

**Paper presented by Mr Gary Crooke QC
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“Five years as Integrity Commissioner: a retrospective”**

This paper presents a retrospect of five years spent as Queensland Integrity Commissioner.

The independent statutory office of Queensland Integrity Commissioner was created in 1998 by an amendment to *Public Sector Ethics Act 1994*. The debate that led to the creation of the Integrity Commissioner focused upon a recognition by both sides of the Parliament that the Community regard and respect for those holding political office was at a abysmally low level. It was thought that if there were some confidential sounding board that was available to give advice before a possible blunder was made, this would contribute to enhancing the image of politicians.

The Queensland Integrity Commissioner is able to advise “designated persons” on the question of conflicts of interest. Broadly speaking, “designated persons” include politicians, senior public servants and statutory office holders. Additionally, the Premier is able to seek advice from the Integrity Commissioner on any matter involving ethics or integrity.

A detailed explanation of the role and function of the Integrity Commissioner can be found on the website at www.integrity.qld.gov.au.

For present purposes, I emphasise that the role of the Integrity Commissioner is advisory only. The office is a part-time one being the equivalent of two days per week and there is no investigative capacity or function.

I adhere to the view that I have previously expressed that in the context of Queensland public administration, the advisory role of the Integrity Commissioner sits well. The CMC and/or the Ombudsman have ample skill and powers to investigate matters involving misconduct, or worse.

There are stringent provisions relating to the obligation of secrecy imposed upon the Integrity Commissioner. All advice and associated material leading thereto are covered by a statutory obligation of secrecy from the Integrity Commissioner’s side. On the other hand, those seeking advice may publish it as widely or as narrowly as they choose.

I have heard it discussed that a possible loophole may exist where a person may deliberately choose not to seek the advice of the Integrity Commissioner on the basis that the person expects that the advice would not endorse their proposed conduct. Whilst this is theoretically so, my view is that on the balance it is better to have the back room, low-key, role rather than investing the office with more prefect like powers to tap individuals on the shoulder and proactively intervene in their day-to-day affairs. I have often heard it expressed by those who come to seek advice that they value the confidentiality from the side of the Integrity Commissioner, which attends the process.

I also consider it to be an advantage that the decision as to what steps will be taken rests with the person seeking advice. This enforces the proposition that those in public office are responsible for their own conduct and, to that extent, set the standards for themselves and others in their particular area of operation.

What then are my main reflections on the five years of tenure? What of the image of politicians five years later? What hope or despair is there for the future?

At the very heart of any appraisal of the role and function of the Integrity Commissioner must be a recognition of the paramount role of the Community in the area of public administration. Ultimately, it is the Community through its expectations, that sets the standards of public administration. Associated with this basic tenet is the fact that perception is everything.

It will not surprise you that in any opinion polls to which I have had access, it is difficult to see how the image of politicians for trustworthiness and integrity has improved in the eyes of the Community. From my vantage point, however, I do not encourage pessimism but rather suggest that there are heartening signs and that the Community, through expectations and demands, can foster these signs towards significant improvement.

Let us begin with the heartening signs. When I first commenced office, I read with interest the seminal work of the UK Parliament's Committee on Standards in Public Life. At that time, it was chaired by Lord Nolan and his work was ongoing, continuing through my term of office. I noted that the Committee, as part of its function, met with individual politicians quite regularly and discovered that, on an individual basis, each was genuinely committed to performing his or her public office with integrity and with regard to high ethical standards. During my term, I made it my business to speak with senior politicians and found that their commitment to ethics and integrity on an individual basis was of a very high standard. I also noted that they were keenly aware of the role of the media in its ability to expose conduct which did not come up to expectations.

Beyond this, I have noted the creation of a Code which inhibits and regulates lobbying by persons who formerly held high public office. Additionally, there has been legislation which creates not only a philosophical but, necessarily, a cultural change, in the area of information held by the Government. It is now based upon a right to information as a primary presumption as opposed to the citizen being obliged to establish a foundation to access information.

Further, there has been legislation focussing upon reminding holders of public office of their responsibilities when their office ends. All these matters are concrete signs of a commitment to improve public administration and to enhance integrity.

It cannot be too much emphasised that in this area, actions speak louder than words.

A signal example which I witnessed related to the situation in which a very senior public servant was placed. This individual received an invitation to a singular event where attendance would be much sought after by any citizen. The host was an organisation which was in the process of dealing with the Queensland Government in the area of responsibility of the senior official. There would have been plausible reasons to accept the invitation based upon courtesy and the Government wishing to encourage business in Queensland. Nevertheless, the countervailing consideration existed that the organisation was providing a benefit to a decision-maker in an area of keen interest to the host.

What occurred was that the senior official selflessly decided that it was necessary to set the bar at a very high level in relation to receipt of gifts and hospitality. By the concrete example which was set, there permeated through public administration a realisation that very high standards of integrity were not only spoken about, but in fact were exercised in reality.

All these things create a firm foundation for improvement. What then are the factors which apparently prevent politicians from being held in high esteem by the Community? The answer is far from simple. However, I turn to my base thesis on the proposition that those in public administration, whether elected or appointed, are no more, and no less, than trustees for the Community of the powers and influence which the Community has given them by their election or appointment. I think it is failure to recognise this basic principle and its full force and effect which hinders progress which might otherwise be made.

It is very much like the restaurant which spends years building an excellent reputation and, one night, serves a number of bad meals. The detriment to its reputation for this one blunder is exponentially greater than any days, months or years that would have been spent in providing excellence in its field. A high standard is no more than what was expected and, as such, will be almost taken for granted. Departure from this standard will be a notable event and will significantly detract from the good work that had been done to achieve the high reputation.

A significant pitfall into which those holding high office can stumble, is failure to recognise that their conduct will be measured objectively, and not by their own perceived standard of high ethical values. Whether an acceptable conflict of interest exists is determined by the view of the reasonable member of the public, properly informed.

A trite example serves to demonstrate the point. A person is appointed to chair a selection committee for a particular position. One of the shortlisted applicants is the chairman's sister. The chairman draws him or herself up to his or her full ethical height and declares that he or she will continue to chair the committee because they are so ethical that they would not let inappropriate considerations intrude upon their determination. The process is carried out and the sister is appointed.

I do not need to dwell upon what a reasonably informed member of the public would feel about this situation. It should not have happened, not because the chairman was regarded or suspected of being an unethical person, but because the process itself was objectively flawed. It would seem to be capable of favouritism to one candidate. It matters not, how ethical the chairman could profess him or herself to be. Experience shows that in some of these types of situations, there is something approaching outrage by the person in the position of chairman, and resentment that their ethical standards could be questioned. I repeat it is not their ethical standards which are being questioned, but, objectively, whether the process withstands scrutiny. This type of outrage or resentment often causes persons in public life to blunder on, heedless of objective perceptions. In effect, they seek to pull themselves up by their own ethical boot strings.

When such an unacceptable conflict does occur, it is an example of causing diminishing respect for the institution in which the deluded decision-maker operates.

Let me turn to another area of concern, which is the conduct of Members during the proceedings of Parliament. Such proceedings are now more in the public eye, often with live telecasts or podcasts being available. The Parliament as an institution is the well spring of our democratic system of public administration. To the extent that those involved in its proceedings act without courtesy or respect to their fellow members, the image of the Parliament regrettably suffers, but more particularly, so does the image of any politician who engages in this unseemly conduct. The conduct of the individual quickly translates in the public perception, to all parliamentarians. Sadly, it is a fact that lack of courtesy and respect is another example of unsatisfactory conduct brings down the esteem and respect which Members of Parliament should strive to deserve.

Another area which I feel is at the heart of preventing advances in public esteem is that which can be categorised as “promises”. At the very heart of our concept of ethical behaviour lie propositions such as an ethical person’s word is his or her bond, and that a promise is something which a person is ethically bound to keep. The making of a promise involves a solemn obligation, and if this solemn obligation is breached in ordinary life, the person who does so will deservedly lose respect.

There is a widespread Community understanding and disappointment that all too often something is put forward as a promise by a person in political office and later disregarded. Inevitably this leads to scepticism and distrust within the perception of the Community. Whilst this conduct continues to exist, the path towards increasing respect for holders of political office will meet significant obstacles.

In conclusion, let me discuss a current topical practice which I think incorporates all the basic principles that need to be understood and implemented if there are to be advances.

What I speak of is the practice of holding what is called “fundraisers” by political parties of any persuasion.

Let us return to what I regard as fundamental principles which underlie integrity in public administration. Those elected to, or appointed to, high public office are no more and no less trustees of the capital which they hold for use and benefit of the Community. In no way, is it within their remit as a trustee to do things other than for the public good and, in particular, they should never make use of capital for their own interest.

In real life, the difficulty presents itself that those holding power can make decisions and, with the assistance of spin doctoring or reliance upon the often ephemeral nature of a scandal, feel they can proceed, notwithstanding a failure to comply with proper fundamental principles. Here arises another problematical issue, namely, how is the public made aware of what is occurring and what are the underlying considerations? In this regard, the proper role of the media is all important to ensure proper standards in public administration. Again, to the extent that issues are presented in a biased or unreasonable way, the good that may be advanced by objective reporting, can be exponentially diminished by bias or sensationalism when issues are addressed.

Let us return to the concrete example of “fundraisers”. The usual strategy is for an organisation (usually a political party) to charge large sums of money for invitees to attend a function, promised that their subscription will earn them a right to speak to a decision-maker in their area of business or interest.

This process has been going on for some time, not only in Queensland but also in Australia and overseas. In part it has regard to desirable aspects of public administration in that it is quite open, to the extent of recording attendances and treating the subscriptions as reportable donations. Neither of these factors addresses the question as to whether such conduct is right in principle.

Indeed, it is my view that the failure to address the fundamental underlying principle in an issue such as this is one of the very reasons why the increase in public esteem for politicians is being curtailed.

I think we can see a parallel between this conduct and the hypothetical example of the chairman of the selection committee choosing his or her sister for the position. When called in question we may here see the same indignation (righteous or feigned) as we noted in the hypothetical selection committee chairman, that anyone could suggest that embarking upon such a strategy could in any way could affect proper and ethical decision-making in public administration.

Such would seem to be the chosen way forward for continuation of such a process heedless of how it accords with proper principle. But, what of informed public perception of this process? Is there a perception that those in business, whether privately, or whether corporately and responsible to shareholders, are going to pay a significant amount to attend a particular function for no expected return? "Nothing is for nothing," as Gordon Nuttall now famously said in the witness box.

What, for example, of the developer who pays \$3,000 for a seat next to a Minister responsible for making a decision about a contentious project in which the guest is involved? What of those objectors or other members of the Community who are interested in the outcome of the decision? Are they being perceived to be fairly treated?

At the bottom of all this is the misuse of capital.

The esteem in which the holder of a high political office is held and the power to make decisions that goes with it, are part of the capital which the Community has accorded to the holder of the office to be held in trust for the Community's benefit. It is not for sale for sectional interest. A political party is a sectional interest.

I can't accept equating the process with the established traditions of making a permissible political donation. These events have targets and there is an underlying current where the capital previously mentioned is being used to secure attendance and building up of party funds.

There is an agenda underlying the invitation that is an inappropriate use of the capital entrusted to the individual. To my mind, it is parallel to the hypothetical example of a police officer who pulls up a motorist and asks the motorist to blow into the alcotest device. As the police officer approaches the motorist, he or she says "By the way, would you like to buy a ticket in the Police Station Social Club raffle?"

It is the unspoken creation of an expectation of preferential treatment attending this, which will result in the inevitable conclusion by informed public opinion that the activity is untoward.

What is daunting in the present day and age is that such conduct is persisted in notwithstanding attempts to call those engaging in it to account. There has been recent outrage in the media about the propriety of holding these "fundraisers", yet there has been bold assertions that they will continue to be held for reasons such as "they have been going on for a long time" (does that make it right?), "everybody's doing it" (does that mean it is right?) or "we have to raise money somehow" (does that mean the next step is to rob a bank?). Notably absent is any attempt to justify the conduct in principle.

I have read commentaries in recent times relating to standards of public administration where a phenomenon dubbed as "dumbing down" is recognised as a strategy to be used by those who are determined to proceed head long notwithstanding what are barriers in the field of ethics and integrity. Essentially, such a strategy is no more and no less than adopting a thick hide and relying upon the expectation that Community outrage will subside.

This comes back to the responsibility of that amorphous body which we call the Community which, of course, is the linch pin of our democratic society. To the extent that it is prepared to be "dumbed down" there will be ample room for capital to continue to be misused.

Conversely, if the Community were to maintain its rage against those who cannot justify their actions in accordance with proper principle, standards will rise.

If such were to occur, it would be a giant step forward in recognition of trusteeship, and responsibility and proper use of capital. It would be a giant step forward towards proper public administration and increasing the standing in which elected representatives are held.

The very recent jury verdict in the secret commission trial of former Cabinet Minister Gordon Nuttall, marks a milestone. Juries, by their verdicts, set the standard of conduct in the Community. It provides a chilling example that even in the field of criminal law, to rely on one's own sense of righteousness and ignore objective public perception, can have disastrous consequences. The signal is clear that the Community is, in fact, alert and expects high standards from Ministers. This applies a fortiori in matters ethical, as opposed to criminal.