

CHAPTER ONE

HISTORICAL OVERVIEW

1. 1 Introduction

This chapter casts an eye on the historical heritage of the three provinces under study: Limpopo, Mpumalanga, and Eastern Cape Provinces. The history of the three provinces in their present delimitation dates back to 1994, the onset of a new democracy in the Republic of South Africa. A brief historiography of the three provinces is therefore under study. In particular, a synopsis of the geographical, economic, and politico-administrative features of the provinces will be attempted. However, given the specific interest of the study, emphasis will be placed on the politico-administrative aspect of the respective provincial governments, the focus of attention of the analysis on conflict of interest.

This importance of this chapter in the study cannot be over-emphasized. Indeed, it serves as a chronicle of the history, over a ten-year period, of provincial governments, without which an in-depth understanding of the issues discussed in the subsequent chapters may not be possible. The chapter at the end draws conclusions on the challenge posed to the current third stage of the democratic process in the history of South Africa.

1.2 Brief historiography of Limpopo Province vs. Mpumalanga and Eastern Cape Provinces

In terms of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Republic of South Africa is divided into nine provinces, each with its own legislature, premier and provincial members of executive councils. The nine provinces are: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, North West, Northern Cape, and Western Cape. In the following subsections, a description of the Limpopo Province vs. Mpumalanga and Eastern Cape Provinces is offered with respect to: geographical, socio-economic, technological, and other characteristics.

1.2.1 Geographical Considerations

The Limpopo Province lies within the great elbow of the Limpopo River after which it is named. By its geography, it is a province of dramatic contrasts: from a true Bushveld country, to a relief of majestic mountains, primeval indigenous forests, latter-day plantations, unspoilt wilderness areas, and patchworks of farming land. In short, the province is a tree country in the Savannah biome, an area of mixed grassland and trees, which is generally known as Bushveld (South Africa Yearbook, 1999: 15, 16).

It is endowed with bountiful natural resources. A few hours' drive from Gauteng Province, it boasts the Waterberg mountain range, supporting the thriving farming and game ranching, nature reserves, and resorts. The hot climate makes the Limpopo Province a pleasant year-round holiday destination. In summer, which runs from October to March, it is hot with brief afternoon showers, providing a cooling effect for evenings. In winter, i.e. May to September, the mornings are crisp, the days are dry and sunny and the evenings cold and clear (Tourism, 2002).

On its Southern flank, the province shares borders with Gauteng Province, with its Johannesburg-Pretoria axis, the most industrious metropolitan area on the continent. Thus, the province is strategically placed for business and tourism. These connections are very well served by an excellent road infrastructure, rail and air links. The well-designed N1 route from Johannesburg, which is the Great North Road that goes through the length of the province, is the busiest overland route in Africa, in terms of cross border trade in raw materials and beneficiated goods. The N1 strings together a series of well-known towns: Warmbaths (Bela Bela), with its popular mineral spa, is near the southern boarder of the province. Then, further north are: Nylstroom (Modimolle), with its table grape industry and beautiful Waterberg range; Potgietersrus, renamed Mokopane; Pietersburg, now Polokwane, the capital city, lying strategically in the centre of the province; Louis Trichardt (Makhado), at the foot of the Soutpansberg Mountain range; and Messina, now Mussina, far north and the last town near the border with

Zimbabwe, with its thick-set baobab trees. The crossing into Zimbabwe is the well-known Beit Bridge, where the South African section of this important route north into other parts of Africa ends (Tourism, 2002; South Africa Yearbook, 1999: 15; 16).

Other important Limpopo towns include the major mining centres of Phalaborwa and Thabazimbe, and Tzaneen, a major producer of tea, forestry products and tropical fruits. A new major route, the Maputo Corridor, links the province directly with the Mozambique port region, thus creating development and trade opportunities, particularly in the Southeastern part of the province where the biggest section of the Kruger National Park is situated along the eastern Mozambique boundary. This provincial link with Maputo has been declared a “main” corridor (South Africa Yearbook, 1999: 16).

The port of Durban, Africa’s busiest, is served directly by the province, as are the ports of Richard’s Bay and Maputo. The other most significant facility in the province, as the heartland of an emerging market, is the Gateway international airport situated in Polokwane, the capital of the province (Tourism 2002). It has been recently renamed “Polokwane International”.

The new name of the province, Limpopo, takes its roots from the beautiful attraction of the Limpopo River that draws a borderline between South Africa and Zimbabwe. The province strategically links South Africa to countries further

afield in sub-Saharan Africa. In terms of infrastructure landmarks, a unique feature of the province is that it is a gateway to the rest of Africa. Indeed, it shares international borders with three countries: Botswana to the west and northwest, Zimbabwe to the north, and Mozambique to the east (South Africa Yearbook, 1999: 15; Tourism, 2002).

The second province under description is Mpumalanga. Mpumalanga means in both isiSwati and isiZulu 'place where the sun rises'. It is mainly situated on the high plateau grasslands of the Middleveld, which roll eastwards for hundreds of kilometres. In the northeast, it rises towards mountain peaks and then terminates in an immense and breathtaking escarpment. In some places, this escarpment plunges hundreds of meters down to the low-lying area known as the Lowveld. Notably, it has cross-border relationships with Limpopo Province southward, eastward with Gauteng, northwestward with KwaZulu Natal and westward with Swaziland and Mozambique.

Nelspruit serves both as the capital city of the province and the administrative and business centre of the Lowveld. Witbank is the centre of the local coal-mining industry. Standerton, in the south, is renowned for its large dairy industry. Piet Retief, in the southeast, is a production area for tropical fruits and sugar, while a large sugar industry is also found at Malelane in the east. Ermelo is the district that produces the most wool in South Africa. Barberton is one of the oldest gold-mining towns in South Africa. Sabie, situated in the forestry

heartland of the country, provides, together with Graskop, a large part of the country's total requirement for forestry products. The forestry plantations offer an ideal backdrop for ecotourism opportunities, with a variety of much sought-after hiking trails, a myriad of waterfalls, patches of indigenous forest, and a variety of nature reserves. Lake Chrissie is the largest natural freshwater lake in South Africa and is famous for its variety of aquatic birds, especially flamingos (South Africa Year Book, 1999:14).

The Eastern Cape, whose capital city is Bisho, is, physically, the second largest of the nine provinces. Besides Bisho, other important towns in the province are: Uitenhage, with its motor vehicle-manufacturing and related industries; King William's Town, rich in early settler and military history; Grahamstown, also known as the 'City of Saints'; Graaff Reinet, with its charming collection of historic buildings; Cradock, the hub of the Central Karoo; Stutterheim, the forestry centre of the province; Aliwal North, famous for its hot sulphur springs; and Port St Johns, the largest town on the Wild Coast. It is a land of rolling hills, endless sweeps of rocky coves and sandy beaches, towering mountain ranges, and verdant forests. To say the least, the list includes Port Elizabeth (Nelson Mandela Metro) that produces 47% of provincial GDP.

The Eastern Cape is considered one of the hooks in South Africa: it boasts a remarkable natural diversity, ranging from the dry desolate Great Karoo to the lush forests of the Wild Coast and the Keiskamma Valley, the fertile Langkloof, renowned for its rich apple harvests, and the mountainous southern Drakensberg region at Elliot. The main feature of the Eastern Cape is its astonishing coastline.

With its wide-open sandy beaches, secluded lagoons, and towering cliffs, the Indian Ocean coastline provides the province with a rich natural tourist attraction. The graceful curve of Algoa Bay provides an ideal setting for the port in Port Elizabeth. Other good harbour facilities are found in East London. In addition, four airports, at Port Elizabeth, East London, Umtata, and Bulembu, service the province. Rolling grasslands characterize the eastern interior of the province, while the western central plateau is savannah bushveld. The northern inland is home to the aromatic Karoo succulent bush (South Africa Year Book, 1999: 3, 4).

Table 1.1 below offers a glimpse of the demographic, socio-linguistic, and geographic features of the three provinces.

Table 1.1: Statistics (South Africa Year Book, 1999)

	Limpopo Province	Mpumalanga	Eastern Cape Province
Capital	Polokwane	Nelspruit	Bisho
Population	4,929 million, 12,1%	2,8 million, 7,0%	6,303 million, 15,5%
Principal languages	Sepedi, 52,7% Xitsonga, 23% Tshivhenda, 15,5%	SiSwati 30% IsiZulu 25,4% IsiNdebele 12,5%	IsiXhosa 83,8% Afrikaans 9,6% English 3,7%
Area (km ²)	123, 910, 10,2%	79 490, 6,5%	169 580, 13,9%
Gross Domestic Product (1994)	R14,158million, 3,70%	R31,175 million, 8,15%	R29,049 million, 7,59%

1.2.2 Socio-Economic Considerations

Economically and socially, Limpopo Province is home to a population of 4.9 million inhabitants, 89% of whom reside in the rural hinterland and 46% of the economically unemployed. Consequently, the province is saddled with

debilitating poverty, hunger and diseases (Maswanganyi, 2002: 1). In spite of the bleak picture painted of a high unemployment rate, marketing efforts begin to bear fruit. An increasing number of tourists from within and outside the country are now visiting the province, thus boosting the economic output and creating chances of more job opportunities. The Limpopo Province is renowned as the province of peace. The major proportion of the province is rural, offering a wealth of cultural diversity.

The high level of unemployment in the province belies its mineral riches, such as: copper, asbestos, coal, iron ore, platinum, chrome, diamonds and phosphates. Minerals are currently extracted and transported to other areas for further processing without much local benefit. The province is therefore a typical developing area; exporting primary products and importing manufactured goods and services. It has a high potential and capacity with the right kind of economic development, having a strategic advantage for investors (Provincial Overview, 2003: 16).

In contrast, before and up to 1994, the province had the reputation of being one of the largest producers of agricultural products, but there are now very few agro-industries in the area. For example, the province is the largest producer of tomatoes in the whole country, with the largest farm between Tzaneen and Louis Trichardt, but with no local factory to process tomatoes into tomato sauce and

package the finished product. Reversing this situation seems to be an economic priority (Nkoana 1994: 3-4).

To compound the weaknesses described above, witchcraft-related violence and the HIV/Aids pandemic pose a threat in the province. Witchcraft, in particular, although not unique to the province, has had greater visibility in Limpopo than anywhere else to the extent that it necessitated the establishment of a Commission of Inquiry into Witchcraft, Ritual Murders and Violence. Both the witchcraft-related violence and the HIV/Aids pandemic weaken considerably the prospects for socio-economic development in the province. In view of their potential damage to the socio-economic future of the province and of the country as a whole, both scourges deserve greater attention with a view to finding effective solutions.

In Mpumalanga, the socio-economic situation draws some sharp contrasts to those of Limpopo and Eastern Cape Provinces. Although Mpumalanga is one of the smallest provinces, it has a better GDP in comparison with those of Limpopo and the Eastern Cape.

Citrus fruit and many other tropical fruits (mangoes, avocados, litchis, bananas, paw paws; granadillas, guavas), nuts and a variety of vegetables, are produced in abundance in this province. Nelspruit is the second-largest citrus-producing area in South Africa. It is responsible for one third of the country's export in oranges.

The Research Institute for Citrus and Subtropical Fruits provides research expertise for the sustenance of this huge project. The natural forests of the area could not supply enough timber for the burgeoning mining industry in the early days of gold- mining. Plantations of exotic trees, mainly pine, gum and Australian wattles, were established to supply wood for the mine props. These trees did so well that the Sabie area became the biggest single region of forestry plantations in South Africa. On the other hand, Mpumalanga is very rich in coal reserves. The country's biggest power stations, three of which are the biggest in the Southern hemisphere, are situated here. Secunda, the petroleum-from-coal installation, is also located in this province while Witbank is the biggest coal producer in Africa. It is unfortunate that the industry of coal causes the highest levels of air pollution in the country (South Africa Year Book, 1999)

To this end, the Maputo Corridor, which is currently under construction, will link Gauteng with the Maputo harbour, and will open new tourism opportunities for the province (all the way to Limpopo Province to the south). Despite these highlights, Mpumalanga province comparatively has the highest levels of extreme poverty of the three provinces. Furthermore, it has the second lowest literacy rate in the country, while the population growth rate is higher than the national average. Presumably, the low level of literacy may be compounded by the absence of universities, unlike Limpopo and the Eastern Cape Provinces, which have respectively two universities and five universities.

The Eastern Cape has the third-largest provincial population in the country. The architecture of many of the cities and towns reflects the rich heritage of the people. Apart from five universities, the province has three technikons and twenty technical colleges. Notably, despite the rich heritage and the high quality of educational facilities, 20,9 per cent of those aged 20 years or older have received no schooling, while 4,7 per cent have completed a higher level of education (South Africa Year Book, 1999). Looking back at Mpumalanga, with no university, and the Eastern Cape, with several universities and institutions of higher learning, a link cannot be made between the level of literacy and the presence or absence of universities in a province.

Economically, the Eastern Cape is not rich in minerals, but has excellent agricultural and forestry potential. The Langkloof in the Southwest is a fertile valley area with enormous deciduous fruit orchards, while the Karoo interior is an important sheep-farming area where Angora wool is produced. The province's fishing industry generates about R200 million a year. It is expected that the Government's decision, in July 1998, to issue long-line hake permits to fishermen in the region would boost the industry by providing year-round employment to fishermen who, previously, had only been able to work during the five-month squid season. The squid industry generates about R150 million a year and provides jobs for approximately 3000 people. Between 1985 and 1994, the province's economy grew at an average of 1,7 per cent—slightly higher than the national average of 1,3 per cent. The province contributes approximately R30

billion to the national GDP and is widely regarded as having the potential to substantially increase this contribution as South Africa moves towards an export-led industrial strategy (South Africa Year Book, 1999). It is important to note that the province is still confronted with a host of poverty-related problems, especially in the rural areas. However, with the aforesaid socio-economic heritages, the poverty situation is expected to be reversed in the next ten years.

1.2.3 Technological Considerations

In 1994, the Limpopo Provincial Government inherited four administrations, namely Gazankulu, Lebowa, Transvaal Provincial Administration (TPA) and Venda, each with its own set of information technology (IT) infrastructures, information systems, IT organizational structures, IT consultants and IT personnel. All this had to be woven together into a coherent IT organizational structure and a uniform provincial system and information technology practice. Almost all the systems then in place were background financial systems limited to supporting payroll, bookkeeping, and payment of social grants. There were hardly any domain-specific systems that supported core functions of service delivery departments. Telecommunication infrastructures and area network infrastructures were virtually non-existent in government premises. Personal computers were virtually unknown in almost all government offices. As a result, government officials had virtually no computer literacy skills. IT practitioners were confined to the mainframe environment, which ran the above-mentioned

background financial systems. These practitioners had only rudimentary skills to run and support these systems, and all were located exclusively in the Department of Finance. Given the lack of telecommunication facilities, there was no Internet access and no electronic messaging systems (Office of the Premier Ten Year Report, 2003). As a result, one realizes that paperwork dominated the government data and data communication storage, thus encouraging ghost working and thereby causing poor delivery of services.

The transformation of the business of government hinges to a large extent on the identification and documentation of service and information flows, and on the harmonization of these flows across departmental jurisdictions to service clients by optimally harnessing information and communication technologies. Good IT infrastructure is a key enabling factor. Attempts to realize the technology infrastructure provisioning and the above process transformational objectives and to kick-start technology initiatives are all hampered greatly, year after year, by the inadequate allocation of budgets and funding for these technological projects. Failure to achieve these objectives keeps the Province in a less favourable position for investments, given the lack of appropriate and adequate information infrastructure and concomitant government processes characterized by fragmentation and bureaucracy (Office of the Premier Ten Year Report, 2003).

The Mpumalanga Provincial Government finalized contractual agreements with the State Information Technology Agency (SITA) late in 2003. SITA aims to increase service delivery to Mpumalanga community through the use of IT. It

already hosts the provincial government's transversal systems, particularly personnel salaries (PERSAL) on its mainframe and the company's wide area network (WAN) is also used for current data transmissions (SITA, 2003). This innovative solution is crucial for barring ghost syndicates from manipulating the salary database for their own enrichment.

In the Eastern Cape Province, the current breakthrough and technological advances have provided important tools in efforts to clamp down on fraud and corruption. The technological system recently introduced by the Department of Transport to avoid the abuse of government funds in fuel expenditure is but one example. Alternative electronic payment methods vis-à-vis the previous weak computer system which allowed fraud is being used to avoid extensive use of cheques. Fraudulent activity is minimized by close collaboration with banks to reduce pension cheque fraud (Intengu, 2001:11, 12).

1.2.4 Politico-Administrative Considerations

Before the national elections of 27 April 1994, South Africa had somehow broken with the apartheid regime early in 1993, although it is generally stated that the period 1948 to 1994 marks the apartheid government. Under apartheid, the system of government was characterized by racial division and discrimination; fragmentation and duplication of structures; insufficient coverage of the target population; defective and corrupt delivery arrangements; and general confusion (Luiz 1995: 585).

In 1994, 96% of the citizenry in the Limpopo Province were cast in favour of the African National Congress to take the reigns of the new democratic government. From the outset, it could be predicted that governance in this complex and deeply divided province would not be an easy accomplishment, notwithstanding the overwhelming mandate received from the electorate (Office of the Premier Report to the Office of the President (1994, 1). The primary concern of the new democratic government in 1994 was on apartheid anomalies. It, therefore, sets out to make massive efforts for a rigorous restructuring and policy development between 1994 and 1999, which was the first-round of the democratic government under the reign of the prisoner-turned-president, Nelson Rolihlahla Mandela.

Given the painful consequences of apartheid government through the creation of tribal lines, the province is still suffering the scourge of ethnic conflicts, which disrupts the present government's capacity to apply rigorous management, given the diversity of its functionaries. Notably, conflict of interest in the province could be traced from this origin. Marule (2000: 60) seems to back the view that the previous public service in South Africa was characterized by nepotism and many cases of corruption. For example, in the former Venda only Venda-speaking government officials could be employed. The same applied to the former Lebowa Government and Gazankulu Government, which employed respectively only Northern Sotho/Pedi-speaking and Tsonga-speaking officials.

Ethnicity contributed to the former government administrations' ethnic mindset, which has become an Achilles heel for the democratic provincial government. This is a clear demonstration that the problems and consequences of the past impact negatively on the current and future governments and generations. Ethnic conflicts and nepotistic practices even in this third democratic government have not yet subsided, and these issues still remain a challenge to the new provincial government.

Given the fact that the apartheid was founded on unethical grounds, the administration inherited in 1994 was characterized by high levels of corruption and mal-administration. Since 1994, transformation has also created opportunities for corruption. In South Africa, as in many developing countries, professional ethics has thus come to be associated with efforts to fight corruption, but the issue has a far broader scope, because simply reacting to corruption is inadequate. What is required is an approach, which aims to build integrity systems that are impermeable and resilient to corruption, which promote and encourage ethical conduct by officials and those with whom they associate to do business on behalf of the state (Public Service Commission, 2003: 22).

The Provincial Government underwent a transformational process in terms of the November 1995 White Paper on Transformation of the Public Service, as it applies to other provinces. Subsequent to the rationalization process, which was put together since 1994, many government officials were uncertain about their future, given retrenchment and restructuring processes, thus negatively affecting

the transformation process. Situations like this also had negative impact on the morale and work ethic of government officials (Marule, 2000: 44). Although the transformation process was to a certain extent painful, the province managed to cross the bridge.

Historical exclusion from the means of production of most black people has meant that one of the few opportunities for accumulation of wealth has been the state and state-related business. In a fragile and vulnerable public service, unscrupulous individuals have quickly taken advantage of the opportunities to exploit loopholes to their own advantage (Public Service Commission, 2003:22). For example, the public/private mix opened loopholes for the unscrupulous white fellows to front their business with black partners behind which a “big white schema” of exploitation has only contributed to deepening the roots of conflict of interest. The Public Service Commission (2003: 22) puts it aptly by stigmatizing the relative inexperience of some new government officials, combined with the fact that many of the business relationships are of a new nature, that have also contributed to opportunities for corruption. Given this kind of situation, in Limpopo Province, for example, it is logical to infer that conflict of interest mostly takes place in the area of procurement, which offers many opportunities for corruption.

One of the early milestone resolutions adopted by the Executive Council of the Province was to choose Polokwane as the capital city of the province. The consequences of this decision were to be found in terms of the demands on the

capital and human resources of the province. In this way, government officials from the former homeland administrations were moved to Polokwane in order to harmonize the functions of the government. However, some buildings in those defunct homelands turned into “white elephants” as a result of the great trek to Polokwane.

Polokwane houses the seat of the Provincial Government, with all government departments strategically scattered in and around the city, under the leadership of the premier, to ensure easy and accessible flow of functions within and amongst departments. The departments are statutorily and economically ten: The Office of the Premier; Agriculture; Education; Finance and Economic Development; Health and Welfare; Local Government and Housing; Public Works; Transport; Sport, Arts and Culture; Safety, Security and Liaison. These exclude the Office of the Legislature, which performs the legislative and oversight role of the province, now located in Lebowakgomo, 45km away from Polokwane, which once housed the homeland Parliament for the Pedi tribe.

What remains much to be desired are the liabilities of the rented buildings, which house the provincial government. The Provincial government pursued this matter by establishing an ad-hoc cabinet committee on accommodation whose purpose was to address the accommodation needs of the government and its personnel. Unfortunately, the idea was aborted due to conflict of interest perpetrated by governance and procurement processes (Semenya Commission, 1996: 14). This case is discussed in details later in Chapter Four.

The first round of democratic governance went through with some challenges. The initial five-year period, 1994-1999, was critical to the national, provincial and local governments. In Limpopo, for example, a period of intense racial tensions and strife had been predicted in some quarters. However, the province stood the test of time by steadfastly turning around the past legacies and uncertainties into opportunities for the betterment of the lives of the people of Limpopo (Office of the Premier: Report to the Office of the President (1999: 1). The turnaround of the first (1994-1999) and second (1999-2004) democratic government terms still continues even in this third democratic government (2004-2009).

The following descriptive analysis of these departments is offered for an understanding of the practical circumstances of each provincial department, which, in one way or another, informs the trend of conflict of interest in the province. Various provincial departments have, in the past five years, laid a solid foundation upon which transformation could take place. The Office of the Premier's Report to the Office of the President (1999: 1-18), and other references indicated hereunder, portray a descriptive picture of the various governance of the provincial government department as follows:

- i. In the Legislature of the Province, the legislative component was established in terms of Chapter Six of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) with a specific mandate as reflected in section 114. Section 114 referred to, enables the provincial legislature to initiate, prepare and pass, amend or reject any bill before the legislature. Also to provide mechanisms to ensure organs of state to be accountable to it, also to maintain oversight role of exercising provincial executive authority in the province including the implementation of the legislation and any provincial organ of state. In the interview with the Manager of Ministerial Support in the Office of the Premier (See Appendix IV), it was stated that the Speaker is on par with the MECs.

At its inception in 1994, the Legislature of the province faced serious challenges in defining its role in the creation of a new society as informed by the Constitution. Given the mandate of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), structures and systems had to be put in place to enable the Legislature to carry out its legislative oversight and representative role in creating a society that is founded on values of good governance and public participation in the policy decision making process. To date, the Legislature for example, is still faced with challenges with regard to law making, oversight, and public participation (Legislature of the Northern Province Annual Report, 2001/2:1).

For the past years since the ushering in of democracy, the Legislature of the province has laid a firm foundation for the delivery of services and enacted legislation, which provides for good governance (Legislature Strategic Plan, 2003:2).

- ii. In the Office of the Premier, completed amalgamation of all previously disjointed homeland administrations and TPA into a single administration, ranked as one of the greatest challenges that confronted the province. The work done in the Office of the Premier includes the launch of the anti-fraud and corruption campaign. The implementation of the “Personnel Audit Ghost-busting” exercise has gone a long way in regularising the conduct and reliability of government officials as well as cutting on fruitless expenditure.
- iii. In the Department of Finance, Trade, Industry and Tourism now named Department of Finance and Economic Development, for the past five years, the amalgamation of the previous homeland development corporations into one was effected through the passing of the Provincial Development Corporation Act, 1994 (Act No. 5 of 1994). In the same five-year period, there was eradication of “Ghost Workers” through a Personnel Audit fishnet designed to catch perpetrators of the government pay-system. Personnel Audit Fishnet is a mechanism, which proved working in the province, and was later borrowed by the Eastern Cape Province to overcome their ghost worker problems. The

mechanism forced government officials in all ranks to receive their pay through the cheque system in a particular month as against their normal pay arrangements. This exercise, although hectic, resulted in 1218 cheques not collected with a total value of R413 380.37 in this Department of Finance and Economic Department alone. The cheque statistics in this department shows how conflict of interest was rife through ghosting practices in the province.

- iv. In the Department of Local Government and Housing, for the past five years, the Department was faced with the restructuring process, which ultimately transferred Land component of the department to the Department of Agriculture whilst the Housing component was transferred to the new Department of Housing and Water Affairs. Housing component was later transferred back to the same Department of Local Government. Although the restructuring showed significant adjustments, the way it was handled resulted in poor planning leading to confusion and wastage of resources. To sum it up, there is the consideration and implementation of the Ralushai Commission Report on traditional leadership in the province, which received criticisms from different quarters.

It is clear that the sphere of local government in Limpopo Province has undergone merited and unmerited restructuring processes since 1994. The year 2000 saw signification of the final phase of structural

transformation of local governance. This ultimately led into the creation of six (6) districts (Mopani, Bohlabela, Sekhukhune, Vhembe, Capricorn and Waterberg) and twenty-six (26) local municipalities in those aforementioned districts, which expanded responsibilities and posed enormous challenges to the department. These municipalities have different demographic and economic profiles and differing magnitudes and capacities in fulfilling their constitutional mandates (Local Government and Housing Budget Speech, 2003:1).

The final phase of the restructuring process in 2000 was pre and post interfaced by the introduction of the policy making and legislative processes in 1998 to 2003, which culminated in passing of White Paper on Local Government, 1998 and enactment of the key Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), Local Government Municipal Systems, 2000 (Act 32 of 2000) Act and Local Government: Municipal Financial Management Act, 2003 (Act 56 of 2003) among others thus attempted to strengthen the municipal capacity and service delivery in South Africa.

Given this background, it is an achievement for the department to have put in place legislative, administrative and operational systems in all municipalities vis-à-vis Transitional Local Councils (TLCs). It for this reason that gross over-expenditure and corruption, which

characterized the TLCs, functioned in 1999 up to 2000 were seriously taken into consideration.

All municipalities have adopted Integrated Development Plans (IDPs) that are the bases for all the projects and developmental initiatives in the legal context. However, the municipalities are confronted with the challenge of cost recovery for municipal services from the consumers of which are mostly disadvantaged (Local Government and Housing Budget Speech, 2003:1). Also, IDPs in various municipalities are not synchronized, leaving much to be desired hence municipal backlogs, which continue to frustrate key service delivery in the respective communities.

In the Housing component of the department, the MEC is aware of the developers who transact with government on false pretences, thus building low standard houses. To the MEC, these developers have no place in housing development; hence their contracts are terminated. An example has already been set whereby government officials found guilty of improper conduct were suspended, and some were expelled. This action includes the services of the developers who corrupt the department to gain selfishly, undue enrichments (Local Government and Housing Budget Speech, 2003:8). The Housing and Water Affairs Department was then in a long run dissolved in the process. In the dissolution, Housing became a component of the Department of Local

Government and Housing, whilst Water Affairs component was devolved to municipalities' competence under the Ministry of Water Affairs.

- v. In the Department of Agriculture, Land and Environment, the departmental structure is still faced with further readjustments following the merger of Agriculture, Land and Environment. This merger process was costly and resulted in antagonisms amongst government officials, thus abating work ethics and morale. Critical issues pertaining to the merger process that gave rise to conflict of interest on a short run are raised and reacted to in Chapter Five.
- vi. For the past five years in the Department of Public Works, the department was formed out of the previous administration in 1994, which inherited 16000 government officials. Through attrition, the number was reduced to 10800, and the process is still continuing. The Department was confronted with the disposal of redundant state property and government complex project, which assumed fruitless expenditure due to conflict of interest. In calling for logical presentation of issues, the case is unpacked in Chapter Four.
- vii. The Department of Health and Welfare, more particularly the Health component of the Department, is the first in the country to start with the implementation of a Hospital Information System (HIS) at 42

hospitals in the province. The objective of HIS is to develop a reliable database to ensure proper planning of health care services focusing on the real needs of the community. The tendering process of HIS unfortunately attracted conflict of interest. Again, in calling for a logical presentation of facts, the case is unpacked in Chapter Four.

viii. The Welfare component of the department embarked upon a clean-up campaign that brought to light 30 000 illegal social welfare benefits worth R259 million per year, which were stopped. All pensioners are now part of SOCPEN 5, which is Social Pension National database and all benefits are now administered properly as opposed to the fragmented pension systems of the former homelands. Both divisions of the Department inherited huge expenditure of HIV/AIDS pandemic, which is still a challenge in this dispensation.

ix. Furthermore, in reference to the Welfare component, the Department understands that many of the welfare programmes have not been making far-reaching impact on the lives of the Limpopo community members due to inadequate personnel, which is at 1:2714 (beneficiaries) ratio, and also due to lack of capacity to monitor and provide continued support of delivering social services. It is this state of affairs that has led to burnouts and demoralization of the existing staff complement, often leading to poor services to the communities. This resulted into societal reaction during 2002 October Social

Development month pointing to negative attitude of the Department social services officials, which was a common factor throughout the province (Health and Welfare Budget Speech, 2003/2004:13).

- x. It is unfortunate that health and welfare issues in the province are always politicised, thus hampering service delivery (Health and Welfare Budget Speech, 2003/2004:18). This often happens especially during the era in which national elections are due. Regrettably, politicians make use of the political platforms and other opportunities available to score points on these primarily sensitive and emotive issues of life.

- xi. Education Department in the past five years also faced some restructuring challenges. The department is integrated into one department from the seven previously disjointed administrations. The oversupply of unmarketable teachers compelled the department to rationalize 12 colleges of education to be transformed into community colleges. The restructuring and re-organisation of the department from Head Office to school level had serious implications on learners. There are also serious cases of conflict of interest emanating from the restructuring and re-organization process, which for logic sake, are presented in Chapter Four.

- xii. The Department of Sports, Arts and Culture was initially a Chief Directorate within the Provincial Department of Education. The divorce and creation of the department is a culmination of the integration process of the previously disjointed administrations of Gazankulu, Lebowa, Venda and TPA.

- xiii. Looking into Department of Transport, this also posed and poised with problems and challenges. The department was confronted with road accidents and corruption. There are now sophisticated systems in place wherein traffic officials are equipped with the state-of-the-art equipment such as the Pro-lacer speed devices, breathalysers and roadblock equipment to act swiftly against offenders. This improved the conditions in the department, but road accidents and corruption incidences are still common, although to a limited extent as opposed to the past eras.

- xiv. Lastly, the South African Police Service (SAPS) was established under the Department of Safety, Security and Liaison since 1994 to ensure civilian oversight and democratic accountability. The rights enshrined in the Constitution, enacted in 1996 and the South African Police Service Act, 1995 (Act 68 of 1995) are protected by this department to ensure safety in protecting citizens who come into contact with the law. The Department also obligates the state to provide adequate security

when dealing with those who perpetuate crime (Department of Safety and Security Management Plans, 2003:1).

The Department worked so hard to earn the province's reputation as the province of Peace Credit through South African Police Service (SAPS) and the active participation of the public through Community Police Forums (CPFs). This was informed by a completed amalgamation process of the police service in the province from the former Venda, Gazankulu, Lebowa, and South African Police and former non-statutory forces. The Department has formed Liaison committees on cross-border crimes with Botswana, Zimbabwe, and Mozambique.

In contrast, it is confusing to see the department operating in two paradoxical pieces of legislation in protecting their officials and harmonizing its activities. For example, some police officials are under the cover of the South African Police Service Act, 1995 (Act 68 of 1995), whilst others are under the cover of the Public Service Act, 1994 (Proclamation 103 of 1994).

One observation is police officials under the cover of the Police Act, i.e. new recruits, outnumber those inherited from the old order, commonly referred to as "old comrades" who are under the Public Service Act. Given this scenario, this has labour law implications, with the risk of an

eruption of tension in the police service, the deepening of antagonisms and the risk of further causing and opening a rift of conflicts between the so-called “old” and “new” comrades, i.e. office or field workers. There are some vested interests in the whole legislative framework leading to a time bomb. Why does the Police Act co-exist with the Public Service Act?

The department is confronted with fraud and corruption, problems that constitute serious obstacles to the fight against crime. Investigations that should lead to prosecution of offenders have been abandoned halfway. Another frequent and unsolved problem is the escape of prisoners from the cells.

Mpumalanga and Eastern Cape Provinces, too, were created in terms of the Interim Constitution of 1993 and came into being following the country's first democratic elections in 1994. Mpumalanga Province was originally established as Eastern Transvaal Province a name associated with the former apartheid homelands and the historiography of colonial conquest. In terms of a search for a new name by the Provincial Legislature's multi-party ad-hoc committee in June 1995, the name “Mpumalanga” was found to be the most popular on radio talk shows and other public hearings. On the recommendations of the ad-hoc committee, the Legislature, at its sitting of 24 August 1995, unanimously adopted the new name. In contrast to the Limpopo Province, Mpumalanga did not engage in the renaming of all major towns and other important places.

Likewise, the Eastern Cape Province stuck to its old place names, including those linked to apartheid. Like in Limpopo, Mpumalanga underwent a process of amalgamation of formerly fragmented, racially- and ethnically-based administrations, namely: the former Kangwane and Kwandebele Homelands, portions of the former Transvaal Provincial Administration (TPA), Bophuthatswana, and of the former Lebowa, including Moutse area, which had been under the administrative control of the defunct Lebowa Homeland. Similarly, the Eastern Cape Province resulted from the former so-called independent Bantustans of Transkei and Ciskei, dividing the Xhosa-speaking people and, thus, fuelling unnecessary intra-ethnic conflicts.

The historical overview highlighted one of the root causes of mis-governance (conflict of interest, fraud, and corruption) which is the racially-based establishment of homeland administrations: Lebowa, Venda, and Gazankulu, that come under Limpopo, similar homelands, Bantustans, or autonomous administrative areas in what is now Mpumalanga, and the division of the Xhosa into two Bantustans of Ciskei and Transkei. These racial divisions impacted negatively on the dynamics of the three new provinces. For example, in Limpopo, there is perceived predominance of one ethnic group in some departments. For example, the Department of Public Works is said to be dominated by Shangaans of whom the MEC is one, and to a lesser extent by the Vendas. On the other hand, the Department of Local Government and Housing is said to be dominated by Vendas, whereas the Office of the Premier is said to be dominated by the Pedis (Ngobeni, 2004:9). It does not take time to recognize

them by their hyponyms on office doors and their use of their own languages at work.

As can be seen from this overview of the three provinces, undoing the apartheid past was a mammoth task, which, left to the respective provinces alone, was a huge struggle and a challenge for a period of ten years of democracy. No wonder fraud and corruption seem to have been the hallmark (although not exclusive to) of these three provinces. The importance of focussing research attention on conflict of interest in these provinces cannot, therefore, be over-emphasized.

1.3 Conclusion

The chapter raised critical issues, with a view to outlining a useful background to the issue under study. In describing the politico-administrative situation, and the socio-economic environment, it is hoped that the provinces under study will have shown the potential for development, for example in the area of tourism. The observation of the existence of a real economic potential raises the important question of why Limpopo province in particular still has high levels of unemployment and poverty in spite of its huge potentials in mining, agriculture, and tourism.

Coming to historical highlights, the predominance of particular ethnic groups in a given department occurs at certain levels of management, usually at top and

middle echelons. Tensions, therefore, simmer when crucial and technical decisions are taken about the optimal use of resources for service delivery.

The high number of cases of conflict of interest in the Limpopo, Mpumalanga, and Eastern Cape Provinces shows the difficulty Premiers have in leading and regulating the conduct of politicians and government officials who still, by and large, exploit the system to fulfil their own interests. Details of cases of conflict of interest can be found in Chapter Four. It also contains a breakdown by department of transformation and restructuring processes, which have been moving back-and-forth, to the point of sometimes causing confusion. In the midst of this confusion, unethical officials who got involved in conflict of interest took advantage of the situation.

After putting the site of the study in its historical context, it is now possible to outline the research design and methodology used to understand and explain the issue of conflict of interest. This is done in the next chapter.

CHAPTER TWO

RESEARCH DESIGN AND METHODOLOGY

2.1 Introduction

Conflict of interest is a sensitive and controversial subject in the field of Public Administration. This is put in perspective in the subsequent chapters. Conflict of interest seems to be rife in South Africa. Conflict of interest is a manifestation and combination of political, social, economic and current technological milieus, thus making it complicated to grapple with in the discipline of Public administration.

Conflict of interest in South Africa, and elsewhere, is associated with policy decisions and financial contentions, thus negatively affecting the capacity of the government to deliver services in compliance with the White Paper on Transforming Public Service Delivery of 18 September 1997 and other pieces of legislation. It is for this purpose that the study pursues conflict of interest within the context of public administration as it prevails in Limpopo Province in comparison with Mpumalanga, Eastern Cape Provinces.

The research design and methodology in this chapter are therefore amenable put together in such a way that they accommodate the study in order to draw and solicit raw data that are reliable, valid and consistent. The chapter lays the scientific methodology used in designing and collecting relevant data for the study. After considering a number of the social science methodologies, and that given the fact that the study is unique in terms of the complexity of the subject of conflict of interest informed by the conduct and practices of the government officials, the methodology which is used is also unique, to be precise, the case study method.

The research methodology of case study shows content analysis and limitations of how the data were scientifically captured that could be used in chapters four and five to empirically test the postulated theoretical propositions and attempt to answer the research questions posed herein. This refers to the techniques of data collection, case study analysis of observed facts to explain how the theoretical propositions were tested and research questions answered in the subsequent chapters. The data collection methods referred to are preceded and guided by the target population and sampling showing the size of the sample.

The study accommodates qualitative data and excludes quantitative data in particular due to the predominant use of descriptive research; hence the applications of the case study method. A descriptive research is therefore a mainframe of the study since most arguments in the succeeding chapters are

supported and disapproved by qualitative data. Case studies should therefore be understood from the contexts of this exclusivity, for it underpins the whole study. The chapter in general reflect on the historical interpretation and shortcomings when the data were collected through various means. This qualifies the use of a triangulation method enclosing multi purpose case studies.

To this end, the research problem that is integrated with the objectives, significance of the study and research methodology is clearly taken into consideration to bring the issue of conflict of interest under the spotlight. A brief summary of the outline of the subsequent chapters is covered and justified towards the end of this chapter.

This chapter is a hub of all the subsequent chapters. At the end of this chapter, a conclusion is drawn to ponder upon the scientific methodological issues raised and challenges thereof for the study. Part of the conclusion shows links with the chapter that follows, informed by the triangulation method applied.

2.2 Statement of the Problem

A conflict of interest issue has far-reaching repercussions to public service delivery in the Republic of South Africa. Conflict of interest is not only a concern to public services of South Africa, but has become a trouble world-wide. Kuye and

Mafunisa (2003:428) observe that increased concern in contemporary society about conflict of interest has become about in large part from the realisation that government officials now have more opportunities to put private benefit before public duty. Issues of insider information, self-dealing, outside employment, cronyism and influence peddling amongst others are prevalent concern to public services globally.

In the United Kingdom, for example, during the early 1990s, there was indeed mounting disquiet about the lobbying activities of many Members of Parliament (MPs) which brought about the appointment of Nolan Commission to look into crucial issues of conflict of interest. The House of Commons was fast becoming a market place, in which MPs were increasingly hiring themselves out to business community and therefore acquiring lucrative consultancies, directorships and shareholding in the process. One well-documented study of MPs' commercial interests published in 1991 clearly claims that 384 MPs held 522 directorships and 452 consultancies (Gregory, 1996: 14, 15).

United States of America was also stormed by conflict of interest issues which brought about cooling-off period to gate keep the revolving door. The Watergate scandal in America took root in some sort of conflict of interest and antagonisms within the power elite. According to Domhoff (1974:100,101), the scandal was informed by power elite made up of owners and managers of large corporations, supplemented by commercial bankers, investment bankers, lawyers, foundation presidents, and high-level academic advisors.

In the African continent, the year 1998 saw Uganda stormed by a widely reported high profile case of conflict of interest. How this conflict of interest took place attracted international attention and embarrassed the whole African continent. Doig (2000:49) reports that the President of Uganda's half brother and former commander of military operations in the North, Major General Salim Saleh, had secretly bought the country's largest bank, the state-owned Uganda Commercial Bank, allegedly to stop it from falling into the hands of Malaysians. Shortly after taking over the bank, Major General Saleh arranged for substantial loans to be made to companies he owned without reporting the transactions as required by banking regulations.

In the Democratic Republic of Congo (DRC), then Zaire, the country was astounded by former President Mobutu Sese-Seko who, in his period of office for thirty years, pursued his selfish interest by virtually diverting between \$50 and \$70 million a year from the Bank of Zaire to personal accounts in Europe, mostly in Swiss bank accounts, says a report. Estimates of his vast personal fortunes run over \$6 billion (Ghazanfar & May, 2000: 352,361).

Simmons (1997) reports that whenever allegations of conflicting interests arise, the person being accused never seems to have a problem justifying or rationalizing the activity that gave rise to the allegation. One example is the case of the Arms Deal in South Africa and the recent 2005 Travel Gate Scandal which is a disgrace to see the highly MPs pursuing selfish interest even though

Ministerial Hand Book and The Executive Members' Ethics Act, 1988 are loud and clear in condemning such acts of conflict of interest.

In the main, Lungu (1998: 9) once said that one of the most tiresome problems for African public services is the conflict between partisan interests of a minister versus broader national interests. Dwivedi (1985: 63) hints that ascendancy of politics over administration has meant that political leaders are now capable of using their power and the state machinery to foster a growing personalization of their authority; this to a far extent compromises the quality of service delivery in the respective public services.

Against this background, it appears that conflict of interest finds fertile ground in a context of lax control of the policy and governance frameworks and the existence of loopholes. Unscrupulous officials often exploit these for their own benefits. There is a prevailing perception that the numerous cases of conflict of interest uncovered undermine the rule of law, processes, systems, and structures of government. Worse still, their persistence, despite public policy pronouncements and the existing legislative framework and the attendant code of conduct and public service regulations, is seen as a challenge to the authority of the state and its capacity to deliver.

This explains in part the misdemeanour of government officials who are tempted to manipulate the system in place for their own selfish benefits to the detriment of the public at large. In so doing, these officials fail to meet the obligations of

their respective offices and the expectations of the state and citizens. Being a manifestation of corruption, which is the antithesis of good governance, conflict of interest is germane to Public Administration as a discipline.

Having said that, Mafunisa (2003:4) confirms that conflict of interest has grown worse, leading to a wave of public outrage and a new political resolve; hence this study which is employed to robustly pursue an issue of conflict of interest in South Africa, particularly in Limpopo, Mpumalanga and Eastern Cape Provinces under study without fail.

2.3 Specific Objectives and Significance of the Study

Considering the statement of the problem and the research questions posed, the following objectives inform the study, namely to:

- i. Explore the nature, extent and causes of conflict of interest vis-à-vis government policies, code of ethics and rule of law;
- ii. Isolate and analyse the leadership and managerial conduct of the government officials and the politicians in government including the governance structure;
- iii. Recommend plausible comprehensive framework and mechanism that could spontaneously and promptly check and address the conflict of interest problem from within the context of policy decisions, ethics and rule of the law paradigms to be more specific; and lastly,

- iv. Identify critical issues of conflict of interest in the field of Public Administration for further research by scholars, practitioners and researchers in the field.

In view of these objectives, the significance of the study can be stated in the following five points. Firstly, the study attempts to provide an insight into conflict of interest in the public service. This is significant because conflict of interest has been insufficiently researched in the field of Public Administration in South Africa. The study, therefore, will add to the insufficient existing literature. In practical terms, if more light could be shed on the issue of conflict of interest, may sensitise authorities to the seriousness of the situation and provide a useful instrument for the prevention and resolution of conflict of interest in government.

Secondly, the study has academic significance as it is of interest to scholars and researchers in conflict of interest, ethics, policy, public finance and leadership and management. It may serve as an additional stimulus for further research and theorizing on African Public Administration and Management. The Sector of Higher Education and Training could, therefore, benefit with a view to usefully developing theories, suggesting policies, polishing academic discourse for use by governments in their efforts to stamp out the problem of conflict of interest.

Thirdly, the study is significant in the sense that it contributes to the historiography of the Limpopo, Mpumalanga, and Eastern Cape Provinces. This

historiography constitutes a one-point source of historical collections, which, otherwise, may be difficult to gather from widely scattered sources. The study becomes, therefore, a significant referral for further research in this area.

Fourthly, the study can be said to be a scholastic casebook and biblio-matrix of conflict of interest, up datable from time to time, for a much refined and better understanding of the nature of the problem.

Lastly, the study has the potential to generate much more interest in the phenomenon. With the encouragement and support from government and international organisations concerned by the negative impact of conflict of interest on governance and democracy, further research projects will lead to benefits to South Africa and to the African continent for a strengthening of leadership and governance practices.

2.4 Research Question

The overarching research question of this study is: To what extent has conflict of interest become a problem in the public services of South Africa with specific reference to three provinces under study, i.e. Limpopo, Mpumalanga and Eastern Cape?

2.5 Research Design and Data Collection Methods

De Vos *et al* (2002:137) state that definitions of research design are rather ambiguous. For example, it is a plan or blue print according to which data are collected to investigate the research hypothesis or question in the most economical manner. The research design is actually a plan or blueprint of how one intends conducting the research. This includes focusing on the end product, formulating a research problem as a point of departure and focus on the logic of the research.

To reduce the ambiguity of the definitions raised by De Vos *et al*, Welman (1988:6) and Mouton and Marais (1988:193) clarify that a research design is an exposition or plan of how the researcher decides to execute the formulated research problem. The objective of the research design according to Mouton and Marais (1990:33, 37) is to plan, structure and execute the project concerned in such a way that the validity of the findings is maximized. The choice of a specific research design is the first step in the identification of what is to be investigated.

A research methodology is the how of collecting data and the processing thereof within the framework of the research process (Brynard and Hanekom, 1997:27). The research methodology is either quantitative or qualitative hence; either one or both of the methodologies inform the relevant research design. This is explained shortly afterwards.

By and large, having understood what research design and methodology are meant for, Tashakkori and Teddlie (2003:189) reveal that the goal of social science research is to understand the complexity of human conduct and experience. The researcher's task in this instance is to understand, describe, and explain the reality of this complexity, which is limited by the choice of research methods.

Figure 2.1: The Central Function of a Research Design (Yin, 1993:110)

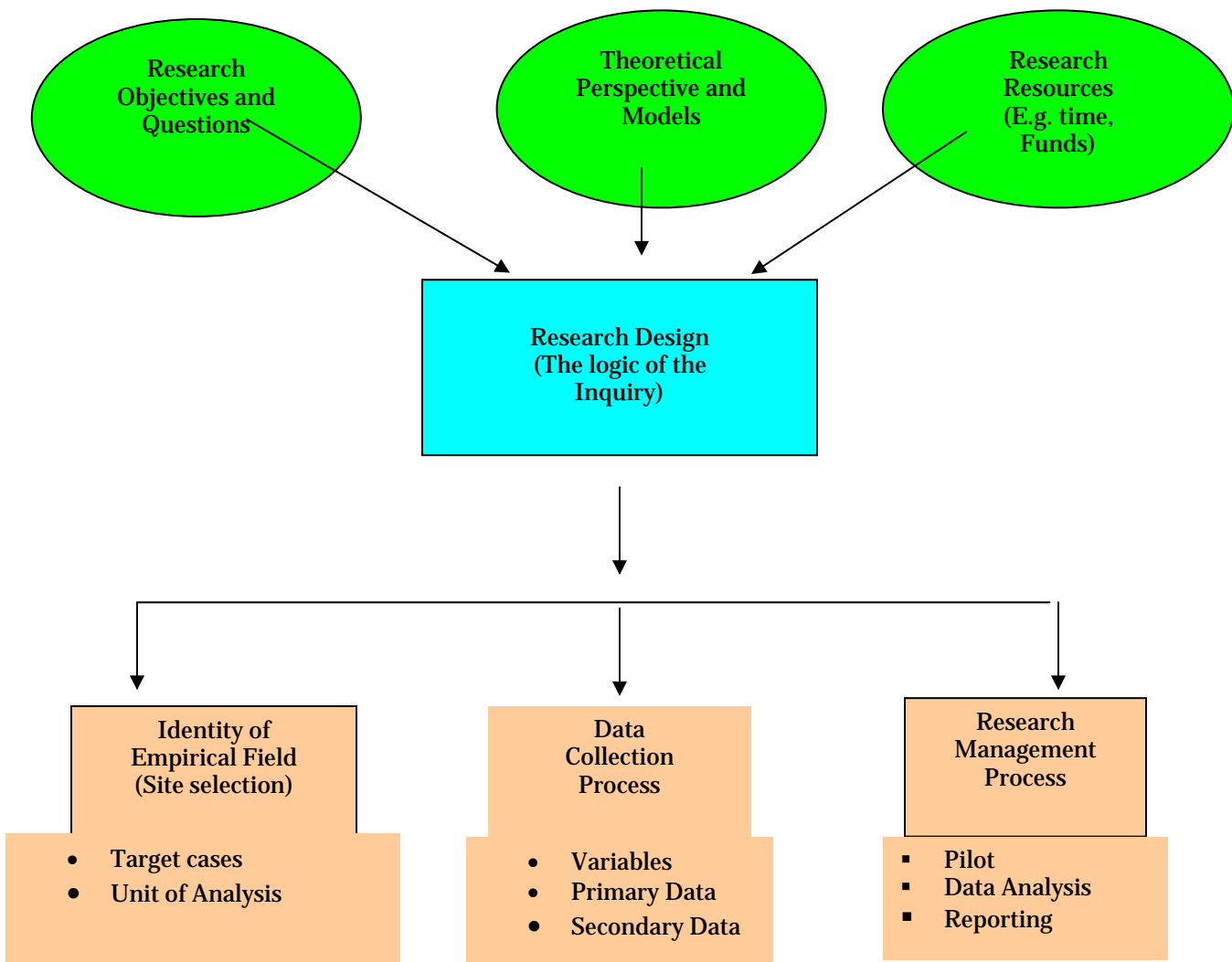


Figure 2.1 referred to schematically present the map of how the data were planned to be collected as reflected in context hereunder:

2.5.1 Unit of Analysis and Sampling Techniques

The unit of analysis for this study, in accordance with the research design structure by Yin (1993:110), is the three provinces under study. Government departments are the sub-units of the provincial governments and, thus, sub-units of analysis in the study, whereas the government officials are the subjects of the study. The population of the research includes the wider group including the governments of Limpopo, Mpumalanga and Eastern Cape Provinces. The population in this case is referred to as target population which, in Bless and Higson-Smith's (1995:87) words, is "the set of elements that the research focuses upon, and to which the results obtained by testing the sample should be generalized".

By 1948, Babbie (2001:178-180) states that some academic researchers had already been experimenting with a form of sampling based on probability theory.

This technique involves the selection of:

- i. Random Sampling: A "random sample" from a list containing the names of everyone in the population being sampled. By and large, the probability sampling methods used in 1948 were far more accurate than quota sampling techniques.

- ii. **Purposive sampling:** Sometimes it is appropriate to select a sample on the basis of knowledge of a population and the purpose of the study, and this type of sampling is called purposive or judgemental sampling. In this case, the researcher could study a small subset of a larger population in which many members of the subset are easily identified, but the enumeration of all of them would be nearly impossible, but the data of the subset to be collected could still be sufficient for the study.
- iii. **Quota Sampling:** Quota sampling is the method, which of course helped George Gallup to avoid disaster in 1936. Like the probability sampling, quota sampling addresses the issue of representativeness by beginning with the matrix, or table describing the relevant characteristics of the target population.
- iv. **“Snowball sampling”**, another type of sampling is referred to as snowball sampling. This procedure is appropriate when the members of a special population are difficult to locate, such as homeless individuals, migrant workers, or undocumented immigrants. In snowball sampling, the researcher collects data on the few members of the target population who are available, and could assist in providing the information on those members whom they happen to know but cannot be traced; hence the word “snowball” which refers to the process of accumulation as each located subject suggests other subjects. Given the fact that this procedure results in samples with questionable representativeness, it is primarily and exclusively used for exploratory research.

Apart from the four sampling techniques based on probability theory referred to by Babbie, there is stratified sampling. Stratified sampling according to Bless and Higson-Smith (1995:91, 93), divides the population into different strata so that each target group of the population belonging to one stratum would be included in the sample, through simple random sampling. This method targets a relatively small population and it permits great accuracy

Against this background, given different sampling techniques of probability sampling discussed earlier, purposive and stratified samplings were preferred for the study mainly because respondents in their strata (for example, their capacities and respective government provincial departments under study) were purposively sampled. In the course of the research, selected government officials in their respective capacities in some of the statutory departments of the provinces under study were targeted.

The business sector was also the focus of attention, given its critical relational links to the government through tendering processes. The relationship between the government and the business sector is in most cases informed by critical risk factors of conflict of interest. It is for this reason that this sector was added in the sample of the target population. In the study, a potential constructor, winner of government tenders was targeted as a case study to identify how the government and business sectors collude in perpetrating conflict of interest. The choice of the company for inclusion in the purposive sample was based on its tendering experience with the government and the reported gross acts fronting, which add a

new dimension of conflict of interest of which the very company had been accused by the shareholder in question.

2.5.2 Methods of Data Collection and Data Collection Techniques

There is a clear-cut distinction between data collection methods and data collection techniques. Data collection methods are the approaches to be followed to collect data whereas data collection techniques are the technical operations or innovations or rather tools employed to collect data. The two aspects of the research methodology are discussed hereunder.

2.5.2.1 Data Collection Methods

Welman *et al* (2005: 134) warns that each data-collecting method and measuring instrument has its advantages and drawbacks. Brynard and Hanekom (1997:27) give one of those drawbacks as time consumption. The most time consuming part of research is the collection of data. This must however be done because without data, it will not be possible to broaden one's understanding to explain the unknown or to add knowledge to already existing knowledge. Brynard and Hanekom further indicate that from the beginning of the research, one has to point out that there are two basic methodologies for collecting data to be distinguished. The methodologies referred to are quantitative and qualitative methods. Both methods make use of specific techniques to collect data, *inter alia*,

literature reviews (cast in the subsequent chapter), interviews, questionnaires and direct observation.

From the word go, there is a quite a strong distinction between quantitative and qualitative research. In quantitative methodology, the researcher assigns numbers to observations. Bernard (2000:254) argues that quantitative data is typically pre-planned, structured and designed to ensure comparability of data across respondents and sites. The data are normally collected in numerical or categorical form, using instruments or procedures that have been designed and tested to ensure reliability and validity.

Apart from qualitative and quantitative research methods, the social research of course, serves many purposes. Three of the most common and useful purposes are exploration, explanatory and description. Explanatory studies are very valuable in social scientific research. They are essential whenever a researcher is breaking new ground and they can almost always yield new insights into a topic for research. The chief shortcoming of exploratory studies is that they seldom provide satisfactory answers to research questions. Another purpose of social scientific research is to explain phenomena. For example, the voting intention of an electorate is a descriptive activity, but reporting why some people plan to vote for candidate A and others for candidate B is an explanatory activity. Descriptive studies are meant to describe situation and events. Although it is useful to distinguish the three purposes of research, most studies normally have elements of all three (Babbie (1986:73-74, See also Table 2.1 and 2.2 below)

Having discussed the two comparative and contrasting methodologies, namely qualitative and quantitative, and also the purposes or types of research namely, exploratory, explanatory and descriptive studies, the study is inclined towards qualitative methodology rather than a quantitative one. One of the fundamental reasons attached to this choice of the methodology is the fact that the study is descriptive, and not too focused on statistical research. The study describes and thereby understands the real life experience of government officials in the conduct of their public affairs as Brynard and Hanekom previously put it. How the government officials conduct themselves in the execution of their duties is of more importance than sheer statistics about cases of conflict of interest committed at our disposal within a specific period of time hence the methodology used is exclusive.

To this end, qualitative methodology according to Brynard and Hanekom (1997:29) refers to research, which produces descriptive data. The fundamental theme of qualitative research is a phenomenological one where the actor's perspective is the empirical point of departure. It is a focus upon real life experience of people.

Lastly, one of the reasons for the choice of descriptive studies, unlike exploratory and explanatory studies, is based on Babbie's (1986:73) fact that a major purpose of many social scientific studies is to describe situations and events. The researcher observes and then describes what was observed. Since scientific

observation is careful and deliberate, scientific descriptions are typically more accurate and precise than casual descriptions.

2.4.2.2 Triangulation and Data Collection Techniques

According to Cohen *et al* (2000:112), triangulation may be defined as the use of two or more methods of data collection in the study of some aspect of human behaviour. It is a technique of research to which many subscribe in principle, but which only a minority use in practice. In its original or literal sense, triangulation is a technique of physical measurement such as for example, navigators, military strategists and surveyors. By analogy, triangulation technique in social sciences attempts to map out or explain more fully, the richness and complexity of human behaviour by studying it from more than one standpoint and in so doing, by making use of both quantitative and qualitative data. Finally, triangulation is a powerful way of demonstrating concurrent validity, particularly in qualitative research.

Arguably, triangulation has been generally considered a process of using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation. Also, triangulation serves to clarify meaning by identifying different ways, the phenomenon is viewed (Denzin and Lincoln, 2000:443). In addition, Mouton and Marais (1990:91) accept that as a general principle the inclusion of multiple sources of data collection in a research projects is likely to increase the reliability of the observations. In general simple terms, Denzin

coined the term triangulation to refer to the use of multiple methods/techniques of data collection. The study therefore resolved to pursue triangulation technique to include interviews, observations and documentary surveys in order to maximize the reliability of the adopted data collection techniques and case study method as such.

Coming to data collection techniques informed by triangulation technique, as a point of departure, the survey is an old research technique. Surveys may be used for descriptive, explanatory and exploratory purposes. They are chiefly used in studies that have individual people as unit of analysis. It is understood that survey research is probably the best method available to the social researcher who is interested in collecting original data for describing a population. Done properly, survey research can be useful tool of social enquiry. Designing useful and trustworthy survey, research begins with formulating questions, either for questionnaires or interviews (Babbie, 2001:238).

The first major old survey technique of data collection is the use of a questionnaire. When using this method, a self report data collection instrument that is supposed to be filled out by the research participants is constructed with do's and don'ts, for example, determining whether an open ended or closed-ended question is needed, also avoiding double barrelled questions to name but a few. Young (1956:176) argues that the questionnaire is designed to collect data from large, diverse, and widely scattered groups of people. It is used in gathering quantitative data as well as in securing the development of data of qualitative

nature where appropriate. Sometimes, it is the only research tool utilized but it is often used in conjunction with other methods of investigation.

The second major survey technique of data collection is the use of interviews. When using this method for collecting data, the interviewer establishes rapport and asks the interviewee a series of questions. In this situation, the interviewer must always remain non-judgemental to the responses provided by the interviewee (Tashakkori and Teddlie, 2003:303-305). Bless and Higson-Smith (1995:104) state that an interview involves direct personal contact with the respondents who are asked to answer questions relating to the research problems. According to Bless and Higson-Smith, one of the methods of getting people to express their views is non-scheduled interviews, commonly referred to as unstructured interview, which consists of asking the respondents to comment on broadly defined issues, also free to relate their own experiences.

In contrast, the most structured way of accessing data directly from the respondents is by means of a scheduled interview commonly known as structured interview. Bryman (2004:109) argues that structured interview is one of a variety of forms of research interview, but it is the one that is most commonly employed in survey research. The goal of the structured interview is for the interviewing of respondents to be standardized so that differences between interviews in any research project are minimised.

Bernard (2000:193) supports that structured interview involves use of an interview schedule; an explicit set of instructions, whereby people are asked to respond to as nearly identical a set of stimuli as possible. However, this technique is inflexible unlike the unstructured interview in the sense that Bless and Higson-Smith (1995:105) asserts that it is based on an established set of questions with fixed wording and sequence of presentation, as well as more or less indications of how to answer each question.

Comparatively, the interview method is preferred for this study unlike questionnaire survey for number of reasons. To mention a few, firstly, the study is qualitative and does accommodate interviews rather than a questionnaire. Secondly, the study is sensitive and cannot afford the respondent to freely use questionnaires in a situation of potential conflict of interest, but rather unstructured interviews. Lastly, Tashakkori and Teddlie (2003:305) support that the preference of interview survey affords the interviewer a chance to probe the interviewee for clarity, which is an advantage unlike questionnaires where the probing is not possible. Young (1956:206) supports the notion that in social science research, the interview survey is used for searching data through face-to-face associations which aid in gaining “a portrait of human personalities” broad enough to encompass the social background which influences behaviour and deep enough to reveal inner strivings and tensions, attitudes and wishes.

Given the background of unstructured and structured interviews referred to earlier, unstructured interviews are preferred to give the opportunity for the

respondents to relate their own experiences and frustrations. Bernard (2000:193) supports the choice of this method particularly for this kind of study by stating categorically that unstructured interviews are used for studying sensitive issues, like racial or ethnic prejudices or hot political topics. Unstructured interviews were mainly conducted in a pilot phase of the study. Welman and Kruger (1999:146) see a pilot study as a means to help in detecting possible glaring flaws in the measuring procedures. A pilot survey was therefore necessary for this study to maintain the flare and tenacity of the data collection methods in collecting scientific information earmarked for the study. However, no clear-cut distinction emerged between the pilot and actual interviews. Unstructured interviews were follow-up verification procedures of the primary documentation.

Given the high level of match between the pilot and actual interviews with a batch of respondents, a decision was taken to have interviews with more informants. A profile of all interviewees and the sample of questions can be found in Appendices IV and V respectively. A high level of commitment among the interviews was noted (see Schedule in Appendix IV): Several respondents chose to have their interview in the researcher's office, far removed from their place of work, thus minimizing the risks of intimidation and interruptions during the interview. The reassuring atmosphere of researcher's office and the high level of commitment among the interviewees were highly conducive to the collection of reliable data. Nonetheless, despite the high level of co-operation, in a few cases there was a palpable unease among interviewees when names of some individuals' allegedly involved in cases of conflict of interest were raised. This

sense of tension was understandable in the sense that informants with political affiliations and ethnic loyalty might feel some sensitivity, shame, and even an urge to protect their own turf. Overall, these cases were infinitesimal and did not bias the data.

Also useful in the course of the research for this thesis was a research trip to Norway on a joint South African Norwegian Research Project, “Developing a Normative Framework for Effective and Efficient Social Security Provisioning: An Institutional Perspective” to research governance and administration issues pertaining to social security. The trip came at an opportune moment, namely during the crucial stage of developing a framework for studying conflict of interest. Besides, Norway was, coincidentally, an excellent site to research good practices of governance, it being one of the Nordic countries (the others being: Sweden, Denmark, Finland and Iceland) widely known as low-level corruption countries according to the well-respected non-government watchdog Transparency International (TI). The work on the project, especially in-group interview sessions both in Bergen and Oslo with Norwegian researchers allowed a better understanding of issues of conflict of interest from a global perspective. A comparative analysis was possible between the Nordic and South African contexts, with a view to drawing important lessons on how to resolve cases of conflict of interest within the context of public administration.

Apart from the unstructured and focus group interviews, the following other research methods were used as triangulation supplements to collect primary data:

The study surveyed government documents such as tender documents, technical reports, official letters and memoranda. These include intergovernmental fiscal reviews and yearbooks. Technical reports referred to, include a Commission of Inquiry, Standing Committee on Public Accounts and Auditor-General and annual departmental reports. These reports were critically scrutinized to retrieve the authentic data for this research. See a list of Auditor-General Reports requested in appendix III. The reports referred to are accessible as they are for public consumption, informed by the amended Constitution of the Republic of South Africa Act, 2005 (Act 5 of 2005), as they are not classified under confidential documents. Other supporting documentation emanating from other sectors of the government were also checked for the study. These documents contain data on conflict of interest.

Written student work (both essay and mini-dissertations by Masters of Public Administration (MPA) students, who are mostly government officials in mid-level supervisory positions, with practical knowledge of the convoluted problems confronting the public service) constituted a valuable secondary source of documentation.

Also, the Internet served as a powerful innovative tool for finding considerable quantities of data. For example, some documentation about the history of the province was downloaded from the provincial web sites whereas articles on conflict of interest in general were downloaded from international search engines. For the study, the following selected search engines were often used, although others were from time to time consulted:

- i. <http://www.sabinet.co.za>,
- ii. <http://www.ebscohost.com>,
- iii. <http://www.sciencedirect.com>,
- iv. <http://fernando.emeraldinsight.com>,
- v. <http://www.google.com>.
- vi. <http://www.yahoo.com>.

When coming to observation technique referred in old terms as field research, Babbie (2001:275, 276) states that by going directly to the social phenomenon under study and observing it as completely as possible, researchers can develop a deeper and fuller understanding of it. Field research is especially appropriate to the study based on the attitudes and behaviours best understood within a natural setting, as opposed to the somewhat artificial setting of experiments and survey. For example, field research provides a superior method for studying the group dynamics such as campus demonstrations, courtroom proceedings, labour negotiations, public hearings, or similar events taking place within a relatively limited area and time.

Young (1956:154) sees observation technique as a systematic and deliberate study through the eye of spontaneous occurrences at the time they occur. The purpose of observation is to perceive the nature and extent of significant interrelated elements within complex social phenomenon, culture patterns or human conduct.

As a result of field research or rather observation technique; an extra source of data was a series of random spot checks physically and electronically throughout the study on the workings of the government officials in the respective provinces. Physically, this was done through departmental site-visits, meetings and workshops with the government officials and some politicians in government in some of the instances. Electronically, this was done through the web and electronic mailing system. These approaches enhanced the data collected by other methods, which were referred to earlier.

Meetings and workshops demonstrated the extent and commitment of government officials towards unbundling service delivery backlogs. The non-participant observation was done in a skilfully careful and subtle manner so as to check against the natural conduct, attitude and reaction of government officials in their day-to-day operational workings.

To this end, it is for this reason that the study is peculiar as compared to other studies, which uses common method of questionnaires, drawing conclusions

from perceptions other than facts drawn from extant realities and eventualities of lifelong experiences.

2.6 Data Analysis Methods

As already indicated, Walliman (2001:227) notes that quite a strong distinction is generally made between qualitative and quantitative research. Not only do the appropriate data have different characteristics, but they also require different techniques for analysis. Natural sciences have traditionally concentrated on 'hard' quantitative (positivist) analysis and this was adopted by the human sciences until its shortcomings became evident. As it became increasingly obvious to some researchers that subjective human feelings and emotions were difficult (or impossible), to quantify, qualitative (anti-positivist) analytical methods were evolved, which took more account of the 'soft' personal data.

In the same way as the qualitative methodology was used to collect data, qualitative analysis is equally used to analyse the same data. White and Adams (1994:106) support that a grasp of qualitative methodologies is becoming increasingly important. The empirical analysis has already confirmed public administration's strong preference for qualitative research. Public administration scholars should become proficient practitioners of this craft and contributors of the advancement of these methods.

Table 2.1 Modified Research Strategies (Walliman, 2001:228)

Strategy/Analysis	Form of Research Questions	Requires Control over behaviour	Focuses on Contemporary event	Qualitative	Quantitative
Experimental	How, why, what?	Y	Y	N	Y
Survey	Who, what, where, how many, how much?	N	Y	Y	Y
Archival Analysis	Who, what, where, how many, how much?	N	Y/N	Y	Y
Historical Analysis	How, why?	N	N	Y	N
Case study	How, why?	N	Y	Y	Y

Van der Waldt *et al* (2001:281) outlines two research goals of conducting research. Public administrators and students of public management and administration can try to answer two fundamental questions about society, namely what is going on, which is descriptive research and why is it going on, which is explanatory research. It is argued that the central role of social research is to try to answer both the “why” and the “what” questions. The aim is both to describe and understand phenomena in society, and in this context, being conflict of interest.

Table 2.2 Extended Research strategy (Mouton and Marais, 1990:51)

Research goal	Contextual Interest (Internal Validity)	General Interest (External Validity)
Exploratory Research	Overview of phenomena by means of case studies and in-depth interviews.	Exploratory surveys
Descriptive Research	Case studies, In-depth interviews and Participant observation	Sample surveys
Explanatory Research	Contextual explanations by means of case studies and historical analysis	Experimental and quasi experimental studies

Apart from the experimental surveys and archival surveys, which are self-explanatory according to Table 2.1, historical and case study analysis, are possible. On one hand, Young (1956:139) explains that the use of historical data assumes that the past life of any group and its social institutions has a causal relationship to the present life of the group and its institutions. According to Young, the past contains, if it can be located, the key to the present.

On the other hand, Denzin and Lincoln (2000:448) confirm that case study is a part of scientific methodology, but its purpose is not limited to the advance of science. First and foremost, Fox and Meyer (1995:18) define a case study as the study of a social phenomenon by means of a thorough analysis of individual

cases. The case according to Fox and Meyer may be a person, event, process, community, society or any other component of social phenomena.

Denzin and Lincoln (2000:448) shed a new light that case studies are of value for refining theory and suggesting complexities for further investigation, as well as helping to establish the limits of generalization. Case study according to Young (1956:229-230) is a method of exploring and analysing the life of a social unit, be that unit a person, a family, institution, culture group, or even an entire community. Its aim is to determine the factors that account for the complex behaviour patterns of the unit and relationship of the unit to its surrounding milieu. On this score, a variety of case study materials have been utilized in social research such as personal documents (generally representing the first person account written by the subject himself or orally related by him to someone else), diaries, autobiographies, letters, confessions, life history data, records in the files of social agencies and so on. All of these materials need to be evaluated carefully in terms of:

- i. the writers motives in providing the record,
- ii. his or her opportunities to know the facts recorded,
- iii. the biases and prejudices of respondents and
- iv. the writers' insight into his or her ability to describe them.

In principle, Leedy and Ormrod (2001:150) sum it up by arguing that the researcher also records details about the context in which the case is found

including information about physical environment and any historical, economic and social factors that have a bearing on the situation.

On the basis of the issues raised and the two tables, 1 and 2 of the research strategy shown above, it becomes clear that the study follows descriptive research, which inform the analysis of case studies from a qualitative analytical perspective. Case study analysis is chosen particularly for this research because of the following four reasons:

One, on this score, although qualitative research is a predominance in this study because of the use of case applications, Rasin and Becker (Eds.) (1992:2) pose an enquiry of what a case is, by providing a radical criticism that, it should not be assumed that case studies are only qualitative, for according to them, at a minimum every study is a case study because it is an analysis of a social phenomenon specific to time and place. Although the researcher agrees to a certain extent with Rasin and Becker's (Eds.) (1992) frame of mind, however, case studies used for the purpose of this research are exclusively based on qualitative analysis.

Two, among educators, it is imperative and important to mention that the case study remains an unappreciated and under-utilised research tool. Most people use it as a method of last resort and even then they use it with uneasiness and uncertainty (Yin, 1993:40). Case studies have also been perceived to be stereotyped as a 'method of last resort' and an attractive nuisance (White and

Adams, 1994:106). Yet, case studies have frequently been the method of choice among experienced investigators in education. These and other examples of the use of case studies have produced important data and ideas and helped to advance educational research (Yin, 1993:40). Strickland (2003: C-4) supports that the aim of cases provides a meaningful practice. They provoke critical issues that demand workable solutions. One therefore observes that cases on conflict of interest, for example lead, into this direction of demanding workable solutions.

Three, case study is a method of exploring and analysing the life of a social unit, be that unit a person, family, institution, culture group or even an entire community. Its aim is to determine the factors that account for the complex conduct of the unit and the relationships of the unit to its surrounding milieu. With case study method it is also possible to eventually link into cause-effect relationships, a very large number of traits and factors as they appear in the cases under study, which is difficult if quantitative methods, are used (Young, 1956:229). The case study method still holds in this era. The life, experience and practices of the government in these provinces under study are described and analysed out of a selected number of critical cases in Chapters Four of the study. A fish model commonly referred to as cause and effect method cut across in the analysis of case studies in the same chapter.

Lastly, case study applications are regarded as the mainframe of the data collection analysis for this particular kind of study obviously because cases portray the existing reality that cannot be disputed. Assumptions, opinions and

inferences are limited when coming to this particular method, because cases are built on existing facts.

In short, cases study analysis is chosen for the purpose of the research because, according to Cohen *et al* (2000:182):

- i. It is concerned with rich and vivid description of events relevant to the case;
- ii. It provides a chronological narrative of events relevant to the case;
- iii. It blends a description of events with the analysis of them;
- iv. It focuses on individual actors or groups of actors and seeks to understand their perception of events;
- v. It highlights specific events that are relevant to the case;
- vi. The researcher is integrally involved in the case;
- vii. An attempt is made to portray the richness of the case in writing up the report.

To this end, Denzin and Lincoln (2000:437) see it fit to identify three types of case study:

- i. Intrinsic case study

The case study is intrinsic if it is undertaken with an understanding of its particular interest. Here it is not undertaken primarily because the case

represents other cases or illustrates a particular trait or problem, because in all its particularity and ordinariness, the case is of much interest.

ii. Instrumental Case study

It is called instrumental case study if a particular case is examined mainly to provide insight into an issue. Here the case plays a supportive role and it is looked at in-depth, its contexts scrutinized, its ordinary activities detailed, but all because this helps the researcher to pursue the external interest. It becomes clear that there is no line distinguishing intrinsic case study from instrumental; rather, a zone of combined purpose separates the two.

iii. Collective case study

A collective case study is an instrumental study extended to several cases. Individual cases in the collection may or may not be known in advance to manifest some common characteristics. They may be similar or dissimilar. They are chosen because it is believed that they will lead to better understanding, perhaps better theorizing about a still larger collection of cases.

On the other hand, Cohen *et al* (2000:183) see types of case study as:

i. Exploratory (as a pilot to other studies or research questions)

ii. Explanatory (testing theories);

iii. Descriptive (providing narrative accounts).

Against this background, given the combination of Denzin and Lincoln and also Cohen *et al* case study prototypes, it becomes explicit that the study follows collective case study informed by descriptive research. Leedy and Ormrod (2001:149) sum it up that in a case study; the researcher collects extensive data on the individual(s), program(s) or event(s) on which the investigation is focused. These data often include interviews, observation and documents (past records); and these were exactly followed in 6.5 above.

Lastly, the researcher is aware of the forewarning cast by Leedy and Ormrod (2001:150) that the case studies sometimes could not be generalisable to other situations.

2.7 Data Interpretation Method

The logic of facts organized in this study is informed by the dictates of the game theory, traced back to 1928 when J. von Neumann, a Hungarian, originated the ideas of game theory from the problems of maximum and minimum (Shengkai, Zhang and Zhang, 2003: 841). Dye (2002:27-28) adds that game theory is the study of rational decisions in situations in which two or more participants have choices to make and the outcome depends on the choices made by each. The idea of “game” is that decision makers are involved in choices that are interdependent. Game theory according to Dye is an abstract and deductive model of policy

making, thus game theory remains a form of rationalism, but it is applied in competitive situations in which the outcome depends on what two or more participants do.

Further, game theory requires the problem to be broken into component parts, as Heap and Varoufakis (1995: 4) advise. In game theory, the problem is broken into component parts. First we need to know the rules of the game because these will tell us what actions are permitted at any time. Then we need to know how people select an action from those that are permitted at any time. Van Witteloostuijn (2003:53) argues that game theory is the conceptual and mathematical toolkit for the study of interactions among parties or players with conflicting interests.

In this study, various parties were involved and the problem was broken into component parts, especially in Chapter Four. Game theory was therefore appropriately applicable to the present study to ensure logic and rationality in analysing and interpreting the findings and to make a sound judgement and draw conclusions about the conduct of government officials and the politicians in government. To this end, whereas every game is governed by a rule, every democratic government, too, has a rule, the rule of law. Consequently, the use of game theory in this study is amply justified.

2.8 Scope and Limitation of the Study

No study or investigation exists without limitation. At the outset, a decision was taken to focus the research attention on cases of conflict of interest in Limpopo Province, a choice dictated by the proximity to the researcher. Nonetheless, it became evident in the initial stages of the research that a comparative perspective might yield a better understanding of the problem. Therefore, the net was cast wider to include two other provinces reputedly fraught with similar problems, namely Mpumalanga and the Eastern Cape Provinces. For Mpumalanga, its proximity to Limpopo was an additional reason for inclusion. As far as the Eastern Cape Province is concerned, the similarity of its history as a province born out of the amalgamation of former Homeland Administrations and its rural character justified its choice for inclusion. The choice of Mpumalanga and the Eastern Cape does not necessarily amount to recognition that other provinces are free from cases of conflict of interest. The inclusion of only two additional provinces was rather dictated by the limitations of space imposed by the scope of the study.

Time constraints also dictated the in-depth discussion of the subject of conflict of interest. A firewall is therefore created to restrict the discourse on conflict of interest from within the confines of governance, leadership and managerial practices of the politicians in government and the government officials per se informed by the statement of the problem. This is the researcher's point of departure and the study should be understood from within this context and

limitation. The study is also confined to issues of conflict of interest in the three provinces under study, Limpopo, Mpumalanga and Eastern Cape, from the year, 1994 to 2004, a ten-year epoch of democracy in South Africa.

Conflict of interest is a very sensitive subject to describe and discuss. Precautions and caution must be exercised in the discussion and interpretation. Given the sensitivity of the issue in question, one could not pre-empt and guarantee the amount of data collected during the fieldwork at this stage. However, it turned out that with the right of persuasive tact and tactics, enough reliable, consistent and valid data were collected.

To this end, this study should be understood in its academic discourse, as an educational mouthpiece in the discipline of Public Administration. As a precaution of ethical restrictions required in academic research, names of individuals allegedly involved in cases of conflict of interest were removed and replaced by office designations. The reason for using office designations was to provide some sense of proportion in each case while protecting the rights of individuals to privacy.

Lastly, the author is aware of the use of the nomenclature of “public servant” in the Public Service Act, 1999, but in this study, the nomenclature, “government official” will be used throughout the thesis to maintain consistency in approach.

2.9 Outline of the Study

The chapter outline is informed by the research design and methodology posed for the study and the uniqueness of the study. It has already been stated that the study follows a case study approach, hence a limit of six chapters, which make up the complete components of the study. The chapters are presented in their systematic and logical arrangements as follows:

Chapter One: Historical Overview

It is important to understand the historical overview of the provinces under study before delving deeply into the study. It is for this reason that Chapter One traces the history of the three provinces under study dating back to 1994, a historic moment of the political life of the country. The outline is brief of necessity, but it provides a background sufficient enough to understand the underlying causes of conflict of interest in the said provinces.

Chapter Two: Research Design and Methodology

After understanding the historical contexts of the provinces under study, it becomes appropriate to look into methodological approach of the study in perspective. As a result, Chapter Two describes the scientific methodology used, including the design of the study, and the methods for collecting the data informed by the statement of the problem. Also included in the chapter are

experiences and limitations of how the data were collected to arrive at the empirical testing of the theoretical propositions postulated. A brief description of the population and the sampling method, and an explanation of the analysis and interpretation techniques are also included.

Chapter Three: Conflict of interest in the Public service

Chapter Three casts the theoretical basis for the study, a prerequisite for a sound scientific work. Some of the highlights are: definitional aspects; conventional theories; nature, and extent of the problem; possible causes and consequences of conflict of interest in and outside South Africa. In this way, the chapter links back to the problem as stated earlier in Chapter Two, and thus have an influence on theoretical issues of public administration.

Chapter Four: Analytical Perspective of Selected Case Studies of Conflict of interest in the Public service

Having stated that the study follows a case study approach, it is not surprising for Chapter Four to analyse the results of the survey, taking care to ensure the reliability and validity of the results. A brief explanation of the techniques applied, for example, case study technique is offered. In a sense, this chapter provides a wealth of war data on which it is possible to theorize further about conflict of interest.

Chapter Five: Interpretation of Selected Case Studies of Conflict of interest in the Public service

It is logical after analysing data available to draw interpretations thereof. Chapter Five provides the interpretation of the results obtained in the previous chapter. Inferences are drawn which empirically answer the research questions posed in Chapter Two. In a nutshell, the chapter attempts to verify to what extent the inferences drawn respond to the research questions and the objectives of the study.

Chapter Six: Conclusions and Recommendations

Lastly, for every beginning, it has an end. The Chapter Six concludes the thesis and draws practical lessons and solutions in Limpopo, Mpumalanga and the Eastern Cape Provinces, which may be applicable elsewhere in South Africa. In so doing, it is hoped that a contribution will have been made to theories of Public Management and Administration. The framework and mechanism to resolve conflict of interest in South Africa suggested in the thesis could be of use elsewhere.

2.10 Conclusion

At this stage, it seems useful to recapitulate. The focus of the study is conflict of interest in the public service. The study was carried out over a period of 30 months. Given the sensitivity of the issue at hand, the fieldwork was strenuous, as unearthing cases of conflict of interest remain a difficult task, especially for an outsider to the realm of government. Notwithstanding the immensity of the difficulty, enough data were collected to satisfy the research needs as tacks and tactics were applied to source the data.

A comparative perspective was introduced by including three provinces (Limpopo, Mpumalanga, and the Eastern Cape) instead of limiting the research attention to one (Limpopo), which had initially been the prime focus of attention when the idea was germinating.

A combination of methods (triangulation technique) was used to collect the data, namely: interviews, documentary survey, observations, Internet-search and most importantly, case applications. This combination of methods contributed to strengthening the data, through triangulation technique. Besides, fieldwork was extended beyond the borders of South Africa, thanks to a research trip undertaken in Norway.

CHAPTER THREE

CONFLICT OF INTEREST IN THE PUBLIC SERVICE

3.1 Introduction

The ten-year of democracy in South Africa, which is also the history of the existence of the three provinces under study together with the methodological framework of the study, laid a foundation for a critical review of the existing theoretical framework on conflict of interest in the public service, which is the central focus of this chapter. In the process, “conflict of interest” is conceptualized within a suitable definitional framework in the corpus of this chapter. A clear operational definition of the concept “conflict of interest” including that of corruption is necessary to avoid any confusion with related terms in the domain of government ethics. The questions posed by Carney (1998:1), namely: What is an interest? What is a private interest? What is public interest? What constitutes a conflict of those interests? When does a coincidence of interests raise ethical dilemma? are therefore answered in this chapter.

Theoretical study of conflict of interest in public administration is submitted to a litmus test and its underpinning is drawn into the chapter to strengthen the arguments raised in the chapter. There are two parts of the theoretical underpinnings, conflict theories from multi-disciplinary perspectives and that of inter-discipline in public administration. The integration of the two shows that

public administration does not operate in a vacuum in the resolve of ethical problems. The dynamics of conflict of interest from international and national perspective is given in great detail to understand the problem of conflict of interest widely. This is followed by the causes and consequences of conflict of interest from within the South African perspective and elsewhere, which are discussed in brief.

The chapter attempts to address critical issues of conflict of interest, raising the issues of leadership and governance, as they have been observed in a variety of countries, thus bringing to bear an international, a national, and a local perspective in the context of public administration. Being critical, the reflection of the theoretical framework identifies existing gaps in the available body of knowledge on conflict of interest and attempts to contribute to filling them. To this end, it would become clear after reading the chapter that conflict of interest has an influence on public administration.

3.2 Conflict of interest and Corruption

It is perhaps appropriate to first look at the concept “conflict” before discussing the concept “conflict of interest”. The concept “conflict” is in essence, the purposeful expression of opposing conduct between various parties (Hattingh, 1998: 79). An example of conflict is that between public and private interests. The tension between the two is a source of concern in this study.

As to “conflict of interest”, it is a concept that is sometimes poorly understood. Therefore, a definitional framework is required by the political leaders and public administrators in order to understand what is involved and expected to do when there is conflict of interest. Woode (1999:45) concurs when he observes that the understanding of conflict of interest is needed more than ever before. Close to Woode, Pauw *et al.* (2002:15) observe that some authors are sceptical about the concept of “public interest” because it is notoriously difficult to define and determine.

Closer to home, the Public Service Commission (2003:22) views conflict of interest as the fact of “acting or failing to act on a matter in which the government officials have an interest to ensure benefit is received”. McDonald (2002) defines conflict of interest as "a situation in which a person, such as a government official, an employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties". Key elements in this definition are “private” or “personal” interest. Often this is a financial interest, but it could also be another sort of interest, say, a special advantage to a spouse or child. There is nothing wrong with this interest unless when this private interest comes into conflict with the second feature of the definition, an "official duty"—quite literally, the duty you have because of the office you hold or the capacity at which you can act officially.

Conflict of interest interferes with professional responsibilities in a specific way, namely, by interfering with objective professional judgement. A major reason clients and employers value a professional is that they expect professionals to be objective and independent. Factors like private and personal interests that either interfere or appear to be likely to interfere with objectivity are then matters of legitimate concern to those who rely on professionals—be it clients, employers, professional colleagues, or the general public (McDonald, 2002).

In short, conflict of interest arises when private interests of a government official clash or even coincide with public interests. Such a tension raises an ethical dilemma when the private interest is sufficient to influence or appear to influence the exercise of official duties. Koehn (1994: 116) argues, therefore, that the legitimate concern of reasonable clients is that some of the commitments of some professionals are such that promoting the welfare of a client has ceased to be the professional primary motivation.

On the basis of this argument, classic examples of conflict of interest include:

- i. A government minister who accepts an offer of future employment from a company, which is currently seeking a government trading licence (Carney, 1998:1);
- ii. A legislator who approaches a minister on behalf of a company in which the legislator is a shareholder;

- iii. A government official who is a potential shareholder of a company, which is tendering with the government. Pauw *et al.*, (2002:336) puts it this way, the “awarding of contracts to companies of which the government official is a shareholder”; and
- iv. If a doctor is selling renal tissue or organs, one has reason to wonder whether his decision to remove a kidney truly aims at promoting one’s health or at maximizing the doctor’s income, perhaps at the expense of the donor’s health (Koehn 1994: 116).

To sum up, conflict of interest is generally thought of as any situation involving hidden, "self-dealing", "related-party transactions", "non-arms length relationships", or "serving two masters" that results in gain for one party at the expense of another. A structured definition of the concept of conflict of interest is:

- i. The convergence between an individual's private interests/obligations/relationships and his or her professional obligations to an organisation;

- ii. Such that an independent observer might reasonably question the motive, actions and outcomes regarding decisions made or actions taken by an individual, as a director, officer or employee; and

- iii. An individual's immediate family or a third party or organisation in which his or her immediate family has a business interest or association, receives any "thing of value" as a result of decisions made or actions taken by the individual as a director, officer or employee of the organisation (Simmons, 1997).

It is for this reason that there are close links between corruption and conflict of interest. Carney (1998:1) delineates them by elucidating the nature of each. Of the two phenomena, corruption is the better known. Most people are able to give an example of corrupt conduct but could less readily explain the notion of conflict of interest. Carney (1998:1) further clarifies that "as for their relationship, one could say that all cases of corruption involve a conflict of interest but the reverse cannot be maintained".

To put this matter in perspective, concrete examples are made. A government official who takes care of his or her private interests is not by definition corrupt. One could say that a government official should be allowed to look after his or her private interest as long as this does not interfere with his basic task of serving the public. However, as soon as looking after his or her private interest interferes

with his or her role of serving the public, in the broadest possible sense, the government official in question crosses the line between what is acceptable and what is corrupt conduct (Verheijen and Dimitrova, 1996: 200).

One observes that this situation is critical because the line of what is acceptable and what is corrupt behaviour is too thin, fluid and nebulous. The line is more informed by differing societal norms and dynamics, rather than uniform acceptable standards. Another example is: as a professional, one takes on certain official responsibilities by which one acquires obligations to clients, employers or others. These obligations are supposed to stand above personal interests.

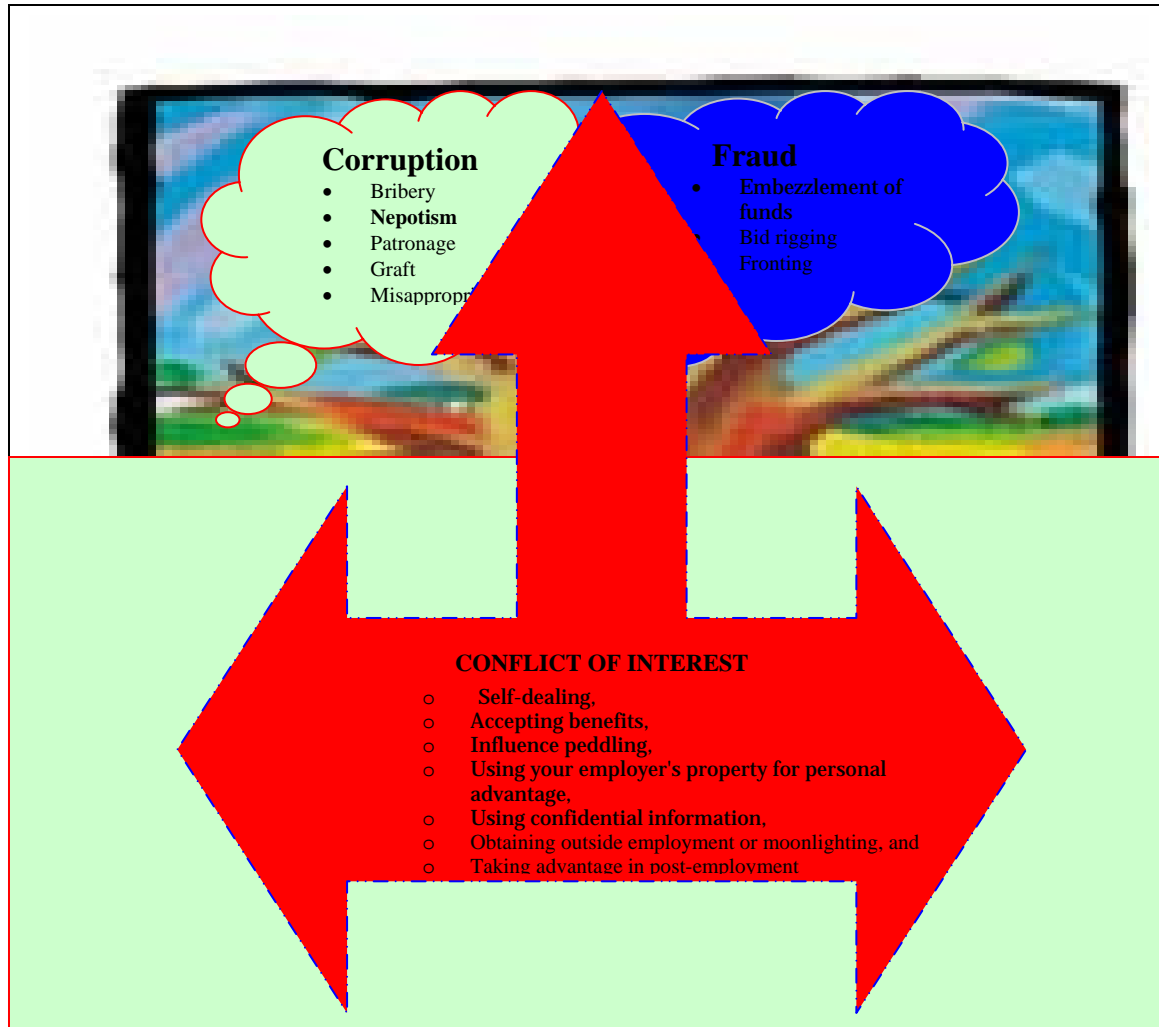
The South African situation seems to fit well in the context of these classical examples. To a large extent, conflict of interest normally bears the characteristics of corruption. To some people, the ends justify the means. To this end, Woode (2000:48) observes that some government officials are more concerned with manipulating the system to their advantage rather than meeting the obligations of their respective offices. They use the prestige and influence of their respective offices or take unfair advantage of their position to pursue their personal interests. A manifestation of this phenomenon, for example, is when a Minister of Finance takes advantage of his office to apply for loans to support his private enterprise. This could be similar to situations in which members of a tender board decide to award themselves contracts which were supposed to go to more deserving members of the public.

Corruption is commonly referred to from time to time as the betrayal of public trust for reasons of private interest (Rosenbloom, 1989:467). Kanyane (1996: 4), echoing Gerald and Naomi, defines corruption as the promotion of selfish interest at the expense of public interest, against the overall objectives of the government, by whosoever is in charge and responsible within the area of work. Corruption, thus clearly defined, touches various areas of government. It takes many forms, but a common silver thread that runs through all of them is the misuse of power and resources for private benefit.

Corruption is born out of a deep-rooted conflict between the power of those who rule and the claims of those who do not. The conflict helps define the powers, privileges and limits attendant upon by various roles in politics and society (Seepe, 2001). Given this definition, corruption and conflict of interest seem to be linked together. It is usually claimed that conflict of interest seems to be one of the threads drawn from the mainstream corruption. Matsheza and Kunaka (2001: 25) remark, “Corruption takes various forms including fraud, embezzlement, extortion, conflict of interest and other forms of abuse of power for either personal or institutional gains”.

One would like to pause here, and make an illustration of interwoven relationship amongst conflict of interest, corruption and fraud including nepotism in the form of a “tree” as follows:

Box 3.1 Conflict of Interest, Corruption & Fraud Box



In this study, a distinction, razor-thin though it may be, cannot be drawn between corruption and conflict of interest. It is, therefore, important to point out that corruption, fraud and conflict of interest should be used interchangeably to a certain extent, from a generalist school of thought. In this thesis, corruption when contextualised and conceptualised is informed by conflict of interest, not vice-versa. The same applies to fraud, as properly defined in the early preliminary part of this thesis.

A generic conclusion is arrived at in grappling with conflict of interest' definition that, government officials who sacrifice services and facilities of government departments for any interest other than that of the public are guilty of conflict of interest. Apparently, so far, it appears that conflict of interest brings about the intrusion of corruption and fraud in public administration. One could further argue that conflict of interest brings about mainstream corruption into government.

After attempting to conclude a definitional relationship between corruption and conflict of interest, now, a turn to conflict of interest could be investigated and explained how it affects ethical values, i.e. the "basic values and principles governing public administration" enshrined in the Constitution of the Republic of South Africa, 1996. The maintenance of high quality professional ethics is a significant challenge to public administrators and frontline officials especially in dealing with conflict of interest' issues.

To conclude on the definitional aspect of conflict of interest per se, Sangweni and Balia (1999:178) identify acts which characterize the appearances of conflict of interest within the context of the plethora of definitions aforementioned in South Africa:

- i. Having a financial involvement with an employee or representative of a supplier, vendor, customer or competitor with whom the employee regularly comes into contact while performing business;
- ii. Accepting personal discounts on products, services or other items from an employee or representative or a supplier or customer, on terms not available to all employees;
- iii. Participating in any activity that might lead to the disclosure of our proprietary information owned by others that have entrusted it to us;
and
- iv. Dealing directly, in the course of normal responsibilities with or through a spouse or family member (as generally regarded by common law and within the diverse cultures) that is a supplier, vendor, customer or competitor or is employed by one.

Given these series of acts, an employee is responsible for declaring the possibility of conflict of interest; unless the conflict of interest is proved beyond doubt that it could not be foreseen (Sangweni and Balia, 1999: 179). Conflict of interest arises therefore from situations in which a decision-maker must balance personal interests with corporate or organisational interests. The former must not supersede the latter and if this happens, a conflict subsists. However, the reverse

is not the case of concern. Often, the conflict is unknown to others involved in or affected by a decision.

Given the premise of conflict of interest informing corruption and fraud, one could say that conflict of interest presumably compromises the level of performance and consequently affects the quality of government service delivery. Conflict of interest is thus an obstacle to the implementation of the White Paper on Transforming the Public Service Delivery, (18 September 1997), particularly the “Batho Pele” principles, which put delivery of services to the people first. If it is not resolved, conflict of interest will abrade the moral and economic fibre of the society in the near future. In the long term, it could turn the economy of South Africa into a failed adventure of the scale of those of the DRC, Zimbabwe, or Zambia on the continent, to name but a few. In the end, failures of this magnitude could ultimately frustrate the good intentions of the New Partnership for Africa’s Development (NEPAD) initiatives. To this end, the term conflict of interest is therefore understood from a negative definitional paradigm.

In a nutshell, Koehn (1994:201) concludes that what precisely constitutes conflict of interest is a fascinating and difficult topic to ponder upon. Despite differences of opinions among philosophers and public administration scholars, there seems to be some consensus that conflict of interest is problematic precisely because it gives the public an impression to believe that the members of the public’s welfare has ceased to be the primary focus of concern as referred to earlier. This study therefore understands conflict of interest from its very orthodox age-old sense as

“a conflict between the private interests and the official responsibilities of a person in a position of trust” (Webster, 1850). The whole study is informed by this conventional definition as a point of departure.

After unpacking the conceptual framework of conflict of interest and having to learn that conflict of interest is derived from a negative definitional paradigm, Starling (2002:142) like Koehn, arrives at the same conclusion that the public interest is no easy task.

3.3 The Relevance of Multi-disciplinary Socio-Philosophical and Psychological Conventional Conflict (of interest) Theories to Public Administration Discipline

This section argues that the discipline of Public Administration does not take place in a vacuum. Coetzee (1988:80) reasons that public administrator should always seek co-operation and guard against isolation. Moreover, there is a growing recognition that the social problems of today are so diversified and inter-related that they can best be understood and resolved through application of the knowledge and skills accruing from all, or the majority of, the social science disciplines.

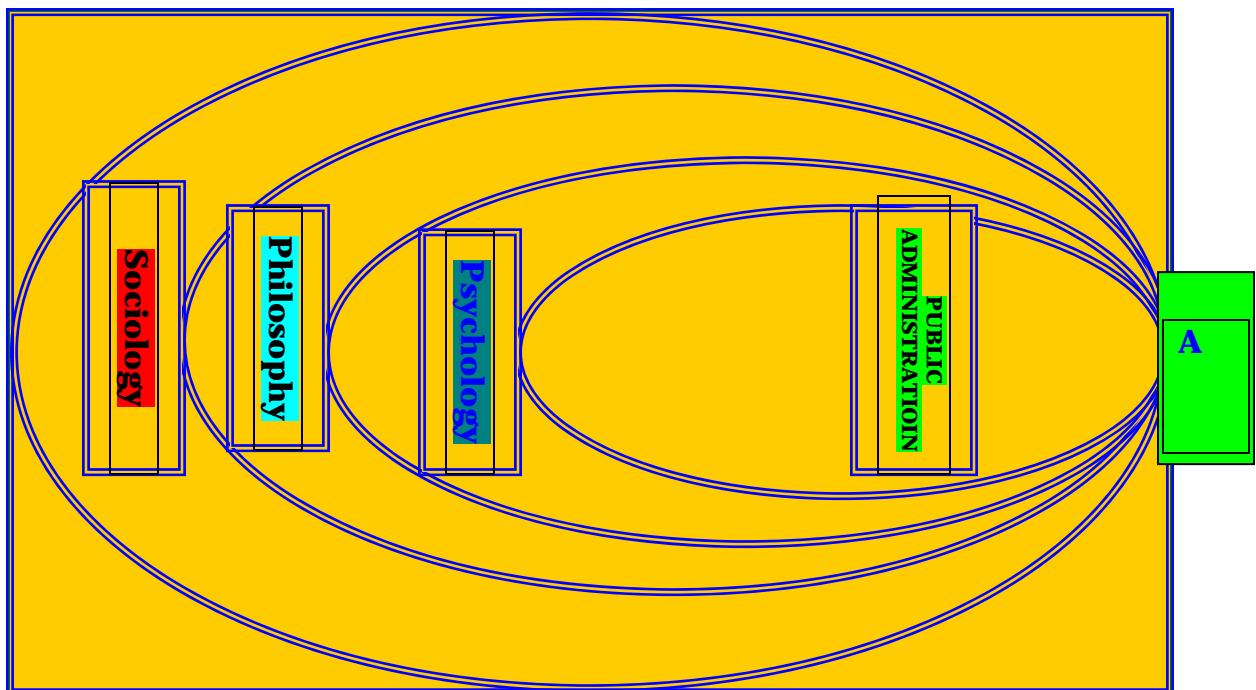
Given the fact that political leaders and public administrators often perform their work in conjunction with practitioners of other disciplines, and as the public administration functions integrate and overarch all human behaviour (Coetzee,

1988:80), this chapter or rather this section of public administration is approached from both inter-disciplinary and multi-disciplinary point of view to accommodate the dominant and relevant conventional conflict theories of sociology, philosophy and psychology in the resolve of conflict of interest from public administration context.

Sociology can be defined as the science of social relationships, the consequences of those relationships for ongoing social systems, and the processes of social change. The sociologist particularly emphasises beliefs, values, moral rules and symbolic communication, which forms the distinctive features of human life. The exposition shows how sociology relates to Public Administration, hence the sociology of public administration. Coming to Philosophy, it is generally regarded as “the mother of the sciences”. A knowledge of philosophy i.e. the special philosophic branches of metaphysics, epistemology (theory of knowledge), logic, ethics and aesthetics is of inestimable value to both the practitioner and the academic pursuing the field of public administration, hence the philosophy of sciences such as law, history, education, religion, and most importantly, philosophy of public administration. It applies to Psychology, which deals with the study of man and woman, his or her mental faculties, emotions, traits, operations, powers and adjustment problems in society. As the success of public institutions depends largely on the behaviour of government officials in specific work environments, a thorough knowledge of psychology and the various branches of applied psychology is of inestimable value (Colette, 1988:83-86).

From the illustration below, loop 3.1, the interrelationship between the dominant social sciences i.e. sociology, philosophy and psychology converging and overlapping at point “A” cannot be over-emphasised hence a need to look conflict of interest study from multi-disciplinary context in relation to public administration.

Loop 3.1 Selected Interdisciplinary and Multi-disciplinary Social Sciences-Public Administration



The origin of the concept “conflict of interest” can be traced back to the origin of humankind. Rude and Luban (1995: 474) study theoretical considerations of conflict of interest from as far as 1880s, which they sum up as the perception of something improper. Sing (1983:33) echoes the old Braibanti notion insisting that:

...man is by nature evil... He cannot be trusted. He will seize every opportunity to exploit his power and influence to advance him. He will lie, cheat, deceive and connive his way through life, given the evil nature of man's inclined pretext.

Mayson vs. Wits Students (2004) confirms this orthodox notion that men are trapped in a situation of keeping possessions, material and money to themselves, and lost the interest of other people even in this new dispensation. This orthodox thought is accepted by the work of Randall Collins, a Sociological Integrative Conflict theorist. Unlike exchange and rational choice theorists, Randall Collins did not see people as wholly rational. He recognised that they are wholly vulnerable to emotional appeals in their effort to find satisfaction. Collins also looked at the final organisation from a conflict perspective. He saw them as networks of interpersonal influences and as arenas in which conflicting interests are played out (Ritzer, 1996, 273-275).

Dahrendorf (1968: 110,116), a well-known German sociologist of conflict theory of the time, put it this way: "men are mortal; although the system is perfect and in a state of equilibrium, individuals cannot always live up to this perfection, for defiance according to him is a motivated inclination for an actor to behave in contravention of one or more institutionalized normative patterns". Surprisingly, these sociological theorists in short recognise and accommodate the existence of conflict of interest in the organization.

Responding somehow to the opposing philosophies of Rousseau and Hobbes, respectively that “man is by nature good” and “he is evil”, Dahrendorf (1985:66) takes an unbiased position by adding the third approach, which liberates the two paradoxical thoughts, which he claims is the right one. The “perpetual vicissitudes” of the human condition are due to the fact that man is both good and bad, which David Hume, to whom Kant owed so much, advanced his own notion of the unsociable sociability of man. It is clear from this position as Dahrendorf (1985:66) puts it that there are other particulars in our natural temper, and in our outward circumstances, which are very incommensurable, and even contrary to the requisite conjunction, among them above all is our selfishness. However, men are not just selfish, but may even be more kind, and the two motives compete. This is where I see the unsociable sociability of David Hume pointed earlier by Ralf Dahrendorf posing a threat to society and leading to conflict of interest in an organization.

Theories of conflict of interest developed further in the subsequent century. Thomas Hobbes argues that a society originates out of self-interest and fear, not out of natural feelings for one’s fellow man. This is repugnant to civil law, which encourages communal relationship (Albert *et al*, 1980). It is in this regard that an element of “ubuntu”, which is rooted in the African tradition, becomes crucial against the philosophies of Thomas Hobbes and some western cultures. Sangweni and Balia (1999:50) define ubuntu as the idea of being human, valuing the good of the community above self-interest, striving to help other people in the spirit of service, showing respect to others, and being honest and trustworthy.

Hobbesian philosophies and some Western cultures, in contrast, are inspired by capitalism, or rather the survival of the fittest, that “...not so much for love of our fellows, as for the love of ourselves” (Albert *et al*, 1980:144). To Thomas Hobbes, self-interest supersedes public interest. Hobbesian theory agrees with the work of Randall Collins on integrative conflict theory, urging one to think of people as animals whose actions, motivated by self-interest, can be seen as manoeuvres to obtain various advantages so that they can achieve satisfaction and avoid dissatisfaction. This theoretical position is against Karl Marx’s political philosophy of socialism and communism. It also fights *lex naturalis*, that is, the law of nature. Laws are made to govern humankind, and to break them is injustice. It is morally and legally correct to put public interest first in the execution of public duty, and to act in contrary is corruptive.

Thomas Hobbes at least agrees that the basic moral concepts of right and wrong, just and unjust arise concomitantly with the establishment of a civil society (Albert *et al*, 1980: 147):

In actual fact, the reality of the situation is that the duty to exercise power in the public interest has been recognized for centuries by political philosophers: Plato, Cicero, Rousseau, Wang, Shih and the Islamic scholar, Abdul Rahman Ibn Khaldun (AD 1332-1406). The ideal concept of public office, expressed by the words, ‘A public office is a public trust’, signifies that the officer has been entrusted with public power by the people; that the officer holds this power in trust to

be used only for their benefit and never for the benefit of himself or of a few; and that the officer must never conduct his own affairs so as to infringe on the public trust (Carney, 1998:3).

Harmon (1995:37) introduces the principle of rationality in choosing between what public interest is and what private interest is. Harmon refers to the philosophy of Alasdair MacIntyre who portrays the modern individual as having to choose between two apparently competing, but in the final analysis converging, grounds for making moral judgements. First and foremost, of these grounds, is rational or principled argument, in which moral judgements are logically deduced from universal and a-historical principles rather than made on the basis of selfish interest or personal gain.

Pauw *et al* (2002:15) bring a notion of “ubuntu” to support the argument of public interest vis-à-vis private interest. In bringing this ubuntu notion again, Pauw *et al* asserts we do not accept the philosophy as alluded by Thomas Hobbes and other proponents that society consists of unrelated individuals with no interest other than their own wishes as expressed in their various choices; but rather inclined to ubuntu referring to wide-ranging practices originating from African humanism.

Notwithstanding the obvious contradictions regarding how conflict of interest can be viewed, perhaps as a result of historical differences over time, it is necessary to understand conflict of interest in its present context without

ignoring the past. Indeed, strategies to deal with conflict of interest could also be informed by past experiences.

Conflict of interest is in actual fact not an event but a human component. It is conscience oriented and exists as long as humankind lives. Albert *et al* (1980:188) argue that conscience is reason functioning as the arbiter of conflicting interests of self-love and benevolence. Conflicts between personal and social interests could therefore be resolved by a regulative principle of a higher order, which is the conscience. Conscience prompts people to perform their duties. Thus, conscience is “the knowledge of right” within each man, which makes him a “moral agent”. Conflict of interest is therefore arbitrary to conscience.

Rees (1990) concludes that in each individual there is the desire for self-gratification. He acknowledges that this is a strong, and an almost insurmountable hurdle. To Rees, the first discernable desire of the infant in the cradle is for himself or herself: “He cannot understand why every need is not met instantly (if not sooner). This is the instinct of self-preservation, the desire to live. He only thinks of his own needs, he is too young to recognize the needs or rights of others”.

So, in the heart of each individual the seeds of selfishness put down deep roots in these formative years, hence selfish interest. On the other hand, Rees (1990) points out that in each heart also resides the tender feeling of benevolence. It

seems strange that these opposing forces should breed, hibernate and thrive in the same heart, hence conflict of interest' tension. It is from this heart of humankind that conflict of interest originates.

Ralf Dahrendorf, being a staunch German sociologist, raises sociological concerns to conflict of interest. According to Ritzer (1996:266), Ralf Dahrendorf is the major exponent of the position that society has two faces, conflict and consensus and that sociological theory therefore should be divided into two parts, conflict theory and consensus theory. The latter, consensus theorists examine value integration in society whereas the former, conflict theorists examine conflict of interest and the coercion that holds society together in the face of these stresses. The two theorists, consensus and conflict are inevitable and prerequisite for each other, as the society cannot exist without the two.

From the perspective of conflict theories of Ralf Dahrendorf, a person in authority influences conflict of interest. Authority resides in positions and not in persons because authority is legitimate. Sanctions can be brought to bear against those who do not comply. Authority implies always both super-ordination and sub-ordination. Conflict of interest within an association is at least latent at all times, which by implication means that the legitimacy of authority is always precarious. This conflict of interest need not be conscious in order for super-ordinates or sub-ordinates to act (Ritzer, 1996: 267-268).

Consequently, conflict of interest poses psychological, or rather behavioural questions. To behave is what organisms do and its goal is to promote the scientific study of behaviour. The work of B.F Skinner, between 1904 and 1990, attests to this behaviourism. Other behavioural theorists who made contributions way back before B.F. Skinner include psychological behaviourists Ivan Pavlov (1849-1936), Edward Thorndike (1874-1949), and John Watson (1878-1958), and analytical behaviourists Gilbert Ryle (1900-1976) and Ludwig Wittgenstein (1889-1951). These infancy theories received fatal death when they were severely criticized and abandoned by the cognitive ethological and ecological psychologists who are convinced that its methods are irrelevant to studying how animals and persons behave in their natural and social environment. Neuroscientists who are sure that the direct study of the brain is the only way to understand the causes of behaviour also rejected behaviourism (Stanford Encyclopaedia of Philosophy, 2002).

Given this background, the cause and effect of human behaviour is therefore left to the profession of neuroscientists to be sorted out. Therefore, the present chapter will focus on the works of behavioural theorists in the resolution of conflict of interest' situations because their death knell was sounded in the late 1900s. Instead, the works of rational choice theorists take precedence in an attempt to suggest solutions to conflict of interest situations.

To this end, conflict of interest demonstrably brought a marriage between sociology, philosophy and psychology amongst others on one hand and public

administration on the other. The study of public administration is dynamic, and a political leader including an administrator should at least have an epistemology of the dominant multi-disciplinary social sciences referred to including law to be in position to execute his or her duties well without being dragged into conflict of interest mud.

3.4 Selected Ethical Conventional Theorists within Public Administration Inter-discipline

Many scholars in Public Administration have insisted unwaveringly that administration is essentially about serving the public interest (Lynn, 1991:52). This refers to the works of conventional theorists of Chester Barnard, Herbert Simon, Paul Appleby, Joseph Harries, Dwaine Mavick and Gordon Tullock, Herman Finer and Carl Friedrich to name but the selected few of which this chapter now turns to:

Herbert Simon was concerned with decision making in public administration, a leading public administration theorist of the time. Hebert Simon called for the rigorous analysis of decision making behaviour as central to the future study of administration, which he simultaneously decimated as simplistic the 'proverbs of administration' in his Administrative Behaviour's writings. Simon argued that administrators made decisions on the bases other than those of economy and efficiency. He contended that social and psychological factors had a great deal to do with the decisions that decision makers made. Actually, before the appearance

of *Administrative Behaviour*, Harold Lasswell in *Psychopathology and Politics* (1930) and Chester Barnard in the *Functions of the Executive* (1938) had essentially made the same argument (Henry, 1975:34).

Henry (1980:132-133) also states the contention made by Herbert Simon that decision makers made decisions on the basis of feelings, emotions and mental sets as well as on “rationality” implied that public administrators could make highly questionable, even immoral public policies that possibly would affect the whole population. Public administrationists became increasingly cognisant of disquieting notion that a sense of ethics—a sense of the public interest—was a genuine need in the practice of public administration. From Hebert Simon’s School of thought, it becomes clear that rationality and morality are two pivotal ethical imperatives in informing administrators to conduct their public affairs properly and to subject the two out of balance call for conflict of interest. Henry (1980:140) cautions that what is needed for the public administrator is a simple and operational articulation of the public interest that permits him to make a moral choice on the basis of rational thinking. One therefore observes that morality and rationality inevitably characterize a good political leader and public administrator per se.

Long before the Watergate Affair in USA, Chester Barnard, one of the leading thinkers in public administration recognised that the critical issues of government ultimately involved moral choices. Moral choices call for rational theories to assist administrators to make acceptable decisions and judgements.

The definitive policy decisions made by government officials often have at their base, a conflicting ethical questions, such as whether to give precedence to the public interest or to the narrow demands of profession, department, business or clientele. In Chester Barnard's view, the strength and quality of an administrator lies in his or her capacity to deal effectively with the moral complexities of organizations without being broken by the imposed problems of choice (Stillman II, 1980:437).

The arguments underpins the study of conflict of interest in the sense that the implication for public administration of the contention that decision makers made decisions on the basis of feelings, emotions and mental sets, as well as on rationality was that public administrators could make highly questionable, even immoral public policies that possibly would affect the whole population (Henry, 1975:34). This argument could also extends to policy implementation wherein critical decisions are made of a technical nature.

Given this background, leading thinkers in public administration are increasingly cognisant of the disquieting notion that a sense of ethics, a sense of the public interest was a genuine need in the practice of public administration. This concern was reinforced by the appearance of a new corpus of literature that addressed the topic of morality and administration in a different manner. This is no other than the works of Paul Appleby in *Morality and Administration (1952)*, which took on the ethical problems posed by the tension between pluralistic politics and hierarchy (Henry, 1975:34).

Paul Appleby, another leading thinker in public administration, an administrative theorist, calls for institutional arrangements in government, which in modern terms is referred to as governance. Governance according to Paul Appleby should provide the most effective safeguard for ensuring ethical administrative behaviour. In the memorial essay to Appleby, Stephen Bailey, a Professor in Political Science and former Dean of the Maxwell School, draws on Appleby's writings to develop some further insights into the essential qualities of moral behaviour in public administration and these are (Stillman II, 1980:438):

- i) Optimism-Ability of a government official to deal with morally ambiguous situations confidently and purposefully,
- ii) Courage-Capacity to decide and act in the face of situations in which inaction, indecision or agreement with the popular trend would provide the easy solution,
- iii) Fairness tempered by Charity: Allows for the maintenance of standards of justice in decisions affecting the public interest.

Likewise, the logic of Joseph Harries in *Congressional Control of Administration (1964)* in which Harries implied that federal public administrators made their decisions primarily on the basis of satisfying a few men who headed powerful committees in Congress, did not strike many as a sound rationale for promoting the public interest. Perhaps the most shattering analysis in terms of the public

administrators relationship to the public interest were Dwaine Mavick's *Career Perspectives in a Bureaucratic Setting (1954)* and Gordon Tullock's *The Politics of Bureaucracy (1965)* (Henry, 1975: 34-35).

Although neither of these works has received the attention it deserves from the field, Mavick's argument that all individual behaviour in public organisations was sublimated self interest informed by empirical study which was conducted at a time in which no one else in the sample was motivated to work for the public interest, and this was disconcerting. In contrast, Tullock argued in an extended fashion that all decision making in bureaucracies is predicated on the individual "reference politicians' getting ahead in the hierarchy concerned with what is good for the public other than private interest is an incidental consideration in bureaucratic decision making at best (Henry, 1975: 34-35).

Given the paradoxes of Mavick and Tullock's arguments, conflicts resulting from competing sources of moral obligation have been the principal topics of dispute between the opposing viewpoints in the rationalist discourse on responsibility ever since Herman Finer (1940) and Carl Friedrich (1940) initiated the debate on the subject more than a half a century ago. Problems of responsibility, then, are construed as conflicts over which obligations have higher or more legitimate standing than others (Harmon, 1995: 100). Friedrich argued that the increasing complexity of modern society made such detailed legislation difficult [as anticipated already by Finer who maintained that responsiveness to the public and managers in public organisations should be subjected to strict and rigid

controls by the legislature] if not impossible. Friedrich felt that the administrator's own concern for public interest was often the only real assurance that his or her actions would be responsive to the electorate (Denhardt, 1991:113). To a certain extent, Finer, a hard-core theorist and Friedrich, a soft core theorist find a common ground, for both believed that responsible government required that public administrators be held accountable for serving the public interest (Harmon, 1995:48).

Harmon (1995:99) states that as a condition of employment, government officials sign contracts specifying their formal duties and obligations. In virtually all instances, they do so freely and voluntarily, but in the bargain they give up certain rights, including, but not limited to, avenues of private gain that are otherwise open to ordinary citizens. During careers governed by these conditions of employment, government officials inevitably confront moral quandaries that fall into either of two general categories. The first involves conflicts between their public or official obligation, on the one hand, and their private commitments and aspirations, on the other. The second category includes conflicts between various competing official or otherwise "public" sources of obligation, for example, between laws or rules and others from political or organizational superiors, or between either of these sources and professional codes of ethical conduct.

According to the conventional theorists, which, is to say, the rationalist conception of responsibility, proper judgements regarding conflicts of either sort have to do with determining which obligations should take precedence over

others. In the first category, official obligations more often take priority over private commitments by virtue of the voluntary nature of the contract into which the government officials enters. This by implications would mean that government officials must demonstrate that the exercise of those rights will not seriously compromise the skilled and faithful performance of their official duties (Harmon, 1995:100). On the contrary, there is a catch between the public and private interest, and many falls in the net of the latter, which is offensive, hence, the study. Klinger (1983:319)'s table below demonstrate this:

Table 3.4 Role Conflict

ROLE CONFLICT	
FORMAL VERSUS INFORMAL EXPECATION	
1. Laws	6. Self
2. Rules and regulations	7. Family
3. Supervisor	8. Friend
4. Subordinates	9. Compatriots
5. Clients	10. Interest Groups
Nature of Conflict	Outcome
<i>1. versus 7 (laws vs. family)-----</i>	<i>Nepotism</i>
<i>1 versus 8 (Laws vs. Friend)-----</i>	<i>Cronyism</i>

In deriving a solution to conflict of interest problems from a conventional perspective which is to be delved in-depth in the last section of this chapter prior to conclusion, Rosenbloom (1989:140) observes that the political approach agrees with the public administration and managerial approach that conflict of

interest ought to be eliminated (Rosenbloom, 1989:480). Henry (1992:390) asserts that most public administrationists, however argue that a plethora of external checks exist as well, assuring compliance with public interest. Charles Hyneman and Hebert Finer for instance believe that legislative surveillance is an adequate check. J.D Lewis and L Von Mises contend that citizen participation in bureaucratic decision making accomplishes the task of matching bureaucratic behaviour with the public interest. Henry J Abraham on the other hand makes a case for the use of the ombudsman as an effective means for assuring administrative responsibility. Dwight Waldo, John M Pfiffner and Robert Prethus have stated that decentralization of the bureaucracy provides an effective means of implementing the public interest. Gordon Tullock and Harold Wilensky urge the use of publishing bureaucratic information to ensure accordance with the public interest. John Rawls theory of justice on the other hand extends to the notion of social contract formulated by John Locke, Jean-Jacques Rousseau and Thomas Hobbes

Finally, Kernaghan (1994:616, 617) introduces the notion of shared values as the bedrock of any corporate culture. According to Kernaghan, it is often argued that shared values should be pursued in the light of the public service's ultimate objective of promoting the public interest. Pursuit of the public interest over private, narrow, personal interests is a major feature distinguishing government officials from their private sector counterparts and this is a struggle to achieve by political leaders and public administrators. Ideally, concern for the public interest is a unifying and motivating force that pervades the practice of public

administration. A shared commitment to core values can facilitate among government officials a sense of belonging to a community devoted to values that are commonly associated with the public interest and that transcend lesser values, especially those based on self-interest. In the other article of Kernaghan's wrings (1997:41), Kernaghan empathises that the government officials' primary duty is to service the public interest. The public interest has been described as "the highest ethical standard applicable to political affairs".

3.5 International and National Dynamics of Conflict of Interest in Public Administration

Entitlements are one of the forms of conflict of interest. In the Police Service for example, one of the police officers said, verbatim: "I do not get paid enough, therefore I should be entitled to make use of my police powers and opportunities to suit my personal needs". This form of conflict of interest is triggered by a situation in which a field police officer for example works hard, risks his life to arrest a criminal, but later discovers that the criminal has been allowed to escape with the complicity of top-ranking police officials (Newham, 2001:40-41). This practice does not only embroil conflict of interest, but also damages work ethics of the operational officers. One could safely conclude that these undue entitlements embroil conflict of interest, which applies across the spectrum.

Typical examples of conflict of interest according to Mahlare (2003:2) are:

- i. Self-dealing;
- ii. Accepting benefits;

- iii. Influence peddling; and
- iv. Use of confidential information.

Conflict of interest applies worldwide. It is a country-to-country, and organization-to-organization problem. Notably, regardless of how high- or low-profiled a country is, or how high or low it is positioned, conflict of interest knows no barriers. It cuts across the global spectrum. It is for this reason that Carney (1998: 2) echoes the thought of Eigen: “Throughout the world, people are increasingly angry with the ways in which public power has been manipulated for selfish interest”.

Rees (1990) concurs with the thought of Harris that selfishness is the universal form of human depravity, which has set the entire world at variance. However, selfishness gradually became the reigning law of the world, thus it became the epidemic disease of our nature. This is contrary to benevolence, the opposite of selfishness. The practice of the one quells the other. Therefore, benevolence is much desired in this study to replace selfishness, which customarily ravages the world, and robs it of its thrilling ingredient.

Conflict of interest undoubtedly involves questions of ethics. In other words, it has ethical implications. It could also exist and result in fraud when an organization has a hidden interest in, or derives a hidden benefit from, the outcome of an event or transaction. This more subtle type of conflict of interest could occur if officials of an organization, either alone or in collusion with

providers of services, obtain public funds or use those funds for things other than intended program purposes. In this instance, an organization has a hidden self-interest that is actually or potentially adverse to the interests of the government and the citizenry (Simmons, 1997).

Simmons (1997) confirms that in the United States of America, conflict of interest is itself usually not a crime unless the individual with the conflict is a government employee, or acts in collusion with a government employee. However, the conflicting interests of a director, officer or employee may result in fiscal or economic loss or loss of competitive advantage to the organization. Should this happen as the result of an intentional act of fraud or abuse, those involved could be prosecuted civilly or criminally for receiving a bribe, receiving a reward for official misconduct, receiving unlawful gratuities, coercive use of official position, or official misconduct.

Under U.S. Federal laws and regulations, organizations doing business with the federal government or who act as custodians or conduits of federal funds have an obligation and responsibility to manage, reduce or eliminate actual and potential conflict of interest. Under civil law, directors, officers and employees owe a duty and loyalty to the organization and are expected to act at all times in the organization's best interest. However, when conflicting interests arise, the potential arises for directors, officers or employees to breach the duty and loyalty they owe (Simmons, 1997).

The Watergate scandal in America took root in some sort of conflict of interest and antagonisms within the power elite. According to Domhoff (1974:100,101), the scandal was informed by power elite made up of owners and managers of large corporations, supplemented by commercial bankers, investment bankers, lawyers, foundation presidents, and high-level academic advisors. Socially speaking the elite is cohesive, and dominates the government in some processes, one of which is special-interest process wherein specific corporations and individuals look after their short-run interests. This is the world of tax favours, subsidies, and spineless regulation. It is also the world of lobbyists, Washington lawyers, and Congressmen who are on the take.

Another potential source of conflict of interest is related to the process of candidature selection. Conflict here resides in the fact that the process is an every-man-for-himself struggle to get elected by any means necessary. This candidature-selection process is isolated from policy process. Watergate is actually remembered because of failure within the candidature-selection process, which spilled over into the ideology process and decreased the legitimacy of some of the key concepts upon which power elite hegemony is based. Nixon's hypocritical attacks on political opponents, his personal money grabbing (land deals, tax avoidance, and use of government monies on his homes) and his paranoid efforts to get his imagined enemies caused dissention within the elite and created unwanted cynicism and distrust in the under-classes (Domhoff, 1974:102).

In the United Kingdom, during the early 1990s, there was indeed mounting disquiet about the lobbying activities of many Members of Parliament (MPs). The House of Commons was fast becoming a market place, in which MPs were increasingly hiring themselves out to business community and therefore acquiring lucrative consultancies, directorships and shareholding in the process. One well-documented study of MPs' commercial interests published in 1991 clearly claims that 384 MPs held 522 directorships and 452 consultancies. Companies see MPs as useful assets (Gregory, 1996: 14, 15). This kind of connection facilitates conflict of interest in the work place. Ministers must ensure that no conflict arises or appear to arise between their public duties and their private interests (Gregory, 1996: 53).

Simmons (1997) concludes that a convergence of interests at times may be favourable to the interests of an organization, as long as they are disclosed and understood in the organization's decision making process and context. However, when dual loyalties or interests exist, "the possibility always exists that in carrying out official duties, individuals may act not in the best interest of the organization, but rather in self-interest or in the interest of others". This inherent risk of conflicting interests can result in favouritism toward, or unfair competitive advantage gained by, companies providing goods and services; and/or theft of services, material or equipment; and/or private gain to directors, officers or employees. When such events occur to the fiscal, economic or competitive disadvantage of the organization, the shadow of bribery, kickbacks, fraud and corruption arises. In the U.S. these are felony crimes prosecutable under state

laws as well as under Federal law. Neither professed ignorance of the law, professed innocence, nor professed lack of intent to violate the law, can preclude the possibility of civil or criminal arrest and prosecution.

In Queensland, towards the end of 1975, Bruce Johnsen, the then Council's Chief Accountant, noticed that the daily number of "missing" car park tickets (that is tickets issued to motorists on arrival but not brought to account by attendants) was steadily increasing. Senior Accounting Officers knew that officers authorized to drive council cars in the field would sometimes defraud the council of small amounts of revenue. For example, they would park their own vehicles in the car park in the morning, taking a ticket at the entrance with the "time in" printed on it by the Bundy clock. Later in the day, they would take a council car from the car park, being allowed by the attendant to depart without producing a ticket. On returning, they would improperly collect a second ticket to hand in when departing after work in their own vehicle. Hence, instead of paying for a full day, they would pay for perhaps one hours' parking and destroy the ticket issued in the morning. As a result, missing tickets resulted and increased (Tucker, 1995:477). The whole scam suggested that attendants were suppressing tickets and revenue, with newcomers being drawn in after learning the tricks. This amounted to a loss of \$240 a day pocketed for selfish interest. Unfortunately, the suspects were not convicted in the District Court on charges of conspiracy to defraud the government because the case was poorly prepared and the presiding Judge rejected it (Tucker, 1995: 478). The car scam shows that government officials, especially top and middle-rank officials, take advantage of the tangled

and complex situation to indulge in activities, which lead to selfish gains. This kind of manipulation is not limited to Queensland alone, but to other parts of the world.

In Argentina, the famous President Peron was said to have accumulated \$700 million in foreign banks drawn from the public purse by the end of his rule. Politicians, especially those in command, and other high-officials take public resources for private consumption instead of investing them in needed infrastructure. These politicians and high-level officials buy fancy cars, jets, and vacations and neglect the productive activities needed to encourage growth. Recently, a former prime minister of Pakistan has been charged with tax evasion in connection with the purchase of private helicopter worth more than million dollars (Ghazanfar & May, 2000: 361).

Nordic Countries (Norway, Sweden, Denmark, Finland and Iceland), according to Transparency International (TI), are reportedly very low on the list of corruption ever since the first survey documented in 1997. However in this range of the Nordic countries, Denmark, Finland and Iceland have the lowest count of corruption according to recent TI index. Bordia (Undated) confirms that their citizens do not have to use dirty tricks to survive. It is against this backdrop to point out that this is not true all the time. Each country has its own tricks and evils, whether in small or in big scale. For example, in a group interview session organized by Professor and Chair of Department of Comparative Politics at University of Bergen through the Norwegian Social Research Director in the

Ministry of Social Affairs, Oslo on 4 November 2003 at 13h00 (See Appendix IV), Norwegian counterparts confirmed the exclusive case of a medical doctor who was implicated in conflict of interest practices for the previous three years. Further, in an interview with Senior Advisor in the National Insurance Administration, Oslo on 5 November 2003, at 9h21, it was also confirmed that some medical doctors had defrauded the social insurance system by issuing fictitious medical certificates to beneficiaries to enable them to access social insurance benefits. This shows that conflict of interest is a threat to all countries, whether of high or low level.

A remark is made in passing, although the cases raised may not link and align exactly with the African experiences in the continent and in the provinces under study in South Africa per se, but of course a point is proven in view of the occurrence of cases of conflict of interest worldwide that conflict of interest is also perpetuated by internationally reputable countries, Nordic countries, UK and USA to name but a few as pointed earlier and that it is no longer appropriate to look at this phenomenon as an African pathology. The North cannot preach to the South on the issue of conflict of interest for if that could be the case, a point will be missed, and a wrong judgement will be passed.

This clarification is necessary before discussing cases of conflict of interest that have been reported on the African continent. Having said that, now, a turn to selected African experiences in the continent and locally in South Africa can be made.

The year 1998 saw Uganda stormed by a widely reported high profile case of conflict of interest. How this conflict of interest took place attracted international attention and embarrassed the whole African continent. Doig (2000:49) reports that the President of Uganda's half brother and former commander of military operations in the North, Major General Salim Saleh, had secretly bought the country's largest bank, the state-owned Uganda Commercial Bank, allegedly to stop it from falling into the hands of Malaysians. Shortly after taking over the bank, Major General Saleh arranged for substantial loans to be made to companies he owned without reporting the transactions as required by banking regulations. Uganda's privatization process is currently under suspension whilst a Parliamentary Select Committee subjects it to investigation.

In the Democratic Republic of Congo (DRC), then Zaire, the country was astounded by former President Mobutu Sese-Seko who, in his period of office for thirty years, pursued his selfish interest by virtually diverting between \$50 and \$70 million a year from the Bank of Zaire to personal accounts in Europe, mostly in Swiss bank accounts, says a report. Estimates of his vast personal fortunes run over \$6 billion (Ghazanfar & May, 2000: 352,361). This is pure open greediness, a conflict of interest that robbed the past and new DRC generation of needy capital for their survival.

Next door in Zimbabwe, conflict of interest is motivated by many factors. The history of land agitation in Zimbabwe dates back to the advent of colonial rule in

the 1890s. The war of 1896, during which whites that had migrated from the south grabbed fertile land from the Matebele and Mashona is one testimony of the bitter conflict of interest between the two races (Mudenda, 2001:2). Currently, Zimbabwe is in the forefront in drawing attention on the fact that if conflict of interest is not resolved, it may take 100 years, but they will later re-emerge and backfire, thus causing political, social, and economic furore and trouble, not only in the country, but also to neighbouring countries. Mudenda (2001: 3), however, emphasizes that had the parties involved, Harare and London, not been oblivious about the land question ten years after independence, the current wave of violence and rule by war veterans would most likely have been averted.

Simmons (1997) reports that whenever allegations of conflicting interests arise, the person being accused never seems to have a problem justifying or rationalizing the activity that gave rise to the allegation. One example is the case of the Arms Deal in South Africa. Many will feel offended at having their integrity questioned. Those with experience in such matters know, however, that in those instances where fraud or abuse actually exists, this type of reaction is also a contrived and calculated move used by the perpetrator to avoid prosecution. In many cases, it works, for government officials do not pursue the illegal or abusive acts of the so-called "trusted employee who would never do such a thing". The appearance of a conflict of interest is always a red flag, warning that official acts may have occurred that are not in the best interests of the organization, and in fact may not be *intra vires*. If such conflicts are not

resolved, bitter consequences usually follow some years later, as is the case of Zimbabwe.

On this point, Lungu (1998: 9) states that one of the most tiresome problems for African public services is the conflict between partisan interests of a minister versus broader national interests. This complicates the situation as financial regulations, of which public services are custodians, precludes allocating resources to programmes outside the budget. However, ministers often ignore these stipulations to favour spending on their own private projects for political gain, thus causing conflict of interest. Zambia is a case in point. A minister once threatened one of the government officials who followed financial regulations, with the possibility of either a transfer or a sack from the department. This only happens when an official does not favour spending on a minister's projects, even if the latter are outside budget lines.

Lungu (1998:9) concludes that when a director general is dismissed, it is not certain whether the problem is incompetence or a strong commitment to a meritocratic service. The tendency of ministers to interfere in procedural matters is also problematic.

Dwivedi (1985: 63) hints that ascendancy of politics over administration has meant that political leaders are now capable of using their power and the state machinery to foster a growing personalization of their authority. "Many public administrators avoid making decisions for fear that either they may be overruled

or political pressure may be brought to bear on them, thereby forcing them to change, rescind or alter the earlier decisions”. Thus, an atmosphere of “playing safe” is created, which is not conducive to responsible and accountable administration. If all play duck and dive game in the public service, bowing down to political pressures and manipulations of politicians in government, conflict of interest is sure to thrive unwaveringly in the blood stream of the organization. Robson in Wessels and Pauw (Eds.) (1999:177) warns that generally speaking, the public administrator is professionally bound to apply the law of the land conscientiously.

In the scenario portrayed not so long ago, the researcher arguably does not support the notion of a way out for the public administrator to resign or to be transferred or shifted to other responsibilities, as this will give a leeway for a political leader to compromise the integrity of the public service by continuing to pressurise the public administrator so that the so called political leader could get away with his or her selfish intentions at the expense of the public interest. The public administrator in this context must unwaveringly resist the political pressure, not to allow his or her arm to be twisted by the political leader concerned. The public administrator must put his or her foot on the ground in compliance with the rule of law under all circumstances. If this is done, it will add value and resemble a strong leader in public administration.

Another area of conflict of interest is the misuse by any government official of government property, a practice prevalent in Africa. In Ghana, for example,

almost every year the Auditor-General reports on the flagrant disregard of the regulations governing the use of official vehicles. In the use of government vehicles very few people and organizations have bothered to ensure economizing and the need to eliminate abuse. Government officials, who by the nature of their work have access to official vehicles, have put these vehicles to private ends serving the needs of their spouses, children and members of the extended family. Notably, some drivers of government vehicles use vehicles for private commercial ends, for example, sometimes as taxis. Tractor operators have used the machinery over weekends on private farms for personal gain. Ambulances of government hospitals have been used to serve needs other than those expected of ambulances (Woode, 2000:6). A lack of public policy and regulation enforcement mechanism creates a window of opportunity for conflict of interest to thrive.

Malan and Smit, (2001: 202); Matsheza and Kunaka (2000:42) identify another area prone to conflict of interest, which is in the domain of public tenders, with its policies and procedures. Procurement, or rather tendering, is an area that is probably most vulnerable to corrupt practices, especially tender board. It involves officials having the power to authorize the payment of large sums of money for goods the organization buys, as well as having wide discretion as to which the money is paid. The moment such a combination of factors is present; corruption can get out of control, for obvious reasons.

Given this background, Lungu (1998:16) observes that the function of purchasing is one of the thorny problems among Directors-General. Many ministers are

tempted to intervene in the function of purchasing because it affords them a chance to favour suppliers of their choice. Time and again tender procedures are flouted and Directors General who insist on the strict application of procedures face an uphill battle. Since the re-introduction of multi-party democracy in Zambia in 1991, for example, tender board procedures have been ignored with impunity and Directors General have stopped bothering about them due to the involvement of ministers in backyard dealings. This state of affairs even involved President Chiluba who granted tenders to the very companies that had done a bad road-mending job. One therefore notes that Zambia, which was at one time acclaimed to be one Africa's breadbaskets, is today an empty breadbasket in Africa, owing to conflict of interest.

A turn to South African situation is now given full attention after relating the international and continental dynamics of conflict of interest in public administration. Conflict of interest is occurring in the frontline offices of respective government departments, at national, provincial and local spheres. Lund (1993:15) argues that any system, which is as porous as the one in South Africa, holds possibilities for conflict of interest. Classical examples given in the area of social security in South Africa are: people within the delivery system, beneficiaries themselves, and the interest groups who take advantage of the porous social security system to accomplish their self-centred ends at the expense of the taxpayer.

Conflict of interest in the area of social security benefits involves both employees and beneficiaries. It has been revealed that pension money had gone into purchasing cars for government officials at senior level, or pension officials taking advantage of the illiteracy and innumeracy of pensioners at pay-points to retain part of the money, collusion with robbers to rob at gunpoint vans delivering money to pay-points, or bribes paid to middlemen in the tribal authorities to get access to the system (Lund, 1993:5-25).

This brief account of cases of conflict of interest in South Africa leads to conclude that it occurs at every point of the chain of command, i.e. in back, middle, and front offices. The next section discusses the causes of conflict of interest and what will happen if the problems continue to exacerbate.

3.6 Causes and Ramifications of Conflict of interest

Before delving into the causes and effects of conflict of interest itself, it could be stated that conflicts in this context are motivated by political, economic, sociological, philosophical and psychological concerns. The causes in most cases are structural and institutional. Social structures and public institutions bring about conflict, hence conflict theory underpinnings. Functionalists like Ritzer (1996:266) argue that conflict theories are oriented toward the study of social structure and institutions. Hattingh (1998:79) on the other hand sees conflict as having far-reaching ramifications. Consequently, appropriate control measures

are required for dealing with conflict situations so as to minimise the side effects of conflict.

Mahlare (2003:1) asserts that conflict of interest is becoming more and more prevalent in our present day society. Its effects are disastrous to an institution or a department in as far as both finances and reputation risk are concerned. This obviously affects a country as a whole. To underscore the point, Rees and Crane (1992:67) state: “the love of money lies at the root of nearly all the crimes committed in the world”. This appears to be the fundamental cause and consequence of conflict of interest. This study agrees with Rees and Crane’s (1992:68) powerful statement that “the power of the love of riches over the human mind is almost paralysing”.

Makinde (1996: 2) points out that a problem of ethics in the public service may be said to exist whenever government officials, individually or collectively, use positions (or do so) in a way that both compromise public confidence and trust because of conflict of loyalties, or as a result of attempts to achieve some form of private gain at the expense of public welfare or common good. Conflict of interest compromises the standard of the government’s duty to generously serve the public. Some of the blame is put on the problem of government officials’ conduct and leadership as a whole, which, in turn, disturbs the social service delivery system.

Against this background, the orthodox thought of wisdom that “power corrupts; and absolute power corrupts absolutely” applies here, abuse of power leading to conflict of interest. Cloete and Wissink (2000:158) also assert that political power can influence the decision maker who wants to protect his or her own interest. They also believe that as a result of political power, the decision maker could satisfy a need instead of taking the best decision. They conclude, “Although the decision maker may use quantitative techniques, the influence of political power will still be dominant”.

In Nigeria in 1993, the government allowed a sale of 100 000 barrels of oil a day to be used directly to finance “priority projects” without first going to the treasury for approval. In this way, a convenient arrangement was created to siphon off public revenue into private accounts. In the first half of 1993, a staggering sum of US\$1.5 billion was committed for the projects, but details of the project remained a mystery to all except a close circle of officials. Even government appointed monitors could not avail any information about the projects, and could not explain why government financial transactions ought to be shrouded in so much secrecy (Lungu, 1996:16). One could conclude that secrecy creates a fertile ground for conflict of interest to thrive long in a government. Accountable governance remains questionable here.

Apparently, conflict of interest occurs when personal interest comes into conflict with an obligation to serve the interest of the public (Grundstein-Amado, 2001: 5). As a result, service delivery is corrupted and thereby becomes dissatisfactory.

Often, if not in most cases, conflict of interest, when practiced, detracts the performance of officials' duties. Illustrative of this is the case of an executive chairperson of a City Council who sat as the chairperson of a tender committee which decided to award a contract to his wife who was operating as a Sand and Stone contractor for the supply of sand and stone to the council (Woode, 1999:52). Makinde (1996:27) warns that if there is ill discipline at the top and the top is rotten, the ill discipline and rottenness will permeate the entire fabric of society, as has been the case with Nigeria.

The practice of conflict of interest may thrive under conditions where the burden of proof is very stringent. For example, in France, corruption statutes require too high a standard of authenticated proof, which delays the whole process of investigation, thus opening gaps that may breed corruption. Given the bureaucratic nature of France, corruption gets you only in five years (Daley, 2001:35) because the process is cumbersome and tedious. It creates opportunities for unscrupulous cases to disappear into thin air due to bottlenecks. In similar situation cases of conflict of interest are tackled when the birds have already flown out of the government or country. This turns into expensive financial and legal process to trace the perpetrators, which have already flown out.

Given the dynamics of the conflict of interest in government, government performance level sometimes is weakened by officials who are exiting to private companies, with which they already established connection whilst still in public

office. The uncontrolled revolving door permeates into exodus of government officials and thus cuts across the top ranked government officials and politicians in government, robbing the government of its very potential human resource capital to deliver services to the public to acceptable standard.

Another cause of conflict of interest is government remuneration ratios. In most cases, the remuneration is low (Klitgaard, 1997:488). Klitgaard (1997: 489) believes that inadequate salaries tempt government officials into unprofessional forms of conduct. For example, when senior jobs produce opportunities to collect bribes, incentives are created to execute duties in ways that are inconsistent and thereby conflict with the public interest. However, pitching salaries high to attract a pool of expertise is not enough. There must also be other reasonable alternative incentives to induce them to perform their jobs effectively and honestly.

One observes that attempts to improve salary packages in South Africa as a way of minimizing the temptation for conflict of interest have, unfortunately, only affected the top and middle levels of the government, leaving out supervisory levels with low remuneration and incentives. Still at the top and middle levels, the high remuneration is not yet matched with output. The salary is high but the output is below average, and this mismatch is not value for public money. Performance agreements are introduced to ensure that remuneration is commensurate with output, but this has not yet provided sufficient solutions to problems. No wonder conflict of interest continues to be perpetrated by top and

middle-level government officials, and cascades down to the lower levels of government. Unless remuneration of officials is taken care of in all levels of government in light of performance and service level agreements, forms of conduct and practices of government officials will always remain in question.

Sufficient trust is necessary between the public and the government. Trust is compromised when an employer has reason to believe that his or her employees put other interests over and above those of his/her organization (Woode, 1999:54). Conflict of interest usually attracts public attention, causing negative societal reactions, damaging the integrity and reputation of the government and that of the society as a whole. Suspicious practices should be avoided by all means. Royal Mounted External Committee (1991) finds it clear that any departure from the principle of impartiality, either actual or apparent, adversely affects levels of public confidence and trust. If private interests are seen to replace public interest, then uncertainty and resentment mount and cooperation and respect fade away, and an appearance of conflict of interest can be every bit as damaging as an actual conflict.

Conflict of interest is an animation one cannot live by, but to undo it, because it sparks firestorm and brings about wrecks of human happiness and life as a result of wars and infighting amongst us (Harris in Rees, 1990). Wars, which erupted between Israel and the Palestinians, the American-led war in Iraq, civil war in Angola, to name but a few, are a signal of conflict of interest ravaging humankind. The seeds of conflict of interest are therefore poignant and

destructive and know no colour, skin, and country, neither rich nor poor (although the poorest is hardest hit).

To this end, it becomes clear that situations of conflict of interest adversely impact on institutional efficiency (Royal Mounted External Committee 1991).

Possible effects of conflict of interest are, in a nutshell:

- i. It undermines public confidence and trust;
- ii. It adversely affects the organizational performance;
- iii. It interferes with the regular operation of the institution;
- iv. It disturbs harmony and discipline in the country and thereby affect the operations, reputation and economy of its own and other countries, with which it has allegiance and partnership; and
- v. It causes wars to erupt, leaving opposing countries to become victims of circumstances to suffer gruesome casualties. Iraq is a case in point as implied earlier.

Sandra (1985:17) infers that allegations of conflict of interest [can] have damaging repercussions not just for the professional or political future of the individual involved, but also for the image and effectiveness of the public body to which he belongs. What is worth mentioning is when the same conflict of interest, after it has been detected, backfires on the perpetrators in the long run. In relation with Sandra's (1985:17) point, one observes that allegations of conflict of interest levelled against the former Premier of Mpumalanga Province is possible to have been the catalyst for denying him the opportunity to serve in the

National Government. This should, however, be checked against the fact that similar allegations against another Premier, the former Premier of the Eastern Cape Province, did not exclude him from Parliament or the National Cabinet.

One should understand conflict of interest in two ways: one, as a race card construed from the latter, and two, as a consequence of the amount of inefaceable political and socio-economic damage of the fabric not limited to the perpetrator himself, but the entire humankind and the society as a whole. Two Game Theorists, Heap and Varoufakis (1995: 154), sum this up when they contend that the interest of individuals to pursue the short-term strategy of corrupt practice in government undermines the long-term interests of all by shortening the period in office. One realises that if, of course the game is not played according to the rules, it is sure to bear ramification for its very players and its viewers or rather recipients who are in this case, the entire members of the society.

It can be stated that conflict of interest takes place as a result of irrational and unintuitive decisions motivated by selfish interest. Cloete (2000:151) warns that the inability to make decisions can bring the public service to a standstill in the sense that it frustrates our capacity to understand ourselves better. This boils down to leadership problems of some political leaders and public administrators. Intuitive decision making, which is a high degree of rationality of thoughts, is implied here, hence the next section, which critically attempts to discuss the way

in which public and private interest, could be balanced when executing public functions.

3.7 Country-to-Country Attempts to Resolve Public versus Private Interests Conflict

Right from the start of this section, mention is made that a proposed integrated framework to resolve conflict of interest is postulated and brought in perspective in the concluding chapter, and only issues of critical importance as attempts to resolve conflict of interest from country-to-country experiences are argued here.

One of the achievements of the first term of the post-1994 era in South Africa is the enactment, in the wake of ethical concerns, of legislations, codes of conduct, and the establishment of institutional mechanisms, as a basis for resolving ethical questions of governance. However, conflict of interest meantime proved to be a resilient test to the government and contributed to corroding the moral and economic fabric of the country. In spite of these shortcomings, an attempt was made to turn the prevailing institutional and legislative mechanisms into potent weapons for combating conflict of interest.

Along these lines, three integrated key life-long framework and mechanisms for preventing and uprooting conflict of interest are proposed in the concluding chapter. Kernaghan (1997:41) supports this argument, by asserting that public organizations will be better able to cope with emerging ethical challenges if they

have a reasonably inclusive and easily comprehensible framework for nurturing and maintaining ethical conduct. Kernaghan (2001:80) further argues in support of a paradigm shift proposed in the last chapter by sharing a Canadian government experience. The notable future-oriented initiative is the effort, now in its preliminary stages in several spheres of Canadian government, to move the public service from a rules-based institution towards a values-based one.

3.7.1 Comprehensive Legal Framework

Government officials have a fiduciary duty. Where public funds are involved, there is a legal responsibility to minimize the risks associated with conflict of interest and to fully resolve legitimate allegations of impropriety or illegal acts that are the results of conflicting interests (Simmons, 1997). Risks associated with conflict of interest could be minimized and thereby eliminated in various ways.

The public is entitled to feel confident that their power or sovereignty is being exercised for their benefit. For as the famous American counsel, Archibald Cox, has noted, the stability of government rests on the maintenance of public confidence. Both a free society and democratic government require a high degree of public confidence in the integrity of those chosen to govern. However, the confidence is sometimes eroded by the appearance of conflict of interest. For this reason, the ethical requirements for legislators, ministers and officials are

apparent and imperative to built public confidence. In this way a politician or official who creates the appearance of a conflict of interest is simply inviting the closer inspection of his or her motive (Carney, 1998:2).

The eighteenth century philosopher Helvetius once wrote that as the laws of movement rule the physical world; so do laws of interest rule the moral universe. It is because interest includes our altruistic and moral concerns as well as our immediate material concerns. No wonder possibilities for conflicting interests in legal practices are almost without limit (Rhode and Luban, 1995:572). The concept of the rule of law allows for the powers of a government to be conditioned by law. The activities of the authorities should therefore confirm to particular ethical norms. Those in authority should exercise their authority with the trust of the people; an important value that is definitely deficient, if not missing in South Africa at this point in time. It is imperative that Public Administration should take place in such a manner that the rule of law prevails (Bayat & Meyer, 1994:37).

Levine *et al* (1990:190) concur that at a bare minimum, ethical behaviour by government officials in a democratic society requires respect for the rule of law and the dignity of the individual. One observes that South Africa is still striving to realise these respect for the rule of law and the dignity of the individual, which are the fundamental ethical imperative of any democratic government.

To stretch the concept further, the rule of law is a basic constitutional principle in a real democracy. The rule of law is the oldest constitutional requirement, which has its origin in English constitutional laws such as Magna Carta, Petition of Rights, Habeas Corpus Act, and the Declaration of Rights, among others. The well-known 19th Century English Constitutional expert, Dicey, explains the rule of law as the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power or even a wide discretionary authority on the part of the law alone. English men are ruled by the law and punished by the very law itself (Gildenhuys and Knipe, 2000: 93). Golembiewski and Gibson (1983:227) argue that one legacy of our western political heritage is a high regard for the law.

The rule of law in that context does not therefore tolerate any situation, which is *ultra vires*. Respect and compliance of the rule of law can therefore be a solution to the perpetuating and controversial conflict of interest in South Africa and elsewhere. This means that statutes must be tightened to rule and discipline the perpetrators, and this uses a “carrot and stick” approach. However, Nigro and Nigro (1994: 375) warn that tightening conflict of interest and other statutes will not eliminate all unethical conduct because government officials may use their discretion to favour their own interest. The dilemma for tightening conflict of interest will have an effect of deterring perfectly honest persons from accepting government jobs.

Codes of conduct are available in respective countries to discourage conflict of interest in the work place. To mention but a few countries:

- i. Le Bris (1996:25-26) concurs that in France, for example, the new Penal Code mentions conflict of interest (articles 432-12 and 13), misappropriation of public funds (article 432-10), embezzlement, bias, discrimination (articles 225-1 to 4), and favouritism in awarding contracts or delegating responsibilities (article 432-14) as well as infringement of personal freedom. Procedures must be put in place to avoid such offences. In France, government officials who wish to move to a new job of a particular company, which he has supervised or had dealings with over the last five years, must inform his superiors. After consulting a committee on ethics, permission may be granted or refused. Legal and para-legal solutions could be effective if they are complemented by other means. South African government officials could learn from this approach and try to come out of their prefectures and begin to engage themselves in thinking deeply about ethics and professionalism in discussion groups.
- ii. In America, to prevent conflict of interest, the ethics law regulates the economic life of all public employees and their immediate families. For example, city council members must disclose on the council's official records any direct or indirect financial conflict of interest with respect to proposed legislation.

No member of the Council or any salaried city employee is permitted to have a direct or indirect financial interest in any business dealings with the city or

its agencies nor can council member or any city employee act as an attorney, agent, broker, or consultant for any person, firm, corporation or other entity interested directly or indirectly in any business dealings with the city (Anechiarico, 1998:22).

- iii. In South Africa, a code of conduct for governing the conduct of every employee in the public service exists, although it is not absolute. It acts as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. Compliance with the code can be expected to enhance professionalism and help to ensure confidence in the public service. Relevant and important extracts from the Code, i.e. is chapter 2 are highlighted:

B.1 The need exists to provide direction to employees with regard to their relationship with the legislature, political and executive office bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflict of interest and what is expected of them in terms of their personal conduct in public and private life

C.1.2 An employee puts the public interest first in the execution of her or his daily tasks.

C.1.5 Co-operates with public institutions established under legislation and the Constitution in promoting public interest.

C.4.5 An employee does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties.

C.4.6 An employee will recuse herself or himself from any official action or decision making process, which may result in improper personal gain and the employee should properly declare this.

C.5.4 An employee does not use or disclose any official information for personal gain or the gain of others; and

C.5.5 does not, without approval, undertake remunerative work outside her or his official duties or use office equipment for such work.

In South African situation as Umgol'uphandle (c) (2003:1) put it, the effectiveness of the Parliament Ethics Committee, which relies on ethics code to address MPs allegedly involved in conflict of interest, was tested in November 2003 during the probe into the private interests of the Deputy President. This includes travel gates scandals where some MPs were confronted.

From the codes of conduct referred to in the respective countries including that of South Africa, it becomes clear that the availability and enforcement of the code of conduct is one characteristic and the compliance is another, and this remains a challenge to all the employees in the public service, including political leaders and public administrators per se.

In America for example, Carney (1998:4) shares the sentiments that employees of the United States Government are prevented from contracting with the government “except for the most compelling reasons”, such as when the needs of government cannot be satisfied. Also, their Code of Ethics prevents them from engaging in any business with the government, which is inconsistent with the “conscientious performance” of their official duties. Anechiarico (1998:22) takes the point further by stating that this ethics law in America also covers post-government service employment. Former city officials are barred for a spell of three years from private employment with companies concerned with matters in which they were involved while in city government. This sprawling legislation casts a long shadow over the public service. Other countries, including South Africa, could learn from this American ethics law.

One observes that the rule could be the ultimate expression of the desire to separate public administration from self-interest. Dimock *et al* (1983, 98) also point to one of the grounds constituting conflict of interest, self-dealing, which according to ethic law in America and South African code of conduct is

prohibited. However, the situation becomes complicated when it is provided that self-dealing covers not only oneself, but also members of one's family and associates who might be used indirectly because once such a relationship begins to fan out, it becomes a matter of debate about where the circle ends.

Rosenbloom (1989: 475, 480) states theoretical position on this matter of public and private relationships. Both the political and managerial approaches agree that conflict of interest ought to be eliminated. Attempting to close the revolving door in preventing public employees from taking private employment, with firms they previously dealt with in their official capacities is a related effort to make them dependent upon and loyal to their public employers. However, the opponents of the revolving door see the solution of closing the revolving door to limit conflict of interest unhelpful.

Rhode and Luban (1995: 538,540) argue against this notion of closing the revolving door with precaution;

“Whereas we need to prevent parties from improperly influencing government officials by promising them private employment; we need to avoid restrictions that will unduly discourage capable people from entering government service”.

Rhode and Luban's concern for not tightly closing the revolving door is that, for example, lawyers with ambitions beyond civil service status will not seek government employment if they know that they will be unable to practice their

specialty in the private sector afterward and that private firms may be unwilling to hire a government employee who might vicariously disqualify the firm in many cases. Closing the revolving door might therefore result in what one lawyer referred to as the bifurcation of the federal bar into permanent public and private sector sub-groups, with the public service sub-groups being lower paid and less than its private counterpart.

Such bifurcation would also deprive both constituencies of what many observers view as a useful exchange of perspectives, expertise and concerns. Finally, government officials who have alternative job possibilities may be more willing to challenge a position that they believe is erroneous. Opponents of the revolving door worry about the consequences of the wide-open revolving door. The solution to these controversial arguments of the revolving door is to improve public service employment, and not to relax ethical requirements (Rhode and Luban, 1995:540).

Carney (1998:8) advises that legislators, ministers and government officials should be required to disclose a personal interest whenever it is likely to be affected by the performance of their official duties. The disclosures should preferably be made at the time the conflict of interest arises so that appropriate and prompt action could be taken to resolve it.

In addition, a declaration to a register of interests provides a permanent mechanism to allow for the declaration in advance of potential conflict of

interest. In South Africa for example, Public Service Commission Annual Report (2002/2003:11) reports that “the Public Service Commission has played an increasingly important role in building ethical conduct in the Public Service and has led to a process of compiling a register of managers’ interests to help identify and manage potential conflict of interest”. These mechanisms of ad-hoc disclosure and declaration to a register of interests complement each other but of the two, the former is the most important.

Given this background, Visser and Erasmus (2002: 309-310) also emphasise that where a government official’s involvement in an assignment would possibly cause a conflict of interest; this should be disclosed immediately. As a result, in such a situation where a government official is trapped in conflict of interest, conflict resolution mechanisms should be sought.

Apart from disclosure, Mahlare (2003: 5, 6)) provides fine details in pouncing and pounding on conflict of interest suspect. Intensive and systematic investigation must take place, informed by the following:

- (i) Determination of the level of involvement;
- (ii) Determination of the frequency of involvement;
- (iii) Exclusion of possibility that the relevant party might not have known;
- (iv) Determination of the benefit; and
- (v) Search and seizure operation, which appears to be crucial to succeed in aggressively resolving conflict of interest to obtain

necessary documentation as material evidence. The following is of significance to search and seizure operations:

- i. Evaluation of the material evidence;
- ii. Suspension of the employee pending investigation;
- iii. Allowing the perpetrator to remove personal property and escort;
- iv. Compilation of an inventory of the content of the office;
- v. Denial of the suspect access to office and computers;
- vi. Downloading of the data from the suspect's computer; and
- vii. Obtaining and reviewing telephone calls made by the subject from official telephones/cellular phones.

The approaches and processes are fine details though not exhaustive.

In a nutshell, Raigorodsky (Undated, 6) points out that an effective policy on confronting conflict of interest must take into account the complexity of the legal, operational and enforcement components. Rules must precisely define conflict of interest. The gathering of information should be efficient and the enforcement

agencies must have officials with the necessary skills to properly research and analyse this type of situations.

Whereas the legal framework serves as a powerful instrument to resolve conflict of interest, there are precautions, which must be taken into consideration:

This study attempted to reveal the shortcomings of the approach towards fixing conflict of interest problems. It now becomes apparent and imperative to change the approach drastically, if we are to succeed in uprooting conflict of interest. The approach referred to here as a shortcoming is an enforcement of compliance, with the characteristics of the French model (Le Bris, 1996:17), which imposes sanctions depending on the nature of the case inclusive of, but not limited to:

- i. Reprimand and warning;
- ii. Suspension for period ranging from one month to two years;
- iii. Transfer;
- iv. Downgrading/demotion;
- v. Striking off promotion table;
- vi. Fifteen years exclusion;
- vii. Automatic retirement, and
- viii. Dismissal.

Rational choice theorists recognise that the threat of punishment may call for appropriate conduct from those who wish to avoid punishment. For example, a person who has been punished for an activity in the past is likely to avoid doing it wherever he or she believes that he or she is likely to be punished again. Rational choice theorists propose the recognition of the motivating role of threats and inducements in the conditioning of human conduct (Scott, 2000).

Unfortunately, as it is pointed out in Chapter Five, in the process of enforcing compliance, some officials escape sanctions given their political status, whereas others bear the brunt of punishment meted out to them. The partiality in reacting to cases on conflict of interest based on the political affiliation of the culprit is prevalent and therefore renders this present approach futile.

According to The Conflict of interest and Post Employment Code Report (Undated: 18, 19), it seems that no a standardized approach or underlying unified philosophy exists among the aforementioned countries on conflict of interest. For example, whilst the governments of Canada, New Zealand, Finland and Iceland recognize that government officials generally approach their work with public interest at heart, only Canada and New Zealand use this approach as the foundation for ethics and code of conduct guidelines that promote integrity rather than to establish a stringent

legislative framework. The Finnish constitution takes public perception into consideration in determining whether an action is necessary, while this has not been factored explicitly into the frameworks of the other countries. In similar terms as in Canada and New Zealand, the Icelandic experience points to the fact that values and principles have become long seen as central to public management and government, possibly highlighting the existence of an implicit cultural code rather than explicit statutory framework.

In short, the promotion of integrity through values and principles vis-à-vis strict legislative framework for punishing bad conduct strikes a key distinction between Canada, New Zealand and Iceland on the one hand, and France and South Africa on the other hand. A strict and harsh legislative framework has proved unworkable in South Africa, as the cases discussed in Chapter Four demonstrate. An attempt to shift to the promotion of integrity through values and principles, norms and standards is imperative and therefore not negotiable in South Africa.

The other issue is that South Africa's legislative framework on ethics is patch-worked and fragmented, and it should contain or harmonize with the existing legislations, not limited to:

- i. The Executive Members Ethics Act, 1998,
- ii. Whistle Blowing legislation,

- iii. Prevention and Combating of Corrupt Activities Bill,
- iv. Public Finance Management Act, 1999,
- v. Administrative Justice Act, 2000, and
- vi. Policies, rules, regulations and procedures governing and underpinning the conduct of politicians in government and among government officials. One of the rules and procedures more relevant according to Public Service Commission (2004), is the creation of an Asset Register whereby all Managers, Directors and above are required to provide information on their financial interests in order to facilitate the identification and investigation of conflict of interest.

To this end, as a matter of following (vi) above, the Public Service Commission Magazine (2003/2004:7) confirms that in several countries, including Botswana and the Philippines, all government officials irrespective of their rank, are required to disclose their interests, but in Australia, like in South Africa, only members of the Senior Executive Service are required to do so. This is a limitation, and it could have been proper to open disclosure to all ranks of management. It can be argued that line managers are best placed to identify conflict or potential conflicts of interest because they know the type and nature of work undertaken by individual employees in their respective government departments.

It is perceived that if disclosures are all-inclusive, government officials, irrespective of their ranks, will be under the obligation of disclosing to their superiors any conflict of interest or potential for conflict of interest as soon as it arises, unlike the current practice. It would seem that this could in one way or the other overcome the problem of government officials having to wait for annual submission deadlines before disclosing. According to what is being said, all the processes, systems and structures should be subjected to periodical monitoring and evaluation to detect potential conflict of interest very early and to prevent material losses.

3.7.2 Governance

The King Committee, which was appointed in 1992 under the auspices of the Institute of Directors (IOD) to study governance in South African companies, saw the institutionalization of corporate governance in the private sector, in the wake of the publication of the King Report I on Corporate Governance in November 1994. This coincided with profound social and political transformations at the time with the dawn of a new democracy and the re-admittance of South Africa into the community of nations and world economy (King Report I, 2001:8). Much as the study acknowledges the good governance proposed by the King Report I in 1994 for the private sector and its needs for improvement, the government seems to have wasted an opportunity when it ignored the quest to extend and share these principles of good governance to the public service,

especially in 1994 when the democratic government was at a time rumbled and ravaged by increasing conflict of interest, running short of proper policies, structures and principles to ensure effective and efficient administration (See Diagram 3.5, Transformation and Conflict of interest Continuum).

Critical issues that could clarify the investigation process in question are highlighted here. Firstly, it is important to point out that governance was not a public service term by origin. It is traced originally to business, having a domain in company law. In business terms, governance is commonly referred to as corporate governance, a mechanism to ensure that the company is strategically organized to render day-to-day profit-based activity. In principle, if the governance set-up is not well inclined to corporate strategy, the company will make a loss. The essence of corporate governance can be found in the pursuit of a situation of “checks and balances”, which gives the stakeholders the possibility of complementing and controlling each other (Verdeyen and Van Buggenhout, 2003:1, 50).

In the same vein, there is a pressing need to import the concept of governance in the public service machinery to make sure that, as in business; it will render day-to-day public service. The concept of corporate governance can therefore be very valuable in the social fraternity, although there are no shareholders in an economic sense in the welfare, healthcare, and social security institutions (Verdeyen and Van Buggenhout, 2003:1). The researcher refers “social governance” to the governance model for the government sector, when applied in

social settings. Whilst corporate governance is used in profit-based institutions, social governance is to be used in non-profit based institutions. Social governance appears to be one of the prominent patchworks of proactively identifying and confronting conflict of interest' situations in the public service.

Secondly, governance means the constitutional, legal and administrative arrangements by which government exercises their power as well as the related mechanisms for public accountability, rule of law, transparency and citizen participation (Laking 2002, 268). Organizational governance is the rules and processes by which organizations are controlled and directed. Concurring with this view, Verdeyen and Van Buggenhout (2003:48) see corporate governance as a model of rules governing mechanisms of the decision making process, and the mechanisms of control and liability. The rules relate to principles such as disclosure, openness and information, transparency, legitimization, participation and checks and balances, of which social governance tries to take precedence of implementing the model. Laking and Verdeyen and Van Buggenhout's understanding of governance contains principles, which are appropriate for ensuring clean and strong governance structures in South Africa. These principles are most importantly:

- i. Legitimization and rule of law;
- ii. Public Accountability;
- iii. Openness, information and transparency;
- iv. Citizen participation; and
- v. Checks and balances.

Thirdly, as far governance principles are concerned, the Constitution of the Republic of South Africa Act, 1996, Chapter 10 (195) covers them, but the challenge is to make sure that they are well implemented in all facets of ministries and administrations. If these principles were well implemented, politicians and government officials would not be involved in so many scandals of conflict of interest. These numerous cases of conflict of interest give the impression that the governance in the entire public service is collapsing. One notorious commonly known case is the near collapse of administration in the Eastern Cape Province, which necessitated the intervention of the National Government.

The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), Chapter 10(195), provides for the promotion and maintenance of a high standard of professional ethics. Public Service Commission (2004:10) reports that public resources are often seen as easy targets by unscrupulous elements inside and outside the government and require careful protection and monitoring. Addressing the problem requires a well-developed ethical culture and appreciation of issues such as conflict of interest. Ethical governance is required and is a challenge in this regard, for it turned into a highly sophisticated area of management specialization.

This is in contrast to the Norwegian or the Nordic countries in general, where social governance is strong because it is underpinned by clear principles. Three

principles are key to the strength of social governance in the Nordic countries, as became evident in a group interview with Norwegian counterparts (2003, See Appendix IV). The three principles are:

- i. “Integrity”-measured by the extent to which government officials carry out their duties according to the rule of law and without self-interest or favouritism;
- ii. “Responsiveness”-measured by the ability of citizens to secure performance to given standards from government officials or to obtain redress, if these standards are not met, and lastly;
- iii. “Transparency”-measured by the extent to which citizens are well informed about the actions of the respective departments.

In supplementing these good governance characteristics, Bled (Slovenia Seminar 2001) suggest the following broader context:

- i. The processes of consultation and decision making, which determine the structure of the scheme;
- ii. The tasks of administration; and
- iii. The institutional arrangements for supervision to ensure accountability.

These components would ensure that welfare service is effective in as much as good governance informs it. However, there is no one single best model for

governance. A wide variety of institutional arrangements could be found throughout the world.

In seeking other avenues to resolve and bring to balance conflict of interest, the Nolan Report (in Gregory, 1996:46,47), proposes seven principles of public life to be observed by every government officials:

- i. Selflessness: Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends;
- ii. Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties;
- iii. Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit;

- iv. **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. Matsheza and Kunaka (2001:18) support that accountability entails those public, private and civil society institutions are answerable for their decisions and actions on the management of public and private sector affairs to the people. This requires that decision makers in these institutions avoid conflict of interest between their professional and private interests by remaining objective, honest and true to the purpose of their work;

- v. **Openness:** Holders of public office should be as open as possible about the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider interest demands;

- vi. **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any

conflicts arising in a way that protects the public interest; and

- vii. Leadership: Holders of public office should promote and support these principles by leadership and example.

As captured in the Nolan Report, some of these seven principles are rooted in the legislative framework in South Africa because they are stipulated in Chapter Ten of the Constitution of the Republic of South Africa Act, 1996. As regards the mechanisms needed to ensure the actualisation of the seven principles, the Nolan Committee proposed that codes based on these principles should operate throughout the government sector. Independent scrutiny, monitoring and high ethical standards through guidance should support internal systems. Education and training should also be inculcated given the pace of change (Gregory, 1996: 47).

Public life is always concerned in one way or another with the differences and the potential if not actual conflicts between public interests and private interests. The point was aptly made in the UK House of Commons debate on ethics on the point that those in public life should be guided by certain standards which, when considered together, put the public good before private advantage. It was argued that it is not always as easy to do this as at it first appears. Therefore, the ability to exercise judgment when making difficult decisions is an important quality to

be sought, not only in elected representatives but also in government officials and in persons appointed to other sorts of official positions. Also, it is important to use all possible means to develop awareness, improve judgment and enhance relevant sensitivities (Chapman, 1995:11). In this way, an impression is created that conflict of interest will be contained.

Regarding guidelines, values and principles in the aforementioned group of countries, Canada's Ethics Counsellor is unique. In Finland, the Parliamentary Ombudsman is largely responsible for the implementation of ethical and conflict of interest' guidelines. The Ombudsman also has the power to recommend court action against parliamentarians, ministers and their staff and other government officials. In New Zealand, similar functions fall under the responsibility of the Office of the Controller and Auditor-General of New Zealand, whilst that of Iceland falls under the State Office. These institutions provide regular reports on government and operate mainly as a review function for departmental activities (The Conflict of interest and Post Employment Report, Undated: 18). Although South Africa has imported from Finland or rather Nordic countries in general the notion of an Ombudsman called Public Protector, its investigation and reporting strategy, unlike in those countries, leave much to be desired.

Apart from guiding principles and institutional standards to wrestle with and defeat the purpose of conflict of interest, whistle blowing is found to be meritorious and rewarding. Whistle blowing is a relatively new term for an older

activity, which differs from various types of performance monitoring. Probably, the 20-year old Charles (Later Sir Charles) Trevelyan initiated the most famous early whistle-blowing episode in the English-speaking world in 1828. This is the same Trevelyan who in 1848 co-authored the celebrated Trevelyan-Northcote Report on “The Organization of the Permanent Civil Service” in Britain. Newly appointed to the Indian Civil Service as assistant to Sir Edward Colebrook, the official Resident in Delhi, Trevelyan soon found that Colebrook and his family were involved in corrupt practices and blew the whistle (Tucker, 1995: 475).

Surprisingly, Sir Charles Trevelyan faced some prosecution and was made a social outcast by his opponents, but he stood firm. Having put his head on the block, the corrupt Sir Edward Colebrook, his senior, was dismissed from the Residency and later the Service. Governor-General Bentinck, an official of the highest calibre, praised Trevelyan’s “manly conduct in standing forthright, single and alone, to rescue the character of his public service and his country from disgrace” (Tucker, 1995: 475-476).

From the ongoing, whistle blowing mechanism to disclose conflict of interest, one observes that whistle blowing is a risky exercise if the whistleblower is not firm and shielded by legislative instruments. If the whistleblowers in South Africa and elsewhere could take the example of Sir Charles Trevelyan, no matter what circumstance under which to blow the whistle, even to the extent of blowing the whistle against their superiors, conflict of interest could be uprooted, and thus resolve the massive problem of conflict of interest. Sangweni and Balia

(1999:103) insist that such whistleblowers must be protected from ostracization, which inevitably occurs.

From the episode Sir Charles Trevelyan vs. Sir Edward Colebrook, it is also important to see highest calibre patriots praising and patting the whistle blowers to give them impressions about their concern as a way of encouraging and sustaining the whistle-blowing practice. Sangweni and Balia (1999:103) report that in the corporate world, whistle blowers are considered for special incentives, an idea which could be considered in the public service. For example, one of the major banks has just announced a campaign to reward whistleblowers with regular monthly prizes and an annual award of up to R1million. More of these initiatives are required as a way to encourage the people to blow the whistle should conflict of interest emerge. Whistle blowing is also possible if a transparent environment is created. Umgol'uphandle newsletter (2004) spells out clearly that South Africa whistle blowing remains a challenge because the court protection of whistle blowers is limited as well as the inadequacy of the whistle-blowing act.

Canada is a “good governance model” for South Africa. In actual fact, there is South Africa/Canada Program on Governance, which began as a foreign policy initiative, following a 1992 request by Nelson Mandela to Canada’s then prime minister, Brian Mulroney, to help the South African leadership manage the process of transition to democracy. The programme materialised during the first five years of democracy, 1994-1999, and proved to be successful to a certain

extent. This was informed by the twinning arrangements which provided the South African partners “their own” as it were, sources of Canadian public-service practitioners, who can be made available for specific projects, and their own Canadian counterparts whom they can visit, whose practices they can observe, and whose experiences they can draw on (Proctor and Sims 2000:160,165).

Many South African partners despite short visits gained a sense of what the Canadian model government looks like, how it works, and the fundamentally important role that is played by a professional public administration. The short visits still serve as continuing sources of both new ideas for South African partners for managing their own programmes and their resolve in implementing them. Therefore Canadian efforts to frame and support good governance in South Africa should continue for some time and not simply because the programme continues to receive the request for assistance (Proctor and Sims 2000:165,172). As the machinery of government in South Africa is not static and also continued to be confronted by conflict of interest’ pandemic, Canadian support and experiences of other countries are crucial.

Canada developed a specialized institutional mechanism to resolve conflict of interest, called “Task Force on Conflict of interest”. Its development was informed by a number of cases on conflict of interest, one of which was that of “Gillespie Affair”. This incident concerned the efforts of a former Liberal Government Energy Minister, Alastair Gillespie, who arranged a deal between the federal government and his own development company to launch a liquefied coal

project as part of an oil substitution programme. As part of the mechanisms to challenge conflict of interest, opposition parties and the media contended that Gillespie's involvement was a clear violation of conflict of interest' guidelines (Gibbons, 2000:209).

Gibbons (2000:210) reports that senators headed The Task Force on Conflict of interest. Their staffs are frequently drawn from the government agencies whilst the executive director was a lawyer from the private practice who had extensive government experience. The task force had a cosmopolitan crosspollination of pockets of experience and innovations to resolve conflict of interest, which aims to translate into Office of Public service Ethics.

Whilst the Task Force on Conflict of interest, translated into the Office of Public service Ethics, in Canada is a praiseworthy institutional mechanism to aggressively confront conflict of interest, South Africa cannot afford to have too many institutional and operational mechanisms. Chapter 9 institutions as contained in the Constitution of the Republic of South Africa Act, 1996 including Judiciary, Public Service Commission (PSC) and other departmental and private structures are enough to resolve cases of conflict of interest in South Africa. What is more important now is to synergize and reinforce these structures with strong resources and capacity to operate. The Constitution should afford some of these structures teeth to bite, instead of merely making recommendations, which are, to a limited extent, enforceable by the powers that be, in this case, Parliament.

Against this background, one can now see that South Africa needs a paradigm shift from curative a method to a preventive method to address its current problems of conflict of interest and governance in the public service as a matter of urgency. The social governance referred to earlier should include risk management strategies of the Public Service Commission (2004:15); indeed, in 2003, the Commission released an overview of international risk management good practices to support departments.

A future model, which is unpacked in the concluding chapter, should incorporate a risk and performance management framework to reduce the problems of conflict of interest in the public service. The Public Service Commission (b) (2003:1, 33) acknowledges that risk management is a key management tool to support accountability and is invaluable in preventing corruption and the wastage of resources. Presumably, this will go some way in ensuring best practices in the public service for risks will obviously be prevented from happening.

3.7.3 Change in Human Conduct (Shaping Sound Ethical Leadership)

As pointed out in Chapter Five, the government often failed to monitor the conduct of its officials in the process of restructuring and transformation. The restructuring and transformation process, which still continuing, still neglects the

reconstruction of the human conduct, an important aspect of any solution to resolve the problem of conflict of interest. Illustrative of this is the restructuring and transformation of a university in the Limpopo Province, which, because it focused narrowly on the organization and failed to consider human conduct, proved to be a fruitless exercise.

Furthermore, whereas codes of conduct are important to serve as guidelines for informing the conduct and attitude of government officials, Franklin and Raadschelders (Undated: 4) warn that the naïveté of this contemporary belief in codification is one issue. Korac-Kakabadse *et al* (Undated: 16) share this view when they remark that although codes of ethics are probably the most visible signs of an organizational ethical philosophy, they are not absolute guarantees of ethical conduct within an organization. They are merely a set of guidelines available to be followed to address issues of conflict of interest, privacy, receiving and giving of gifts. As Ayeni (2004) observes, “it is not a cog in the machine that drives the organization crazy on which we can cast a blame, but the very people who conduct such organizational affairs”, whose mindset would therefore need transformation.

Franklin and Raadschelders (Undated: 4) argue that given the fact that the number of codes of ethics has grown so rapidly in the past decade, we can assume that it is either a fashion with a bandwagon effect or that its frantic adoption demonstrates the inability of codified ethics to adequately replace internalized

conduct. A drastic change in human conduct is therefore highly recommended as part of the arsenal besides the existing codified ethics rules. In other words, codes of ethics are necessary but not sufficient: they need to be integrated with the reconstruction of human conduct.

The Learning and Development Committee recognised that the anticipated shift must respect core public service values such as the rule of law, integrity and political neutrality. Kernaghan (1997:44) in writing, blatantly states that if the culture of a public organisation, or the public service as a whole, is characterized by strongly shared values, there should be less need for rules of conduct. Thus, if there is broad and firm commitment to ethical values in the public service, government officials are more likely to do the right thing, and there will be less need for rules on ethics.

Jabbara and Jabbara (1983) suggest a logical context of 'engineering' human conduct, ensuring integrity and decision making by politicians and government officials. According to Jabbara and Jabbara, this can be achieved through a socialization process, an entry point to commence from families, peers, schools, churches and other secondary groups to the media:

- i. The family may be called upon to help children to develop new ethical attitudes and patterns of conduct. Two factors of importance are singled out. First, the family enjoys a nearly exclusive access to the child during

the period of his critical formative years. Secondly, the relationships, ties and attitudes a child develops in the family during these formative years are emotionally significant and will most likely influence his adult conduct. The socializing function of the family is very important when upbringing the child. Charity begins at home.

Kanyane (2004:41,42) supports that the sway of the adults who love and nurture their children is in line with the well-regarded adage that the family is the strongest element in shaping lives. It is within the bosom of the family that values are handed down from one generation to the next. For example, children who grow up in a family where books and reading are valued, develop an attachment to books and learning.

- ii. The significance of peer groups as potent socializing agencies has been emphasized by a number of scholars who find that peer groups are supplementing parents of their socialization function. An individual finds a way of close interaction with his peers in exchange of ideas for birds of the same feather flock together.
- iii. No one contests the school's socializing role because, like the family, it is in a privileged position to influence a child's social attitudes during his decisive formative years. A school acts in the capacity of a parent, as the maxim, *parentis in loco* suggests. Outcome-based education in South

Africa is a step in the right direction in crafting the conduct of the learner from cradle to a grave.

- iv.* Religions and other pressure groups proved to be working successfully in Britain to eliminate unethical conduct from the society. Political parties, social clubs and associations through their intellectual and social activities spread to their members a sense of integrity which is essential in shaping new positive attitudes and patterns of conduct. However, politicians should be more disciplined and honest when addressing their members in their caucuses.

- v.* Lastly, as a result of modern technological developments, the mass media have emerged victorious as an important agency of socialization and the influential shaper of public opinion. Research demonstrates that in the nineteenth century in England, for example, the influence of literature and the press exposed the evils of unethical practices to the British people. However, the media in South Africa leaves much to be desired because it is not well organized to expose and challenge head on the powers that engage in conflict of interest' dealings. Although the media to a certain extent expose conflict of interest' situations in the country, in some instances, the politicians in government who attempt to protect their political turf sway it. Through serious, radical and responsible action by scholars, the elite and the press, activities involving conflict of interest can be uncovered and

perpetrators punished. In the words of Jeremy Bentham, “publicity is the very soul of justice”.

The crafting processes of human conduct or rather future leaders from childhood to adulthood should synergize and fit into the life-cycle of the public service as its affairs are supposed to be conducted by the ideal political leaders and public administrators who are not only competent, but ethically and professionally sound and matured. Franklin and Raadschelders (Undated, 3) insist that people are morally mature when they are able to subject their individual morality to the needs of policy or of the nation. This pertains to “agentic” shift or moral inversion. In other words, political leaders and public administrators should be educated or rather receive maturity in their conduct beyond what the government prescribes. In a nutshell, Robson in Wessels and Pauw (Eds.) (1999:158) argue that the values internalized by the political leader and public administrator as a person would to a large extent be a product of the developmental process undergone principally in the home, at school, and in places of religious instructions.

To ensure an ethically, professionally and maturely sound public service, the entry-level of the government should be controlled to accommodate prospective mature candidates fit for public service. The entry point should function back-to-back and in tandem with the exit point of the public service to make sure that the revolving door is properly managed without dogmatic restrictions.

In Canada, for example, referring to Conflict of interest and Post-Employment Code for Public Office Holders (1994) and The Conflict of interest and Post Employment Report (Undated: 12), it takes two years for a politician and one year for a government official to wait after leaving the employ of the public service to join other organizations. Otherwise, the Ethics Counsellor could bring into scrutiny any breach of the code and make recommendations to the Prime Minister accordingly. This is a liberal way of controlling the revolving door, rather than tightly closing it *ad infinitum*, given the preceding argument.

Perhaps because of its similarities to the Canadian model (for South Africa invited Canadian government to set a pace for democratic governance to take root in 1994], a comprehensive integrated model provided for South Africa in the concluding chapter would be best served by the following ten key principles:

- i. Conserve and enhance public confidence and trust in the integrity, objectivity and impartiality of government;
- ii. Act in a manner that will bear the closest public scrutiny;
- iii. Make decisions in the public interest on the merits of each case;
- iv. Avoid private interests that would be affected by decisions taken in the course of the public interest;
- v. Resolve any conflict between private interests and official duties in favour of the public interest;

- vi. Neither solicit nor accept transfers of economic benefit;
- vii. Avoid extending preferential treatment;
- viii. Avoid taking personal advantage of information obtained in the course of official duties;
- ix. Avoid the use of government property for anything other than official activities; and
- x. Avoid taking improper advantage of previous position after leaving public office.

The change in human conduct, which is proposed here, to get rid of conflict of interest problems, requires a paradigm shift; i.e. a shift from a bureaucratic to a post bureaucratic organization. This is depicted in the chart below borrowed from Kernaghan (2000:92). However, the chart is open to improvement to align it with ongoing organizational changes and dynamics of the regimes in their conduct of public affairs:

Chart 3.7 From the Bureaucratic to the Post-bureaucratic Organization

Characteristics of the bureaucratic organization	Characteristics of the Post-bureaucratic organization
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Policy and Management Culture

Organization centred → **Citizen-centred**
Emphasis on needs of the Organization itself Quality service to citizens/stakeholders

Position power leadership, → **Participative**
Control, command and compliance Shared values,
Participative decision making

Rule-centred → **People-centred**
Rules, procedures and constraints An empowering and caring milieu for employees

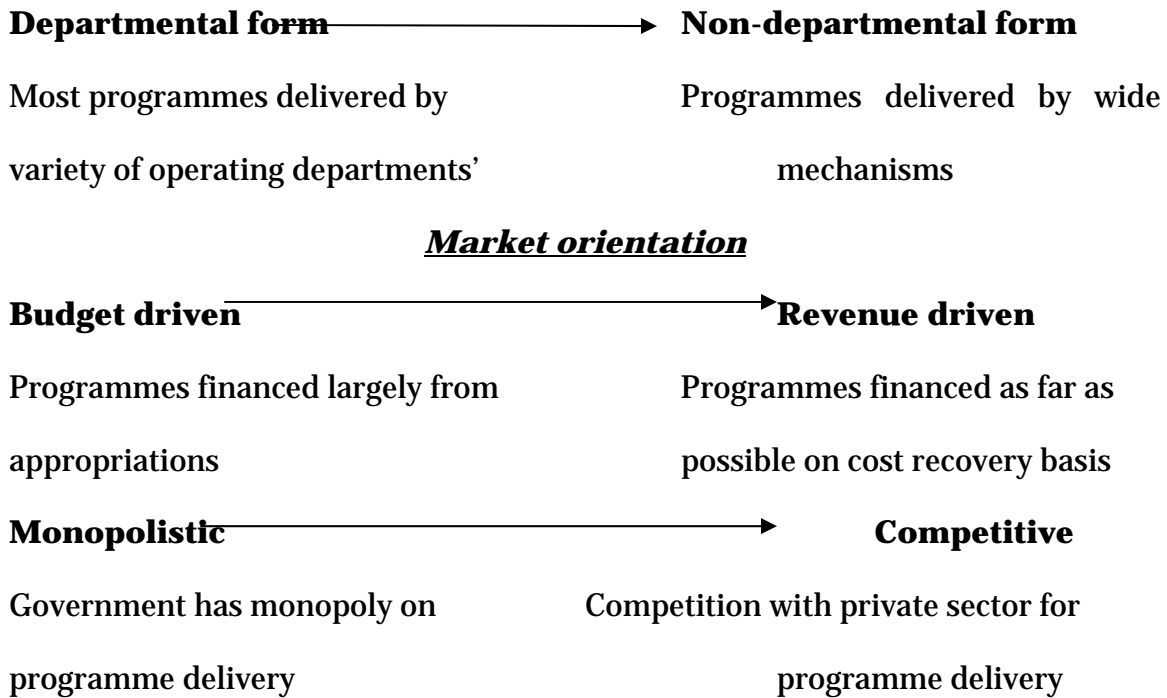
Independent action → **Collective action**
Little consultation, co-operation, and co-ordination Consultation, co-operation and co-ordination

Status quo-oriented → **Change oriented**
Avoiding risks and mistakes Innovation, risk taking and continuous improvement

Process oriented → **Results oriented**
Accountability for process Accountability for results

Structure

Centralized → **Decentralised**
Hierarchy and central controls Decentralization of authority and control



It is assumed that if public organization in South Africa shifts and adjusts to the post-bureaucratic characteristics from the chart above by adopting the proposed integrated model from Loop 3.5 provided in the concluding chapter, it would be possible for government officials and politicians to be duty bound to put public interest first out of their free will, and not out of compulsion. Perceptibly, the temptations of putting their private interest first at the expense of the public in general will plummet and grow dim through sound ethical leadership and good conduct.

A need for sound ethical leadership and good conduct show that leaders and managers are vulnerable to conflict of interest. There is a need for a leader or a manager to have good qualities in ethics and professionalism. The two, ethics and professionalism are two convergent imperative qualities to be resembled by

any government official serving the public. Kuye and Mafunisa (2003: 431) also recognise that leaders today are confronted with many challenges, and a need exists to develop new skills of leadership and at the same time, and to be in a position to address the salient issues of conflict of interest. Technical or functional skills are no longer sufficient. Leaders are required to be strategic, to lead beyond boundaries, and importantly to keep sight of the vision ahead with their feet firmly on the ground. Robson (in Wessels and Pauw, 1999:157) sheds a new light that a good leader, a political leader and public administrator in this context must accept that ethical considerations lie at the very heart of the practice of public administration, and that success as a public administrator will in great measure be determined by how and fully consistent one responds to the ethical imperatives inherent in the occupation.

Otherwise, to Mayson (2004), the new generation are discouraged from pursuing a political career lest they might later, once they have become leaders, be trapped and embroiled in controversies about conflict of interest, as the current situation seems to predict and dictates for potential leaders. Having said that, Tait (1997:15) adds that people learn to hold and to live values not by reading a rulebook but by seeing how others behave and observing what kinds of behaviour are valued and rewarded. For this reason and to this end, nothing seems to us more important for the future of public service values than the quality of leadership in the public service.

3.8 Conclusion

This chapter on conflict of interest was complex. The chapter took both radical and softer approach to the understanding of conflict of interest, starting from its definitional aspects; multi-disciplinary and inter-disciplinary theories, dynamics of conflict of interest; causes and ramifications to its possible solutions.

The study addresses a very sensitive and delicate issue of conflict of interest. According to the Royal Mounted External Committee, it has a fluidity of the interface between personal interests and public duty. It is this fluidity that makes it difficult to precisely separate the two. The former always influences the latter. Another complication observed by the Royal Mounted External Committee is based on conflict of interest, which occurs, in an infinite variety of forms.

The chapter justifies the theoretical arguments pertaining to conflict of interest in an effort to enhance theoretical underpinnings, mainly based on the political theories of orthodox scholars—not limited to Thomas Hobbes and Karl Marx—in contrast to the sociological conflict theories of Ralf Dahrendorf, David Hume and Randall Collins. This includes the conventional theories referring to the works of conventional theorists of Chester Barnard, Herbert Simon, Paul Appleby, Joseph Harries, Dwaine Mavick, Gordon Tullock, Herman Finer and Carl Friedrich amongst others. The chapter has proven a point that public administration cannot operate in a vacuum in the resolve of its problems.

The researcher was forced to rely or borrow the theoretical arguments of other dominant social sciences in this case sociology, philosophy and psychology to better understand the dynamics of the problem of conflict of interest from multidisciplinary and inter-disciplinary perspective so that it can be well tackled.

In discussing cases in a sampling of countries, economically active or inactive, developed or undeveloped, the study realized that the North (including those, such as the Nordic countries, Canada and New Zealand, considered as being low-level corruption countries) could not lecture the South in the area of conflict of interest because both are equally guilty. The chapter, therefore, concludes that each country of either high or low level status has its own ills about conflict of interest and a quest to resolve the conflict of interest by all countries is imperative.

After undergoing a contour of constitutional discourse, one has to pause here, by warning that tightening conflict of interest and other statutes will not necessarily eliminate all unethical conduct, because, as already indicated, political leaders and public administrators may use their discretion to favour their own interest. Statutes cannot be so worded as to proscribe every possible kind of influence peddling.

As in Canada, the legislative framework in South Africa must be principle-based. The purpose of this type of framework is to enhance public confidence in the

integrity of politicians in government and government officials and the decision making process in government. A combination of the advantages of Conflict of interest and Post-Employment Code for Public Office Holders, The British Nolan Commission's Seven Principles of Life, the Australian Bowen's Code of Conflict of interest, and the Canadian Ten Principles, should augment principles of public administration as embedded in Chapter Ten, section 195 of the Constitution of the Republic of South Africa Act, 1996.

Against this background, with the history unfolding, it becomes crystal clear that legal solution is not enough to eliminate conflict of interest practices hence a need to integrate the legal imperative with good governance and change in human conduct, i.e. shaping a sound ethical leadership to shape up a comprehensive integrated model to tackle conflict of interest problems.

Having indicated that a legal solution is not enough to eliminate conflict of interest, the integration of the law, governance and change of conduct and attitudes towards acceptable norms and standards of the society, i.e. the rule of law or *lex naturalis*, can solve conflict of interest. Leaders and managers must lead and manage by example. Their conduct and attitude must be right, above suspicion of selfishness in serving the public. One concludes in support of the prevailing literature that without public interest as an ideal for which to strive for, public life lacks a moral foundation. Given that conflict of interest originates from the human conscience, that it is not an eventuality, and that it is informed

by the underlying dynamics, this study is premised on this context, to explore and robustly tackle the issue uncompromisingly in the subsequent chapters.

This chapter has dealt with issues of definitions and theories of conflict of interest and has, thus, laid a basis for the subsequent chapter whose role is to analyse the collected raw data on conflict of interest from a comparative perspective.

CHAPTER FOUR

ANALYTICAL PERSPECTIVE OF SELECTED CASE STUDIES OF CONFLICT OF INTEREST IN THE PUBLIC SERVICE

4.1 Introduction

Having mapped out, in Chapter Two, the process of data collection, and having presented, in Chapter Three, a critical literature review of the issue at hand, the scene is now set for linking the critical issues raised in previous chapters to a practical analysis of the data collected, and apply a check against the problem, research questions, objectives, and theoretical propositions postulated.

In the analysis of the results of the survey in this chapter, use was made of different techniques of data analysis, bearing in mind the necessary precautions to ensure and maintain the reliability and validity of the findings. More specifically, the qualitative analysis, case study, and historical interpretation, methods were used in triangulation. One of the outcomes is to theorise in the field of Public Administration and Management about conflict of interest.

The application of case study as one of the component of the triangulation is likened to a game theory, whose players are forced to operate within the rules of

the game. Cases are, thus, broken down into episodes, analysed according to rules of the game. Based on these analytical approaches, the selected cases of conflict of interest are identified and analysed according to episodes in a way to compare their situations from one province to another.

4.2 Selected Case Studies of Limpopo Provincial Government in Comparison with Mpumalanga and Eastern Cape Provinces

Selected case studies were referred to in respect of Mpumalanga and Eastern Cape Provinces under study hereunder as follows:

4.2.1 Episode One: Transformation, Restructuring and Governance Process

Apparently, one of the loopholes, which attract conflict of interest, is the ongoing transformation, restructuring and governance process in the respective provincial departments. Since 1994, the government undertook a transformation route to reorganize and reposition the departments against the corrupt apartheid legacy. Notably, the very transformation has also created opportunities for corruption (Public Service Commission Magazine, 2003:2). Limpopo, Mpumalanga and the Eastern Cape Provinces are a case in point for interrogation.

For example, the Select Committee on Liaison with Provinces (SCOLP) Report (1996:5,16) reveals that the Eastern Cape Province, for example, attempted an integration of the old apartheid Cape Provincial Administration (CPA) and those

of the former Ciskei and Transkei homelands, but this did not take place in an organized manner. As a consequence of this failure, some government departments ended up with too many employees while others had too few; furthermore, the integration process resulted in cases of conflict of interest.

The Limpopo Province is one of the provinces, which South Africa prides itself of because it is strategically located, having a strong potential, and focus on mining, agriculture and tourism. The province underwent its own transformation and restructuring process. The transformation and restructuring of departments and the change of names of the province and towns, although a praiseworthy exercise, stretched and drained the budget of the province and led to several cases of conflict of interest. See Diagram 4.1 below which attests to this.

In contrast, the Eastern Cape Province did not make a sterling contribution in the transformation and restructuring including change of names of the province, cities and towns, which still carry the stigma of apartheid. The near collapse of the provincial administration that required the interventions from the National Government is evidence to this failure. Mpumalanga Province on the other hand attempted transformation and restructuring process with limited success.

Limpopo Province shares a tough experience of transformation, restructuring and governance process to draw lessons from. Firstly, just like in Mpumalanga and the Eastern Cape Provinces, Limpopo Province was under the legacy of defunct homelands governments, which were managed by ill-qualified

government officials whom the new provinces inherited. The provincial governments were also clouded with ghost workers consuming huge amounts of the personnel budget. Unfortunately, 98% of the provincial budget by then was devoted to salaries whilst 2% of the breakdown was devoted to capital budget. Surprisingly, government officials contributed far below service delivery standards, which is incommensurate with their take-home pay. The “sunset clause”, which was initiated between 1994-1999, accounts for this problem. The clause served to protect the jobs of the former homeland government officials for a period of at least five years and was claimed to be a decent way of undoing the products of the past apartheid government (Ramathlodi, 1998).

In their first term of office the Premiers had already on their hands, problems brought by the “sunset clause”. For example, this clause gave the former Premier of Limpopo Province a license to pull together three former Homeland Directors General (DG)—from former Lebowa, Gazankulu and Venda—to his office, doing nothing other than exhausting the personnel budget of the Premier’s Office (Ramathlodi, 1998). Star (1998: p1) believes that these amounted to huge personnel expenditures, severe financial management and capacity problems, pointing to nothing less than a crisis in the public service.

According to an interview with the Manager in charge of Administration and Finance in the Department of Land Affairs (2003, See Appendix IV), there is an allegation that the directors under the sunset clause earned each over R600 000 per annum; but they seems to have contributed less efforts to service delivery, but

spent most of their time at work engaging in personal interest at the expense of public resources. Apparently, their performances were incommensurate with what they earned per month. The sunset clause, which appeared to have created room for conflict of interest, a bitter pill to swallow for a period of five years, brought severe consequences. Diagram 4.1 below bears material evidence.

Secondly, the transformation, restructuring and governance of some of the departments were highly politicised and thus became sensitive. One example is the Department of Local Government and Housing, which underwent a painful and expensive process. First called Department of Local Government and Traditional Affairs, it later became Department of Local Government and Water Affairs, and now it is simply Department of Local Government and Housing.

On the other hand, the Department of Finance and Expenditure was transformed into Department of Finance, Economic Affairs and Tourism, then Department of Finance, Economic Affairs, Environment and Tourism, and Department of Finance and Economic Development, and now recently split into two, Treasury Department and Department of Economic Development, Environment and Tourism. The Department of Agriculture also underwent the same process, changing first into Department of Agriculture, Land and Environment before it became Department of Agriculture. The list is endless.

These transformational process instigated infighting among factions of politicians and government officials from the Pedi, Tsonga and Venda groups.

This signifies that racial divisions were and are still rife even to this day in the province, showing that management in diversity is still questionable in public administration. Given these divisions, one infers that conflict of interest is also rife along ethnic and racial lines.

Further evidence of factionalism is the predominance in some departments of a particular ethnic group, a fact that exacerbates mistrust and causes chasm and schism amongst government officials. Under these conditions, conflict of interest takes precedence. The Manager in charge of Administration and Finance in the Department of Land Affairs (2003) cited the Department of Agriculture, which had government officials who lost *esprit de corps* by failing to rise above petty local politics. These officials are trapped in their doldrums and conundrums prefectures. As a result, less revenue was collected in the department. There was also wastage in the expenditure of public funds because most budgeted funds were never spent according to the departmental plans. This attracted audit queries to a point where the Standing Committee on Public Account (SCOPA) subpoenaed the Head of Department (HOD) to clarify its financial position.

The phasing out of some departments in the course of the transformation and restructuring process can also be cited as one of the causes of the lack of trust among officials. For example, what was initially the Department of Environment and Tourism as a stand-alone department was de-established and the conjoined components, environment and tourism, underwent a surgical operation, were polarized and merged with other departments. The environment component was

transferred and merged with the Department of Agriculture whilst the tourism component was transferred and merged with the Department of Finance and Economic Development by then before it was recently split as already indicated (See below the two organizational structures in their original forms referred to as a case study).

Figure 4.1, Schematic Representation of Department of Environmental Affairs & Tourism before July 1996 (Source: Departmental Organizational Structure: Environmental Affairs & Tourism in Muchavi, 2003:3)

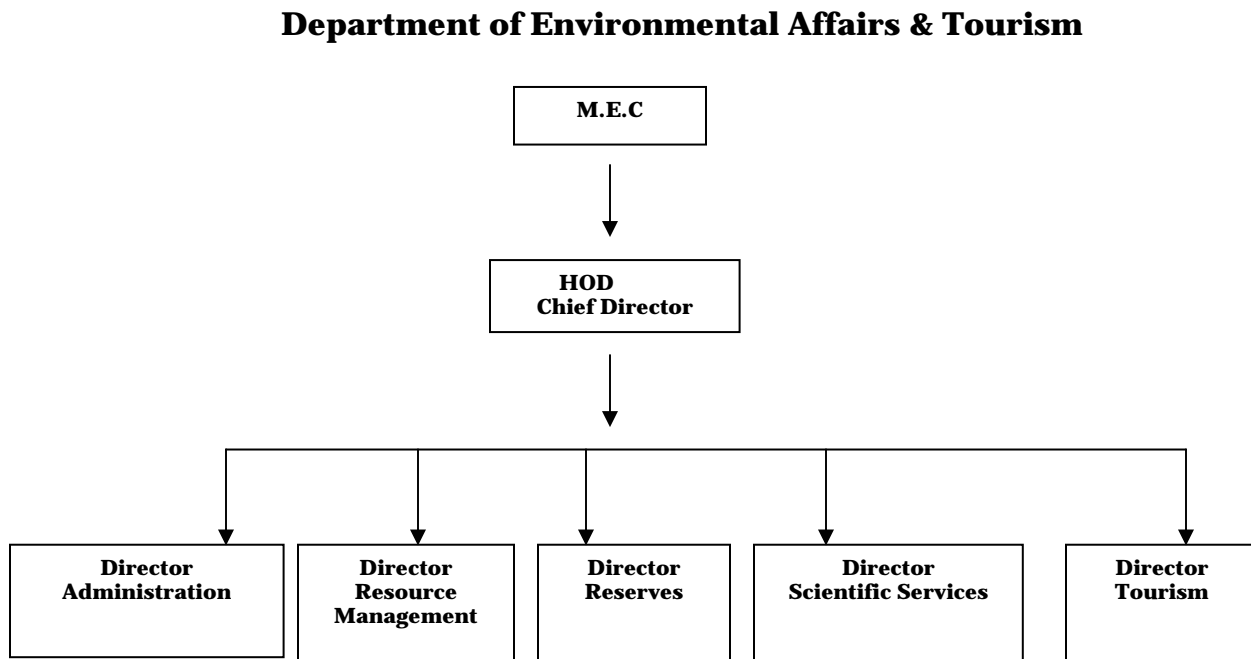
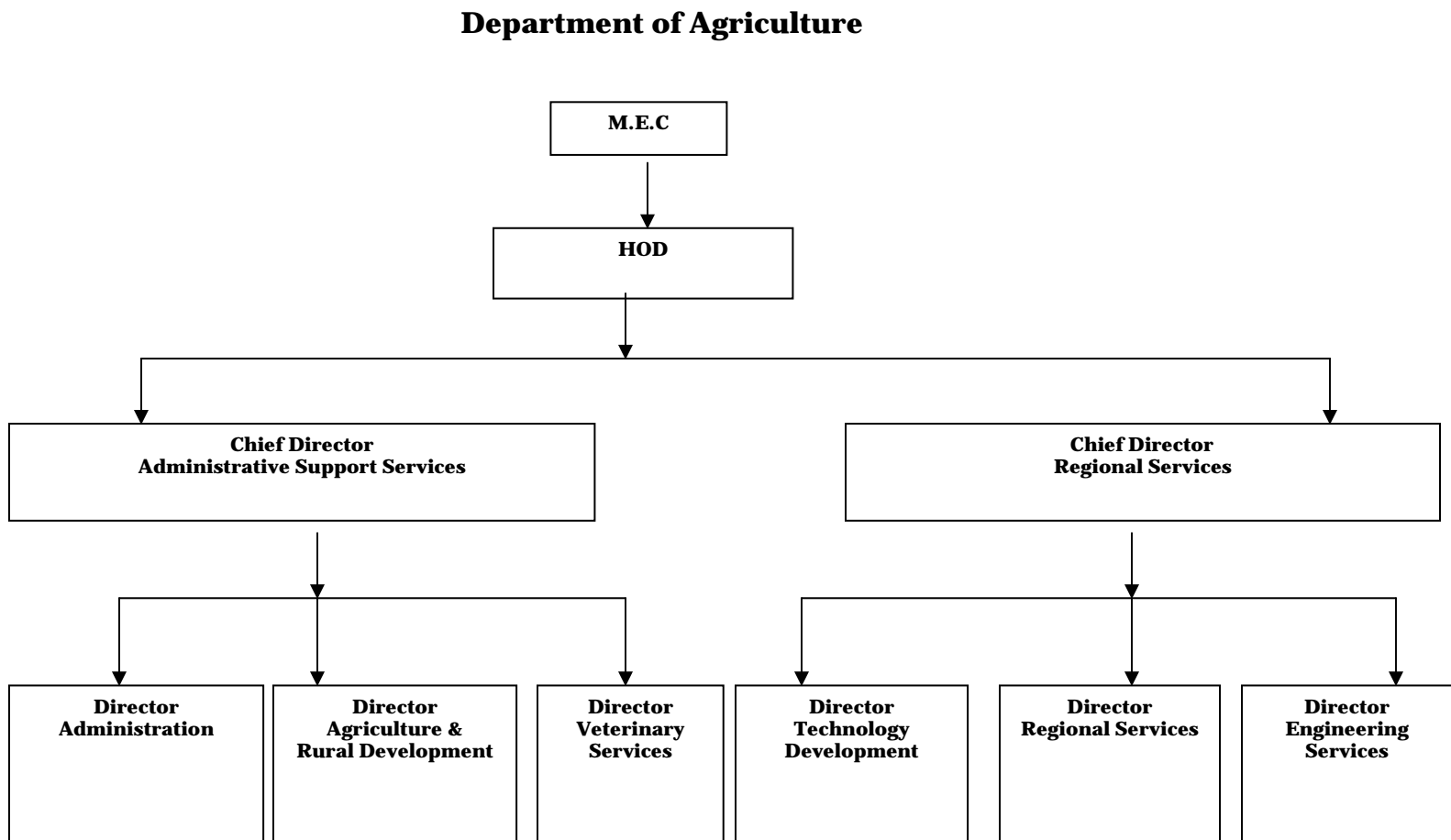


Figure 4.2. Schematic Representation of Department of Agriculture before July 1996 (Source: Departmental Organizational Structure: Agriculture in Muchavi, 2003:4)



The same happened to Housing and Water Affairs as a stand-alone department. The two components were surgically separated, one component being transferred to a department whilst the other was completely dismembered. The “Housing” component was transferred to the Department of Local Government and

Traditional Affairs, now referred to as the Department of Local Government and Housing, whilst the “Water Affairs” component was simply dismembered and placed under the jurisdiction and competence of the Ministry of Water Affairs at national level.

The separation process referred to above is tantamount to a physiological analogy, which could be attributed to the 1988 dramatically painful, but yet successful surgical operation of conjoined twins recalled below.

The successful separation of Mpho and Mphonyana marked a medical breakthrough for South Africa. No such surgery had been performed before in this country, and this case provided a unique opportunity to prove that South Africa was capable of medical breakthroughs. The twins, joined at the head, were separated in May of 1988 when they were a year or so old... They shared some brain tissue; they will probably not develop full mental abilities as adults (South African Panorama, 1988).

The process of surgical operation inflicted pains to the twins and has a similitude with what has happened to the Limpopo Government Administration for a period of ten years, from 1994 to 2004. Some of the pains inflicted in the surgical process of separation and reorganization of the provincial government departments are the practices of wasteful expenditures, theft of assets and conflict of interest, which ultimately led to corruption. In an interview with the Manager in charge of Management Support in the then Department of Finance

and Economic Development (2003, See Appendix IV), it was revealed that when the Department of Environment and Tourism was phased out and the “Environment” component was transferred to the Department of Agriculture, computers were stolen by some government officials who took advantage of the transitional situation. Besides, an elephant was stolen and sold by one of the government officials.

Similarly, the Manager in charge of Administration and Finance in the Department of Land Affairs (2003) alleges that in the de-established Department of Water Affairs and Forestry, where he was attached, white folks in senior management position instructed the guards of Game Reserves to go home during the night with an intention to commit theft of the elephants. They thus used the opportunity to drug the elephants and rhinos during the night and arranged trucks to loot the animals once they were weak. It is safe to conclude that senior government officials took the transformation, restructuring and governance process as a golden opportunity to fulfil their personal intentions.

The surgical operation that is restructuring and transformation process of government departments had human, material and financial implications. Firstly, the shrinking and expansion processes in the respective provincial government departments negatively affected government departments financially and technically. For example, government officials from the de-established departments came with the intention of occupying higher-ranking offices from their former low positions. Some affected departments were not careful in

scrutinizing the job profiles of their new deployed staff. Tribal attitude normally facilitated this kind of conflict of interest because in some cases the receiving department would place officials in much higher positions than they deserved in a duplicitous manner.

Thirdly, the negative consequence of the surgical operations (transformation, restructuring and governance process), which affected some government departments in the province, was the mismatch between previous skills and new posts. As an interview with the Manager in charge of Management Support in the then Department of Finance and Economic Development (2003) revealed, government officials who had come with nature reserves field experience of working in the bush or forest were assigned to posts in a new government department that were incompatible with their previous work experience. This kind of transfer is one that can be said to be from functional environment to a public administration and management environment, which are totally different and would need orientation and adjustments, which was costly and somehow took some time. This obviously burdened the head of the component with staffing complications, for these functional workers who worked long in the bush, expected to be reoriented and trained altogether to adjust to the new environment of administration and managerial work in their divisions.

As a result, government officials assigned to new posts in their new departments remained idle while earning their full salaries during the window period of the transfer process. Some, disgruntled, did not turn up at work because of the lack

of proper monitoring by the system. Eventually, some were carried away with “an-idle-mind-is-the-devil’s-workshop” syndrome and began to use official hours for their own benefit at the expense of public interest.

Fourthly, the government has left a free hand to some government officials to climbing on the back of others to get higher posts and fulfil their own interest at the expense of public interest. Most of these officials are “dead wood” in the provincial government who put their interests first and, thus, neglect the “Batho Pele” spirit of service to the people first.

One observation is that of the high number of government officials drawn from the old order who seem bent to undermine the democratic process. Their state of mind and attitude are those of people preoccupied with self-interest. This perception is also shared by one of the key interviewees, the Manager in charge of Administration and Finance (2003), who, however, thought that the uncertainties about job security arising out of the transformation process might have de-motivated government officials from the old order.

There also seems to exist some mistrust among officials of the new order vis-à-vis those of the old order who were reputed to have skills and experience to pass on to the former. To use an analogy, the conflict between the two sets of officials (i.e. those drawn from the pre-1994 regime and their post-1994 counterparts) is like the hostility between cats and dogs, or the presence of two bulls in the same

kraal. In both cases, tension and strife are inevitable. In the case of a provincial government, such tension is frustrating and not conducive to good public service.

To put it in simpler terms, there seems to be a gulf between those who are referred to as “old comrades” (i.e. officials drawn from the old order) and those who are referred to as “new comrades” (i.e. officials appointed at the inception of the new democratic order in 1994). On the one hand, the old comrades are stuck to the status quo of the old order, breeding antagonism against their new comrades who are keen to achieve transformation. The reality of the situation makes it easy for conflict of interest to frustrate the transformation, restructuring and governance process of the new order. Yet, some good should have made out of the situation by merging and utilising the skills and potential of both groups, which, with the right attitude and work ethic would be a great asset.

Fifthly, another obstacle to good governance is the excessive predominance of a particular political party in government. This fact cuts across the three provinces under study. For example, The Eastern Cape Legislature Annual Report (2003:11) corroborates the researcher’s theory of political predominance being too counterproductive. Indeed, as the reports shows, political patronage seems to bedevil all the echelons in the Legislature. The researcher’s theory of political predominance demonstrates the serious risk of patronage and the creation of fertile ground for conflict of interest to thrive in the government sphere.

According to the excessive predominance referred to earlier, there is a grapevine spreading in the corridors of the public service that the ruling political party under the current system of government, to a certain extent seemingly wields too much power that it uses to protect certain important members of its own at the expense of the will of the majority and also at the expense of the image of the country in general. The researcher's theorization suggests that political predominance also brings about party patronage, which impacts negatively on the principle of separation of powers as provided for in the Constitution of the Republic of South Africa, 1996 and leads to conflict of interest.

Given the background of the "winner-take-all" principle of our electoral system, the patrons in power turn into "who's who" in politics and influence disciplinary action taken against their protégés. Ironically, the "who's who" are "heavyweights" or rather tycoons by world standard as opposed to "lightweights" or those without much power in the political arena. They become almost "untouchable" and are likely to indulge in unscrupulous practices. The status as "untouchable" biases any judgment of alleged cases of bad governance reported to them.

Further, the researcher's theory of political predominance also postulates patronage and nepotism as direct consequences of political dominance in government. A case in point is the allegations published by the local media about appointments in government of relatives, friends and political affiliates. An anonymous letter (2003) received among other documentation also denounces

similar cases. The anonymous letter specifically cited the case of a certain reshuffled MEC against whom allegations were levelled of appointment of relatives.

It is perceived that patronage and nepotism are rife in the province especially in appointments and also extends to the day-to-day execution of duties and to tender processes. The situation of political party predominance in government compromises the system of checks and balances which have become toothless and hamper the capacity of opposition parties to challenge the government of the day. A tug-of-war has developed between the ruling party and the opposition parties as a result of too much power in the hands of a ruling party to the detriment of democracy and service delivery.

Apparently, in drawing together the issues so far discussed, it appears as if the province focused too much attention on transformation and restructuring of the governance structures and systems and, thus, overlooked the important aspect of changing people's attitudes. To resolve the problems of corruption, which arises out of conflict of interest, it is important to work on changing people's mindsets, or to be more precise, to achieve a change-of-conduct revolution.

To illustrate the necessity of a change of attitude, the case of a university in Limpopo Province can be cited. By not including a change-in-conduct revolution as a priority in the transformation and reconfiguration process between 2001 and 2002 under the reign of the Administrator appointed by the Minister of

Education, the researcher observed the failure of the university to make tangible progress in governance. Instead, the process created conflicts and infighting in the institution. In other words, structural and systemic changes, without a change of conduct, have not removed the risks of conflict of interest either in the university or the province.

It appears that the more government officials became acquainted with the governance and systems, the more they were prone to indulge in conflict of interest. Some evidence of this is drawn from interview data, such as the interview with a SAPS Captain in the Crime Intelligence Unit (2003, See Appendix IV and Diagram 4.1 hereunder). 1994 to 1999 was an era for developing policy and for putting up systems through restructuring and transformation. Everyone in the government was adjusting and familiarizing himself or herself with the new environment. Although conflict of interest was inherited from the apartheid government, it had, however, not been as visible and prevalent as between 1999 and 2004 era. The increase in cases of conflict of interest may be explained by the fact that once government official became familiarized with the “sprawled-out-like fertile legislative environment”, they discovered loopholes that they could exploit.

One relevant example is the tension between Public Service Act, 1994 (Proclamation 103 of 1994) and Basic Conditions of Employment Act, 1997 (Act 75 of 1997). Section 30 of the Public Service Act spells out that:

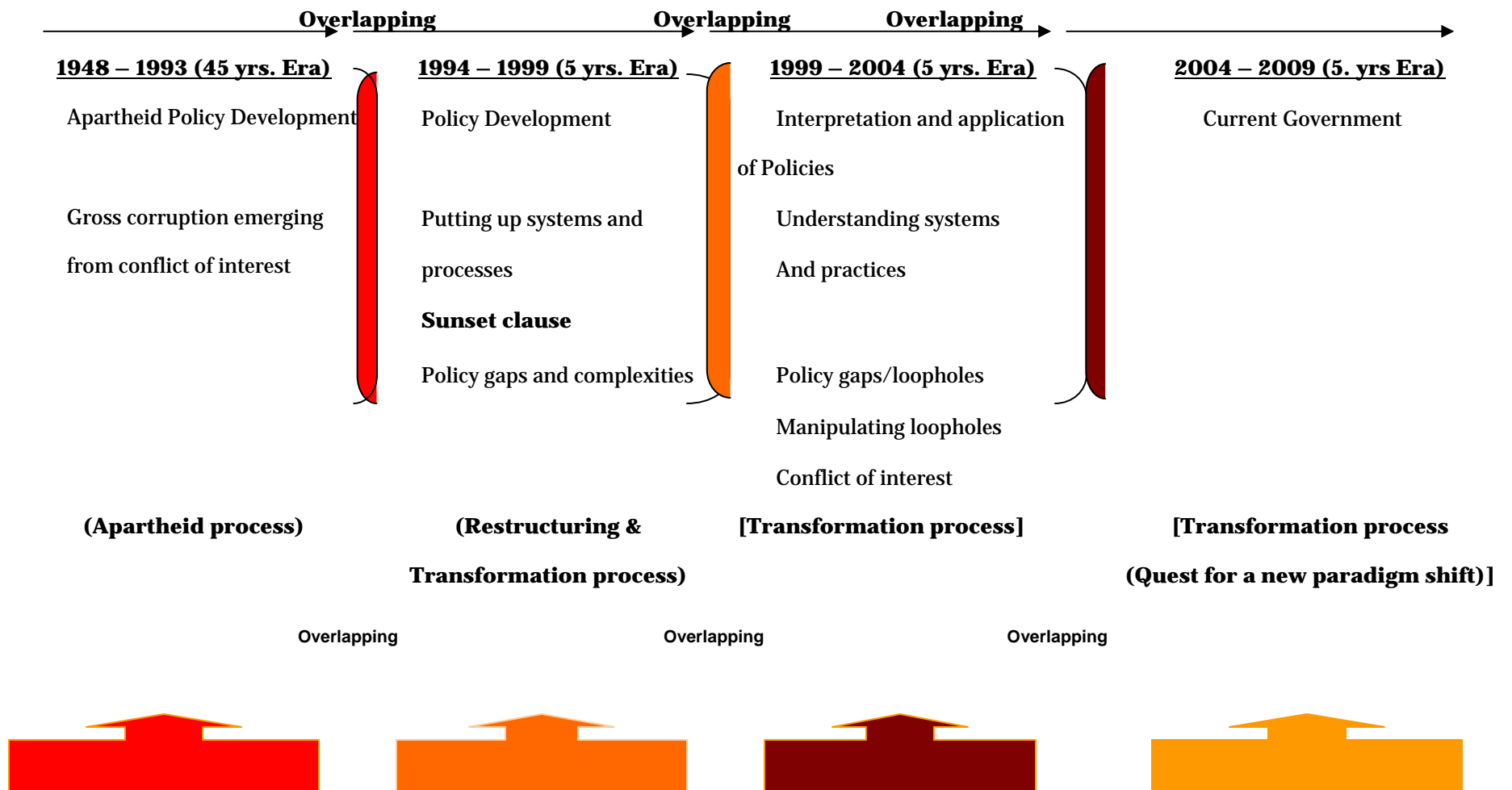
- i. Every officer and employee shall place the whole of his or her time at the disposal of the State;
- ii. No officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or an officer authorized by the said authority; and
- iii. No officer or employee may claim additional remuneration in respect of any official duty or work which he or she performs voluntarily or is required by a competent authority to perform.

The bone of contention in the two pieces of legislation, Public Service Act and Basic Conditions of Employment Act (Resolution) is that in the latter, the permission has to be acquired by the government official only in respect of work done for another person and organization and not for himself or herself, as it is the case with the former. This further qualified in that the work for which permission is required in terms of the former is limited to work done in a personal capacity. Same applies to overtime, in terms of Public Service Act, the state can demand government official to place all of his or her time during official working hours at the disposal of the state whereas the state in the Basic Conditions of Employment Act by researcher interpretation cannot demand the government official in question to obtain permission for remunerative work outside official office hours. The two legislations though they aim to address conflict of interest are apparently in conflict, and this so-called tension creates a

room for manoeuvring by unscrupulous government officials (See the entire legal contention in Chief Law Advisor File, 2003).

Interfaces and overlaps as seen on Diagram 4.1 hereunder show that conflict of interest, if given insufficient attention, can manifest itself and thrive in the system.

Diagram 4.1: Transformation and Conflict of interest Continuum; preceded by the interview with one of the Captain in the SAPS Crime Intelligence (See Appendix IV)



Given this diagram, unscrupulous government officials presumably take advantage of the existing governance loopholes to satisfy their own interests. It is alleged that government officials in one of the six municipal districts in Limpopo Province opened companies in the names of their relatives and connived with the technical department of the municipality to siphon money through tenders (Interview with a Captain in the SAPS Crime Intelligence, 2003, See Appendix IV).

As can be seen, the game is the same: officials are perpetrating conflict of interest and their cronies across the racial divide. The myth of conflict of interest being seen as a peculiar misdemeanour perpetrated by Africans is, thus debunked. It cuts across the racial divide and involves even white officials from the old order who, logically, having prior experience in running the government and business organizations, should have behaved better.

It is safe to assume that the change in the conduct of government officials is an important factor in addressing issues of conflict of interest. The current democratic government (2004-2009) portrayed in the continuum on Diagram 4.1 above is better placed to do better than its predecessors by learning from the mistakes of the latter. One of the lessons it could learn is that of transformation, restructuring and governance which should contribute to shaping and perfecting democratic instruments to eliminate conflict of interest. Whilst the rule of law, policies, governance and systems are to be perfected, the surgical operation of perfecting human conduct is equally important and should be given a chance if

the provincial governments are serious about the task of eliminating cases of conflict of interest.

4.2.2 Episode Two: Government Vehicle Fleet and Accessories

The use of government vehicles in Limpopo is another sore point of ethics in governance. The 2000 Auditor-General Report (2000: 39) condemns the use of government vehicles after hours and over weekends for private purposes and the absence of effective disciplinary steps in response to this misuse of government property. For example, in 1997, the Traffic Control Department impounded a total of 642 vehicles for unauthorized use. Similarly, in the Department of Education, notwithstanding the explicit prohibition against using vehicles over the Easter weekend of 9 to 13 April 1998, at least nine government vehicles were caught being used against the prohibition and which covered distances of up to 2 771 kilometres in Limpopo Province.

Similar cases of misuse of government vehicles have regularly been found in Mpumalanga Province. It was found that the first auto reports were not scrutinized by the Department of Local Government, Traffic Control and Traffic Safety and exceptions were therefore not regularly followed up to ensure the efficient operation of the fleet vehicle. Consequently, the performance of vehicles had not been evaluated against predetermined standards to ensure the cost effectiveness and optimal utilisation of the department's vehicle fleet

(Mpumalanga Province Department of Local Government, Traffic Control and Traffic Safety Annual Report, 2003: 28).

Like vehicles, accessories, such as tyres, have been the subjects of scrutiny in Limpopo Province. Tyres were found not to have always been acquired or fitted in the most economical and efficient manner. During the 1996/97 and the 1997/98 financial years, R3.3 and R2.19 million, respectively, were paid for tyres purchased or fitted at private garages. According to calculations, approximately R2.84 million could have been saved if tyres would have been replaced in-house (Auditor-General Report 2000:38). In Mpumalanga Province, the Department of Local Government, Traffic Control and Traffic Safety Annual Report (2003:28) showed abnormal frequencies of repairs to and maintenance of some vehicles. In both Limpopo and Mpumalanga Provinces, private companies have had an interest in the business transactions of the government, in cahoots with government officials who benefited personally from these. These are clearly cases of conflict of interest.

Also illustrative of conflict of interest is the misuse of fuel in Limpopo Province. Checks showed that no reconciliation between the tank capacity and the fuel intake of vehicles could be reached. The audit report found that the fuel intakes exceeded tank capacities on a regular basis. The table below shows these discrepancies between the tank capacity of vehicles and the reported intake (Auditor-General Report, 2000:40). The same anomalies were found in Mpumalanga Province: the Department of Local Government, Traffic Control

and Traffic Safety discovered that tanks of some vehicles in their fleet were overfilled and then travelled low kilometres per litre (Mpumalanga Province Department of Local Government, Traffic Control and Traffic Safety Annual Report, 2003:28).

After the Provincial Internal Audit Report (2003:6) of the Department of Agriculture had developed a policy on subsidized motor transport, the department did not, however, put in place the process on how fuel allowances would be administered. The department cannot, therefore, properly account for the payments of fuel allowances. Officers tend to apply whatever expenditure schedules they can estimate as being appropriate on fuel allowances in the absence of clear guidelines. This lack of proper procedures facilitates cases of conflict of interest, most of which are conducive to corruption.

Table 4.1: Trip structure (Extract from Provincial Audit Report, 2003:7)

Date	Place	KM travelled	Standard KM	Difference
	CAPRICORN DISTRICT			
07/05/02	Mankweng to Spitzkop	85	39	46
13/05/02	Mankweng to Spitzkop	39	39	0
14/06/02	Mankweng to Segwashi	77	40	37
14/06/02	Segwashi to Mankweng	40	40	0
	MOPANI DISTRICT			
03/07/02	Giyani to Tzaneen	130	120	10

09/07/02	Giyani to Tzaneen	165	120	45
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As can be seen from Table 4.1 above, the discrepancies in the right hand side column are an indication of abuses by government officials who might be adding kilometres of private use of vehicles to the declared mileage. Another point that can be made from the table is that of laxity on the part of inspectors of the government vehicles who are not doing their job properly of a thorough check when they approve official trips. Government officials claim kilometres travelled for their own interest and, thus, cause to the department extra unnecessary expenditure.

Table 4.2: Fuel Reconciliation

VEHICLE REGIST- NUMBER	MANUFACTURE (MADE)	DATE	TANK CAPACITY IN LITERS	LITERS RECORDE D	EXCESS IN LITERS
GLB 428N	Toyota Corolla 1601 GL	05/03/98	60	342,1	282,1
GHB 661N	Mazda Midge 160 Sedan	27/03/98	57	408,6	351,6
GWB 038N	Opel Astra 140	29/03/98	55	264,4	209,4
GDB 125N	Nissan Hard Body 2.0 SWB	10/04/98	90	605,5	515,5
		11/04/98	90	276,5	186,5
GDB 382N	Toyota Corolla 1801 GLE	11/05/98	60	352,4	192,4

GZ 31861	Toyota ODA 110	28/05/98	120	847,8	727,8
	Refrigerator Truck				
	Total		532	3097.3	2465.3

The operating costs of the vehicle fleet, according to First Auto, increased from R42.31 million during the 1996/97 financial year to R70.51 million (67%) during the 1997/98 financial year. The same analysis of Table 4.1 is applied to define the situation of Table 4.2 in the sense that there seems to be no supervision or internal inspection mechanism to deal with the material fleet situation on the ground hence a massive loss of fuel for private use.

Table 4.3: Operating Costs per Months

PROVINCE	AVERAGE FUEL COSTS PER VEHICLE PER MONTH FOR THE YEAR 1 APRIL 1996 TO 28 FEBRUARY 1997
	®
MPUMALANGA	765,04
NORTHERN PROVINCE (LIMPOPO)	664,55
FREE STATE	653,27
EASTERN CAPE	653,27
NORTH WEST	560,55
KWAZULU-NATAL	548,77

NORTHERN CAPE	417,37
GAUTENG (PRETORIA)	410,99
WESTERN CAPE	383,23
GAUTENG	351,61

The scenario in Table 4.2 indirectly accounts for the scenario in Table 4.3 hereunder here under. According to Table 4.3, during the 1996/97 financial year, the average fuel costs per vehicle in the Province were the second highest in the country when compared with other provincial administrations (Auditor-General Report, 2000: 41).

Records in Table 4.4 below show that Mpumalanga Province comes first in terms of fuel consumption costs, whereas Eastern Cape Province comes the fourth. SCOLP Report (1996:1-60) alludes the fact that part of the consumption cost in Eastern Cape Province is as a result of corruption existing in the form of petrol being stolen from state garages.

In the final analysis of this episode, apparently, the episode adds value in the field of Public Administration. In terms of this episode, Public administration has to also look at the issue of governance and risk management as important modern concepts of the discipline, to close conflict of interest shopping spree. Governance and risk management are crucial here due to the following:

- i. The fleet of vehicles in the Department of Transport all over South Africa appears to be a potential ground for conflict of interest to thrive, due to misuse of such vehicles. Ghana is but one example of potential conflict of interest emanating from poor governance and risk management policy enforcement according to the citation spelled out in section 3.5 of Chapter Three.
- ii. Risk management is crucial here, because we see unscrupulous government officials indulging in practices which are not acceptable, colluding with the private garages to fit tyres uneconomically, exceeding normal fuel intake tank capacities and adding kilometres of private use of vehicles to the declared mileage to say the least not to mention use of government spare parts for private motive.
- iii. The aforesaid unacceptable practices are simply hot spot areas, which informs the Departments of Transport to come up with effective risk management policy and plan to prevent these conflict of interest problems from happening, for prevention is better than cure.
- iv. Finally, this means that the governance and performance management systems have to be right and checked on periodical basis, otherwise the whole attempt to devise effective risk management policy and plan will be a futile exercise.

4.2.3 Episode Three: Three Solid Cases of Conflict Interest in the Department of Education

(a) Appointment of a School Principal at Charles Mathonsi Secondary School: Acting Principal vis-à-vis the then MEC of Education's Wife *[unless otherwise acknowledged, data were extracted from Public Service Commission, 2001: 61-89]*

In terms of section 6(3) of The Employment of Educators Act, 1998 (Act 76 of 1998), the Head of the Department (HOD) may only decline the recommendation of the governing body of the public school or the council of the further education and training institution, if:

- i. Any procedure collectively agreed upon or determined by the Minister for the appointment, promotion, or transfer has not been followed,
- ii. The candidate does not comply with any requirements collectively agreed upon or determined by the minister for the appointment, promotion, or transfer,
- iii. The candidate is not registered, or does not qualify for registration, as an educator in terms of the South African Council for Educators,

- iv. Sufficient proof that the recommendation of the said governing body or council, as the case may be, based on undue influence, or
- v. The recommendation of the said governing body or council, as the case maybe did not have regard to the democratic values and principles referred to in section 7(1).

The episode under discussion here involved the appointment of the Principal of Charles Mathonsi Secondary School for which the deadline for applications was 12 February 2000 at 16h30. The application by the Acting Principal of the Secondary School was received on the 10th February 2000, i.e. within the deadlines. In contrast, that of the then MEC of Education's wife was received on 29 February 2000; 17 days way after the deadline had passed and on the last day of the extended closing date of 29 February 2000. One may even speculate that the extension of the deadline might have been set to accommodate the MEC of Education's wife's application and other applicants. Conflicting information was reportedly received about the extension of the closing date.

Table 4.4: Short Listing Schedule

Identity	Academic qualification	Professional qualification	Current position	Tag
-	Std 10, BA (Hons)	Secondary Teachers Diploma (STD)	English Subject Adviser	I
Acting Principal of the same School	Std 10,	Secondary Teachers Diploma (STD)	Acting Principal	J
The then MEC of Education's wife	Std 10, BA	Secondary Teachers Diploma (STD), HED	Teacher	E
-	Std 10	Secondary Teachers Diploma (STD), HED	Head of Department	K
-	Std 10, BA	Junior Secondary Teachers Certificate (E.ED)	Head of Department	L

In terms of the short-listing schedule referred to in table 4.5, the interviews took place on 1 July 2000. At the conclusion of the interviews, the Interview Committee ranked the candidates in order of preference and also made a brief motivation as prescribed in paragraph 8.2 of resolution 1 of 2000. The interviewing Committee allocated the following average scores to each candidate as shown in the table below:

Table 4.5: Interview Scores

Identity	Average Score
Acting Principal (Tag J)	121,75
The then MEC of Education's wife (Tag E)	109,25
English Subject Adviser (Tag I)	107,25
Head of Department (Tag K)	91,25
Head of Department (Tag L)	88,75

As the table shows, the Acting Principal obtained the highest score, the MEC of Education's wife ranked second. After the results were forwarded to the School Governing Body (SGB) for recommendation, the SGB decided to recommend the Acting Principal to the Department of Education for appointment as school principal for Charles Mathonsi Secondary School. Given the bureaucratic red tape, the recommendation went through the Circuit Manager, District Manager, Regional Manager, and Director of Personnel, before it reached the Head of Department (HOD), to ensure that all the procedures and other departmental directives had been complied with. It is in this bureaucratic snarl that conflict of interest arose.

Without any credible explanation, the Circuit Manager, short-changed the order and recommended the MEC of Education's wife for the position in spite of the Interview Panel's recommendation in favour of the Acting Principal. The explanation of leadership qualities he offered was found to be weak, as he had not sat on the panel either as a member of the Interview Committee or an observer to

realise her potential. According to Circuit Manager, he saw this quality in the MEC of Education's wife Curriculum Vitae (CV), although as it transpired later, the CV showed no obvious leadership roles she might have had in the previous ten years.

At the next stage, another muddle occurred. Even before receiving the recommendation from below (7 July 2000), the District Manager had already written a letter (6 July 2000) endorsing the recommendation to appoint the MEC's wife to the Regional Manager. It appears, therefore, that the District Manager did not have the decency to wait to see the content of the report letter in question, but was keen instead to satisfy his vested interest by acting *ultra vires*. On being interrogated by the Public Service Commission (PSC), the District Manager was unable to explain why he had written a letter to recommend the appointment a day before receiving the procedural report from below.

The saga did not stop at the District manager level, but went all the way up to the Regional Manager. Having been carried away and having endorsed the recommendation to appoint the MEC of Education's wife instead of the Acting Principal, he, too, fell into the trap of conflict of interest. He, too, used the explanation of the CV and personal knowledge of the candidate he recommended for appointment to justify his decision.

A subsequent investigation established that some officials had acted under undue pressure exerted on them directly or indirectly by the MEC. Worse still,

in their zeal to support their favourite candidate, the officials went to great lengths to discredit the Acting Principal on suspicions and unverified facts. They also used the argument of the need “to redress gender imbalance” of which the Department did not have any instructions in the form of an Employment Equity Plan.

Curiously, Circular 53 of 2000 was issued on the 21st of August 2000 to inform and address gender balances in promotion of posts in schools, on the same date a School Governing Board (SGB) meeting was called by Management at Charles Mathonsi Secondary School “to persuade the SGB to change their recommendations from appointing the Acting Principal to the position of the principal and replace him with the alternative, MEC of Education’s wife to the principal post”. The circular was more than a letter to address gender imbalances for it also referred to other issues that might have been happening at the school. The issuance of the circular on gender balance at the time of swaying and short-changing the decision of the SGB to ultimately appoint the very MEC’s wife remains questionable, and cannot be acceptably construed as sheer coincidence.

It is noteworthy to recall the outcome of a court case involving the implementation of measures promoting gender or demographic representation. In the case of Public Servants’ Association of South Africa versus the Department of Justice (case No. 23975/95), the High Court, *inter alia*, ruled that the Department of Justice could not implement any policy and measures thereof relating to the filling in of posts in order to promote representation unless such

policy and measures had been negotiated and agreed upon. The Department clearly did not have a negotiated Employment Equity Plan in terms of which it could have enforced the appointment of women to specific positions. The same could be said of the SGB's recommendation to be short-changed in favour of the MEC of Education's wife on the ground of ensuring gender balance. The MEC's pressure to obtain his wife's appointment provoked controversy countrywide. Only after pressure by the South African Democratic Teachers Union (SADTU) to have the allegation of conflict of interest investigated was the Acting Principal appointed to the post of Principal and officially assumed his duties on 22 November 2000.

In the light of the forgoing episode presented, it becomes apparent that the issue of conflict of interest is very prominent, for it brought to light, three public administration aspects; governance, accountability and legality in this context as follows:

- i. The governance and accountability loopholes are spelt out in the sense that the issue of the governance is compromised in this episode especially when the then MEC abused his powers to exert pressure over the administration to make the appointment of his wife acceptable, even when merit principles, let alone the educators legislation, policies and practices dictate otherwise. The grey area between politics and administration discovered by the conventional theorists, one of which being Woodrow Wilson, is still a problem [a haven for potential conflict of interest] in to-days public administration.

- ii. The case also brings into play, institutional instruments to challenge unethical practice, conflict of interest for example. The legality and accountability of the then MEC was brought to a resilient test when the trade union demanded investigation for such appointment of the then MEC's wife. Suppose SADTU was silent on this matter, the issue of the conflict of interest at hand would have been surfaced.
- iii. This episode therefore calls for individuals and bodies within and without the government system to blow the whistle when there are suspicious cases of conflict of interest. The intervention of the Public Service Commission also shows its commitment to enhance ethics and professionalism in the public service. However, the PSC's report's silence about the punitive measures positioned against the very MEC who was found to have been a culprit in this matter raises eyebrows.
- iv. Finally, the case obviously shows how the very Constitution of the country was ignored particularly chapter ten, sec. 195, and this is uncalled for, as the Constitution is widely known to be the supreme law of the country, and whoever is found to have infringed it, including the state president himself is expected to be brought to book.

(b) Who else could refuse a donation of three high volume digital printers, folders and 1300 photocopiers worth R29 million? [*Unless otherwise acknowledged, the data were extracted from Public Service Commission, 2001: 110*]

Section 21.2 of the Treasury Regulations states “the Accounting officer may approve the acceptance of any gift, donation, or sponsorship to the state whether such gift, sponsorship, or donation is in cash or kind”.

The gazetted notice made by the former Minister of Education, Professor S.M.E Bhengu published in the Government Gazette, 9 July 1999 given in terms of Section 7 of the National Education Policy Act, 1996 (Act 26 of 1996) deals with typing, editing and printing of examination question papers. In terms of paragraph C of the Notice,

Where examining bodies choose to use external agencies for the purpose of printing, the agency concerned should be fully investigated by the examining body to ensure strict security measures and good quality printing service. Examining bodies were however encouraged to move away from the use of external printers and seek to build capacity in the province.

Departing from this premise, the gazetted notice strengthened the offer made by a data company to donate three high volume digital printers, folders and 1300

photocopiers to the Department of Education in the Limpopo Province. The letter from the data company offering a donation to the Department of Education in the Province was dated 1 March 2000. The letter specifies that the offer was valid for ten days only, subject to the following conditions: -

Copiers for schools @ R5, 40c per copy for,

School A

- i. Volume of 10 000 copies per month, Data Company 5815 copier,
- ii. Cost per image @ R5, 40c per copy and all copies at R5, 40c per copy,
- iii. Minimum of 10 000 copies per month with an agreement of 5years,
- iv. Subject to a maximum escalation of 10% per annum.

School B

- i. Volume of 25 000 copies per month, Data Company 5824 copier,
- ii. Cost per image @ R5, 40c per copy,
- iii. Minimum of 25 000 copies per month with an agreement of 5years,
- iv. Subject to a maximum escalation of 10% per annum,
- v. Offer only valid for ten days.

The dealer from the data company confirmed on 28 March 2000 that the value of the donation was R29 million and further that ownership would only be transferred once the five-year cost per copy agreement has been completed. The Finance & Procurement Directorate raised concern about the strings attached to the donation.

After a lot of discussion and exchange of memos, the deal collapsed, when the donation turned out to be a scam. Before the Head of Department (HOD) could respond to the acceptance of the donation, he requested that the matter must first be investigated. The HOD revealed that there was a friendship between the former MEC and data company dealer, which could be construed as a potential case of conflict of interest. The letter to the HOD confirmed the suspected friendship between the data company owner and the MEC of Education. Further proof of this connection came in the form of the following invitation from the Data Company that the HOD eventually handed over to the Public Service Commission:

Data Company cordially invites...(name of invitee) to enjoy a relaxing and entertainment afternoon with Commission Data Company and former MEC of Education to ensure that your institution reaps the full benefits of what the Data Company has to offer. The other side of the invitation reads as follows: The Education has given rise to a new world...where all rules have changed, where knowledge is the key..."

The finding of the Commission was that the former MEC and the company involved in the deal had put so much pressure on the officials that they ended up recommending to the HOD approval of the donation. However, notwithstanding the recommendation, the HOD declined the "donation" that he saw as a normal lease and marketing ploy. Surprisingly, the company had pursued the offer of the donation for more than six months contrary to the initial terms of ten days only.

In the end, it was found from evidence produced by the Examination Section that the company had actually pursued the matter for over 22 months.

In strengthening the issue of politics and administration interface problem brought to light in this episode, too much politicization and any disharmony between the two top offices in a department could be harmful, especially when the political boss on his/her HOD exerts undue pressure. The disagreement leading to the lack of effective service delivery is the very squabble in Limpopo between the MEC of Education and his HOD. The resistance by the HOD to the pressure by his MEC resulted in his suspension. Eventually, thanks to the intervention by the Premier the suspension was lifted and a cabinet reshuffle saw the MEC moved to another post. The whole saga only brought about an unhealthy environment, duress, morass and stress, all of which affected service delivery, and confirms the maxim that “when two elephants fight, the grass suffers in the long run”.

In the final analysis the aforesaid episode recalled politics and administration debate into picture. The public administration issues raised in the episode are demonstrably understood to be ruining the relationship between politics and administration to a great extent as follows:

- i. It clearly illustrates government officials’ proclivity to benefit from their positions by confusing their personal interest for the business *persona*, a coalition that amounts to conflict of interest. It is unfortunate that politicians

go to great lengths to exert pressure on functionaries to get them to do their “dirty job”. Nothing is spared, including threats that would make them fear losing their jobs if they do not tow the line with the politicians concerned. Administrative heads in particular are therefore in the firing line of their political hierarchy who in one way or the other ask them to either “shape up” or “ship out”. Experience suggests that only few stand on their ground in the face of such threats.

- ii. The Provincial Administrative Head (HOD) of Education in the above episode is one such exception for, in spite so much pressure from all quarters, he stood firm. His exception of not shipping out is obviously informed by being a seasoned Professor in Public Administration. However it does not take any administrator to become a professor first in order to stand firm on the ground, but it takes a person to understand the law, and know how it is applies and also the expertise and experience in public administration and management are a plus to survive as a tough and good administrator. Lastly,
- iii. In analysing the whole cabinet reshuffle process made by the former Premier to ease the tension between the political head and administrative head, one wonders whether reshuffles and redeployments of members of the cabinet to save them from their troubles is an acceptable way of balancing accountability and responsibility between political heads and administrative heads of government and of resolving conflict of interest situations. It seems to be a

case of a wrong to right a wrong. The net effect is that such action only makes the interface of politics and administration difficult

(c) Fencing of 162 School Projects without the necessary budget in the Department of Education [*Unless otherwise acknowledged, the data were extracted from Public Service Commission, 2001: 120-123*]

In terms of section 64(1) of the Public Financial Management Act, 1999 (Act no.1 of 1999) “...any directive by an executive authority of a department to the Accounting Officer (AO) of the department must be in writing”.

Accompanying this act follows Tender Board Act, 1994 (Act no. 2 of 1994), which states “The Tender Board can grant general tender to any supplier of goods or services”. The agreement that is entered into in this respect constitutes a binding contract, which does not in any way force the departments to issue an order for the delivery or supply of such goods or services supplied by the company that has been granted the tender; as the contract clearly stipulates that no delivery could be made until an official order is received from the department concerned.

Given this regulatory framework in 1999, the Department of Education identified about 162 schools that needed to be fenced. The project of fencing the schools was included in the business plan of the Department of Education. However, after budget allocations, the responsible directorate had to revise its business plan and cut out some of the projects, as there were insufficient funds in the

budget. In terms of priorities, the project of fencing the schools was one of the capital expenditure excluded from the business plan. Consequently, no order for fencing materials could be placed with any supplier. Information received was that this had been the position for the previous two years. Priority was given to the building of classrooms instead of fencing the schools. The following case is an example of conflict of interest involving tendering for provincial government public works.

In terms of Tender Board Act, No 2 of 1994, and a General Tender No. GCNP 21/98 was granted to a particular X Construction CC for the supply and delivery of fencing material to all Provincial Departments. However, in terms of the same act, there was a letter advising X Construction of the tender award condition stipulating, “... No delivery must be made until an official order is received from the Department concerned”. Since then, to this date, the Department did not issue any order for the purchasing of fences to the said company.

As this extract shows, there had not been any official order issued to concretise the purchase and supply of fencing materials. The consultant of X Construction CC took up the matter with the then MEC of Education explaining that he had a tender with the Department of Public Works. Apparently, his company did not receive any orders from the Department of Education. In his letter dated 25th January 2000, the concerned consultant requested the department to issue him with an order of R2million. The HOD of Education confirmed that the then MEC

had requested him to issue the concerned consultant with an order for purchasing fencing materials. However, as he also confirmed, he explained to the then MEC that the Department of Education had been operating under budget constraints. The then MEC therefore requested that the concerned consultant should be issued with the order against the following year's budget, as according to him, the concerned consultant had already incurred expenses. However, there was no proof established about the expenses allegedly incurred by the consultant. Nevertheless, the HOD requested the then MEC to put in writing his instructions for an order against the following year's budget, a request that the then MEC turned down. As a result, the HOD refused to issue an order to the consultant in question.

It appears clearly that the then MEC was engaging in some form of arm-twisting in favour of a consultant from whom he may have had or was expecting something in return. Although the case was put to rest without incurring any expenditure, there was a general concern from officials about poor communication between the said MEC and the HOD. The officials also complained about the said MEC's tendency to disregard proper channels of communication, which resulted in what they referred to as "parallel administration". This, according to concerned officials, was very problematic for the administration of the department to function properly, for it resulted in confusion and frustration among officials, thus hampering service delivery. Had the HOD played the MEC's game, the rule of law would have been compromised.

In the final analysis, this episode brought on the surface, the whole crucial issue of political interference in public administration in respect to procurement and contract administration. This issue of politics/administration dichotomy, since Woodrow Wilson conventional era, still remains a grey area in today's contemporary public administration. The resolve of it is still wanting, and should that be the case to afford to solve it, could be an excellent contribution in the field of public administration. The case also brought in the open, rational decision making to a test:

- i. It is a common knowledge that politicians have a tendency of interfering in the administration of government departments, laying their hands where material benefits are, especially in the tender projects, hence great challenge to overcome conflict of interest.
- ii. On the other hand, although the tender condition spelled out that "... No delivery must be made until an official order is received from the Department concerned" was issued to ensure financial control in tendering, however, in this case, the tender condition appears to punish the service provider, if in case it is not abused because awarding of the contract automatically raised potential expectations to the consultant to provide service to the Provincial Department of Education. Why such a fuss not to issue the official order to the service provider who has won the tender that there are financial constraints to that effect. There are two issues in the argument. Why issue a tender knowingly (1) or unknowingly (2) that there are financial constraints. This

implies that there is poor administration of the finances vis-à-vis tender projects in the department. Lastly,

- iii. The episode shows that beside the political interference in the affairs of administration by the political head, the administrative head in spite of his seasoned professorial experience in public administration cannot be spared from accounting for poor financial administration and loopholes in respect of this episode, which is rooted on procurement and contract administration.

From the three episodes (a, b, c) referred to, one golden thread which run through, is especially regarding the conduct of the former MEC of Education, it is noteworthy to cast in brief, his political career. The MEC of Education in question had originally been MEC of Finance and Expenditure from 1994. According to the interview with the Management Support Manager in the Department of Finance and Economic Development (2003, See Appendix IV) the MEC of Education created the Tender Board structure in terms of the legislation, but appointed a chairperson and a secretary who were close to him without declaring the interest as required by the law. Unscrupulous tender practices took place out of collusive practices between the MEC in question and the Tender Board.

As a result, he was later moved to the Department of Local Government and Housing as a way of easing tension and controversy around him. Unfortunately, here, too, before long, he was embroiled in some controversy: an internal audit unearthed irregularities regarding collusion in housing tenders with the

developers. The development of one of the suburbs in Polokwane is a case in point. This development project was stopped when it was decided that monies paid to the developer should be recovered after it had been found that the MEC had colluded with a developer without following the necessary procedures of the Housing Board. Another case is that of a payment made to constructors through the arrangement of the MEC in question for houses that were never built (Interview with Management Support in the Department of Finance and Economic Development, 2003, See Appendix IV). Surprisingly, the said MEC was summarily shifted again, this time to the Department of Education where he was implicated in many scandals. The three (a, b and c) cases spelled out above bear material evidence.

Given this backdrop, the provincial government can be blamed for complicity because it failed to learn from previous irregularities in which the controversial MEC had been involved. Instead, after several scandals and redeployments, he was later appointed Chief Executive Officer (CEO) of the Limpopo Tourism and Parks Board, a parastatal of the Department of Finance and Economic Development, from which he was finally axed after another high-profile scandal. Oppositional parties and members of the public could not understand why the MEC in question was appointed in this high-profile position in the first place given his chequered record. According to Smit (2003:1), the said MEC “has a spectacular career of literally destroying Government departments and the good of the public”.

Prior to his appointment as CEO, it is claimed that the Tourism and Parks Board was functioning without major problems. In the interview with the Management Support Manager in the Department of Finance and Economic Development (2003, See Appendix IV), it was revealed that the CEO in question was caught in a scandal of using hard cash to entertain potential tourists and high-profile politicians in government. Part of the hard cash in his possession was difficult to be accounted for. To transact government business with hard cash violates the general accounting principles contained in the Public Financial Management Act, 1999 (Act 1 of 1999).

He was also allegedly involved in a 4x4 Land Rover tendering scandal by approving a tender submitted by a garage dealer who did not have a garage in the first place, but decided to use his house to enter into transactions with the Tourism and Parks Board to supply vehicles to the Board. His malpractices both embarrassed the ruling party, of which he was a prominent member, and hampered the delivery of public services.

In the final analysis, conflict of interest not only has the potential to corrupt the mind of the perpetrator which ultimately may lead to his/her fall, but also damages the reputation of a government and/or a party when it fails to take firm decisions to remove corrupt officials. Attempts to move the controversial MEC from post to post had no other effect but have multiplying scandals over and over again. Conflict of interest is a chain, which keeps on extending until it affects the whole organization. Had the government become honest in dealing with the

unscrupulous officials, their political and professional careers would have been redeemed.

Besides, the controversial MEC-turned-CEO, several other cases of shifting the culprit to another position has been reported. For example, a CEO of a district municipality who allegedly could not account for the use of public funds, and was ultimately found guilty of the offence, was not punished. Instead, he was moved to the position of Project Manager of a Water Board in a district municipality (Interview with Ministerial Support Manager in the Office of the Premier (2003, See Appendix IV). Sadly, as was the case with the controversial MEC, the officer of the Water Board proved to be a recidivist. He was subsequently accused of eleven counts of financial misconduct at the Water Board and was eventually suspended from duties as of 18 September 2003. The tumult had been prompted on 3 June 2003 when an anonymous letter containing several allegations of conflict of interest against the Chairperson of the Board and his CEO was sent to the Minister of Water Affairs and Forestry (Smit, 2003:1, 3). Further details were revealed in a media focus group interview (SABC Radios Focus Group Interview, 2003) on the anonymous letter and the suspension of the Project Manager. The CEO of the Water Board claimed that after the appointment of the Project Manager in March 2002, trouble started to brew in the organisation and relationships became strained in December of the same year when he was asked questions on his alleged misconduct to which he did not give satisfactory answers. To break the deadlock and clarify matters, mechanisms were attempted

in-house, but failed. This left Management with no option but to order the Project Manager's suspension on 18 September 2003.

The practice of shifting officials, assumed to be a deviation of public attention away from the government, is also replicated in Mpumalanga Province. One well-known case is that of an MEC who was moved from one provincial department to another after having been allegedly involved in a scandal. Yet, one opposition party and the media insistently denounced her move to another department as being utterly inappropriate because her responsibility in the poor service delivery of hospital and clinical services as a result of gross violation of tender and financial controls in which she had been implicated. Her move to another department was no more than a way of shielding her incompetence and corrupt practices. The reshuffle was seen more a political game by the premier than a rational act with good intentions, some sort of recompense for the major role in politics she had played.

It may be argued that political games by the ruling party undermine democracy in the sense that they intentionally blur the real problem of scandals by shielding the culprits from public scrutiny. Politicians outside the ruling party share this argument. A Member of a Provincial Legislature (MPL) and Standing Committee on Public Account (SCOPA) emphasizes, in an interview (Interview with MPL, and SCOPA Member, 2003, See Appendix IV) political patronage, bias, and lack of transparency. Cases of conflict of interest are seldom dealt with in the open. Instead, they are dealt with within the ruling party circle and in secrecy. The

public would have liked to see such cases, irrespective of the political affiliation of the accused, dealt with in the open.

4.2.4 Episode Four: The Implementation of Hospital Information System (HIS) in the Limpopo Province, Department of Health and Welfare, for R116 million *[unless otherwise acknowledged, the data were extracted from report to the former MEC of Health and Welfare coming from the panel appointed to appraise the implementation of HIS in the Province, 2001:1-55]*

South Africa had an opportunity with the advent of the new dispensation in 1994 to develop a National Health Information System (NHIS/SA) from scratch. The process meant to benefit the country with the latest methodologies and technologies to overcome pitfalls that often led to costly, ineffective and incompatible tools and systems in this sector. As a result, the NHIS/SA Committee was created in August 1994 to conceive and design a comprehensive Health Information System (HIS) of South Africa and to implement it in stages. HIS would primarily be designed for the management of the national health care services and facilities at the district, provincial and national levels. There are some standards drawn to inform the establishment of HIS in the provinces.

In tendering, Limpopo Province was informed by its Provincial Tender Board, established in terms of the Northern Tender Board Act, 1994 which has the sole power to procure supplies and services for the Province, subject to the provisos of any Act of the provincial legislature, to arrange the hiring or letting of anything,

or the acquisition or granting of any right for or on behalf of the Province, and to dispose of movable provincial property, etc. The Department of Health and Welfare (DHW) was expected to abide by this stipulation including the Public Financial Management Act, 1999 (Act No.1 of 1999).

The DHW granted a tender with reference NTP4022, to X Company to carry on with the work in 23 Hospitals for a total value of R117, 7million. The total balance paid in March 2000 was R94.9m. In September 2000, the total paid was R99.6 million. There was thus a positive balance of R18.1million on the original contract value. The Provincial Tender Board approved a Business Partner to be subcontracted by X Company in the project so that they should be empowered in the process and enjoy a transfer of skills from X Company. Unfortunately, there was no policy in place to regulate the relationship between the said Business Partner and X Company.

In the process, there was transition of DHW management, wherein the then Superintendent General (SG) resigned, and the then Project Sponsor was promoted to a post in another provincial department; as a result, a new management had to be put in place, which short changed the whole tender arrangements. A new government official was appointed to serve as the new SG, whilst a medical doctor was transferred to take up the vacant post of Project Sponsor. It is reported that the New SG sidelined the existing Project Steering Committee and appointed a new Steering Committee composed of different

people of less expertise led by the new incumbent, Director for Policy and Planning. This brought turmoil to the department.

In addition, the X Company was at some stage requested to give a quotation to implement the system in the remaining 17 hospitals. The X Company gave three different quotations on three successive occasions, which had a wide variance from R52 million, R42 million, and then R29.9 million. Assuming that at this stage the X Company would have known the environment back and forth and should have been in the best position to quote accurately, the inconsistency in quoting for the completion of the project referred to those variant figures resulted in a break of trust between the DHW and the X Company. Remarkably, this led to the DHW calling for another tender.

Given this situation, the new SG and his officials instructed the X Company to hand over all activities of the project on 29 September 2000 to Y Company which had been awarded a tender (NTP7479) to take over the management of Welfare and Health Information Technology Operation Centre (WHITOC), a day before the Y Company could take over on the 30 September 2000. It remains an open secret that Y Company was privy to all the processes beforehand of the short notice within which they were able to take over a project of this magnitude. The dereliction of duty should be blamed squarely on the new SG and his officials that he had appointed to manage this project.

The material evidences of conflict of interest in the whole scheme began to appear. The following findings were unearthed and levelled against Y Company tender process:

- i. The evaluation criteria were supposed to have been determined before the tenders were received, and be opened up to avoid bias. This was not the case here because material evidence shows that the evaluation criteria were determined after the tenders had been received. The probabilities are that such criteria could have been determined after the tenders were opened and inspected,
- ii. The weights put on the evaluation criteria were determined in the course of evaluation session, inviting bias and abuse. There was no scoring of points on the observation during the site visits. A discussion prevailed to arrive at a consensus instead.
- iii. The meeting for selecting the potential tender was chaired by the new SG vis-à-vis the normal tender policy and practice.
- iv. To sum it all, the Tender board sent out requests for clarification on the tender responses to all short listed companies on the 2 October 2000. It is noteworthy to see the Y Company being instructed by the DHW to forward their reply which it did on the 30th September 2000 direct to them and not to the Tender board which made such a request on the 29

September 2000, which obviously is a date before the Tender board could send out the invitations.

In addition, it was pointed out by one of the witnesses of this investigation that someone, the wife of the Director for Finance and Administration, was an employee of the Business Partner of the Y Company. This relationship was questionable when it was found that Y Company had over-invoiced the DHW by about R30.000. Surprisingly, the new Project Sponsor had endorsed the invoice on the same day. An order for that service was printed on 20 December 2000 and was signed by the Director for Finance and Administration, who under normal circumstances, should have checked with the Departmental Manager of WHITOC about whether the service rendered was certified to have satisfied the DHW. The Business partner of Y Company where the wife of the Director for Finance and Administration was employed and Investments Company appear on some of the Y Company invoices. The question, which remains unanswered, is: Were these mysterious structures meant to launder the funds from DHW to individuals for personal gains?

More questions need to be asked about the financial management of the tender. From September 2000, the project was supposed to run for a period of five years on the projected cost of R94 million. The invoices from Y Company submitted to DHW show that the DHW already paid almost R50 million to Y Company. The question is: How was the DHW going to survive the remaining period of four

years if they had already spent almost half of the R94 million on the budget in the first year of the five-year cycle?

In view of this discrepancy in the amounts paid in the first year and the remainder to be disbursed for the next four years, among other recommendations, the MEC of DHW was advised to consider putting the entire project on hold, to stop payment and further consider a possible recovery of the amounts paid after seeking legal advice from the Provincial Legal Services and the State Attorney. However, it remained unclear what benefit this action would bring, or alternatively carry on with the project, at the time when the DHW had already lost 149,6 million to X and Y Companies [99,6million from X and R50million from Y Companies). The department reaped the whirlwind in this case and therefore failed to accomplish its desired objectives ahead of other provinces in a spell of one year as it anticipated. The whole tender scam smacks of conflict of interest, which, undoubtedly, contributes to poor service delivery in the DHW. This conflict of interest is particularly cynical because it occurs at the expense of many lives put at risk in under-resourced hospitals and clinics.

In short, it now becomes apparent that before the acts of corruption could take place, vested interests arose first when a new Superintendent General (SG) was appointed. It becomes obvious that the New SG sidelined the existing Project Steering Committee and appointed a new Steering Committee composed of different people with less expertise led by the new incumbent, Director for Policy and Planning. This uncalled for appointment brought up turmoil in the

Department of Health and Welfare and ultimately led to the unprincipled termination of the contract with X Company in favour of Y Company. Evidence shows that the said SG and his team came into conflict with public interest and that Y Company was privy to all the processes, which led to its subcontract with the Department. There was also duplicity involved in the whole scheme because evidence shows that the wife of the Director for Finance and Administration was an employee of Business Partners to Y Company.

In the final analysis, the episode mooted critical issues of importance in procurement and contract administration, a modern unique field of public administration, which is busy gaining popularity due to scams of huge magnitudes in the country.

- i. There are fundamental flaws in the tender policies and specifications and also how such policies are applied do attract potential conflict of interest.
- ii. Whilst the government encourages public private partnerships in the delivery of services, it leaves much to be desired because it is a known fact the private sector contributes in most cases to this conflict of interest pandemic. The business connections in most cases are collusive and become raw hot deals because the decisions concluded often goes into what we call it “ a black box”, defeating the very transparency principle in section 195 of chapter 10 of the Constitution

of the Republic of South Africa, 1996 (Act 108 of 1996), spelling out public administration.

- iii. The fact that The Business partner of Y Company where the wife of the Provincial Director for Finance and Administration was employed leaves much to be desired about declaration of interest. The current declaration of interest in the Ministerial Hand Book informed by the Executive Members' Ethics Act, 1988 is limited to the politicians in government, but this limitation is a loophole in itself, because even the administrator or anyone in the employ of government is collusive and vulnerable to conflict of interest, and the declaration of interest should therefore cascade to all levels of administration and management.
- iv. Apart from extending the declaration of interest to all levels of administration and management the whole legislation and policies on procurement and contract administration, now called supply chain management in the modern expression, should be revisited to close all the loopholes indefinitely.

4.2.5 Episode Five: Fronting of X Construction (CK 2001/003773/23) African Shareholder vis-à-vis White Counterpart Shareholder *[Unless otherwise stated, the data was drawn from the affidavit, correspondences and interviews]*

The Preferential Treatment Policy Framework Act 2000 (Act No.5 of 2000) supports the awarding of tenders to Previously Disadvantaged Individuals (PDIs). PDIs are defined in the context of the said legislation as persons who did not have the right to vote prior to 1994. However, white counterparts have used loopholes, especially “fronting” (i.e. use of an African “business partner” as a front), to benefit excessively from tenders. Fronting is a new concept encrypted in the mainstream public and business sector wherein white consultants establish and register companies using untrained African fellows to attract and win tenders of huge capital for their selfish advantage. A business, X Construction referred to here, is a case in point. Its unscrupulous activities frustrate the birth and the intentions of the Preferential Treatment Policy Framework Act, 2000 (Act No.5 of 2000) and associated regulations

In terms of the CK 2001/003773/23 and the letter dated 17 May 2002, the said Construction was established on the 17 January 2001. An African employee of X Construction who served as a bricklayer was roped in when the Y Construction was initiated. In the said Y Construction, he now was serving as the “foreman” of the project, with an entitlement of 80% of the interest in the whole business dealings. Surprisingly, however, although the African shareholder was allegedly a

potential owner of the business, according to the business profile, he was not empowered to sign some contract documents for the tenders.

In one of the projects, the list of personnel, which was supplied to the Waterberg District Municipality, sheds more light on the composition of the business stakeholders' credentials structured as follows:

Table 4.6: Business Membership

Race, Gender & Status	Position	Shares in %
White Woman (Mrs)	Administration Clerk	20
White man (Mr)	Project Manager	0
White man (Mr)	Foreman & Trainer	0
African man (Mr)	Foreman	80

According to this profile, the African shareholder, with no working experience and under training on how to manage and regulate projects, handled site-works, including placing orders, employing workers and handling site meetings. In contrast, the Administration Clerk, a white woman, with twelve years of working experience in bookkeeping and accounting, was engaged in administration work of paying accounts, orders, VAT, and balancing of bank statements.

An Affidavit (2001), prepared and signed by the African shareholder on 11 December 2001, confirms that the concerned part has confirmed to Fraud Awareness and Special Investigations that he took employment with Y

Construction on 25 January 2000 as a bricklayer, in agreement of a monthly salary of R1.500 topped up to R2000.00 until December 2002, although he did not formerly resign.

Given some developments, a joint venture agreement was struck between the African shareholder (80%) and a white counterpart (20%), wherein the African shareholder was requested to suggest a brand for the business venture. Chukudu, referred to as elephant and Tau (referred to as a lion) Construction brands were proposed, and Chukudu was finally preferred, and in January 2001, the joint venture was registered, under CK 2001/003773/23. There was no agreement on who should be the major shareholder of the X Construction and on what basis. However, logic dictates that the African shareholder having majority share of 80% of the business, he should be the key person in commanding authority in the pronouncements and operations of the business. Surprisingly, in terms of the Affidavit (2001) the Y Construction began tendering for contracts with Limpopo Government Departments where in most cases the white shareholder requested the African shareholder, the potential owner of the business, to submit tender documents to the Tender Board. However no discussions or rather information pertaining to tender prices and specifications were disclosed to the concerned African shareholder at any given stage. His shareholding of 80% over the white counterpart of 20% seems to exist on dead letter.

It is worth to note that the chequebook was never in possession of the African shareholder. The way the business account was opened with commercial bank

should have raised eyebrows. According to a follow-up interview with the African shareholder (See Appendix IV), he was supposed to understand and instruct all transactions but he did not have any idea about the account. He was only called to sign certain bank documents surreptitiously. Although he signed the bank document authorized on 21 November 2001 no prior arrangements with him had been in place for opening the account.

To put it bluntly, this series of injudicious arrangements suggests the African shareholder had his arms twisted, his poor literacy and business having been taken advantage of. The African shareholder reiterated during the interview that he did not have the chequebook in his possession and that he did not receive bank statements of all the projects.

Three tenders awarded to Y Construction further elucidate the manipulative conduct of the white partner:

- i. Y Construction was awarded by a university in the province a contract to construct a new conference room on the main campus and won the first milestone tender of R91 526.62. The African shareholder was not aware of the tender won by his business. He was given a plan detailing the project, but no tender amount was disclosed to him. He knew about the price of the tender at a time when his business was requested to commence with the last project in (iii) below at Waterberg Municipality District in June 2002. As a

potential owner of the business, doing site-work and construction for the said university, the African shareholder was only given R500.00 wages in cash for the whole project that had cost R91 526.62. He was also told that another R500.00 was used to buy him a bicycle, although that was without his permission. To the date of the Affidavit (2001) in December 2001, he was not shown the amount and balance of the tender and the operating expenses of the project but only told verbally that a lot of money was used to cover the operating expenses of the business.

- ii. In a second project, the same practice occurred, wherein the concerned African shareholder was not informed about his major business transactions. A milestone tender, Contract/Tender No. 2001/130 WCS 029023 for the local Magistrate Court was issued to Y Construction for R374 517.47, a figure that was not disclosed to the African shareholder beforehand, but only during his involvement with the project. In a follow-up interview dated 28/04/03 (See Appendix IV), the African shareholder confirmed that out of the whole project of R374 517.47, he was only paid R5 000, put on record as a bonus from the same Y Construction.
- iii. The third and last project, according to interview with the African shareholder on the 16 April 2003 at 13h30 in Polokwane (See Appendix IV), was the construction of Waterberg District Municipal

buildings in June 2002 whose tender amounted to R3 976 890-00 was won by Y Construction. As was usual practice, the African shareholder was neither informed about the tender nor the amount. In a follow-up interview dated 28/04/03, the African shareholder said that when the paperwork for the project was in progress, he was requested to sign the reference document of Y Construction only to find out after a long time during the investigation that the document had a covering letter subsequently attached without his knowledge. This implies that he signed incomplete document under wrong impressions. In essence, the African shareholder knew nothing about Y Construction's technical accounting operations and bookkeeping. He attended only three site meetings and failed to attend other meetings because he was deliberately shifted away from the whole R3million project to engage in other activities in another region.

Actually, his attention was calculatedly deviated in a ploy strategically played by Y Company. "The R3million project was completed in March 2003 and building was opened for use in April 2003", reported the African shareholder. Of note, he was not given a single payment for the work he did on the project (See Appendix IV). It is at this stage in 2003, after realising that he played too much in the game of the white counterpart that he decided to take the matter up with his lawyer for recourse. In the process of taking the matter to court by his lawyer, an out-of-court settlement was entered into. As a result, the

African shareholder received R30, 000 proceeds of the three projects mentioned earlier. Although his lawyers wanted to close the case, the African shareholder still feels that the R30 000 awarded to him was too little. His strong argument is based on the R3million project, which was completed in 2003 and his status as a potential owner of the business (Last follow up interview with the concerned African shareholder, See Appendix IV).

In the final analysis, in a way to understand this episode in depth, one has to look at the whole issue of procurement and administration again. In actual fact, public private partnerships (PPP) seem to attract potential conflict of interest in public administration, and this is a burden to the government institutions. In analysing the case in context, the following issues affect or rather have an impact to public administration:

- i. It is clear that the white counterpart did not give a fair deal to his African partner but instead abused Previously Disadvantaged Individuals (PDI) tender documents and policies to conduct business with the government. This is but one episode out of the many fronting scams.
- ii. Furthermore, the white counterpart took advantage of unchecked opportunities, including porosity of the provincial tender system and administration, to unscrupulously exploit the public purse through fronting.

- iii. On the other hand, the government has to account also and cannot therefore not exonerated from the whole conflict of interest' scheme because, in one way or another, it contributed to this unscrupulous conduct. It may even be suggested that there was tacit participation of government officials who should have easily seen, through close scrutiny of the documentation of the Y construction, that that was a case of fronting. One therefore is tempted to infer that the government, and whoever was involved in awarding tenders to this bogus fronting scheme, also deserves blame for the mess. One wonders how many more tenders of this nature may have contributed to the mass of conflict of interest.
- iv. In fact, the whole issue of governance in procurement and contract is questionable, and continues to remain a hot spot area of conflict of interest to thrive in the government institutions.
- v. This episode also emphatically calls for the government to tighten up loose ends of governance in procurement and contract administration, which now turned to be a haven of potential conflict of interest mercilessly ruining the public purse in huge chunks of million of money, and this must to stop indefinitely.

4.3 Reflections of Mpumalanga and Eastern Cape Provincial Governments Case Studies

Having discussed six solid episodes of conflict of interest in Limpopo Province, some of which touch upon and extend to Mpumalanga and Eastern Cape Provinces under study, it is therefore useful to have comparative perspective [of similar cases] in Mpumalanga and Eastern Cape Provinces:

4.3.1 Brief Case Study of Mpumalanga Provincial Government

This section start with Mpumalanga Province's allegations of conflict of interest, mismanagement, fraud and corruption episodes reported in Amnesty International Corruption Reports (2000:23), TAC (2002) and Mpumalanga Ten Year Report (Undated: 19) amongst others:

A team from the Investigative Directorate unearthed crime fraud probe into the R1.3billion promissory note scandal in Mpumalanga Parks Board (MPB) for Serious Offences (IDSEO). It is assumed that the promissory notes were secretly issued to financial brokers in return for massive offshore loans wherein neither Treasury nor Reserve Bank approval was obtained for the deals. The promissory note scandal is linked to a probe into network of front companies allegedly used to defraud the state of at least R1.7million, channelling it out to Members of Provincial Parliament of a particular political party.

On the other hand, allegations of irregularities and corruption were levelled against the Provincial Department of Health. A Health MEC was alleged to have implicated the department into irregularities after which the controversial MEC was redeployed by the Premier to another provincial department following damning results of a forensic audit which pointed to a sombre mismanagement in the department. It is claimed that the government is only prepared to say the least that the audit reports indicate questions of mismanagement and serious negligence in the supply of medical equipment and spending of the HIV/Aids budget. It was also found that the department in question did not have a functioning organizational structure. It was reported that in 2002 the same Department of Health was a shameful blight on the governance and public health service.

The other episode is that of the Provincial Deputy Speaker and three senior officials in the Legislature who were alleged to have systematically siphoned money out of the legislature by submitting invoices for non-existent projects. Although the four officials admitted in court affidavits that they received roughly US\$140 000, they insisted that they were entitled to the money. However, at the end, they were finally fired from the government and arrested on 36 counts of theft and fraud charges for US\$138 456 of state funds irregularly diverted to secret bank accounts, operated in the name of the Deputy Speaker.

In Mpumalanga Province, a total of 1 375 incidents of unethical practices were reported by whistleblowers. Some government officials were criminally charged,

while others were charged for unethical practice. Of the government officials who were charged, 144 were dismissed after disciplinary hearings. The report is silent about the rest who were charged, and this raises eyebrows, of what will happen to them in a long run.

In the final analysis according to observations made, whereas Mpumalanga Province has its share of notoriety for numerous cases of conflict of interest, the number of prosecuted government officials appears comparatively too small. This may simply mean that many unscrupulous officials were left off the hook. The perception that some people are untouchable “holy cows” by the judicial and non-judicial systems gains momentum, and is likely to weaken the existing public policy, governance, and accountability frameworks in provincial public administration.

4.3.2 Brief Case Study of Eastern Cape Provincial Government

In the Eastern Cape Province, too, acts of conflict of interest abound since the province’s inception in 1994 to the point that the Administration of the Province was more often than not under fire. Had it not been for the interventions by the National Government as provided for in the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Eastern Cape provincial government would have ground to a halt at some point in time. This bears material evidence that conflict of interest has ramifications, which, if left unattended, may lead to the collapse of an organization.

The Select Committee on Liaison with Provinces (SCOLP) attested to the deterioration of the Eastern Cape Government Administration when it intervened on the 22 September 1996 on a fact-finding mission. Upon the completion of the fact-finding mission, the SCOLP Report (1996:1-60) made it clear that the province was severely fraught with conflict of interest, which embraced theft, fraud, and corruption problems. Amongst other cited cases reported by SCOLP are:

- i. Supernumeraries or “ghosts” loaded in the Personnel Salary (PERSAL) system and general corruption within the public service. This includes a serious issue of pension and other grants being paid to deceased individuals and ghost schools. Notably, the present computer system is loaded with ghosts who receive salaries and are actually being promoted. Also, the ineffective computer system allows syndicates to defraud large amounts of money in the payments of social grants. So the Department of Health and Welfare, having a budget of R2, 6billion, leaves much to be desired, given cited few fraudulent cases.
- ii. The process of transformation and integration of the public service leading to corruption.
- iii. State Assets being obtained in a suspicious manner and accusations of maladministration are rife. This is exacerbated by the fact that no updated

register of government assets exists, which leads to corruption and looting. Surprisingly, it is reported that the last inventory of state assets was carried out in 1984, during the apartheid era. Also, financial controls in the form of bookkeeping and expenditure vouchers have not been updated since 1988. A cash flow problem and lack of electronic data systems add to this problem.

- iv. Allegations so prevalent about secret deals between the provincial government and the private companies.
- v. Problematic tender procedures creating the possibility of loopholes for corruption. This includes fraud, maladministration and tender procedures leading to problems with pension payouts.
- vi. Nutritional Feeding Schools Schemes at various schools linked to corruption, leaving either the Department of Education or Health and Welfare responsible.
- vii. Corruption in the form of petrol being stolen from state garages, thus leaving the Department of Transport accountable.
- viii. People from other provinces offered cheap plots along the coast, spoiling the natural beauty with inappropriate structures, are bribing traditional leaders in the Wild Coast area.

- ix. Allegations of conflict of interest by councillors paying themselves high salaries, car allowances and pension packages.

Some of the cases cited are somehow not exclusive to the years between 1994-1996 or between 1999-2000. The Eastern Cape Legislature's Annual Report (2003:14, 97) clearly shows that:

- i. The government social welfare policies are designed to ensure that citizens are cushioned from the effects of poverty and unemployment but the social welfare system is bedevilled by fraud and corruption and is generally not user-friendly especially for the aged and disabled.
- ii. It is said to report also that there were no audit queries received during the period under review, as the Office of the Auditor-General has not carried out the auditing in the said province.



The SCOLP Report (1996:16) evidently noticed that the Eastern Cape Province is suffering from a serious lack of effective management. No definite link exists between authority and responsibility, let alone accountability, which result in poor performance and service delivery. More harm than good is being caused by the appointment of people without necessary experience to posts, which require special qualification.

Besides the intervention mentioned in SCOLP report, the Interim Management Team (IMT), whose report was put together and published in 2003, made another. Given the background of chronic administration problems in the province, as various reports show, the intervention of the National Government was required, the problems of numerous cases of conflict of interest being so obvious in the province. This is as a result of the neglect of the rule of law and governance processes. The Interim Management Team (IMT) (2003) report confirms this. The lack of application of the rule of law and governance processes identified by IMT report resulted amongst others into:

- i. Lack of change in ethical conduct, change that is critical for turning around the departments;
- ii. No action being taken against any manager nor rectification of the problems being done, in spite of continuous audit disclaimers received by departments;
- iii. Limited follow-through action to the very many cases of corruption reported;
- iv. The excessive authority and power of the Tender Board that outweighs its level of accountability;

Six issues contained in the problem analysis matrix below account for problematic issues, which were raised earlier:

Matrix 4.1: Problem Analysis of Eastern Cape Province

PROBLEM ANALYSIS: GENERAL	
CURRENT STAKEHOLDER PERCEPTIONS	POSITIVE NEGATIVE
<input type="checkbox"/> Quality of leadership and management at departmental level?	<input type="checkbox"/> <input checked="" type="checkbox"/>
<input type="checkbox"/> Quality of human resource management practices?	<input type="checkbox"/> <input checked="" type="checkbox"/>
<input type="checkbox"/> Financial management and general administrative capacity?	<input type="checkbox"/> <input checked="" type="checkbox"/>
<input type="checkbox"/> Ability to uphold ethics and reduce corruption?	<input type="checkbox"/> <input checked="" type="checkbox"/>
<input type="checkbox"/> Reliability and dependability of public service to deliver on government priorities?	<input type="checkbox"/> <input checked="" type="checkbox"/>
<input type="checkbox"/> Overall effectiveness and efficiency of public service?	<input type="checkbox"/> <input checked="" type="checkbox"/>
	

Source: ITM (2003) Report on the work of the Interim Management Team, Eastern Cape, NCOP, 11 September.

In the final analysis of Eastern Cape Provincial Government, the province is very unique as compared to Limpopo Province and Mpumalanga conflict of interest' situation. The Eastern Cape Province is taking a lead in conflict of interest' issues, not in terms of the provinces under study, but the rest of the provinces in South Africa. It is in actual fact treading on dangerous zone in spite of the interventions

made by the National Government. Notably, the analysis dictates that if Province and Mpumalanga under study continue to harbor conflict of interest in respect of their issues raised in the previous respective episodes, they will surely utterly fall in the same manner as Eastern Cape Province. The reason to the fall is informed by the somber situation of conflict of interest in the Eastern Cape Government, which was left unattended to over a longer period of time since its establishment in 1996.

So, the Eastern Cape Province casts a sound warning bell to Limpopo Province, Mpumalanga and the remaining six provinces in South Africa in particular against conflict of interest duly informed by lack of strong governance, accountability, risk management policies, monitoring and evaluation and also performance management systems. The public administration issues raised are a golden thread cutting through the provinces under study influencing conflict of interest, and the thread should therefore be teased out without hesitation.

4.4 Conclusion

The data in this chapter were analysed using a triangulated method combining historical interpretation, case study techniques with a game theory wherein the cases cited were analysed checking on their trend to show how the rules of the game were manipulated to arrive at conflict of interest situations. Given the use of these techniques, it is worth mentioning to note that findings were arrived at on the three provinces under study. The case analysis culminates into a classified

casebook, thus also realizing the significance of the study pointed in Chapter Two.

Potential cases of conflict of interest found and analysed in this chapter explain to a large extent the failure by the three provincial governments under study to ensure strong public administration for effectual service delivery, because most of these cases involve huge financial expenditures. Although in other cases, it is difficult to determine precisely how much the government may have lost, one can surmise the loss in material resources spent attributed to time spent to dealing with the cases and their consequences, and loss of public trust.

One of the issues raised in the chapter has to do with transformational and restructuring processes within provincial departments. To this effect, a logical inference was drawn that it was a mistake for the province to focus too much on restructuring and transformation of the structures and systems while overlooking change of conduct, as has been the case since 1994. This oversight has been at the root of the persistent prevalence of conflict of interest. Closely linked to this is the issue of impunity. The provincial authorities have a propensity of protecting those close to them politically involved in conflict of interest' scandals. It must be pointed out that "race" was found to be irrelevant in the perpetration of conflict of interest. Conflict of interest should therefore be viewed in a holistic context.

In discussing some of the cases of conflict of interest in this chapter, mention was made of the implications of political pressure exerted on administrators of the departments by political bosses to fulfil private interests at the expense of public interest, which amounts to abuse of political power. Experience has shown that only a few stand their ground in the face of such pressure. The resilience of the HOD of Education in Limpopo stands out as an outstanding example for others to emulate. It may be stated here right away that the interface between politics and administration still accounts for many cases of conflict of interest, an immemorably unresolved grey area in the field of Public Administration.

One episode of conflict of interest in this study, namely the episode of company fronting, dismisses the myth that conflict of interest has some racial roots or explanation. There is a tendency to generalize from a few episodes and attribute cases of conflict of interest to African people and think that Whites are immune. The episode stated proves otherwise. It is, therefore, worth cautioning against generalisations and perceptions on conflict of interest that would be based on skin colour, race, creed, or country of origin, when are actually not true. The literature cited in chapter three supports this argument.

The Mpumalanga and Eastern Cape Provinces confirm the cases reported in Limpopo Province, for they also have their own ills of conflict of interest in one way or the other. The case of the sacked Deputy Speaker in Mpumalanga and that of former reshuffled MEC of Health to another department on counts of allegations are yet top range highlights of the problems pertaining to conflict of

interest. In the Eastern Cape Province, the allegations of the wife of the former Premier pertaining to tendering with the government is yet another case in point which fights Ministerial Hand Book and Executive Members' Ethics Act provisions on conflict of interest. The situations of conflict of interest cases in the three provinces under study are therefore comparable, and have one common golden thread in the main issues and aspects of Public administration being public policy, ethics and accountability, governance, performance and risk management.

To this end, after rolling out conflict of interest issues in the three provinces under study, it becomes crystal clear that the second objective of the study pointed in Chapter Two is achieved, for Chapter Three when read together with this chapter managed to isolate and unpack the root of conflict of interest vis-à-vis government performance and standards. This objective was achieved when the study critically responded to the research question posed in Chapter Two: "Why are some government officials more concerned about manipulating the system for their own advantage rather than meeting the obligations and expectations of their respective offices?" In other words, why do some government officials in South Africa put private interest first at the expense of their official duty to serve the public, despite the existing institutional and legislative framework to guard against conflict of interest?"

The chapter found three central foci of attraction accounting for conflict of interest' problems sprawled out in the respective provinces under study précised as follows:

- i. Greediness informed by bad conduct and immorality of mostly top brass politicians in government and government officials, thus affecting and permeating to the middle and supervisory echelons;
- ii. Poor governance, questionable accountability, and ill-defined risk management systems if any and;
- iii. Lack of coherent legislation on conflict of interest, for the chapter discovered fragmented pieces of legislations, which are not in harmony with each other in jurisprudential legal context when responding to conflict of interest' issues (e.g. *Public Service Act, 1994* (Proclamation 103 of 1994) and *Basic Conditions of Employment Act, 1997* (Act 75 of 1997, see Chapter Four for more details).

The study, therefore, notes the critical mass in several aspects of public administration namely governance, ethics and accountability, performance and risk management which continues to challenge the field of Public Administration in the context of conflict of interest.

To this end, the subsequent chapter provides an interpretation of the cases described and briefly analysed in this chapter, while Chapter Six offers possible conclusions and remedies to major cases of conflict of interest delineated in this study.

CHAPTER FIVE

INTERPRETATION OF SELECTED CASE STUDIES

OF CONFLICT OF INTEREST IN THE PUBLIC

SERVICE

5.1 Introduction

This chapter attempts to ensure that the analyses drawn previously are well interpreted to cover the objectives of the study. It sets out to prove or disprove the theoretical propositions postulated in Chapter Three. In approving or disproving the theoretical propositions, the chapter will, therefore, have contributed to the epistemology of the social sciences, particularly, the field of Public Administration and its branches. This is possible through the use of historical interpretation, which interrogates the selected cases of conflict of interest in the previous chapter.

There are three key critical issues of concern in public administration, a golden thread cutting across the previous chapters, which are left to a robust discussion. The three issues are isolated not as a replica, but as highlights of the whole study for they are the cause and effect of the previous chapters. They somehow account for the cases of conflict of interest referred to in the previous chapter. These key critical issues are:

- (a) Governance;
- (b) Ethics and Accountability;
- (c) Performance and Risk management.

The said issues are interwoven, but discussed separately for the easy flow of interpretation of critical issues of the study raised. They are interwoven indispensably into corporate governance framework, a framework, which is recommended in the next chapter of the study.

A historical interpretation of these three issues at the same time brings with it some new knowledge and spin-offs into the study. They are the paradigms of crafting the branches into the trunk. This affords the following chapter room for resolving problems of conflict of interest from this entry point.

Having said that, the end of the chapter concludes on the critical issues raised and poses a challenge for the provinces in particular and South Africa as a whole to respond strongly against the critical problems of conflict of interest, which are currently haunting the technological, political, economical and social fabric of the country in respond to public service delivery.

5.2 Cause and Effect of Critical Issues in Public Administration (Governance, Ethics and Accountability and Performance and Risk managements) for Consideration vis-à-vis Conflict of interest

5.2.1 Governance

Governance cannot be separated from the study of conflict of interest in a sense that the latter is informed by the former if it is weak.

Much as the country has drawn towards the third round of national democratic elections which took place on the 14 April 2004, political parties also took advantage of weak governance to discredit the existing government to score political points. This was a political strategy to persuade the public to vote for these parties. The manipulation of the public's mind is also some form of conflict of interest.

Allegedly, opposition parties who, rightly, denounce conflict of interest in government, unfortunately succumb to the temptation and become guilty of the same sin. One can infer that, conflict of interest, if left under this unobstructed situation; it then becomes perpetual and thus remains patrimonial venom. It is observed that from the apartheid government to this democratic government, conflict of interest surfaced and the current experience also has a characteristic of this patrimonial venom, which is likely to poison the very existence of this 2004-2009 democratic government.

There have been notable changes in the provinces under study, unfortunately marred by cases of conflict of interest. The government has so far been more reactive than proactive to conflict of interest' situations. Only when a case arises does the government take some trouble to sanction the perpetrators, often to the minimum. Therefore, conflict of interest compromises the long-term outcome of transformation and governance in the provinces. It can also be surmised that reactivity is more expensive than pro-activity, for prevention is better than cure. Illustrative of this fact is the situation that prevailed in the Eastern Cape Province, which required the intervention of the National Government to make the provincial government stronger to resist conflict of interest. This was due to weak governance.

Another point worth mentioning is the level of politicization at the top governance, for example between the offices of a Minister and of his/her Director General (DG), or those of an MEC and of his/her Deputy Director General (DDG), which could prove to be a strength or a weakness. Harmonious working relationships and less political interference are likely to lead to a positive policy direction and a successful policy implementation culminating into effective and efficient service delivery. Surely, when the top governance is strong and in agreement, the whole department will feel at ease. One case in point is the harmonious working relationships between the then Premier of Limpopo and his DG, which was found to have ensured a sense of maturity, purpose and initiative in policy direction and implementation.

In contrast, when the top governance does not share the same political affiliation or ideology, infighting occurs. Makobela (2003:11-12) cites the case of the Minister of Safety and Security and the National Commissioner of the South African Police Service (SAPS) who had divergent views on the restructuring of the police service. The Minister allegedly exerted pressure on the Police Commissioner to accelerate the implementation of affirmative action, which to the Minister, was a political imperative, whereas the Commissioner was reluctant to implement such a speedy transformation and even threatened to resign. Another well-known case opposed the then Minister of Home Affairs, leader of the Inkatha Freedom Party (IFP), and his DG, an ANC member. Their differences over Home Affairs issues always appeared to be a political squabble between the ANC and the IFP. Each side accused the other of serving its own political interests against those of the other party and of the public.

Against this background, it becomes apparent that governance is the primary issue in public administration, which leaves much to be desired in the provinces under study. For the provincial governments to succeed in ensuring effective service delivery, especially Eastern Cape Province, it needs strong governance to overcome abounding conflict of interest.

5.2.2 Ethics and Accountability

It is crucial to state forthrightly that ethics and accountability are important delicate issues in public administration, and if not handled properly, conflict of interest has a reason to attack the government mainstream.

Having said that, this chapter argues for or against some theoretical framework of the study in Chapter Three in respect of ethics and accountability. The theoretical proposition, “conflict of interest is one of the threads drawn from the mainstream of corruption” is not borne out by the findings in Chapter Four. Instead, the findings suggest that the opposite holds true. Conflict of interest is instead the mainstream whereas corruption is the thread. According to this interpretation, there ought to be a vested interest or a conflict first before corruption could take place. The Royal Mounted External Committee (1991) concurs that there has been a shift, in recent decades, from emphasis on such issues as bribery, fraud and corruption to more subtle and complex problems of the separation of public and private interests.

Conflict of interest and corruption are interwoven. Casting an analogy, conflict of interest is the taproot of the great tree grown out of a grain of mustard seed, which bears fruits, and in this instance the fruits of corruption. The bitter fruits of corruption show that there is a taproot of conflict of interest, which subtly feeds the great tree with poisonous nourishments. To destroy the taproot is to

kill the tree which bears the fruits of corruption, and this is logically correct and not vice versa.

The moral of this case study is that attempting to destroy the fruit of corruption is a waste of time for in the past, South Africa has undergone fruitless efforts to eradicate corruption, wasting efforts, time, public money and material resource. Indeed, as one fruit of corruption was destroyed, others continued to ripen all over again in another season of conflict of interest. Therefore, logic dictates that it is important to deal first with the conflict of interest, being the taproot, rather than the fruit, which is corruption in this context, for the understanding of the study dictates that when a conflict of interest is resolved, corruption will obviously fall on the way side.

It is rational to think of devising mechanisms to deal with the root cause of corruption, which is conflict of interest. According to this approach, to deal with the fruit of corruption is therefore curative rather than preventive. Conflict of interest should be aggressively addressed vigorously. As a taproot, it must be extracted from its deep ends and then destroyed.

The theoretical proposition that “in most cases politicians in government and government officials appear to sacrifice services and facilities of government departments for interest other than the public interest” as pointed out in Chapter Three is accredited by this study. The selected episodes in the previous chapter transform this proposition into reality. This argument ties in with Rees and

Crane's (1992:68) discourse that the power of the love of riches over the human mind is almost paralysing. Once this love of riches paralyses the moral fabric of the heart, in this case the heart of the individual and the ruling party; the corrupt mercilessly continues to corrupt. The cases of conflict of interest discussed in this study are classic examples of mistrust and the destruction of the moral fabric. Sadly, the image projected is that of provinces, the whole country, and even the whole continent under the grip of conflict of interest.

It is safely argued that greed is the main cause of conflict of interest. This concurs with Rees and Crane's (1992:67) theory (in Chapter Three) that the love of money lies at the root of all the crimes committed in the world. Most South Africans, including government officials, were carried away by the euphoria of the new democracy, in 1994. Some members of the government were short-changed and developed false hopes of getting rich quickly, some even dreaming of outdoing tycoons on the world stage, in the United States of America, United Kingdom, Germany, and France (Interview with a Captain in the SAPS Crime Intelligence 2003, See Appendix IV). A culture of enrichment has taken root among politicians and government officials in the province who, out sheer greed, used short cuts to amass a fortune by simply siphoning millions of Rand in public money. Embezzling public funds has become a past time for unscrupulous officials who lead a lavish lifestyle, own expensive property, imported luxury cars, and expensive gadgetry.

It is important, at this juncture, to note accountability issues. In view of the existing legislation and policies, South Africa is characterized by English-type rule of law:

- i. *Constitution of the Republic of South Africa Act, 1996* (Act 108 of 1996) amended by *Constitution of the Republic of South Africa Act, 2005* (Act 5 of 2005)
- ii. *Northern Province Tender Board Act, 1994* (Act No. 2 of 1994);
- iii. *Northern Transvaal Exchequer Act, 1994* (Act 3 of 1994);
- iv. *Provincial Development Corporation Act, 1994* (Act No. 5 of 1994);
- v. *The Public Protector Act, 1994* (Act 23 of 1994);
- vi. *Public Service Act, 1994* (Proclamation 103 of 1994);
- vii. *Basic Conditions of Employment Act, 1997* (Act 75 of 1997).
- viii. *The Auditor-General Act, 1995* (Act 12 of 1995);
- ix. *South African Police Service Act, 1995* (Act 68 of 1995);
- x. *The White Paper on the Transformation of the Public Service, 16838* of 1995;
- xi. *White Paper on Transforming Public Service Delivery, (18340* of 1997);
- xii. *Executive Members' Ethics Act, 1998*
- xiii. *Public Financial Management Act, 1999* (Act No.1 of 1999);
- xiv. *Municipal Financial Management Act, 2003* (Act 56 of 2003);

- xv. *Preferential Treatment Policy Framework Act, 2000* (Act No.5 of 2000), amongst others.

In addition, there are the following provincial and national accountability institutions and systems amongst others:

- i. Fraud and Corruption Control Unit in the Office of the Premier and other selected provincial departments;
- ii. Public Service Commission (PSC);
- iii. Auditor-General (AG);
- iv. Standing Committee on Public Account (SCOPA);
- v. Provincial Risk Management system; and
- vi. Performance Management Systems (PMS).

The media serves as a strong powerful accountability tool. It is a powerful tool to shape public opinion and deepen the roots of democracy at the provincial and national levels. Opposition parties also use the media as a platform to convey their opinion and ideology, which, according to the Co-ordinator of Further Education & Training Institute in the Provincial Department of Education during the interview (2003, See Appendix IV), is balanced politicking. However, the way the media are manipulated leaves much to be desired.

The media in South Africa carry a historical stigma because they were muzzled and even fought dedicated freedom fighters against apartheid. The ruling party, which was for a long time the victim of the media's campaign against those who

were fighting apartheid, seems to have maintained some sort of distance from and even mistrust of the media. In some instances, the media are vilified by the powers that be to protect their own political turf, something that may contribute to weakening the resolve of the free media in the country.

One example of attempts by the government to muzzle the media is that of a Broadcasting Corporation Radio News Presenter who was very critical of the government. It is reported that the presenter's fearless exposure of corruption and mal-administration in government and political affiliation were disliked by the government and earned him a redeployment in the corporation (Mogashoa, 2003: 7). Indeed, his denouncement of the then Premier who had parked in a disabled parking bay provoked irk of the then Premier who surreptitiously approached senior members of the Broadcasting Corporation to get him silenced. As a result of the alleged secret meeting between the Premier and senior members of the Broadcasting Corporation, the said outspoken presenter was in no time promoted to the position of Senior Programme Producer, two ranks higher than his position—the position of Programme Producer, not that of Senior Programme Producer, being immediately above that of presenter which then raised eyebrows.

In this instance, there was an unmistakable case of media manipulation by politicians to silence an outspoken radio presenter, with the dangling of a carrot, at the expense of public interest. Conflict of interest in this case cripples the role of the media in strengthening public accountability and shaping up public

opinion for strong democracy in the country. The sidelining of the outspoken presenter from a position where he was competent and critical of the government was a political gambit used to corrupt the media and deny the public the right to know more about the misconduct of government officials. Ultimately, the outspoken news presenter had no choice but to offer his resignation. For him, a move into politics was the only means to continue his fight against misrule.

To this end, in essence, it is no longer a surprise to see South Africa, having in place legislative and institutional mechanisms to ensure that the rule of law is complied with, still finds itself swimming in a sea of cases of conflict of interest involving important chunk of public money and government officials. It is safe to infer that conflict of interest has a negative bearing on the economy of the country over the long run. Contrary to what some may believe (e.g. Interview with an MPL in Limpopo Province; 2003, See Appendix IV), conflict of interest should not be judged by its size because the pain felt by its victims is immeasurable no matter how little the sum of money involved. As Sandra (1985) warns, any conflict of interest could have damaging repercussions not only to individuals involved but also to the image of the public body to which he belongs.

The lack of accountability, control, and impunity are all obstacles to democracy, an impediment to public service delivery for economic development, and a blot on the government. Impunity has turned into some incentive for politicians and government officials to flout policies and line their pockets

5.2.3 Performance and Risk Management

Apart from governance and ethics and accountability, lie performance and risk managements, new innovative management practices drawn from the private sector. They are also a labyrinth of the total picture, and once undermined, also give rise to potential conflict of interest, and this is what this study has found.

Coming to theoretical propositions referred to earlier, one last one was that “conflict of interest presumably compromises the level of performance and consequently affects the quality of government service delivery”. Evidently, cases of conflict of interest discussed in the previous chapter defeat the main purpose of the White Paper on Transforming the Public Service Delivery, 18 September 1997, particularly the “Batho Pele” principles, i.e. people first. The consequences of conflict of interest are immensely devastating. Illustrative of this are episodes referred to in the previous chapter, which show how conflict of interest severely affects the budget of government departments with very negative results. This put a severe strain on the government budget, for the public money deviated for selfish interest could have been spent for the right public course to benefit the population in various ways: services, job creation, and economic development for example.

Diagram 5.2 Supply Chain Management vis-à-vis Conflict of interest

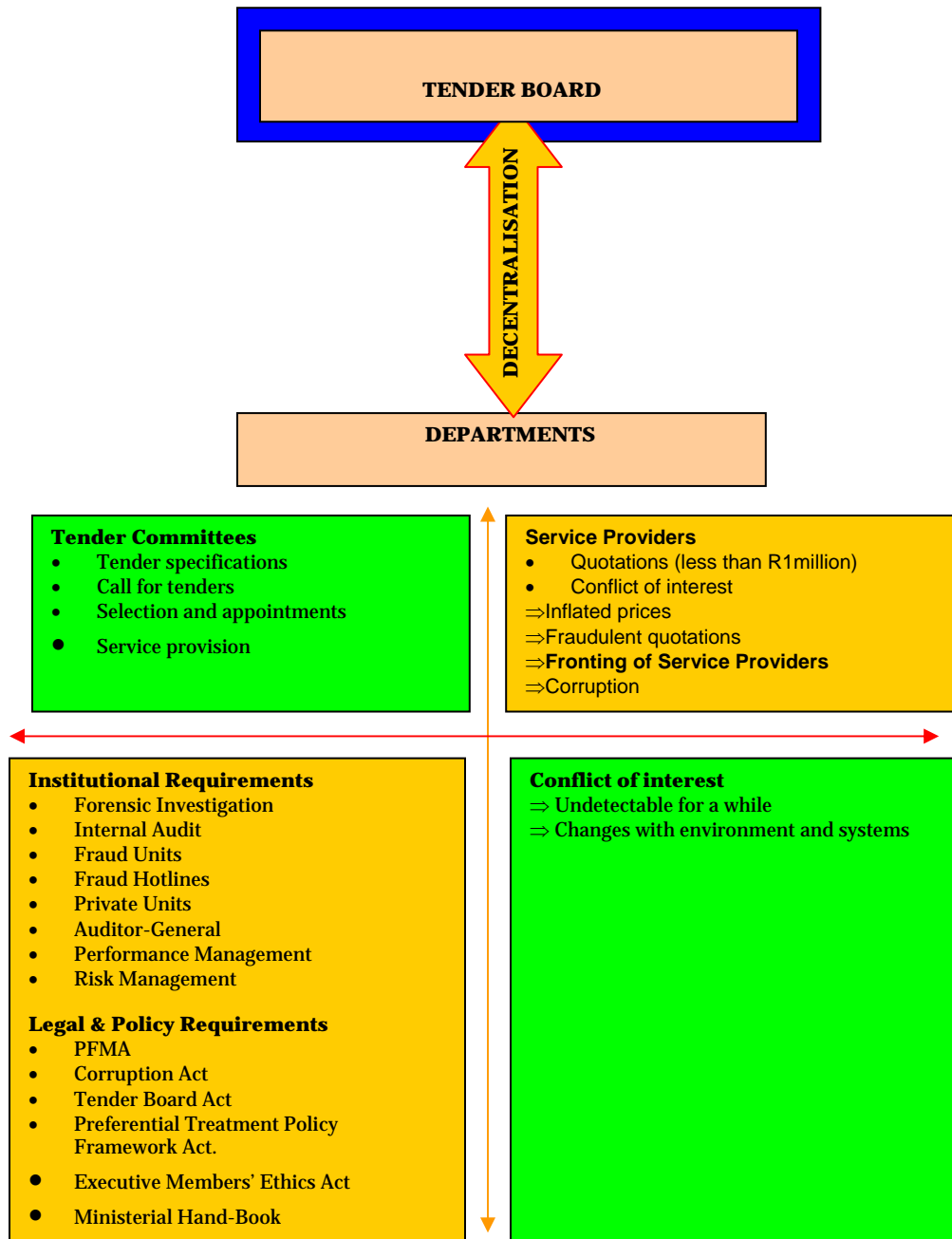


Diagram 5.2 above was drawn on the basis of an interview with the Manager of Security and Risk Management Services in the then Department of Finance and Economic Development (2003, See Appendix IV). As can be seen, conflict of interest is pervasive both within one system or institution and through the

interface of internal and external individuals and systems and forces. In this case, since government departments are given competence of awarding to service providers tenders of less than R1million through the decentralized arrangements, collusion is rife between government officials in the Tender Board and Committees within departments with the service providers takes a high level standing in and outside the province.

In essence, the move to give national departments overall powers to award tenders is risky. The tendering process is, therefore, fraught with conflict of interest. The Public Service Annual Report (2002/2003:26) emphasises that corruption remains a problem at all levels of government and the problem of complicity by government officials in acts of fraud and corruption remains a challenge. This according, to the said annual report, is true in relation to the area of supply chain management formerly referred to as procurement and contract management.

An interview with the Manager of Security and Risk Management Services in the then Department of Finance and Economic Development (2003, See Appendix IV), suggests that conflict of interest is undetectable (as also seen in Diagram 5.2 above) during the practical and technical operational tendering processes between the concerned government department and the service provider. Conflict of interest can be detected only during the auditing and forensic investigations undertaken after business transactions. According to the researcher's observation, this is a *post facto* kind of auditing, which is reactive

and problematic because it is difficult to repair the damage at the critical stage. A relevant example is the fronting of service providers as a method used by white entrepreneurs to scoop tenders from government amounting to millions of Rand.

The provincial government in Limpopo Province at the moment has started establishing risk management systems with an Anti-corruption Unit in the Office of the Premier and the Security and Risk Management services in the Department of Finance and Economic Development. However, there is a lack of an integrated approach to these two systems to create a strong monitoring unit in all provincial government institutions. Performance management cycle is limited to the top and middle management levels exclusive of supervisory management. This is with regard to signing contractual agreements or service level agreements (SLA). In addition to SLA exclusionary practice, performance is not well managed, monitored and feed backed. Therefore, it is apparent that government officials take advantage of these loopholes, the disintegrated risk management and exclusionary performance management cycle to circumvent the law.

The Public Service Commission Annual Report (2002/2003:26) confirms the presence of important elements of an effective ethics infrastructure, i.e. code of conduct, fraud prevention plan, risk management plans and consistent financial disclosures in the respective government departments, but these elements are often generic, inappropriate, and poorly supported. The report also reveals that the effectiveness of the different elements is often compromised by their failure to operate in an integrated and coordinated manner.

To illustrate this lack of effectiveness, one can refer to the five risk management cases, of which two are high-level, detected by the then Department of Finance and Economic Development in the Limpopo Province. The five cases are confidential and cannot be disclosed according to the picture drawn by the Manager of Security and Risk Management Services in the then Department of Finance and Economic Development (2003, See Appendix IV). In the interview with the said manager, the fear was expressed that the two high-level cases would disappear into thin air because there is a tendency of high-level officials who always wish to see their political turf protected. Elsewhere, the situation is not better.

Numerous cases of non-compliance with internal control measures as well as deficient internal control systems have been found in the Mpumalanga Province Department of Local Government, Traffic Control and Traffic Safety. The internal control and implementation of the various measures are therefore not yet brought to a satisfactory level (Mpumalanga Department of Local Government, Traffic Control and Traffic Safety Annual Report, 2003:19). Worse still in the Eastern Cape Province, the Legislature policies the researcher perused do not even cover conflict of interest issues nor do they include mechanisms of risk management controls, a material omission that facilitate the perpetration of conflict of interest.

To this end, it becomes apparent that if the government departments do not carefully consider performance and risk managements integrated in the context

of government service delivery, conflict of interest will always remain a threat to the public service.

5.3 Conclusion

This chapter interpreted three critical issues; governance, ethics and accountability, and performance and risk managements in public administration emerged from the previous chapters. The three critical issues referred to were identified and interpreted in an attempt to reflect the dynamics of conflict of interest in public administration put forward in the previous chapters. The interpretation of these issues leads to the recommendations of some innovative solutions to the problem of conflict of interest in the next last chapter of the study.

This chapter also interrogates ethics and accountability in the respective provinces under study for the country is informed by the rule of law and good institutional enforcement mechanisms against conflict of interest. It also questions the manipulation of the media, print and non-print, by the ruling party, which continues to compromise the public opinion in shaping strong democracy in the country.

A conclusion was drawn that conflict of interest must not be judged by the size of the act for the pain felt has incalculable economic and psychological side effects, nor matter how little the amount of the conflict of interest is. The cumulative

effect of cases of conflict of interest has been devastating in the long run, as examples of countries such as Democratic Republic of Congo (DRC), Uganda, Zambia, Zimbabwe and Nigeria, to mention but these, show. Indeed, as Sandra (1985) observes, conflict of interest can have damaging repercussions not only to individuals involved but also to the image of the public body to which he belongs.

The assumption that conflict of interest compromises the level of performance and consequently affects the quality of government service delivery, a key plank of the White Paper on Transforming the Public Service Delivery, 18 September 1997 (the “Batho Pele” principles) was also borne out by the data, and attested for by the issue of performance and risk managements. It is in fact realised that risk management is disintegrated whereas performance management cycle is exclusionary in nature, and this leaves much to attempt to integrate risk management and make performance management cycle inclusive in the resolve of conflict of interest.

This said, the next and final chapter of the thesis would conclude the study, on the grounds of the three critical issues in public administration, governance, ethics and accountability, and performance and risk management summarised above. Possible solutions to conflict of interest will also be suggested in tandem with identification of issues for future research.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

Conflict of interest is a disturbing perpetual problem, which cuts across South Africa and beyond, as the previous chapters confirmed. It possesses local and international idiosyncratic features of a political, economic, and social nature, and is not oblivious to technological features or combinations of features mentioned. However, the focus of attention in this study has been on conflict of interest in the public service, which involves ethical and financial implications of great magnitude.

The study examined whether there is a distinction between corruption and conflict of interest as the two are often confused. The study further examined whether in most cases, politicians in government and government officials appear to sacrifice services and facilities of government departments for interests other than those of a public nature. Another issue raised in the study was whether conflict of interest compromises the level of performance and consequently negatively affects the quality of government service delivery, to the point of defeating the very purpose of the White Paper on Transforming the Public Service Delivery, 18 September 1997 (“Batho Pele” Principles). Lastly, the study verified whether if conflict of interest was not resolved, to what extent it has become a problem in South Africa, preventing the new generation from enjoying their just reward instead of doing to it what apartheid regime did to the present generation.

The study then went on to address the research questions posed in Chapter Two. The answer to the question: ***To what extent has conflict of interest become a problem in the public services of South Africa with specific reference to three provinces under study, i.e. Limpopo, Mpumalanga and Eastern Cape,*** was attempted in Chapters Three, Four and Five. The possible ways and means to resolve the problem of conflict of interest received attention in Chapter Three and the last part of this chapter.

The study explored the nature and extent of conflict of interest vis-à-vis the code of ethics, policy decisions, and the rule of law. It also isolated and analysed the root causes of conflict of interest vis-à-vis governance, performance and risk management. Recommendations are thus drawn on the basis of governance, ethics and accountability and performance and risk management that have the potential to check and address problems of conflict of interest in the context of corporate governance framework, a business framework, which is finally infused into the public service. The study also identified gaps on the basis of which it proposes critical issues of conflict of interest for further research by scholars, especially researchers in the field of Public Administration.

The study, it is hoped, will have offered insights into conflict of interest in the public service. This is significant because conflict of interest was hardly researched in the field of Public Administration in South Africa. The outline provided in the study of an epistemological and theoretical framework adds value to the field of Public Administration in which it is situated and other related disciplines. From a practical point of view, the study has the potential to sensitise accounting authorities about

conflict of interest and, thus, offer ways of preventing it from going out of hand. In arousing the interest of scholars, researchers, and practitioners in the subject of conflict of interest [ethics including public policy and public finance], the study stimulates further research and the development of appropriate theories that would contribute towards crafting intuitive policy decisions, effective implementation and evaluation for the South African Association of Public Administration and Management (SAAPAM) in particular and the African Association Public Administration and Management (AAPAM) in general. The Higher Education and Training sector might, thus, also benefit from these postulated theories in their academic discourse.

The study is also significant because it contributed towards putting together and safeguarding the ten-year historiography of Limpopo Provincial Government and that of Mpumalanga and Eastern Cape to a certain extent (see Chapter One). Apart from putting together a historiography of the three provinces under study, the study constructed a scholastic casebook and a biblio-matrix (see Chapter Four and the bibliography respectively) on conflict of interest, which could be updated from time to time as and when a further understanding of the nature of the problem is reached. The biblio-matrix could be of use to scholars in the field of Public Administration and related social science disciplines. The casebook thus attempts to enhance the etymology and anatomy of conflict of interest, an insight that could be of use to practitioners, especially in the public service. The study also generates interest in the problem of conflict of interest and, thereby, encourages government and the international community to support, materially, financially or otherwise, this kind of research project, for the benefit of South

Africans and the entire African continent in making the government stronger with respect to ethical and public policy issues.

Against this background, this chapter concludes by offering possible lessons and solutions drawn for the analysis of the data collected in the three provinces under study. The recommendations are holistic and are, therefore, not limited to the provinces, but concerns South Africa as a whole. They could also benefit any other country, which suffers from the leprosy of conflict of interest.

The Royal Mounted External Committee (1991) and Starling (1998:152) state that if men were perfect beings, no government would be necessary. If perfect beings were to govern men, neither external nor internal controls on government would be necessary. In framing a government, which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

It is this human element of imperfection, which is characterized by weakness, selfishness, vulnerability and susceptibility to temptation that creates a critical mass in public administration. The critical mass that conflict of interest represents is rigorously dealt with in this closing chapter. The interpretation of critical issues of conflict of interest identified in Chapter Five such as governance, ethics and accountability, and performance and risk management in public administration, sheds more light on conflict of interest, posing a question to corporate governance. The chapter, therefore, prepared the field for an appropriate response to the issue of corporate governance posed.

However, before responding, the chapter first goes through a chapter-by-chapter appreciation of some reflections of issues on conflict of interest' issues. These reflections of issues serve as a strong base from which the recommendations are drawn and issues of further research are identified.

6.2 Conclusions

This section summarises the thesis by giving a compact account of individual chapters.

Chapter One is unique and took the reader through the historiography of the provinces under study, from 1994 to 2004, the ten years of democracy in South Africa. It also raised critical issues, which broadened the perspective and scope for understanding the three provinces and the dynamics of governance, ethics and the historical shift of political power in 1994. In the process, the chapter attempted to understand the root causes of unemployment and poverty that persist in a province that may have huge potential for mining, agriculture, and tourism.

In discussing the dynamics of governance in the three provinces in Chapter One, special mention was made of issues of racism, a by-product of the apartheid government, and its divide-and-rule policies of separation embodied by the establishment of homeland administrations. Indeed, these racial divisions reinforced attitudes and practices, which the new provincial governments inherited. One of these attitudes is exemplified by ethnic predominance in government departments as found in Limpopo Province. The archetypical example is the Department of Public Works, which is dominated by two

particular ethnic groups. A simple cursory reading of plate names on office doors or the predominant use of given African languages in offices suffices. Furthermore, the predominance of a particular ethnic group is evidenced at certain levels of management, for example, at the top and middle levels. Tensions, therefore, exist when crucial and technical decisions are taken about the use of resources to be converted into deliverables. The chapter demonstrated how the ills of the past still inform the conduct of politicians in government and government officials, an important fact that accounts for conflict of interest in the provinces.

Chapter One also contended that the rise in cases of conflict of interest in the three provinces under study is an example of the difficulty the Premiers of provincial governments have in leading and regulating the conduct of the politicians in government, and government officials who exploit the very system to fulfil their own interest to the detriment of the public interest. Certain Premiers of provincial governments are alleged to have been involved in scandals involving conflict of interest. How much more, then, their subordinates?

A department-by-department account of the transformational and restructuring processes, which moved back-and-forth, to the point of appearing at times confusing, was also offered in Chapter One. It was remarked that the confusion emerging from or accompanying these processes opened a window of opportunity to unethical government officials to indulge in conflict of interest (see Chapter Four for a full account of these cases of conflict of interest). Also notable in the chapter is the picture painted of the geographical, economic, technological, social and political milieu in the provinces under

study. This historiography of the three provinces serves as a point of entry in understanding the nature of the problem, of and how to solve conflict of interest, a scourge that blocks progress.

Drawing from Chapter One, Chapter Two introduced the study proper by crafting an appropriate landscape that included the position, scope, and limitations of the study for an understanding of its context, *ceteris paribus*. One of the limitations was the sensitive nature of the topic. To unearth the truth, which would otherwise have been impossible to fathom, use was made of some technicalities and tactics employed within the ethical boundaries required by a study of this nature. In other words, Chapter Two may be considered a bird's view of the study. It stated the problem and objectives of the study and described the data collection techniques, dealt with the research design and methodology. The chapter was a roadmap for the conduct of fieldwork. To use another analogy, the chapter served as a radar for the direction of the research, to avoid deviations from the lines set at the inception of the project.

The research design and methodology, two key scientific sub-components of the chapter, were important guidelines for the handling of the 30 months of fieldwork in the three provinces under study, namely Limpopo, Mpumalanga and Eastern Cape provinces. A comparative perspective was introduced for studying the three provinces instead of limiting the research attention to one (e.g. Limpopo), which had initially been the prime focus of attention when the idea was germinating.

Given the sensitivity of the issue at hand, the fieldwork was strenuous, as unearthing cases of conflict of interest remain a difficult task, especially for an outsider to the realm of government. Notwithstanding the immensity of the difficulty, enough data were collected to satisfy the research needs as tactics were employed to source the data. To collect the data, interviews and documentary survey were used as the primary techniques. They were supported by non-participatory observations, Internet-search, and to a limited extent, a scan of the media. Because each method has its shortcomings, it was thought that a combination of strengths of methods would compensate for the shortcomings of individual methods. To complement the fieldwork in South Africa, a research trip to one of the Nordic countries, Norway, offered a golden opportunity to obtain a comparative view of the problem of conflict of interest, and this was motivating.

Given the scientific methodological instruments and data analysis techniques employed, the data generated on conflict of interest is understood to be reliable, valid and acceptable for this voluminous study. The data gathered add value to the existing theories in the discipline of Public Administration.

Chapter Three took both a radical and a softer approach to the understanding of conflict of interest. It looked at the theoretical framework for the study and how it is applicable to the problem under study. More specifically, the chapter discussed: definitional aspects; theoretical propositions and conflict theories, thus teasing out the indispensable relationship of Public Administration and other social science disciplines such as sociology, philosophy and psychology. Other issues discussed were: forms, nature and extent; cause and effect; as well as possible solutions to conflict of interest. In other

words, the chapter dealt with the etymology and anatomy of conflict of interest. Among other observations, it must be pointed out that conflict of interest occurs at the interface between personal interests and public duty, which is fluid. This fluidity makes the separation of the two difficult. The former always influences the latter. Another complication to be noted (see also the Royal Mounted External Committee, 1991) is the infinite variety of forms that conflict of interest may take.

One of the tasks of the chapter was to identify important theoretical propositions on conflict of interest. The main theoretical arguments were political theories of orthodox scholars, not limited to Thomas Hobbes and Karl Marx, versus the conflict theories of Ralf Dahrendorf, David Hume, and Randall Collins. The chapter challenged the behavioural theories of B.F Skinner, Edward Thorndike, and John Watson, siding with neuroscientists who criticized this theoretical thinking whose death knell was sounded in 1900. The argument by neuroscientists against behavioural theories was that behaviours of humankind are a result of the brain and should therefore be left to neuroscientists. The researcher was forced to rely on, or borrow from, the theoretical arguments of other dominant social sciences; in this case sociology, philosophy and psychology to better understand the dynamics of the problem of conflict of interest from multidisciplinary and inter-disciplinary perspectives and more importantly to tackle the issue of conflict of interest in context.

Apart from the theories of the interrelated disciplines, conventional theories were emphasised in this chapter. Many scholars in Public Administration have insisted unwaveringly that administration is essentially about serving the public interest. This

refers to the works of conventional theorists such as Chester Barnard, Herbert Simon, Paul Appleby, Joseph Harries, Dwaine Mavick and Gordon Tullock, Herman Finer and Carl Friedrich to name but the selected few to whom this chapter turned with the sole aim of shedding more light on the study.

Herbert Simon, a leading public administration theorist of the time, for example, was concerned with decision making in public administration. He called for the rigorous analysis of decision making behaviour as central to the future study of administration, which he simultaneously decimated as simplistic the ‘proverbs of administration’ in his *Administrative Behaviour’s* writings. Simon argued that administrators made decisions on the bases other than those of economy and efficiency. He contended that social and psychological factors had a great deal to do with the decisions that decision makers made.

Henry also states the contention made by Herbert Simon that decision makers operated on the basis of feelings emotions and mental sets as well as on “rationality” implied that public administrators could make highly questionable, even immoral public policies that possibly would affect the whole population. Decision making is all element of risk in Public administration. Public Administrators became increasingly cognisant of the disquieting notion that a sense of ethics a sense of the public interest was a genuine need in the practice of public administration. From the Hebert Simon School of thought, it becomes clear that rationality and morality are two pivotal ethical imperatives in informing administrators to conduct their public affairs properly. One therefore

concludes that morality and rationality inevitably characterize a good political leader and public administrator per se.

Long before the Watergate affair in the USA, Chester Barnard, one of the leading thinkers in public administration recognised that the critical issues of government ultimately involved moral choices. Moral choices call for rational theories to assist administrators to make acceptable decisions and judgements. In Chester Barnard's viewpoint, the strength and quality of an administrator lies in his or her very capacity to deal effectively with the moral complexities of organizations without being broken by the imposed problems of choice.

Given this background, leading thinkers in public administration are increasingly cognisant of the disquieting notion that a sense of ethics, a sense of the public interest, was a genuine need in the practice of public administration. This concern was reinforced by the appearance of a new corpus of literature that addressed the topic of morality and administration in a different manner. The works are those of Paul Appleby on morality and administration (1952), which took on the ethical problems posed by the tension between pluralistic politics and hierarchy. Paul Appleby, another leading thinker in public administration, an administrative theorist in his own right, calls for institutional arrangements in government, which in modern terms is referred to as corporate governance. Governance, according to Paul Appleby, should provide the most effective safeguard for ensuring ethical administrative behaviour.

Given the paradoxes of Mavick and Tullock's arguments, conflicts resulting from competing sources of moral obligation have been the principal topics of dispute between the opposing viewpoints in the rationalist discourse on responsibility ever since Herman Finer (1940) and Carl Friedrich (1940) initiated the debate on the subject more than half a century ago. Friedrich argued that the increasing complexity of modern society made such detailed legislation difficult [as anticipated already by Finer who maintained that responsiveness to the public and managers in public organisations should be subjected to strict and rigid controls by the legislature] if not impossible.

Chapter Three finally refers to Kernaghan, a contemporary ethical scientist, who concludes the concerns of conventional theorists by introducing the notion of shared values as the bedrock of any corporate culture. According to Kernaghan, it is often argued that shared values should be pursued in the light of the public service's ultimate objective of promoting the public interest. Pursuit of the public interest over private, narrow, personal interests is a major feature distinguishing government officials from their private sector counterparts. Ideally, concern for the public interest is a unifying and motivating force that pervades the practice of public administration.

Chapter Three also provided a comparative perspective. A look at both the developed or underdeveloped worlds suggests that the North cannot lecture to the South on conflict of interest because this phenomenon occurs in both worlds. The chapter, therefore, concludes that conflict of interest is a universal phenomenon, which exists at different levels (high or low) of prevalence.

With the history unfolding, it becomes crystal clear that a legal solution is not a panacea to eliminate conflict of interest practices hence a need to integrate the legal imperative with good governance and a change in human conduct, i.e. crafting a sound ethical leadership to shape a comprehensive integrated model to tackle conflict of interest problems. In reflecting on the causes and effects of conflict of interest, the chapter hoped to offer solutions for overcoming this phenomenon. One of the ways of overcoming conflict of interest is to find ways and means of changing the conducts and attitudes of those in charge of public affairs to acceptable norms and standards of the society *lex naturalis*.

As Pauw *et al* (2002) conclude, without public interest as an ideal for which to strive, public life lacks a moral foundation and this absence of moral foundation leads to conflict of interest. The researcher is forced by the overwhelming evidence of facts to conclude Chapter Three by making the following statement:

Given the fact that conflict of interest originates from the human conscience, that it is not an eventuality, and that it is informed by the underlying dynamics, it is concluded that any solution will involve changing the mindset of those involved in [decision making and] governance to be more specific.

Chapter Four can be considered the nucleus of the study because it analyses its findings. Conflict of interest has been discussed on the basis of selected main episodes of which a compressed account is provided here. Potential cases of conflict of interest found and

analysed in this chapter explain to a large extent the failure by the three provincial governments under study to ensure strong public administration, because most of these cases involve huge financial and non-financial burdens. Although in other cases, it is difficult to determine precisely how much the government may have lost, one can surmise the loss in material resources spent attributed to time spent dealing with the cases and their consequences, and loss of public trust.

One of the issues raised in the chapter has to do with transformational and restructuring processes within provincial departments. To this effect, a logical inference was drawn that it was a mistake for one of the provinces under study to focus too much on restructuring and transformation of the structures and systems while overlooking change of conduct, as has been the case since 1994. This oversight has been at the root of the persistent prevalence of conflict of interest showing loopholes in the governance of the public service. Closely linked to this is the issue of impunity. The provincial authorities have a propensity for protecting those close to them politically involved in conflict of interest' scandals. It must be pointed out categorically that "playing race cards" was found to be irrelevant in the perpetration of conflict of interest in this chapter.

In pursuing this race card issue further from a cultural perspective, one episode of conflict of interest in this study, namely the episode of company fronting, is one of the highlights of the study in the sense that it dismisses the myth that conflict of interest has some racial roots or explanation. There is a tendency to generalize from a few episodes and attribute cases of conflict of interest to African people and think that Whites are

immune. The episode stated proves otherwise. It is, therefore, worth cautioning against generalizations and perceptions based on conflict of interest that would be based on skin colour, race, creed, or country of origin. Given this background, the study urges that conflict of interest should be viewed in a holistic context.

In chapter Four, mention was made of the implications of political pressure exerted on administrators of the departments by political bosses to fulfil private interests at the expense of public interest, which amounts to abuse of political power. Experience has dictated that only a few stand their ground in the face of such pressure. The resilience of the HOD of Education in Limpopo serves as an outstanding example for others to emulate. It may be stated here baldly that the interface between politics and administration still accounts for many cases of conflict of interest, an immemorially unresolved grey area in the field of Public Administration to date. The issue of ascendancy of politics over administration here subjects the principles of public administration enshrined in Chapter Ten, Sec.195 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), especially (ethics and) accountability, to a litmus test.

The Mpumalanga and Eastern Cape provinces confirm the cases reported in Limpopo Province, for they also have their own ills of conflict of interest in one way or the other. The cases of the dismissed Deputy Speaker in Mpumalanga and that of the former reshuffled MEC of Health to another department on count of certain allegations highlight the problems pertaining to conflict of interest. In the Eastern Cape Province, the allegations of the wife of the former Premier pertaining to tendering with the

government is yet another case in point which undermines the Ministerial Handbook and Executive Members' Ethics Act, 1998, provisions on conflict of interest. The situations of conflict of interest cases in the three provinces under study are, therefore, comparable, and are linked by the main issues and aspects of Public Administration narrowed to governance, ethics and accountability, performance and risk management.

To this end, after rolling out conflict of interest issues in the three provinces under study, it becomes crystal clear that the second objective of the study described in Chapter Two is achieved, for Chapter Three when read together with Chapter Four managed to isolate and unpack the root of conflict of interest vis-à-vis government performance and standards.

The chapter found three central foci of attraction accounting for conflict of interest problems sprawled out in the respective provinces under study summarised as follows:

- i. Greediness informed by bad conduct and immorality of mostly top brass politicians in government and government officials, thus permeating to the middle and supervisory echelons;
- ii. Poor governance, questionable accountability, and ill-defined risk management systems, and
- iii. Lack of coherent legislation on conflict of interest, for the chapter discovered fragmented pieces of legislations, which are not in harmony with each other in jurisprudential legal context accounting for poor governance, accountability, and performance management.

On the basis of the critical issues raised in Chapter Four, the study, therefore, notes the critical mass in several aspects of public administration namely governance, ethics and accountability, performance and risk management which continues to challenge public administration in the context of conflict of interest to date.

Coming to Chapter Five, it interpreted critical issues of conflict of interest, using game theory and the historical interpretation component of the triangulation method. This chapter succeeded in interpreting three critical issues: governance, ethics and accountability; performance and risk managements in public administration emerged from the previous chapters. The three critical issues referred to were isolated and interpreted in an attempt to reflect the dynamics of conflict of interest in public administration. The interpretation of these issues led to the recommendations of some innovative solutions to the problem of conflict of interest.

These are explained briefly as follows:

One, the governance issue raised in the chapter was that relating to some theoretical framework. Of the three theoretical propositions postulated in Chapter Three, one was rejected; the other two were confirmed by the data. Firstly, the theoretical proposition that conflict of interest is one of the threads of mainstream corruption was rejected. The data suggested that conflict of interest is the mainstream of corruption. More particularly, the data made an illustration by concurring with the statement paraphrased in Chapter Three coined by the researcher that “Conflict of interest is the taproot of the great tree grown out of a grain of mustard seed, which bears fruits of corruption...to

destroy the taproot, is to kill the tree which bears the fruits of corruption, and this is logically correct and not vice versa”. Secondly, the proposition that in most cases politicians in government and government officials appear to sacrifice services and facilities of government departments for their own interest to the detriment of public interest was borne out by the data.

Two, this chapter also interrogates ethics and accountability in the respective provinces under study for the country is informed by the rule of law and good institutional enforcement mechanisms against conflict of interest. It also questions the ruling party’s manipulation of the media, which continues to compromise the public opinion in shaping strong democracy in the country.

Three, on the other hand, the last assumption, that conflict of interest compromises the level of performance and consequently affects the quality of government service delivery, a mainstay of the White Paper on Transforming the Public Service Delivery, 18 September 1997 (the “Batho Pele” principles) was also borne out by the data, and attested to by the issue of performance and risk management. It is, in fact, realised that risk management is disintegrated whereas performance management cycle is exclusionary in nature, and this requires great effort to attempt to integrate risk management and make performance management cycle inclusive in the resolution of conflict of interest, hence the corporate governance framework proposed by the study hereunder.

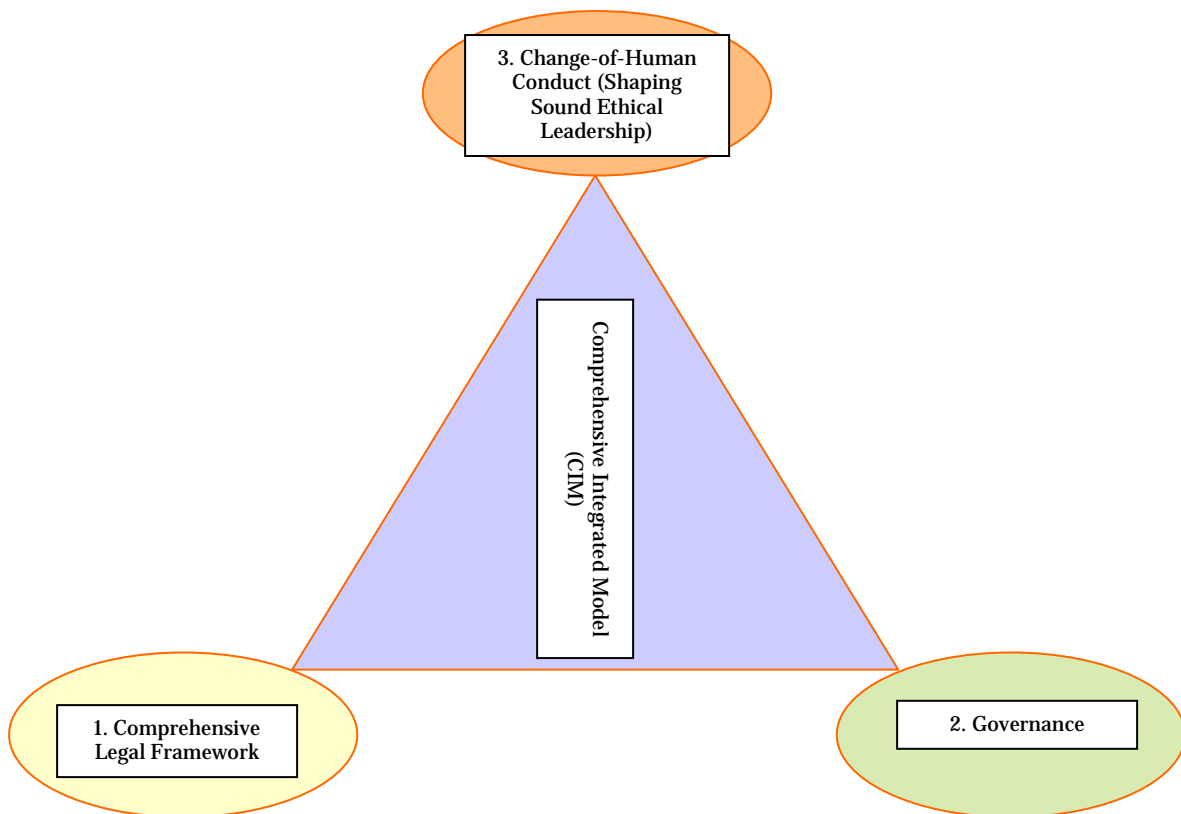
In view of these critical issues raised, general recommendations to resolve the problems of conflict of interest in South Africa (and perhaps, applicable to other countries) are offered and explicitly elaborated in the next section on the grounds of the three critical issues in public administration [governance, ethics and accountability, and performance and risk management] summarised into two models:

- a) Comprehensive Integrated Framework Model, and
- b) Corporate Governance Framework Model including Risk Management

a) Comprehensive Integrated Framework Model

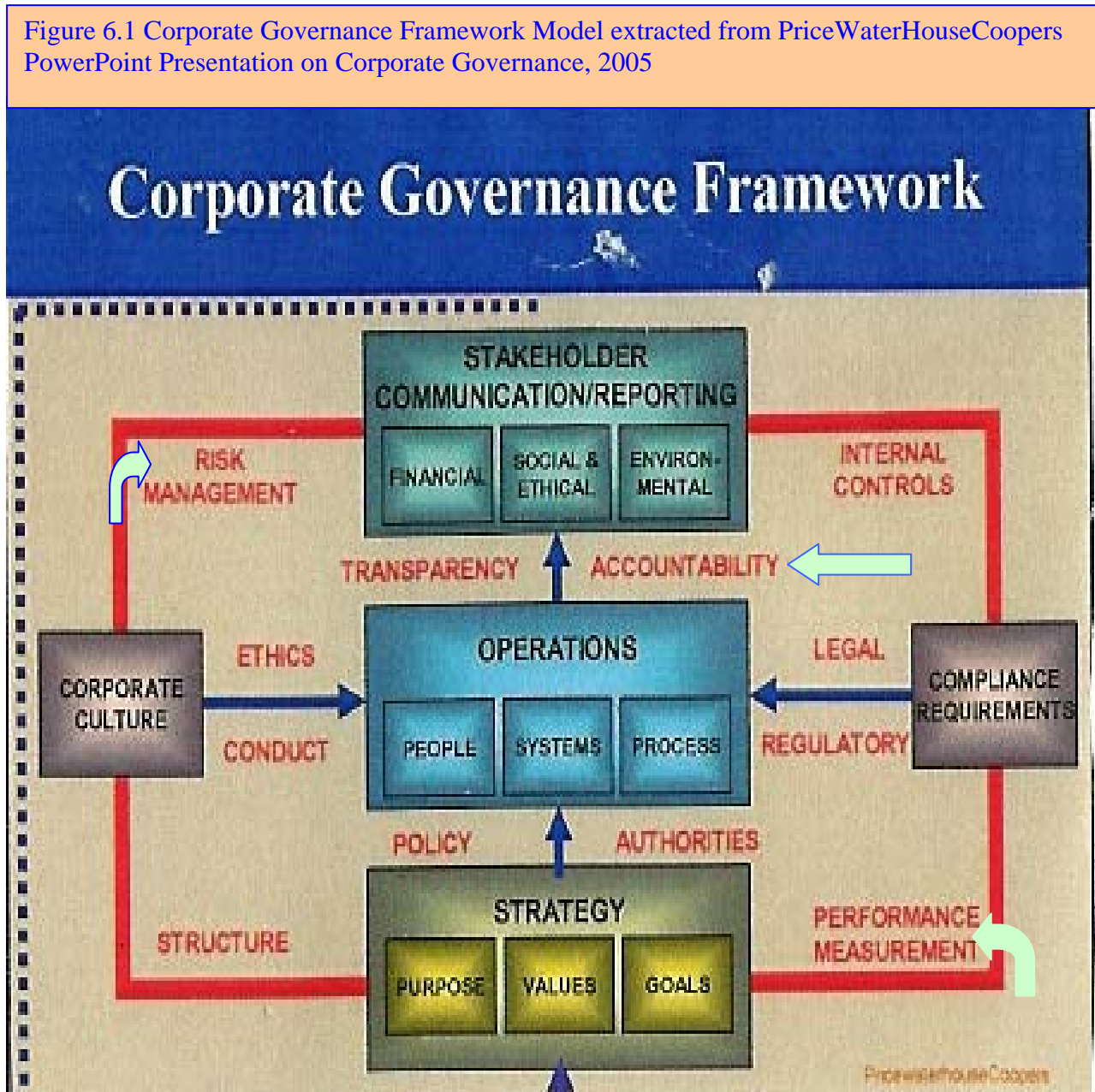
The study proposes the first set of recommendations: an integrated comprehensive framework model which is postulated in a loop as follows:

Loop 6.1 Comprehensive Integrated Model (Triangular Loop)



b) Corporate Governance Framework Model

These issues, governance, accountability and performance and risk management are incorporated into what is called corporate governance framework, which is also postulated in the form of an illustration, indicated by arrows (see table 6.1 below) as follows:



Firstly, according to the PriceWaterHouseCoopers (2005) powerpoint presentation, (corporate) governance is the means of ensuring due and adequate control over the

strategy and direction of an organization and the stewardship, use and disposition of its assets, both financial and non-financial in achieving its key objectives. It has the elements of:

- i. Leadership,
- ii. Stewardship,
- iii. Ethics,
- iv. Security,
- v. Vision,
- vi. Direction,
- vii. Influence
- viii. Values,

and is a function of:

- i. Leadership and Direction,
- ii. Risk Management and Control
- iii. Reporting (Performance Management and Measurement)

Given the explicit background of King I report on corporate governance in the last part of Chapter Three, the transition from the King I (2001) to the King II (2003) report on corporate governance provides a corporate strategy to get rid of conflict of interest in an organization. However, it does not equate governance explicitly in the public service as in the private sector. There is a possibility for future research, which exists to try to align corporate governance with the public service, in no uncertain terms. The paradigm shift

in making the government to run businesslike is a reality, which is imminent, hence a recommendation to infuse corporate governance strategy in the government sector in context.

The study carefully exposed the three provinces under study to have wrought and been confronted with ethics and accountability problems. Chapter 10(195) of the Constitution of the Republic of South Africa, 1996 is being severely tested, especially due to ongoing conflict of interest. The fact that unscrupulous government officials undermine accountability as a principle of public administration is critical to this study.

In the true sense of the word, the concept 'public accountability' is one of the principles of public administration, one which all public managers and political office bearers must uphold without fail. Public accountability, in simple terms, demands of political and administrative heads of departments at different levels of government that they should be answerable for their actions.

An important new policy development introduced according to Public Service Laws Amendment Act, 1997 (Act 47 of 1997) is the recognition of provincial departments as fully-fledged departments, accountable politically and administratively. This shift eliminates confusion and puts accountability squarely with the people who control the levers of administration and management. This change gives HODs and managers of the various departments a compelling force to apply ethics, because they know that they will be held answerable for their actions should they act *ultra vires*. The introduction of the

Public Finance Management Act, 1999 as amended and Local Government: Municipal Finance Management Act, 2003 (56 of 2003) also recognises that more responsibilities should be given to managers. This means the tools and best practices which were crafted by Public Service Commission to hold the managers accountable should be seriously taken into consideration.

6.3 Specific Recommendations

On the basis of the findings and critical issues raised in the study, it is now possible to suggest, in this chapter, some remedial therapy to conflict of interest. The old question posed by Socrates, one of the heroic political philosophers of old, “What ought to be done?” seems relevant here. In response to this Socratic question, some sets of specific recommendations are offered below:

Firstly, having fragmented and disoriented pieces of ethical legislations, taken advantage of by unscrupulous government officials to pursue selfish interest, it is incumbent on the government to aggressively review all pieces of ethical legislation, including whistle-blowing legislation. These pieces of legislation should be replaced by a proposed Comprehensive Conflict-of-Interest Act, which would harmonize the fragmented pieces of legislation governing the conduct of politicians in government and government officials, which are at the moment somehow contradictory or confusing. For example, a recent piece of legislation, the South African Social Agency Act, 2004 (Act. No.9 of 2004), has a portion of conflict of

interest of the Agency in section 8 (1-6). Demonstrably, conflict of interest continues to be dealt with in piecemeal, fragmented fashion. The confusion created by these disparate pieces of legislation could be cleared up by one single law with branches on conflict of interest, a sort of Comprehensive Conflict of Interest Act (CCIA), to promote integrity, as is the case of the principle-based legislation in Canada, not dogmatism, as seems to be the case in France and here in South Africa. Whereas we are aware of Parliament preparing to debate the [Prevention and Combating of Corrupt Activities Act, 2004 \(12 of 2004\)](#) [which is at the moment inadequate], the researcher still argues and maintains that a distinct comprehensive legislation on conflict of interest will prove more effective.

Secondly, it is time to recommend, as a matter of urgency, ***for a turn-around radical process mapping; in simple terms, an investigation of governance issues in all structures of government (national, provincial, and local) and government parastatals, through a strong committee similar to the King Committee, but with a public service focus, to re-invent uncorrupted administration that will translate into effective service delivery.***

The proposed governance investigation process should be as transparent and comprehensive a consultation as possible. This process should culminate into a Comprehensive Good Governance Framework (CGGF) incorporating an innovative and adaptable good governance model blended from variety of models. The CGGF must be tabled in Parliament for ratification and institutionalisation as a piece of legislation or strategy on good governance in all structures of government in the country. Having said

that, the proposed investigation of governance issues will promote integrity among politicians and government officials and thereby prevent, eliminate, or at least minimize situations of conflict of interest. The study of governance on social security, in which the researcher played a part in the South Africa/Norway Social Security Project (2002-2005) is a prelude to this proposal.

Similarly, following the jurisprudence relating to offices in Canada (Ethics Councillor), New Zealand (Office of the Controller and Auditor-General), Finland (Parliamentary Ombudsman) and Iceland (State Audit Office), in South Africa, the equivalent must be housed under one institution, possibly the Office of the Public Protector (OPP). This office must be well resourced with skilled officials, material and financial resources to enable it to function proactively rather than reactively, as is the case now. The office must be well placed and co-ordinated in all provinces and municipalities to afford everyone the chance to lodge complaints on conflict of interest practices.

Furthermore, governance should include special courts to deal with risks, which must be informed by Administrative Justice. This type of justice, according to the Public Service Commission (2004:22), ensures procedurally fair administrative actions. Also, attempts to strengthen Chapter 9 Institutions as contained in the Constitution of the Republic of South Africa, 1996, including the Public Service Commission (PSC), the National Intelligence Agency (NIA) and National Prosecuting Authority (NPA) are also urgent and imperative.

Thirdly, based on the problem of over legalism in South Africa, a proposal is therefore made for a robust paradigm shift of the conduct of political leaders and government officials to operate within the dictate of jurisprudence. It makes no sense to propose comprehensive jurisprudence and good governance without good leadership and trust, invoking a total change in human conduct. It is wonder that attempts to resolve conflict of interest in South Africa in too restrictive and legalistic a framework, without a concern for the promotion of integrity and rational decision making, have all failed. It is, therefore, important to point out that the pursuit of a change in human conduct model in an attempt to promote integrity and rational decision making for politicians and government officials cannot succeed overnight. More time, focus, discipline, and most importantly, patience, will be required to change the mind-set and thereby restore a culture of trust in the public service. The old maxim, “Rome was not built in one day” appears appropriate here. Indeed, it took forty-five years to plant the seeds of apartheid in the mind-set of the African people; it may even take longer to undo this corrupt mind-set, which deepened conflict of interest in government.

Fourthly, given the political interferences of the MECs in the administration of public affairs, which is ongoing debate of the interface between politics and administration in the academic circles, **the study has in mind of going back to Woodrow Wilson politics administration dichotomy debate, making a strong recommendation of reducing the amount of politics, which is in over-supply in the provinces.** It follows that if the political wing of the MECs is cut off, the HODs and managers will have a strong impetus for work ethics, and greater

opportunities to use their competencies with precision, enabling them to also account administratively and directly to the premier concerned. The current practice, of manning the provincial departments with MECs and HODs, is not only costly and bureaucratic, but more often than not, unnecessarily sparks antagonism. Future research should look into this area aggressively to cross check the feasibility of the new approach vis-à-vis the current approach in an attempt to strengthen ethics and accountability in the administration of public affairs. Performance management, informed by strong ethics and accountability, should be the norm when this radical change takes place.

Fifthly, in strengthening the monitoring eye of ethics and accountability, it is recommended that government officials in all ranks should cooperate with and support statutory bodies, especially chapter 9 institutions enshrined in the Constitution of the Republic of South Africa, 1996, which enhance and promote ethics and accountability in the public service by affiliating with one-stop umbrella association of ethics and professionalism. To ensure this, they should join professional associations that can cater for their professional needs and they should be in a position to canvass opinions in open forums such as conferences, symposia and workshops of the association. The South African Association for Public Administration and Management (SAAPAM) is such an ideal body and related professional bodies should be in the forefront of carrying this challenge forward in this, the 21st century, and beyond. SAAPAM is currently in the making and is faced with the huge challenge of serving as an umbrella body of ethics and professionalism to control those pursuing a public service career, running parallel with the Health Professional Council of South Africa (HPCSA), for example. In this way, the

professional bodies will contribute massively to entrenching ethics and accountability, which will in return, make the government stronger.

Lastly, the study exposed the public service, which is becoming amateurish, and should be rescued. As in the private sector, professionalism in the public service is critical to the realisation of the aims and standards of the profession, to the advantage of clients. This is especially so today, when private sector principles are converted into public service practice, hence the infusion of performance and risk management systems in the government sector.

Nengwekhulu (1997) strongly believes that what the performance management system (PMS) seeks to do is reduce to an absolute minimum the presence of non-performers and poor performers in the public service. That objective can be achieved if and when public service managers use the PMS with absolute resolve. According to the Public Service Review Report (1999/2000), the Limpopo Provincial Government set an example when it got rid of 'ghost workers' to save approximately R30 million. A complete overhaul of the problematic elements demands that real professionals should be attracted to the public service, and be subject to spot checks. This recommendation is informed by the current practice which already requires that talented managers should be attracted to the government mainframe, for it is not only talent that merits appointment, but these recruits should be ethically sound, with a proven track record of good professional conduct instead of a crude career progression which, in the recent past, has caused misplacement of talents and a waste of resources.

In the main, it is recommended that monitoring and auditing of performance and risk management should be strengthened and conducted in all government departments on a periodical basis with the aim of checking against risk awareness measures and the maintenance of high standards of professional ethics and public service delivery. This would mean that exclusionary performance systems and disintegrated risk management mechanisms must be resolved by way of cascading and extending service level agreements of Senior Management Service (SMS) members to even the lowest government incumbent on the ground and also integrating the database and systems of risk management in the three spheres of government. In this way, electronic monitoring of performance and risk management will not only be enhanced and increased, but could serve as early warning systems to detect conflict of interest, and thus put the perpetrators at high risk.

To this end, if the proposed early warning systems are well employed and maintained in a sustainable manner informed by tight internal and external controls, the corporate government strategy will bear fruit in an onslaught against conflict of interest.