

University College of the Cayman Islands 2014 Annual Conference:

Towards a Corruption-Free Caribbean: Ethics, Values and Morality

Friday, 21 March, 2014 10.00-11:30am

Models of Anti-Corruption Institutions: Lessons for the Region

Speech by the Auditor General of the Cayman Islands

Good morning ladies and gentlemen. It is a pleasure to be here with you this morning and be involved in this plenary session. I would like to congratulate UCCI on putting together such a wonderful conference and it is a pleasure to be on the stage with my fellow speakers.

I have been asked to speak about the anti-corruption framework here in Cayman, the structure, challenges, what I see as working and reflect on any changes required to the framework.

I have two perspectives on this first as the Auditor General, the watchdog of public spending, and secondly as a member of the Anti-Corruption Commission.

To using sporting terminology I am not sure that I receive any home advantage in talking about the subject of corruption. It is maybe one of those occasions when playing away from home might be considered less risky.

Anyway joking aside corruption/fraud is a scourge on society. Whilst it is not always obvious, the impact of corruption in society harms the development of countries, impacting the lives of all citizens but particularly the disenfranchised and the poor. It violates public confidence in the state and endangers social cohesion. The true cost of corruption is difficult to measure, but the reality is that it distorts the social and economic decisions of Governments, and impacts the quality and price of goods and services. Ultimately it is a cost on government which ultimately the tax payer, the average citizen ends up having to bear the cost of. It doesn't respect borders and all jurisdictions need to be aware of the risks and impacts of it taking root.

It is sometimes argued that corruption can help grease the wheels of a slow-moving and over-regulated economy. For example I heard people say a little bit corruption doesn't matter

because he got things done, or that he only used his position to further a “legitimate” business interest

However evidence indicates that apart from increasing costs, creating unproductive investments and leading to a decline in the quality of public services, it doesn’t actually expedite the provisions of services or goods, it actually delays and hinders them

Moreover if corruption is not contained, and we start to accept small levels of corruption as a cost of doing business, it will grow and become institutionalized, a situation from which it is difficult to return.

I am not here today to eulogize about the evils of corruption, but from a purely practical perspective I am clear in my view that no country can afford the inefficiency and cost that corruption brings, as we continue to strive to at least maintain if not improve the quality of public services we receive, with the limited resources at our disposal.

Therefore it is fundamentally important that we seek to contain corruption, I would like to say eradicate it, but I am a realist and our target should be to find ways to contain it and minimize its impact.

A major component of this fight is ensuring that we have the appropriate framework in place, supported by strong institutions which limit the opportunity for corruption to take place, through prevention and deterrence, and enable the effective investigation of potential instances of corruption.

Looking at the state of affairs here in Cayman we have key elements of what Transparency International calls a “National integrity system” in place. From my perspective we have a relatively stable legal system and independent judiciary, a proactive and free media, a level of public awareness, and there presently appears to be some political will to address issues around good governance and corruption.

I would suggest the very fact that we are holding this conference here in Cayman is a positive indicator of the climate here in Cayman, as we show a willingness to discuss and address the challenges of corruption.

We have a legislative framework, structures and institutions in place to deliver an anti-corruption regime and create an environment which minimizes the risk or reduces the opportunities for corrupt behavior to take place.

In essence I am talking about an environment where good governance is promoted, where the rule of law is respected, there is effective accountability and transparency in the use of public resources, where there are sound financial management systems, robust control mechanisms in place, effective public reporting of the performance of government, and an embedded culture of public service values and ethics

From a legislative perspective we have the laws in place that provide a clear framework for good governance and an environment which reduces the opportunities for corruption to take place. I am not saying they are perfect, and there are areas which need to be developed and improved, and some gaps around areas such as political financing, but as a starting point they are more than adequate.

For example there is the Anti-Corruption Law which while it has a number of difficulties in its implementation and application, provides a basis for prevention and deterring corruption, and enforcement through education, investigation and prosecution.

As my office recently reported in a number of reports on Governance the Constitution, Public Management and Finance Law and the Public Service Management Law provide a reasonable framework for the effective management of public services and resources, and provide for effective accountability and transparency in an ethical public service value driven environment.

The freedom of information law promotes transparency and accountability for Government decisions and use of resources, and the recently passed standards in public life law which fills an important legislative gap should be a force for promoting ethical and transparent decision making and reducing the risk of personal gain driving decisions.

The importance of transparency in creating the right environment cannot be understated. As Louis Brandeis a late Justice of the US Supreme Court said,

"Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

We also have in place institutions to support the framework which apart from legal system include:

The Anti-Corruption Commission to educate about impact of corruption, receive complaints of corruption and investigate cases of corruption or any suspected offence under the Anti-Corruption Law

Commission for Standards in Public Life to promote standards in public life and now compliance with recently passed Standards in Public Life Law

Office of the Complaints Commissioner – to receive and investigate complaints about the administration of public services, and report on matters of interest

The Office of the Auditor General – to audit the financial affairs of government including the effective, efficient and economic use of resources, and whether they are managed in accordance with the principles of good governance

Information Commissioners Office – to monitor compliance with the Freedom of Information Law, hear appeals when access to information is denied and raise awareness of the public's rights to information and Governments obligations.

However whilst we have the components of a framework with key legislation and institutions in place to promote good governance, and prevent, deter, detect and investigate corruption, there have been and continue to be challenges to creating an environment that minimizes the risk of corruption occurring.

A key challenge I see through my work is embedding a culture of compliance, internal control, and decision making based on clear public service principles. I am not saying that public

servants are operating as a rule unethically but there has been and there continues to be clear examples which demonstrate significant issues with the development of management frameworks and processes, to support or enable effective and efficient compliance with laws, regulations and ultimately the delivery of public services.

I will illustrate this point using an example close to my heart. Over the last decade there have been significant issues in reporting the financial performance of Government entities, a fundamental component in the parliamentary accountability cycle .

Over this period there have been significant gaps in the financial management across government, meaning the controls within the legislative framework to ensure the effective stewardships of public funds are not in place resulting in no accountability for hundreds of millions of dollars of public money and clear exposure of public funds to waste, abuse and ultimately corruption over a significant period of time.

This example leads me onto another contributing challenge or factor, the lack of consequences where there is non-compliance or where policies and procedures are ignored. Going back to the financial reporting example as far as I can tell there have been apparently little or no consequences for not meeting the legal requirements to report the financial performance of Government and establish effective financial management, and poor behaviors were effectively fuelled and reinforced. In fact I can think of examples where it would appear that individuals got rewarded despite the failure to perform fundamental responsibilities.

This in itself raises further questions about the will of legislators to hold the public service accountable for the use of resources, and senior public sector leaders desire to develop a performance based culture based on public service values to ensure there is effective stewardship of public money.

To illustrate this point I would like to read you a quote from a senior official who stated

“for the most part, the Public Management and Finance Law and regulations do not purport to create a legally enforceable financial framework, but something more of a non-binding code of conduct for the administration of government’s finances.”

This raises the question what is the point of the legal framework if this is how it is perceived, and demonstrates an attitude that undermines the effective stewardship of and accountability for public money

Another challenge is ensuring the strength of the institutions supporting democracy. Questions need to be asked around whether they have a sufficient legal mandate, are truly independent, have sufficient resources, are protected from undue influence and pressure, have the ability to publically report findings and administer or recommend sanctions or legal action.

I would suggest the legal mandates generally seem reasonable, although there are areas which could be strengthened, but there are clear challenges about safeguarding the independence of some of the institutions, ensuring they are sufficiently resourced to carry out their mandate, they are sufficiently protected and have effective powers to administer or recommend sanctions. Therefore weakening the strength and therefore the effectiveness of these institutions.

Taking one example, myself, the Complaints Commissioner, the Information Commissioner and the ACC are legally independent of the Government but the offices that support them are still legally part of core government and as a result there are levers that government could use to restrict or undermine our work.

Looking at what is working I do believe that there is now an atmosphere that is more supportive of good governance, but we will need to see if the will to drive through change is ultimately there, backed up by appropriate the resources

We now have a Standards in Public Life law which is a significant step forward and, the Freedom of Information Law I believe is having an impact to free up information and increase transparency, and at the same time helping to remove some of the cultural barriers regarding this. This is probably better for others to judge but I do believe my office is having a positive impact through our audits, apart from holding to account by also helping government to improve the management of resources and improve their accountability, even though at times I

feel the progress is slow. Generally the oversight Offices are all able to report in public and do so robustly. And although it maybe not entirely obvious to all the ACC is making progress.

However we are still on a long path of improvement, and there undoubtedly still significant work to be done to ensure we have an environment that effectively reduces the risk of waste, abuse and corruption

From my perspective I cannot understate the importance of Leadership and setting the right the tone at the top. Leaders in the public service, and I talk about this in the broadest sense including politicians, senior officials, board members and executive management have to be, but equally importantly have to be seen to be leading ethically, making decisions in a clear and transparent manner. Without this it is difficult to embed values and ethics not just in the public service, but more widely across the economy. And I would suggest that perception is as important as reality in this regard.

Allied to this is building a performance based culture and appropriate management systems, processes and controls, within the public service to drive performance and encourage behaviours that support public service values and the effective and appropriate use of resources. The Government is taking steps to move this forward but I would suggest that it has a way to go before it is embedded.

Aligned to a performance based culture there also need to be consequences for not meeting your responsibilities. I am not talking necessarily about punitive action for making a mistake but fundamentally if there is a failure to meet key legal, regulatory or administrative responsibilities there needs to be actions or remedies in place to ensure that good behaviours are developed and reinforced.

From a legislative framework there is also work to be done. I look forward to seeing the new Standards in Public Life Law come into force, and its effective policing and enforcement which will no doubt provide some challenges, not least in resourcing.

But we still need to address in my opinion some other key matters from a legislative position. In this I include political and campaign financing and disclosure, public appointments to boards,

mechanisms for whistleblowing and protection for whistleblowers, as well reviewing the ACL and simplifying the PMFL, as through complexity we create risks and challenges

We need to consider strengthening the institutions that support good governance and democracy. As Minister Ngozi said yesterday they are fundamentally important to effectively combatting waste, abuse and corruption. We need to ensure they have the capacity, independence and legal protections to be able to deliver their mandates and as appropriate the required prosecutorial powers.

We need to develop mechanisms where it is a matter of policy that certain information is disclosed on a proactive basis and improve the ease of access to that information.

And finally we need to continue to seek new ways to educate and inform our citizens about the perils of corruption

In conclusion I would say that we are on a path of continuous improvement. We have a lot of the foundations in place and good work is being done, but we need to build on this and ensure that we truly develop and reinforce a culture and environment where the opportunities for undertaking corrupt activities are minimized, and where the accepted norm is not about who you know, but about delivering public services efficiently and effectively in the best interests of all.