

## **SETTING UP AN EFFECTIVE ANTI-CORRUPTION UNIT WITHIN A LAW ENFORCEMENT ORGANIZATION**

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### 1. INTRODUCTION

Law enforcement agencies throughout the world are, to a larger or a lesser degree, faced by the problem of corruption within their own ranks. This is not a new phenomena. Corruption has always been a part of society and will always be a threat to good, honest governance.

Law enforcement agencies have a particular role to play in the societies they serve. This role means that there is a particular and a special relationship between society and the agency that stresses the importance for the agency to be honest and the integrity of its officers beyond doubt.

Unfortunately we live in an imperfect world and deal with imperfect people. People who are fallible and susceptible to the hardships of life

### 2. CORRUPTION DEFINED

Corruption is the abuse of power for gain.

#### 2.1 Discussion

It is not my intention to give a lecture on the nature of corruption but rather to have some form of departure so that there is a common understanding of the threat of corruption.

The abuse of power in a law enforcement organisation is to be viewed in an extremely serious light. This is so because, as I have said, there exists a very special relationship between it and the community. The community look up to the agency for protection and service - thus most agencies have the logo "To protect and to serve".

When the community and the agency lose faith in one another, law enforcement stops. The result is that the community no longer share information with the law enforcers and they, on their part, no longer trust the community. There is a general loss of law and order and potential investors are afraid that if they invest in that country and lose money through a criminal act, the police will be unable to protect their interest due to mismanagement and corruption.

### 3. REASON FOR SETTING UP

I believe that corruption in a law enforcement agency is due to greed on the one hand and mismanagement on the other.

Greed is a very strong motivational factor. Together with love and hate and a number of others, it is referred to as one of the seven deadly sins.

One must obviously not just look at the agency itself because greed is purely the motivation. Opportunity is

created when a member of society offers a bribe or tempts an officer with an offer. It has been said that it takes two to tango. There cannot be corruption without offer and acceptance.

Mismanagement or the lack of good management and in particular command and control, often create the opportunity for an officer to accept a bribe. If there is in sufficient supervision there will always be an opportunity for something to go wrong.

#### 4. THE PROCESS

The South African experience has shown that, much like the Hong Kong situation in the 1970's, corruption is manifesting itself at all levels of society and in particular those areas where power, when abused, disadvantages the weak and the poor.

The first step to take in the process is to determine whether there is a need for such a unit. Although I do not propose dealing with the scientific methods employed in the process, I think that it is important to do the pre-planning very carefully.

I can only speak on the South African experience in this regard and feel that the level of sophistication of the Malaysian agency will certainly put our own effort in the shadow.

However, we are progressing, albeit slowly, and I am confident that our own unit compares very well with the best in the world.

#### 5. THE SOUTH AFRICAN EXPERIENCE

The South African Police Service established its Anti-Corruption Unit in 1996. Although it existed as a Special Investigations Unit from as early as 1993, it was only in 1996 when the structure was officially approved.

The background to its establishment is important. South Africa, after the coining of democracy in 1994, was divided into nine provinces. A new Police Act, was passed and national control was devolved to lower levels.

This brought about the situation where each province had to duplicate structures that had previously existed only at national level. When the Anti-Corruption Unit of the South African Police Service was established, it was a totally new unit that had not been envisaged when planning was done for the South African Police Service some two years earlier,

The result was that no budget, logistical or accommodation planning had been done. It was only with the utmost co-operation from top management nationally and provincially, that we were able to get a unit going.

In the years following we were able to consolidate our position and to start expanding our operations. We are still, however, hampered by legislation that does not, like the Malaysian Akta Pencegahan Rasuah of 1997, set out the establishment of the Agency, its powers as well as other relevant issues dealing with corruption.

#### 6. LESSONS LEARNED

##### 6.1 Planning

The first Lesson to be learned from our experience is the importance of proper planning. The necessity for the establishment of an Anti-Corruption Unit came from representations made by an Attorney General as a result of a great number of complaints he received from members of the public concerning Police corruption. At the time, in 1993, the problem was thought to exist only in the largest metropolitan areas of the country. Therefore a unit

was established to deal with the metropolitan areas. It is only now, that we are decentralising, that we discover that corruption also exists in the most distant of the rural areas.

In retrospect, it would have been good if we had got our mandate, policy and structure in place before advertising the command posts.

As it turned out, when the Unit started in 1996, it consisted only of the different commanders. Each one of them had to start recruiting staff; obtaining accommodation, transport and anything else that goes into setting up an operational unit. It was truly a “ghost unit” but, I must say, the appointees did very well.

The one problem we encountered was the lack of adequate accommodation - not because we were after comfort, but because we could not afford to share office space with other Police units. We were forced to do so in many instances because separate accommodation was not available and, when available, expensive to rent in a time when there was no money in the budget for this purpose.

We found that our biggest challenge was the negative perception that existed among our fellow police officials regarding our Unit. We were branded as traitors and sell-outs because a proper awareness campaign had not preceded our establishment. We could not learn these things from past experience or from other police departments.

The maintaining of secrecy regarding our operations, our intelligence, information technology and technical ability has been an ongoing battle.

Too many people show an interest in the activities of the Anti-Corruption Unit and we have to take extraordinary steps to protect ourselves. It is strange to experience this because corruption in the private sector (which does not form part of our mandate) does not excite half the interest than that in the Police. The need for secrecy in this regard is often not understood. Not only is secrecy paramount for the success of an operation, but also for the reputation of an innocent person against whom a malicious allegation has been made. Once a reputation has been tarnished by corruption, it is destroyed.

To underestimate the power of corruption is to make a fatal error. Corruption has the ability to transcend normal barriers put in place to protect information. It is for this reason that an Anti-Corruption agency needs, as far as possible, to have its own database. Such a database should be accessible only by a select group of persons and information shared on “need-to-know” basis.

This is so because, through the “old boy” system, it is possible for any member of the Police to obtain almost any kind of information in its possession.

This very real danger underlines the necessity for a separate system and also makes the process expensive. When I speak of expense I am really referring to the fact that there should be a political and an administrative will to set up such a unit.

One must bear in mind that, politically speaking, corruption is a very handy stick to beat the opposition with, It takes great conviction therefore to stand up and be counted on a corruption platform if there is any possibility of a counter charge.

I am not a politician and will not attempt to speak on their behalf, but we need only look at the very recent happening in Germany where a political leader was forced to resign as a result of allegations of impropriety. I get the idea that this politician may not be solely responsible but he has to take the blame.

As far as many people are concerned, the cost of setting up a separate structure seems to suggest that it might

not be worth the effort. Why not rather structure such a unit under a “white collar” crime unit ( such as fraud or serious fraud)?

The reason, I think lies in the answer that corruption within a law enforcement agency differs totally from corruption in commerce and industry.

Corruption in a law enforcement agency is all about the abuse of official power for gain. The abuse of power in a law enforcement agency is, therefore not limited to a particular type of situation because of the variety of services / investigations that it conducts.

Corruption in such an agency is also not limited to operational issues but also to the more “traditional” form like contract manipulation and the unauthorised disclosure of information.

The successful investigation of corruption also depends totally on the approach. The methods employed need to suit the particular case and may have to be tailored to a larger or a lesser degree.

Due to the unconventional approach to such an investigation, it is vital that the policy of the agency makes provision for such a unit. It will, for instance, have to make provision for the safeguarding of witnesses, rewards to informers, dealing with whistleblowers, access to sensitive information in other units and the right to compel members to co-operate or to deliver exhibits or information. A very relevant issue here is also the right to compel a member to disclose the source of his / her assets.

## 8. POLICY ISSUES

I will not dwell on the more obvious policy issues, but will concentrate rather on other issues that impact on operations.

## 9. WITNESSES

The few witnesses available in a corruption case, not contaminated by suspicion of involvement, need to be adequately protected by a witness protection scheme that is able to cater for the safeguarding of members, given the unique situation that police personnel can be easily traced through ranks and service numbers. Members receive salaries that are deposited in bank accounts.

Bank accounts can be accessed and it can be determined from which area a person is operating. The same goes for credit cards.

It is virtually impossible to hide a police official within an organisation. The only way would be for a person to “leave” the Service and be accommodated in a secure environment. If the organisational policy does not make provision for it, there could be a serious problem. Other non-police witnesses can be adequately dealt with by such a programme,

## 10. REWARDS

The organisation should be able to reward police witnesses. Non-members usually do not present problems, but serving members often do because, once again, the policy does not provide for it. Where it does, there is no problem.

In this day and age it is becoming increasingly more difficult to decide on a just reward for members. If they are paid they can be accused of being information peddlers. If they are promoted, it may upset others. Medals are of

little use and a polite letter of appreciation more often than not fails to take cognisance of the extreme stress and hardship caused by a fear of reprisal.

## 11. WHISTLEBLOWERS

The whistleblower is more often than not no more than a normal witness. However, there are persons who give information with the sole purpose of discrediting a competent, honest investigator whose investigation is becoming uncomfortably close.

It is in such cases that extreme caution is to be displayed to determine the veracity of the information.

A whistleblower can also cause a grave problem in that such a person needs to be removed from his / her current location, for protection reasons, but fails to recognise this and views such attempts negatively, blaming the organisation and accusing it of intimidation.

The agency needs to have a policy on whistleblowers that is communicated to all its members.

## 12. ACCESS TO INFORMATION

In many cases the hostility shown to anti-corruption investigators results in the so-called “blue wall of silence”.

The sub-culture of clan-protection, prevalent in many law enforcement agencies, makes it very difficult to access information, be it in the form of documents, on computer or otherwise.

Often, when documentation is sought, it is conveniently “lost” or “misfiled”, resulting in delays, time wasted and often the scrapping of an investigation,

It is unfortunate that in many law enforcement agencies members protect the criminal element in their own ranks, not because they perceive them as such, but rather because they do not believe them to be guilty.

It is for this reason that an administrative order should exist that would enable the Anti-Corruption Unit to compel a member to present him / herself as a witness when summoned to do so and to produce any information required.

## 13. DISCLOSURE OF ASSETS

In some agencies members are allowed to become involved in private enterprise. This I believe, is extremely dangerous because it opens the door to abuse and corruption. If a member is allowed to do private work, especially if it is in the same field in which such member is officially employed, it is very easy to succumb to the temptation to abuse official power. It also makes it extremely difficult, when investigating possible corruption, to distinguish between legal and illegal income. If the law makes provision for a presumption of guilt and places the burden of proof on the accused, there is no problem.

Many agencies have administrative rules that make provision for a member to make a disclosure of assets. I believe that this should be mandatory for all members who serve in Anti-Corruption Units. They should also be subjected to regular screening procedures and also face some form of integrity test- polygraph, asset audit etc.

## 14. EMPLOYMENT CONTRACT

It is of the utmost importance to remove a corrupt officer as soon as possible. In agencies where this can be done easily without falling foul of labour laws, there is usually no problem. It is where labour laws exist, that alternatives have to be found. One such alternative may be an employment contract, signed at the time of first employment, that makes provision for immediate dismissal should such member become involved in corruption or fails to adhere to a code of ethics or code of conduct.

## 15. CONCLUSION

Corrupt police officers undermine the trust society places in them, They contribute to the breakdown in law and order and should be removed from their positions as quickly as possible because, while in office, they have access to all official information and can easily intimidate witnesses or defeat the investigation.

For this reason the establishment of a good and effective Anti-Corruption Unit is an absolute necessity that has to be established with a lot of planning, supported by sufficient financial and logistical resources - but above all backed by administrative and political resolve.