson of the hearing must then decide on any further postponement (*Public Service Handbook, 2003*).

There are challenges facing the employer in the implementation of the above, more especially with regard to the period of suspension. There are cases where members get suspended for a much longer period. It is not clear at the present moment if employees would have recourse in the event that their labour rights are infringed upon in this manner.

Having touched on the disciplinary code of conduct, it is now opportune to discuss the code of conduct for both the employer and the employee. *A practical guide to ethical dilemmas in the workplace* (2002:8-8) outlines the responsibilities of the employer and the employee. The responsibilities of the employer include the creation of an appropriate environment in which values are established and exemplary models are set for all employees. The employer here refers to the Minister/MEC or the Public Service managers.

Section 195(1) (a) of the *Constitution* (1996) requires that a high standard of professional ethics be promoted and maintained in public administration in general. It must be mentioned that it is essential to sensitise all employees about the importance of observing the code of conduct. This may be done by way of advocacy campaigns geared toward promoting a disciplined Public Service cadre, which will be motivated to pursue the plight of the poor and implement the pro-poor policies of government such as BEE without bias or prejudice.

5.12 PERFORMANCE DUTIES OF PUBLIC SERVANTS

The promotion of conditions for the implementation of BEE/BBBEE may not be possible in the environment where the public officials are self-serving and do not have passion toward poverty eradication. *A Practical Guide to Ethical Dilemmas in the Workplace*, (2002:37-50) extrapolates the following as duties expected of employees in the Public Sector. These should be seen as essential en route toward creating a caring Public Service that is not self-serving and inward looking:

- i. An employee strives to achieve the objectives of his or her institution cost-effectively and in the public interest.

It is expected of employees to ask themselves from time to time if they are doing that which adds value to their post of duty. This requires all employees to have a thorough knowledge of the goal and objectives of their components and their duties within the component.

- ii. An employee is creative in thought and in the execution of his or her duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law.

It is expected of employees to apply their minds quicker and seek to do their work better at all times. In the field of finance, it is expected of employees to be able to pick up the red flashing lights in matters of the budgets. They should be able to detect fraudulent practices on time and put in place corrective measures urgently to avoid the escalation of malpractices.

- iii. An employee does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties.

Employees should behave themselves in such a manner that the Government of the day and members of the public will trust them.

- iv. An employee is honest and accountable in dealing with public funds and uses the Public Sector's property and other resources effectively, efficiently and only for authorised official purposes.

The general public has entrusted the public servants with assets, property and funds, expecting employees to handle these in a responsible and honest manner. It is important for employees to realise that the lower the state's expenses can be kept, the more and

better quality services can be rendered to the country within the limits of the available resources. The observance of the above duties will result in the equitable and transparent allocation of resources for poverty alleviation through BEE, where allocated resources will not be wasted or spent irregularly. The equitable management of resources is imperative for the reduction of poverty as there will be sufficient resources to advance the course of BEE through PPP.

5.13 FINANCIAL MISCONDUCT

Having discussed the roles and responsibilities of school governing bodies, it has become apparent that there are gaps in policy formulations with regard to who is held accountable for financial mismanagement, though a Governing Body shall establish and administer a school fund (Circular 13 of 2000). The crux of the matter here is when someone would be hauled before the disciplinary hearing for having flouted the provisions of *PFMA*, (1999) Section 81 to 84. The Act explains that failure to comply with the requirements as outlined in the Act is tantamount to misconduct. Paragraph 5.10 explained how school funds are allocated and how any form of mismanagement hampers service delivery and the realisation of BEE through PPP. The programmes in which the budget is rolled out are listed as follows: Strategic Management Services, Economic and Fiscal Management, Provincial Financial Management Reforms, Provincial Financial Management and Governance and public-private partnerships. When a budget is allocated in either of the five programmes, it should not matter whether that budget is reserved for PPP formations, any mismanagement of it would affect the operation in the entire department. For example, if R500, 000 is allocated in the Strategic Management Services for training through PPPs and R100, 000 of it goes unaccounted for, any activity for which the money was budgeted for would be grossly affected. For BEE through PPPs to be realised, every programme listed above should have budget allocated for it.

Financial misconduct includes unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure. The *PFMA*, (1999) states that *financial misconduct* is a ground for dismissal or suspension against a member or person referred to in

Subsection (2) or (3). The difficulty here is that a disciplinary hearing would be applicable only to employees. It will be problematic to discipline a member of a school governing body (SGB), who may not be an employee of any of the Government departments. Reliance on a court of law to take action against any member of an SGB who flouts the law often results in frustrations as such cases never get concluded timely enough. The promotion of favourable conditions for the implementation of BEE/BBBEE would be difficult in an environment of litigations and counter-litigations.

The purpose of disciplinary code for senior managers is pointed out in the SMS handbook (*Public Service Handbook*, 2001:89). Senior Management System comprises of members from the level of director to director general.

The Disciplinary Code and Procedures for members are intended to achieve the following (*Public Service Handbook*, 2001:89-90):

- i. support constructive labour relations in the Public Service;
- ii. promote mutual respect between members and between members and the employer;
- iii. ensure that supervisors and members share a common understanding of misconduct and discipline;
- iv. promote acceptable conduct;
- v. provide members and the employer with a quick and easy reference for the application of discipline;
- vi. avert and correct unacceptable conduct; and
- vii. prevent arbitrary or discriminatory actions by supervisors towards members.

The above procedures are envisaged to achieve among other things, the ideal of resolving the conflict at the source, rather than going through a convoluted procedures of arbitration which may take much longer than it is expected. The promotion of conditions for BEE/BBBEE implementation is achieved in the presence of checks and balances, where both employees and employers abide by the conditions of service and the norms of

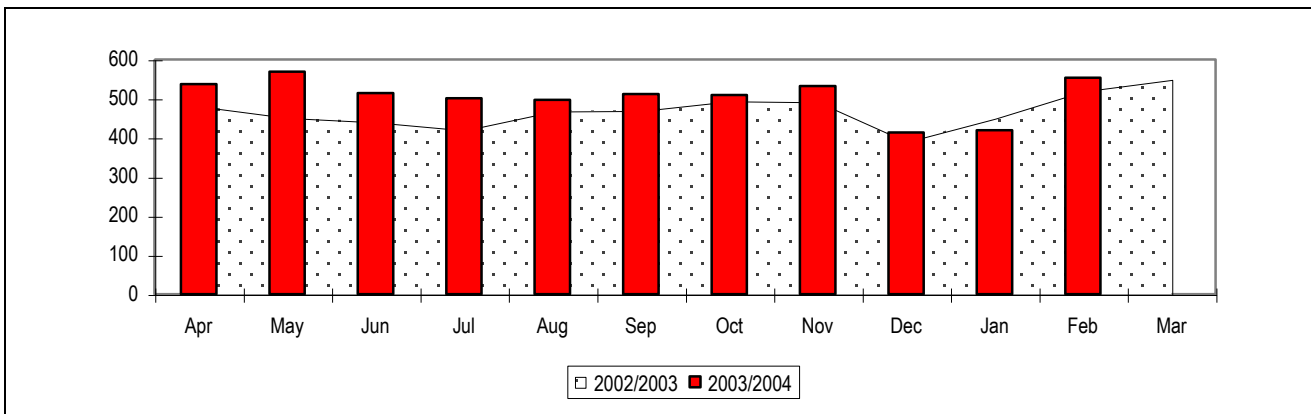
propriety. The employees should know that flouting of the rules is punishable by law. The accounting officer for instance, cannot simply award tenders to his or her friends and relatives with impunity, similarly the employer may not take action against employees without a good cause. The formation of PPPs in the presence of lawlessness is a challenge as investors will find it difficult to associate with a public sector that is characterised by chaos where returns on investment are not achievable.

What needs to be investigated is whether the current laws are actually a deterrent for any form of misdemeanour. This will be exemplified in the number of cases reported and whether those cases resulted in convictions. As indicated in the preceding paragraphs, it will be vital to look at information provided by the CCMA. The statistics below will help shed some light in terms of reported cases. A closer look at these cases will provide information with regard to those offences that are committed regularly as well as the information around the sanction meted out against those who are at fault. In an ideal environment, a company that intends entering into partnership with the Government would need to be assured of recourse in the event of a misdemeanor.

In order for BEE to be implemented in the Public Sector, there has to be laws and policies that discourage any form of misbehaviour. The creation of an environment for the implementation of BEE has already been referred to in the previous chapters. Once more, it should be noted that BEE through PPP may not be exercised in the presence of ill-discipline. Critical to this discussion is whether the introduction of laws and statutes can deter corruption in the Public Service and whether there is any evidence of any form of ill-discipline having been punished. The figures below may not necessarily be case-by case specific as mismanagement of fund cases reported do not indicate statistically the amount of money pilfered or what the money was budgeted for. What is important is that every budget misused in any form or shape creates an environment of mistrust which will not be in the good interest of PPP formation for the realisation of BEE ideals. Paragraph 5.13 has alluded to the programmatic budgeting used in Public Sector. A misuse of funds in one programme will affect the other in the long run as in turn, the units or departments will run out of cash to execute BEE mandates.

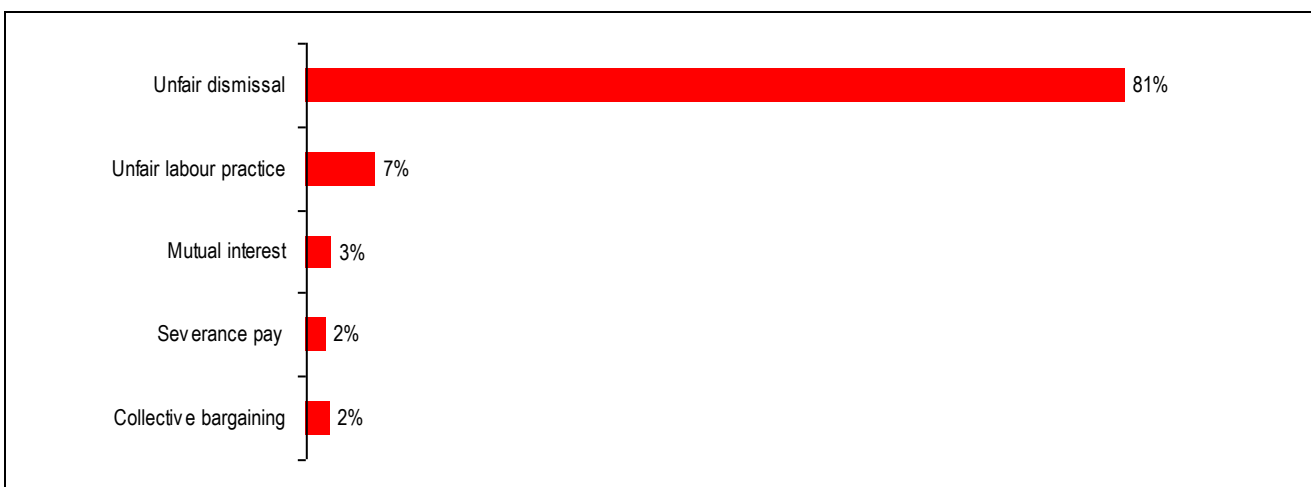
During February 2004, a total of 11068 cases of misconduct were recorded as new referrals on the Case Management System over a period of 20 working days – an average of 553 cases every working day.

FIGURE 5.1-AVERAGE NUMBER OF REFERRALS PER DAY FROM APRIL 2002 TO FEBRUARY 2004



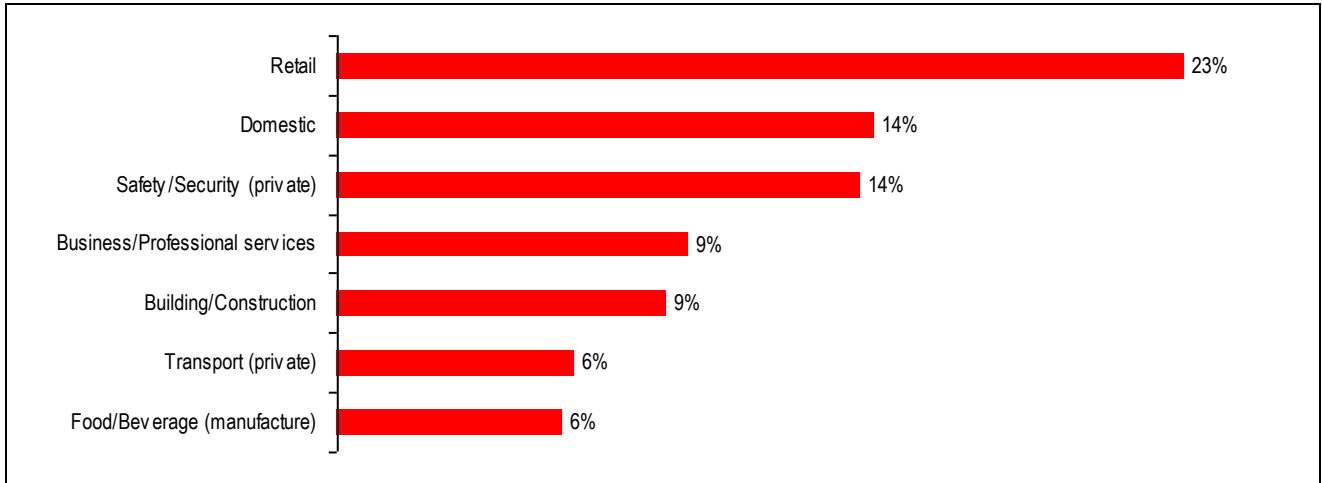
Source: DPSA (2006), RSA.

FIGURE 5.2-REFERRALS BY ISSUE



Source: DPSA (2006), RSA

FIGURE 5.3-REFERRALS BY SECTOR



Source: Parbhoo, S., Modise, S., Milton, E., Chauke, T., Gavender, N., Khosa, D. and Modise, L. *et al.* (2004).

In analysing the figures above, it is worrisome to note that the level of unfair dismissal stands at 81%. This in itself displays a crisis in understanding procedures. The promotion of conditions for BEE/BBBEE implementation in an environment where employees feel insecure poses a challenge. Grossett (2004:51) spells out procedures that have to be followed when meting out disciplinary procedures. The labour courts look primarily at whether the punishment for the crime was commensurate with the nature of the crime. It must be understood that should employees who are found guilty of serious financial offences have these guilty verdicts overturned by the court of law, this will only serve to exacerbate the levels of corruption and discourage PPP formation. Where corruption abounds, service delivery grinds to a halt. Considering the number of referrals in these figures, from the number of referrals to referrals by sector, it may not be denied that issues of misconduct are pervasive in the Public Sector and that if not properly managed will pose a challenge to the ideals of poverty alleviation in that it may seem as if the employees are more concerned about enriching themselves than serving the populace. Government resources must be put under the custodianship of trustworthy and ethical cadres rather than in the hands of crime syndicates with unwavering intentions of

defrauding the very government that employed them. If a company for instance, is awarded a tender fraudulently and fails to deliver the intended service because of collusion with the employees in the Public Sector, it is those employees who are hauled before the disciplinary hearing for misconduct. In promoting the conditions for BEE/BBBEE implementation, such cases would, for instance be recorded as acts of misconduct as indicated in the foregoing statistics.

5.14 NATURE OF FINANCIAL MISCONDUCT

Though Figures 5.1-5.3 provided a general overview of statistical presentation of cases presented to CCMA, it is vital to scrutinise if there are cases of financial nature that require to be analysed in this study. It was mentioned in paragraph 5.15 that acts of fraud do have an impact on the delivery of the Government broad goals of economic empowerment and development. It is for this reason that it is essential to highlight issues of corruption in this study. Highlighting the statistical representation of the levels of misconduct provides a helpful mechanism through which the entire Public Sector can be overhauled so as to attract partners from the private sector to invest in those projects the government on its own may not have capacity to deliver on, *e.g.* building hospitals, building schools, roads and prisons. This endeavour will promote BEE through PPP. The statistical analysis of misconducts, the trend and intensity thereof, presents an opportunity for academics, in partnership with the Government to develop new policies that would help curb the spiraling corrupt practices pervasive throughout the Public Sector in spite the legislative frameworks that seek to curb criminal activity within the Public Sector.

Simmons (1999:2) posits that public employees are expected to be rational professionals who follow the routines and duties of the agencies for which they work. Their values are expected to be limited to the neutral pursuit of their agency's objectives or official norms. Corruption is characterised as the self-interested pursuit of undeserved rewards (bribes, insider deals) or position (nepotism and favouritism). Corruption may include fronting as well. Critical to Simmons' postulate is the key phrase – *undeserved rewards*; which may not necessarily be in the thinking of the one who commits corruption, as the one committing corruption may see the act as equitable distribution of wealth, for instance.

This may have a propensity to touch on values embedded in a particular society as discussed in paragraph 5.4.

Despite Government's effort to root out corruption within the Public Service, the picture remains discouraging, as the most prevalent transgressions reported to the Commission, are fraud and theft (*Report on Financial Misconduct, 2002/2003 and 2003/2004*:vii). Fraud and theft hamper the creation of wealth and discourages the principles of BEE through PPP. It has been reported that dismissal as a sanction was only imposed in 50% of the cases. Below is statistical presentation of financial misconduct committed by officials for the years 2001 to 2004. Later in this study, reference will be made to the outcome of the referred disciplinary cases. The difficulty here is if employees continue to steal from the Government rather than help implement BEE, and get away unpunished. An example has been presented in paragraph 5.10 with regard to budget allocation for schools. As this budget is allocated, various activities are considered as in the case of services, repairs and renovations, the same applies to departmental allocations per programme as listed in the Annual Report (2006/2007:19-25). Employees could, for instance, hire their own companies to renovate a school under the guise of BEE. This act of misconduct would, for instance, be reported as financial mismanagement.

Table 5.1- Financial misconduct

FINANCIAL YEAR	TOTAL NUMBER OF CASES
2001/2002	434
2002/2003	849
2003/2004	582

Source: Report on financial misconduct (2002/2003). Government Printers: Pretoria.

At first glance, there seems to be a substantial increase in the number of reported finalised financial misconduct cases during the 2002/2003 financial year (*Report on Financial Misconduct, 2002/2003 and 2003/2004*:16). The indication is that there seems

to be some level of compliance with respect of pursuing the acts of misconduct committed by employees.

The Table below provides an overview of the number of cases reported at national and provincial spheres for the 2002/03 and 2003/04 financial years:

Table 5.2- Report on financial misconduct (2002/2003)

National/Provincial	Number of cases
National	355
Eastern Cape	54
Free State	46
Gauteng	108
Kwazulu-Natal	110
Limpopo	26
Mpumalanga	84
North- West	56
Northern cape	4
Western Cape	6
Total	849

Source: Report on financial misconduct (2003/2004). Government Printers: Pretoria.

Table 5.3- Report on financial misconduct 2003/2004

National/Province	Number of cases
National	181
Eastern cape	181
Free State	60
Gauteng	16

KwaZulu-Natal	55
Limpopo	9
Mpumalanga	19
North West	46
Northern Cape	2
Western cape	13
Total	582

Source: Report on financial misconduct (2003/2004). Government Printers: Pretoria.

Reference has been made to the departments that reported various types of misconduct cases committed by officials. The types of misconduct cases reported were categorised as follows:

- i. fraud and theft;
- ii. misappropriation;
- iii. gross negligence;
- iv. fruitless, wasteful and irregular expenditure; and
- v. corruption.

More often than not, the departments did not specify the nature of financial misconduct. This resulted with the skewed analysis of data (*Report on Financial Misconduct, 2002/2003 and 2003/2004:18*). In order to test the efficacy of existing disciplinary procedures, it may be necessary to refer to the outcomes. The Public Service Commission (2004/2005:13) reveals that in those cases where charges were brought against employees, 77% of employees were found guilty of financial misconduct. The number of employees who absconded, resigned, retired or passed away, which resulted in disciplinary action not taken against them has remained at 7% over the past 3 financial years. General reporting of this sort of misconduct should be programme-based to be able to put in place risk control mechanisms that are responsive to a particular misdemeanour. Paragraph 5.15 discussed risk management.

Being found guilty of financial misconduct may not be panacea to continuing with such practices, of importance remains the nature of sanction meted out. It is required of each case to be treated according to its merit. The decision on the nature of sanction is dependent on the prevailing norms and values of the society. In line with the attempt by the Government to root out corruption from the Public Sector, the high incidence of that sanction of dismissal (38%) is an indication of the zero tolerance on financial misconduct (*Public Service Commission, 2004/2005:13-14*).

Having discussed issues of fraud and financial misconduct, it may be appropriate to look at the findings of Southern African Institute of Government-Auditors (SAIGA)'s Public Sector Fraud Survey (2001/2002). According to this survey, more than 80% of the respondents believe that fraud in the Public Sector is a major problem. The study continued to make analysis of fraud awareness among employees in the three spheres of government. It became apparent that the level of awareness in this regard differed from one sphere to another, with provincial government top of the list, followed by national government, with local government as the least sphere in the graph (SAIGA, 2001/2002:15). The implementation of BEE policies in the atmosphere of fraud and corruption will be near impossibility. The pieces of legislation available will not be of any assistance where those who are charged with the responsibility to implement them are engaged in fraudulent activities. Fraud and corruption in South Africa is caused by the following:

- i. collusion between employees and the third party;
- ii. collusion between employees;
- iii. type of industry;
- iv. management override internal controls;
- v. poor hiring practices (CV fraud);
- vi. lack of control over management by directors; and
- vii. poor non-existent corporate ethics policy (Gobodo Forensic Accounting, 2004:3).

The above causes of fraud call for review of the supply chain management as it in its current form where employees are members of the bidding committee. This aspect will be discussed further in Chapter 7. The current structural formation of bidding committees does not bode well for the promotion of conducive conditions for BEE/BBBEE implementation, more especially as it relates to collusions among employees and third parties. It is vital that the risk areas are identified so that attention is focused in the high risk areas. The following paragraph will discuss the management of risks.

5.15 RISK MANAGEMENT

Of vital importance is the recognition that every sector, institution or department faces a particular risk, at times peculiar to that sector, unit or department. The Department of Health, for example faces the challenge of having to control the dispensing of medicines with maximum caution to ensure that patients are not provided with expired medicines. The Gauteng Department of Education having commissioned Edu-Solution to supply learning support materials could face a different risk of the wrong supply of materials. The National Intelligence Agency (NIA) faces a different risk to manage, which is ensuring to safe-guards the intelligence received about the impending attack by another country. What has to be taken into consideration here is that by recognising the existence of risk is not in itself, risk management. Risk management is about proactively identifying and understanding the factors and events that may impact on the achievement of strategic and business objectives (Risk Assessment Information Handbook, 2006:2-3). The risk management is about monitoring and reporting the risks identified. Good risk management is all about taking good risks and managing them well. Risk management objectives are as follows (Risk Assessment Information Handbook, 2006:2-3):

- i. create the right awareness and understanding of risk at all levels of the department;
- ii. instill the culture of risk management and risk ownership being practiced as everyone's responsibility;
- iii. engage risks and manage them well in the department;

- iv. embed risk management in the way the department is run; and
- v. comply with appropriate risk management practices in terms of corporate governance guidelines.

As far as the Public Sector is concerned, risk is likely to be identifiable at the level of procurement. It has been mentioned that it is not enough to simply state the existence of risks. What matters here is to address risks in a systematic and concerted way.

Risk is identifiable as it manifests itself in employees' behaviour as it relates to the legislature and executive authority. Corrupt public officers are those who directly or indirectly accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or person who directly or indirectly gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person (section 4 (1) (a –b) of the *Prevention and Combating of Corrupt Activities Act*, 2004 (*Act 12 of 2004*)).

Risk can manifest itself for example, in fronting. According to the *BBBEE Act*, 2003 (*Act 53 of 2003*) section 9 (5) (6.1-6.3); fronting practices include, but not limited to the following:

- i. window dressing: where black people are appointed to an enterprise on the basis of tokenism, as a result they do not participate actively in the activities of the enterprise;
- ii. benefit diversion: this includes initiatives implemented where the economic benefits received as a result of the BEE Status of an enterprise do not flow to black people in the ratio as specified in the relevant legal documents; and
- iii. opportunistic intermediaries: this includes enterprises which have concluded agreement with other enterprises with a view to leveraging the opportunistic intermediary's favourable BEE Status in circumstances where the agreement

involve among others, terms and conditions which are not negotiated at arm's length on a fair and reasonable basis.

Risk indicators in this particular area can be high or moderate. Considering the above, it may be that compliance in respect of BEE/BBBEE requirements as it appears on paper may not necessarily be the panacea for equitable BEE/BBBEE implementation. It is for this reason that a meticulous checks and balances must be put in place to ensure that the poor benefit from this policy as it was envisaged at its inception.

5.15.1 HIGH RISK INDICATORS

The creation of an environment where BEE through PPP thrives poses a challenge in the absence of checks and balances. The identification of areas of risk plays an important role in ensuring that the conditions for the promotion of BEE/BBBEE are realised. A private company for example, may find it difficult to form a partnership with the Public Sector in the area where return on investment is not assured; similarly the Public Sector will find it difficult to form a partnership with a company, which does not have a good reputation. The risk indicators are as follows:

- i. black people who an enterprise claims are its shareholders, executives or management are unaware or uncertain of their role or participation within an enterprise;
- ii. black people who serve in an executive or management position in an enterprise are paid significantly lower than the market norm;
- iii. an enterprise only performs a peripheral or marketing function;
- iv. an enterprise relies on a third party to conduct the majority of core functions normally conducted by enterprises similar to the enterprise;
- v. an enterprise cannot operate independently without a third party, as a result of contractual obligations or a lack of technical or operational competence; and
- vi. any practice which circumvents or attempts to circumvent codes (The Risk Assessment Information Handbook, 2006:3-4).

In pursuit of equity, any form of corruption should be investigated and exposed. As long as these wayward practices are left to flourish, it will be difficult to achieve the rationale for wealth distribution among all the citizens. It is imperative to isolate the listed high-risk indicators and establish mechanisms to manage them in such a manner that they do not compromise the promotion of the condition for the equitable implementation of BEE/BBBEE.

5.15.2 MODERATE RISK INDICATORS

The indicators for moderate risk are as follows:

- i. the black people identified by an enterprise as its shareholders, executives or management have limited knowledge of an enterprise;
- ii. there is no significant indication of active participation by black people identified as top management at strategic decision-making level;
- iii. an enterprise pays management or administration fees to a related person or shareholder with no BEE status;
- iv. an enterprise acquires goods and/or service at a significantly different rate from market from a related person or shareholder (transfer pricing);
- v. an enterprise obtains loans, not linked to the share acquisition, from a related person at an excessive rate; and
- vi. an enterprise shares all premises and infrastructure with a related person, or with a shareholder with no BEE status or a third-party operating in the same industry where the cost of such premises and infrastructure is disproportionate to market-related costs (Section 9(5) *Broad Based Black Economic Empowerment Act*, 2003 (Act 53 of 2003)).

The answer does not lie in the classification of risks according to their degree of intensity, but in the act of preventing them. CIPFA (2001:1) outlines a process towards risk management which encapsulates the following:

- i. risk identification: what is the risk here?
- ii. risk evaluation: what will happen to desired outcome?
- iii. risk/benefit analysis: does the benefit outweigh the risk?
- iv. risk reduction: can something be done to reduce the risk?
- v. risk monitoring: determining if something has happened which altered the risk;
- vi. continuity planning: what plans have to be put in place in the event of risk happening?
- vii. risk transfer, as buying insurance to defray the risk; and
- viii. risk funding: what financial provisions should be held for the primary or residual risk?

Risk management differs from sector to sector. The above process when used properly can be used to develop risk management strategies. It is essential though to note that everybody should be involved in risk management (CIPFA, 2001:14). Table 5.4 shows the level of involvement of employees in risk management:

Table 5.4- Involvement of employees in risk management

	Develop the corporate risk management strategy	Agree on the corporate risk management strategy	Provide advice and support on strategy development and implementation	Implement the strategy	Share experience of risk and risk management issues	Review the effectiveness of the strategy
Board of trustees		✓				
Executive management	✓			✓		✓
Risk managers	✓		✓	✓	✓	✓
Service team			✓	✓		✓
Risk management group			✓		✓	✓
Support service			✓	✓	✓	✓
Service managers				✓	✓	✓
Employees				✓	✓	
External partners					✓	

Source: Chartered Institute of Public Finance and Accountancy 2001. Johannesburg. p14.

On the basis of the discussion above, the creation of a somewhat free risk environment, or the understanding of the possible risks in the work environment will go a long way towards making the goals of BEE through PPP realisable. It is incumbent upon government functionaries to do a situational analysis before embracing a partner for service delivery. Any partner who may not add value to a governmental department is a risky partner and should therefore be ignored. In recognition of possible risks, the government has introduced register for Tender Defaulters according to *Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004)*.

Risk has the propensity to manifest itself in different forms and shapes. Identification of *risk* requires management to draw a risk management strategy that will not be static as risks are prone to change from time to time. According to Tladi (2006), in the North West Province, risk assessment applies in areas where construction is to be conducted. This is normally done by quantity surveyors, who have the freedom to disqualify or qualify. The difficulty here is when it applies to the implementation of BEE quotas, where the majority of black-owned companies still lag behind.

The same challenge was raised at the feedback meeting of senior management. Hospitals in Gauteng, for fear of risking the lives of patients, prefer to procure goods and services from the most reliable vendor with brand name, rather than fulfilling the requirement of the policy that requires them to purchase from the BEE companies. This poses a serious challenge of compliance versus the safety of patients as most of the black-owned companies seem to be unable to provide the preferred quality equipment required for the Hospitals on time. This may be attributable to a number of factors, ranging from the inability for these companies to secure loans from the banks to buy quality equipment, lack of basic resources such as transport to deliver the goods on time or lack of skills. It has nevertheless been raised as a serious concern by the chief executive officer of hospitals in Gauteng (Gauteng Shared Service Centre, 28 September 2006).

It is generally acceptable to procure services from a company, which is not only capable to deliver quality service, but also deliver these services on time and be compliant with BEE codes. The challenge may either be to promote the policy of the preferential procurement as mentioned above and risk lives or be seen to be non-compliant and save lives.

5.16 CONCLUSION

The discussion of the management and promotion of discipline in the Public Service for the creation of conducive environment for the realisation of a fair and equitable distribution of wealth through PPP has not been without challenges. An attempt has been

made to highlight a few challenges in realising this objective. Though there are pockets of excellence in diverse areas of policy development in the Public Sector, the challenge lies in the implementation. Without favourable conditions created for the promotion of the conditions for BEE/BBBEE implementation, in the form of corrective measures among other things, it will be difficult to realise the ideals of BEE. The introduction of corrective measures needs to be guided by the extent at which the existing policies and procedures are being implemented and the success thereof. The statistical presentation of offences reported and prosecutions carried out, as indicated in this chapter served to present a picture of the level of honesty, loyalty and commitment by the employees and employers to carry out BEE directives and create jobs.

The difficulty in policy implementation may be attributed to fundamental human resource weaknesses. These weaknesses manifest themselves in the area of recruitment, where the emphasis is put on cronyism rather than on competence and experience. This presents itself as a human resource risk that needs to be managed effectively. It has been proved by a number of researches that the Public Sector in South Africa does not perform to its optimum.

This chapter highlighted how provinces have been unable to spend their capital budgets. The solution here lies in the equitable and open recruitment strategy that is free from any form of nepotism or favoritism. In order to realise this objective, private recruitment agencies should be commissioned to recruit personnel for the Public Sector, more especially in high-risk areas such as chief financial officers.

The challenge facing the Public Sector today is the inappropriate placement. In some cases, personnel in senior positions are placed purely on policy consideration rather than on competence to achieve redress. This practice makes it difficult for the condition for the implementation of BEE/BBBEE to be realised. The consequences of a lack of skilled employees in the Public Sector are that the ordinary citizens suffer as a result of shoddy service delivery.

In terms of accountability with regard to school finances, it will be appropriate for principals to be held accountable for finances so that as employees it is possible to prosecute in the event of financial mismanagement. In terms of the current dispensation with schools, principals are responsible for procurements and SGBs for authorisation. The supply chain management system would at times take unnecessarily long, more especially if members of the SGB are not available to authorise the expenditure.

The promotion and management of discipline in the Public Sector require a concerted effort by all involved, *i.e.* employees and employers. In order to realise the ambitious objective of arriving at what has been adopted by the ANC as the ruling party in its manifesto entitled people at work for a better life for all, it is incumbent upon the Public Sector as a whole to address the challenges outlined in this study. It has so far become apparent that matters of discipline in the Public Sector do not only address the behaviour of employees in the workplace alone, but also that of the employer and the Government. The employer as the one responsible for the management of discipline is expected to lead by example.

Chapter 6 of this study will focus on Gauteng Shared Service Centre as procurement office and how it executes its procurement functions. The specific areas of responsibility in respect of the Gauteng Shared Service Centre's role are analysed in line with its strategic objectives and broad organisational goals. The success of BEE in this chapter focuses on how women, youth, people with disabilities as well as people in the rural areas have benefited from BEE through PPP initiatives as discussed in paragraph 4.5.