WHISTLE BLOWING AND WHISTLE BLOWER PROTECTION IN THE SOUTH AFRICAN PUBLIC SECTOR

by

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DECLARATION

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I declare that WHISTLE BLOWING AND WHISTLE BLOWER PROTECTION IN THE SOUTH AFRICAN PUBLIC SECTOR is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

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ACKNOWLEDGEMENTS

When one starts with this process, nothing can prepare one for the magnitude of completing a thesis. The never ending hours and sifting through countless sources and interviews are only made bearable by the knowledge that this time will come to an end. I would be ungrateful if I were not to express my appreciation to the various individuals who were part of this journey:

DEDICATION

To my mother, Marésa Holtzhausen (1947-2005):
for giving me life, love, support, courage…

I miss you greatly and know you share in this.

SUMMARY

The objective of this study was mainly to describe, analyse and evaluate the determinants of the phenomenon of whistle blowing that influences the protection of employees making authorised and/or unauthorised disclosures. It was also a purpose of the study to evaluate the specific role of the Protected Disclosures Act 2000 (Act 26 of 2000) (PDA) in fulfilling its mandate to protect authorised disclosures on wrongdoing in public and private sector organisations.

The PDA seeks to combat crime and corruption through the disclosing of wrongdoing. The intention is to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner, by providing comprehensive statutory guidelines through the PDA for the disclosure of such information, and protection against any retaliation as a result of such disclosures.

An important aspect that this study dealt with was the provision, as a prerequisite to the PDA to be implemented successfully, that individual members of the private and public sectors have to act responsibly and in good faith in making disclosures in order to be protected by the PDA.

In order to provide clarity on the conceptualisation of whistle blowing, the study explored the conceptual knowledge of the variables influencing the determinants of whistle blowing and the whistle blower through the application of a literature study of the concept and theories of ethics, values, morals, loyalty, trust and whistle blowing, in order to describe and analyse the variables influencing the whistle blower, the whistle blowing process, the characteristics of whistle blowers and the strategies and procedures employed to blow the whistle in an organisation. The study explored the organisational determinants influencing a whistle blower's decision to blow the whistle in the social context of an organisation in order to determine the

influence of organisational culture and organisational trust as internal social factors that may facilitate the effective management of whistle blowing resulting in no whistle blowing taking place.

The study objectives, appropriate conclusions and proposals are addressed based on the role that the PDA, the ethical determinants of the work environment, the determinants influencing the individual whistle blower and the organisational determinants influencing effective whistle blowing, can fulfil, in order to serve as a mechanism to combat corruption.

KEY TERMS

Authorised disclosures; Code of conduct; Corruption; Ethics; Good faith; Morality; Organisational culture; Organisational trust; Organisational wrongdoing; Trust; Unauthorised disclosures; Values; Whistle blower; Whistle blowing; Whistle blowing policy.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

"Everywhere, our knowledge is incomplete and problems are waiting to be solved. We address the void in our knowledge and those unresolved problems by asking relevant questions and seeking answers to them. The role of research is to provide a method for obtaining those answers by inquiringly studying the evidence within the parameters of the scientific method".

- Leedy

This study focuses on the determinants of whistle blowing influencing the protection of employees making authorised disclosures in terms of the Protected Disclosures Act 2000 (Act 26 of 2000) (hereafter referred to as "the PDA" or "the Act").This introductory chapter provides a background and rationale as well as a motivation for the study in order to put the problem in proper context. Subsequently, the significance of the study is addressed. The problem statement that arises, the research question, research problems/questions, hypothetical points of departure and the research objectives, are also provided, and the approach to the study set out briefly. To clarify this approach, it has also been necessary to explain the research method used to collect information. Terms frequently used in the thesis are concisely defined, in order to avoid misinterpretation or misunderstanding. The chapter concludes with an overview of the chapters contained in the thesis.

1.2 Background and rationale for the study

One of the key obstacles in the fight against corruption is the fact that, without legal protection, individuals are often too intimidated to speak out or blow the whistle. The PDA provides protection against occupational detriment to those who disclose information of unlawful or corrupt conduct. This law is therefore an important weapon in the anti-corruption struggle to encourage honest employees

to report wrongdoing.

South African whistle blowing legislation goes further than the British law and also covers both public and private sector employees. However, when drafting the legislation, the Judicial Service Commission could not be persuaded to expand the ambit of the law beyond the employer-employee relationship. Therefore a pensioner (who is not an employee), for instance, who blows the whistle on a corrupt pension officer or fellow pensioner would not be protected under the law. However, the PDA is currently under review.

The presumed benefits of whistle blowing for society should be seen against the possible negative consequences of whistle blowing, as managers and administrators sometimes argue that their organisation's authority structures should protect them from the harassment of potential false, bothersome or even violent confrontations by employees. Whistle blowers are both citizens and managers, and are therefore exposed to dilemmas in both roles. As citizens, they want to see the termination of wrongdoing. As managers, they would prefer whistle blowing incidents to go through internal channels only. However, if whistle blowing is ineffective, it benefits no one.

The promulgation of legislation to protect whistle blowers has raised the hope that individuals within the public sector will contribute more to the eradication of corruption in their ranks. Whistle blowers come from any level of an organisation and even from outside, although legislation in many countries does not protect the latter. Whistle blowers may blow the whistle on sexual harassment, fraud, inadequate health and safety measures, harmful practices, breaches of regulatory requirements or any other form of corruption, but they are mostly ordinary people with a high moral standards and values and a commitment to ethical conduct.

The potential value of employees coming forward and raising concerns over criminal and irregular conduct is self-evident. Investigations into alleged malpractices have often revealed that employees were either aware of the problem or had raised concerns that had been ignored. The cost of this silence in

terms of the environment, public health, employment, financial security, lifelong savings, the public purse or lifelong disability is devastatingly high.

The position occupied by an individual in an organisation is not the driving factor behind the choice to blow the whistle on perceived wrongdoing. However, the position of a whistle blower may influence an organisation's response. In this regard, credibility may influence the response, not only the credibility of the whistle blower's claim, but also his or her credibility as an individual. The position occupied by a whistle blower in an organisation also has an effect, particularly if the person is responsible for duties that may otherwise have been categorised as whistle blowing. Internal auditors are an example of this. Other factors are power and status, anonymity, and whether there are ulterior motives for whistle blowing or not.

Several statutes and pieces of legislation were introduced over the a period of time aimed at the institutionalisation of formal structures for openness, the disclosure of malpractice and transparency to combat crime and corruption and the enforcement of constitutional rights over the past few years. These pieces of legislation include for example the Constitution of the Republic of South Africa 1996, the Open Democracy Bill 1998, the PDA 2000 (Act 26 of 2000), the Investigation into Serious Economic Offences Act 1991 (Act 117 of 1991), the Reporting on Public Entities Act 1992 (Act 93 of 1992), the Corruption Act 1992 (Act 94 of 1992), the Audit Act 1992 (Act 22 of 1992), the Public Service Act 1994 (promulgated under Proclamation 103 of 1994), the Promotion of Access to Information Act 2000 (Act 2 of 2000) (the POAIA) and the Prevention and Combating of Corrupt Activities Act 2004 (Act 12 of 2004). Klaaren (2002:721) argues that even though these Acts constitute a major advance in the development of good governance, there are still important areas of public life that are not protected against malpractice. Klaaren also states that some information in particular may get lost in the gap between the PDA and the POAIA. In this gap, the disclosure of some categories of constitutionally protected information of public concern by current or former public officials is protected by neither the PDA nor the POAIA. In this respect, these Acts do not implement the full protection that the constitutional rights of access to information and free

expression (as well as other rights) may extend to public officials. However, these Acts create a framework for members of the public to play a crucial role as partners in fighting corruption and mismanagement in both the public and private sectors.

There is an increasing focus on good (and bad) corporate governance in South Africa and internationally, and institutions that are transparent and open will benefit from more favourable investor perceptions. Improved relationships with the public show that a substantial effort has been made to endow public administration with a legal framework that encourages the players involved to assume a greater sense of responsibility and develop practices to promote transparency and to protect whistle blowers (Mbatha 2005:3).

The PDA provides protection to whistle blowing employees, including employees in the public sector. Such employees may not be subjected to any occupational detriment. This means that whistle blowers cannot be dismissed, refused promotion or suspended on account of their blowing the whistle (Klaaren 2002:721). Ideally, therefore, there is legal protection against retaliation or intimidation.

Mbatha (2005:4) states that public administration in South Africa has to overcome numerous difficulties caused largely by the burden of history, unethical and corruptive constraints and government secrecy. He argues that, in the face of these difficulties, efficient administration that serves the needs of all citizens is one prerequisite for strengthening the rule of law and the credibility of the state, both internally and externally. Such administration must be transparent, responsible and accountable, and served by honest officials. In the current context of the globalisation of the world economy and the fluidity of cultural boundaries, administrations in all countries also face a variety of issues, including the ethical problems concerned with the protection of employees who expose malpractice or misconduct in the workplace, transparent administration and good governance.

However, the scope of the disclosures protected by the PDA is relatively narrow and it is uncertain how broadly it will be interpreted and applied by the courts and by implementing agencies in government. It seems clear, though, that the PDA's definition of protected information is relatively narrow and the requirement that a disclosure of an employee must be done in *good faith* also needs to be interpreted and applied by the courts.

Whistle blowing is understood to mean the act of disclosing information in the public interest. It is increasingly recognised that whistle blowers have an important role to play in combating wrongdoing (Mbatha 2005:6), including criminal and irregular conduct. Because of some confusion about the meaning of the term, whistle blowers have unfairly acquired a bad reputation as being troublemakers, busy-bodies and disloyal employees. A major cause of this negative perception in South Africa is the unfair confusion of whistle blowers with apartheid-era informants (popularly known as *impimpis*) who betrayed their comrades (Auriacombe 2004:659 and Camerer 2000:1). This historical context, not unlike to that of former Soviet bloc countries, as well as societies in some European countries such as France that were deeply scarred by World War II, has unfortunately allowed the stigmatisation of whistle blowing as an activity to be despised rather than to be encouraged (Mbatha 2005:7). Hence, one of the purposes of this study is to provide information on who whistle blowers are and what the process of whistle blowing entails, in an attempt to support its de-stigmatisation.

If understood correctly, whistle blowing is not about informing in a negative, anonymous sense. Rather, it is a key tool in promoting individual responsibility and organisational accountability. The bravery of being prepared to blow the whistle is seemingly directly related to a cultural resistance to the promotion of transparency and accountability in many organisations. The reality is that, in sticking their necks out to raise concerns within their place of employment, whether it is in the private or public sector, people more often than not risk victimisation, reproach and sometimes dismissal as often the messenger, rather than the important message being conveyed, is attacked. Within this context, whistle blowers acting in good faith and in the public interest may be the bravest

of citizens. In refusing to turn a blind eye to suspected impropriety in the workplace and as such preventing possible harm, they deserve society's support, if not praise (Mbatha 2005:7).

Whistle blowing is to the advantage of society in that it discloses wrongful acts in organisations by telling someone who is in a position to do something about it. Whistle blowing is described as the "…disclosure of information about perceived organisational wrongdoing, by a member or former member of the organisation, to parties that are in a position to take action, if this disclosure is in the public interest" (Miceli and Near 1992; Camerer 1996; King 1999; Uys 2000b). This thesis will look at some elements of this definition, and explain any departures from this definition for the purposes of discussing the PDA (see chapter four).

Corruption has been and still is prevalent in the public sector of South Africa. In a democratic state, the mismanagement of state money, or the money of the taxpayer, is a serious crime against society. It is well-known how devastating an impact a corrupt government can have on the citizens of a state (Mbatha 2005:8).

The improper enrichment of officials is not the only concern in terms of blowing the whistle on corruption – there is also the unlawful or unethical abuse of authority to consider. This means that whether a person bribes someone or misuses money, his or her authority is being abused (Mbatha 2005:8; Fox and Meyer 1995:29).

Corruption-combating measures may exist, but there has been little research into how effective such measures have been, especially when viewed against the ongoing presence of corruption in the public sector in South Africa. The process by which a politician or public official can clarify what activity is right or wrong must be highlighted to act as a code of ethics that is – or could be – generally applied to diminish corruption in state departments. It is also important to evaluate and even to create declarations of an ethical nature, whether in writing or verbally, which command or forbid certain behaviour in specified circumstances (Fox and Meyer 1995:45; Mbatha 2005:8).

Whistle blowing, the act of exposing wrongdoings within an organisation, is one way of fighting corruption and unethical behaviour by pointing it out to those who are able to do something about it (Camerer 1996; Uys 2000b and Binikos 2006). The whistle blower sets out to expose the wrongdoing and to supply information that enable those who hear about it to put and end to it (Heacock and McGee 1987; Miceli and Near 1992; Camerer 1996 and Binikos 2006:11), thus making organisations more effective (Miceli and Near 1992) and more transparent and accountable (Jos, Tompkins and Hays 1989 in Binikos 2006). However, whistle blowing is complex and ambiguous, and people are often either reluctant to do something about wrongful acts or their efforts may be undermined by others. Organisations tend to respond negatively to accusations (Camerer 1996; Uys 2000a), which allows the wrongdoer(s) time to try and cover up the irregularities. Some whistle blowers experience extremely cruel responses to their reports, which is highly counterproductive.

According to Milliken, Morrison and Hewlin (2003:454), "employees are often reluctant to share information that could be interpreted as negative or threatening to those above them in the organizational hierarchy… This reluctance to speak up, and the silence or information withholding has the potential to undermine organizational decision-making and error-correction and to damage employee trust and morale". What this boils down to is that if organisations retaliate towards whistle blowers then not only is the opportunity to address the wrongdoing lost, but the trust between the organisation and the whistle blower is breached, and the morale of the employee is damaged (Binikos 2006:11). This may result in the whistle blower being discouraged to report acts of wrongdoing, or perhaps even encouraged to keep quiet. Other authors (Camerer 1996; Miceli and Near 1995, Bok 1982, Jubb 1999; Uys 2006) point out that such a negative response may lead the whistle blower to pursue external channels to report to. Remaining silent may shield the employee from retaliation, but the long-term consequence of allowing the wrongdoing to continue is a far greater price to pay than the short-term benefits of remaining silent. A similar situation may be found with external whistle blowing. Although external whistle blowing, like remaining silent, may

cause suffering for the whistle blower, it may also be bad for the organisation in the long-term. Both silence and external whistle blowing might not be the best way of dealing with wrongdoing, therefore (Binikos 2006:12).

Since its democratic transition, South Africa has witnessed a number of highly publicised and controversial cases of whistle blowing. Closer examination of the cases reveals that there are problems with the implementation of protection within the scope of the PDA. In most of the cases, the whistle blower was a single individual with the conviction and courage to challenge a powerful in-group in order to end evidential wrongdoing. Such individuals usually draw attention to the wrongdoings they disclose, putting them in the middle of a controversy and causing them much suffering. Although the organisations and industries in which whistle blowing has occurred are dissimilar, the responses the whistle blowers have received have been consistently the same and many have been forced to resign or leave their jobs. In almost every known case in South Africa since 1994, the whistle blower has been victimised, retaliated against, and treated with hostility; they were not regarded as courageous, and their attempts to remedy a wrongful situation were not appreciated (Binikos 2006:10).

1.3   Motivation for the study

The notion of institutionalised, encompassing protection for prospective whistle blowers in terms of corrupt governance as a key component of the democratic order introduced after the 1994 elections is a particularly interesting and useful field of study. While it is acknowledged that the results of this study do not aim to be entirely or finally conclusive, it is hoped that this research on whistle blowing and whistle blower protection will arrive at a quantifiable indication of the status of whistle blowers at the end of the first five years of whistle blowing legislation in South Africa.

The thesis also has further potential value in that, with the exception of the research of Mbatha (2005), there has not been much demand for the doctrine of whistle blowing in public administration. Writers in this field of study highlight the

phenomenon mainly in the legal, sociological and psychological fields, and there seems to be a lot of confusion with regard to the conceptualisation of whistle blowing, even among researchers. The definition of unauthorised disclosures has been underemphasised in research and practice with regard to its application to the public sector work environment. Some researchers consider any disclosure of organisational wrongdoing, authorised or unauthorised, to be whistle blowing, and pay relatively little attention to mechanisms that could strengthen whistle blowing protection in organisations, probably because the provisions of the PDA to protect whistle blowers are poorly understood, and because few people understand what is meant by the phrase *effective whistle blowing*. This might be because there is a common understanding that because the previous authoritarian dispensation did not see whistle blowing as a priority, there is no point in reporting wrongdoing as nothing will be done about it and nothing will be done to protect the potential whistle blower from retaliation.

As Mbatha (2005:195) rightly remarks in his research, there are various significant potential barriers that stop officials from acting against misconduct in the workplace: Sometimes wrongful conduct is seen as justified and correct when it should not be; sometimes people believe that nothing will be done if wrongdoing is reported; many are still concerned about personal and professional retaliation; and many do not know how and where to report corruption.

The main aim of this thesis (which in turn is closely linked to the approach to the study (see section 1.8), is to analyse the special role that the PDA plays in the protection of public disclosures of alleged wrongdoing of employees in organisations. The research also aims to examine a protected disclosure and to expand upon the important ideas advanced by the documented literature and legislation in order to arrive at an appropriate definition and description of the concept whistle blower that is appropriate for this thesis.

1.4   Significance of the study

Although the body of knowledge on whistle blowing has been growing steadily during the past two decades, theorists have been focussing almost exclusively on

the individual whistle blower. While it is important to identify and understand the factors that motivate potential whistle blowers to come forward with incriminating information, it has become increasingly important that the social context of whistle blowing be scrutinised as well, since this knowledge is crucial for deciding how to apply these factors to protect an employee who discloses wrongdoing. This study is also concerned with determining the factors that motivate employees to make disclosures, with a view to making suggestions towards increasing the level of understanding on how to report corruption without being afraid of the consequences of whistle blowing. The belief that reporting criminal and irregular conduct will not change anything is also of concern.

Researchers and academics have continued to show a keen interest in identifying the factors intended to foster the improved management of whistle blowing in organisations. This study is therefore consistent with the ongoing academic and intellectual interest in the subject of whistle blowing, which is mainly informed by the need to manage whistle blowing in organisations and the need for protection for those who disclose wrongdoing in the face of a challenging situation, particularly in South Africa. The strategies and legislation adopted to set up an efficient administration and to eliminate corruption and promote ethical standards in South Africa are also indicators that the subject of this study is both important and topical. It is hoped that in this way the study will help improve the practice of whistle blowing management by attempting to achieve improved protection through more effective policies and procedures.

Also, the research will contribute to the existing body of literature on the subject of whistle blowing through an innovative application of the provisions of the PDA, the legal environment from which the information for this study was drawn. The research will contribute to scholarship by providing a fresh synthesis of information shaped by the researcher's own insights.

The study has an additional academic value in that it seeks to put to test whistle blowing theories and definitions in the context of the PDA and the work environment in organisations, with particular reference to public sector organisations. In particular, the study also explores whistle blowing from the point

of view of the organisation in which the disclosure or organisational wrongdoing occurs. For whistle blowing to act as an effective deterrent to organisational misconduct, it is important that the disclosure of information should be managed effectively.

1.5   Statement of the problem and research question

The problem examined in this thesis is necessarily multifaceted. According to Mbatha (2005:9), the contemporary call for a fundamental reappraisal of openness and transparency and the exposure of malpractice in government institutions are world-wide phenomena, as is clear from current literature as well as from the agendas of, among others, both national and international conferences on the administrative sciences. The current emphasis on the need for whistle blowing in government spheres may be attributed to the detrimental effects of corruption and unethical conduct and practices. According to Mbatha (2005:9), the interaction between the organisation and the public, the private sector and political and administrative institutions in the South African democracy takes a multiplicity of forms and is, in principle, complicated. After all, the heterogeneous public, government, parliament, provincial and municipal authorities and administrations, business sector, unions, political parties and community organisations, all have their own functions and their own professional trends that sometimes become the source of controversy. They also often derive their power and authority from different statutory and other sources. Transparency, openness and the disclosure of criminal and irregular conduct through whistle blowing offer channels through which the public can have inputs into government's services to the public. The ethical dilemmas of whistle blowing, disclosing malpractices in public sector organisations, cannot be quantified. Naturally, the phenomenon can only be discussed in relative rather than absolute terms. Where reference is made to the scope (quantity) of ethical variables within whistle blowing, therefore, this must be interpreted relative to certain circumstances (Mbatha 2005:9).

One of the key obstacles in the fight against corruption, according to Mbatha (2005:16) is the fact that, without legal protection, individuals are often too

intimidated to speak out or blow the whistle on criminal and irregular activities they observe in the workplace. Problems identified from Mbatha's research (2005) as the most significant potential barriers in preventing employees from taking action about workplace misconduct are:

- conduct being seen as justified and correct when it should not be, resulting in an ethical dilemma for the public official;
- the attitude that there is no point in reporting corruption as nothing will be done about it;
- concern about personal and professional retaliation; and
- not knowing how and where to report corruption.

Some authors have assumed that whistle blowing either will or should increase (Mbatha 2005; Near, Dworkin and Miceli 1993), because of the presumed benefits of whistle blowing to society at large. In fact, however, there may be negative consequences of whistle blowing to managers, their organisations, and, in some instances, to society. As potential recipients of whistle blowing reports, managers and their subordinate officials sometimes argue that their organisation's authority structures should protect them from the annoyance of potential falsified, troublesome or even aggressive confrontations by employees (Mbatha 2005).

As stated before, whistle blowers who are managers are both citizens and managers, thus exposing them to conflicts on both sides. As citizens and as potential whistle blowers, they want to see rapid and thorough organisational termination of the reported wrongdoing. As managers, they prefer to see whistle blowing about evidently valid allegations pushed through internal channels only, so that the institution's dirty linen is not aired in public. Research thus far has provided little direction in this regard. The relevant literature describes the characteristics of people who blow the whistle and the conditions under which they do so (e.g. Mbatha 2005; Miceli and Near 1985, 1988; Trevino and Victor 1992). There is also information about retaliation and who would be most likely to suffer it (Miceli and Near 1985; Near and Miceli 1986). Ineffective whistle blowing

benefits no one; obviously, it is critical to determine those predictors that increase the likelihood of effective whistle blowing.

This is all the more essential in South Africa's case. Given the recent whistle blowing experiences, it seems that any whistle blower in South Africa can expect a negative organisational response to his or her action. If potential whistle blowers perceive whistle blowing to be an act with real risks, given the known outcome of many whistle blowing cases, then they may be discouraged and this form of correctional action reduced. However, protection for disclosing wrongdoing is not, as is commonly assumed, expressed solely via the PDA, but is also dependent upon ongoing trust between the employers and employees in an organisation.

By drawing upon relevant theories in literature that concern the protection of whistle blowers, the main research problem to be theoretically researched by this study will therefore be:

What is the nature and scope of the PDA in creating protection for the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner; how can these provisions be used to increase the level of understanding of disclosures of wrongdoing done in good faith; and how can these disclosures be managed effectively to bring about an increase in authorised disclosures made in good faith in public sector organisations?

1.6 Research problems/questions

Researchers are generally prompted to ask questions that may help to answer and provide possible solutions to the research problem being studied. The research problems/questions to be addressed by this study are:

- To what extent can the PDA be interpreted and applied by the courts and by implementing agencies in government in order not to subject employees or employers to any occupational detriment?

- What is meant by criminal and irregular conduct in terms of disclosing wrongdoing?

- To what extent does the nature of the disclosure determine whether it is a protected or unprotected disclosure?

- What is meant by disclosing information in good faith?

- What is the nature of the interaction of ethics, morals, values, loyalty and trust in an organisation when the choice of disclosing wrongdoing must be made?

- How can this interaction be strengthened in order to increase the likelihood of whistle blowing being effective as a corruption-combating mechanism?

- To what extent does the complexity of defining whistle blowing affect the dilemma of whistle blower protection?

- What are the characteristics underlying the whistle blowing process?

- To what extent does organisational trust versus fear of retaliation affect the decision to blow the whistle?

- What are the factors constituting organisational trust and could the effectiveness of whistle blowing as constructive correctional action be increased through the internal reporting of wrongdoing built on relationships of trust in the organisation (as opposed to keeping quiet or external reporting)?

- How can whistle blowing policies that will not cause any harm to the whistle blower be managed effectively and efficiently and be encouraged in public organisations in order to address the concern about personal and professional retaliation?

1.7 Hypothetical points of departure

A hypothesis is a suggested, preliminary, yet specific answer to a problem that has to be tested and is derived from the research problem and may be tested negatively or positively (Auriacombe 2001:48). Contingent on the research problem and research questions that were developed and tested by this study, the following hypothetical points of departure become pertinent:

- An unauthorised disclosure of wrongdoing, which is what whistle blowing is, should be transformed into an authorised disclosure of wrongdoing, following certain prescribed processes and procedures.

- For whistle blowing to be an effective deterrent in terms of organisational wrongdoing, it is important that the disclosure of information should be managed effectively and responsibly.

All the hypothetical points of departure were formulated in such a way that acceptance of any or all of them constituted support for the findings obtained from the literature on whistle blowing provided in the following chapters.

1.8   Approach to the study

Contrary to the research approach of quantitative researchers, it is believed by qualitative researchers that data can only effectively be interpreted when he or she maintains an close relationship with the object of study and comes as close as possible to it (Mouton in Webb and Auriacombe 2006:597).   Qualitative research refers to an approach to the study of the world which seeks to describe and analyse the behaviour of humans from the point of view of those being studied.   Rather than observe the behaviour of an object during experimental research, and thus attempt to control all factors and variables that might distort the validity of the research findings, the qualitative researcher seeks to become immersed with the object of study (Webb and Auriacombe 2006:597).

Qualitative research displays a number of characteristics.   Firstly, qualitative research is dedicated to viewing events, norms and values from the point of view of the people who are being studied.   Secondly, such researchers provide detailed descriptions of the social settings they explore.   This enables them to understand the subject's interpretation of what is going on.   Thirdly, the scholar attempts to understand events and behaviour in the context in which they occur, following a holistic approach.   This is significantly a different standpoint from the natural scientist who attempts to isolate the subject from undue interference.   Fourthly, qualitative research views life as streams of interconnecting events, an

interlocking series of events and as a process of constant change (Bryman in Webb and Auriacombe 2006:599).

Qualitative research follows a research strategy that is moderately open and unstructured. Even when interview schedules are used as a research technique, the researcher provides minimal guidance to interviewees and allows considerable leeway when responding to questions. When the interviewee moves away from the researcher's designated area, the advantage arises as data is provided that is central to the interviewee (Bryman in Webb and Auriacombe 2006:598).

Because of their fear of disclosing corruption, many employees prefer to keep quiet. Being fearful of making a disclosure can be as problematic for an employee as being a victim of or witness to corruption. Following the clarification of what comprises an authorised disclosure (*i.e.* a disclosure protected under the PDA) the thesis aims to establish a corpus of criteria of influencing factors that may facilitate an understanding of the application of effective whistle blowing mechanisms and policies in order to create positive responses of organisations when incriminating information is disclosed.

Once all the questions and uncertainties regarding whistle blowing in organisational settings had been integrated, the research problem for the purpose of this thesis was the selection of a framework by way of which the nature, role and functioning thereof could be explained and appraised according to its value.

The most useful theoretic approach to explaining the complex phenomenon of whistle blowing was to isolate and consider the variables and factors that affect the phenomenon; *i.e.* to determine the nature and scope of the PDA in whistle blowing protection, the nature and scope of the democratic normative principles and variables such as ethics, morals, values and trust in public organisations, and the interaction between these variables and whistle blowing. The variables, which form the basis for the major part of the thesis, helped to define the parameters and limitations of wrongdoing within which and under which whistle

blowing occurs, and from this originated the basic framework and objectives of the whistle blower and the whistle blowing process that give the study the necessary theoretic grounding. Obviously it remains a mere qualitative framework and the influence of the various determinants and variables on organisational wrongdoing resulting in whistle blowing vary all the time, as they react to each other or are modified by the course of events.

The objective of the thesis was not to become entangled in the fine detail of the law; nor was the intention to assess the value of the PDA in the process of whistle blowing, but rather to perform an investigation into generalisations on whistle blowing in a democratic society, and to make generalisations in terms of the knowledge of employees regarding whistle blowing opportunities and their freedom to make authorised disclosures of wrongdoing in their work environment.

Given the absence of a known and proven system of norms for definitively setting the guidelines for whistle blowing in the public sector, there is a need for establishing an appropriate corpus of criteria that would be comprehensive enough to cover the entire field of ethical, organisational, managerial and legal responsibility to accommodate whistle blowing. It should also consider the protection of whistle blowers in government activity and be as scientifically accountable in theory as it would be workable in practice. To meet these requirements, it is also important to investigate in this thesis the ethical dilemmas and differing perceptions of the role of whistle blowing and corruption, as well as the whistle blowing practices prevalent in the public sector. Ethics and whistle blowing take on many manifestations and should not be regarded as having a single form.

Isolating the factors that create and maintain whistle blowing problems proved to be difficult. To be able to deal with those difficult situations more effectively the author considered some of the forces that are often present in organisations, such as ethical considerations. There may also be other factors at work, including the following:

An organisational culture of neglect: Frequently a factor in ongoing social settings in organisations, neglect refers to when a problem is not attended to, either because decision-makers or managers are not aware of it or because they are unwilling to do anything about it. Neglect may come in the form of poor management, inefficient accountability mechanisms, underfunding, understaffing, inadequate training, or any number of other conditions.

Individual attitudes and behaviours: Individual attitudes and behaviours also often contribute to whistle blowing problems. The individuals who create the problems may be powerful politicians, difficult employees, unethical managers, judges and others. At times, the individual may be a person outside the organisation who exerts influence because of the financial resources he or she controls, the votes he or she can command, or the relationships he or she has developed.

Group attitudes and behaviours: Whistle blowing dilemmas are sometimes created or maintained by the attitudes and behaviours of groups of people. A consortium of supervisors or managers might resist changes in policy that would alleviate a problem. Small groups of direct workers might resist the implementation of new intervention strategies. Funders might make inappropriate decisions. Certain people might influence politicians and government officials, or the media. Recognising such groups and their influence is important.

Institutions: Perhaps the clearest example of institutions being part of the problem is the bureaucracy. Some scholars say that stability is both the greatest single strength and the greatest single weakness of a bureaucracy. The very nature of bureaucracy makes it resistant to change. Because they are so resistant to change, bureaucracies may endure a series of policy interventions without altering the way they do business. If whistle blowing occurs in a bureaucracy, the whistle blower is likely to find at least a part of the problem there.

Policies: Problematic policies may exist at any level, but they are often most difficult to detect at institutional levels. A review of institutional procedure manuals can help uncover such problems.

More generally, the study will also attempt to present some potential indicators for the effectiveness of protected disclosures in the whistle blowing process. This is based on theory and research in the area of the problem statement.

1.9 Research objectives

In order to achieve the aim of the study, the objectives of the study are to provide:

- A systemic exploration of the scope of the PDA through an overview of the Act in order to provide an exposition of the rationale of the Act and its provisions to provide protection to whistle blowing employees in public organisations, including employees in the private sector.

- An analysis of the concepts ethics, values, morals, loyalty and trust, in order to examine the influence of these important external variables on the process of whistle blowing in an organisational setting.

- An exploration of conceptual knowledge of the variables influencing the determinants of whistle blowing and the whistle blower through the application of a literature study of the concept and theories of whistle blowing in order to describe and analyse the whistle blower, the whistle blowing process, and the strategies and procedures employed to blow the whistle in an organisation. It is also a purpose of this objective to get clarity on the conceptualisation of whistle blowing.

- An exploration of the organisational determinants influencing a whistle blower's decision to blow the whistle in the social context of an organisation in order to determine the influence of organisational culture and organisational trust as internal social factors that may facilitate the effective management of whistle blowing, resulting in no whistle blowing taking place. It is also a purpose of this objective to get clarity on the various issues related to the management of whistle blowing.

- A consideration of the insights that the body of knowledge on whistle blowing reveals, with a view to making proposals and identifying potential further steps that have to be taken for the successful implementation of

whistle blowing measures with their potential positive impact on the fight against criminal and irregular conduct in organisations.

1.10 Research method and literature information gathering

The first step in any research process involves a careful examination of the problem, what we know about the problem and what other scholars studying it have learned, in order to unearth different answers, conflicting results and multiple opinions. The research approach in this study is qualitative in nature and will of necessity require careful description, analysis, interpretation and evaluation of data as well as draw on a variety of sources for the purpose of obtaining information and relevant data. This is supplemented by open-ended interviews which constitute the major instrument for the collection of primary data, and will be used to gather information on the opinions, needs, experiences and expectations of two groups of respondents: Public service representatives as the employers and employees in a public sector environment and private sector representatives as the employers and employees in a private sector environment.

1.10.1 Research method

The purpose of this section is to present a brief introductory discussion of the research method used in the thesis. Qualitative research focuses on meaning, experience and understanding, thus to ensure a clear in-depth understanding of a research topic. Qualitative data can allow for a greater degree of non-sequential data that results in a cyclical and open-ended research process. This thesis makes use of a qualitative design to study the "properties, values, needs or characteristics that distinguish individuals, groups, communities, organisations, events, settings or messages" (Du Plooy 2001:83).

Deciding to follow either a quantitative or qualitative approach during research design, determines which research methods will be chosen (Mouton in Webb and Auriacombe 2006:599). When a social scientist decides to follow a qualitative approach, he or she is most likely to make use of methods and techniques associated with it, including ethnographic studies, grounded theory and case

studies. The qualitative research method that was chosen for this thesis is grounded theory, which will be explained in the following paragraph for clarification.

Grounded theory is a qualitative research method that uses a systematic set of procedures to develop an inductively grounded theory about a phenomenon. Only after data concerning a particular phenomenon has been collected and analysed, does a theory materialize. However, not all data collection and analysis exercises develops into a theory, some eventually only describe phenomena (Strauss and Corbin in Webb and Auriacombe 2006:599).

The aim of grounded theory is to build theory that is faithful to and illuminates the area under study. Grounded theory should accurately represent the everyday reality of a particular substantive area, be understood by those who were subjected to the study and those who practiced it and be abstract enough to be applicable to a variety of different contexts related to that phenomenon.

As mentioned before the self-defined purpose of grounded theory is to develop theory about phenomena of interest. The researcher attempts to derive a theory by using multiple stages of data collection and the refinement and interrelationship of categories of information.

The grounded theory researcher starts with the raising of generative questions which help to guide the research, but are not intended to be either static or confining. As the researcher begins to collect data, core theoretical concept(s) are identified. Provisional linkages are developed between theoretical core concepts and the data. The effort tends to evolve toward one core category that is central. Eventually, one approaches conceptually dense theory as new observation leads to new linkages which lead to revisions in the theory and more data collection. The core concept or category is identified and fleshed out in detail. This process continues and does not end. Grounded theory does not have a clearly defined demarcated ending point. The research project ends when the researcher decides to end it (Webb and Auriacombe 2006:599).

The approach followed in this thesis was designed to incorporate the elements that have already been identified by scholars in the field as being the critical components that must be considered for an impartial assessment of the protection of whistle blowers. Therefore, the choice of method for this study was based on the following requirements:

1.10.1.1   Gathering of information

In an effort to gather information and knowledge relevant to the field of study and research methods, the researcher relied on both primary and secondary sources of data. In this regard, two main research instruments were employed, namely the literature study and document analysis of the PDA in order to evaluate the provisions of the PDA. The aim of providing a documentary analysis of the PDA is based on the assumption that this is an area in whistle blower protection that that received little attention from scholars in South Africa, especially research related to the possible impact and outcomes (or non-outcomes) of the PDA and other legislation in terms of the interface between the monitoring of malpractice – and thus, the enhancement of whistle blowing protection.

The document analysis of secondary (qualitative) data complements the primary data generated by the interviews. Document analysis helped to verify the claims of whistle blowers in the subject matter of protected disclosures. However, it is important to note that these research instruments are not mutually exclusive; rather, they serve to complement each other.

The literature contains appropriate and relevant information on the subject of whistle blowing. However, the review of relevant literature indicates that studies of whistle blowing have been approached mainly from a foreign or international perspective. Indeed, the assumptions about whistle blowing on which this study is premised were propounded by authors such as Mbatha (2005) and Uys (2000b, 2005). However, these literature sources do not adequately reflect the impact of the PDA on cases in South Africa. To overcome this perceived deficiency in the literature, the researcher deliberately had to source local literature that addressed the South African situation.

1.10.1.2   Literature study

In the literature search the particular focus of the researcher was on the following concepts: Ethics, corruption, morality, whistle blowing, responsibility and information (*i.e.* case studies and factual information regarding whistle blowing). These include a host of publications related to the historical, philosophical and legal interpretation and related debates on whistle blowing in South Africa and elsewhere. Descriptive works that attempted to describe and outline whistle blowing were mostly academic, but also included publications of a more popular nature. The researcher specifically concentrated on the conceptualisation, as well as theories and models applicable to, these concepts.

Documentary sources from which secondary data was obtained included:

- relevant published textbooks and other literature;
- unpublished dissertations and theses;
- published and unpublished research reports;
- articles from scientific journals, reference works and newspapers, as well as magazine reports;
- official and unofficial government publications;
- the Constitution 1996 and other relevant laws and statutes;
- speeches and papers where appropriate;
- unpublished lectures, documented interviews, periodic reports and documentation of the cases; and
- internet sources.

1.10.1.3   Interviews

The deductive manner of the study, its largely uncharted terrain and the definitive role that particular points of departure played in the development of the various measures or guidelines and criteria, called for selecting information as a supplementary and hence secondary means towards an end. The supplementary data was interpreted and clarified in discussions with senior officials, specialists

and experts from state institutions, academics, and persons and associations of persons from other sectors. Based on the objectives and hypothetical points of departures of this study, the purpose of the open-ended interviews and discussions was to generate primary data from the participants, concerning their perceptions of the effects of the various identified issues in the protection of whistle blowers, as well as the relative importance they attach to these issues.

1.11 Terminology

Comprehensive conceptual clarifications of terms specific to the research appear in the appropriate chapters. However, to avoid uncertainty and ambiguity in the interpretation of concepts, terms utilised throughout the thesis are concisely defined below.

1.11.1 Community

A community in this thesis means a group of people living together in a specific geographical area, linked by political, economical, social and religious needs, interests and expectations and with the will and the ability to maintain itself (Scrutton 1996:73, 92,405).

1.11.2 Corruption

Klitgaard, MacLean-Abaroa and Parris (1996: 1) define corruption as:" … the misuse of office for personal gain. The office is a position of trust, where one receives authority in order to act on behalf of an institution, be it private, public or non-profit. Corruption means charging an illicit price for a service, or using the power of office to further illicit aims. Corruption can entail act of omission or commission. It can involve legal activities or illegal ones. It can be internal to the organisation (for example, embezzlement) or external to it (for example, extortion). Although corruption acts sometimes may result in a net of social benefit, corrupt usually leads to inefficiency, injustice and inequality".

1.11.3   Dilemma

According to Brockett (1988:65), a dilemma may be defined as a difficult problem, a problem for which it is seemingly impossible to find a satisfactory solution. To this Makrydemetres (2002:2) added that a dilemma is wider and more demanding as a problem, however complex and difficult the problem might be. Dilemmas cannot be solved in terms in which they are initially presented to the decision maker. Dilemmas therefore arise from a situation that necessitates a choice between competing sets of beliefs, values and principles (Vyas-Doorgapersad and Ababio (2006:388). Gortner (1991:14-15) pointed out that the ethical dilemmas faced in managerial situations are primarily related to competing values.

1.11.4   Disclosure

Disclosure is the act of telling details or of publishing a secret. The disclosure of confidential information is an act of divulging information that should not be made public (Collin 2004:76).

1.11.5   Ethics

According to Mbatha (2005:16), ethics can be seen as a system of moral principles that is based on values relating to human conduct, with respect to the rightness or wrongness of certain actions and to the goodness and badness of the motives and ends of such actions. Ethics constitute the basic principles of undertaking the right action, based on written and unwritten rules of conduct. Ethical, for the purpose of this study, means in accordance with moral laws.

1.11.6   Governance

Refers to the function, action, process or qualities of government. It does not refer to government structures such as a cabinet or a municipal council, but to the policies made and the effectiveness with which these are implemented (Mbatha 2005:15).

1.11.7   Government

The institutions responsible for making and carrying out the laws supporting a particular policy, and for passing judgment on disputes that arise under those laws. It is thus the way of ruling or controlling a country (Collin 2004:106).

1.11.8   Organisational wrongdoing

Organisational wrongdoing can be defined as perceived criminal or irregular conduct such as stealing, mismanagement, health and safety problems which might have a negative effect on the organisation and the public interest (Near, Rehg, Van Scotter and Miceli 2004:226-227).

1.11.9   Public Administration

Public Administration is a term used to describe the study of selective practice of task associated with the behaviour, protocol and conduct of the affairs of the administrative state. The term could further be classified as the art and science of the management of the affairs of government as applied within the confines of the bureaucracy (Mosher 1980:8).

1.11.10   Public sector

The public sector can be defined as a collective term which refers to the public service as well as local government, statutory bodies, quasi-government institutions, parastatals and similar bodies (Clapper 2000:18).

1.11.11   Public service

Within public administration there is a public service for the Republic, which must function, and be structures in terms of national legislation, and which must loyally execute the lawful policies of the government of the day (Constitution of the Republic of South Africa 1996)

1.11.12 Values

Values are the conscious, affective desires or wants of people that guide their behaviour. They are, for the purpose of this study, preferences and decisions which provide the standards by which public officials live. Values, as defined by Hilliard and Ferreira (2001:93), are general standards by which people live, views about what is desirable. Values refer to ethical standards. Values involve deep emotional dedication to certain cognitive views of the value of objects normally relating to human activity.

1.11.13 Whistle blower

For the purposes of this thesis, a whistle blower is an employee who makes an unauthorised disclosure of information about criminal or irregular conduct, along avenues that are not specified (Bakman 2003:3).

1.11.14 Whistle blowing

Raising a concern about a malpractice within an organisation or through an independent structure associated with it. Mathews (1987:40) defines whistle blowing as the act by an individual who believes that the interest of the public overrides the interests of the organisation he or she serves. The act of whistle blowing can have an extraordinary influence on the organisation, on society and on the whistle blower.

1.12 Overview of chapters

Chapter one of the thesis provides a general introduction to the entire study and a justification for the choice of theoretical framework adopted in this thesis. It includes the background to, rationale of and motivation for the study; the significance of the study; the statement of the problem and research question; research problems/question; hypothetical points of departure; the approach to the study; and the research objectives. The research method and literature information gathering are also provided, as well as the terminology used for the

purposes of the thesis. Finally, the chapter concludes with an overview of each chapter of the thesis.

Chapter two provides an overview of the legislative measures to facilitate protected authorised disclosures on wrongdoing. The chapter contextualises the literature on whistle blower protection in terms of the disclosure of information and perceived organisational wrongdoing. The provisions of the PDA are explained in terms of the background of the above context. Other legislation concerned with whistle blowing is also highlighted.

Chapter three provides a review of the variables influencing the ethical milieu in public organisations. The meanings of the concepts ethics, values, morality, the duty of loyalty and trust, as well as their influence on the public official, are investigated. The context of the role of ethics and trust is also clarified. The role of the ethical community, ethical dilemmas, public service ethics, and the materialisation of unethical conduct are also explained. Attention is paid to the establishment of an infrastructure for transparent and ethical governance, as well as to strategies to promote ethics. The chapter also discusses statutory guidelines and codes of conduct as well as the principles for the promotion of ethical behaviour.

In **Chapter four** attention is given to the variables influencing the whistle blower in making disclosures on wrongdoing. The chapter provides an overview of the concept whistle blower, definitions of whistle blowing, an investigation of the characteristics underlying the whistle blowing process and an examination of the process of whistle blowing. The context within which whistle blowing cases in South Africa and abroad occurred is highlighted and the consequences of whistle blowing, as well as those for the whistle blower and the organisation, are explained. Finally, the chapter discusses certain ethical concerns related to the whistle blower.

Chapter five explores managing organisational whistle blowing in terms of the variables influencing organisational culture and organisational trust in disclosing wrongdoing. The context where whistle blowing occurs in an organisational

setting and the development of a whistle blowing organisational culture and organisational trust are explained. The chapter also pays attention to how to deal with whistle blowing in the organisation, the effects of whistle blowing on the organisational image and how whistle blowing can be managed. Finally, the chapter investigates the effectiveness of whistle blowing.

Chapter six provides a synthesis of the study through a summary of the research objectives of the study. Certain observations are made in terms of the study objectives. The hypothetic points of departure are tested, the findings presented and conclusions drawn. Finally, proposals are made for possible future research arising from this thesis.

CHAPTER TWO

LEGISLATIVE MEASURES FOR FACILITATING PROTECTED AUTHORISED DISCLOSURES ON WRONGDOING

2.1   Introduction

"You need the freedom of association. You need the freedom of information. You need the freedom to challenge and to monitor government and other officials. Without that kind of society, democracy becomes a ritual".

- Frene Ginwala

In the introductory chapter, the following questions were posed: "*What is the nature and scope of the PDA in creating protection for the disclosure of information by employees relating to corrupt and other irregular conduct in the workplace in a responsible manner; how can these provisions be used to increase the level of understanding of disclosures of wrongdoing done in good faith; and how can these disclosures be managed effectively to bring about an increase in authorised disclosures made in good faith in public sector organisations?"* (see section 1.5). These questions were posed as part of the problem that has to be addressed.

This chapter sets out to clarify the research question posed in chapter one "*to what extent can the PDA be interpreted and applied by the courts and by implementing agencies in government in order not to subject employees or employers to any occupational detriment?"* (see section 1.6*)* by means of establishing a clear and meaningful basis for its interpretation and utilisation in the context of this thesis. The purpose is to eliminate confusion regarding concepts such as criminal and other irregular conduct and protected disclosure in terms of disclosing information as stated in the research questions in chapter one. "*What is meant by criminal and irregular conduct?"* … *"To what extent does the nature of the disclosure determine whether it is a protected or unprotected disclosure?"…"What is meant by disclosing information in good faith?"* (see section 1.6.)

Parliament, through the promulgation of acts, seeks to combat crime and corruption by encouraging whistle blowing by employees regarding an impropriety, *i.e.* unlawful and irregular conduct, committed by employers and fellow-employees. Employees who take such action are to be protected from unreasonable treatment by their employers. The intention is to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner, by providing comprehensive statutory guidelines for the disclosure of such information and protection against any retaliation as a result of such disclosures (Landman 2001:37).

Since the level of corruption and other criminal activity in South Africa appears to be on the rise, it is becoming more obvious that legislation like the PDA is needed. This chapter aims to provide an overview of the legislative measures that can facilitate protected authorised disclosures on wrongdoing. The starting point of this chapter is to provide general background information on the rationale for the PDA in terms of what a disclosure entails, what is perceived as organisational wrongdoing relating to the disclosurer, wrongdoing relating to the disclosurer (or whistle blower), peer-reporting, reporting to the proper persons as well as to ask the question of in whose interest the disclosure must be made.

The legislative measures to combat corruption and facilitate whistle blowing in terms of the PDA will then be explored in detail. The purpose of the PDA is highlighted, after which a theoretical scouting of the provisions of the Act is done. The aspects dealt with are: Concepts and definitions, objectives and application, legal remedies, protected disclosure to a legal advisor, protected disclosure to an employer, protected disclosure to a member of cabinet or executive council, protected disclosure to certain persons or bodies, general protected disclosure, and regulations.

There are also various other legislative matters concerned with whistle blowing, for example the Constitution of the Republic of South Africa 1996,

the Open Democracy Bill 1998, the Investigation into Serious Economic Offences Act 1991 (Act 117 of 1991), the Reporting on Public Entities Act 1992 (Act 93 of 1992), the Corruption Act 1992 (Act 94 of 1992), the Prevention of Combating of Corrupt Activities Act 2004 (Act 12 of 2004), the Audit Act 1992 (Act 22 of 1992), the Public Service Act 1994 (promulgated under Proclamation 103 of 1994), the Public Finance Management Act 1999 (Act 1 of 1999), and the Promotion of Access to Information Act 2000 (Act 2 of 2000) as promulgated to give effect to the constitutional right to fair access to information. This act aims to broaden the transparency and accountability process.

However, as a prerequisite for all this legislation to be implemented successfully, individual members of the private and public sector will have to act responsibly and in good faith by making disclosures.

2.2 Background and rationale for whistle blower protection legislation

According to Landman (2001:37), crime and corruption are rife in South Africa and therefore it comes as no surprise that Parliament has enacted a law, the PDA, to address the problem of crime and corruption in both the public and private sector. The preamble to the Act asserts that "Criminal and other irregular conduct in organs of state and private bodies is detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage."

In South Africa, subject to certain conditions, blowing the whistle constitutes a protected disclosure under the PDA, with legal protection for whistle blowers against reprisals by employers (if the disclosure is made by following the correct legislative procedures). The Act provides protection against retaliation for good faith whistle blowing on perceived wrongdoing. It gives directions to the employee toward seeking confidential advice and blowing the whistle

internally or with the responsible person. Provided there is good evidence to support the concern, it also protects whistle blowing to regulatory authorities and broader whistle blowing, where the circumstances justify it and the particular disclosure is sound.

2.2.1 Disclosure of information

There is no universally accepted definition of whistle blowing. Some definitions of whistle blowing distinguish between authorised and unauthorised disclosure (Lewis and Uys 2007:2). Typically, whistle blowing is seen as the unauthorised disclosure of information when whistle blowers report wrongdoing in the wrong way, *i.e.* along the wrong channels; the information is of a sensitive nature; or the person making the disclosure is not considered sufficiently senior in the organisation to make the disclosure, thus relating to the status of the individual (see section 4.3.3) (Uys and Senekal 2005:8). Unauthorised whistle blowing is causes negative responses from the organisation. As Uys (2005:7) states, "It is precisely the unauthorised nature of the whistle blower's disclosure that exposes him/her to the accusation of treachery". In addition, while whistle blowing is becoming more regulated, and legislated by the PDA, this will not necessarily mean that the organisation will see it as authorised action (Uys 2005:7).

The organisation may see the way in which the disclosure is made as unauthorised. Because of the organisation's response or because of the nature of the wrongdoing itself, whistle blowers often have no choice but to report wrongdoing in a controversial or unauthorised manner. Also, if there are no channels for such reporting, then the whistle blower may report things in ways that the organisation may see as inappropriate (Uys 2005:9). Both these factors may lead to unauthorised disclosure when a whistle blower is forced to report "over someone's head", *i.e.* to go to external regulatory bodies or the media to try and solve the problem. The whistle blower's report is then seen as unauthorised disclosure, which is counterproductive, as it usually only leads to further negative responses e.g. the case of Beige Holdings where André du Toit exposed irregular transactions and fraud in 1999 (see 4.5.1.10).

Disclosures may be considered unauthorised for a number of additional reasons. If the disclosure exposes highly sensitive or classified information (protected by confidentiality agreements or secrecy clauses) to parties that the organisation believes should not have access to such information, the organisation sees the disclosure as unauthorised (Uys 2005:9).

2.2.2 Perceived organisational wrongdoing

Most definitions agree that whistle blowing relates to perceived organisational wrongdoing. In order for a disclosure to take place, the whistle blower must witness an incident or practice, or set of incidents or practices, as incorrect and improper behaviour. This observation then causes the whistle blower to disclose the perceived wrongdoing (Miceli and Near 1992:156), and the disclosure may only take place once such a perception exists. However, the wrongdoing must also be perceived as important for the individual to disclose it (Gundlach, Douglas and Martinko 2003:117).

2.2.2.1 The disclosurer

Most definitions agree that the disclosurer must be an employee or former employee of the organisation within which the wrongdoing has occurred or is occurring (Near and Miceli 1985:4; Camerer 1996:45; King 1999:316). Former employees are included in this definition because individuals often leave an organisation as a result of whistle blowing. It is important to note that it is because of such individual's prior involvement in the organisation that he or she has developed a perception of organisational wrongdoing.

Whistle blowing, whether by an employee or former employee, is usually directed at an authority that may offer, or facilitate, a solution to correct the wrongdoing. Whistle blowers are typically employees who are subordinates and who aim to change the workplace for the better. As such, they may be seen as political agents (Rothschild and Miethe 1994:254) who want to

change the way things are done within an organisation. Because such subordinates in effect challenge their superiors there is often harsh retaliation.

2.2.2.2 Wrongdoing

Most experts see wrongdoing in an organisation as including unethical, illegal or harmful practices (Near, Rehg, Van Scotter and Miceli 2004:221) in the organisation of which the whistle blower is a part. In order for the wrongdoing to be disclosed, it is important that the research question of *"what is meant by criminal and irregular conduct in terms of disclosing wrongdoing?"* be addressed. Wrongdoing may include "… criminal activity, contravention of any statute, improper or unauthorised use of public and other funds, miscarriage of justice, the abuse of power, maladministration ..." (Uys and Senekal 2005:5).

Typically, two categories of wrongdoing are found in the literature.

Firstly, there is wrongdoing that Miceli and Near (1992:171) recognise as organisational crime, which is crime "… committed on behalf of an organisation by one or more of its employees, with the primary purpose of increasing organisational wealth". Organisational crime may also benefit the individuals involved, for if the organisation benefits, then certain individuals or groups within the organisation will benefit as well, for instance where there is contract fraud, money laundering, price fixing, or cost-cutting activities (Miethe 1999:27). As Miethe (1999:27) says, "... particular individuals may benefit from the misconduct, but the behaviour is supported by the organisation and is functional for the continued operation of the company". The organisation and the person committing the wrongful acts feel under threat, therefore, when accused. This is why many disclosurers will be either kept from reporting the wrongdoing, or treated very harshly if they do report it.

Secondly, some occupational crimes include acts of wrongdoing which are purely for self-interest (Miceli and Near 1992:171) – acts that occur "within a work-setting" and that are "motivated by individual need and lack

organisational support" (Miethe 1999:27). Miceli and Near (1992:171) state that occupational crimes "are committed primarily to increase individual wealth". It must be noted that syndicates functioning within a company to defraud it for direct individual and personal benefit may also be viewed as occupational criminals.

According to Miethe (1999:27), other activities include "counterproductive work activities (such as substance abuse on the job, coming to work late or leaving early; taking unauthorized work breaks), prohibited personnel practices (such as discrimination and sexual harassment), financial fraud (such as embezzlement and overcharging for business expenses, falsifying time cards), and poor production or service activities (such as defrauding customers by low quality service, abuse of clients)". Miethe (l999:27-28) adds that occupational deviance is not tolerated in most organisations.

2.2.2.3   Peer-reporting

Whistle blowers may come to act against their superiors or their peers. When whistle blowing involves the disclosure of information regarding a peer's illegal, immoral or harmful practices, it is referred to as peer-reporting. Research on group behaviour has found that members of the organisation generally react more negatively to peer reporters than to whistle blowers (Trevino and Victor 1992:40). Peer-reporting usually involves the reporting of individuals committing occupational crime, as such crimes are committed to directly benefit individual(s) who desire to increase their own personal wealth. Peer-reporting can also relate to organisational crime and does not focus on occupational crime only. Newly appointed employees are less likely to report a wrongdoing as they might fear fellow- employee or group retaliation or being ostracised (King and Hermodson 2000:323)

2.2.2.4   Reporting to the proper persons

Whistle blowers have two ways of reporting organisational wrongdoing, namely to authorities within the organisation, or regulatory authorities outside

the organisation (Uys 2005:8) and therefore two main forms of whistle blowing can be identified, namely internal and external whistle blowing (Near and Miceli 1996:509) (see sections 4.4.1.2 and 4.4.1.3).

Internal whistle blowing refers to reporting to people or managers within the organisation who are higher up in the organisational hierarchy. Those who receive internal complaints may be direct line managers, human resource representatives, chief executive officers, members of an executive council or board of directors. Internal whistle blowing may be via existing communication channels such as hotlines or via unauthorised communication channels e.g. e-mail if that is the only way (Johnson and Wright 2004:69) .

External whistle blowing refers to the disclosure of information outside the organisation and includes media, politicians, public protectors, government bodies, regulatory bodies, interest groups and enforcement agencies (Miceli and Near 1994:774-775). According to Uys in Binikos (2006:22), the appropriate whistle blowing procedure is for the whistle blower to report firstly internally, and then, if that does not succeed, to approach an external law enforcement agency, and finally, if that does not work, to report to the media, or to politicians, both of whom may also be considered external complaint recipients. However, where the media and politicians have received complaints of and exposed wrongdoing, they are not seen as whistle blowers since they are not members of the accused organisations. They are merely a way in which the whistle blower, a member or former member of the organisation concerned, can report and hopefully remedy the wrongdoing.

Journalists and politicians may also be seen as whistle blowers if they expose crime and corruption within an organisation they belong to or represent. Harry Charlton (see 4.5.1.1) is a politician who became a whistle blower when he exposed the South African Parliament, where he worked as Chief Financial Officer. Charlton blew the whistle on fellow Members of Parliament and their travel agents who had abused travel vouchers, defrauding Parliament of an estimated R24 million. Not surprisingly, this scandal has since been dubbed Travelgate. If the whistle blower is aware and understands the correct

channels of disclosing wrongdoing, it can *"be used to increase the level of understanding of disclosures of wrongdoing done in good faith."* (see section 1.5; 2.3.6 and 4.5.1.12).

2.2.2.5   In whose interest should the disclosure be?

Whistle blowing is said to be authentic when the disclosure of information is consistent with the greater good, *i.e.* in the interest of the public. If whistle blowing is seen as a tool to reveal fraud and corruption (Camerer 1996:49-50; Elliston 1982:168) rather than to gain personal benefit, then it is prosocial behaviour, since it is in the interest of the public. Malevolent whistle blowing (Uys in Binikos 2006:24), on the other hand, is when the whistle blower stands to gain personally, or when the individual engages in whistle blowing to leverage his or her position within the organisation, *i.e.* when prosocial benefits – if any – are secondary.

Whistle blowing is (a) deliberate action(s) that follows on the whistle blower's moral need to protect the organisation and the public from harm (Alant and Uys 1999:7). In terms of the PDA, every employer and employee is now regarded as having a responsibility to do something about crime and any other irregular conduct in the workplace (although employees are not obliged to disclose wrongdoing). The employer must ensure that employees who disclose such information are protected against retaliation or victimisation (see section 2.3.5). The PDA has far-reaching consequences for both employer and employee; the next section therefore looks at the provisions and certain prominent features of the PDA.

2.3   Legislative measures to combat corruption and facilitate whistle blowing – the Protected Disclosures Act 2000 (Act 26 of 2000)

External disclosures raise legal and ethical issues of confidentiality and business confidentiality. Disclosures also affect relationships between business, the state and the media. An external disclosure usually involves at least some regulatory intervention and inconvenience and, at worst,

unjustified negative publicity. This will cause unnecessary damage and disruption to the organisation, which would have dealt with the matter if it had known about it. As shown above, a culture where, in the absence of safe alternatives, media disclosures are a legitimate first port of call, gives an open invitation to an aggrieved or malicious person to cause damage, rather than raise the issue responsibly (Dehn and Borrie 2001:6).

In most legal systems, there is no protection for an employee who makes an external disclosure – even if it is in good faith, justified and reasonable. Such disclosures are therefore often made anonymously. This raises a number of issues. Anonymity will be the cover preferred by a malicious person. Anonymous reporting also makes it difficult to investigate the matter, and even impossible to rectify it. Anonymity, however, is no guarantee that the source of the information will not be figured out. Where the person is identified, the fact that he or she acted anonymously will often be seen as a sign of bad faith, jeopardising the person's position, or at worst, costing the person his or her career. Their plight then attracts media attention, which can only discourage others from disclosing wrongdoing at all (Dehn and Borrie 2001:6).

The near certainty that an external disclosure will lead to serious reprisals means that the matter is often not raised until the employee leaves the organisation. By then the problem may be much worse, the evidence will be outdated, and the whistle blower may allow the information to be used to damage or even blackmail the organisation (Dehn and Borrie 2001:7).

The United Kingdom's Public Interest Disclosure Act (PIDA 1998) was supported mainly due to information resulting from inquiries into major disasters that workers were aware of and were afraid to disclose for fear of victimisation. This Act covers both private and public sector employees and is a compulsory disclosure pathway in which when someone decides to blow the whistle, it must first be done within his or her own agency or department (Groeneweg 2001:16). The PIDA stresses the procedural correctness of the disclosure and (even more heavily) the ethical requirement of good faith.

However, it does not impose the duty to investigate the disclosure, nor does it provide for a compulsory review mandate or for parliamentary accountability through periodic reporting to Parliament. Though the Act provides for compensation for reprisals due to disclosure action, it does not provide for services in relation to whistle blower feedback, counselling and relocation.

According to Diale and Holtzhausen (2005:15) the United Kingdom's PIDA virtually gave birth to the South African Protected Disclosure Act, since the two are very much alike. Both apply to both the private and public sectors; whistle blowers have to follow the same institutional procedures to qualify for protection; secrecy laws prevent employees from disclosing certain types of information regarded as classified; and most importantly, the burden of proof and good faith requirements are entrenched. According to Vickers (2000:440), these requirements can be a concern for procedural correctness which might overshadow the interest of the public.

According to the Open Advice Democracy Centre (hereafter referred to as "ODAC") (2003:2-3) the PDA should play a central role in the overall fight against corruption and it aims to promote a safe environment in which someone who suspects or knows in good faith that something is incorrect, reports it to a relevant and capable authority which has the power to, for example, investigate the matter and if able, remedy the situation. ODAC was established in 2001 to promote the PDA and to provide training and consultancy connected with the administration of the PDA. It has embraced a quasi-government function of uncritically promoting the South African whistle blower law (De Maria 2005:221). Another focus of the PDA is to create a declaratory objective. This implies that the law should create a safe legal environment for disclosures and therefore create a culture where the disclosure will be heard in a responsible manner and the messenger treated with respect.

Since its promulgation in 2000, the PDA has evoked different reactions across the political, economic and social spectrum. On one hand, the PDA is seen as having the capacity to put in place the right context for raising and addressing

concerns in the workplace (Camerer 2001:1 and Molatudi 2001:36); on the other hand, the PDA is thought to offer employees who disclose wrongdoing little in terms of real job protection (Diale 2005:11).

2.3.1 The purpose of the Protected Disclosures Act 2000 (Act 26 of 2000)

Until the year 2000, neither the South African common law nor the South African statutory law made provision for ways to protect whistle blowing employees. The question that needs to be addressed is *"what is the nature and scope of the PDA in creating protection for the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner?"* (see section 1.5). The PDA was enacted with a view to creating a culture in which employees may disclose information on criminal and other irregular conduct in the workplace in a responsible manner, thus promoting the eradication of crime and misconduct in organs of state and private bodies.

Each of the procedures designed to ensure that the disclosurer is protected has certain requirements to be complied with. If a disclosure is made to a legal representative, there are only a few requirements, but the requirements become more comprehensive as one moves up the ladder, with the most comprehensive requirements applying to making a general disclosure. It is important that *"… these provisions be used to increase the level of understanding of disclosures of wrongdoing done in good faith."* (see section 1.5).

Camerer (2001:5) quotes Richard Calland, Executive Chair of the Open Democracy Advice Centre (ODAC), as having said: "At the heart of the Act is the notion that prevention is better than cure. It strongly encourages whistle blowers to disclose first of all to their employer, in order that the employer should have the opportunity to remedy the wrongdoing. Potential whistle blowers need to know that they must first go through this door, where the test

is that of good faith, rather than making a broader disclosure which would require higher tests."

Any concerns that the Act favours employees are unsupported (see section 4.5.1.12). The Act is specifically structured in a way that best serves the interests of accountable organisations. Only when internal channels have been exhausted or fail are broader disclosures to external bodies protected, meaning that the disclosure must be made in accordance with the prescribed process. The Act can and will make a difference in the way organisations and the state receive complaints about wrongdoing and how conscientiously these are addressed.

If employers respond appropriately to the good faith concerns raised by their employees, the Act should be invoked rarely rather than regularly. Ultimately, the law protects both employers and employees. Through informing employees that it is acceptable to blow the whistle and putting procedures in place for them to do so, employers receive early warnings of potential problems in their organisations and can address them before they spill over into the public realm. An employee, who raises legitimate concerns in an environment of trust to those able to address those concerns, cannot be discriminated against in terms of his of her occupation for doing so.

Bearing in mind the prescription required for protected disclosures to bodies other than employer channels in order to invoke the protection of the law, whistle blowers would be wise to familiarise themselves with the provisions of the Act. This will aid the employee to understand that the *"nature of the disclosure determine whether it is a protected or unprotected disclosure."* (see section 1.6). The following section gives a theoretical outline of the PDA in order to put the protection of employees and employers in the process of disclosing wrongdoing into context.

2.3.2 A theoretical scouting of the Protected Disclosures Act 2000 (Act 26 of 2000)

This Act makes provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers. It provides for the protection of employees who make a disclosure that is protected in terms of the Act and provides for relating matters.

The objectives of the Act are threefold. It aims to provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties committed by his or her employer; it protects an employee, whether in the private or the public sector, from being subjected to occupational detriment on account of having made a protected disclosure; and it provides for certain remedies in connection with any occupational detriment suffered on account of having made a protected disclosure.

The preamble to the Act reflects its policy objectives and gives recognition to the fact that:

- "The Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;
- section 8 of the Bill of Rights provides for the horizontal application of the rights in the Bill of Rights, taking into account the nature of the right and the nature of any duty imposed by the right;
- criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage;

And bearing in mind that:

- neither the South African common law nor the South African statutory law makes provision for mechanisms or procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether in the private or the public sector;
- every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace;
- every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure;

And in order to:

- create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures;
- promote the eradication of criminal and other irregular conduct in organs of state and private bodies" (PDA 2000:2).

According to the ODAC (2003:3), encouraging the disclosure of irregular conduct in a conscientious way is the *raison d'etre* of the Act. The preamble acknowledges that such irregular conduct takes place in the public and private sector. The employee in the workplace is often the person who sees and reports such conduct, and uses remedies available in legislation to deal with employer/employee relationships (the Commission for Conciliation, Mediation and Arbitration, hereafter called the CCMA and the Labour Court).

The next section of this chapter explores various concepts, definitions and aspects specifically relating to the PDA.

2.3.3 Concepts and definitions relating to the Protected Disclosures Act 2000 (Act 26 of 2000)

The concepts of disclosure, protected disclosure, (for not all disclosures will lead to the protection of the whistle blower), impropriety, employer and employee are essential to the Act.

Section 1 of the Act provides that unless the context indicates otherwise –

(i)"*disclosure* means any disclosure of information regarding any conduct of an *employer*, or an *employee* of that *employer*, made by any *employee* who has reason to believe that the information concerned shows or tends to show one or more of the following:

(a)   that a criminal offence has been committed, is being committed or is likely to be committed;

(b)   that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;

(c)   that a miscarriage of justice has occurred, is occurring or is likely to occur;

(d)   that the health or safety of an individual has been, is being or is likely to be jeopardised;

(e)   that the environment has been, is being or is likely to be damaged;

(f)   unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act 4 of 2000); or

(g)   that any matter referred to in paragraphs (*a*) to (*f*) has been, is being or is likely to be deliberately concealed;

employee means –

(a)   any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

(b)　any other person who in any manner assists in carrying on or conducting the business of an *employer.*

(ii)　*employer* means any person –
(a)　who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or
(b)　who permits any other person in any manner to assist in the carrying on or conducting of his, her or its business, including any person acting on behalf of or on the authority of such employer".

The Act applies to employers and employees, but does not include the entire corporate family; for instance, directors who are not employees as well cannot claim protection under the Act. The Act defines the concept employer, while the South African labour statutes define the concept employee.

According to the ODAC (2003:3-4), the PDA should be extended beyond the employer/employee relationship in order to achieve the objectives of the Act. The ODAC also gives a number of examples of whistle blowers who are outside the employer/employee relationship in the Act and therefore not covered by the Act:

- The public

A pensioner reports a corrupt bureaucrat in the welfare office. He suffers emotional injury when the bureaucrat verbally abuses him.

The owner of a driving school in a small town raises a concern about financial misconduct committed by the head of the traffic department. She now has to wait a long time for appointments for her learners to do their driver's licences and her learners fail more often now than previously.

- Agency workers

Mr S. is a bookkeeper who works for a business, but from home. He is asked to become involved in tax evasion. He declines, but then the business stops sending him work.

Mrs T., a labour broker's employee, raises concerns of health hazards in the company that employs her as a cleaner. She is afraid of reporting the matter to her employer or to the company where she works, because if the cleaning contract is terminated, her employer will discharge her.

- Independent contractors

A tiling firm gets a contract to provide and lay tiles at a hospital. The superintendent takes some of the tiles home. The contractor informs the Department of Health and the superintendent is disciplined. Working conditions are made very uncomfortable for the tiling firm.

Although the United Kingdom law, the PIDA, limits the remedies to those provided within the Employment Law environment, it is important to also recognise that in effect the PIDA creates a tort/delict within the labour law. This is drawn from its legislative history. The PIDA was drafted as a pure tort/delict, providing protection to any individual through whichever court. For administrative reasons, the Department of Trade and Industry took responsibility for the PIDA legislation, and the remedy in the law remained a convoluted one, but decided by the Employment Tribunals (ODAC 2003:4).

(iii)   *"impropriety* means any conduct that falls within any of the categories referred to in paragraphs (i)(*a*) to (*g)* of the definition of "disclosure", irrespective of whether or not –

    (a)   the impropriety occurs or occurred in the Republic of South Africa or elsewhere; or

(b)   the law applying to the impropriety is that of the Republic of South Africa or of another country".

Some practical difficulties, including evidential problems, are bound to arise where it a whistle blower accuses an employer or co-employee of violating a law of a foreign country (Landman 2001:38-39).

(iv)   *"Minister* means the Cabinet member responsible for the administration of Justice.

(v)   *occupational detriment*, in relation to the working environment of an *employee,* means –
   (a)   being subjected to any disciplinary action;
   (b)   being dismissed, suspended, demoted, harassed or intimidated;
   (c)   being transferred against his or her will;
   (d)   being refused transfer or promotion;
   (e)   being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
   (f)   being refused a reference. or being provided with an adverse reference, from his or her *employer;*
   (g)   being denied appointment to any employment, profession or office;
   (h)   being threatened with any of the actions referred to in paragraphs (*a*) to (*g)* above; or
   (i)   being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.

(vi)   *organ of state* means –
   (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
   (b) any other functionary or institution when –

> > > (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
> > >
> > > (ii) exercising a public power or performing a public function in terms of any legislation".

The definition of an organ of state is comparable but not identical to that in the Constitution 1996. One significant difference is that an organ of state as defined in section 239 of the Constitution 1996 excludes a court or judicial officer from the concept, but not so in the PDA 2000 (Landman 2001:38). The PDA makes includes the public sector in the definition as it makes provision for employees functioning within national, provincial and local spheres of government as well as for constitutionally established bodies.

> (vii)   *"prescribed* means prescribed by regulation in terms of section 10.

> (viii)   *protected disclosure* means a *disclosure* made to –
> > (a)   a legal adviser in accordance with section 5;
> > (b)   an *employer* in accordance with section 6;
> > (c)   a member of cabinet or of the executive council of a province in accordance with section 7;
> > (d)   a person or body in accordance with section 8; or
> > (e)   any other person or *body* in accordance with section 9, but does not include a *disclosure* –
> > > (i) in respect of which the *employee* concerned commits an offence by making that *disclosure*; or
> > >
> > > (ii) made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5".

It seems as if there may be various disclosures. For example, an employee in the public sector may first seek legal advice from a lawyer (or industrial relations consultant) and disclose information in the course of obtaining advice. The employee may then make a disclosure to the employer or to a person designated by the employer to receive such a disclosure. The same

disclosure could also be made to a member of the cabinet or the executive council of a province. In principle there is no reason why the disclosure cannot be made also to the public protector or another body. In terms of section 5 it is noteworthy to mention that, for example, persons on the staff of the South African Revenue Services are obliged by law to maintain secrecy (see section 4 of the Income Tax Act 58 of 1961) (Landman 2001:39).

(ix)   "this Act" includes any regulation made in terms of section 10.

2.3.4 Objectives and application of the Protected Disclosures Act 2000 (Act 26 of 2000)

The objectives and application of this Act in terms of section 2 are as follows:

(1)   "(a) to protect an *employee,* whether in the private or the public sector, from being subjected to an *occupational detriment* on account of having made a *protected disclosure*;

(b) to provide for certain remedies in connection with any *occupational detriment* suffered on account of having made a *protected disclosure*; and

(c) to provide for procedures in terms of which an *employee* can, in a responsible manner, disclose information regarding *improprieties* by his or her *employer*;

(2) This Act applies to any *protected disclosure* made after the date on which   this section came into force, irrespective of whether or not the *impropriety* concerned occurred before or after the said date".

It is not certain why the Act reads this way, for it does not allow for different sections to come into operation at different times.

(3)   "Any provision in a contract of employment or other agreement between an *employer* and an *employee* is void in so far as it –

(a) purports to exclude any provision of *this Act*, including an agreement to refrain from instituting or continuing any proceedings under *this Act* or any proceedings for breach of contract; or

(b)   (i) purports to preclude the *employee*; or

(ii) has the effect of discouraging the *employee* from making a *protected disclosure".*

The objectives and application of the Act is therefore to provide protection to employees in the private and public sector from occupational detriment such as dismissal, suspension, disciplinary action, intimidation, demotion and harassment if the disclosure was made according to the prescriptions of a protected disclosure.

2.3.5   Employee making protected disclosure not to be subjected to occupational detriment

Section 3 stipulates that no *employee* may be subjected to any *occupational detriment* by his or her *employer* on account of, or partly on account of, having made a *protected disclosure*.

As stated before, an employee has the right not to be subjected to occupational detriment. This right is the principal protection which the Act foresees. Occupational detriment includes discrimination against the employer in the form of among others victimisation. Occupational detriment is limited to the whistle blowing employer's working environment.

As mentioned in section 2.3.3 point (v), occupational detriment can mean being subjected to "disciplinary action; being dismissed, suspended, demoted, harassed or intimidated; being transferred against his or her will; being refused transfer or promotion; being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage; being refused a reference, or being provided with an adverse reference, from his or her employer; being denied appointment to any

employment, profession or office; being threatened with any of these actions; or being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security" (Harrison 2004:23).

Most of the things described as occupational detriments are well-known forms of victimisation. For instance, it is quite possible for an employer to refuse an employee a reference, since the general rule is that an employer does not have to give an employee a reference (though the employer has to give the employee a certificate of service (Landman 2001:42). Employees subjected to occupational detriment in contravention of section 3 may take the matter to court.

2.3.6   Legal remedies

The various legal remedies stipulated in the Act are dealt with in section 4.

(1)   "Any *employee* who has been subjected, is subject or may be subjected, to an *occupational detriment* in breach of section 3, may –

   (a)   approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act 1995 (Act 66 of 1995), for appropriate relief; or

   (b)   pursue any other process allowed or prescribed by any law.

(2)   For the purposes of the Labour Relations Act 1995, including the consideration of any matter emanating from the Labour Relations Act by the Labour Court –

   (a)   any dismissal in breach of section 3 is deemed to be an automatically unfair dismissal as contemplated in section 187 of the Act, and the dispute about such a dismissal must follow the procedure set out in Chapter VIII of that Act; and

   (b)   any other *occupational detriment* in breach of section 3 is deemed to be an unfair labour practice as contemplated in Part B of Schedule 7 to the Act, and the dispute about such an unfair

labour practice must follow the procedure set out in that Part: Provided that if the matter fails to be resolved through conciliation, it may be referred to the Labour Court for adjudication.

(3) Any *employee* who has made a *protected disclosure* and who reasonably believes that he or she may be adversely affected on account of having made that *disclosure*, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the *disclosure* to another post or position in the same division or another division of his or her *employer* or, where the person making the *disclosure* is employed by an organ *of* state, to another organ *of* state.

(4) The terms and conditions of employment of a person transferred in terms of subsection (2) may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer".

The fact that such remedies exist under the Act should provide an incentive for employees to blow the whistle without fear, as well as for employers to ensure that they are able to account for any action that might occur once a disclosure in good faith has been made.

As there may be cases where it is impossible for an employee who is a *bona fide* (in good faith) whistle blower to make a disclosure to his or her direct employer, the Act allows other ways of making disclosures, such as a general protected disclosure, for which much more than *good faith* is needed (see 4.5.1.12), since the Act is aimed at encouraging employees to raise their concerns internally so that the organisation can respond to the concern internally rather than externally.

The question that arises is *"to what extent can the PDA be interpreted and applied by the courts and by implementing agencies in government in order*

not to subject employees or employers to any occupational detriment?" Landman (2001:42) states that where occupational detriment is threatened, the most appropriate remedy would generally be an interdict. The jurisdiction and powers of the Labour Court are covered by provisions under the Labour Relations Act 1995 (Act 66 of 1995) that apply to the situation governed by the Act. As for other relevant courts, they will also be confined to their normal jurisdiction and powers. In view of the criticism expressed in the preamble about the powerlessness of the common law to protect the whistle blower, it is uncertain why other courts should have jurisdiction in these matters as well.

According to Landman (2001:43), the dismissal of a whistle blower amounts to an automatically unfair dismissal. The Labour Court is entitled to order the reinstatement of whistle blowers or to order compensation of not more than an amount equal to 24 months times the monthly remuneration payable to the employee at the dismissal date. Alleged unfair labour practices can include lesser occupational detriments. Disputes such as dismissal must be referred to either bargaining council that has jurisdiction on the matter or the CCMA, as the case may be, and thereafter to the Labour Court for settlement. The Act does not include this kind of unfair labour practice in schedule 7 to the Labour Relations Act 1995 (Act 66 of 1995), hereafter referred to as the LRA, *i.e.* those unfair labour practices leading to adjudication and those leading to arbitration by the CCMA or a council.

There is a difference between an arbitrator's power and the power of the court. Item 4(1) of the LRA deals with the powers of the Labour Court to deal with any dispute referred to it in terms of item 3 "on terms it deems reasonable, including, but not limited to, the ordering of reinstatement or compensation". The Employment Equity Act 1998 (Act 55 of 1998) repealed the kind of unfair labour practice which it was created to remedy. If one assumed that this Act applied, reinstatement would not be an option and unfair labour practice in terms of a lesser detriment would not involve dismissal. It may be that the Act wants the court exercise powers which the CCMA or council could have exercised had they been given jurisdiction. If so, item 4(2) allows for the dispute to be dealt with "on reasonable terms".

Employees who have made a protected disclosure and who reasonably believe that they may be adversely affected by such disclosure, must, at their request and if reasonably possible, be transferred from the post or position held at the time of the disclosure to another post or position in the same division or another division of the employer or, where the person making the disclosure is employed by an organ of state, to another organ of state (Landman 2001:43).

If someone is transferred, his or her employment terms and conditions may not be less favourable than those that applied immediately before the transfer. In addition, a work contract or other employer-employee agreement that purports to exclude any provision of the Act, including an agreement not to take steps under the Act or for breach of contract, or purports to preclude the employee, or tries to keep the employee from making a protected disclosure.

The above remedies deal with contraventions of section 3 that have already taken place. If an employee fears that he or she will suffer occupational detriment in future, he or she can apply to the Labour Court, and probably to the ordinary courts, for an interdict against such occupational detriment.

The protection that the PDA grants whistle blowing employees overlaps to some extent with that granted by the LRA, but the PDA gives more detail about the forms of occupational detriment that will be prohibited. It also clears up certain legal uncertainties that employees may have if they had only the LRA at their disposal.

Despite the fact that the PDA and LRA overlap, the PDA clearly covers a broader scope. The fact that a dismissal in contravention of the PDA will constitute an automatically unfair dismissal give employees more protection than a dismissal in terms of the LRA would have, as such a disclosure would typically *not* be automatically unfair under the LRA. The PDA also gives employees more protection against acts by employers short of dismissal. Finally, the PDA gives clearer guidance and more detail as to what actions are prohibited. The cases of Grieve vs. Denel, Mike Tshishonga and Allison

Pedzinski illustrate that legal remedies can be used if the whistle was blown in good faith and as a result of them making the disclosures they were victimised for disclosing acts of impropriety committed by the employer (see sections 4.5.1.2; 4.5.5.1 and 4.5.1.9).

2.3.7 Protected disclosure to a legal adviser

Section 5 of the PDA states that:

"Any *disclosure* made –
    (a) to a legal practitioner or to a person whose occupation involves the giving of legal advice; and
    (b) with the object of and in the course of obtaining legal advice, is a *protected disclosure"*

It is not quite clear what is meant by the phrase "or to a person whose occupation involves the giving of legal advice", but it is probably meant to include paralegals and staff of certain non-government organisations providing legal advice.

2.3.8 Protected disclosure to an employer

In order to qualify as a protected disclosure, the Act stipulates in section 6 that:

(1)   "Any *disclosure* made in good faith –
    (a) and substantially in accordance with any procedure *prescribed*, or authorised by the *employee's employer* for reporting or otherwise remedying the *impropriety* concerned; or
    (b) to the *employer* of the *employee*, where there is no procedure as contemplated in paragraph (a), is a *protected* disclosure.

(2)   Any *employee* who, in accordance with a procedure authorised by his or her *employer,* makes a *disclosure* to a person other than his or her

employer, is deemed, for the purposes of *this* Act, to be making the *disclosure* to his or her *employer*."

According to Le Roux (2000:41, 44) common law contract principles stipulate that an employee has a duty to act in good faith towards, and generally to further the interests of, his or her employer. Traditionally, the courts have been prepared to enforce this duty fairly strictly. A person making the disclosure will be protected if it is done in good faith and according to prescribed procedures, provided that such a procedure for the reporting and remedying of an impropriety has been prescribed or authorised by an employer.

But what happens if the employee sees this duty of good faith as conflicting with his or her more general duty in terms of public interest? For example, what are the rights and duties of a bookkeeper who realises that his or her employer is not paying VAT, or is bribing a Customs and Excise official so as not to pay the necessary duties on imported goods?

Or, if an employee should find out that his or her employer is breaking the law and polluting the environment by allowing a factory to release noxious substances into a nearby river … would the state protect such an employee if he or she should disclose this? And how would making a protected disclosure in terms of clause 6 work in practice?

Example: Let us imagine a sincere traffic official working in a traffic licensing department. He notices that a fellow-employee is issuing clearance certificates to noticeably unroadworthy vehicles. The honest employee, motivated out of good faith and in the interest of the public and knowing how many deaths result from such vehicles being on the road, decides to blow the whistle on his fellow-employee. As a public official, he may already have signed the code of conduct stipulating the duty to report impropriety. If it is possible to make a protected disclosure, he would be wise to do so. He might also report the suspected wrongdoing to his immediate supervisor. For section 6 disclosures to be protected, good faith is the only test. However, it is

not the whistle blower's duty to investigate the matter – all he has to do is to disclose information according to the procedures specified in the Act to those who are in a position to look into the matter (Mbatha 2005:147 and Camerer 2001:4).

If the traffic official's immediate supervisor is a responsible and honest manager, he would welcome the information supplied by the honest employee acting in good faith and would ensure that the allegations made in the disclosure were followed up. However, if the line manager to whom the disclosure is made is an accessory of the corrupt co-worker, the official may be dismissed, demoted or labelled as a troublemaker. There would be certain steps he could take under the Act, however, to protect himself (Mbatha 2005:148 and Camerer 2001:4).

It is highly unlikely that an employee who discloses unlawful acts to the authorities will be seen as failing to act in good faith. An employer will, therefore, not be able to dismiss such an employee immediately, or to claim damages for losses suffered, as a result of the disclosures made by the employee. If the employer give the employee notice that his contract has been terminated, such a termination would almost certainly constitute unfair dismissal, which would mean that the employee would have a right to be reinstated or to be compensated under the LRA. Actions short of dismissal which penalise the employee for his actions could also constitute disciplinary action short of dismissal, and therefore possibly unfair labour practice as contemplated in item 2(1)(b) of schedule 7 to the LRA.

It is clear, therefore, that the LRA does provide a measure of protection for whistle blowers against dismissal or other forms of detrimental action, but is such protection enough?

The PDA shows that Parliament did not think so – in fact, it shows that Parliament realised that employees blowing the whistle on their employers did not have enough protection. According to the preamble to the PDA, "Neither the South African common law nor the statutory law makes provision for

mechanisms or procedures in terms of which employees may without fear of reprisals; disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether in the private or public sector."

In section 6(2), the Act also makes provision for confidential hotlines (see section 5.5.3), with some companies encouraging their employees to make use of them: "Any employee who, in accordance with a procedure authorised by his or her employer, makes a disclosure to a person other than his or her employer is deemed, for the purposes of this Act, to be making the disclosure to his or her employer."

In South Africa, as elsewhere, there has been a competitive market for such services. Research has found, however, that where the only real alternative to silence is for individuals to make an anonymous report, practical problems result. Anonymous disclosures are hard to corroborate, difficult to investigate and often impossible to remedy. Setting up and publicising a hotline through which the public and employees can anonymously report suspected corruption is therefore not felt to be the best answer in terms of promoting and encouraging a culture of openness, transparency and accountability.

2.3.9 Protected disclosure to a member of cabinet or executive council

Section 7 of the PDA states that any *disclosure* made in good faith to a member of cabinet or of the executive council of a province is a *protected disclosure* if the *employee's employer* is –

(a) "an individual appointed in terms of legislation by a Member of Cabinet or of the Executive Council of a province;

(b) a body, the members of which are appointed in terms of legislation by a Member of Cabinet or of the Executive Council of a province; or

(c)   an *organ of state* falling within the area of responsibility of the member concerned".

Landman (2001:40) states that the Minister of Justice is obliged, after consultation with the Minister of Public Service and Administration, to issue practical guidelines which explain the provisions of the Act and all procedures which are available in terms of any law to employees who wish to report or otherwise remedy an impropriety. The guidelines must be approved by Parliament before publication in the *Government Gazette.* All organs of state must provide to every employee a copy of the guidelines or must take reasonable steps to bring the relevant notice to the awareness of every employee in the organisation.

2.3.10   Protected disclosure to certain persons or bodies

According to section 8 of the PDA, disclosures to certain persons or bodies include:

(1)   "Any *disclosure* made in good faith to –
    (a)   the Public Protector; or
    (b)   the Auditor-General; or
    (c)   a person or body *prescribed* for purposes of this section; and in respect of which the *employee* concerned reasonably believes that –
        (i)   the relevant *impropriety* falls within any description of matters which in the ordinary course are dealt with by the person or body concerned; and
        (ii)   the information disclosed, and any allegation contained in it, are substantially true, is a *protected disclosure.*

(2)   A person or body referred to in, or *prescribed* in terms of, subsection (1) who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or *prescribed* in

terms of, that subsection, must render such assistance to the *employee* as is necessary to enable that *employee* to comply with this section".

After consultation with the Minister of Public Service and Administration, the Minister of Justice may by notice in the *Government Gazette* make regulations for the purpose of section 8(1). Such regulations may add matters which, in addition to the legislative provisions pertaining to such functionaries, may in the ordinary course be referred to the Public Protector or the Auditor-General, as the case may be. Any regulation made for the purposes of section 8(1)(c) must specify persons or bodies and the descriptions of matters in respect of which each person or body is prescribed (Landman 2001:40). An example of this type of body could be a Commission of Enquiry.

In the case of Mike Tshishonga, a disclosure was made firstly internally in the Department of Justice and when the issue was not properly addressed he made the disclosure to the Public Protector, the Auditor-General and even to the Minister in the Presidency (see section 4.5.1.2).

2.3.11 General protected disclosure

Section 9 provides prescriptions in terms of a general protected disclosure and includes:

(1) "Any *disclosure* made in good faith by an *employee* –

    (a)   who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and

    (b)   who does not make the *disclosure* for purposes of personal gain, excluding any reward payable in terms of any law; is a *protected disclosure* if –

        (i)   one or more of the conditions referred to in subsection (2) apply; and

        (ii)   in all the circumstances of the case, it is reasonable to make the *disclosure*.

(2) The conditions referred to in subsection (1)(i) are –

(a)   that at the time the *employee* who makes the *disclosure* has reason to believe that he or she will be subjected to *occupational detriment* if he or she makes a *disclosure* to his or her *employer* in accordance with section 6;

(b)   that, in a case where no person or body is *prescribed* for the purposes of section 8 in relation to the relevant *impropriety,* the *employee* making the *disclosure* has reason to believe that it is likely that evidence relating to the *impropriety* will be concealed or destroyed if he or she makes the *disclosure* to his or her *employer*;

(c)   that the *employee* making the *disclosure* has previously made a *disclosure* of substantially the same information to –

(i)   his or her *employer,* or

(ii)   a person or body referred to in section 8, in respect of which no action was taken within a reasonable period after the *disclosure*; or

(d)   that the *impropriety* is of an exceptionally serious nature."

According to Le Roux (2000:44), the employee must reasonably believe that the information is "substantially true" and that the disclosure must not be made for personal gain. The disclosure must be reasonable and if the disclosure is made in terms of section 6, the employee must have a reason to believe that he or she will suffer occupational detriment. In the instance where no body is available in terms of section 8 and the evidence might be destroyed, or if the information was previously revealed and nothing was done, section 9 applies. The impropriety that is part of the disclosure must also be of an exceptionally serious nature which relates to the research question *"to what extent does the nature of the disclosure determine whether it is a protected or unprotected disclosure?"* (see section 1.6). The disclosure must be in good faith and along the correct channels as prescribed by the PDA.

(3) "In determining for the purposes of subsection (1)(ii) whether it is reasonable for the *employee* to make the *disclosure*, consideration must be given to –

- (a) the identity of the person to whom the *disclosure* is made;
- (b) the seriousness of the *impropriety*;
- (c) whether the *impropriety* is continuing or is likely to occur in future;
- (d) whether the *disclosure* is made in breach of a duty of confidentiality of the *employer* towards any other person;
- (e) in a case falling within subsection (2)(c), any action which the *employer* or the person or body to whom the *disclosure* was made, has taken, or might reasonably be expected to have taken, as a result of the previous *disclosure;*
- (f) in a case falling within subsection (2)(c)(i), whether in making the *disclosure* to the *employer* the *employee* complied with any procedure which was authorised by the *employer,* and
- (g) the public interest.

(4) For the purposes of this section, a subsequent *disclosure* may be regarded as a *disclosure* of substantially the same information referred to in subsection (2)(*c*), where such subsequent *disclosure* extends to information concerning an action taken or not taken by any person as a result of the previous *disclosure"*.

Each of the above procedures ensures that a disclosure is protected and it has certain requirements that must be complied with. It should be noted that a disclosure will not be protected if the whistle blowers stands to gain financially from making the disclosure. However, only a few requirements apply in respect of a disclosure made to a legal representative, with the requirements becoming more comprehensive as one moves up the ladder. The most comprehensive requirements are those for making a general disclosure.

2.3.12 Regulations

Section 10 of the Act deals with the following regulations:

(1)   "The *Minister* may, after consultation with the Minister of Public Service and Administration, by notice in the *Government Gazette* make regulations regarding –

      (a)   for the purposes of section 8(1), matters which, in addition to the legislative provisions pertaining to such functionaries, may in the ordinary course be referred to the Public Protector or the Auditor-General, as the case may be;

      (b)   any administrative or procedural matter necessary to give effect to the provisions of *this Act*; and

      (c)   any other matter which is required or permitted by *this Act* to be prescribed.

(2)   Any regulation made for the purposes of section 8(I)(c) must specify persons or bodies and the descriptions of matters in respect of which each person or body is prescribed.

(3)   Any regulation made in terms of this section must be submitted to Parliament before publication thereof in the *Gazette*.

(4)   (a)   The *Minister* must, after consultation with the Minister of Public Service and Administration, issue practical guidelines which explain the provisions of *this* Act and all procedures which are available in terms of any law to *employees* who wish to report or otherwise remedy an *impropriety*.

      (b)   The guidelines referred to in paragraph (a) must be approved by Parliament before publication in the *Gazette.*

      (c)   All organs of state must give to every *employee* a copy of the guidelines referred to in paragraph (a) or must take reasonable steps to bring the relevant notice to the attention of every *employee.*"

Employees are often in the best position to discover criminal activities or irregular conduct in the organisation. However, without any legal protection, their disclosures may be costing them too high a price in terms of the consequences. However, legislation, specifically the PDA, now makes provision for employees to blow the whistle or to disclose information relating to corruption, maladministration and other inappropriate conduct in the workplace, to public and private bodies without fear of retaliation.

The nature and scope of the PDA in creating protection for the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner (see section 1.5) makes provision for a number of avenues that can be utilised to blow the whistle. Firstly internally within the organisation to the employer or someone that represents the employer and secondly if the desired result is not achieved, external channels such as a legal advisor, minister, the Public Protector and the Auditor-General. If all avenues have been exhausted, then a disclosure can be made to the media (but not as an avenue for the first disclosure), as was done by Mike Tshishonga (see section 4.6.1.2). If these provisions are applied and followed more ardently more whistle blowers will be protected under the PDA from for example occupational detriment, provided that the disclosure is made in good faith.

The information disclosed must show or tend to show that a criminal offence has been committed or is likely to be committed, that a person failed to comply with a legal obligation, damage to the environment was done, and there was a miscarriage of justice, unfair discrimination or endangerment of health and safety. Disclosures not made according to the above provisions can still be protected if there is a reasonable belief that the information is to a large extent true, the disclosure is not made for personal gain, the whistle blower reasonably belief that he or she will be subjected to occupational detriment if the disclosure is made to the employer, a previous disclosure on the same matter that was made to the employer was not addressed within a

reasonable period of time and that the impropriety is of exceptionally serious nature.

2.4   Other legislative measures concerned with whistle blowing

Although the PDA is also known as the "whistle blower act", there are various other legislative measures that aim to promote openness, transparency and accountability and strive to fight against corruption. Legislation should be drawn up in such a manner that unethical and corrupt behaviour can be prevented before it happens. The next section in this chapter deals with some such legislative measures.

2.4.1   The Constitution of the Republic of South Africa 1996

An open and transparent system presupposes that the information required to hold public officials accountable and to enforce the individual's fundamental rights should be readily accessible. It is therefore possible to establish a direct link between transparent and accountable public administration and access to information. This link is clearly recognised in section 195 of the Constitution 1996, which deals with basic values and principles governing public administration. Section 195(11)(g) provides as follows:

"Transparency must be fostered by providing the public with timely, accessible and accurate information".

According to section 32 of the Constitution 1996, every person has the right to information held by government and any other information held by a person and needed for exercising or protecting this right. This prescription led to the promulgation of the Promotion of Access to Information Act 2000 (Act 2 of 2000).

2.4.2 The Open Democracy Bill 1998

The people who are best acquainted with corruption, maladministration and unlawful practices in government organisations and therefore ideally placed to draw attention to such wrongdoing, are themselves public officials. Diligent officials who might wish to complain about poor conduct are often discouraged from doing so by a legal obligation of confidentiality, or by a fear of reprisals. By protecting public officials from such consequences through the whistle blower protection component in the Open Democracy Bill 1998, recognition is given to the indispensable role of those who speak out against misconduct in the promotion of accountable and efficient government and administration (Gumbi, Maleka and Mchunu 1995:S.n).

In terms of section 63(1) of the Open Democracy Bill 1998, public officials who act in good faith and disclose information about the contravention of a law, corruption, dishonesty or maladministration in a government organisation, cannot be held civilly or criminally liable and may not be subjected to disciplinary action. However, the protection awarded in terms of section 63(1) applies only if:

- the official disclosed the information to a parliamentary committee, a committee of a provincial legislature, the Public Protector, the Human Rights Commission, the Auditor-General or an Attorney General;
- the official disclosed the information to a news medium on clear and convincing grounds that –

  - disclosure was necessary to avert an imminent and serious threat to the safety and health of an individual or the public, to ensure that the impropriety was properly and timeously investigated or to protect him/herself against reprisals; and
  - the disclosure is in the public interest and outweighs any need for non-disclosure.

The Open Democracy Bill 1998 also prohibits the enforcement of any obligation of confidentiality, which could restrain whistle blowing. If it becomes law, it will override any other legislation, which may contain provisions that could hinder the disclosure of information regarding maladministration, misconduct, corruption or law-breaking in government organisations (section 63(1)). People who have disclosed information about maladministration, corruption or lawbreaking or indicate an intention to do so are protected against reprisals by section 65(1), as they may not be dismissed; suspended, demoted, harassed, subjected to having a condition of employment altered, denied appointment or election to any office or profession or threatened with such action. If reasonably possible and upon their request, they must be transferred to another division in the same institution or to another government organisation (section 65(5)).

To counter the perceived increase in the levels of corruption, the government took important initiatives. One such initiative was to strengthen the fight against corruption by giving legal protection to whistle blowers through the enacted PDA. The Act works with the notion that prevention is better than cure, and gives legal protection to private and public sector individuals who raise concerns about unethical practices and corruption in organisations.

2.4.3   The Investigation into Serious Economic Offences Act 1991 (Act 117 of 1991)

The Investigation into Serious Economic Offences Act 1991 (Act 117 of 1991), makes provision for the establishment of an Office for Serious Economic Offences headed by a Director appointed by the Minister of Justice. Any member of the public who suspects that a serious economic misdeed is being committed or about to be committed can provide reasons for, details of and other relevant information on such suspicions to the Director in a sworn statement. The Director can also, on his or her own initiative, start an investigation. The investigation will be held *in camera*, witnesses can be subpoenaed and evidence presented during such an investigation cannot be used later on in a criminal case. If the Director is of the opinion that the

disclosed facts constitute an offence, the necessary information can be presented to the relevant Attorney General. After the conclusion of the investigation, a report will be drawn up and handed to the Minister of Justice (Du Plessis 1993:241-242).

2.4.4   The Reporting on Public Entities Act 1992 (Act 93 of 1992)

The Reporting on Public Entities Act 1992 (Act 93 of 1992), makes provision for certain public entities that obtained funds from Parliament or from a trust administered on behalf of the public to report to Parliament annually on the relevant activities and financial transactions. The chief executive officer of a listed public enterprise is responsible for keeping written records up to date. The board of directors has to ensure that auditors' reports are drawn up yearly and made available to the relevant minister and Auditor-General no later than six months after the end of the financial year (Du Plessis 1993:243). As the funds are in the interest of the public meticulous record keeping is required. If there are any discrepancies, it should be reported to the relevant authorities.

2.4.5   The Corruption Act 1992 (Act 94 of 1992)

The Corruption Act 1992 (Act 94 of 1992), came about as a result of an investigation conducted by the South African Law Commission in 1989 at the request of the Minister of Justice, into the state of South African law relating to corruption and bribery. The Commission came to the conclusion that the law was in need of considerable reform and recommended among other things a new focus on the matter of the criminalisation of corruption. Until this time, this had been dealt with mainly under the common law crime of bribery and the related Prevention of Corruption Act 1958 (Act 6 of 1958). The recommendations of the Commission resulted in the promulgation of the Corruption Act 1992 (Act 94 of 1992).

In terms of section 51(1)(a) of the Corruption Act 1992, the offence is committed in respect of:

"any person upon whom –

- any power has been conferred; or

- who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law; or

- anyone else."

Any offences taking place outside the country would be considered to have taken place within South African borders and the person or organisation would fall under the jurisdiction of the magistrate, regional or Supreme Court of his or her place of residence. The relevant court can pass its own sentence (Du Plessis 1993:243).

2.4.6 The Prevention and Combating of Corrupt Activities Act 2004 (Act 12 of 2004)

The Corruption Act 1992 was replaced by the Prevention and Combating of Corrupt Activities Act 2004 (Act 12 of 2004). Chapter 2, section 3, defines corruption as follows:

"Any person who directly or indirectly –
(a) accepts or agrees or offers to accept any gratification from another person whether for the benefit of himself or for the benefit of another person; or
(b) gives or agrees or offers to give any other person gratification, whether for the benefit of that other person or the benefit of another person, in order to act, personally or by influencing another person to act, in a manner that –
(i) amounts to –

   (aa) illegal, dishonest, unauthorised, incomplete or biased acts; or

   (bb) the misuse or selling of information or material acquired in the course of the exercising, carrying out or performance of any

powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) amounts to –

(aa) the abuse of a position of authority

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) was designed to achieve an unjustified result; or

(iv) amounts to any other unauthorised or improper inducement to do or not to do anything; is guilty of the offence of corruption".

The focus of this Act (as stipulated in the introduction) is "…to provide for the strengthening of measures to prevent and combat corruption and corrupt activities; to provide for the offence of corruption and offences relating to corrupt activities; to provide for investigative measures in respect of corruption and related corrupt activities; to provide for the establishment and endorsement of a register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; to place a duty on certain persons holding a position of authority to report certain corrupt transactions; to provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities; and to provide for matters connected therewith."

The Corruption Act 2004 makes provision for the reporting of improprieties committed by for example public officials. The irregular or criminal conduct (e.g. illegal acts, the misuse of information, abuse of a position of authority) is committed when a person intends to gratify themselves or others, or where a person agrees or offers to give another person gratification. A further specification is that certain persons in a position of authority must report certain corrupt transactions.

2.4.7   The Audit Act 1992 (Act 22 of 1992)

The aim of the Audit Act 1992 (Act 22 of 1992), is to allow the office of the Auditor-General to function autonomously from government administration. The Act stipulates among other things that ownership of movable and immovable goods in future would pertain to the office of the Auditor-General. Specific rulings were also made with regard to appointments, promotions, transfers, retirements, discharge and misbehaviour. Section 46 prohibits any employer or employee involvement in party politics that could compromise the independence of the Office of the Auditor-General. This does not, however, include attending a public meeting in a personal or private capacity. Section 41 of the Act states that no official employed in the Office of the Auditor-General is entitled to unauthorised payment and that any such payments should be deducted from his or her salary. The money can also be retrieved from the organisation where it was deposited (Du Plessis 1993:244).

2.4.8   The Public Service Act 1994 (promulgated under Proclamation 103 of 1994)

Auriacombe (2005:221) states that the Public Service Act 1994 (Proclamation 103 of 1994), must be considered the most important of all legal provisions relevant to the behaviour of public officials. Section 20 of the Act deals with misconduct and is a prime example of the efforts to limit corruption and maladministration by means of legislation (Cameron and Stone 1995:79). Section 21 of the Public Service Act 1994 deals with misconduct on the part of the public official and the following is a list of the misdemeanours for which the official can be prosecuted in accordance with section 21:

- contravening or failing to comply with any provision of this Act;
- negligence or indolence in the carrying out of his or her duties;
- undertaking, without the permission of a relevant executing authority, any private agency or private work in any matter connected with the

performance of his or her official function or the carrying out of his or her official duties;

- making use of his or her position in the public service to promote or to prejudice the interest of any political party;

- attempting to secure intervention from political or outside sources in relation to his or her position and conditions of service in the public sector, unless this occurs in an endeavour to have any grievance redressed through Parliament or a provincial legislature;

- misappropriating or making improper use of any property of the State under circumstances not amounting to an offence;

- committing an offence; and

- discloses, otherwise than in carrying out his or her official duties, information obtained by or conveyed to him or her through his or her employment in the public service, or uses that information for any purpose other than for carrying out his or her duties, whether or not he or she discloses that information, without first obtaining the permission of his or her head of department.

2.4.9   The Public Finance Management Act 1999 (Act 1 of 1999)

According to Fourie (2002:124), the Public Finance Management Act 1999 (Act 1 of 1999, hereafter referred to as "the PFMA") is one of the most important measures for improving financial management in the public sector. Section 2 of the PFMA aims to secure transparency and accountability in order to promote the sound management of expenditure, revenue, liabilities and assets. It is therefore important that financial management should be excellent in order to prevent corrupt activities.

2.4.10 The Promotion of Access to Information Act 2000 (Act 2 of 2000)

The POAIA was promulgated to give effect to the Constitutional right to fair access to information. The Act aims to broaden the transparency and accountability process. Linking to the POAIA, the PDA provides procedures

for employees in both the public and private sector to raise concerns about the unlawful or irregular behaviour of co-workers or employers. The so-called whistle blower act also identifies various types of information disclosures and protects the whistle blower from (for example) losing his or her job (Camerer 2001:3).

There are, however, certain problems that can be linked to the implementation of the POAIA and that need careful consideration for the Act to be successful. According to Roberts (2006:232-234), such aspects include more effective training for information officers, as the success of the POAIA depends largely on how well information officers perform their duties. It is also imperative that the government of the day give political and other support, especially in terms of accountability and responsibility. Government should be careful not be perceived as blocking investigations into alleged corrupt activities (e.g. the arms deal).

The public should be made aware that it has the right to information through, for example, awareness programmes. It is also necessary for organisations to have adequate record-keeping systems in place to make it easier for members of the public to retrieve information (Roberts 2006:234-235). In terms of whistle blowing, it would make the information held by the employee who discloses more reliable if he or she had access to relevant information.

2.5   Summary and conclusions

In its current form, the PDA makes provision for procedures to allow and assist employees in both the public and private sector to raise their concerns about the unlawful or irregular conduct of employers or co-workers. Various types of information disclosures are pointed out in the Act, including suspicion of criminal offences, failure to comply with legal obligations and "a reasonable belief that the health or safety of an individual has been, is being or is likely to be, endangered."

This legislation was enacted with a view to creating a culture in which employees may disclose information of criminal and other irregular conduct in the workplace in a responsible manner, and may generally promote the eradication of crime and misconduct in organs of state and private bodies. In terms of the Act, every employer and employee is now regarded as having a responsibility to address crime and any other irregular or unethical conduct in the workplace (although employees are not obliged to make disclosures). The employer must take all the necessary steps to ensure that employees who disclose such information are protected from retaliations as a result of having made disclosures.

Employees making a protected disclosure in terms of the specified procedures are protected from occupational detriment. This might include being subjected to disciplinary action, dismissal, suspension, demotion, harassment, intimidation, being transferred against his or her will, being refused a transfer or promotion, or otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security. The Act prohibits an employer from subjecting an employee to occupational detriment on account of having made a protected disclosure. Should occupational detriment occur and be found to have been linked to the making of a protected disclosure, the *bona fide* (good faith) whistle blower would be protected and the employer would not be allowed to dismiss or prejudice the employee for having raised legitimate concerns. This, in effect, is how the law protects whistle blowers.

It is important to note that disclosures of information relating to the above will only be protected if they are made according to specific procedures. This relates to the research question *"what is the nature and scope of the PDA in creating protection for the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner?"* (see section 1.5)*.* In order to be protected, a disclosure must be made in one of five ways:

- to a legal representative (section 5);

- to an employer (section 6);

- to a minister or member of the provincial executive council (section 7);

- to a specific person or body (section 8); or

- as a general protected disclosure (section 9).

Only the Public Protector and the Auditor-General are currently mentioned with other persons or bodies (for example, the Special Investigating Unit) required to be prescribed by the Minister of Justice in the regulations.

The Act does not deal with the way improprieties must be remedied or prosecuted. The Act assumes that the whistle blower has not been involved in any improprieties for it does not provide immunity for him or her against persons other than the employer. The relationship between the whistle blower and a co-employee is not the principal focus of the Act. However, the provisions relating to transfers may provide some protection from the antagonism of a co-employee who has been implicated.

In terms of section 3 of the PDA, no employee may be subjected to any occupational detriment by his or her employer on account of, or partly on account of, having made a protected disclosure.

It should be noted that an individual employee will only be afforded protection in terms of the Act if he or she has made a protected disclosure to either a legal adviser, an employer, a member of cabinet or of the executive council of a province, the Public Protector, the Auditor-General, or a person or body prescribed for the purposes of the Act. Importantly, the employee will not be protected by the provisions of the Act where he or she is committing an offence by making the disclosure.

The type of information disclosed relates to *"what is meant by criminal and irregular conduct in terms of disclosing wrongdoing?"* (see section 1.6) and may be among other things a criminal offence, failure to comply with a legal

obligation, miscarriage of justice, endangerment to the health and safety of an individual, damage to the environment, unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (Act 4 of 2000), or the deliberate suppression of any of these matters.

An important principle which emerges from the PDA which address the research question *"what is meant by disclosing information in good faith?"* (see section 1.6) is that the disclosure must be made in good faith and the employee making the disclosure must have a reasonable belief that the information disclosed and any allegation contained in it are substantially true. Any disclosure made for personal gain (excluding any reward payable in terms of any law) is not protected by the Act.

Sections 3 and 4 of the Act set out the protective measures upon which an employee who has made a protected disclosure may rely. The research question addressed by this section in the Act is *"to what extent can the PDA be interpreted and applied by the courts and by implementing agencies in government in order not to subject employees or employers to any occupational detriment?" (*see section 1.6). An employee may approach any court or tribunal that has jurisdiction or may pursue any other process allowed or prescribed by law in order to protect him or her from suffering any occupational detriment in breach of section 3 of the Act.

Any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected as a result of having made that disclosure, may also request to be transferred to another post or position in the same division or to another division. The employer must be cautious in transferring the employee, as the Act stipulates that the terms and conditions of employment may not, without the written consent of the employee, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

While the Portfolio Committee of Parliament, when drafting the Protected Disclosures Bill, considered the creation of new offences to be appropriate,

the Act has not provided for penalties either in the case of an employer who does not protect a whistle blower, or in the case of a whistle blower that makes a disclosure which is not protected. In this regard, the Committee decided that the matter needed further research and consideration, since such a provision may impact on existing laws and practices regulating employer-employee relations.

It is possible that amendments may be made to the existing legislation to create offences where an employer unlawfully subjects an employee to an occupational detriment, or where an employee makes a false disclosure. The Act is confined to the relationship between employer and employee in both the public and private spheres. It would not provide protection to an independent contractor, for example.

Whistle blowers who intend using the provisions of the Act to conceal their own involvement in criminal activities will not find protection in this legislation. Where a law has been contravened, the Act will not protect the employee from criminal prosecution, civil liability to third parties, or prosecution for offences, as the case may be.

Any contract between an employer and an employee that purports to exclude any provisions of the Act will be void. This provision includes any agreement:

- to refrain from instituting or continuing any proceedings under the Act or any proceedings for breach of contract;
- which purports to preclude the employee from making a protected disclosure; and
- which has the effect of discouraging the employee from making a protected disclosure.

Employers will need to familiarise themselves with the provisions of the Act and ensure that they are fulfilling their responsibilities in creating an environment where unlawful activities can be exposed without fear of

retaliation against the whistle blower. The *"… provisions can be used to increase the level of understanding of disclosures of wrongdoing done in good faith"* (see section 1.5) if these provisions become part of the organisational culture. After all, by curbing incidences of irregular conduct in this way, an organisation is better placed to protect itself from the devastating consequences of fraud, industrial espionage and other forms of wrongdoing. It is imperative that the organisation put in place the necessary procedures to enable the employee to make a protected disclosure. Chapters three to six of this thesis will focus specifically not only on creating a culture that promotes *bona fide* disclosures, but also on focussing on the procedures for effective whistle blowing in an organisation.

In the next chapter, the variables influencing the ethical milieu in public organisations will be examined in detail, in order to determine their influence on whistle blowing.

CHAPTER THREE

THE VARIABLES INFLUENCING THE ETHICAL MILIEU IN PUBLIC ORGANISATIONS

3.1   Introduction

"The reputation of a thousand years is determined by the conduct of one hour".
- Japanese proverb

In the first chapter it was stated as an objective of the study (see section 1.9) that *"an analysis of the concepts ethics, values, morals, loyalty and trust (would) be made in order to examine the influence of these important external variables on the process of whistle blowing in an organisational setting"* so as to determine the nature of the interaction of these concepts in an organisation where a choice has to be made to disclose wrongdoing (see section 1.7). The research question *"how can this interaction be strengthened in order to increase the likelihood that whistle blowing will be effective as a mechanism to combat corruption?"* (see section 1.6) is also posed in an attempt to provide answers to the above questions through the application of research.

Values and ethics have become a priority concern for governments across the globe. The maintenance of high ethical standards is important in all spheres of society. The importance of values and ethics lies in the trust between not only public officials and the public but also the public's faith in the democratic process.

South Africans are concerned about integrity in government and they have the right to expect the highest ethical conduct of public officials. Public administration ought to operate within democratic prescriptions and values that impact upon the execution of public sector activities, and on the implementation of measures that promote ethical whistle blowing. In other words, when a government claims to

accept the prescriptions of democracy, then it has to accept that the very same prescriptions also apply to the way in which policies that promote the protection of whistle blowers are implemented (Mbatha 2005:29).

A public official is often faced with the question of loyalty. One has to be loyal to the employer, but also to the public, as the public official works with the taxpayers' money. It is vital that public officials act morally and ethically at all times, as it is in the interest of the public at large, *i.e.* for the public good.

Public officials act within a political environment and must behave in a manner that is consistent with democratic and other values. It is against this background that the variables of ethics and values influence the ethical milieu of public organisations. There is also a relationship of trust within the organisation. The person who discloses the wrongdoing should feel that he or she will be protected and therefore that the person to whom the disclosure is made will always act consistently in similar situations and will be loyal to the disclosurer.

The enormity of dealing with unethical, illegal and corrupt practices and promoting accountability and ethics cannot be underestimated. Governments need resources, impartiality and public support to be successful and to function properly.

In this chapter, definitions will be provided in terms of relevant terms such as ethics, loyalty, values and morals (morality). It should be borne in mind that a value, for example, is something someone regards highly. What one person regards as important may differ from what another individual regards as important. Consideration will also be given to various ethical aspects such as democratic values, prescribed guidelines and guidelines derived from community values, as well as theoretical approaches to ethics and the development of an ethical community.

In addition, in the fulfilment of his or her duties, the public official is faced with ethical dilemmas which could influence whistle blowing in the decision-making process, and dilemmas such as policy, political activities, administrative secrecy, a weak institutional system and administrative discretion which could lead to criminal and irregular conduct. Unethical conduct materialises in, for example, election fraud, unauthorised disclosures of confidential information and kleptocracy. Such ethical dilemmas occur when public officials must choose between morally desirable and morally undesirable behaviour.

Government must ensure that high professional standards are maintained in the public sector, especially during times of change. The chapter will also identify some key elements of providing a transparent and ethical infrastructure to regulate against undesirable behaviour and to provide incentives for good conduct, and explores the various strategies available for promoting ethics. Such strategies call for ethical leadership and ethics education and training in public administration.

In this chapter the relevance of statutory guidelines and a code of conduct as an essential remedy against unethical conduct by public officials will also be elaborated on. What is meant by a code of ethics in terms of being used as a measure to combat corruption and mal-administration will also be discussed, as well as what should be written into a code of ethics. The code of conduct for the South African Public Service will also be provided, including a discussion on how a code of ethics can be enforced as a measure against corruption and mal-administration. The prescriptions of code of conduct are an important measure for establishing a spirit of co-operation where openness and transparency are cultivated. Some principles for the promotion of ethical behaviour will be identified. It is imperative that senior managers set an example by demonstrating and promoting ethical behaviour.

Any public official must realise that he or she must fulfil his or her duties in terms of ethics, values, morals and norms that are essential to his or her community despite the existence of different cultures. No public official can function in the isolation of his or her culture or his or her community, as those values and norms will have an effect on the way public officials fulfil their duties. It is therefore essential that public officials follow ethical guidelines in the fulfilment of their duties as well as believe in the virtues of morals and values. In addition, it is important to clarify the various concepts associated with the ethical milieu in which the whistle blower functions.

3.2   Clarification of relevant terminology

In order to have a better understanding of the problems relating to ethics, the relevant concepts of trust, ethics, values, loyalty and morality will be defined in the following section.

3.2.1 Ethics

The concept ethics has its origin in the Greek word *èthos* and refers to the inner disposition, while *ethos* (without the accent) refers to morality. The word ethics refers to guidelines that direct the behaviour of public sector employees and could also be referred to as moral laws (Andrews 1987:7). Ethics also denotes the way in which public officials interpret ethical behaviour as the correct moral activity. The *ethos* (or the moral) should be supported by particular values and norms as well as an ethical code of conduct that is acceptable to society (Denhardt 1988:31).

South Africa forms part of the global community and should therefore follow a set of global ethics. Global ethics can be defined as "… globally shared moral values that shape relationships, determine decisions, and guide actions for every individual, institution and nation …" (http://globalethics.org/about/default.html).

Large-scale globalisation identifies the need for global and universal norms and values. The private and public sectors need a set of directives that can steer them in the direction of the expectations of society. Most organisations have some kind of code of conduct – for instance, medical professionals and accountants – and public sector employees also need to have behavioural guidelines that are in line with not only South African standards, but also international standards.

Merrill, Lee and Friedlander in De Beer (1998:292) define ethics as: "… that branch of philosophy that deals with what ought to be done, with what kinds of actions are 'good' (or at least 'better'), and with personal values and individual character."

Chandler and Palno in Mafunisa (2000:335) define ethics as being a "system of moral principles (relating) to that branch of philosophy dealing with values relating to human conduct, with respect to the rightness or wrongness of certain actions and to the goodness or badness of the motives and ends of such actions".

Ethics are defined by Andrews (1988:34) as:

- "... the application of values to individual behaviour and action ... (that) … provide the moral and legal basis for guiding personal conduct in different circumstances and situations. Ethics are reflected in laws and regulations, codes of behaviour and professional standards.
- ... the science of character, the science which deals with moral customs and habits of conducts ... (which) … deals with the character and conduct of man, insofar as … (these are) … good or bad, right or wrong. Ethics always approve or disapprove … set a value, negative or positive, upon conduct ... reflect on conduct … pronounce human action good or bad, with reference to some standard or criterion".

Hilliard (1992:11) states that in a country as culturally heterogeneous as South Africa there are divergent values and norms that must be upheld and that could affect the quality of public administration. Different values and norms could lead to ethical dilemmas such as, for example, conflicting situations.

The word ethics can be explained by referring to its teleological and deontological implications. Ethical deontological theories, on the other hand, hold that either a power or something else, such as religion, moral leaders, reason, the institution or employers, other than just circumstances, determines which actions are considered ethical or not. This also refers to the intentions of the doer or the community's need for a particular action. This type of theory is more formalistic and can even be classified as absolute or legalistic. *Deon* refers to the Greek word for *duty*, and holds that a person is duty-bound and that this duty must be carried out according to certain principles, mostly founded on religious principles (De Beer 1998:293-294).

According to De Beer (1998:295), the Greek word *teleos* refers to and end or result and therefore the concept teleology can be defined as "… an ethical system within which the moral worth of an action is judged by the relative goodness or badness of its consequences, *i.e.* the act that produces the most good is right". Teleological theory refers to the *consequences of an act* and uses these as a yardstick to determine whether an act can be classified as ethically wrong or right. This type of ethics is commonly known as consequence ethics.

The distinction between these two concepts is that *deontology* refers to decisions which are made according to the principles of duty, while *teleology* focuses on the judgement of consequences as good or bad, right or wrong.

According to Garofalo (2004:17) the method for creating a moral agency in public administration is a two-stage ethics training initiative framed by the unified ethic and designed to justify practices, policies and programmes in the light of values,

and also to clarify such values such as fairness, honesty and loyalty. The unified ethic reflects specifically on the unity of human nature and principles, appealing to a human being's need for consistency and rational nature. This is directly in line with the deontological perspective. However, humans also value the teleological perspective, as we also have a desire for happiness (for ourselves and others). This is also the different perspectives within which the *bona fide* whistle blower functions.

Cloete in Bauer (2002:167) defines ethics in public administration as "the collection of moral principles, norms, values and obligations that serve as conduct rules to be observed by political office-bearers and officials to ensure openness, courtesy, responsiveness, respect for the law, excellence, efficiency and economy".

Ethics indicate a set of principles or norms, the standards characteristic of an activity or profession, and make a further distinction between what is and what ought to be (Scruton 1996:176). According to Baai (1999:371), ethical predicaments arise when there is a conflict between competing obligations or between sense of duty and self-interest.

The word ethics can be used in a particular sense to refer to the standards characteristic of a profession, or, more generally "… any system of moral values held forth as meriting intrinsic obedience and not on account of some purpose which obedience might incidentally serve" (Fulmer and Franklin 1982:90).

Ethics, however, do not concern themselves only with the actions and decisions of people but also with those things that are man-made, such as organisations and policies which form part of the network of society. In this sense, note should be taken of not only the ethical conduct of public officials and political office-bearers, but also of the importance of ethics for the organisations within which public officials and political office-bearers act (Esterhuyse 1991:11). Van der

Westhuizen (2001:32) states that it is important that public officials be actively involved in the search for morally correct positions and decisions.

Three relevant aspects regarding ethics can be identified Van der Westhuizen (2001:32):

- it calls public servants into action;
- it requires reasoning; and
- it encourages public servants to ask for guidance in order to find the correct course of action.

A distinction should be drawn between the law (statutory requirements) and what is perceived to be ethical. Legislation is exact and prescriptive and defines actions that are correct/incorrect, lawful/unlawful. Ethics go beyond the law and are based on, among others, societal norms. Action can therefore be legal and ethical, legal but unethical or illegal and unethical. It is a moot point whether or not an action can be described as ethical yet illegal (Van Pleet and Peterson in Van der Westhuizen 2001:32) – for example, actions taken by vigilante groups.

Kernaghan (1996:16) defines the concept as follows: "Ethics (are) concerned not only with distinguishing right from wrong and good from bad but also with the commitment to do what is right or what is good. The concept of ethics is inextricably linked to that of values, that is, enduring beliefs that influence the choices we make from among available means and ends."

Disclosures, especially an external disclosure raise legal and ethical issues of confidentiality and business confidentiality and influence *"… the process of whistleblowing in an organisational setting."* (see section1.9). If public officials had accepted the correct ethical values and behaviour, then whistle blowing can be an effective measure that can be used by the government in its drive against corruption.

According to Mbatha (2005:213) whistle blowers can be characterised as ordinary people who have a high standard of moral values expressed in ethical conduct; people with the ability to distinguish between right and wrong. Ethics clearly point out the difference between right and wrong behaviour and this can be viewed as the standard against which the behaviour and actions of public officials and political office-bearers can be measured. It is also necessary to draw a distinction between ethics and values.

3.2.2 Values

Maluleke in Mafunisa (2000:53) refers to values as ideals, attitudes and beliefs that are held by individuals and which underlie political, social and personal relationships. The word ethics refers to the actual application of values to individual behaviour and action.

Chapman (1993:2) argues that ethical behaviour among the authorities would enhance the democratic process by ensuring that "representatives and officials would respect the rights of citizens and uphold those values which have been agreed as essential to a particular democracy".

Values are general standards by which people live, views about what is desirable. Values refer to ethical standards, and entail deep emotional dedication to certain cognitive views of the value of objects normally relating to human activity (Hilliard and Ferreira 2001:93).

According to Chapter 10 of the Constitution of the Republic of South Africa 1996 (hereafter referred to as "the Constitution"), public administration is governed by certain democratic principles and values such as the following:

- a high standard of professional ethics must be maintained;
- the best use of resources must be promoted;

- public administration must be development-orientated and attention must be paid to people's needs;
- services must be provided fairly, impartially, equitably and without bias;
- public administration must be accountable and transparent;
- the potential of people must be developed through efficient management; and
- public administration must be broadly representative of the population, taking into account ability, objectivity, capacity and the need to redress imbalances.

The above values as stipulated in the Constitution should form the basis of, for example, the decision-making process of public officials. A high standard of professional ethics must be maintained at all times. Values, for a public official, are the basis of preferences and decisions, provide the standards by which the public official lives, and may even give direction and meaning to everything that the public official believes in and undertakes (Hanekom 1989:120).

The word values refers to a human being's idea of what is acceptable or unacceptable (Athos and Coffey in Mbatha 2005:35), virtuous or without virtue. Values therefore indicate the importance allocated by the individual to activities experienced and provide the individual with a guideline for personal conduct. It should, however, be borne in mind that values represent personal judgements on qualities, experiences or phenomena and are, therefore, both subjective and objective. Furthermore, human beings distinguish not only between positive and negative aspects, but also between themselves and other individuals in that they may think, feel and react differently from others (Hanekom 1977:10 and Mbatha 2005:35).

In South Africa, there is a tendency to try and regulate all types of behaviour and reach ideals through laws, policies and regulations. Such an approach is doomed to failure if it is not accompanied and supported by vital consensus on the types

of values and norms that are prevalent in our society. According to Estherhuyse (1991:10-11), it is "meaningless to talk about responsibility and accountability" without a "moral consensus on the normal norms and values in which a society … and the individual members of that society have an interest".

Values, as a part of ethics, determine how people will react to others, and are also responsible for how one experience, accepts, defends or changes ideals. It is part of human nature to perceive people who have different ideals as a threat. As a result, different opposing groups with different ideals are formed, whose interactions can only be interpreted in terms of conflict, victory or defeat. Thus, according to Lategan in (Hanekom 1989:16), "all our actions and attitudes are … value-laden and no social system is neutral from a moral perspective – it can only be more or less justifiable or legitimate in terms of a specific set of norms". Furthermore, public officials also in some cases have to make certain individual judgements about whether the emerging social values are right and acceptable; this responsibility cannot be underestimated. Specific values to which public officials should pay attention are equity, freedom, justice, fairness and various individual rights (Denhardt 1988:126). These individual rights can be found in the Bill of Rights as contained in Chapter 2 of the Constitution.

Every group of individuals develops norms and values pertaining to ethical conduct which enable the other members of the group to predict each other's behaviour. Norms and values aid more effective communication and also facilitate co-operation. Norms and values are a collective agreement about what is necessary to survive, what works and what needs to be done to ensure co-operation (Moeller 1988:120). It is also important to establish how a public official interprets the role which ethical behaviour should play in the execution of his or her duties.

Although opinions differ on what constitutes ethical behaviour, the term ethical behaviour usually refers to behaviour that conforms to generally accepted social

norms and values. Such norms and values could include (Van Niekerk, Van der Waldt and Jonker 2001:116 and Mbatha 2005:25):

- humaneness;
- honesty;
- justice;
- reasonableness;
- freedom;
- truth;
- decency;
- integrity;
- order;
- fairness; and
- openness.

The South African population is characterised by a heterogeneous society in which people differ according to their norms, values and cultures. The task of public sector managers is more complicated due to this diversity, since the demands put on them differ from society to society and from culture to culture (Hanekom, Rowland and Bain 1987:162). It should be kept in mind that whistle blowing takes place because an employee becomes aware of irregular and illegal conduct and then, by using a value judgement, decides to blow the whistle. Ethics in the public sector are found in the ethical and moral behaviour of public officials and also include values that are integral within a democracy.

3.2.3 Democratic values

To achieve the objectives of democracy and create conditions under which citizens will be able to achieve the greatest possible well-being, government should be organised in a manner that will allow transparent deliberation, consultation, and the exercising of discipline. In adhering to basic democratic

values, government and political representatives will ensure that the views of different communities and role-players are considered in order to find reasonable solutions for conflicting viewpoints. Some such democratic values are described below (Vyas-Doorgapersad and Ababio 2006:391-393; Van Niekerk *et al.* 2001:119 and Mbatha 2005:27):

(a) Accountability

In its broadest sense, accountability is an obligation to expose, explain and justify actions. Public accountability demands that the actions of public organisations be publicised to encourage public debate and criticism (Mbatha 2005:28; Vyas-Doorgapersad and Ababio 2006:392). Banki (1981:97) describes accountability as: "A personal obligation, liability or answerability of an official or employee to give his superior a desired report of the quantity and quality of action and decision in the performance of responsibility".

(b) Openness and transparency

Openness and transparency concern the extent to which the functioning of government organisations is open to public scrutiny (Vyas-Doorgapersad and Ababio 2006:391-393; Schwella, Burger, Fox and Müller 1996:16 and Mbatha 2005:27). There should be mechanisms in place to ensure that all public processes and programmes are open and transparent to the public.

(c) Representation

The Constitution 1996 (Section 195 [I]) stipulates that public organisations must reflect the composition of the population in management positions and in other occupational groups (Vyas-Doorgapersad and Ababio 2006:392). The Employment Equity Act 1998 (Act 55 of 1998), seeks to eliminate unfair discrimination in employment, and to provide for affirmative action to redress the

imbalances of the past and create equality in employment. This legislation is drafted with a view to advancing those groups that have been disadvantaged as a result of discrimination caused by laws and social practices, but not with a view to seeking retribution for past injustices.

The purpose of the Employment Equity Act 1998 (Act 55 of 1998) is to achieve equality in the workplace by:

- promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- implementing positive measures to redress the disadvantages in employment experienced by black people, women and people with disabilities, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

(d) Responsibility and responsiveness

Responsibility refers to the duty of a person to carry out a certain piece of work allocated to him or her. Responsibility can also indicate the manner in which a person carries out tasks, the values he or she attaches to such tasks, and in what way he or she reflects on the values of other persons that he or she may come into contact with while performing day-to-day tasks (Vyas-Doorgapersad and Ababio 2006:391; Van Niekerk *et al.* 2001:119; Mbatha 2005:27).

In democracies, one of the objectives of government organisations is to improve the general welfare of the public. For this reason, the actions of political office-bearers and public officials must be to the advantage of the individual as well as the community. If different individuals and interest groups hold different values, it can lead to tension (Vyas-Doorgapersad and Ababio 2006:391; Henry 1980:133; Mbatha 2005:27). Office-bearers and public officials should therefore weigh their values against the possible results of their actions before taking decisions. The

general benefit to the community should be more important than individual or group values and interests.

(e) Legality/Legitimacy

According to Fox and Meyer (1996:73); Mbatha (2005:28) and Vyas-Doorgapersad and Ababio (2006:391-392), legitimacy is the perception among citizens that the government and its actions are legally and morally correct and acceptable. It is vital that the actions of political representatives and public officials contribute to the acceptance of government decisions, programmes and policies.

Professional values entail efficiency, creativity, innovation, competence, loyalty to the trust of the public, and "speaking truth to power". Ethical values comprise public trust, the common good, discretion, honesty and integrity. People values consist of tolerance, moderation, decency, courtesy, respect and courage. Democratic values include loyalty to the executive, accountability, support to the government, respect of the Constitution of a country, the rule of law and due process (Garofalo 2004:9).

Northouse (2001:255) argues that ethics are a key to good leadership because of the nature of the process of influence, the impact that leaders have to establish the values of the organisation and the need and ability to engage subordinates to achieve mutual goals. Ethics, leadership and values are inseparable. Garofalo (2004:4) states that there must be a move in the public sector from a legalistic to an ethical understanding of leadership as a clear moral framework designed to enhance the critical sense of public officials, to promote moral agency in the public interest and to provide a basis for values validation and clarification.

For the purposes of this chapter the term ethics deals with the character and conduct, and the morals of a public official. Regarding the conducting of public

affairs by the public official, it deals with whether the public's business was conducted rightly or wrongly and whether the public official's behaviour was good or bad when the official duties were conducted. Ethics evaluate conduct against some supposedly absolute criteria and impose negative or positive values upon them. These criteria can be in writing (legislation) or could be merely the interpretation of an individual of what is acceptable and what is not. The Public Service Code of Conduct provides guidelines on what is acceptable and good conduct. Democratic values require that public officials act in good faith with the interest of the public at heart. If actions are taken by public officials within the organisation that contravenes these values and morals, the whistle should be blown on the wrongdoings.

3.2.4 Morality

The word morality is derived form the Latin word *mores* and like the Greek word *ethos* refers to customary or conventional behaviour (De Beer 1998:292). At the outset, there should be clarity regarding the meaning of the terms morality and ethics. Morality has to do with the personal conduct of the individual – his or her moral duties and conformity to conventional rules. Ethics refer to the basic principles of the right action and to rules of conduct (Mbatha 2005:38). Morality, therefore, refers to human behaviour, what happens in practice, while ethics refer to certain basic principles and norms.

Hilliard and Ferreira (2001:93) describe morals as right or wrong, good or bad human behaviour and therefore have to do with the personal conduct of the individual. Moral values can usually be found in the family context; it is primarily the responsibility of parents to impress moral norms and values upon their children. If there is a breakdown in family life, this responsibility might be shifted to others. Morals refer to habits and behaviour, the correctness or wrongness of actions.

Kernaghan (1996:4) states that "A first principle of professional morality is that being accountable to others does not make you any less accountable to yourself. We are entering a period when this will be seen as even more important than before … The vitality of government is partly dependent on how well we understand and respect the principle of personal ethics."

Public officials are required to function in accordance with democratic, society and personal values and ethical dilemmas often come to the fore (see section 3.4). Such dilemmas are complex, with no clear guidelines, in, for example, legislation. Ethical dilemmas exist when public officials are faced with a choice between alternatives. The ideal is for organisations to develop a document with prescribed procedures for dealing with ethical dilemmas. It is advisable for the public sector to provide whistle blowing policies, for example the KwaZulu Natal Provincial Treasury has a whistle blowing policy.

Different people have their own particular motives for blowing the whistle, but what they do tend to have in common is recognition that it would be morally wrong not to blow the whistle on perceived wrongdoing. The trouble is that some people are victimised for disclosing wrongdoing. This is what makes whistle blowing a moral act, because the individual goes on a personal undertaking to protect the public against the wrongdoing he or she decides to report. Morality, values and ethics all play a role in whistle blowing. In carrying out their duties, public officials also need to be loyal towards the organisation, fellow employees and the public.

3.2.5 The duty of loyalty

According to Westman and Modesitt (2004:29) one of the most important central duties of an employee is that of loyalty to the employer as this is implicit in the employment relationship. The duty of loyalty is a flexible concept that varies, depending on the specific conditions of the employment relationship concerned.

The duty of loyalty requires the employee to act for the benefit of the principal in matters entrusted to him or her, and information acquired because of the position of the employee should not be used in a manner that would put the employee in an unfairly advantageous position. An employee should also not speak disloyally in matters relating to his or her employment except when it is necessary to protect his or her own interests or those of others.

The duty of loyalty includes the obligation not to act on behalf of a person whose interest is in conflict with the employer's interest. This obligation also prohibits employees from knowingly gathering information for political organisations with the purpose of sabotaging the employer. A duty of confidentiality is implied by the duty of loyalty, since the latter requires an employee "not to use or to communicate information confidentially given him by the principal … to the injury of the principal … unless the information is a matter of general knowledge". The duty of confidentiality recognises that the flow of necessary information might be impaired if employees made unauthorised disclosures of confidential information. The duty of confidentiality is qualified in that the employee may properly disclose information if his or her employer has committed or is about to commit a crime/illegal activity. The duties of loyalty and confidentiality arise in part from the trust that employers have in employees (Westman and Modesitt 2004:29-30).

A dilemma experienced by the whistle blower specifically relates to loyalty as whistle blowers are sometimes perceived as disloyal employees. The whistle blower might be divided between his or her loyalty towards an employer, fellow employees and the interest of the public it serves. Whistle blowing is about basic issues which lie at the heart of human activity. It covers loyalty and the question of dubious practices. However, sometimes their loyalty to the organisation is overruled by their conviction that they should act first and foremost in the public interest as the public for example trust public officials to keep their interest at heart.

3.2.6 Trust

Bews (2001:28) states that "…voluntary action presumes willingness on the part of the trusting party while vulnerability indicates an element of risk. An evaluation involves a judgement while at the same time provision is made for this judgement to involve the social skills of the trusting party". Maritz in Robbins, Odendaal and Roodt (2004:257) agrees with Bews, adding that trust is a "positive expectation" (insight in another person's character) that such other person will not abuse an opportunity to expose the one who trusts him or her to undue vulnerability and risk.

Anywhere trust is needed, there will be at least two parties involved, *i.e.* the trustor (the one who trusts) and the trustee (the one or the object that is trusted. Sztompka in Binikos (2006:42) defines trust as a "gamble" and that as there exist an expectation that other people, groups or organisations with whom one is in contact with will behave in a manner that is conducive to our well-being. There is however not a guarantee that others will act in this positive manner; therefore it is a gamble as trust in others is a risk on the possible future actions of others.

Sztompka in Binikos (2006:43) argues that trust is faith in the way in which the trustee (whether a person, group or body) will respond (or commit him- or herself to respond) to the action of the trustor. This response or commitment to respond will vary, according to the strength of faith, strength of character and type of situation, which in turn implies judgment based on the situation, the characteristics of the trustee and the trustor's willingness to place him-/herself at the mercy of the response of the trustee, which is inherently unpredictable. This is a risk the trustor has to take. The stronger the trust, the greater the risk. South African business tycoon Anton Rupert has been quoted as saying: "Trust is risk. Mistrust is an even greater risk". Also, the greater the expectation that the trustee will behave in a manner conducive to the well-

being of the trustor, the more vulnerable the trustor is. It is because of this decision-making risk that Sztompka in Binikos (2006:43) defines trust as a "gamble based on an individual's judgement" and Bews (2000:19) defines is as a "voluntary action of the party, flowing from an evaluation, based on the social skills of that person concerning the potential of another, or others, not to take advantage of the vulnerability of the first party".

Bews's definition meets the criteria discussed in Sztompka's definition, and illustrates how a decision based on trust is a voluntary decision based on the circumstances of the situation. However, any decision to trust involves risk of some kind. Therefore the decision to trust requires an assessment of the situation and the risk attached to it. If an individual is treated with fairness; he or she is unlikely to expect harm or abuse. The assessment of the situation therefore involves judging how trustworthy the trustee is and/or may be in future.

To simplify the definitions of Sztompka in Binikos (2006:43) and Bews (2000:19), trust in this thesis is understood to be the trustor's expectancy that the trustee will treat him/her fairly and benevolently.

Trust also involves making oneself vulnerable, for example when confidential information is disclosed. Trust provides opportunity to take advantage of another or to disappoint another. Trust is not a risk per se; it is a willingness to take risk. Maritz (2004:257) further identifies five key dimensions of trust, namely integrity, loyalty, openness, consistency and competence:

- Integrity refers to truthfulness and honesty.
- Loyalty is the willingness to protect another person, *i.e.* being reliable and dependable.
- Openness relates to the ability to share the whole truth.

- Consistency refers to reliability, predictability and behaviour. As the proverb says, action speaks louder than words, *i.e.* there should not be discrepancies between what a public official says and what he or she does.
- Competence includes a person's interpersonal and technical knowledge, therefore skills and abilities. A public official should be competent in order to handle allegations of perceived wrongdoing.

A whistle blower needs to trust the organisation and the senior public officials. Questions posed on alleged wrongdoing should be answered in an honest and open manner. The person disclosing the wrongdoing should feel that he or she will be protected and should therefore be able to expect that the person to whom the disclosure is made will always act consistently in similar situations and also be loyal to the disclosurer.

Gillis (2003:2) defines organisational trust as the "willingness (of the organisation), based upon its culture and communication behaviours in relationships and transactions, to be appropriately vulnerable, based on the belief that another individual, group or organisation is competent, open and honest, concerned, reliable and identified with common goals, norms and values".

Sievers (2003:356) states that trust is an important aspect of all human relationships and a necessary element of the social fabric. In organisations it is important to create conditions where personal trust can be articulated with societal and systemic trust. He claims that the reality within the organisation is put to the test by unexpected and irrational behaviour which could lead to an environment where trust is not given a fair chance. Kunda in Kamsteeg (S.a:2) agrees with Sievers in terms of his argument that organisational culture becomes a management tool that is counterproductive to the intention of a common culture and can produce mistrust and rivalry, especially where corruption is rife.

According to Kamsteeg (S.a:2-3) there is growing concern that societal/systemic trust and social cohesion is on the decline. He also questions whether or not the concept trust can truly be measured. Trust relationships are based on certain expectations and the uncertainty lies in the question of whether such expectations will be justifiable in the long run.

Claybrook (2004:7) states that "... organisations have reputations and images, and … develop routines, processes, and culture which unify the behaviour of their employees and the responses to external contacts", which affect the experiences and perceptions of trust at the various levels of interaction (individual, group, institutional) within the organisation. This definition suggests that there is a relationship between a trustor (e.g. a person disclosing alleged organisational wrongdoing) and a trustee (e.g. an organisation or manager).

Misztal (1996:16) argues that although trust and confidence are perceived to be similar, there is a fundamental difference between them. Confidence seems to be a kind of unconscious, therefore basic, trust. Kamsteeg (S.a:5) quotes Sievers as saying "… instead of further managing or engineering trust … we have to learn new ways of creating trust between partners who do not necessarily share the same goals and values." This principle is useful in the case of a diverse society such as South Africa's.

According to Gray (1998:1) the way to rebuild trust is to regulate behaviour, ensure administrative competence and establish opportunities for participation within conditions of economic and social stability. Low levels of trust can be attributed to public perceptions and to a misuse of public resources and unreliable services. The absence of trust can be found in a number of areas and it should be noted that an absence of trust in one area may overflow into other areas:

- intra-organisational trust (within organisations);
- inter-organisational trust (between organisations);
- trust in organisations (between organisations and those they serve); and
- social trust (between individuals in specific communities).

The concept trust includes various aspects. The following are features of trust according to Gray (1998:1-2):

- it enables commitments to be undertaken in times of difficulty;
- it is a resource that can be increased with use;
- it is a convenient electoral catch all (the public believes in their political representatives);
- it makes governance easier as a trusted government is less likely to face questions and challenges;
- it can enable co-ordination without competition or coercion;
- it is often held to underpin successful economies; and
- trust exists at different levels of belief.

A decision based on trust is a voluntary decision promoted by the conditions of the situation. However, as stated before, any decision of trust will involve risk of some kind. Therefore the decision to trust requires an evaluation of the situation in order to assess whether any retaliation or harm might arise, and to what degree. If an individual is treated with fairness, the expectancy of harm or retaliation will not arise. The evaluation of the situation therefore involves judgement of the trustee's trustworthiness and possible future actions.

The limitations of trust are identified by Gray (1998:2-3) as:

- Trust is fragile and maintained through an absence of contrary evidence as a relationship built on trust can be shattered through one negative incident.

- It is difficult to rebuild trust once it has been broken and such a situation will not be rectified by stricter regulation.

- Trust is a subjective perception of possible future behaviour and therefore not easy to achieve through policy interventions.

- Relationships built on trust sometimes lack the consistency and clarity required for administration to be effective.

- Setting unachievable standards for behaviour may undermine efficiency, and thus future trust and competence.

- Trust is only considered worthwhile when it is associated with sets of values that are beneficial and when it is conditional and limited rather than absolute.

- Trust is a matter of reputation and society must therefore be open enough to enable interactions that could lead to trust and where intentions and competence can be judged.

- Rational choice theory suggests various reasons why it might be difficult to build and maintain co-operative behaviour.

- Processes aimed at rebuilding trust might include apologies, admissions of guilt, repentance, compensation, restitution, and punishment which entails psychological and/or financial costs.

- Trust may only thrive in limited situations where "at least one party is free to disappoint the other, free enough to avoid a risky relationship and constrained enough to consider the relationship an attractive option" (Gray 1998:2-3).

Trust is the "belief that an organisation will do what it says it will do" (Paine 2003:5), and therefore can be relied upon for support or assistance. In whistle blowing this is based on the belief that the organisation will appreciate the

report, will respond transparently to the matter, and will protect the disclosurer.

Gray (1998:6-8) suggests certain interventions to rebuild a trust relationship:

- An inventory of good practices must be developed by, for example, investigating real-life practices.
- Organisations need to know where trust is weakest and most damaging. A social audit could assist the public sector in mapping out changes in trust and to develop hypotheses about the origins of such changes.
- Communication facilitates trust as it establishes a certainty of intent, and avoids depersonification and fear of exploitation. Openness not only refers to an open government, but also allows for forums where both intention and competence can be negotiated and tested, such as Parliament.
- It is advisable to build a relationship of trust by starting small, but there will be long-term rewards.
- Whistle blower procedures should be in place, not just for protection purposes, but also for the prevention of inaccurate or unnecessarily damaging disclosures of information.
- Where organisations are so complex as to engender low trust, they need to be simplified. This is important in the regulation of conduct.
- Breaches of trust must be followed by swift action which would include due process for those accused of alleged wrongdoing.
- Social and economic stability provide foundations of trust.
- Organisations need to understand how high trust interacts with trust in another. Employees need to trust in the organisation, and if that trust is breached, the employee should trust the organisational processes enough to believe that they will help disclose alleged wrongdoing.

Paine (2003:5) states that identification refers to the extent to which public officials feel connected to the organisational culture, in other words, "the extent to which we hold common goals, norms, values and beliefs with our organization's culture". Thus, any definition of organisational wrongdoing must include a compatibility of goals between the *trustor* and the *trustee.*

The *"… interaction of ethics, morals, values, loyalty and trust in an organisation when the choice of disclosing wrongdoing … "* and *"how can this interaction be strengthened in order to increase the likelihood of whistle blowing being effective as a corruption*-combating *mechanism?"* (see section 1.6) cannot be underestimated as the various concepts elate to each other. The choice to blow the whistle is not an easy one and it is influenced by for example personal values, morals and ethics. It is therefore important to establish guidelines on ethical behaviour that is based on a common understanding of values and morals in the public sector. Whistle blowers struggle with the dilemma of loyalty-loyalty to fellow employees, the organisation and the public. Trust lies at the heart of the whistle blowing process. Employees who blow the whistle have a reasonable belief that there concerns will be addressed. Trust forms an integral part of the organisational culture and employees should know that they will be protected from organisational detriment if the decide to blow the whistle. The public also places their trust in public officials to ensure that their best interest will be served. Public officials function not only in the public sector, but also in a larger community.

3.3   The ethical community

The most fundamental difference between communal and individualistic societies is their opposite views regarding the status of the individual and the status of the community. Within an individualistic society, the individual is supreme and most important. In a communal society, the community has supreme power over the

individual and the individual's first priority should be to serve the community through communal service (Okediji in Nethonzhe 2002:16-24). Demands relating to ethics in communal societies are closely linked to verbal and non-verbal rules of communication that are designed in such a manner as to ensure communal social order. Ethics therefore play a major part in determining who says what to whom, when, for what purpose and under which circumstances. The context and content of communication are normatively determined (Jakubowicz in Nethonzhe 2002:16-24). In communal societies, ethics are not loosely followed guidelines for behaviour but a matter of cultural and social demands. Within the community, the appropriate level at which the exchange of ideas should occur and the various interaction levels are based on the ways in which such exchange may affect established interpersonal relationships and hence the social order (Singer in Nethonzhe 2002:16-24).

In South Africa, as a communal society, communication rules and ethical demands are given the status of primary social values with religious inference. Such societies do not distinguish between the secular and sacred, spiritual and material, religious and non-religious areas of life (Mbiti 1969:2-3). According to Moemeka in Nethonzhe (2002:34) duty is perceived as a religious imperative and a moral obligation and when people violate set rules, the violators are socially punished and even the spirits of the dead are believed to punish them. In rural South Africa, values are communicated by the elders through the interpersonal mode in small or large groups, e.g. family and village meetings, and these modes also serve as channels for the dissemination of information.

Mbiti (1969:10-14) states that ethics communicated in cultural values and attitudes are informed by various philosophical principles that provide a framework for communication patterns in communal communities and which are referred to as the philosophical foundations and cornerstones of African culture and include the following:

- the value of the individual;
- religion as a way of life;
- supremacy of the community;
- respect for the elderly; and
- sanity of the leadership.

The principle of ubuntu is applicable to the supremacy of the community, and implies that human beings should live and care for others. The Zulu proverb *Umuntu ungumuntu ngabantu* (A human being is a human being through other human beings) summarises the ubuntu concept well. The welfare of the community should take precedence, as that will eventually benefit all community members (Ndungane in Nethonzhe 2002:16-24).

If a person makes a positive contribution to the community he or she earns the respect and blessing of their elders and of the leaders of the community. If not, there could be retribution in the form of mental, physical and financial punishment (Mbiti 1969:23).

All societies expect their leaders to set an example, but the manner in which such authority is exercised varies from one society to another. Leaders are expected to be above reproach and should enjoy honour and respect (Okediji in Nethonzhe 2002:16-24). Clifford and Taber in Nethonzhe (2002:32) argue that a fluid leadership structure in which everyone (except the very young) is involved, is a major characteristic of a communal society and relates to the saying "It takes a village (community) to raise a child" (www.afriprov.org). It is therefore important that all community members contribute to and take responsibility for ensuring the existence and maintenance of the social fabric. Theorists such as Miceli and Near (1985:534) and Ponemon (1994:119) are of the opinion that the moral reasoning characteristics of an individual could have an influence on the decision to blow the whistle. The stages of moral development will be addressed in the next section of this thesis.

3.3.1 Moral development in the community

Moral development theories rest on the notion that human beings develop morally in the same way as they develop cognitively, linguistically and physically. It is essential for the individual to understand how external authority interprets the difference between good and bad before acquiring the ability to independently evaluate rules for him- or herself. Moral development then corresponds with the cognitive development of the individual in response to communication. Miceli and Near (1985:534) suggest that the theory of moral reasoning as advanced by Lawrence Kohlberg is key to an understanding of an individual's ethical inclination to blow the whistle. Kohlberg (1984:21-22) advanced the moral development theory of Piaget which recognised that a child uses progressively more sophisticated ways of moral reasoning that complement the child's cognitive and intellectual development. Kohlberg's theory on moral development identifies six stages within three levels of development, which can be set out as follows (Kohlberg 1984:21-22):

3.3.1.1 Pre-conventional level

This first level of moral development can be equated to the level where the child responds to cultural rules that judge behaviour as right or wrong, good or bad. The concepts are interpreted in terms of the pleasure or pain resulting from action (*i.e.* reward or punishment respectively). The pre-conventional level consists of two phases. Phase one focuses on punishment and obedience and the understanding is that the avoidance of any form of punishment and unconditional respect for power are considered as moral. In phase two the correct action is considered to be instrumental in satisfying individual needs and sometimes the need of others. The primary aim of phase two is to use other people to obtain something.

3.3.1.2 Conventional level

On the conventional level, living up to the expectations of the individual's family, group or nation is regarded as valuable, regardless of the consequences of the behaviour. Phase one of this level assumes that what the majority of the peer group considers ethical is acceptable. The conscience of the individual emerges during this phase. The next phase calls for the development of an orientation towards authority, rules and the upholding of social order. There is strong emphasis on strict rules of behaviour.

3.3.1.3 Post-conventional, autonomous and principle level

An individual needs to have a cognitive abstracting ability and the ability to see issues in shades of grey, not just in black and white. What is accepted as normal values and principles is defined by the individual and not by authorities, groups or other individuals. The first phase of this level creates clear awareness of relationships of personal values and opinions on procedural rules in order to reach consensus. There is therefore an emphasis on the legalistic view, but the law may be changed with national consideration of social utility. Obligations are bonded by free agreement and contract and are the official morality of the public sector and the Constitution. The final phase, which is the highest level of moral development, involves an orientation towards decisions of continence and self-elected principles and is highly abstract and ethical. The universal principles of human rights and justice are reflected in this phase.

Moral development serves as a guide to all public officials, as they need to act ethically. Ethical behaviour is expected from the community being served. However, public officials may be faced with ethical dilemmas.

3.4   Ethical dilemmas

There are three major categories of public sector ethics, namely policy ethics, individual (or personal) ethics and organisational ethics. According to Kernaghan (1996:3-5) policy ethics refer to "the ethical implications of policy decisions and recommendations. Public servants face difficult ethical choices in making or recommending policy …" Individual ethics are personal ethical standards that public officials bring to their recommendations and decisions. Public officials need to be ethical, as they have access to confidential information and their position of power in the policy process. Organisational ethics refer to ethical obligations and duties imposed by the organisation. At times public officials experience conflicting demands from the organisation within government itself. Public officials might even at times experience conflict between personal ethical preferences or the policy choices they would prefer to make on the one hand and the demands of the organisation on the other. The whistle blower, for example, may struggle between knowing of some form of wrongdoing and believing that it should be exposed on the one hand and loyalty to the person or group committing the wrongdoing on the other.

According to Baai (1999:371) ethical predicaments arise when there is conflict between competing obligations or between a sense of duty and self-interest. The White Paper on the Transformation of the Public Service 1995 states that a high standard of professional ethics should be promoted and maintained in all spheres of public administration.

Kidder (1995:234) suggests that ethical dilemmas are conflicts between right and right, while moral temptations relate to conflicts between wrong and right. Moral temptations are, for example, bribery and improper bidding practices. Ethical dilemmas are issues such as economic growth versus environmental protection, or discipline versus compassion with employees. Such are conflicts between two or more right values and lie at the heart of ethical decision-making. It is therefore

imperative that public officials be clear about the content, purpose and basis of their decisions.

An ethical dilemma on the other hand is an obvious conflict between moral imperatives, where obeying one would mean contravening the other (http://wikipedia.org.wiki/Ethicaldilemma).

Managing in an increasingly diverse workforce has raised difficult issues in both personal and organisational ethics (Kernaghan 1996:12). In order to advance the public interest, the actions of public functionaries, both elected and appointed, should always be in the public interest, *i.e.* their official conduct should always be good, right and positive. It should, however, be kept in mind that ethical prescriptions on the one hand and legal and regulatory prescriptions on the other may be incompatible. Public functionaries are expected to adhere to the *intra vires* rule at all times, and ethical conduct is, within the public sector, always subject to strict prescriptions based on the policy of the ruling party, as expressed in terms of legislation. If public officials do not adhere to the *intra vires* rule, which entails acting in accordance with the formal prescriptions of the law, conflicting actions could well develop into ethical dilemmas (Mbatha 2005:24). However, Kernaghan (1996:13) argues that integrity in government is not simply a matter of regulations and rules; it also relates to the personal standards of all public officials.

According to Mbatha (2005:25) some of the most common ethical dilemmas facing public officials revolve around aspects such as:

- administrative discretion;
- corruption;
- nepotism;
- conformity;
- administrative secrecy;

- information leaks;
- values;
- impartiality;
- professional ethics;
- fairness;
- public accountability;
- policy dilemmas;
- the relationship between appointed officials and elected political office bearers;
- the influence of pressure groups on the ethical conduct of public administration;
- the political activities of appointed public officials; and
- public interest in the behaviour of public officials.

Ladikos (1999:30) is of the opinion that if regulations and authorisations such as the issuing of licences and permits are controlled by one department or person, too much power is vested in such individuals – which might lead to corruption or bribery. Unethical conduct occurs as stated before whenever a public official abuses his or her position for personal gain that is totally out of balance with his or her public duties. The situation is further complicated by the presence of different values and norms in the society in which the public official operates.

Public employers and politicians exercise significant discretionary powers in their everyday work, in their management of public resources, at the interface with citizens, and within the context of policy making. Ethical principles are a key check against the arbitrary use of that public power and a key factor in the quality of governance. Without some ethical barometer it is difficult, if not impossible, to measure changes in levels of corruption or misconduct in the public sector. Unethical governance costs society much more than money; it also leads to a lack of trust and confidence in the government, ultimately resulting in a lack of

participation or involvement in government affairs (Van Niekerk *et al.* 2001:116 and Mbatha 2005:25).

The ethical conduct of public officials is essential to obtain public trust in government. It is important that there be a coherent and comprehensive ethics infrastructure in the public sector (Kernaghan 1996:15). Public officials are constantly in the eye of the public and society expects public officials to be ethical as they work (for example) with public monies. According to Malan and Smit (2001:64) sound governance is ruined when the public no longer trusts public officials as a result of corrupt practices and unethical conduct. Where there is distrust, communication disintegrates and employees may start questioning the reliability of the internal information system, since it is controlled by an unethical management corps. It is therefore imperative that the *"interaction of ethics, morals, values, loyalty and trust in the organisation be strengthened to increase the likelihood of whistle blowing being effective as a corruption*-combating *mechanism."* (see section 1.6).

Malan and Smit (2001:64-68) identified the following aspects as implications of unethical management:

- trust and credibility;
- the loss of skilled labour;
- the collapse of productivity;
- lower standards of service delivery;
- crisis management;
- a culture of corruption;
- the development of alternative structures;
- racial tensions in the workplace;
- an increase in the number of public servants; and
- an increase in the number of consultants.

According to White (1993:1-3) ethical dilemmas can be resolved firstly by focusing on the practical consequences of the actions and secondly by concentrating on the actions themselves. Questions that can be asked can include (for example) how does the action measure up against the principles of fairness, respecting the dignity and rights of others, and honesty? It is therefore important to analyse the consequences as well as the actions.

Ethical dilemmas occur when individuals are in situations where they have to choose between morally desirable and morally undesirable behaviour. In the end, it is a choice between right and wrong - and sometimes even between right and right.

In general, employees tend to behave in a certain way, either because of tradition, organisational structures, oaths of office, popularity, prestige or fear, or because the individual is drawn toward the ethical behaviour of a group or person and strives to bring his actions into agreement with a specific model. The result of the sensitivity of the individual to acceptable and unacceptable behaviour (Armstrong and Graham 1975:21 and Mbatha 2005:51) is that as an employee, the public official deliberately and often voluntarily tends to conform to the standards of the organisation where he or she is employed.

Conformity in public sector is aimed at ensuring that public officials conform to the ideals of the public institution. As no one person is the same and public organisations employ people of various persuasions, the aspect of conformity is of great importance for public organisations. A public official can be expected to conform to certain stated guidelines regarding his or her functional and administrative activities, *i.e.* to conform to the rules, procedures and traditions of the public sector (Hanekom 1982:25-27).

3.5 Public service ethics

Bailey in Mafunisa (2000:285) explains public service ethics as follows: "Government is moral insofar as it induces public servants to relate the specific to the general, the private to the public, the precise interest to the inchoate moral judgement."

This explanation refers specifically to democratic morality. It is imperative that public officials act morally and ethically at all times, as this is in the interest of the public at large, thus for the public good. Frederickson (1997:234) states that the spirit of public administration activities is based on the moral base of benevolence to all citizens. Benevolence is specifically used in this context to illustrate that without benevolence, public administration would just be governmental work. The activities of public officials should be towards all and this could lead to an ethical spirit of public administration and management.

3.5.1 Ethical behaviour by public officials

A public official needs to comprehend the ethical nature of his or her profession in terms of the promotion of the public good as well as the manner in which he or she fulfils this role. Good governance rests on ethical considerations (Robson 1999:157). Thus, the morality and ethics of the public sector rest on the morality and ethics of public officials who do not put self-interest first, and who are true to the work and fulfil their duties in accordance with all the necessary resources, as the public has the right to expect (Hummel 1998:885).

Robson (1999:172) states that a public official needs to be able to distinguish between his or her role and that of the political office bearer to whom he or she reports. It is important for public officials to maintain professional integrity within the so-called grey areas of politics and administration. Although the public official is involved in the policy-making process whereas politicians are involved in the

process of administration, these two areas should not be seen as dichotomous but rather as complementary. It has been stated before that ethical conflicts might arise if for example there were various needs of society that had to be addressed but limited resources to do so.

According to Vyas-Doorgapersad and Ababio (2006:388) "… state officials and public servants which are exposed to acute ethical dilemmas can hardly help succumbing to a state of confusion and embarrassment in which they are often quite unwillingly thrust." It is therefore imperative that the public sector have an ethical culture that provides clear ethical guidelines to avoid further confusion among public officials.

The following aspects comprise acceptable behaviour on the part of public officials (Andrews 1988:36-37 and Mbatha 2005:45):

- all dealings must be transparent and open;
- all dealings must be in the public interest;
- there must be no violation of the rights and privileges of individuals;
- there must be strict adherence to all legal prescriptions and regulations;
- discretionary powers must not be abused;
- no financial resources should be wasted and effective work performance must be maintained at all times;
- the actions of a public official may not benefit or injure any individual; and
- the actions of public officials should be such that the effectiveness of public organisations are absolutely beyond reproach.

3.5.2 Public officials and government ethics

Clapper (1999b:136) states that public officials are required to perform various activities in terms of decision-making and using discretionary powers which might be fraught with ethical dilemmas. Such dilemmas could be ascribed to conflicting

responsibilities, tension between personal needs and responsibilities, and even obscure rules.

According to Minister Fraser-Moleketi (2006) in a keynote address to the National Anti-Corruption Forum, South Africans expect government to conduct its business with integrity and not to get involved in any form of fraud or corruption.

Three ethical ideals form an integral part of government ethics (Hanekom 1989:121-123 and Mbatha 2005:46):

- a higher form of society which entails that the efforts made to ensure happiness in society form the main basis of social organisation;
- service to the community as an ideal entails that the public official's actions must be commensurate with the expectations of the community; and
- the happiness and well-being of the public official as an ethical norm entails that the public official's interest is safeguarded against unlawful and unethical behaviour through specific legal or other measures.

The three ethical ideals call for ethical behaviour in terms of society, the interest of the public and that the interest of public officials themselves is safeguarded through legislative and other measures. These legislative measures provide guidelines aimed to prevent unethical conduct.

3.6 Materialisation of unethical conduct

Government's failure to establish high ethical standards in its organisations may lead to an unfortunate situation where the unethical conduct of public officials becomes the order of the day. Some manifestations of unethical conduct include the following:

3.6.1 Control of valuable resources

In many countries, government supplies goods, resources and services to the public at less than market-related prices. Such goods, resources and services include public housing, electricity, water, access to land; educational and health facilities as well as rationed goods. Resources are scarce and it is up to public officials to decide how such resources will be divided and distributed – an environment which could easily spawn corruption and bribery (Ladikos 1999:31).

3.6.2 Election fraud

Vote-buying is soliciting a citizen's vote in exchange for some reward of monetary value. For example, politicians may use campaign contributions to pay individual voters. The voters concerned would naturally not object, since they benefit from such actions. One example took place during the 1996 elections in Thailand, where voters were promised post-elections bonuses if their candidate won (Rose-Ackerman 1999:139). Most of the characteristics associated with patronage also have a bearing on vote-buying.

Patronage entails the assignment of government positions to political supporters or could refer to the appointment of friends and family without merit. Undue advancement of friends as well as the appointment of relatives who do not qualify for the offices concerned, could result in the selection and appointment of public officials of a poor quality, causing the quality of public sector to decrease in its entirety (Rose-Ackerman 1999:139).

According to Rose-Ackerman (1999:69) a personnel system based on patronage undermines the efficient and effective delivery of service and leads to unjust administration.

3.6.3 Abusing one's public office/kleptocracy

The term kleptocrat refers to a ruler or a top official whose primary goal is personal enrichment and who possesses the power to further this aim while holding public office. The aim of the kleptocrat is personal wealth maximisation, but the tools at his or her disposal are not perfect. Such leaders control the state but not the entire economy and the state concerned may have a disloyal and weak public sector, a poor resource base and a vague and confusing legal framework. Examples that fit this model are long-standing dictatorships such as that of Mobutu Sese Seko of Zaire (1965-1997) and President Alfredo Stroessner of Paraguay (1954-1989) (Rose-Ackerman 1999:114-116).

3.6.4 Accountability

Political office-bearers and senior public officials' actions, attitudes, behavioural patterns and decisions should be rational in order to be accountable. Rationality in decision-making refers to the making of reasoned, careful selections from alternatives in order to achieve predetermined objectives (Hanekom *et al.* 1987:27).

All governments must provide *inter alia* effective, transparent, accountable and coherent government. Public sector managers should be held accountable for their behaviour, for the reason they are in the employ of the public (Botes 1994:7). Cloete and Mokgoro (1995:17) explain the term accountability as the respect due to aspects of value such as state expenditure. Banki (1981:97) describes accountability as the "personal obligation, liability, or answerability of an official or employee to give his superior a desired report of the quantity and quality of action and decision in the performance of responsibility".

Hilliard (1996:26) states that accountability should be seen from two angles – the internal and the external. Internal accountability takes place within the

organisation and could include internal audit reports. External accountability is accountability towards the public. One or more of the following mechanisms can determine public accountability (Botes, Brynard, Fourie en Roux 1992:182):

- personal inspections;
- approving decisions;
- yearly reports;
- regular auditing; and
- daily supervision and controls.

3.6.5 Official violence

Official violence usually manifests itself during situations relating to labour action such as labour disputes, demonstrations and protest action. This could also occur when citizens are deprived of their political and other rights and freedoms by way of legislation and other similar restraining measures. Official violence can also be understated. For example, members of the public having to wait in long queues in the sun to receive their social grants can also be regarded as official violence (Van Niekerk *et al.* 2001:123 and Mbatha 2005:53).

3.6.6 Unauthorised disclosure of confidential information

According to Roux in Kuye, Thornhill, Fourie, Brynard, Crous, Mafunisa, Roux, Van Dijk and Van Rooyen (2002:92), it often happens that important information is not made accessible because it is confidential. Official information (e.g. pending tax increases, rezoning of land, retrenchment of staff) is often of such a sensitive nature that disclosing it could lead to chaos, corrupt practices or, for some individuals, inappropriate financial gains. Leaking such confidential information or using such information for personal gain would be an unethical action.

According to the Municipal Systems Act 2000 (Act 32 of 2000), the following pertain to the unauthorised disclosure of information:

(1) "A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

(2) For the purpose of this item 'privileged or confidential information' includes any information –
   (a) determined by the municipal council or committee to privileged or confidential;
   (b) discussed in closed sessions by the council or committee;
   (c) disclosure of which would violate a person's right to privacy; or
   (d) declared to be privileged, confidential or secret in terms of the law.

(3) This item does not detract from any person's right to access to information in terms of national legislation."

It is thus stipulated that information classified by the municipal council or a committee as confidential, information discussed in closed council/committee meetings, information that could violate a person's privacy or any information declared by the law as secret, confidential or privileged may not be disclosed by councillors. This poses problems to a councillor that decided to blow the whistle as it might be perceived that information that was disclosed is confidential or sensitive.

3.6.7 Institutional misconduct

Misconduct and unethical behaviour by public officials can take on a variety of forms, such as:

- Nepotism (if relatives or friends are favoured by being awarded contracts or promotions);

- Misuse of authority and violation of public responsibility, usually for private gain;

- Bribery (if public officials accept improper gifts or entertainment in return for special favours such as privileged information);

- Protecting inept colleagues, managers or political heads; or

- Misuse of insider knowledge and influence peddling (Van Niekerk *et al.* 2001:123 and Mbatha 2005:54).

The perceived deterioration of government services and products is usually attributed to the corrupting influences of power, which may lead those who hold it to act in their own interest rather than in the interest of the community. Theft of public property ranges from petty thieving such as personal telephone calls or helping oneself to office stationery to stealing large amounts of public money and valuable resources. Every year public organisations suffer losses as a result of theft and the misuse of public property. To avoid such misappropriation of public property, public officials should be made to endorse a code of conduct during an induction programme, and should be warned of the dangers of such unethical acts (Mbatha 2005:54). New employees should also be informed of what constitutes misuse of public property.

3.6.8 Victimisation/harassment

A deviation from the ethical values of fairness and reasonableness expected of public officials can also be manifested by victimisation. Victimisation can be defined as deceiving, cheating or committing fraud, or acting unfairly and unjustly (Hanekom and Thornhill 1983:109). Victimisation could take place through for instance a traffic official checking the roadworthiness of a vehicle, the passport control officer checking a passport and the policeman enforcing the law for the illegal selling of goods such as pirated compact disks. Public officials should act

ethically and within the law (*i.e.* an act passed in accordance with the Constitution). They should also act fairly and reasonably, promoting the public interest, and there should be checks and balances to limit the authority of public officials, since too much authority and discretion could lead to an abuse of power.

3.6.9   Excessive administrative secrecy

Secrecy provides an opportunity to cover up unethical conduct and can therefore be regarded as an ally of corruption, suppressing dishonest practices. A significant correlation exists between excessive secrecy, confidentiality and an increase in incidents of corruption and maladministration. A veil of secrecy could indeed open doors to possible malpractice which in turn could promote corruption. It is in the interest of society as a whole that official secrecy be kept to a minimum so as to limit possible malpractice and corruption (Hilliard 1994:221-222). Unethical conduct is detrimental to the public sector and it is therefore important to establish an ethics infrastructure for the public sector.

3.7   Establishing an ethics infrastructure

Garofalo (2004:8) states that in the Canadian Office of Public Service Values and Ethics an ethics infrastructure includes a statement of standards of conduct, values or principles; tools to raise awareness of values, control wrongdoing and promote the management and evaluation of ethics and value programmes and to reinforce a culture of ethics and keep the trust of the public. Distinctions are drawn between professional, ethical people and democratic values.

Clapper (1999a:386-389) states that the ethics infrastructure provides a conceptual framework which includes mutually reinforcing functions and elements that will support the public sector to strive for and hopefully achieve high standards of right-doing which will be rewarded and encouraged. The Public Management Association (PUMA) developed the ethics infrastructure on behalf

of the Organisation for Economic Co-operation and Development (OECD) and the integrated whole includes eight separate elements (PUMA 1998:24):

(a) Political and administrative commitment: Politicians should emphasise the importance of transparency and ethics, set an example and support good conduct with adequate resources.

(b) An effective legal framework: Laws and regulations that set standards of behaviour and enforce them, such as the Constitution.

(c) Efficient accountability mechanisms: Administrative procedures, audits, agency performance evaluations, consultation and oversight mechanisms including agencies such as the Public Protector and the Auditor-General.

(d) Workable codes of conduct and ethics: Statement of values, roles, responsibilities, obligations and restrictions, *i.e.* punitive measures for non-compliance.

(e) Professional socialisation mechanisms: Education and training will be provided to create an ethical organisational culture in the public sector, thus creating an awareness of ethical conduct.

(f) Supportive public sector conditions: Fair and equitable treatment; appropriate pay and security.

(g) A co-ordinating ethics body: Would take on the role of not only a watchdog, but also the promoters of ethics and right-doing, e.g. the Public Service Commission.

(h) An active civil society (including a probing media): Watchdog over government activities, providing enabling legislation such as the Access to Information Act 2000.

The relative synergy between the different components of the ethics infrastructure will depend on the cultural and political traditions of a country, the overall approaches to public administration, and the historical record in promoting ethical and transparent behaviour. Like any other set of management tools, the effectiveness of infrastructure depends on whether it is implemented, understood,

and applied consistently. The ethics infrastructure can be achieved through control, guidance and management (Clapper 1999a:389).

Kernaghan (1996:19-21) identifies the following as possible elements of an ethical framework:

- The assessment of ethical performance as a basis for appointing and promoting all members of the public sector, particularly the leadership;
- An ethics audit to evaluate the procedures and policies for preserving and nurturing ethical conduct;
- The provision of an official, confidential hotline that can be used to discuss concerns about personal ethical conduct or the conduct of others;
- Ethics training for public officials, including all employees in the public sector;
- An ethics councillor to perform administrative and advisory functions for senior public officials across the public sector:
- An explanation of the code, either by following each principle or in a separate part that adapts the principles of the code to the particular needs of individual departments;
- An ethics counsellor, Public Protector or committee to advise on ethical issues and rules within a single department;
- A statement of values, either as part of a strategic plan or as a separate document;
- Provision for administering the code, including penalties for violations and provisions for grievance;
- Elaboration on the code, usually as a commentary under each principle that will elaborate on the meaning of the principle and/or examples of the violations of the principle;
- The raising of ethical considerations in a purposeful and regular way at meetings and through for example newsletters;

- Reference to the existence of ethics rules (for example regulations) related to the problem areas covered in the code and/or to problem areas covered elsewhere;

- A code of conduct linked to the value statement which sets out general principles of ethical conduct; and

- The inclusion of exit interviews to ask questions about the employee's view of the ethical culture of the organisation.

It is important that the ethics infrastructure be understood by all in the organisation through – among others – training and an explanatory manual. Various strategies can also be used to communicate and promote the ethics infrastructure in the organisation.

3.8 Strategies to promote ethics

Various strategies, which could be used to combat unethical behaviour, will be discussed in the following paragraphs:

3.8.1 Ethics education and training in public administration

Education and training in accountability issues could lead to a greater awareness of issues relating to accountability. According to Louw (1998:70) in-service training in ethical standards and norms must be provided to public officials if ethical behaviour is expected of such public officials. Training material could include (Louw 1998:70):

- prescriptions regarding fair and reasonable actions towards colleagues and the general public;

- prohibitions in respect of the misuse of public funds and/or public institutions for self-interest or private gain;

- specific legislation, procedures and regulations which govern the behaviour of public officials; and
- measures to avert confidential information being made available to private individuals for the purpose of advancing their own interests at the cost of others.

Clapper (1999a:382) states that a professional ethics paradigm must be followed in teaching ethics in the public sector, with a view to avoiding abstract philosophical literature, the social sciences and other currents of thought that have been developed through centuries of sustained inquiry. Case studies that do not facilitate the learning of principles underlying various situations should be avoided. The principles should rather be taught in a practical manner and focus on public sector ethical issues such as accountability and the place of politics in public administration. The National Anti-corruption Programme (NAP) aims to promote ethical practices in all sectors and activities through awareness and training programmes (Fraser-Moleketi 2006:s.n).

3.8.2 Ethical leadership

Ethical leadership is the most important determinant of ethical conduct in the public sector. Managers on all levels are influential in setting the ethical tone of the organisation. Senior managers, apart from setting an excellent example in terms of their personal ethical conduct, should communicate their ethical expectations throughout the organisation. The managers should also be held accountable for their performance in doing so (Kernaghan 1996:17-18). According to Joseph (2002:8-9) "A new moral consciousness is dawning in which many people who strive to live morally are now insisting that their institutions and leaders do the same."

3.8.3 Adequate and fair compensation

According to Rose-Ackerman (1999:71-72) some developing countries pay public servants poorly. At independence, most of the former colonies inherited public sector salary scales that exceeded those of the private sector, but this eroded over time. Low public sector salaries naturally cause corruption, as a survival strategy. However, Rose-Ackerman cautions that one should not exaggerate the public/private discrepancy. In many cases total remuneration also includes benefits such as housing and a medical aid. Such perks do not always compensate for the gap and in these instances; public officials are likely to find opportunities for a second income or supplement their salaries by accepting pay-offs.

A selection bias will operate if government salary scales do not reward those with specialised skills. Some people, qualified for the public sector, will seek employment in the private sector – either abroad or in their home countries, and leaving behind only lower-skilled employees in lower-paid government jobs that they are unable to perform. After a period of time, the entire public sector could be staffed with low-productivity workers who are not employable in comparable private sector jobs and those who are prepared to accept bribes (Rose-Ackerman 1999:74).

It should, however, be noted that a study performed by the Institute of Security Studies found that low salaries were not one of the major factors contributing to corruption. The majority of the experts were not of the opinion that public officials were poorly paid or that low salaries were the reason officials extracted bribes from the public. Neither did salary increases for public officials rank high as possible anti-corruption strategies – except for some statements that police officers could be paid better salaries in an effort to curtail corruption (Camerer 2001:4).

3.8.4 The media

The media plays a role in accountability because it reports on issues regarding the public sector such as corruption and unethical behaviour (Cloete and Mokgoro 1995:26). The media can become a powerful mechanism in public accountability if it concentrates on the administrative process. The printed and electronic news media play an important role in providing a mouthpiece to society on the actions of government. The South African Bill of Rights as contained in Chapter 2 of the Constitution 1996 makes provision for the "freedom of the press and other media". However, this right does not allow war propaganda, the provocation of violence or hate speech.

It is the task of investigative journalists to ensure that they report the truth and have high reporting standards. An example of the media's role in exposing manifestations of unacceptable and unaccountable ethics of public officials includes the so-called Travelgate scandal, which brought unethical and unaccountable behaviour to the attention of the public by (1) deterring the public officials concerned and (2) educating the public about ethics and accountability. This enabled members of the public to serve effectively as whistle blowers. According to Minister Fraser-Moleketi (2006:s.n), one has to be cautious not to get involved in trials through the speculation of the media and should rather allow for the constitutional right of due process.

3.8.5 *Ad hoc* bodies

Ad hoc bodies are established to serve a specific purpose, and once that purpose has been attained, they cease to exist. *Ad hoc* bodies include commissions of enquiry, which are appointed to investigate matters of national or provincial interest. The President of South Africa or a premier could appoint a commission of enquiry to enquire into matters of national interest, for example where there are allegations of maladministration, corruption or suspected public

corruption. In South Africa it is a fixed practice to appoint judges to head commissions of enquiry and to perform other non-judicial work. Their services are utilised because of their public standing, their reputation for impartiality, their integrity and their ability to ascertain the true facts and propose fair solutions (Mafunisa 2000:67). One example of a commission of inquiry is the Heath Special Investigating Unit which investigated approximately 95 000 allegations of corruption involving an estimated R8 billion. A Special Investigating Unit investigates matters referred to it by the President of South Africa on the following grounds (Mafunisa 2006:516):

- public sector corruption;
- improper conduct by elected officials;
- serious maladministration in public sector organisations;
- unlawful conduct which causes serious harm to public interests;
- unapproved transactions;
- unlawful expenditure of public funds; and
- intentional or negligent loss of public money or damage to public property.

The various strategies should be used to curb unethical behaviour such as corruption. These strategies, which is build on *"ethics, values, morals, loyalty and trust should be strengthened to increase the likelihood of whistle blowing as a corruption*-combating *mechanism."* (see section 1.6). Various Constitutionally established bodies were established and focus, amongst other things, on the eradication of corruption in the public sector.

3.8.6 Constitutional bodies

The following institutional mechanisms are used in promoting ethical behaviour among political office-bearers and public officials. Such bodies are provided for by the Constitution.

3.8.6.1 Public Protector

The Office of the Public Protector was established under Chapter 9 of the Constitution 1996 with the operational requirements stipulated by the Public Protector Act 1994 (Act 23 of 1994). The Public Protector functions independently from Government and all political parties and is appointed by Parliament. The Public Protector receives complaints from aggrieved persons against Government, government officials, government departments and government agencies and may explore matters referred to him or her, make recommendations on corrective action and report to Parliament (Bauer 2002:170).

3.8.6.2 Auditor-General

The post of the Auditor-General was created in terms of Section 188(1) of the Constitution of 1996. The functions of the Auditor-General are to ascertain, investigate and audit all accounts and financial statements of all departments of the national, provincial and local spheres of government as well as any statutory body or any other institution financed entirely or partly by public funds. The legislatures can appoint some of their members to finance committees or public accounts which can summon accounting officers (the administrative heads of administrative executive organisations such as state departments) to give account of financial transactions relating to their departments (Mafunisa 2006:514). Cloete (1998:197) states that the word accounting in the job titles of the officials concerned refers to the rendering of an account and to answerability, rather than to accounting in the sense of bookkeeping.

A forensic auditing capacity was established in 1997, followed by preventative and reactive strategies for investigating corruption. The overall aim is to promote a culture of fraud awareness in the public sector through for example participation in national and international initiatives, publications and workshops

which is in fact a preventative strategy. A reactive strategy was also created to investigate alleged economic crime (Mafunisa 2006:514).

3.8.6.3   Public Service Commission

The Constitution mandates the Public Service Commission to promote sound values and principles applicable to public administrations and to focus specifically on professional ethics. The Public Service Commission seeks to play a developmental role by ensuring that its programmes support government initiatives (Sangweni 2005:s.n). In the State of the Public Service Report (2006:6) it is stated that the Public Service has demonstrated the ability to promote and implement ethical frameworks. The ethical framework is further strengthened by the active participation of the private sector and civil society. The Public Service is currently working on a National Anti-Corruption Programme adopted by the National Anti-Corruption Forum.

3.8.6.4   Judicial organisations

Maluleke (in Mafunisa 2000:64) calls for imprisonment without the option of a fine as the minimum sentence for those involved in corruption. Where the government has suffered irrecoverable monetary or proprietary loss through acts of public sector corruption, offenders should have their movable or immovable properties attached by due process of civil law. If an elected public functionary is convicted on more than one account of corruption, such a person should be imprisoned. Maluleke concludes by stating that a sentence that is fair to the accused and consistent with the gravity of the crime is reasonable and justifiable in an open and democratic South Africa (in Mafunisa 2006:515).

According to Cloete in Mafunisa (2006:515), most judicial organisations attend to cases in public, and provide motivated reasons for their judgement after the

evidence has been heard. Court cases usually get publicised in the media. The fear of being exposed to the public by the media is one factor that may discourage public officials from acting in negligent and unaccountable ways. For the courts of law to be effective in instilling a sense of accountability, their independence and objectivity must be maintained.

3.8.6.5   National Prosecuting Authority

According to Mafunisa (2006:516-517), the PDA stipulates that "…the National Director, shall with the concurrence of the Minister of Justice, and after consulting the Directors of Public Prosecutions, determine prosecuting policy and issue directives which may be observed in the prosecution process". The Directorate of Special Operations aims at institutionalising a multidisciplinary, proactive approach to fighting crime, thus integrating functions of intelligence, investigation and prosecution. The Asset Forfeiture Unit focuses on the following (Mafunisa 2006:517 and Public Service Commission 2001:42-54):

- corruption;
- violent crime;
- attaching large amounts of cash linked with drug trading;
- targeting of serious criminals;
- white collar crime; and
- attaching property used in the drug trade or other criminal activities.

The various Constitutional bodies are essential in the whistle blowing process and for example the Public Protector and the Auditor-General are identified by the PDA as bodies to which a disclosure can be made (see section2.3.10). Statutory guidelines make prescribe guidelines for ethical governance.

3.9   Statutory guidelines and codes of conduct

The South African public sector functions within various statutory guidelines. The statutory framework is the basis for communicating the bare minimum compulsory standards and principles of behaviour for every public employee and politician.

3.9.1 Statutory guidelines

According to Vyas-Doorgapersad and Ababio (2006:393) the following prescribed guidelines apply to ethical governance:

- Fundamental rights as listed in Chapter 2 of the Constitution, which bind all public institutions.
- Administrative justice includes not only the normative guidelines of public management, but also the guidelines relating to administrative justice as contained in Section 24 of the Constitution.
- Legal rules entail that every action of public organisations must be within (*intra vires)* the limits enabling regulations and acting as binding documents.
- The Public Service Act 1994 (Proclamation 103 of 1994) sets out rules that govern conduct. These are a reflection of the intention of public officials to serve the public with honesty and integrity.

Laws and regulations could state the fundamental values of the public sector and should provide the framework for guidance, exploration, disciplinary action, and prosecution. Kuye *et al.* (2002:199) state that codes of conduct and codes of ethics are important for the promotion of public trust and confidence in the ethical performance of public officials, the reduction of unethical behaviour, creating awareness of the ethical foundations of Public Administration among serving and aspiring public officials and providing guidelines on the relationships among

fellow public officials, political office-bearers and members of the public. Codes of conduct/ethics can only truly be successful if there are mechanisms in place to enforce these principles, as a code does not in itself guarantee ethical behaviour.

The Public Service Commission developed the South African Public Service Code of Conduct that was promulgated in 1997. An Explanatory Manual on the Code of Conduct for the Public Service, developed in 2002, was sent to departments with a view to creating ethical awareness, and a directive that the relevant documentation had to be accepted, signed and kept on personal employee files (Department of Public Service and Administration 2003:90). The Public Service Act 1994 includes a Code of Conduct that contains guidelines for 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.

Section 96 (1) of the Constitution states that members of Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation such as the Executive Members Ethics Act 1998 (Act 82 of 1998). The introduction to the explanatory manual on the Code of Conduct for the Public Service (2002:7) states that the purpose of codes is to promote the reality and the understanding of integrity by attempting to prevent unethical conduct before it occurs.

The key achievements of the South African Ethics system are (http://www.pmg.org.za/docs/2003/appendices/ETHICS.htm):

- Most public and private organisations have some form of ethics code.
- A code of conduct for the public service has been developed and communicated, with training and manuals. Most departments have implemented these.
- An Ethics System and code of conduct for Parliament have been implemented.

- Senior management members in the public service are required to disclose their interests.

There are also some weaknesses in the system, however. These include:

- It is a problem to manage discipline in the public sector, especially in the light of the reluctance of some senior managers to take disciplinary action against employees who have violated ethical standards.
- Employees are not encouraged to blow the whistle on unethical conduct in the workplace.
- Financial risks get far more attention than reputation risks.
- Both Parliament and in the public sector do not fully disclose all interests.
- Local government and many organs of the state are excluded from the process.
- Ethics management practices are not integrated in public sector processes (http://www.pmg.org.za/docs/2003/appendices/ETHICS.htm).

Most organisations have internal ethics codes and guidelines, which establish the norms for acceptable behaviour, such as the internal Code of Conduct of the Department of Correctional Services and the Code of Ethics and Business Conduct of the Gauteng Provincial Government. Such guidelines vary from organisation to organisation, but may not be in conflict with those promulgated by higher authorities.

3.9.2 Code of conduct in the public sector

Dreyer (1971:26) describes a code of conduct as a set of rules for behaviour prescribed by a higher authority to a specific homogeneous group of employees. A code of conduct should have at least the following four characteristics (Van der Waldt and Helmbold 1995:167):

- encouraging responsible behaviour among public sector managers and their adherence thereto;
- promoting public trust in the integrity of public sector managers;
- providing guidelines to public sector managers in their conduct; and
- providing guidelines to public sector managers with reference to discretionary powers.

Ethics and good governance are needed to place the South African government under greater scrutiny and to induce organisations to become more socially responsible and accountable. In order to obtain social responsibility and accountability, legislators and policy-makers must play a creative role. The creation of a more accountable government includes ways to curb corruption. It is not always easy to enforce a code of conduct. It is therefore necessary and prudent to involve employees in developing such an instrument.

Rasheed (1995:12-14) states that the ethical debate in African countries has intensified for four basic reasons:

(a) A growing acceptance that unethical practices have contributed to economic difficulties;
(b) The stricter adherence of developing countries to specifications of good governance by donor agencies;
(c) An increase in the incidence of unethical practices and a lack of accountabiltiy measures; and
(d) A wave of political liberation which has lead to citizens demanding a more transparent form of government.

According to Kernaghan (1996:16) ethics rules can take several forms, but a code of ethics, that is, a single document providing guiding principles for problem areas, is the most common. A code of conduct should be the starting point for a broad inquiry into the ethical dilemmas of an organisation.

Van der Waldt and Helmbold (1995:167-168) define an ethical code of conduct as being of "… particular value since stability will not be dependent merely on a majority government … diverse values may be fused in a common value system against groupings, can be measured …can serve as a type of watchdog to once again call all parties and groupings to order and accountability … will make a contribution to the openness of the public service and the reconciliation of different standards".

Ethics in the public sector are found in the ethical and moral behaviour of public officials and are incorporated into a code of conduct. The need for a code of conduct is twofold – firstly, to combat corruption and secondly, to prevent corruption. A code of conduct can be used to combat the following activities which are generally regarded as unethical in public administration (Mbatha 2005:62):

- bribery, favouritism, nepotism, influencing, graft;
- conflict of interests;
- protection or covering up of incompetence;
- regulation of trade practices or the lowering of standards with a view to personal gain; and
- use or misuse of official and confidential information for private purposes.

According to Sangweni (2005:s.n) it is important to ensure that a culture of professional ethics is entrenched in the public sector and expressed by public officials in their daily conduct. An instrument such as the Public Service Code of Conduct should inspire confidence in public organisations. Regarding codes of conduct as a method of promoting ethical behaviour, Kernaghan (1996:15) identifies two important arguments:

"The first is that written ethical rules in general and codes of ethics in particular are an important but insufficient means of promoting public service ethics. The

second argument is that certain ethical issues are more amenable than others to management by ethical rules."

Having argued the matter thoroughly, he concludes that the objective of promoting ethical behaviour will be better achieved if there are a combination of codes, role models with exemplary behaviour and employee development, not just through codes alone (Kernaghan 1996:27).

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A code of ethics has to define what constitutes decent behaviour or integrity and the public sector code of ethics must be "acceptable as a sensible guide to good behaviour by the vast majority of officials… it will give them the conscience that now sometimes seems lacking, the mechanism by which morality can be internalised and thereby enforced by the individual" (Williams 1985:62). However, it is also important that a code of ethics be imposed; it should not just be seen as something produced on paper. It should be viewed by officials as a condition for employment in order to work effectively and to ensure that everyone follows the stipulated guidelines (Williams 1985:63 and Mbatha 2005:62).

Resolutions taken by the National Anti-Corruption Summit (2005) in terms of ethics, awareness and prevention include the following:

- Fostering a culture of greater accountability and transparency in all sectors;
- Creating a joint research programme to audit the state of professional ethics in each sector.
- Encouraging whistle blowing and reporting in all the sectors and providing more adequate protection to those who dispose alleged wrongdoing;
- Promoting leadership in all sectors of society that shows commitment to integrity and the fight against corruption;
- Values and principles of codes of conduct for the various sectors must be established, promoted and enforced through defined programmes;

- An integral component of training programmes is ethics awareness and this should also be included in school curricula.

It is clear that the National Anti-Corruption Summit has placed specific focus on ethics training and that awareness programmes must be created. Codes of conduct will also help to facilitate ethical behaviour.

The purpose of a code of conduct is to ensure accountability in terms of value systems and agreed values within such a system. Corruption and fraud thrives in an environment that is devoid of ethics and morals. The aim of a code of conduct is therefore to create an environment that is rich in moral and ethical values and behaviour. Values that form part of for instance the Gauteng Provincial Government include (http://www.gpg.gov.za/publications/anti-corruption.html):

- loyalty;
- sanctioning bad and rewarding good behaviour;
- high standards of service delivery;
- integrity;
- a culture of honesty;
- a sense of pride and belonging to the Gauteng Provincial Government;
- a positive public image;
- professionalism;
- confidence from the public;
- acceptance of accountability and responsibility; and
- all other positive attributes contributing toward sound ethical standards.

The code of conduct of the Gauteng Provincial Government strives to create an organisational culture that includes honesty, integrity professionalism, confidence from the public, ethical standards as well as loyalty (see sections 3.2.5 and 3.2.6). These values could strengthen the organisation in the fight against corruption if all the public officials are committed to these values.

A code of ethics has to do with behaviour and more specifically behaviour which relates to duty, self-control, equal treatment and the absence of favouritism. A code of ethics also has a role to play in creating uniform conduct in accordance with community values as well as being a means of upholding existing community values and norms. A code of ethics should also emphasise the positive and not only the negative; be able to serve as a criterion against which improper conduct can be measured; and serve as a guideline for the observance of acceptable norms (Barrie and Carpenter 1994:75). The behaviour of public officials is often directed by defined basic principles referred to as moral laws, which are based on doctrines endorsed by the relevant community (Andrews 1988:41). A code of ethics serves as an indication of which values are accepted by the majority of society as being more important than others (Hanekom 1982:163 and Mbatha 2005:64).

3.9.2.1   Contents of the code of conduct

The Office of the Public Service Commission has a code of conduct/ethics for public officials and provides guidelines to both public officials and employers of what type of ethical behaviour is expected of them. The code of conduct also gives an indication of the spirit in which public officials should perform their duties; the action to take to avoid conflict of interest; and the terms of public officials' personal conduct and private interest (Cameron and Stone 1995:80 and Mbatha 2005:62).

The Public Service Commission (1997) provides the following guidelines contained in the Public Service Code of Conduct:

"1.   Relationship with the Legislature and the Executive

An employee –

- is faithful to the Republic and honours the Constitution and abides thereby in the execution of his or her daily tasks;

- puts the public interest first in the execution of his or her duties;

- loyally executes the policies of the Government of the day in the performance of his or her official duties as contained in all statutory and other prescripts;

- strives to be familiar with and abides by all statutory and other instructions applicable to his or her conduct and duties; and

- co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

2. Relationship with the Public

An employee –

- promotes the unity and well-being of the South African nation in performing his or her official duties;

- will serve the public in an unbiased and impartial manner in order to create confidence in the public service;

- is polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;

- has regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;

- is committed through timely service to the development and upliftment of all South Africans;

- does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;

- does not abuse his or her position in the public service to promote or prejudice the interest of any political party or interest group;
- respects and protects every person's dignity and his or her rights as contained in the constitution; and
- recognises the public's right of access to information, excluding information that is specifically protected by law.

3. Relationship among Employees

An employee –

- co-operates fully with other employees to advance the public interest;
- executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
- refrains from favouring relatives and friends in work-related activities and never abuses his or her authority or influences another employee, nor is influenced to abuse his or her authority;
- uses the appropriate channels to air his or her grievances or to direct representations;
- is committed to the optimal development, motivation and utilisation of his or her staff and the promotion of sound labour and interpersonal relations;
- deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
- refrains from party political activities in the workplace.

4. Performance of Duties

An employee –

* strives to achieve the objectives of his or her institution cost-effectively and in the public interest;
* is creative in thought and in the execution of his or her duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;
* is punctual in the execution of his or her duties;
* executes his or her duties in a professional and competent manner;
* does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
* will recuse him- or herself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;
* accepts the responsibility to avail him- or herself of ongoing training and self-development throughout his or her career;
* is honest and accountable in dealing with public funds and uses public services property and other resources effectively, efficiently, and only for authorised official purposes;
* promotes sound, efficient, effective, transparent and accountable administration;
* in the course of his or her official duties, reports fraud, corruption, nepotism, mal-administration and any other act which constitutes an offence, or which is prejudicial to the public interest to the appropriate authorities;
* gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and

- honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

5. Personal Conduct and Private Interests

An employee –

- during official duties, dresses and behaves in a manner that enhances the reputation of the public service;
- acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- does not use his or her official position to obtain private gifts or benefits for himself or herself during the performance of his or her official duties nor does he or she accept any gifts or benefits when offered as these may be construed as bribes;
- does not use or disclose any official information for personal gain or the gain of others; and
- does not, without approval, undertake remunerative work outside his or her official duties or use office equipment for such work."

The Public Service Code of Conduct strives to create an ethical organisational culture by providing guidelines on the relationship between the public official and the Legislature and the Executive, the relationship with public, the relationship among employees, how duties should be carried out as well as on personal conduct and private interests. Core to these guidelines are the protection of the interest of the public (see section 2.2.2.5) and loyalty (see section 3.2.5). The code also states that the appropriate channels should be used to convey grievances and report fraud, nepotism, mal-administration and corruption by making use of internal and external channels to report these wrongdoings (see sections 2.3.5; 2.3.7; 2.3.8; 2.3.9; 2.3.10; 2.3.11; 4.4.1.2 and 4.4.1.3). If these guidelines are followed it could aid *"… unauthorised disclosures of wrongdoing … to be transformed into an authorised disclosure … by following certain prescribed*

processes and procedures" (see section 1.7). It is important to ensure that the various codes of conduct are enforced.

3.9.2.2   Enforcing a code of conduct

According to Mbatha (2005:71) the code of conduct for public officials in the South African public sector is an indication of how important the government rates the role which such a code can play as a measure against unethical behaviour and corruption on the part of the public official. A code of conduct will not eliminate corruption; however, it should encourage public officials to base their actions on sound moral grounds (Cameron and Stone 1995:85) such as integrity and honesty. In addition to a code of conduct, provision is also made among the doctrines of democracy for the conduct of public officials namely (Cloete and Mokgoro 1995:187-188):

- it is generally accepted that public officials must promote the general welfare of the public in accordance with the policy goals determined by the legislator;
- in a democratic state, every member of the population has the right to insist on fair and reasonable treatment;
- public officials, according to the principles of a democracy, must in performing their duties, respect the rights and freedom of the population, whose rights and freedom can only be infringed upon directly by the legislator;
- the public should always be able to demand public officials to give account of their activities; and
- the activities of public officials can meet the ethical norms only if they fulfil their activities effectively without wasting the resources of the community.

Ethics embody the ideals people should strive for and how people should behave and are based on the belief that the public sector acts in the interest of the public.

The loyalty and efforts of public officials, managers and others involved in public administration belong to the Constitution 1996 and laws of South Africa. Such duties should be performed in the public interest. The next section of this thesis will deal with the principles which are required to promote ethical behaviour.

3.10 Principles for the promotion of ethical behaviour

In order to establish a culture for public officials to act ethically, certain principles apply (http://www1.oecd.org/puma/ethics/pubs/rec98/re98.htm):

3.10.1 Clear ethical standards

Public officials need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie. A concise, well-publicised statement of core ethical standards and principles that guide the public sector, for example in the form of a code of conduct, can accomplish this by creating a mutual understanding across government and within the broader community.

3.10.2 The reflection of ethical standards in the legal framework

The legal framework is the basis for communicating the minimum mandatory standards and principles of behaviour for every public official. Laws and regulations could state the core values of public sector and should provide the framework for guidance, investigation, disciplinary action and prosecution. Values can be found in – for example – the Constitution and the Public Service Code of Conduct.

3.10.3   Ethical guidance to public officials

Professional socialisation should contribute to the development of the necessary judgement and skills enabling public officials to apply ethical principles in actual circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which public officials are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public officials apply basic ethical standards in the work environment.

3.10.4   Public officials should know their rights and obligations when exposing wrongdoing

Public officials need to know what their rights and obligations are in terms of exposing authentic or suspected wrongdoing within the public sector, such as clear rules and procedures for officials to follow, and a formal chain of responsibility. Public officials also need to know what protection will be available to them in cases of exposing wrongdoing. This relates to the so-called whistle blowing. In South Africa the PDA fulfils the role of protecting whistle blowers if the disclosure is made in good faith.

3.10.5   Political commitment to reinforcing the ethical conduct of public officials

Political leaders are responsible for maintaining a high standard of correctness in discharging their official duties. Their commitment is demonstrated by example and by taking action (since actions speak louder than words) that is only available at the political level, for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing; by providing adequate support and resources for ethics-related

activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

3.10.6 The decision-making process should be transparent and open to scrutiny

The public has a right to know how public organisations apply the power and resources entrusted to them. Transparent and democratic processes should facilitate public scrutiny, oversight by the legislature and access to public information. Transparency should be improved by measures such as disclosure systems and recognition of the role of an active and independent media.

Chapter 9 of the Constitution 1996 makes provision for the establishment of the Public Protector, the Auditor-General and the Human Rights Commission in order to strengthen the constitutional democracy. The Public Protector has the power to investigate any conduct in state affairs, to report on that conduct and to take appropriate remedial action. It is the responsibility of the Auditor-General to audit and report on the accounts, financial statements and financial management of all state departments and organisations, and to compile a report that must be made public. The Human Rights Commission must promote respect for human rights and culture of human rights and monitor and assess the observance of human rights.

3.10.7 There should be clear guidelines for interaction between the public and private sectors

Clear rules defining ethical standards should guide the behaviour of public officials in dealing with the private sector, such as regarding public procurement and outsourcing. Increasing interaction between the public and private sectors, such as public private partnerships, demands that more attention be paid to public sector values and requires external partners to respect those same values.

The National Anti-Corruption Forum includes sectors such as civil society and the private sector in efforts to curb corruption.

3.10.8 Senior managers should demonstrate and promote ethical conduct

An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public sector values and ethical standards. Managers have a significant role in this regard by serving as role models and providing consistent leadership in terms of ethics and conduct in their professional relationship with political leaders, other public officials and citizens.

3.10.9 Management policies, procedures and practices should promote ethical conduct

Management policies and practices should demonstrate an organisation's devotion to ethical standards. It is insufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage some public servants to function on the border of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only define the minimal standards in terms of government officials' actions, but also clearly articulate a set of public sector values that employees should aim for.

3.10.10 Service conditions and management of human resources should promote ethical conduct

Public sector employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies

should create an environment favourable to ethical behaviour. Consistently using basic principles such as merit in the process of recruitment and promotion helps operationalise integrity in the public sector.

3.10.11 There should be adequate accountability mechanisms in place within the public sector

Public officials should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on observances with rules and ethical principles and on the achievement of results. Accountability mechanisms can be internal (such as internal audits) to an agency as well as government-wide, or can be put in place by civil society.

3.10.12 There should be appropriate procedures and sanctions to deal with misconduct

Mechanisms for the discovery and investigation of for example corruption are a necessary part of an ethics infrastructure. There have to be procedures and resources that can be relied upon for monitoring, reporting and investigating breaches of public sector rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should use proper judgement in using these mechanisms when actions need to be taken (http://www1.oecd.org/puma/ethics/pubs/rec98/re98.htm.)

In 2002 a survey of the South African basic ethics infrastructure was done by KPMG, Transparency South Africa and the Public Service Commission. The aim of this survey was to establish the extent to which the private sector, civil society organisations and the public sector succeeded in establishing a basic ethics infrastructure. This study revealed basic flaws in the ethics infrastructure. Although codes of conduct and confidential reporting mechanisms are in place and whistle blower protection mechanisms exist, it still seems as if all

organisations have not been able to incorporate ethics management practices into existing management processes. A senior manager needs to be appointed to implement the ethics responsibility and there is a general lack of knowledge in terms of the practical application of the code of conduct. It should be kept in mind that the existence of a code of conduct does not imply that new (or even existing employees) are aware of its implications. Ethics must be seen as a core strategic issue and this can only be achieved if there is sufficient, meaningful leadership (Public Service Commission 2002).

In South Africa, organisational fraud and theft, financial management procedures, workplace safety, security of information and racial discrimination are some of the most pertinent ethical issues. It also seems as if financial risks are still considered more favourably by wrongdoers than losing their reputations. Public organisations need to start focussing more on effective, successfully implemented ethics policy, the measurement of ethical performance and assigning clear responsibility for ethics at the senior management level (Public Service Commission 2002).

Glazer and Glazer (1999:279) argue that whistle blowers are usually professional people with integrity and close ties to the community and religious activities. Integrity is a set of moral and ethical principles, applied when two or more parties engage with one another. These principles are applied by and must therefore be acceptable to both the trustor and the trustee to reach a fair agreement. According to Bews (2000:23), a higher level of trust between the trustor and trustee will exist when the principles are applied. However, Dandekar (1993:93) argues that a whistle blower is a member or a former member trusted with privileged information. The role of competency is an important one to engage with when dealing with information. Competency can be defined as "ability in that group of skills, competencies, and characteristics that enable a party to have influence within some specific domain" (Bews 2000:31). This is when a whistle blower blows the whistle, because he or she has access to relevant information

and decides to disclose it. The reason for disclosure is to alert the public if it is in the interest of the public. This is where trust (see section 3.2.6) plays an important role in giving credibility to the whistle blower as a person (see chapter four).

Dandekar (1993:93) argues for a more focused view of trust in the organisation, because it allows for more transparency within the organisation. A person might recognise irregularities in the organisation and try to discover a way to correct them. According to Bews (2000:19), trust is an important aspect of the human condition but not something that automatically exists. It must be nurtured if it is to become a vital factor in relationship building. Therefore trust can be defined as a "… voluntary action of one party, flowing from evaluation, based on the social skills of that party, concerning the potential of another, or others, not to take advantage of the vulnerability of the first party" (Bews 2000:19).

The vulnerability of the party in question is safeguarded if there is a level of openness between the parties. If the whistle blower has trust in the organisation he or she will feel comfortable that the information can flow freely without any interruptions and without fear of retaliation. A relationship that only involves a certain level of trust may not sustain a good relationship. By giving information the informant implies that there is a deeper level of trust and that the trust level may be improved. Withholding information could have a negative impact on the relationship, so that the issue of integrity is at stake as well. The whistle blower must ensure that he or she does not step over the demarcated line within the relationship between him or her and the organisation, but must not allow the organisation to infringe upon his or her freedom.

Geertz (1973:137) argues that one has to distinguish between organisational culture as a model of the world (a set of ideas and assumptions that provide explanations about the complicated world employees function in) and a model for the world (which teaches ethical behaviour).

Many times when there is no openness within the relationship, the trust level breaks down. This is because the abovementioned factors were not in place and the trustor did not feel confident enough to confide in the trustee. When such relations break down, it creates a negative environment for both the trustor and trustee. The loyal person that worked within the organisation no longer confides in the organisation, while the organisation does not know whether the individual will continue to be trustworthy.

3.10 Summary and conclusions

Ethical values of integrity, accountability and equity must be part of the values of the public sector organisation. Public officials must realise that they occupy a unique position in society and that the promotion of the general welfare of the community must be their first priority. Their unique position must not be used for the furtherance of their ideals and public officials must adhere to ethics which are seen as a system of moral principles and prescribed by the Public Service Code of Conduct. The values and morals by which the public official lives as an individual in a community has a direct influence on his or her position as a public official, since it should never be forgotten that the public official is first and foremost an individual member of a particular community.

Consideration must continually be given to the existence of values and morals deemed by the public to be sound and desirable as well as providing the background for sound transparent administration. Acknowledgement and manifestation of the value norms of public administration in the conduct of the authorities would also serve as a guideline for public officials in the performance of their official duties. As soon as the public official takes a serious interest in his or her ethical behaviour and is not to be confronted by ethical dilemmas, a cornerstone of good government has been laid in which sound public administration is possibly enjoying the trust of the community it serves. Ethics are

essential for sound transparent public administration and when viewed in conjunction with values and morals, serve as the cornerstone of transparent public administration.

A very close and delicate relationship is also likely to exist between whistle blowing and trust, as the decision to report relies largely on trust. Trust might strengthen the commitment to the organisation, and therefore the chances that individuals would want to manage the situation through established internal controls in a co-operative manner. It makes whistle blowing less threatening, and may encourage a culture of authorised disclosures. It may benefit the organisation, and more particularly the larger public sector as a whole, by creating the perception of whistle blowing as positive and rewarding phenomenon in the workplace.

Research has shown that moral reasoning characteristics of employees might be a determinant in an employees' propensity to blow the whistle. The variables of "*…ethics, values, morals, loyalty and trust"* have an *"… influence on the process of whistle blowing in an organisational setting."* (see section 1.9). Ethical conduct form one of the cornerstones of good governance.

Ethical dilemmas occur in most countries and many public officials will be confronted with ethical dilemmas while employed in the public sector. Although it is essential that corruption, in whatever form it may appear, has to be dealt with promptly, it is not always easy for public officials to become whistle blowers. Public officials must be fully aware of the risks are taking when reporting corruptible behaviour; the failure to prove such allegations could have serious consequences for the public official. Nevertheless it is essential to embark on such a course of action if he or she is of the opinion that the values and morals of his or her society are jeopardised by the presence of unethical and corruptible behaviour.

It is clear that a code of conduct is of importance in ensuring that the public official fulfils his or her duties in an ethical manner and that the values and norms of the community are protected by the code of conduct against possible immoral, criminal and unethical behaviour. There is a need for guidelines against which public officials can measure their behaviour. To ensure an honest government, a code of conduct which can guide and direct the actions of public officials is essential; otherwise it would be virtually impossible to define what constitutes unethical behaviour.

The drawing up of the code of ethics for the South African public sector is an indication of the seriousness of the South African government to combat unethical and unacceptable behaviour among public officials and to stress the importance of ethical and moral conduct. The divergent nature of South African society, which is also depicted in its public sector, and the influence of the different cultures, values and norms on the public officials coming from this differentiated society, emphasise the importance of the development of a uniform set of ethical guidelines applicable throughout the entire public sector against which the actions and behaviour of public officials can be measured. It is vital that public officials are made aware through training and education of unethical and corruptible behaviour, if the battle against corruption is to be won.

A leader is the most important influence on the culture of an organisation and has the responsibility of creating trust and credibility. It was found that governments must promote ethical conduct by adhering to guiding values and by establishing infrastructure to manage the process. It was furthermore established that unethical conduct manifests itself through election fraud, official violence and institutional misconduct. To combat such manifestations, it is important to utilise remedies. Possible remedies include the use of whistle blowers, monitoring and investigation, transparency, clear rules and guidelines, political leadership, statutory guidelines, accountability, incentives and training. Apart from these remedies, government should also establish formal mechanisms to ensure

ethical governance. In the South African context some such formal mechanisms would include the Auditor-General and the Public Protector.

Public officials occupy a unique position in society and the promotion of the general welfare of the community must be their first priority.   Their unique position should be used to promote their own ideals and they have to adhere to ethical standards, in other words, systems of moral principles.   The values and morals by which public officials live their lives as individuals within a community have a direct influence on their position as public officials, as they are individual members of a particular community first and foremost.

Consideration must always be given to existing values and morals deemed to be sound and desirable by the public. Such values and morals provide a solid base for transparent administration. Ethical dilemmas occur in most public sectors. All public officials are bound to be confronted by such dilemmas while they are in the employ of the public sector.   Although it is essential for corruption, in whatever form it might appear, to be dealt with swiftly, it is not always easy for public officials to become whistle blowers.   Public officials must be fully aware of the risks they are taking when informing on suspected corruption or other wrongdoings; the failure to provide sufficient proof for such allegations could have serious consequences.   It is essential that public officials should only embark on such a course of action if they are sincerely of the opinion that the values and morals of the society to which they belong are in serious jeopardy as a result of unethical and corrupt behaviour.

It is clear that a code of ethics of some form is very important to ensure that public officials fulfil their duties in an ethical manner. The values and norms of the community should also be protected by such a code of ethics.   Furthermore, there should be guidelines against which public officials can measure their behaviour.   To ensure honest government, a code of ethics should direct and

guide the actions of public officials; otherwise, it would be virtually impossible to define what constitutes unethical behaviour.

The formulation of the code of conduct for the South African public sector indicates the commitment of the South African government to combat unethical and unacceptable behaviour among public officials. These measures contain a uniform set of ethical guidelines applicable throughout the entire public sector. Public officials, through training and education, should also be made aware of unethical and corrupt behaviour if the fight against corruption is to be successful. Current and future demands in terms of ethical and accountable governance will place increasing emphasis on ethical behaviour and professional competence. Public officials and political office bearers should serve society through actions directed at promoting the public interest. If people do not recognise the activity they may be witnessing, or in which they may be participating as corrupt or at least as undesirable or harmful, then they are not likely to react to it as such. If they do recognise behaviour as unethical and corrupt, but believe that, for example, such behaviour is appropriate within the given circumstances, they are also unlikely to attempt to change the behaviour. It is therefore crucial that the understanding of public officials of what constitutes unethical and corrupt behaviour should be harmonised.

Public officials should always have the public interest in mind whenever they are fulfilling their duties; taxpayers' money is involved, of which it should be possible to give proper account, in public, at any time. However, as soon as public officials use their public office for private enrichment, this immediately constitutes corrupt behaviour. Corruption is an intentional act with public officials knowing what their duties are but preferring to neglect them or fail to perform them in order to attain personal gain. Corruption also occurs if public officials act beyond their duties in an unethical and immoral manner, thus displaying a lack of honesty and integrity; the latter two are essential characteristics of any public official serving the public.

Governments should make every effort possible to eliminate possible causes of unethical and corrupt behaviour. Some such causes could include deficient control, a lack of accountability, complex legislation and inadequate procedures and information. There appears to be conflict between traditional values and the systems governing the behaviour of public officials on the one hand and the modern roles they are expected to play on the other. Public officials try to meet these standards, but there are weaknesses in the procedures for maintaining and enforcing them. As a result, people in public life are not always as clear as they should be about the boundaries of acceptable conduct.

Public employees operate in a changing world. They are subject to ever greater public scrutiny and increased demands from citizens. As a result they have to render better and more responsive services, but within a context of stricter limits on resources. They also have to assume new functions and responsibilities as a result of devolution and greater managerial discretion, as well as the increased commercialisation of the public sector.

High standards of conduct in the public sector have become a critical issue for governments. Preventing misconduct is as complex as the phenomenon of misconduct itself and a range of integrated mechanisms are needed for success, including sound ethics management systems. Public management reforms involving greater devolution of responsibility and discretion for public servants, budgetary pressures and new forms of public service delivery constantly challenge traditional values in the public sector. The principles for the promotion of ethical behaviour have been identified and it is imperative that public officials know their rights and obligations when exposing wrongdoing. The variable influencing the whistle blower in disclosing wrongdoing will be the focus of chapter four.

CHAPTER FOUR

THE VARIABLES INFLUENCING THE WHISTLE BLOWER IN DISCLOSING WRONGDOING

4.1   Introduction

> *"One stone is enough against fifty clay pots".*
> – Ethiopian proverb

When a person decides to blow the whistle on wrongdoing, he or she can do so internally or externally. For the purposes of this thesis a whistle blower is an employee making an unauthorised disclosure of information about criminal or irregular conduct along avenues that are not specified. This definition implies that a whistle blower is not protected under the Protected Disclosures Act 2000 (Act 26 of 2000) (the PDA).

In South Africa, external whistle blowing is regulated by the requirements of the PDA. After having examined the legislative aspects of protection for disclosures on wrongdoing in the PDA, as well as considering the ethical dimensions and dilemmas as important variables to the whistle blowing process, it is necessary to turn to the whistle blower and the process itself. This chapter therefore attempts to fulfil the objective to provide answers for the research questions identified in chapter one: "*To what extent does the complexity in defining whistle blowing influence the dilemma of whistle blower protection?*" and "*What are the characteristics underlying the whistle blowing process?*" (see section 1.6).

This chapter therefore sets out to consider which variables influence the whistle blower in making disclosures on wrongdoing, who whistle blowers are, what their characteristics are and how the process of whistle blowing occurs. The promulgation of legislation to protect whistle blowers has raised the hope that individuals within the public sector will contribute more to the eradication of corruption in their ranks.

Whistle blowers come from all the levels of an organisation and even from outside, although in many countries, legislation does not protect the latter. Whistle blowers may blow the whistle on sexual harassment, fraud, inadequate health and safety measures, harmful practices, breaches of regulatory requirements, money-skimming, or any other form of corruption.

According to Mbatha (2005:213) whistle blowers can usually be characterised as ordinary people who have a high standard of moral values expressed in ethical conduct; people with the ability to distinguish between right and wrong; courageous people who are prepared to stand up for what they consider to be right or wrong; and people prepared to accept the risk that blowing the whistle may endanger their employment and thus their livelihood, their status in society, or their reputation.

Mbatha (2005:214) further states that organisations' responses to an act of whistle blowing are influenced by the following:

- the credibility of the whistle blower: if people are trusted, such an action may be taken seriously;
- the motivation of the whistle blower: if there are any suspicions about the reasons why someone chooses to blow the whistle, chances are that the complaint will not be heard;
- the perceived validity of the evidence: this – rather than the perceptions or the motivations of the whistle blower – should be the most important reason for taking a disclosure of wrongdoing seriously;
- the position of the whistle blower: power and status often influence the capacity of an individual to influence management; and
- membership of minority groups within an organisation: females or members of underrepresented ethnic groups may find it harder to be heard.

This chapter considers the complexity of analysing and defining the concept of whistle blowing, a complicated and multileveled phenomenon, by providing

an overview of the concept in order to characterise the whistle blower, and then to provide a definition of a whistle blower.

The individual characteristics underlying the whistle blowing process will also be examined. These include credibility, power and anonymity as well as the psychological characteristics that underlie the whistle blower in the decision-making process. The concept of trust forms an integral part of the process and will make it easier for an employee to disclose perceived wrongdoing, e.g. if he or she feels that they will be protected.

The whistle blowing process as well as the various alternatives the whistle blower has, such as silence, discussions with colleagues and internal and external whistle blowing, will be examined. These concepts will be discussed in detail. To understand the process and the outcomes for the whistle blower and the organisation, various national and international cases will be cited.

The chapter discusses the consequences of whistle blowing – for the whistle blower and for the organisation. The chapter will conclude with questions illuminating specific ethical points in the whistle blowing process.

4.2   Contextualising whistle blowing/whistle blower

According to Calland (2004:2), "… whistle blowing is about basic issues which lie at the heart of human activity. It covers loyalty and the question of dubious practices. It concerns communication and silence. It is about practicing what one preaches and about leadership. It focuses on responsibility toward others and the accountability of those in charge. It is where public and private interests meet".

Whistle blowing is also a distinct form of dissent, particularly where issues of public health, safety, fraud, or abuse of office are involved (Johnson 2003:3-4). Near, Rehg, Van Scotter, and Miceli (2004:220) explain whistle blowing as the disclosure by current or former members of an organisation of immoral,

illegitimate or illegal practices under the control of the employers, to organisations or persons that might be able to effect action.

Whistle blowing is "the disclosure by an employee of confidential information relating to some danger, fraud or other illegal or unethical conduct connected with the workplace, be that of the employer or of his fellow employees" (Louw 2002:121). In general, whistle blowing involves calling attention to wrongful acts, usually in order to stay away from harm — although there may be other reasons that people may wish to speak out (Camerer 1999:1). Whistle blowing is the act of disclosing organisational wrongdoing by reporting it to authorities who are in positions to rectify the situation.

In 2000, the Organisation of Economic Co-operation and Development (OECD) provided the following explanations of the term: "[a] Bringing an activity to a sharp conclusion as if by the blast of a whistle (*Oxford English Dictionary*); [b] Raising a concern about malpractice within an organisation or through an independent structure associated with it (UK Committee on Standards in Public Life); [c] Giving information (usually to the authorities) about illegal or underhand practices (*Chambers Dictionary*); [d] Exposing to the press a malpractice or cover-up in a business or government office (US, *Chambers Dictionary*); [e] (origins) Police officer summoning public help to apprehend a criminal; referee stopping play after a foul in football" (Dehn in Mbatha 2005:163).

Whistle blowing is when organisational wrongdoing is brought to the attention of persons in positions of authorities (complaint recipients) who are able to do something about the situation. Because whistle blowing is in the interest of an organisation or a society, some theorists regard it as prosocial conduct (Miceli and Near 1992:39-41; Greenberg and Baron 2003:410), since the "actions of whistle blowers can protect the health, safety, or security of the general public" or those within an organisation, *i.e.* whistle blowing is "an act that benefits others" (Greenberg and Baron 2003:408,410) and can therefore be considered as altruistic behaviour for the public good (Miceli and Near 1992:36; Camerer 1996:48).

Prosocial behaviour can be defined as positive social behaviour with the intention of benefiting others, even though prosocial actors can also intend to gain rewards for themselves. Various authors have suggested that whistle blowing can be considered as a type of prosocial behaviour as whistle blowers call attention to organisational wrongdoing (Miceli and Near 1988:268).

In an organisation, prosocial behaviour usually takes the form of organisational citizenship, *i.e.* an "informal form of behaviour in which people go beyond the call of duty to contribute to the well-being of their organisation and those in it" (Greenberg and Baron 2003:408).

Nevertheless, whistle blowing is not necessarily consistent with organisational citizenship because it is prosocial conduct. It happens when employees recognise that there are certain wrongdoings in the organisation and decide to expose such wrongdoings to someone who is able to do something about it (Greenberg and Baron 2003: 408).

As stated before, whistle blowers can come from all the levels of an organisation and even from outside the organisation, although some countries do not protect so-called outside whistle blowers. Whistle blowers may expose sexually harassment, fraud, corner-cutting with regard to health or safety, and many other acts that are not in the interest of the organisation or of the public.

According to Bromley (1998:150) a whistle blower may start by talking to representatives of an external regulatory unit, which could cause controversy in terms of the motivation and character of the whistle blower and may create questions about the information the whistle blower may want to divulge.

From the above, one can deduce three aspects about whistle blowing (Barker and Dawood 2004:21):

- The perceptions of an employee in the organisation of morally incorrect behaviour.

- The communication of such perceptions to parties outside of the organisation.
- The perception of those in authority that this particular communication should not have taken place.

Hunt (1998:529) focuses on the contextual issues that represent an act of disclosure. This involves knowing what is disclosed, by whom, and to whom. Only when organisational wrongdoing is disclosed, moral, ethical and public interests are at stake. Alford (2001:18) argues that "it is admirable, but it is not whistle blowing, to complain of sexual harassment or racial prejudice against oneself." In addition, most employees would not consider it whistle blowing to complain of an act if sexual harassment if it was part of a pattern that was ignored by management.

The focus on public interest should on the other hand not be restricted "to issues in which an overriding societal value is at stake" (Alford 2001:18), such as where people's lives are in danger. Any disclosure exposing something that is "not for the public good" can be seen as whistle blowing. Petersen and Farrell (1986:4) stress the special form of dispute that characterises whistle blowing: "Whistle blowing is a special form of dissent in which a member or former member of an organisation goes outside the organisation or outside normal organisational channels to reveal organisational wrongdoing, illegality, or accusations that threaten the public."

Petersen and Farrell (1986:4) add to their definition by indicating how the dissent is in the interest of the public. One has to remember that whistle blowing is in the public interest, although not necessarily for public knowledge. For instance, if an organisational wrongdoing has occurred within a state department and a public sector reports it to the director general to disclose the wrongdoing, that public sector has blown the whistle, because it is in the public interest. The problem will only become worse if the director general cannot put it right and the issue of public knowledge comes into action, but because the act is still in the domain of the public interest it

shows that the individual is not acting for selfish reasons. Yet the action from the individual creates a reaction, and the person may be seen as a dissenter trying to divide the organisation and create friction in a normal working environment. The primary question then is what motivates the whistle blower to finally blow the whistle.

As already stated, over many years, whistle blowers have unfairly acquired a bad reputation as busy-bodies, disloyal employees and troublemakers (Camerer 2001:1). A major cause of this negative perception in South Africa is the fact that whistle blowers are seen as *impimpis* – apartheid-era informants who betrayed their comrades. This historical framework has unfortunately allowed the stigmatisation of whistle blowing as an activity to be despised rather than encouraged (Camerer 2001:1). Regrettably, the truth is often that, when responsible workers or law-abiding organisations blow the whistle on corruption, it seems the best they can hope for is isolation and disapproval. The effect (although unintentional) is that someone who informs on corruption in which he or she has participated, like the collaborators mentioned above, will receive more protection and assistance from the authorities than innocent colleagues or competitors who blow the whistle on actions in which they had no part (Camerer 2001:1).

Vickers (1997:4) states that whistle blowers are perceived as being either watchdogs or protestors. They are there to "discover and then expose wrongdoing in order to avoid safety or financial disasters" or "raise more general concerns about the effects of their employers' activities" (Vickers 1997:4). These two views describe the types of whistle blowers that exist in the literature, where four types are identified. The *heroes* are loyal employees, who report concerns in order to ensure that organisational faults are rectified. The *idealists* speak out because there is a mismatch between their expectations and organisational realities. The *defensive whistle blower* is the calculating employee who, in anticipation of disciplinary proceedings for poor performance, reports a concern with a view to establishing that the true reason for disciplinary action was victimisation for speaking out. Finally,

the *vengeful whistle blower* is a former employee who reveals an employer's wrongdoing as a form of retribution for perceived maltreatment.

People do not automatically blow the whistle if they become aware of misbehaviour in their organisation. Therefore, there has to be an issue that is larger, that affects more than only the people within the organisation. Miethe (1999:44) identified four types of responses to organisational wrongdoing in a survey attempting to analyse the age, gender, educational level, occupational position, and years of employment within a company as well as psychological beliefs and general attitudes of the whistle blower. Miethe (1999:44) distinguishes four types of responses:

- non-observers of misconduct;
- silent observers – those who see misconduct but remain silent;
- internal whistle blowers – those who report organisational wrongdoing within the company; and
- external whistle blowers – those who report organisational wrongdoing to authorities outside the company.

Brewer (1998:2) states that motivation is not easy to identify because it is steeped in historical as well as symbolic expression. For these reasons, many of people's motivations are considered elusive. The same goes for blowing the whistle. Different people have their own particular motives for blowing the whistle, but what they do tend to have in common is a recognition that it would be morally wrong not to blow the whistle. "Whistleblowing should have some definite goal, in the attempt to terminate the current wrongdoing or prevent future wrongdoing of a similar type" (Near and Miceli 1996:510). Elliston (1982:169) also involves an accusation and is directed to people, not just a sense of warning, but in the sense of locating responsibility for the wrongdoing.

Most employees are loyal to their organisation. However, sometimes their loyalty to the organisation is overruled by their conviction that they should

act first and foremost in the public interest. This is where the interest of the organisation and those of the public could cross paths. The trouble is that some people are victimised for disclosing wrongdoing. This is what makes whistle blowing a moral act, because the individual goes on a personal mission to protect the public against the wrongdoing he or she decides to report. Morality, trust and ethics all play a role, therefore, in whistle blowing (see sections 3.2.1; 3.2.4 and 3.2.6).

A reasonable description of a whistle blower raises a further question which relates to the research question of *"to what extent does the complexity in defining whistle blowing influence the dilemma of whistle blower protection?"*: If a person encounters what he or she sees as an act of wrongdoing and discloses it, should he or she be categorised as a whistle blower? If corrective action is taken without pressure on the person making the disclosure, he or she is unaffected. In such circumstances, the internal procedures have been effective. This is the ideal – the whistle blower comes to no harm and the organisation is enhanced. However, such a lack of conflict does not reflect the notion of a whistle blower. Usually either the person disclosing wrongdoing is at risk, or the disclosure is ignored or denied. Those most commonly recognised by the term whistle blower, therefore, are individuals who keep on pointing out that something is wrong even in the face of harsh opposition (Feldman 1999:2).

The Australian Senate Select Committee states that "what is important is not the definition of the term but the definition of the circumstances and conditions under which employees who disclose wrongdoing should be entitled to protection from retaliation" (Glazer and Glazer 1989:5).

When considering legislation aimed at encouraging whistle blowing, policy makers have chosen to use the generic term disclosure when referring to whistle blowing (see, for example, the South African PDA 2000 and the United Kingdom's Public Interest Disclosure Act of 1998). However, the concept disclosure only refers to the information that is made known, whether

internally or in the public domain, and not to the complex process that constitutes whistle blowing.

There is much confusion around the concepts of *whistle blowing* and *whistle blower* and therefore adds to the complexity of whistle blower protection. Most people are in agreement that whistle blowing involves the disclosure of information, but should not be confused with *informing* as the act of blowing the whistle has a specific goal in mind, for example the eradication of organisational wrongdoing through action taken to stop the wrongdoing (Near *et al.* 2004:221). Lewis (2001:169) defines whistle blowing as, "disclosure by employees and ex-employees of malpractice, as well as illegal acts or omissions at work".

Whistle blowing is much more than disclosure, however, because the person making the disclosure has to be specific. In addition, there is a difference between authorised (following the rules and regulations of the organisation) and unauthorised (not according to organisational channels or even in public, e.g. to the media) disclosures. Whistle blowing is regarded as *unauthorised* disclosure (Vinten 1994:5 and Bakman 2005:3) and as an "… unauthorized disclosure of information that an employee reasonably believes is evidence of the contravention of any law, rule or regulation, code of practice, or professional statement, or that involves mismanagement, corruption, abuse of authority, or danger to public or worker health and safety".

From the literature review, it is apparent that the concept whistle blowing implies the presence of specific actors, identifiable actions and a process consisting of a number of steps, occurring in a particular order (Near and Miceli 1996:513 and Mbatha 2005:164). The actors are:

- the whistle blower;
- the wrongdoer(s), whether this is an organisation or an individual;
- the person who receives proof of the alleged wrongdoing; and

- the organisation that is called upon to act to correct the situation that gave rise to the whistle blowing.

According to Mbatha (2005:165), the whistle blower perceives an action by the wrongdoer that is, among other things, allegedly wrong, fraudulent, dangerous or illegal, which compels the whistle blower to make this action known. In brief, the process of whistle blowing (see section 4.3) includes:

- the whistle blower gathers information and evidence about the alleged wrongdoing;
- he or she reports it internally or externally;
- the organisation takes action to verify the evidence; and
- the organisation puts in place measures to redress the situation (Uys and Senekal in Binikos 2006:16 and Bakman 2005:3).

Should the whistle blower be victimised or dismissed, legislation such as the PDA is in place to protect him or her, and legal steps may follow (see section 6.2.2).

In view of the above and for the purposes of this thesis, a whistle blower is an employee making an unauthorised disclosure of information about criminal or irregular conduct along avenues that are not specified (see section 1.11.9).

One of the research questions in this thesis is "*What are the characteristics underlying the whistle blowing process?"* The various characteristics associated with the whistle blowing process will be the focus of the next section in this chapter.

4.3 Individual characteristics that underlie the whistle blowing process

Barker and Dawood (2004:123-124) state that there are a number of factors that can influence the whistle blowing process. These are as follows:

- Situational conditions that can be separated into organisational characteristics (e.g. the size of the group, organisational culture and climate, incentives for whistle blowing, bureaucracy, and departmental policies) and wrongdoing characteristics (e.g. the type of wrongdoing, seriousness and the quality of the evidence).

- Power relations and the amount of power held by individuals or units within the organisation.

- Individual characteristics including personality variables (e.g. intolerance of ambiguity and low self-esteem), job situation (e.g. pay, supervisory status, job satisfaction), demographics (e.g. education, gender, age) as well as moral development/behaviour (e.g. social and religious responsibility, moral judgement).

- Other factors such as social and/or financial support, membership of professional groups, conformity issues, loyalty and trust.

Near and Miceli (1985:12) suggest that the theory of moral reasoning is fundamental to an understanding of the individual's ethical tendency to blow the whistle, especially in relation to the organisation or to management. To test this suggestion, Arnold and Ponemon in Ponemon (2001:119) researched perceptions of whistle blowing and the reasoning characteristics of 106 internal auditors using a between-subjects experimental design. Findings revealed that internal auditors – with moderately low levels of moral reasoning – were unlikely to predict whistle blowing as a means for disclosing wrongdoing. This result was especially prominent when the possible retaliation meant a high degree of penalty for the whistle blower. The findings also indicated that the position of the prospective whistle blower influences internal auditors or management to act in an ethical manner.

Researchers further believe that certain positions within an organisation lay down whistle blowing behaviour (Spencer in Ponemon 2001:119; Near and Miceli 1986:137) found that internal auditors may be instructed to blow the whistle as part of their jobs; that is, their behaviour is role-prescribed, and they

should therefore have more power in the organisation. Even though such reporting is role-prescribed, actual behaviour is doubtful. In a later study, Near and Miceli in Ponemon (2001:119) suggest that the internal auditor's role in reporting wrongdoing may cause ethical tension because such actions can have a harmful effect on the reputation the organisation. Dozier and Miceli (1985:825) state that whistle blowers are more selfless than other organisational members, possess higher moral reasoning capacities, and are able to resist organisational retaliation.

4.3.1 Anonymity as a characteristic of whistle blowers

According to Miceli and Near (1994:780) whistle blowers who do not have power in the organisation might decide to remain anonymous in order to safeguard their positions in the organisation. With the inclusion of whistle blower hotlines, it is assumed that the disclosure made by the whistle blower is protected, as is the identity of the whistle blower. Whistle blowers may file a report without signing it, or provide incriminating evidence with no indication of the source. Whistle blowers may hide their identities in order to avoid retaliation, but then risk losing their effectiveness, for at least three reasons (Elliston 1982:173-176): Firstly, members of an organisation may dismiss the concerns of whistle blowers who are not willing to face the target of their accusations, and, presumably, give the accused an opportunity to confront them, thus weakening the minority influence of anonymous whistle blowers. Secondly, if anonymous whistle blowers do not provide sufficient evidence of wrongdoing, complaint recipients are unable to seek additional information from them, reducing their expert power. Thirdly, if whistle blowers are viewed as credible complainants because of their characteristics, an anonymous whistle blower obviously has reduced credibility.

A person may wish to remain anonymous to prevent retaliation but this is sometimes easier said than done. Laws protecting whistle blowers, for example, do not always prevent retaliation. In addition, if the whistle blower remains anonymous to the complaint recipient, the complaint recipient may be

rendered less able to determine whether the wrongdoing has occurred and whether it is deserving of action (Elliston 1982:172).

A second way of remaining anonymous is for whistle blowers to identify themselves to the complaint recipient while requesting that their identity should not be revealed to others (such as to the South African Public Service Commission). Doing so may increase their credibility and facilitate the complaint recipient's enquiry. However, such an action surrenders power to the complaint recipient and could jeopardise the whistle blower. If, at any time, the complaint recipient wishes to influence the whistle blower, he or she may threaten to betray his or her confidence.

Elliston (1982:171) argues that anonymity should be seen as neutral, as the middle ground between privacy and secrecy and that the whistle blowing process creates the paradigm of bad ways or revealing something where the person involved cannot defend him/herself, which could disrupt the solidarity of the group. However, the seriousness of the incident might be harmful to the group anyway. This dichotomy could force the individual to make a moral judgement.

According to Barker and Dawood (2004:130) there are two schools of thought on whether or not anonymity should be a guarantee or not and this leads to a question: Does the public have the right to know the identity of the whistle blower or should his or her identity remain confidential?

Minister Geraldine Fraser-Moleketi said that in order for a whistle blowing mechanism to be effective, there must be effective protection of the identity of the whistle blower and there must be effective follow-up of all *bona fide* (in good faith) disclosures (Mail and Guardian 2003).

Elliston (1982:172-173) states that anonymous whistle blowers may have mixed success in achieving the goal of preventing harm to the public interest. Anonymous complaints often are the intended to protect the identity of the whistle blower by reducing the likelihood of retaliation. However, anonymous

whistle blower complaints can be difficult to investigate due to a lack of information and an inability to contact the whistle blower for additional details. Also, if anonymous complaints are sufficiently detailed, they may make it possible to identify the whistleblower, thereby defeating the purpose of anonymity. Such a whistle blower will no longer be anonymous, and worse, may suffer retaliation even though there is no record that it was he or she who disclosed the information. Elliston further argues that blowing the whistle publicly might be ideal, but that it cannot be demanded and one cannot condemn persons that choose to stay anonymous.

Similarly, employees who participate in the decision-making that leads to their organisations' decisions to take proper actions, but who oppose such actions, may feel that their voices have gone unheeded. One of the reasons why employees have not become whistle blowers in the past may be their concerns about retaliation. The existence of the PDA makes employees less fearful of retaliation than before and more likely and willing to make informed authorised disclosures. In addition, the media has been portraying whistle blowers in a more favourable light than in the past, as seen in Time Magazine's selection of three whistle blowers as their Persons of the Year for 2002 (Near *et al.* 2004:219).

4.3.2 Credibility as a characteristic of whistle blowers

Whistle blowers that are credible have a greater chance of persuading top management to terminate the wrongdoing. Credible information is a resource in short supply in most organisations. If a whistle blower can convince others that wrongdoing has occurred he or she should have greater power to change the behaviour of members in the organisation. According to Kotter and Schlesinger (1979:106-114), members of organisations resist change when they do not trust those who want the change – thus, the credibility of the whistle blower is of great importance.

Credibility can rely on the perceived motives of the whistle blower. Some people consider whistle blowers to be loyal employees (Kolarska and Aldrich

1980:41-58), whereas others view them as snitches, sneaks, rats, squealers or traitors (Camerer 1996:2 and Bok 1980:334), *i.e.* either with altruistic or egotistic motives (Brief and Motowidlo 1986:715). The real motives of whistle blowers will vary from one situation to another and cannot be entirely known by others, but their motives are often perceived to be the deciding factor in judging their credibility. The perceived validity of a complaint should reasonably rest on the evidence that wrongdoing has occurred and not on the individual's reason for calling attention to it. That is, it is possible that even the worst of liars did in fact witness real wrongdoing being committed (Near and Miceli 1995:689).

The literature on minority influence also suggests that the credibility of the complainant is essential. In many instances, evidence may be sketchy or conflicting, and the complaint recipient, co-workers or others may rely on indications that they can trust the complainant. Factors that enhance the credibility of the whistle blower will, therefore, be expected to lead to higher levels of efficiency in dealing with a complaint (Near and Miceli 1995:690).

4.3.3 Power as a characteristic of whistle blowers

There is a relationship between status and power in whistle blowing situations. Imagine the whistle blower is a person who has an elevated status in the organisation – a person whose services are highly valued and difficult to come by and who, because of his or her technical or executive value or professional status is considered as more important to the organisation (Perry 1992:52). Such a person may also, because of his or her status, be considered more competent or credible than someone of lesser status (Greenberger, Miceli and Cohen 1987:530). Whistle blowers with status may also be used to being rewarded and being able to influence the opinions of others, especially if he or she is in a position of authority or expertise.

It further appears as if whistle blowers with power may be less likely to experience retaliation. Whistle blowers who lacked support from either top

management or their immediate supervisors were much more likely to suffer punishment (Miceli and Near 1994:779).

Mainiero (1986:643) found that, when confronted with a frustrating workplace situation on which they depended, women were more likely than men to use an compliance strategy in which the "low-power individual accepts the power imbalance and decides that nothing else can be done in the situation".

Two perspectives were identified that predicted this finding (Mainiero 1986:643):

- Early socialisation shapes the behaviour of men and women differently. Men are viewed as, and rewarded for, using direct aggressive strategies, whereas women are expected to be powerless or submissive; and
- Structural segregation (into less powerful organisational positions) has caused women to be less likely to exert power forcefully.

Both the above perspectives suggest that women (and perhaps also members of other minority groups) may face considerable resistance to change in white, male-dominated organisations. However, if one belongs to a majority group one perhaps has more status, position, support from management, professional status, education, money and tenure … and you may escape retaliation when you decide to blow the whistle.

4.3.4   Psychological characteristics that underlie the whistle blower's decision-making

Several empirical studies (for example Near and Miceli 1985:12 and Arnold and Ponemon 1991:119) have related whistle blowing judgment to the moral reasoning paradigm and most of these focuses on pre-decisional behaviour rather than on the decision-making process as a whole. Various psychological processes underlie all ethical behaviour and action (Rest 1986:77-79):

- sensitivity describes how the individual reads the situation around a certain set of ethical actions and choices;

- reasoning describes the processes from which the person chooses, from among the different possible actions, a single "best" ethical action;

- perseverance describes how the individual follows through on a particular ethical choice, and which factors make it easier or more difficult for him or her to follow through in terms of his or her ethical decision;

- value assignment describes how the person assigns "moral" values (among other non-moral values, such as leisure time, career success, economic gain, or power) to the ethical path he or she chose;

- loyalty can be understood as the expectancy of the trustor that he/she will receive fair and kind treatment at the hands of the trustee (Binikos 2006:34); and

- trust can be defined as the firm belief in the truth, strength or reliability of a person or thing; a confident expectation; responsibility (position of great trust) (Thompson 1992:981).

Psychology literature shows that the above six components form a realistic mechanism for integrating the complex process of ethical behaviour and action. The components can also help the whistle blower analyse the whistle blowing process in the organisational setting. Initially, a prospective whistle blower would have to be sensitive to the possibility of wrongdoing – would have to have healthy scepticism, for instance, when it comes to fraud or theft. According to Rest (1986:77), sensitivity to ethical issues is necessary if one is to be able to process and resolve ethical conflict. Someone without ethical sensitivity, therefore, would find it difficult to distinguish between ethical and unethical acts and would probably not even notice that there was a problem.

A second component is perseverance, and this is perhaps the most important of the six components when it comes to whistle blowing, because a person who has noticed a problem but does not have the strength of character to

follow through on his or her ethical conviction, would not make the ethical decision. It is often difficult for individuals to take that final step even if they believe that the moral choice would be to disclose the wrongdoing (Brabeck in Near and Miceli 1985:59).

The component of trust is also vital. It is probably a fact that a whistle blower no longer trusts his or her organisation as much as before. In fact, once the whistle blower has blown the whistle, the organisation doesn't trust him or her anymore either, since the whistle blower has been disappointed in an ethical sense and therefore no longer recognises the organisation's authority (Davis 1989:8).

In other words, the organisation's response breaks the relationship of trust between the organisation and the whistle blower and confuses loyalties on both sides because the whistle blower has already been in a position where he or she had to choose between loyalty to the organisation and accepting the wrongdoing or loyalty to morality and not accepting the wrongdoing (Uys and Senekal 2005:9). For the whistle blower, making these choices constitutes a betrayal – a betrayal of loyalty to and trust in the organisation (Uys 2005:13), which makes him or her even more determined to set right the wrongdoing that was reported. And if the report of the wrongdoing was resisted in any way, the whistle blower is bound to feel that the organisation is systemically corrupt (Uys 2000b:9). Thus, external whistle blowing is often not a choice but a requirement that follows internal whistle blowing.

In some cases the whistle blower is pressured to discard the disclosure, conform, allow the wrongdoing to be ignored and continue. The level of pressure varies, depending on how the wrongdoing was reported. In addition, once the whistle blower has been labelled as a whistle blower, he or she will also probably find it difficult to keep performing effectively in the organisation (Miliken, Morrison and Hewlin 2003:1454). As Davis (1989:8) says: "How can a person work as before with people whose loyalty he no longer shares? How can co-workers treat him as they did before when he is no longer quite one of them? How can he hope for promotion, or even retention, in an organisation in

which he can put no trust, in which he has no friends, and for which he is likely to make further trouble?"

Given the knowledge of the above outcome that the potential whistle blower might face, it is likely then that potential whistle blowers will consider their options before blowing the whistle on organisational wrongdoing (Miceli and Near 1992:123), and many may choose not to blow the whistle, which means that they will then be exploring the alternatives to whistle blowing, for if there are viable options, then perhaps whistle blowing may be avoided altogether.

Another component, namely reasoning, comes into play when the individual thinks about ethical strategies for solving the problem according to his or her level of moral reasoning (see section 3.3.1). It is known, for instance, that individuals at lower moral reasoning levels tend to worry about retaliation or victimisation, while individuals at higher moral reasoning levels worry more about the negative consequences of failing to report the incident to the proper authorities, whether there is retaliation or victimisation or not.

The individual then does a value assessment, allowing him or her to apply ethical values to the issue or the ethical conflict. For example, an individual with relatively high moral reasoning skills might decide to blow the whistle after discovering fraud in the organisation even though such disclosure would put the organisation at a disadvantage and cause (for example) the dismissals of colleagues. Another person with identical moral reasoning skills may decide to keep silent because to him or her it is more important to keep the organisation afloat than to reveal the fraud.

Once he or she has decided on an ethical strategy, the whistle blower must decide when and how to act on it. Of course there are other issues to consider as well besides moral values – issues such as organisational, social and economic variables, the need to do the right thing, the possible retaliation, maybe losing his or her job, peer pressure, economic incentives, and a host of other things.

4.4 The whistle blowing process

A person that has become aware of irregular or criminal conduct has a few options to consider. These are described in the following section of the thesis.

4.4.1 Whistleblower's dilemma: non-reporting versus reporting

Deciding to expose corruption within an organisation brings the individual face to face with several dilemmas. In practical terms, if someone is concerned about corruption or serious wrongdoing in an organisation, he or she has the option to stay silent; to blow the whistle internally or with the responsible person; or to blow the whistle outside, either to the authorities or to the media or both. An internal channel refers to the disclosure of sensitive issues to co-workers or management within the same organisation. External channels refer to disclosures to those outside of the organisation such as the media or government organisation (Ponemon 1994:125). The dilemma of the potential whistle blower may in part be due to economic dependence and in part to a duty to keep the employer's business confidential (Borrie in Camerer 1996:2). Besides the real fear of victimisation resulting from disclosures, a primary dilemma involves the conflicting loyalties between the desire to follow intrinsic moral beliefs and expose misconduct, and the organisational pressures to conform to a culture of loyalty and confidentiality, even though these may be misplaced (Camerer 1996:2).

Internal and external whistle blowing are not the only choices of action that a complainant may choose when discovering organisational wrongdoing. There are cases where employees prefer to avoid reporting. According to Miceli and Near (1992:140) this is termed "non-reporting" and can occur in the form of employee silence or through discussing the issues with colleagues.

4.4.1.1 Silence rather than redress

According to Milliken *et al.* (2003:1455), silence may be ascribed to a number of elements – the characteristics of the individual, the characteristics of the

message, and the organisational environment. The characteristics of the relationship between supervisor and subordinates is also important (Milliken *et al.* 2003: 1455), and is as relevant to organisational crime as it is to peer reporting where work-related crime is present. This is because in peer reporting, the first point of disclosure will be the individual's direct supervisor.

With regard to factors related to the individual, a number of issues may surface. The individual may be hesitant to blow the whistle because he or she may feel his or her "facts may be mistaken" or that "there could be an innocent explanation" (Dehn 1999:9). In addition, where others have the same uncertainties, or have also chosen to remain silent, the individual will be prone to question why he or she should speak out if other members of the organisation did not (Dehn 1999:9).

According to Dehn and Borrie (2001:4), the "culture of silence" may cause other problems as well, since "unscrupulous competitors, managers or workers" are given reason to believe that "anything goes" (Dehn and Borrie 2001:2). Remaining silent gives the notion that malpractice is tolerable. Dehn and Borrie (2001:2) also claims that whistle blowing has a societal impact, as it denies society the opportunity to address the injustice … and that society focuses more on punishment and compensation than on prevention and deterrence (Dehn 1999:9).

Dehn (1999:9) argues that even though the response towards the wrongdoer is not in the control of the individual, the individual may feel responsible for any outcome of the reporting with respect to the consequences it has for the wrongdoer. The individual needs to believe that the wrongdoing will be addressed, or it might seem better to remain silent (Dehn and Borrie 2001:2). Milliken *et al.* (2003:1541) add to this by stating that employees are not always willing to share information that could be interpreted as threatening or negative by those higher up in the hierarchy and therefore remain silent out of fear. Research also suggests that the individual will refrain from taking action when considering the costs involved (Dehn and Borrie 2001:2; Milliken *et al.*

2003:1452) and that the consideration of one's own interests are persuasive factors in choosing to keep silent (Dehn and Borrie 2001: 2).

The subject of the message may also prevent disclosure. Milliken *et al.* (2003:1454) state that individuals in the organisation generally do not want to be the bearers of negative information and also because of the negative consequences that it may lead to. Also due to the nature of the wrongdoing, the individual may fear being negatively perceived as disloyal by colleagues whose trust and respect might be required in future (Dehn 2001:2). These factors, in their opinion, lead to what they refer to as the "mum-effect" (Milliken *et al.* 2003:1453). Thus the response that is expected and generated from the nature of the message (its sensitivity) may discourage individuals from becoming whistle blowers.

The supervisor-subordinate relationship also creates dilemmas for those who uncover organisational wrongdoing. According to Milliken *et al.* (2003:1455) this intensifies the mum-effect. The willingness to speak out to supervisors is found to be consistent with perceptions of how amenable and receptive the supervisors are. Milliken *et al.* (2003:1455) found that upward communication of bad news occurs when individuals lack trust in their supervisor.

Top-management might also be perceived to be unwilling to listen, where the culture is understood to be not very supportive, and where there is a fear of negative consequences. This is related to organisational norms and "the quality of one's relationship with senior management" (Milliken *et al.* 2003:1455). According to Miceli and Near (1992:4) the failure to report does not necessarily imply non-action such as remaining silent. It could also include discussing the issue with fellow workers or consulting with others in terms of what action is best to pursue. Even where these impediments are overcome or reduced, the whistle blower will fear that he or she will be labelled as treacherous by those colleagues whose respect and trust he or she may want or need in future (Mbatha 2005:179-180).

If "the wrongdoing is not checked, it may escalate, proving even more costly (for example, in the case of law suits) when it is finally detected … the wrongdoing may eventually cost the organisation its life" (Miceli and Near 1992:6-7). Milliken *et al.* (2003:1454) state that "… the silence or information withholding … has the potential to undermine organisational decision-making and error-correction and to damage employee trust and morale". This proved to be the case for Enron, where a culture of coercion prevented many employees from coming forward (Milliken *et al.* 2003:1454). The corrupt practices continued unabated and finally when Sherron Watkins, vice president, revealed the irregularities, it proved to be one of the world's greatest and costliest examples of how a leading multi-million dollar corporation can close down after the allegations are proved.

4.4.1.2 Blowing the whistle internally

Internal whistle blowing, although admittedly not without problems, is the preferred option for the whistle blower and for the organisation. Barnett (1992:950) states that internal disclosures afford organisations the opportunity to address problems before it becomes a public scandal. Internal disclosures are viewed more positively by managers and might even be encouraged. This sentiment is echoed by the Price Waterhouse Coopers Economic Crime Survey (2005:18) which stated that luck cannot be basis for an anti-fraud approach and that if a crime is discovered early, the risk of damage is lowered and the better the probability of recovering lost assets. Furthermore, according to Barnett in King (1999:316) an ethical culture is created where employees are encouraged to report wrongdoing internally.

The United Kingdom Committee on Standards in Public Life (1996:22) observed that placing employees in a position where they feel determined to approach the media to publicise their concerns is unsatisfactory to both the employee and to the organisation. It is far better for systems to be put in place that encourage employees to raise concerns within the organisation, yet that allow recourse to the parent department where needed. An effective internal system for the raising of concerns should include (Dehn 1999:10):

- respect for the confidentiality of staff members raising concerns if they wish and an opportunity to raise concerns outside the line management structure;

- a clear statement that malpractice is taken seriously in the organisation and an indication of the kinds of conduct regarded as malpractice;

- penalties for making false and malicious allegations; and

- an explanation of the proper way in which concerns may be raised outside the organisation if necessary.

The approach now taken by many organisations to receiving information from employees is similar to the attitude displayed towards customers 30 years ago (that they were untrustworthy, troublesome complainants). This is a mistake since not only is information from the workforce readily available and free to collect, but it enables the organisation to rectify a possible problem before it causes any real damage to the company, its reputation or its stakeholders. The self-interest of the organisation in whistle blowing is now being recognised and a few large organisations have begun to use outside advice lines to encourage employees to raise concerns about wrongdoing. These developments have been given added momentum, particularly in the United States, by legal requirements to demonstrate due thoroughness, where safety, competition, financial and certain criminal laws have been violated (Dehn and Borrie 2001:5 in Auriacombe 2004:663).

Many sources emphasise the importance of internal whistle blowing over external whistle blowing and state that an organisation should ideally strive for internal whistle blowing (Barnett 1992:950 and King 1999:315), encouraging it through an organisational culture that values whistle blowing, and that is open and transparent. The main reason provided in arguing for internal whistle blowing is that it provided an earlier opportunity to correct the matter, and thus may avoid the more damaging consequences of external whistle blowing (Barnett 1992:952 and King 1999:316). Furthermore, if the internal whistle blowing takes place within an organisation that fosters a whistle blowing

culture, the retaliation suffered by the whistle blower may be mitigated (Dehn and Borrie 2001:6).

Smith (1988:12) states that: "… culture is the shared values and behaviour that knits a community together. It's the rules of the game; the unseen meaning between the lines in the rulebook that assures unity". Siehl (1985: 125) explains organisational culture as follows: "Within this context culture consists of values and beliefs that groups within the organisation come to share these values and are expressed and transmitted through various means including organisational stories, ceremonies and myths. Viewed from this perspective culture is viewed as a powerful means of implementing control and is of particular relevance to the strategy implementation perspective".

Organisations are now beginning to realise the importance of providing an alternative to (but not a substitute for) line management, since without this managers may have a monopolistic control over which information goes to those higher up in the organisation. As with any monopoly, one weak link – be it a corrupt, lazy, sick or incompetent person – will break the communication chain and stop those in charge from receiving information that could be critical to the organisation.

4.4.1.3 Blowing the whistle externally

Although most whistle blowers are treated negatively the responses are not all equally severe. Dworkin and Baucus (1998:1286-1287) point out those whistle blowers that disclose externally tend to experience greater retaliation than internal whistle blowers. They ascribe this to the fact that external whistle blowers are seen as disloyal for not reporting the wrongdoing internally and might lose their jobs are a result. Most organisations are of the opinion that there are adequate internal reporting mechanisms, such as an open door, present in organisations that should be utilised by the employees instead of making disclosures externally. Because the whistle blower does not use their so-called open door, they dismiss him or her for reporting the matter externally. Internal whistle blowers also get dismissed, but not as nearly as

often as external whistle blowers. The reason for this is that external reporting present a dilemma to managers as the alleged wrongdoing might become headline stories in the popular press if the whistle blower is dismissed. The dismissal might lend credibility to the claims made by the whistle blower. Managers are likely to proceed slowly, pressuring the individual to renounce his or her allegations, trying to discredit the employee, or compiling evidence to support the subsequent firing (Dworkin and Baucus 1998:1287).

If people do not feel safe to blow the whistle within the organisation, the whistle blower can turn to other options. Without a safe route internally, they have no choice but to disclose the matter externally, whether to the authorities or more widely. This is becoming more and more important, since modern technology makes it possible to disclose wrongdoing more and more widely. A relevant example to consider in the context of any anti-corruption measure is where an employee or an audit firm discovers, or reasonably believes, that account books, statements or entries may hide bribes. If they feel unwilling or unable to blow the whistle internally, their only choice will be to disclose externally or not at all (Dehn 1999:10).

In contrast, external whistle blowing can impact more negatively on the organisation as well as its brand and reputation through the media. Barnett (1992:950) states that disclosures that are made externally usually reflect negatively on organisations. The negative publicity creates pressure for the organisation, makes employees less productive and demoralises the staff. By challenging the organisation's authority structure, external whistle blowing casts a reflection on management (Barnett 1992:950 and Binikos 2006: 34). The costs of litigation (which arise more often after external whistle blowing) is often drawn out and costly for both the whistle blower and the organisation, as well as causing further negative publicity and societal scrutiny and lowers productivity. According to the Price Waterhouse Coopers Economic Crime Survey (2005:23), organisations observed that with external reporting, there is little opportunity of recovering what has been lost through wrongdoing such as fraud. Giving the organisation a chance to remedy wrongdoings can help save a corporation. Cynthia Cooper, named as one of the Persons of the Year

2002 by Time Magazine (Near *et al.* 2004:219), took the internal route to raise her concerns about possible accounting fraud at World Com to the board of director's audit committee. The board reacted by firing the financial officer concerned and disclosed the matter to the public. Although World Com has gone through bankruptcy proceedings, the company is still in existence. Cooper stated in an interview that there was "only one right path to take" and encouraged whistle blowers to disclose via the correct channels (Near *et al.* 2004:219).

4.4.1.4 Internal or external whistle blowing?

On the other hand, Dworkin and Baucus (1998:1287) found that internal whistle blowers are more likely to be dismissed immediately in order to silence or intimidate the employee, as internal reporting is viewed as a challenge to the authority structure in the organisation. The study conducted by Dworkin and Baucus show that internal and external whistles blowers experience retaliation such as being dismissed, and secondly, that external whistle blowers receive worse retaliation than internal whistle blowers. Most whistle blowers experience some form of retaliation, and this is not without consequence for the whistle blower and the organisation (Barnett 1992:952).

4.4.1.5 Discussions with colleagues

In determining whether or not to disclose organisational wrongdoing, employees might assess the severity of the wrongdoing, personal role responsibility, the perceived threat of retaliation, the organisational culture and group norms regarding the disclosure to peers (King and Hermodson 2000:310). Some potential whistle blowers ask colleagues how they feel about the situation, to try and get more information about the wrongdoing, or to try to understand how the organisation might act in response. These talks may cause the employee who finds that there is a culture of silence, or that there is little organisational support for those who report wrongdoing, to keep quiet. This is especially true if there is a lack of trust (Milliken *et al.* 2003:1455). On the other hand, if the employee realises that the culture of

silence is not acceptable, the talks with colleagues will not change his or her mind.

Talks with colleagues are a form of non-reporting, and so is silence and both are dangerous. Non-reporting, and especially employee silence, as an alternative to whistle blowing should therefore not be encouraged. Dehn and Borrie (2001:2) states that silence will deny "responsible employers … the opportunity to protect their interests". King and Hermodson (2000:310) define role responsibility as the extent to which an employee feels a personal obligation to disclose perceived wrongdoing to a person in authority. The role responsibility might be influenced by a code of conduct, perceptions of justice, individual characteristics of the observer, situational issues and organisational concerns.

Once the whistle blower has decided to blow the whistle, various steps can be followed. Whistle blowing is an obvious operation and concerns making public certain issues by an individual acting on his or her own, believing that both his or her motives and the accusation made will stand up to public examination. There are four components of whistle blowing (Mbatha 2005:176):

- An individual executes an action or series of actions intended to make public information about an alleged act of wrongdoing.
- The information becomes a matter of public record. Successful whistle blowing requires that information become public and that it be accessible to others as part of a formal or open record.
- The information is about possible or actual wrongdoing in an organisation, such as dangerous; illegal or unethical activities in the organisation.
- The individual who makes the information public is not a journalist or an ordinary citizen, but a member or former member of the organisation. Thus, whistle blowers sound an alarm from within the very organisation within which they work, aiming to spotlight neglect or abuses that threaten the public interest.

Whistle blowing in the public sector can be related to three requirements (Williams 1985:15-18):

- As the government is entrusted with certain responsibilities, such as national security, confidentiality would be of the utmost importance and a breach of confidentiality through whistle blowing could have damaging effects on everyone.
- A public official may resort to whistle blowing if the conduct of another official is gravely offensive to the standing and fundamental interests of the public.
- The changing character of political heads could lead to conflict of interests occurring between the public sector and the government.

Whistle blowing occurs, therefore, whenever individuals take it upon themselves to point out what they believe to be unethical or irregular behaviour. Such action is often met with a great deal of resistance from others in the organisation. Superiors often view such actions as being an insult to their authority or as a challenge to the organisational imperative, which they find useful to protect. Colleagues and subordinates are often unwilling to express their support either for fear of losing their own jobs or because of fear for the future of the organisation (Feldman 1999:149). If public officials had accepted the correct ethical values and behaviour, then whistle blowing can be an effective measure that can be used by the government in its campaign against corruption.

There are six elements contained in whistle blowing. These are (Jubb 1999:78):

- the whistle blower;
- the disclosure subject (the act that was perceived);
- the act of disclosing the wrongdoing;
- the target organisation;
- a recipient to whom the disclosure will be made; and

- an outcome.

Further to the above, Feldman (1999:2-3) and Mbatha (2005:178) state that there are three stages in the process of whistle blowing. During the first stage, *causation*, a person needs to observe irregular or criminal conduct (or activity) taking place in the organisation. A decision must then be made as to whether to agree with the wrongdoing, to partake, to object or to walk away. These five choices are not mutually exclusive as an individual's decision on how to behave at any given time may be reconsidered later.

Irrespective of personal demeanour, there may be no alternative but to proceed to the second stage, *disclosure*. In organisations regulated by legislation, which include all organisations in democratic societies, there may be rules and regulations requiring disclosure to an external regulator or auditor. Auditors and other compliance officers are themselves under strict rules of disclosure. In situations of disclosure, the response of some institutions is to get rid of the problem, not by addressing the disclosed wrongdoing, but by addressing the whistle blower.

Stage three of the whistle blowing process is *retaliation*. Disclosure is often by means of confidential information including documents, but even so, the whistle blower's identity may not be obvious if the disclosure is an anonymous disclosure. Consequently, identification of the whistle blower is a matter of great importance to the wrongdoer while preserving anonymity may perhaps be of greater importance to the whistle blower (Feldman 1999:2-3 and Mbatha 2005:178).

The whistle blowing process requires that certain steps be followed to *"… increase authorised disclosures made in good faith in public sector organisations"* (see section 1.5).

Barker and Dawood (2004:131-132) identify the following five steps in the whistle blowing process:

- Step 1: Reduce opportunities to commit unethical or illegal conduct

New employees must be screened effectively and there should be no opportunities that could motivate unethical or illegal conduct. Regular reinforcement should also be done to motivate employees to avoid wrongdoing through for example the enforcement of the Public Service Code of Conduct.

- Step 2: Establish if the observed activity is actually wrong

An activity will be wrong if it is illegal, unethical or illegitimate and the decision to report the perceived activity should be determined by the seriousness of the act and if the reporting will be effective, that there are no other actions that can be taken and that the personal position of the whistle blower do not influence the decision.

- Step 3: Use internal mechanisms in the organisation to raise concerns

Critical information systems or internal reporting mechanisms must be in place in the organisation at an appropriate level to ensure that employees follow the correct internal channels and not damaging external channels like a regulator or the media.

- Step 4: Organisational policies/procedures must be used

If the correct procedures/policies are used within the organisation, the damage and disruptions can be minimised and the situation rectified internally and rapidly. Once the whistle has been blown, the organisation should take action and investigate the matter, even if there is a dispute as to whether or not the activity is legitimate or not. The organisation might choose to take steps or ignore the whistle blower, depending on the policies/procedures of the organisation. Camerer (1996:48) states that there is a danger here in an open door policy run by a corrupt

management which might work against the whistle blower and serve the purpose of identifying the troublemaker to be ejected.

- Step 5: External whistle blowing

As a last resort, one can justify external whistle blowing if all internal channels have been exhausted, are unavailable or unusable, or when organisational policies/procedures are not in place. Whistle blowers often choose the external channel if they are of the opinion that the case might be treated as more credible and that more attention will be attracted and that corrective actions can be ensured.

It is important to thus reduce the opportunities for irregular or criminal conduct to take place; one also needs to determine if the perceived act is in fact incorrect and if so, it must be reported by firstly making use of internal channels according to prescribed procedures or policies. If the desired effect is not achieved, for example an approved report from an external auditor or occupational detriment is feared, then external whistle blowing will be the only alternative.

When a person notices an action which might be criminal or irregular, he or she needs to determine if the action is in fact incorrect. Once it has been determined that the action is irregular or criminal, the observer will have to decide whether or not to blow the whistle. If the decision is made to blow the whistle, then ideally the organisation will have internal structures (or even a person) by which the disclosure can be made. If all attempts have failed to disclose successfully internally, then only can external whistle blowing be considered (see section 4.4.1.3). The next section of this thesis will elaborate on selected case studies to illustrate not only the process of successful whistle blowing, but also the detrimental effects that whistle blowing can have on a whistle bower.

4.5 Cases of whistle blowers who disclosed acts of wrongdoing

The potential value of employees coming forward and raising concerns over perceived malpractices, in the interest of the public, is self-evident. Investigations into a number of disasters that have taken place globally, in both the public and private sectors, have revealed that employees were either aware of the problem and too worried about the effects on their careers to raise their concerns, or that employees had raised concerns but that these had been ignored by those to whom the disclosure was made. The cost of this silence to the environment, public health, employment, financial security, lifelong savings, the public purse and lifelong disability is devastatingly high (Drew 2003:4 and Auriacombe 2005:87).

In the context of the public sector, whistle blowers are often public officials who, of their own accord, inform the relevant authorities about requests received that could be detrimental to the interest of the public welfare or individual citizens or specific activities that is contradictory to the stated purpose of the public sector (French 1983:138).

4.5.1 Selected examples of cases in South Africa

The following section elaborates on various cases on not only the whistle blower incident, but also the organisational responses that have been witnessed in the most recent South African cases of whistle blowing.

Some form of retaliation, may be seen in each of the organisational responses to the whistle blowers and indicate a sequence of hostile events aimed at nullifying, isolating, defaming and ultimately expelling the whistle blower.

The subject of whistle blowing increasingly regarded as one of the most useful inputs in transparent and democratic societies, remains plagued with challenges and problems. Some of the most known South African cases to date are that of Harry Charlton and that of Mike Tshishonga, a Deputy Director in the Department of Justice.

4.5.1.1　　Harry Charlton

As the chief financial officer in Parliament assigned to investigate travel voucher corruption among Members of Parliament, Harry Charlton exposed 6 travel agents and 25 Members of Parliament who defrauded Parliament by abusing travel vouchers to a total estimated amount of R24 million which resulted in the National Prosecuting Authority being brought in (Dawes 2005:1). The organisation responded by suspending and later dismissing Charlton on charges of misconduct for procedural and governance irregularities relating to the procurement of software and consulting services (Binikos 2006:27). Charlton was found guilty on 12 of the 15 disciplinary charges brought against him. The chairperson of the hearing, Baba Schalk, stated that due to the severity of the charges brought against Charlton, it was an "act of mercy" to dismiss him and that he was not allowed to appeal the decision made by Schalk but that he had recourse to the Conciliation, Mediation and Arbitration Committee (hereafter referred to as "CCMA") (Adams 2006:2). Daniels (2007:5) states that Charlton then filed a case in the Labour Court on the basis of the PDA. Charlton felt that he was dismissed unfairly because of the disclosure of travel voucher corruption (popularly known as Travelgate). Parliament argued that the PDA does not apply to Charlton as the disclosures about Members of Parliament did not fall within the prescriptions of the PDA. The organisation received media attention through the court case. To date all the travel agencies involved have been sequestrated in order to recoup costs and a number of Members of Parliament fined. The Labour Court has dismissed Parliament's argument that the PDA does not apply to Charlton. This allows Charlton to bring evidence that he blew the whistle on the Travelgate scam. Parliament was ordered to pay legal costs (SABC News 2007).

4.5.1.2　　Mike Tshishonga

The first claim before the Labour Court for compensation arising from the PDA is the case of Mike Tshishonga vs. the then Minister and Director General of Justice. In October 2003 Mike Tshishonga (employed at the Department of

Justice for 30 years and the managing director of the Master's Office Business Unit) levelled serious accusations at former Justice Minister Penuell Maduna. Tshishonga was responsible for addressing corruption in the liquidation industry (Davids 2007:1-4).

The case concerned the appointment of a liquidator in the Retail Apparel Group (RAG) that was liquidated in May 2002. Tshishonga alleged that Maduna had a "questionable relationship" with Enver Motala, a private-sector liquidator. The supposedly nepotistic relationship had led to Maduna's alleged "abuse of the infrastructure and staff of the Justice Department for the purposes of advancing his personal interests," and of endangering South Africa's criminal justice system. Motala was dissatisfied with the manner in which he was sidelined in the appointment of liquidators (Davids 2007:1-4).

Tshishonga was in the process of restructuring the Master's Office and the appointment of liquidators. Motala attended a merger meeting of the insolvency practitioner's bodies at the request of the former Minister where other liquidators were excluded. The former Minister met with Tshishonga and expressed his dissatisfaction with the fact that Mr Motala had not been appointed as a liquidator. Minister Maduna then instructed the Master in the Pietermaritzburg Office to appoint Motala. Mr Tshishonga, unhappy with the appointment, acquired a legal opinion as to the Minister's powers. The appointment of Mr Motala was successfully challenged in court and it was established that the Minister did not have the power to appoint liquidators. The Minister then appointed a subordinate of Mr Tshishonga's, without discussing it with him, to oversee the appointment of liquidators in Pietermaritzburg in the RAG case, and Mr Motala was appointed as the fifth liquidator. Former Minister Maduna thereafter removed Mike Tshishonga as head of the unit and refused to meet with him. Subsequently, Mr Tshishonga enquired from the previous Director General how a politician could instruct an administrator and how the instructions could be executed without following proper procedure, but no reasons were provided. The issue of poor performance was raised, but at a later disciplinary hearing the former Director General stated that poor

performance was never an issue and that Tshishonga had in fact sent a clear message of good governance (Davids 2007:1-4).

The former Director General commissioned a forensic investigation into Tshishongas' corruption allegations but did not react to the report received. Mike Tshishonga then called on the Office of the Public Protector and when nothing was done about the complaint, he went to the Auditor General (see 2.3.10). Again, as in the case of the Public Protector, nothing was done. At last, the Public Protector referred the matter of Tshishongas' poor treatment to the Public sector Commission while the Public Protector investigated the allegations of irregularities. As a final resort Mr Tshishonga discussed the matter with the Minister in the Presidency who stated that a meeting would be set up between the Minister and Director General of Justice and Mike Tshishonga. This meeting never took place. Only then did Mike Tshishonga set up a press conference. He was suspended a week later for divulging sensitive information and two weeks after that, he was charged with misconduct. He successfully challenged the suspension in the Labour Court and was reinstated to his previous position. The Department of Justice, however, did not comply with the court order and still continued with a disciplinary hearing where an independent chairperson had found Tshishonga not guilty. The former Director General refused to reinstate Mr Tshishonga and instead offered him a settlement and terminated his employment as agreed by both parties (Davids 2007:1-4).

The court found that the disclosure made by Tshishonga to the media was reasonable, as the media disclosure was the fifth disclosure he made, that the correct procedures had been followed and that all the requirements of the Act had been complied with (Davids 2007:1-4).

The Minister of Justice and the Justice Department were ordered to pay Tshishonga one year's salary as well as the legal costs. The Department of Justice received negative publicity and embarrassment. The court said of this case: "… a defence that the employee breached confidentiality has to be

approached so cautiously that it does not strip the PDA of its content" (Davids 2007:1-4).

4.5.1.3   The case of the Lenasia chemical factory workers

In South Africa, the case of eleven chemical factory workers who lost their lives in Lenasia is well-known. Concerned employees blew the whistle on poor working conditions in the factory to the Department of Labour. These included being locked up with gas bottles for up to 16 hours, fire extinguishers that were not in working order, lack of ventilation and the absence of an emergency alarm system – conditions that were inexcusable if not illegal. According to Auriacombe (2004:656-657) it came to light that the Department of Labour had received written notice on the poor working conditions from concerned employees three months prior to the incident.

4.5.1.4   Vicky Breytenbach

Ms Breytenbach, a teacher employed at KwaMhola Secondary School provided evidence of examination cheats within the Mpumalanga Department of Education. Breytenbach did not return to work due to the hostile responses she received. Her salary was suspended and she was then fired from her job on the basis that she had exhausted her sick leave. In June 2005 she was reinstated and transferred to another school and her salary rectified. The Mpumalanga Department of Education received media attention; there was political campaigning against the Department and a possible loss of reputation for the ruling party (Binikos 2006:27).

4.5.1.5   Allison Pedzinski

Pedzinski was the compliance officer at Andisa Securities, a financial organisation. She was responsible for monitoring the supervisory, statutory and regulatory compliance of the employer with regards to financial trading. She became aware of a series of irregular share deals made by members of staff, including senior managers over the financial period 2001-2002. Allison

Pedzinski raised her concerns internally to her immediate supervisor as well as to persons in the SCMB Group Compliance Structures. The organisational response was to bring accusations of disobedience, and disrespecting authority at Pedzinski and she was given written warnings, her job position was changed (she was told that her position would become redundant due to operational requirements) and ultimately she was dismissed. The dispute was registered at the CCMA and after the CCMA process had been exhausted, the Labour Court found that the dismissal was automatically unfair in terms of the Labour Relations Act and that the disclosure was protected under the PDA. Andisa Securities were ordered to pay two years' salary as well as her legal costs. Loss of profits was experienced and negative publicity was received by the organisation. The judgement on the Pedzinski case came at a stage when she had been without a job for two years and two months (Lewis and Uys 2007:14).

4.5.1.6   Victoria Johnson

Johnson, the senior legal advisor at the Cape Town City Council, accused the mayor of Cape Town of voter fraud in order to influence the outcome in terms of changing street names. Victoria Johnson was responsible for monitoring the public response to a proposal by the mayor that some street names in the city should be changed. She realised that the mayor was misrepresenting the nature and extent of the public response and that her immediate supervisor was generating fake letters of support for the name changes and she raised her concerns with the deputy mayor. The organisational response was an investigation after which her immediate supervisor was re-assigned to another position. She was ostracized by colleagues and voluntarily decided to resign. The results of this case for the organisation were embarrassment, media attention and a loss of reputation. The mayor and many officials were eventually dismissed (Uys 2005:6).

4.5.1.7 Glen Chase

According to Diale and Holtzhausen (2005:16) Glen Chase is one of the mostly-cited cases on whistle blowing in South Africa. The irony of it is that, instead of correcting the wrongs reported by one of the senior staff members against a political office-bearer, the Northern Cape provincial government chose to shoot the messenger. The whistle blower concerned was Glen Chase. He uncovered massive abuse of the state's financial resources for unrelated activities. Chase compiled an explosive dossier and hand it to the Special Investigative Unit (Scorpions) (see section 2.3.10), the body contemplated in section 8 (c) i-ii of the PDA:

(c)   a person or body *prescribed* for purposes of this section; and in respect of which the *employee* concerned reasonably believes that –

(i)   the relevant *impropriety* falls within any description of matters which in the ordinary course are dealt with by the person or body concerned; and

(ii)   the information disclosed, and any allegation contained in it, are substantially true, is a *protected disclosure.*

Ironically, the MEC involved resigned after the allegations found their way to national media. In return, the government chose to suspend the whistle blower. The chronology of events is the same as the case cited above. He was suspended, charged and exonerated. He was charged again on artificially fabricated charges and an arbitration order was issued to have him re-instated. At present a ruling on the appeal lodged by the government is still being awaited from the Labour Court (Burgess 2005). Suffice to say that this case shows a clear disregard for the laws of the country on the part of the very people who are entrusted with upholding them. The Northern Cape Provincial Government received media attention and opposition leaders campaigned against the leaders of the party.

4.5.1.8   Dr Kobe

This is the case of the Impungwe Hospital in the Mpumalanga Province, which has the highest mortality rate in the country in terms of terminally-ill patients – a fact that can be attributed to a lack of resources, both material and human. Dr Kobe raised the issue with internal structures but her plight fell by the wayside. The grim picture she painted of the conditions indicated that the hospital had only two medical doctors (herself and a junior doctor), very few amenities for patient care and a demoralised staff due to unresolved issues. To compound the issue, the hospital had a high intake in terms of terminally ill patients from the nearby Witbank Hospital (Diale and Holtzhausen 2005:16).

The situation took a turn when she decided to publicly disclose her frustrations with the Special Assignment team presenting an SABC current affairs programme, with a view to drawing attention to her repeated calls for urgent intervention. The results were that of constant harassment by the administrative staff of the Department, which led to her resignation and joining private practice. The main reason she spoke out was the medical ethos of patient care, guided by her professional conscience – facts which were of pitifully little concern to the hospital administrators and support services (Diale and Holtzhausen 2005:16).

4.5.1.9   Keith Grieve

According to Le Roux (2003a: 65) the decision in Grieve vs. Denel (Pty) Ltd was one of the first decisions dealing with the PDA. The case referred to potential protection for employees who are victimised because of their attempts to disclose acts of impropriety committed by the employer or by employees acting on behalf of the employer (see section 2.3.5). Grieve, the Safety and Security Manager at a company manufacturing explosives (in the Swartklip Products Division) made several allegations of corruption against certain managers, which included nepotism, financial irregularities and the misuse of company assets. He was specifically concerned about the actions of the General Manager at Swartklip and those associated with him, and

made a disclosure to his immediate supervisor, Mr Schultz, on 23 October 2002. Schultz, after a meeting with another member of management, informed Grieve that he was in an uncomfortable position and would prefer Grieve to take the matter directly to the Board of Directors.

Grieve was in the final stages of completing a report to the Board of Directors when he was informed that he was being investigated due to an explosion that had occurred at Swartklip. He subsequently had to attend a meeting with Mr Schultz and the General Manager (who was aware of the fact that Grieve was preparing a report to the Board of Directors). The General Manager discussed the report with Grieve on 14 and 15 November 2002 and asked Grieve to disclose certain information. Grieve was willing to do so, but not to disclose his informants (Le Roux 2003a:65).

The report was submitted to the Board of Directors on 19 November 2002. Grieve was suspended on full pay the next day and ordered to appear before a disciplinary committee (this was later postponed to 13 January 2003) for, among other things, downloading pornography from the Internet at work. He was also accused of racism, and of "inciting employees against the company and senior management, and leaking information to former employees" (SABC News 2003). Le Roux (2003a:65) further states that Grieve and his attorneys realised while preparing for his hearing that he could be protected in terms of the PDA (see section 2.3.6). It should be noted that the CCMA determined that there was enough evidence to show that the disclosure Grieve wanted to make had some substance (thus a *bona fide* disclosure) and that the intended discipline (the suspension) fell under the heading of occupation detriment.

Grieve was reinstated after an interdict for unfair labour practice. His work was investigated and he was found guilty of "insolence and insubordination" and then discharged because of "an irretrievable breakdown of trust" (Uys and Senekal 2005:10). The Denel subsidiary received negative publicity and media attention and the case appeared in the Cape Labour Court for unfair labour practice.

4.5.1.10　André du Toit

In 1999 a financial executive, André du Toit, reported irregular stock market transactions and fraud to the value of R800 million by Beige Holdings directors. He blew the whistle by reporting the irregularities firstly to the chairman of the board and then to Beige's auditors, Pepilisky Hurwitz. Thereafter Du Toit compiled a dossier that he took to the regulatory authorities (Temkin 2004:1).　Du Toit was suspended after revealing the irregularities to the auditors. A disciplinary enquiry was threatened, and soon after that, his contract was terminated on the basis that he had disclosed sensitive information to third parties (Auriacombe 2005:95). Several CCMA hearings followed, and eventually an agreement was reached "as the process had become too painful for him" (Uys and Senekal 2005:10).

Once again negative publicity and media attention were received by the organisation. The joint Management Directors were suspended and subsequently fired; 700 staff members were retrenched, and the business was eventually liquidated (Uys and Senekal 2005:10).

4.5.1.11　Kendal Bok

This case involves an individual named Kendal Bok who lost his job, his marriage of 22 years, everything he owned and he has a sequestration order hanging over his head. All these were the results of lawful and procedural disclosure of illegal and corrupt activities at his place of work. As a Production Plant Manager, Kendal discovered a wide range of illegal activities ranging from the use of sub-standard material, inflated production results, misleading financial results and kickbacks. He went on to report the matter to his immediate superior. To his surprise, he was accused of the very discrepancies he uncovered, a move that he was not prepared for. The company rewarded him with a dismissal (an occupational detriment) for allegedly changing the financial figures. He took the steps that the PDA suggests as remedies in terms of section 4(1-4), which are the following (see section 2.3.6):

(1) "Any *employee* who has been subjected, is subject or may be subjected, to an *occupational detriment* in breach of section 3, may –

   (a) approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act 1995 (Act 66 of 1995), for appropriate relief; or

   (b) pursue any other process allowed or prescribed by any law.

(2) For the purposes of the Labour Relations Act 1995, including the consideration of any matter emanating from the Labour Relations Act by the Labour Court –

   (a) any dismissal in breach of section 3 is deemed to be an automatically unfair dismissal as contemplated in section 187 of the Act, and the dispute about such a dismissal must follow the procedure set out in Chapter VIII of that Act; and

   (b) any other *occupational detriment* in breach of section 3 is deemed to be an unfair labour practice as contemplated in Part B of Schedule 7 to the Act, and the dispute about such an unfair labour practice must follow the procedure set out in that Part: Provided that if the matter fails to be resolved through conciliation, it may be referred to the Labour Court for adjudication.

(3) Any *employee* who has made a *protected disclosure* and who reasonably believes that he or she may be adversely affected on account of having made that *disclosure*, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the *disclosure* to another post or position in the same division or another division of his or her *employer* or, where the person making the *disclosure* is employed by an organ *of* state, to another organ *of* state.

(4) The terms and conditions of employment of a person transferred in terms of subsection (2) may not, without his or her written consent,

be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer".

After interim relief awarded by the CCMA to be reinstated, the company unleashed what can only be described as a dreadful blow by engaging the services of top law firms to challenge the CCMA ruling and charging Bok with unrelated issues such as slander; they embarked upon a smear campaign and ultimately applied for a forced sequestration (Burgess 2005). Bok's summary of what happened was "…after I had made a report to my supervisor, slowly but surely I could sense that a case was being built against me".

This case demonstrates that, firstly*;* regardless of the intentions of the PDA, the reality is that, organisational power-relations are skewed in favour of those in senior positions, and the requirement of disclosing internally first is fundamentally flawed as well as being a recipe for disaster for the whistle blower if the person implicated is his or her immediate supervisor. Secondly; related to the first aspect, is the issue of the organisation being well-endowed with financial and legal resources, whereas the individual whistle blower is not. This is demonstrated by the extent to which this company could drag out the expensive litigation process for long enough that the powerless individual had to be sequestrated, and finally, the tactics used by organisations to disregard the rulings of the bodies contemplated in the Act for remedial purposes, including things like buying time when they had to implement the CCMA ruling, and shifting the goal posts by charging the whistle blower with other unrelated offences (Diale and Holtzhausen 2005:14-16).

4.5.1.12 Communication Workers Union (CWU) vs. Mobile Telephone Networks (Pty) Ltd

The case of CWU vs. Mobile Telephone Networks (Pty) Ltd was similar to the Grieve vs. Denel case (see section 4.5.1.9). The employee in this case distributed an e-mail to a group of fellow employees within the organisation in which the integrity of certain members of management was attacked. A notice

of suspension was served on the employee, where after he lodged an urgent application for an interdict that would prevent the employer from proceeding with the disciplinary inquiry pending the adjudication of an unfair labour practice dispute referred to the CCMA by him. As in the case of Grieve, the unfair labour practice dispute was based on the allegation that the disciplinary hearing and the suspension were in line with the description of occupational detriments (see sections 2.3.5 and 2.3.6) as defined by the PDA (Le Roux 2003b:17-18).

The Court, on the facts of the case, was not prepared to grant the requested relief. The Court analysed the PDA in detail, illustrating the balance that the legislature sought to achieve. Reference was made to the Grieve case and the Court agreed with the comments made as well as with the fact that the PDA sought to encourage a whistle blowing culture. It also pointed out that effective, transparent and good governance by employers was in the broader interest of the public and that all employees should be encouraged to blow the whistle without fear of reprisal on criminal and irregular conduct by employers (Le Roux 2003b:18).

It should be noted that the Court also pointed out that the protection extended to employees under the PDA is not unconditional. It sets certain procedures to be followed as well as criteria for a disclosure to be considered as protected. In the case of CWU vs. Mobile Telephone the question that had to be considered focused on the e-mail message. Could an e-mail message sent to various people constitute a protected disclosure? Several important points were made by the Court on this matter (Le Roux 2003b:18):

- For disclosed information to be considered protected, it must either disclose or intend to disclose forms of criminal or other misconduct.
- The disclosure must be made in good faith and if an employee deliberately sets out to embarrass or harass an employer it is not likely to be considered as *bona fide.*

- Good faith, however, does not require proof of the validity of any suspicions or concerns that an employee might have or even a conviction that any type of wrongdoing has actually occurred. Real concerns must be protected within the employment context, even if it is later found to be unfounded.
- The PDA does not protect disclosures that are based on rumours and assumptions.

On the basis of the above, the Court decided that the e-mail communication failed to meet the conditions for protection as set out by the PDA. The e-mail was a subjective opinion or an accusation, rather than a disclosure of information. For a disclosure to be protected it must be, on a *prima facie* basis at least, carefully supported and documented (see section 2.3.11). In this particular case there was no proof that the information in the e-mail contained any proof of impropriety. Another concern was that the information was communicated to a general meeting prior to being sent. The PDA also focuses on disclosures made in private rather than in public. A balance should be found between the intentions of the PDA and the reputation of the persons against whom these allegations were made. The disclosure must also be done according to the correct procedure. The requirement is that a disclosure has to be made through an authorised channel. Disclosures must be made according to a procedure that is either authorised or established (Le Roux 2003b:18).

According to Le Roux (2003b:18-19) the Court further distinguished between internal (see section 4.5.1.2) and external (see section 4.5.1.3) disclosures. Internal disclosures do not require reasonable belief that the information disclosed tends to show that any wrongdoing has occurred. For the disclosure to be an external protected disclosure, a reasonable belief must exist that the allegation is true. If disclosures are made according to prescribed or authorised procedures and the disclosed information turns out to be untrue, then little damage will have been done to the external image of the organisation. The PDA therefore not only provides a mechanism through

which employees can blow the whistle without fear of reprisal but also protects the rights of employers and senior managers against false accusations.

Commonalities that can be found in most of the South African cases are that the employees witnessed improprieties being committed (see section 2.3.2) and decided to disclose the wrongdoing by mostly making use of internal channels in the organisation, usually disclosing first to a direct supervisor. Mike Tshishonga exhausted all the channels available and only after he received negative responses (or even no responses) did he disclose to the media, which was the fifth channel. Glen Chase disclosed to the Special Investigative Unit as specified in section 8 of the PDA (see section 2.3.10). Whistle blowers are protected under the PDA from unfair labour practice where the whistle blower experienced occupational detriment, such as suspension or dismissal after the disclosure was made (see section 2.3.3) and can call upon legal remedies, thus the courts for protection (see section 2.3.6). Kendal Bok relied on the legal remedies for protection. It should be noted that, as already stated, good faith forms the basis of a protected disclosure. A whistle blower must have a reasonable believe that the information that he or she disclose is true and the disclosure must relate to criminal or other misconduct. The case of Communication Workers Union (CWU) vs. Mobile Telephone Networks (Pty) Ltd illustrates that a whistle blower will not be protected if the disclosure is made on opinions and via e-mail communication. For a disclosure to be protected and authorised, the correct procedures and channels must be followed. The next section of this thesis provides some selected international cases.

4.5.2 International cases

Whistle blowing is an international phenomenon and one finds many examples of international cases in the literature. The following section will focus on selected international cases.

4.5.2.1   India

Twenty years ago, in 1984, Indian workers, together with a local journalist, raised concerns about a gas leak and safety measures to the local authority and Union Carbide India Limited, which chose to ignore them. This resulted in the deaths of 3 800 people and 2 680 people left with partial disabilities (www.psiru.org). This case reminds one of the South African Lenasia chemical factory workers case. In both cases the safety concerns were communicated to the employers as well as to the relevant authorities (the South African Department of Labour and the Indian local authority). In both cases lives were lost.

4.5.2.2   United States of America

Martin and Rifkin (S.I:7) states that Ralph Nader exposed auto safety problems in a book titled "Unsafe at Any Speed". The result of these disclosures lead to General Motors putting Nader under surveillance and attempted to discredit Nader. These underhanded tactics generated public support for Nader.

According to Near *et al.* (2004:219) Time Magazine honoured Sherron Watkins, Colleen Rowley and Cynthia Cooper by selecting them as their "persons of the year" for 2002. Sherron Watkins, an internal accountant at Enron, set out her concerns on potential problems with accounting practices in a letter to the Chairman of Enron, Kenneth Lay, in 2001. While this letter has proved extremely useful to the subsequent investigation into the collapse of Enron, it did not initiate the investigation and Ms Watkins did not take action until the investigation was already under way. This may be explained by the fact that there is no comprehensive whistle blower protection for private sector employees in the United States of America. Colleen Rowley blew the whistle by sending a memorandum to Director Mueller of the Federal Bureau of Investigation in which she alleged mismanagement of the investigation of terrorists by senior managers. Cynthia Cooper reported falsified accounting records to the Audit Committee at WorldCom. The Audit Committee dismissed

the Chief Financial Officer who was later found guilty of using illegal accounting practices. In all three the cases, the whistle blowers disclosed internally, but the correspondence was leaked to Congress or the media (Near *et al.* 2004:219).

According to Uys (2006:221) the Challenger launch disaster that happened on 28 January 1986 is another pertinent example. The initial culture of National Aeronautics and Space Administration (hereafter referred to as "NASA") was one of a "get there safely" single goal/culture where internal whistle blowing was encouraged. In NASA there was a change in the culture when challenges led to a multiplicity of inconsistent goals, leading to a culture of "get there safely, cheaply and on time". Severe problems were identified in the seals of the rocket booster during April 1985. Concern was expressed by engineers involved in the project who wrote a memorandum to senior management stating that losses might occur unless improvements were made. It was decided that there was insufficient proof to postpone or cancel the launch.

Allan McDonald and Roger Boisjoly, engineers at Morton Thiokol Inc. in the United States, testified before the Rogers Commission investigating the 1986 Challenger shuttle disaster that there had been ongoing problems with the rocket's P-rings and that they had urged their supervisors and NASA officials to postpone the fatal launch. Following their testimony, the engineers were demoted to menial jobs. Only the intervention of the Commission members saw them being reinstated (Ettore 1994:18).

4.5.2.3   The United Kingdom

In the United Kingdom, the Bingham Enquiry into fraud and corruption at the Bank of Credit and Commerce International found in 1991 that, due to an autocratic environment and a climate of intimidation, neither employees nor firms were willing to voice their concerns. An internal auditor who raised concerns was dismissed. This led to new rules in the United Kingdom on the

duties of auditors and other firms to report suspected irregularities (Camerer 2001:2).

However, public officials may also be asked or instructed by their political masters to act in an unlawful way. In March 2004, it was claimed that the United Kingdom's immigration service had secretly allowed thousands of ineligible migrants to enter the country. Claims were made that this was done "to massage figures so it did not appear there would be mass influx when eastern European states joined the EU on May 1" (Wintour in Auriacombe 2005:16). The public official who blew the whistle was dismissed. However, the responsible minister subsequently resigned when evidence against her started to mount up.

It is clear from the above that the position occupied by an individual in an organisation is not the driving factor behind the choice to blow the whistle on wrongdoing. It will be shown below, however, that the position of a whistle blower may influence the response of the organisation.

Informants can also act as whistle blowers. Such informants may work, for example, for the police or a regulatory authority. They can either be placed in the organisation for the purpose of uncovering evidence of suspected wrongdoing or may be employees of organisations who have been recruited by the relevant authority. This may sound more like fictional crime and spy stories, but there is growing evidence of police forces using this tactic to root out corruption.

4.6   Consequences of whistle blowing

The following section will provide insight into how whistle blowing may affect the whistle blower and the organisation, and will also refer to responses to whistle blowers.

Miethe (1999:147-148) states that "Unfortunately, most legal protection for whistleblowers is illusory: few whistleblowers are protected from retaliatory

actions because of numerous loopholes and special conditions of these laws and the major disadvantage that individual plaintiffs have against corporate defendants".

4.6.1 Consequences for the whistle blower

As a result of the negative organisational response, the whistle blower may experience great disbelief and distress at the manner in which the organisation they seek to protect is behaving (Rothschield and Miethe 1994:262). Organisations believe that whistle blowing is a deviant act that threatens the prosperity and blemishes the reputation of the organisation (Uys 2006:9). Ultimately, negative retribution affects the whistle blower's ability to continue working in the organisation (Milliken *et al.* 2003:1454). Many whistle blowers also endure endless litigation (Jos, Tompkins and Hays 1989:554) when compensation is sought for damages suffered by the whistle blower. Litigation is also known to be prolonged, and emotionally and financially wearisome, and will affect the whistle blower's family as well (Jos *et al.* 1989:554 and Binikos 2006: 31). The reputation of the whistle blower may also be affected, especially if the court case is reported in the media. Future job prospects may also be compromised as a result of the person's reputation as a traitor or troublemaker due to the negative media publicity surrounding the case. In addition, financial pressures rise as a result of the person losing his or her job (Uys 2005:9).

Camerer in Barker and Dawood (2004:132) states that the whistle blower will experience negative or positive responses to his or her action, depending on the organisational culture – regardless of whether the disclosure was made internally or externally. The following responses might be expected:

- Managers might spend time and financial resources to cover up the problems rather than admitting that something is wrong.

- Superior officers might punish the whistle blower by questioning his or her competence and judgement, blacklisting the individual from other positions or even terminating his or her services.
- Colleagues might also feel betrayed and the whistle blower might experience degradation ceremonies that will punish and alienate the resister and protester.
- The whistle blower might be made the scapegoat ("punishing the messenger"), and may suffer for his or her efforts and may even fear retaliation.

Whistle blowers function within an organisational context and the disclosure of alleged wrongdoing also has consequences for the organisation.

4.6.2 Consequences for the organisation

Miceli and Near (1992:9) state that challenging the authority structure through whistle blowing at times undermines legitimate control found in organisations. Miceli and Near (1994:777) further state that the reaction of members to whistle blowers of an organisation may be determined by their personal believes about whether the organisation is the beneficiary or victim of wrongdoing. Whistle blowing threatens the viability of the organisation, in that it reduces the organisation's use of illegal means to achieve greater profits, and any exposure of such shady dealings may be costly in terms of penalties, reputation and a loss of business. Whistle blowing affects the organisation's reputation and results in employee withdrawal (Milliken *et al.* 2003:1454), a decline in staff morale and a lack of trust (Davis 1989:8) as well as a poor business results (Miceli and Near 1992:8). It is also financially costly, as organisations would "rather use time and money to cover up the alleged wrongdoing than to address the problem. Further costs may be incurred when the matter is referred to labour courts and when penalties are levied against the organisation for their infringements. The fear of retaliation also serves as a deterrent to potential whistleblower (Camerer 1996:52 and Binikos 2006:31)

Referring back to the South African cases of whistle blowing in the previous section it is evident that whistle blowing has had serious consequences for the organisations involved. All the organisations experienced negative publicity and in many cases the disclosures resulted in political instability. It is also evident that the process is a negative experience for most whistle blowers. The decision to blow the whistle is a difficult one and whistle blowers will have to address a number of ethical tension points.

4.7   Ethical concerns in the whistle blowing process

Whistle blowers raise a number of specific ethical concerns. Ethical tension points can either be procedural or substantive. Jensen (1987:322-323) asks the following questions relating to procedural ethical tension points:

- How serious is the problem?
- How carefully did the whistle blower handle the information?
- Have the individual's motives been carefully explored and aired to his or her satisfaction?
- Has the whistle blower made enough of an endeavour to have the condition corrected internally through regularly established channels?
- When should whistle blowing happen? Should it be during office time?
- Should whistle blowing be done openly or anonymously?
- With what intensity and how often should whistle blowing take place?
- Who is the whistle blower's proper audience?
- Can a person switch roles from participant to judge?
- Is it ethical to undertake such a costly effort in terms of time, effort money and mental involvement?

Loyalty lies at the heart of substantive ethical questions. The challenge is to try and establish a balance between multiple loyalties, the truth, obligations and values. A nurse might for example have difficulty blowing the whistle on inadequate practices as she or he has an obligation towards patients, the hospital administration, her or his peers, supervisors, the medical profession,

her or his own self-worth, the general public and the truth. Jensen (1987:324-325) poses the following questions:

- What is the individual's obligation towards the organisation?
- What are the moral obligations towards peers in the organisation?
- What are the ethical obligations towards the profession?
- Will the act of whistle blowing have a negative effect on the individual's family?
- What moral obligations does one have towards oneself?
- What is the moral obligation toward the general public, *i.e.* the outsiders to whom the message is addressed?
- What will the effect on core values be?

Peterson and Farrell (1986:7) agree with the questions asked by Jensen by asking similar questions such as: "When should one's responsibility to the public be placed before loyalty to one's employer and co-workers? Does one have to go public when revealing wrongdoing, or can this be done anonymously? What takes precedence when professional judgement and organisational authority clash? Does one ever have an *obligation* to be a whistle blower?"

This type of question demands that choices must be made between values such as loyalty to the organisation and to co-workers. The choice might further be complicated if the potential whistle blower has incomplete information and uncertainty about the consequences of blowing the whistle.

Peters and Branch in Jensen (1987:326) concludes that "Every whistle blower who is right contributes to a kind of education by example for the country, even if he is widely regarded as a failure or as an important martyr for his particular cause". To this conclusion one should add that if a whistle blower is wrong, the act of whistle blowing weakens society and the organisation.

Jensen (1987: 326) states that whistle blowers struggle with numerous ethical tension points. Many of these are procedural in nature and the whistle blower can ask the following questions:

- "Am I fairly and adequately portraying the seriousness of the wrongdoing?
- Have I collected the correct information, analysed it properly and presented the case fairly?
- Do my motives arise from a concern for the public interest or do I have a personal agenda?
- Have I tried to get the issue resolved internally?
- Should I blow the whistle while I am still employed in the organisation or after I have left the organisation?
- Should I reveal my identity or remain anonymous?
- Have I stated my claims with the necessary intensity and frequently enough?
- How ethical have I been in selecting my audience?
- Is it appropriate and ethical for me, as part of the group, to become the judge as well?
- Is it ethical to set into motion an act that could be very costly and could affect the lives of many?
- Am I fulfilling the moral obligations and values of my organisation, my peers, my profession, my family and myself?"

Nilsen in Jensen (1987:324) made a sensitive suggestion that a person faced with the above agonising questions needs to "engage in a mock trial within" him- or herself, evaluating both sides to determine the stronger group and to "keep in mind that following his or her conscience should be a matter of rigorous thought as well as righteous feeling". In the end, whistle blowers decide that what is good for the organisation is good for the larger public. Loyalty to the group is superseded by other values such as equality, efficiency and the dignity of life.

4.8   Summary and conclusions

This chapter set out to describe and analyse the whistle blowing process and to determine the *"… characteristics underlying the whistle blowing process."* (see section 1.6). The analysis included an examination of the definitions of whistle blowing in the literature and to determine how the *"… the complexity of defining whistle blowing affect the dilemma of whistle blower protection."* (see section 1.6). It also focused on whistle blowing cases by providing examples of South African and international whistle blowers who observed acts of wrongdoing, who were involved in acting unlawfully or required to act unlawfully, and who blew the whistle deliberately, as well as the role of the media regarding external disclosures.

An attempt was made to identify the specific characteristics of individuals who choose to blow the whistle on wrongdoing. In this regard, credibility, power and anonymity were examined. The process of whistle blowing was then explored in detail and whistle blowers' options were identified as silence, blowing the whistle internally and blowing it externally. In each case, the benefits and disadvantages of the particular choice were pointed out. The decision-making process of the whistle blower was also studied.

In this chapter whistle blowing has been explored and defined within the framework of prosocial behaviour. The organisational responses to whistle blowing were investigated and what has become clear is that whistle blowing is a situation that is not free of controversy or difficulty. In addition, organisational responses create dilemmas for the whistle blower, as well as escalate the problems for the organisation itself. The picture painted in this chapter is one of conflict, which shows that retaliation becomes a betrayal of loyalty and trust. Although there are alternatives to whistle blowing, all options point to internal whistle blowing as the form of reporting which presents the best opportunities for success for both the organisation and the whistle blower. External whistle blowing is the more problematic of the two, but remaining silent or discussing the issue with colleagues also present their own dilemmas. Thus one comes to conclude that internal whistle blowing as a

possible form of disclosure could be the most successful option to eradicating organisational wrongdoing through whistle blowing. If applied and managed correctly, these disclosures can *"… bring about an increase in authorised disclosures made in good faith in public sector organisations."* (see section 1.5).

In considering how organisational responses may push a whistle blower to follow external channels, it became interesting to note that the relationship of trust between the organisation and the whistle blower emerged as an important feature in the discussion or retaliation. However, what needs to be pointed out is that even if there is no fear of retaliation, whistle blowing may still not occur if there is a lack of trust. This aspect will be dealt with in more detail in the following chapter.

In order to encourage employees to disclose wrongdoing, they need to be given confidence that the authorities will conduct competent and timely investigations on the information provided and that those who are implicated will be brought to book. Occupational detriment, once proven, should be made a criminal offence and the remedial processes should be broadened to include personal safety and services such as counselling and debriefing. This suggestion is made in view of the services provided to the beneficiaries of witness protection programs in the South African Police Services.

The whistle blowing process was also analysed in detail, and the three stages were discussed. *Causation*, the first stage, is when someone sees an activity or action that he or she regards as illegal, unethical or immoral. The choices are to ignore this, to concur, to take part, to object or to walk away. The various choices are not mutually exclusive, as the decision may be reconsidered at a later stage. *Disclosure*, the second stage, may be unavoidable in some cases, particularly where there are strict rules requiring disclosure to an external regulator or auditor. After disclosure, the response of some may be to get rid of the problem by getting rid of the whistle blower. Stage three, therefore, is *retaliation*. The effectiveness of whistle blowing, it was found, is defined by the extent to which the questionable or wrongful

practice (or omission) is terminated at least partly and within a reasonable time-frame as a result of whistle blowing.

In the next chapter, the process of whistle blowing will be viewed from the perspective of the organisational variables influencing the effective and efficient management of whistle blowing in order to prevent external whistle blowing that is not protected under the PDA (unauthorised disclosures).

CHAPTER 5

MANAGING ORGANISATIONAL WHISTLE BLOWING: THE VARIABLES INFLUENCING ORGANISATIONAL CULTURE AND ORGANISATIONAL TRUST IN DISCLOSING WRONGDOING

5.1 Introduction

"In the history of the world and humanity, it is always men and women of courage who show the way others follow".
– Theresa Kufor

Although the body of knowledge of whistle blowing has been growing steadily during the past two decades, theorists (Glazer and Glazer 1989; Dworkin and Baucus 1998) have been focussing nearly exclusively on the individual whistle blower. It has become more and more important that the social context of whistle blowing should be scrutinised as well. In particular, it is necessary to look at whistle blowing from the point of view of the organisation in which the disclosure of organisational wrongdoing occurs. For whistle blowing to act as an effective deterrent to organisational misconduct, it is important that the disclosure of information be managed effectively. The unauthorised disclosure of information, which is what whistle blowing is (without whistle blower protection), should be transformed into authorised disclosure of information, following certain prescribed processes and procedures.

This chapter aims to understand the context where whistle blowing occurs in an organisational setting; the development of a whistle blowing organisational culture; and organisational trust; in order to determine how trust may develop as a result of an individual's interactions with the organisation as a whole. This chapter attempts to place organisational trust in the context of whistle blowing in order to imagine how it could influence whistle blowing behaviour as a means to encourage internal reporting, avoid external whistle blowing, and reduce the chances of non-reporting. Questions that can be raised are whether organisational trust increases the chances of internal whistle blowing

or whether a lack of trust increases the chances of non-reporting (especially keeping quiet and discussing with colleagues) and external whistle blowing. The research questions *"to what extent does organisational trust versus fear of retaliation affect the decision to blow the whistle?"* and *"what are the factors constituting organisational trust and could the effectiveness of whistle blowing as constructive correctional action be increased through the internal reporting of wrongdoing built on relationships of trust in the organisation (as opposed to keeping quiet or external reporting)?"* (see section 1.6) are posed in an attempt to provide answers through the application of research.

In order to understand the relationship between organisational trust and whistle blowing, the relevant terminology in terms of dealing with whistle blowing within an organisation needs to be understood. In this regard, policy, strategy, hotlines, the organisational response toward whistle blowing and the various forms that negative organisational responses could take are all aspects which will be explored in this chapter. Attention will be paid to the effects of whistle blowing on the organisational image, how whistle blowing can be managed, and the effectiveness of whistle blowing. This chapter attempts to fulfil the objective to provide answers for the research question: *"How can whistle blowing policies that will not cause any harm to the whistle blower be managed effectively and efficiently and be encouraged in public organisations in order to address the concern about personal and professional retaliation?"* (see section 1.6).

5.2   The context where whistle blowing occurs in an organisational setting

The climate of the whistle blower's place of work will determine how wrongdoing and whistle blowing will typically be dealt with (Near and Miceli 1996:511). Some organisational variables put the emphasis on the organisation as a whole, while others may focus more on analysing subunits of the organisation (Greenberger *et al.* 1987:530).

For the time being, it is assumed that there is some homogeneity across subunits of the organisation and that organisations vary in their responses to attempts to change. In particular, some public officials resist change, whereas others seem to embrace it. This partly reflects the perspective of the dominant coalition toward change and the appropriateness of whistle blowing (Mbatha 2005:191).

Beyond this, the organisation's overall climate and its structure both reflect and influence its members' resistance to change. At the most basic level, variables are concerned with the organisation itself. Characteristics of the wrongdoing, described previously, also influence members' resistance to change. The organisation's environment may also play a role in influencing organisational variables and wrongdoing variables. For example, norms associated with the organisation's task domain and social norms may affect the organisation's climate for wrongdoing and whistle blowing. Economic variables such as global competitiveness may affect the dominant coalition's perception of the organisation's dependence on the wrongful activity (Mbatha 2005: 191).

However, the primary aim of a whistle blowing culture is that concerns about illegal, criminal and irregular conduct, thus wrongdoing should be properly raised and addressed in the workplace or with the person responsible. In essence, the whistle blower is seen as a witness and not as a complainant. Where communication channels in organisations are designed for grievances and complaints that is how they are used by the workforce. In the context of concerns about abuse, it is important to keep in mind that malevolent and aggrieved people make damaging disclosures *when there is no recognised whistle blowing policy*. Recognising this, a whistle blowing culture should be concerned with the silent majority – people who think that it is not in their interests to blow the whistle on corruption or serious wrongdoing. A whistle blowing policy (see section 5.5.1) will help public sector organisations and societies deter corruption and wrongdoing where some of those who now remain silent could be encouraged to see internal whistle blowing as a viable, safe and accepted option (Dehn and Borrie 2001:9).

The main beneficiaries of a culture that disapproves of and penalises people who blow the whistle in good faith are those few corrupt organisations and individuals. Knowing that the alarm will not be sounded, they are confident that their wrongdoing (especially if it is corruption or bribery) will go undetected and unpunished. In any case, when the successful investigation and prosecution of criminal activity outside of the workplace depend overwhelmingly on the information the police receive, it is not clear why the communication of information about wrongdoing in organisations is generally assumed to be undesirable. Quite apart from people with a predisposed criminal intent, the current culture adversely affects the conduct of the great majority of people. For them the strongest deterrent is the fear of being caught and the shame and embarrassment that go with it. Where a culture of secrecy and silence exists, otherwise reasonable people may be tempted to engage in criminal and irregular behaviour because they believe they will not be caught. Equally, if such a culture exists in a society, then otherwise responsible organisations may feel they will be at a competitive disadvantage if they do not also pay bribes or engage in illegal practices (Dehn and Borrie 2001:9).

There is a strong undercurrent in the literature of public administration that suggests the existence and importance of a workplace environment that is hospitable to whistle blowing activities. To that end, cautious employers should take steps to minimise risks and negative exposures by establishing a positive culture of whistle blowing. Whistle blowing can also be an effective early warning system. Employees in the front line know better than anyone what is going on in their area. All kinds of benefits may accrue from listening to them. But not doing so may cause a local difficulty to grow into a crisis. Not knowing where to turn in a crisis can also be extremely stressful for employees who may, as a result, feel cornered into acting in a way that is in the interest of neither the employer nor the employee (Mbatha 2005:192-193). Near and Miceli (1996:511-513) states that internal whistle blowing is more likely to take place where organisations support whistle blowing and that external whistle blowing is associated with a culture where reporting is associated with retaliation.

Under the PDA, the absence or ineffectiveness of whistle blowing mechanisms within an organisation may well be enough to protect an employee against sanctions for having disclosed confidential information to a third party. However, this is not conducive to effective long-term damage limitation. It would be more desirable if effective whistle blowing can be incorporated into the organisational culture of public sector organisations.

5.3   The development of a whistle blowing organisational culture

The concept organisational culture refers to the heart of the organisation and the organisation should do everything possible to foster their organisational culture and to make sure that every employee knows about and is able to identify with the organisational culture. This can be done by way of stories, rituals, symbols, language and terminology. Of course there are also subunits within organisations … subgroups with their own unique subcultures (Holtzhausen 2004:9).

It should be noted that organisational culture and organisational climate are not the same thing. Forehand and Gilmer (1964:362) describe the organisational climate as –

"… the set of characteristics that describes an organisation and that –
- distinguishes the organisation from other organisations;
- is relatively enduring over time; and
- influences the behaviour of people in the organisation".

Meyer (1967:14) is of the opinion that the organisational climate is the result of management style, organisational policies and general functioning procedures. Moran and Volkwein (1992:22-35) and Clapper (1995:73) explains the differences between organisational culture and organisational climate as follow:

- Resistance: Organisational climate shows relatively low resistance, while organisational culture shows relatively high resistance.
- Development: Organisational culture is much stronger than organisational climate when it comes to perseverance better because it developed over a longer period, while the organisational climate develops more rapidly.
- Change: Because the organisational climate develops faster than the organisational culture, it can be changed more quickly.
- Manifestation: The organisational climate manifests on the basis of attitudes, values, and assumptions. Culture refers to group interaction and climate to the reaction to that group interaction.
- Existence: Climate can be seen as a component or an element of culture.

Thus, organisational culture influences the establishment of climate. Organisational culture is more implicit and hidden, while organisational climate develops from organisational culture and is more visible and obvious. A discussion regarding organisational culture will facilitate the understanding of the differences between culture and climate.

Organisational culture connotes a system of common values ... patterns of beliefs, rituals, myths and practices, which developed over years, helped to develop the organisation, and cause groups of people to have the same understanding of what constitutes acceptable behaviour which could increase whistle blowing if employees understand what constitutes wrongdoing. Daffue (1989:144) argues that organisational culture is a process through which the members of that organisation bond and which give meaning to their day-to-day lives. The main difference between culture and climate is that climate can change overnight (a new political party takes over, for instance, and dismiss existing or hires new staff members).

The culture and ethos of the public sector as a whole, as well as individual departments, can be communicated in part through value statements that

express a commitment to shared values which includes ethical values. These value statements are usually codes of conduct and can contain values that are not traditionally viewed as ethical values, such as effectiveness and innovation. Most such value statements contain some ethical values that can help enhance the ethical climate of the organisation. A statement of the values of the organisation can provide a philosophical underpinning on which ethics rules are based (Kernaghan 1996:18). Ponemon (1994:124) argues for a moral atmosphere within the organisation. A moral atmosphere can be defined as the part of the culture of the organisation or the informal philosophy that deals with ethical problems and the resolution of moral conflict. A positive moral atmosphere contains a healthy degree of diversity among the employees in terms of their ethical believes, values and moral reasoning characteristics. As a result of this positive atmosphere, individuals will feel free to express a variety of moral views that might be different from other views in the organisation. By sharing different ideas, a better understanding can be reached of the different value systems which in turn could lead to finding a common understanding on what is acceptable behaviour within the organisation and what would be classified as wrongdoing.

Weeks (1988:121–123) states that if management and public officials do not implement the values of the organisation, the values which management follows in their daily practices will become the true values of the organisation. Public officials should constantly keep in mind that "action speaks louder than words" and that subordinates scrutinise the behaviour of management to determine what acceptable actions entail. Since the values of an organisation are influenced by ethical variables, public officials should ideally manage those variables.

In order to understand values better, Rossouw (1996:14-16) distinguishes between three kinds of values within an organisation.

Firstly, *strategic values*, which involve the goal(s) of the organisation. These are broad-based values that include all the aspirations of the organisation.

They include the mission and vision statement, the philosophy and dictum of the organisation.

Secondly, *work values*, which are focused on the individuals' own aspirations within the organisation. One way to detect an organisation's work values is to look at what employees consider desirable in their everyday work context, what motivates them, what employees want to achieve within the organisation.

Rossouw (1996:14-16) states that e*thical values*, the third kind of values, are very important, because ethical values place both organisation and individual in a specific context … and it is here that these values are expressed. Ethical values specify the character of the interaction among the individuals within an organisation. If the organisation's strategic values do not coincide with the individual's work values, the latter may be moulded so that they fit the ethical values, which in turn hold the strategic and work values together. If the interactions between the individual and the organisation are based on mutual respect and trust, the relationship continues and develops, allowing the organisation to grow as the relationships grow (see section 3.2.2).

As mentioned before, organisational culture consists of shared values among individuals as well as groups. Ethical behaviour and the disclosure of wrongdoing should become part of the value system of all public officials. It would be advisable to first determine the value system of the individual, then the value system of the organisation concerned and then to bring the value systems in line with the general value system required within the public sector. In order for ethics to become a reality in the South African context, they should become a value system understood and shared by all.

All three the above values have to work together for an organisation to be successful. However, work values are important for the organisation as far as an understanding of the structure of the organisation is concerned. Every organisation has a specific formal structure that dictates the manner in which

its values will be enacted. The values also play a crucial role in developing the communication structure of the organisation (Ponemon 1994:118).

According to Louw (http://www.dcc.mil.za/Code_of_Conduct/Files/EthicalCodes.htm) an ethical code of conduct should come from within the organisation and should reflect the standards of the profession or the organisation and characteristics of the organisation and should facilitate awareness of ethical issues within the organisation. He stresses that the code of conduct must be taken seriously, otherwise it is a meaningless exercise. However, since public officials cannot be forced to follow a code, it should guide and not dictate. An ethical code of conduct should be the standard by which to judge whether conduct in the organisation is ethical or unethical and if the ethical climate within the organisation is the result of a proper process in which the organisational culture and the value system are institutionalised, this will be possible (see section 3.9.2).

Codes need to be revised to keep up with changes in terms of laws, regulations and policies and should be tested against standards of ethical behaviour. Louw further provides steps relating to ethical codes and include the following:

- To annually review the process and to ensure that the code if part of the organisations strategic and operational process.
- To ensure compliance with existing codes in the organisation.
- To reward whistle blowers for their loyalty and for refraining from being involved in any wrongdoing.
- To reward employees for ethical conduct.
- To perform a moral audit of the organisation, including ongoing appraisals of all internal and external activities and reviews of organisational policies.
- To verify performance levels in terms of the set indicators (which should be incorporated in training programmes).

- To enhance the responsibility of individuals to be self-regulatory to ensure that their performance level is higher than the norm.
- To ensure that organisational values are understood by all employees and that they have the ability to make decisions relating to ethical issues, even if the code of conduct does not provide clear guidelines for specific situations.

King (1999:316) defines an organisational structure as the manner in which tasks and jobs are formally grouped, divided and co-ordinated. The structure consists out of formal reporting relationships within the hierarchy. There are various types of structures within an organisation such as a formal matrix, hybrid, divisional, bureaucracy, simple or horizontal structures. The formal setting includes the informal setting as well. According to Davis (1989:7-8) the informal structure can impact on the formal structure. Whistle blowing gets rid of the silence about organisational wrongdoing. Davis discusses this issue as follows (Davis 1989:7-8):

- "What must the whistle blower have become to blow the whistle": It shows that the whistle blower has lost faith in the formal organisation and is no longer loyal to it.
- "Interpersonal relations have disappeared": The relationship that once existed between the whistle blower and his or her colleagues has been damaged because the whistle blower is seen as a traitor.
- "Whistle blowing is always proof of organisational trouble": Employees do not go outside the prescribed channels unless the channels are inadequate.
- "Whistle blowing is also proof of management failure": The manager above the whistle blower will have heard his complaint, but dealt with it inadequately.
- "Whistle blowing is also bad news for those on whom the whistle is blown": What was once done in the shadows, going unnoticed, has now been uncovered.

- "The whistle blower trusted the organisation before blowing the whistle": The whistle blower no longer trusts the organisation and wants to expose wrongdoing even more.

The informal structure involves the relationship between the whistle blower and the organisation as well as his or her colleagues. According to Brockett (1988:74-75) every organisation is unique where socialisation processes are concerned. Socialisation can be described as the process by which new employees are brought into the culture of the organisation and made to feel at home. Assumptions, attitudes and values are transferred from existing, experienced employees to new employees. The socialisation process is ongoing throughout the employee's career, and it allows a new employee to familiarise him- or herself with the values and norms of the organisation (and existing employees to transfer ethical values).

The disclosure of information may hurt those the information is about, since in essence their loyalty is being questioned. Ideally, the organisation's values – even the value of loyalty itself – are supposed to have been part of the individual, but now it seems that they are not. From a professional perspective, an employee is required to be loyal to his or her chosen profession, and to maintain professional ethics, but most employees are also naturally loyal to the organisation they work for. The organisation's expectation of loyalty has a crucial effect on how it will react in terms of with retaliation; the organisation will find it difficult to trust an employee who is seen as disloyal, and the employee will lose faith in the organisation as well. Loyalty therefore has to do with the development of trust and the factors that involve trust (Alant 2001:7) (see section 3.2.5).

Some characteristics that contribute to the whistle blowing process include reputation, contextual and personality factors. According to Bews (2000:22) these three characteristics relate to trust and on closer inspection it becomes clear that these three features are important in the whistle blower's character as well.

Reputation is the joint knowledge that exists within a society or group culture. It can build a strong and lasting relationship if the reputation is good, or destroy the association if there is a poor reputation. When an organisation has a culture of openness and allows information to be freely accessible to all employees, the individual can come forward and disclose information knowing that in doing so his or her reputation will be enhanced. However, if the disclosure leads to the individual losing his or her position in the organisation, it causes the individual to stop trusting the organisation and to decide not to disclose information again (Bews 2000:22).

Contextual factors refer to the qualities and characteristics of people, keeping in mind that these qualities vary from person to person. It takes time to build a relationship with people in a controlled environment. Certain situations could emphasise a need for closer interaction while other situations require less interaction. Sometimes interaction may only exist on a superficial level, only in order to fulfil certain work requirements (Bews 2000:22).

When dealing with personality factors, five criteria should be taken into consideration: Conscientiousness, emotional stability, agreeableness, extroversion and openness to experience or resourcefulness. The whistle blower has to have a better reputation than the average person, because this will allow him or her to become more involved in important areas of the organisation, since he or she will have more credibility and acceptance in society (Bews 2000:22).

Glazer and Glazer (1999:279) argue that whistle blowers are usually professional people with integrity and close ties to the community and religious activities (see section 3.3). Integrity is a set of moral and ethical principles, which are applied when two or more parties engage with one another. Such principles are applied and must therefore be acceptable to both the trustor and the trustee to reach a fair agreement. According to Bews (2000:23), there will be a higher level of trust between the trustee-trustor when these principles are applied. However, Dandekar (1991:93) argues that a

whistle blower is a member or a former member trusted with privileged information. The role of competency is an important one to engage with when dealing with information. Bews defines competency or ability as he calls it, as competencies, skills and characteristics that enable a person to exert influence within a specific area (Bews 2000:31). This is what happens when a whistle blower blows the whistle – he or she has access to relevant information on for example irregular conduct and decides to disclose it. The reason for disclosure is to alert the public, if the matter is in the interest of the public. This is where trust plays an important role, by giving credibility to the whistle blower as a person (see section 4.3.2).

Dandekar (1991:93) argues for a more focused view of trust in the organisation, because it allows for more transparency within the organisation. A person might recognise irregularities in the organisation and try to find a way to correct them. According to Bews (2000:19), trust is a very important aspect of the human condition, but it is not something that exists automatically; it must be nurtured if it is to become a vital source of relationship building. Therefore trust can be defined as a "… voluntary action of one party, flowing from evaluation, based on the social skills of that party, concerning the potential of another, or others, not to take advantage of the vulnerability of the first party" (see section 3.2.6).

The vulnerability of the party in question is safeguarded if there is a level of openness between the parties. If the whistle blower has trust in the organisation he or she will feel comfortable that the information can flow freely without any interruptions and without fear of retaliation. A relationship that involves only a certain level of trust may not sustain a good relationship. When someone provides someone else with information, it presupposes a deeper level of trust between them, and this can be improved. Withholding information, on the other hand, could have a negative impact on the relationship, since the issue of integrity is then at stake as well. The whistle blower must ensure that he or she does not overstep the demarcated line in the relationship between him or her and the organisation, but must also not allow the organisation to infringe upon his or her freedom.

Geertz (1973:55) argues that one has to distinguish between organisational culture as a model *of* the world (a set of ideas and assumptions that provide explanations about the complicated world employees function in) and a model *for* the world (which teaches ethical behaviour).

Many times when there is no openness within a relationship, trust breaks down. This is because the trustor did not feel confident enough to confide in the trustee to begin with. When trust relations break down it creates a negative environment for both the trustor and the trustee. The loyal person working within the organisation no longer confides in the organisation, while the organisation does not know whether the individual will continue to be trustworthy.

There are many conflicting views of organisational whistle blowing. One of these is that the organisation often sees whistle blowing as illegitimate, since the exposure of organisational wrongdoing is perceived to be threatening to the overall position of the organisation. Some justify the harsh treatment of whistle blowers by referring to them as unbalanced, disloyal employees and even as rats. As Peterson and Farrell (1986:7) observe: "Just because they pass a right to rat law, it doesn't make ratting any less obnoxious". Peter Drucker (1981:33) states the following: "Under 'whistle blowing', under the regime of the 'informer', no mutual trust, no interdependencies, and no ethics are possible". Another, more positive view is that the act of whistle blowing is legitimate and even necessary; this view sees whistle blowers as courageous citizens, protectors of the interest of the public and upholders of professional standards. Ralph Nader in Peterson and Farrell (1986:7) disagrees with Drucker, and feels that employees should have the right to disclose wrongdoing publicly, provided all internal mechanisms have been exhausted. Thus, whistle blowing becomes a authoritative lever for organisational responsibility and accountability.

The Markula Centre for Applied Ethics (Ravishankar) suggests guidelines to encourage internal whistle blowing in an organisation by establishing an

organisational culture that is conducive to whistle blowing (http://www.scu.edu/ethics/publications/submitted/whistleblowing.html):

- Create a policy about reporting illegal or unethical practices that should include formal mechanisms for reporting wrongdoing, such as hotlines. The communication channels for raising concerns must be open and it should be clearly communicated that it is not acceptable to victimise a whistle blower. Furthermore, there should be a clear connection between performance measures and the code of conduct in the organisation.

- Top management should endorse the process of whistle blowing by showing a strong commitment to it, and encouraging it. Line managers must communicate this approach and be continuously trained in creating an open door policy to facilitate employee complaints.

- The commitment of the organisation must be publicised so that employees hear about the policy and about ethical behaviour regularly. If management acts on alleged wrongdoing in a positive manner, employees will realise that the organisation is serious about unethical conduct.

- All allegations should be investigated and reported on promptly.

- The organisation's internal whistle blowing system should be evaluated continuously to establish the opinions of employees. Questions such as the following may be asked: Do you believe that you will be protected if you disclose wrongdoing? Do you know how and to whom to report wrongdoing?

Whistle blowing can be prevented by encouraging it internally (see section 4.4.1.2). Once the whistle is blown externally to for example the media, it can be detrimental to both the whistle blower and the organisation. The objectives of an internal whistle blowing program include the following (http://www.scu.edu/ethics/publications/submitted/whistle blowing.html):

- Employees are aware of the internal mechanisms available to them to disclose alleged wrongdoing and that action will be taken immediately to resolve the problem.
- The internal whistle blowing program will reflect to employees that the organisation is serious about adherence to the code of conduct.
- The exposure of the organisation should be kept to the minimum to try and limit the damage that can be done when an employee discloses wrongdoing externally.

Barriers to a successful internal whistle blowing program include the following (http://www.scu.edu/ethics/publications/submitted/whistle blowing.html):

- misguided solidarity on the part of unions;
- fear of reprisal;
- fear of alienation from peers;
- lack of trust in the internal organisational system;
- unwillingness of employees to become so-called snitches; and the
- belief that management does not apply the same standards to everyone.

Organisations should seek to remove barriers, but it should also be remembered that not all whistle blowers have honourable intentions and that there are some who do not blow the whistle in good faith. As already stated trust in the organisation plays an important role in the decision to disclose wrongdoing and will be the focus of the next section of this thesis.

5.4 Organisational trust

If the trustor trusts that he or she will be treated fairly and will be protected by the trustee, and then organisational trust may be defined as the expectation of the trustor that he or she will be treated fairly and will be protected by the organisation (the trustee). In contrast to this, Gillis (2003:10) defines organisational trust as: "The organisation's willingness, based upon its culture

and communication behaviours in relationships and transactions, to be appropriately vulnerable, based on the belief that another individual, group or organisation is competent, open and honest, concerned, reliable and identifies with common goals, norms and values".

The problem with the above definition is that it considers the organisation to be the trustor. Although there are circumstances where this definition will be relevant, (for example inter-organisational trust), in this thesis, the organisation is considered to be the trustee and therefore a opposing emphasis is placed on the definition. However, the value of Gillis's (2003:10) definition is that it put emphasis on a number of important factors that are critical to trust in an organisational context (Binikos 2006:45).

Firstly, organisational trust occurs in a specific social context (organisation) that is conducive to an environment in which organisational trust can develop. This environment is related to the culture of the organisation, its specific communication systems and structures, the way in which relationships and hierarchies are built and preserved, and the means by which tasks are achieved. These elements make up the social environment of the organisation and will influence the nature of trust that develops (Binikos 2006:45). As Claybrook (2004:7) states that organisations have certain reputations to uphold and develop processes, routines and culture which aim to unite the employees and guide their behaviour and responses towards external contacts. This has an influence on the experiences and perceptions of trust at the different interaction levels found in an organisation.

Secondly, the definition of organisational trust must make provision for the trustor to readily place him- or herself in a vulnerable position. This willingness to put oneself in a vulnerable position is based on certain beliefs and criteria that are generated through interactions with the organisation and involves judgement based on an evaluation of risk. An evaluation of risk in the case of organisational trust is based on characteristics in the organisation that promote the organisation's level of trustworthiness (Binikos 2006:45).

The factors that promote trustworthiness in an organisation include reliability, integrity, honesty, openness and competence, a concern for employees and identification (Paine 2003:5; Gillis 2003:2; Claybrook 2004:4 and Binikos 2006:45). Competence refers to an organisation's effectiveness in competing and surviving in the marketplace and also relates to the efficiency of co-workers and managers (Binikos 2006:45).

In the case of whistle blowing, competence may relate to how effectively the complaint recipients deal with the wrongdoing. According to Gillis (2003:2), effectiveness implies capabilities such as clear thinking and reasoning skills, intellectual abilities, effective communication skills, crisis management, decision-making and problem solving skills. Integrity involves the belief that the organisation is just and fair. In this sense, it involves perceptions around the treatment of employees, and the manner in which procedures and processes deliver fair practice and solutions for employees which is particularly relevant to whistle blowing (Binikos 2006:46). Consistency is found when an organisation's actions are consistent and dependable and that organisation will address issued disclosed through whistle blowing (Paine 2003:5 and Gillis 2003:2). The organisation can therefore be relied upon for support or assistance. In whistle blowing this belief includes the notion that the organisation will value the report and will respond transparently and in due time to the matter. Openness and honesty refers to "the amount, accuracy, and sincerity of information shared" (Paine 2003:5 and Gillis 2003:2). However, openness and honesty may be absent if whistle blowing is perceived as threatening to the organisation and its managers. A concern for employees includes "feelings of caring, empathy, tolerance and safety that are exhibited when we [employees] are vulnerable in business activities" (Paine 2003:5 and Binikos 2006:46). This would involve protecting the employee from all occupational detriment (see section 2.3.3). Finally, Paine (2003:5) states that identification refers to the extent to which managers and co-workers feel connected to the organisational culture, in other words, the extent to which all employees believe in the common values, goals and morals included in the culture of the organisation. Thus any definition of organisational wrongdoing must include the fact that the goals of the trustor

and those of the organisation should be compatible. Trust within the organisation can take on a variety of types.

5.4.1 A model for the development of organisational trust

According to De Vries (2004:4) Lewicki and Bunker (1996) developed a three stage model for the development of trust relations that are typically found within organisations: calculus-based trust, knowledge-based trust and identification- based trust.

Calculus-based trust rests on a calculation of the benefits or rewards for preserving trust, or the avoidance of punishment or detriment as a result of the violation of trust (Lewicki and Bunker 1996:44). This stage of trust is based on the believe that people do what they say they will do. Lewicki and Bunker (1996:120) state "… trust is an ongoing, market-oriented, economic calculation whose value is derived by determining the outcomes resulting from creating and sustaining the relationship relative to the costs of maintaining or severing it". Their opinion is that the prevention-seeking elements are stronger motivators than the benefit-seeking elements of the relationship. Trust at this stage is most sensitive, as it occurs at an early stage of the relationship where there is little prior knowledge of behaviour (as reference) on both sides should the relationship become threatening. Due to this fact, one would be less willing to pursue the risks of engagement. Calculus-based trust is the first stage in the development of trust, and is quite partial and fragile (Binikos 2006:47). It always precedes knowledge-based trust.

Knowledge-based trust is based on an established relationship that has grown out of calculus-based trust, and as a result, a considerable amount of knowledge is available to both parties regarding the relationship and the trustworthiness of either party. It is therefore based on the knowledge and predictability about the intentions and actions of others (De Vries 2004:4). The knowledge gained from the relationship contributes to predictability of behaviour, and decisions to continue with the relationship are based on information rather than calculated decisions of prevention. In addition, trust is

enhanced when behaviour is predictable. Knowledge-based trust requires ongoing communication for relationship building, and an understanding of the multi-dimensional elements of trust – which in turn illustrates when trust is likely to be violated or enhanced (Binikos 2006:47). Knowledge-based trust is fundamentally different from calculus-based trust, although it comes from calculus-based trust.

Binikos (2006:47) states that identification-based trust is trust is based on identification with another person's desires and intentions. Both parties appreciate each other's wants, and this result in a common understanding between them. Trust at this level is strong enough to allow one party to represent another party in its absence. It also helps the parties understand what is required to sustain the other's trust. According to Lewicki and Bunker (1996:123), "… increased identification enables one to 'think like' the other, 'feel like' the other, and 'respond like' the other". In organisations, this often results in co-operative behaviour as opposed to self-interested behaviour. The issue of identity is important within identification-based trust. The group identity may be incorporated into the individual's own identity; and as the group identity grows stronger, so does co-operative behaviour, resulting in a strengthening of trust through an enhanced identification of the needs being met in the relationship (Binikos 2006:47).

Sztompka (1999:32) made a similar four-stage distinction by distinguishing between the levels of risk (see section 3.2.6). First-degree risk is when other people behave poorly towards others. Second-degree risk refers to the inability of people to act in the interest of others and is therefore not trustworthy. Third-degree risk is when an individual is aware of the trust that for example subordinates put in him or her, but lack the moral obligation to meet it. Fourth-degree risk can be applied to situations in which discretion is given to others that can affect the interest of the individual and the risk lies in the assumption that those others will abuse the power of discretion. It should be kept in mind that public officials should always act in the interest of the public. Organisational trust, like organisational culture, develops over a period of time.

5.4.2 Development of organisational trust

Trust is a dynamic phenomenon and develops over a period of time through a succession of stages. The development of organisational trust may be explained as follows (Binikos 2006:48-50):

- The development of trust can be seen as chronological and moves from calculus-based trust to knowledge-based trust, and then to identification-based trust. The development process is one that develops and changes. However, not all relationships of trust reach maturity, for a variety of reasons, depending on the relationships among the forces impacting on them.

- There is significant overlap between the stages of development. Each stage gives rise to the next through action typical of its nature. Calculus-based trust is driven by assembling knowledge to make a decision as to how to act: This knowledge lays the foundation for knowledge-based trust. In knowledge-based trust, individuals continuously strive to learn more about the other. As these learning increases, so does the identification with the other party. When identification becomes the basis of the relationship, the transition to identification-based trust has been made.

- The change from one stage to the next is characterised by a paradigm shift. For example the change from knowledge-based trust to identification-based trust is located in a shift "from extending one's knowledge about the other to a more personal identification with the other" (Lewicki and Bunker 1996:125).

- The development of trust may be facilitated by interface between individuals and the factors of trustworthiness. Bews (1999:26) includes competency, openness, personality factors, integrity and a history of interactions as factors of trustworthiness.

- The decision to trust is also influenced by the contextual climate of the environment, which will influence the identification of risk, and will often take into considering the reputation of the trustee.

- Trust is not a linear process. If the relationship is damaged, trust is likely to decline. Trust may advance through a process, but it may also devolve.

Understanding how trust develops helps one understand how relationships in an organisation develop and how they break down. The factors of trustworthiness show which characteristics of the organisation will promote trustworthiness, and are useful in understanding how trust may affect whistle blowing behaviour. However, in all the literature, very little mention was made of trust in whistle blowing contexts, and how organisational trust, and its development or breakdown, may affect or be affected by whistle blowing.

5.4.3 Development and decline of trust in whistle blowing

Not much has been recorded in the literature on the relationship between organisational trust and whistle blowing. Therefore, when considering the role of trust in whistle blowing, insight gained through the literature needed to be applied in order to try and understand how the two may be linked. This would suggest that there is a gap in the literature.

The literature review revealed that whistle blowing is an action, or series of actions, taken to correct organisational wrongdoing by reporting it to a person, a group of persons or an identified regulatory body who can rectify the wrongdoing. When the act of whistle blowing is received negatively, it may break down relationships, resulting in a destructive cycle of conflict, based on the arguable interactions that develop between the whistle blower and the organisation to prove either that the wrongdoing has occurred or that the whistle blower has acted disobediently. As the contentious relations continue, the whistle blower and the organisation become opponents, and the relations between them deteriorate. As long as the adversarial relations continue to deteriorate, the conflict between the whistle blower and the organisation becomes more debatable and destructive. At the same time, the relations escalate the conflict, as the whistle blower seeks alternative complaint recipients such as external regulatory bodies or the media, and the

organisation in turn increases the severity of its responses (Binikos 2006:50 and Near and Miceli 1996:508).

Thus the conflict between the whistle blower and organisation escalates as it increases in the scope of the disagreement, the participation of external members, and the severity of responses. In other words, as the conflict intensifies, it does so in a destructive manner.

The literature also shows that trust builds, or declines, through a number of interactions. At the lowest level of interaction, where there is no prior knowledge of the trustee, trust becomes a calculated risk and is a gamble for the trustor. However, interactions where treatment is found to be fair the trustor builds an expectation that no harm will come to him or her. This creates a situation that helps enhance trust, since the gamble is reduced and there is a more solid base from which more calculations of trust may be formed. As the interactions continue to grow, trust becomes a point of identification, and may even become a natural reaction when a party makes a decision. Thus, if organisational responses to whistle blowers display elements of unfair treatment or make them fear some kind of career or emotional harm, the relations are probable to break or devolve into distrust. As the relations break down, an assessment will have to be made of effect the relations will have on the whistle blower's choices in terms of his or her options to rectify the situation (Binikos 2006:50).

5.4.4 Delicate role of trust in internal whistle blowing

The relationship of trust between the supervisor and his or her subordinate needs to be examined (King 1999:317). In a strong relationship of trust, the employee will report the wrongdoing to his or her supervisor (internal reporting). King (1999:324) emphasises this as a structural issue that will remove impediments to upward reporting. However, this implies that the supervisor will act on the issue. In this regard organisational structure is very important in allowing for internal whistle blowing to take place, starting at the supervisor-subordinate relationship ... not only should there be a relationship

of trust between the supervisor and subordinate, but the employee should also be able to trust the structure of the organisation. Similarly, Uys (2000b:260) and King (1999:324) emphasises that the relationship between supervisor-subordinate will promote internal whistle blowing if the supervisor's word can be trusted. This relates to whether employees are given an assurance that they will not be victimised if they use the correct channels to disclose irregular or criminal behaviour. The organisation should be restructured to facilitate the reception of disclosures, and the communication channels of the organisation should be opened (Uys 2000b:266 and King 1999:324).

Based on what is now known about organisational trust, it can be assumed that it would reduce the possibility of employee silence and enhance the likelihood of internal whistle blowing. If the definition of organisational trust as a future expectancy of fairness and no harm is true, one could expect that where there is organisational trust, a whistle blower would not be afraid to disclose wrongdoing internally. If there is trust, it implies that the organisation is competent, is fair, has integrity, and is open, honest, reliable and true to its word (Binikos 2006:52).

Furthermore, such an organisation will be concerned about the well-being of its employees it will act to protect them. If this is the case, and whistle blowing is effectively dealt with, the responses of the organisation should increase trust. If the organisation responds positively, there is much more at stake than whistle blowing, since such a response could also deepen the level of trust between the parties, possibly moving on from calculus-based trust to knowledge-based trust over a shorter period of time in young relationships. In other words, the response itself could in turn strengthen trust relationships, and this subsequently benefits both the organisation and the whistle blower. Trust implies that the organisation will not retaliate and that it will protect the individual from retaliation; an upward and constructive spiral of reporting would therefore be likely to develop (Binikos 2006:52).

Binikos (2006:52) states that the converse could apply, in two ways: Firstly, the literature review shows that an organisation may be unresponsive. That may be perceived as a lack of competence, and in some cases as dishonesty and a lack of integrity. The whistle blower would therefore have no certainty that he or she would be treated fairly and would not be harmed.

According to the definition, trust will probably not develop, or it will be eroded and will continue to erode as the organisational responses increase in severity. The whistle blower will then reconsider his or her options, and alternatives will be raised, such as to remain silent or discuss the wrongdoing with colleagues (Binikos 2006:52).

Secondly, if internal reporting has occurred and the response has been retaliatory and harsh, it will most likely result in the diminishment of trust. If the whistle blower has reason to expect unfair treatment or harm, alternatives to internal whistle blowing will again come to the fore. The literature suggests that in such a case external reporting is most likely to occur. The research question *"to what extent does organisational trust versus fear of retaliation affect the decision to blow the whistle?"* (see section 1.6) is applicable. It may be suggested that the development of trust is important in terms of the whistle blower's decision of whether to report or to remain silent. When he or she decides to report, the choice between reporting internally or externally will be affected by how the whistle blower experiences and perceives the responses of the organisation. Thus, the existence of trust in a best case scenario where no retaliation is experienced could result in a constructive escalation of the wrongdoing. If there is distrust, the whistle blower will either not report or report externally … causing a destructive escalation of conflict (Binikos 2006:53).

It is important to note that the effect of organisational trust on whistle blowing may be contradictory. Firstly, an individual who is aware of his or her position of trust, may abuse this trust while making decisions, based on the knowledge that they are too trusted to be questioned about their activities (Husted 1998:233 in Binikos 2006:53). However, where this scenario applies to the

wrongdoer it will obviously not be relevant in the discussion of how intra-organisational trust may promote internal reporting over external reporting. Secondly, a very high level of trust may lead to disbelief that an organisation could behave in such an offensive way, so that potential whistle blowers, or complaint recipients, may close their eyes to the wrongdoing, or the superior may disbelieve the whistle blower, based on the belief that the organisation would not allow such harm to take place. This means that if there is too much trust, it could also result in non-reporting (Binikos 2006:53).

Trust may be viewed as instrumental in influencing decision-making behaviour especially in times of whistle blowing where risk, uncertainty and unpredictability are present. However, the relationship between trust and whistle blowing seems to be largely unexplored in the literature.

What needs to be examined then is how trust may affect the whistle blower's decision-making. If trust exists, will potential whistle blowers take the risk and blow the whistle? If so, would they blow the whistle internally, since they expect fair treatment or even rewards for the actions? On the other hand, if there is a lack of trust, will the risk of reporting be too immense resulting in employee silence? Alternatively, if there is a lack of trust, will that drive the whistle blower to external reporting instead if it is perceived that the external means are the only means of receiving fair treatment and no harm from the whistle blowing (Binikos 2006:54).

5.4.5 Managing the relationship of organisational trust and internal whistle blowing

This section of the chapter refers to the management of whistle blowing through the relationship of organisational trust and internal whistle blowing, and also the choice to keep quiet. The *"… factors constituting organisational trust"* need to be managed properly to ensure that *"… whistle blowing as constructive correctional action be increased through the internal reporting of wrongdoing."* (see section 1.6). To understand this important relationship in an organisational setting one could look at implications for practice provided by

Miceli and Near (1992:283), who identified three ways that implications for practice may be perceived. These are implications for the organisation, implications for the whistle blower, and implications for organisations not employing the whistle blower. Ultimately, these are all important implications for the facilitation of prosocial behaviour.

5.4.5.1 Implications for the organisation

According to Miceli and Near (1992:283), organisations should "adopt actions in support of strategies to create positive climates ... to prevent wrongdoing (proactive) or respond effectively when wrongdoing and whistle blowing occur (reactive)". Proactive and reactive strategies may contain actions that are strategic and involve structure and communication. The value of these actions is that they create positive climates for correcting or preventing wrongdoing. The relationship between organisational trust and whistle blowing may be seen as instrumental in this mix, and it is proposed that the actions undertaken should have the additional goal of creating a culture of trust.

Organisational trust may impact on how effectively the organisation manages to deal with crime and corruption and avoid negative consequences of whistle blowing. Actions and strategies regarding whistle blowing, whether proactive or reactive, may be beneficial to the development of organisational trust, which in turn may further influence the form of whistle blowing and whether an individual will keep quiet or not. These strategies may be used to enhance trust as well as internal whistle blowing as prosocial behaviour. To the extent that organisational trust may promote internal whistle blowing, or keeping quiet, it becomes a workplace control in the management of organisational wrongdoing. Internal whistle blowing would be a positive workplace control as it would encourage internal reporting (provided that the other conditions for the other facilitators of whistle blowing are met). If this is managed correctly, it could be constructive and rewarding for all. Where organisational trust is low, other whistle blowing options may be pursued, or an individual may remain quiet. Keeping quiet is negative for the organisation in that it influences a person to not disclose. This is an unintended, unanticipated disadvantage in

terms of the lack of organisational trust, which will exert an influence, thus causing the situation to result in a scenario in which syndicates or individuals prone to misconduct take advantage. It may also mean that situations of peer reporting are less likely, as group norms and values, or the role responsibilities of members of groups that are generally corrupt, will result in a greater likelihood of individuals deciding to keep quiet (Binikos 2006:106-107).

5.4.5.2 Implications for the whistle blower

With organisational trust will come organisational concern, integrity, fairness, identification, competencies, honesty and openness, all of which will be of benefit to the whistle blower in cases where reporting is needed. The whistle blower will feel that the act of whistle blowing will be more acceptable and will in fact be encouraged, and that the outcome (avoiding further wrongdoing from occurring or correcting wrongdoing) is more achievable (Binikos 2006:107).

Miceli and Near (1992:284) advise whistle blowers to network along their career paths in order to have a safety net, should it be required. This may help create employment environments in which a high level of trust is valued and instilled, making it easier for the individual to blow the whistle more effectively, and also to avoid reprisal afterwards. Even so, internal whistle blowing could still go awry, even in high trust environments; it is always hard to foresee the consequences of whistle blowing, especially in a new working environment.

5.4.5.3 Implications for organisations not employing the whistle blower

Miceli and Near (1992:287) state that organisations not employing the whistle blower (e.g. the Public Protector and the Public Service Commission) have a role to play in supporting whistle blowers. Such organisations could positively promote whistle blowing, create open dialogue, or offer financial support to whistle blowers. The implications are that in the broader social context within which the organisation experiencing whistle blowing exists, there would be

more pressure on the organisation to deal with and support whistle blowers. In other words, organisations not employing the whistle blower have a role to play in creating high trust social cultures, supportive of whistle blowers and organisations that respond constructively to whistle blowing. In turn, this would exert pressure for organisations to create effective whistle blowing polices. The implications for both the whistle blower and the organisations employing or not employing the whistle blower, illustrate that internal whistle blowing facilitated by organisational trust is socially beneficial at both micro and macro levels and is therefore prosocial behaviour. However, the consideration of external whistle blowing also needs to be discussed in terms of prosocial behaviour (Binikos 2006:108).

Whistle blowing (both internal and external) is said to be prosocial behaviour, although it is often not perceived as such (see section 4.2). This is because given recent experiences whistle blowing has resulted in high costs for the whistle blower, the organisation and often society as well – depending on the nature and seriousness of the wrongdoing (Miceli and Near 1992:40). However, what this thesis shows is that internal whistle blowing is the preferred form of whistle blowing, as it offers several positive, constructive opportunities to control and/or rectify the situation.

External whistle blowing, on the other hand, brings few advantages, even though theoretically it could also have positive results (if it successfully averted wrongdoing without causing any harm to either the whistle blower or the organisation). Truth is, external whistle blowing is also a form of prosocial behaviour (see section 4.2), but in reality its success is questionable, since the results of external whistle blowing suggest that it is a reporting option to be avoided and discouraged in favour of internal whistle blowing, as opposed to any other form of action (such as non-reporting or media reporting) (Miceli and Near 1992:40).

However, this is not to say that external whistle blowing cannot achieve positive results.

It is only that in most cases of external whistle blowing positive results are unusual and simply harder to achieve. Internal whistle blowing is a stronger form of prosocial behaviour, and should be encouraged. As organisational trust may now be seen as an integral part of encouraging internal whistle blowing, developing trust should be a priority of every organisation. It is very clear that internal whistle blowing has many more and greater advantages than its external counterpart (Miceli and Near 1992:41).

The finding that trust is an important facilitator of internal whistle blowing (but unfortunately also of the possibility of the individual deciding to keep quiet) highlights how important trust is in the modern organisation. A relationship of trust is good for co-operation. It also helps employees to trust the organisation and believe in the competence of their leaders, and it creates a culture of greater loyalty. Trust may offer additional benefits in terms of the eradication of organisational wrongdoing. Wrongdoing is more likely to be reported earlier, so that the long-term effects of wrongdoing may be averted sooner. Again, this may benefit the whistle blower, who may be rewarded for protecting and contributing to the organisation – and in some cases also to society (Binikos 2006:108). The disclosure of wrongdoings takes place within an organisational context and it is imperative that these disclosures are dealt with effectively.

5.5   Dealing with whistle blowing in the organisation

Organisations should have the opportunity to deal with allegations of wrongdoing in order to establish if it is in fact wrongdoing. Organisations should be informed timeously if they are to be able to act proactively, and should have a whistle blowing process in place to facilitate such proactive action.

The whistle blowing process should include the following (Barker and Dawood 2004:130):

- appropriate, accessible channels within the organisation to report wrongdoing; and
- alternative channels if there is any possibility that management may be implicated in the alleged wrongdoing.

The individual could also choose a third option, namely to keep quiet. This could be because the person realises that the information is incorrect, that he or she was mistaken, or that there was in fact an innocent explanation for the action. In order to successfully implement a whistle blowing strategy, the organisational culture needs to be changed from external restrictions to stricter internal control, including preventative management practices to curb deviant conduct (Barker and Dawood 2004:130).

It is important to create an organisational culture that encourages whistle blowing so that corruption and any perceived wrongdoing can be exposed. Whistle blowers need to be seen as witnesses rather than as complainants. An effective organisational culture of whistle blowing will have channels of communication in place for complaints and grievances to be aired (Dehn and Borrie 2001:4). In order to create an organisational culture that encourages protected disclosures, necessary policies must be in place.

5.5.1 Policy

Although legislative measures protect the whistle blower and an ethical code of conduct provides guidelines, it important that the organisation set up a policy for whistle blowing. The disclosure of wrongdoing, thus whistle blowing should be perceived as positive in the organisation. A whistle blowing policy should focus on the following (Barker and Dawood 2004:129):

- A disclosure made by the whistle blower must be in the public interest and in good faith.
- The whistle blower should not be guided by personal gain.
- A manual should be available on the policy and the procedures pertaining to the process of whistle blowing.
- It should be clear that malpractice will not be tolerated.
- There must be examples of what counts as malpractice.
- The confidentiality of the employee raising the concern should be respected.
- Systems that can be responsive and supportive to the whistle blowing process need to be devised and implemented.
- Whistle blowing can be viewed as appropriate if it involves the disclosure of illegal or unethical actions in the organisation.
- In order to educate employees on their right to disclose alleged wrongdoing, regular workshops should be conducted.
- Employees need to know of all the possible whistle blowing avenues available to them.
- Alternative channels, separate from line management, should be made available.
- All internal avenues should be exhausted before the matter is taken up by the hierarchy of the organisation.
- Strict internal disciplinary procedures need to be implemented once there is evidence of wrongdoing.
- A dedicated senior public official should be appointed to deal with the concerns of employees and to provide protection to whistle blowers.
- Employees must know about the proper procedure in terms of external disclosures (in case they need them).
- Access to other external bodies, e.g. a professional body, should also be allowed.
- Employees of key subcontractors should also have access to the whistle blowing policy.
- The alleged unethical or illegal conduct must be perceived to be able to cause death, ill health or injury.

- The whistle blower needs to receive feedback.
- Abuse of the scheme must be avoided at all costs.

From the above it is clear that a whistle blowing policy, based on the prescriptions of the PDA must exist within an organisation (see chapter 2). It is imperative that *"… whistle blowing policies that will not cause any harm to the whistle blower must be managed effectively and efficiently and be encouraged in public organisations in order to address the concern about personal and professional retaliation."* (see section 1.6). This policy need to be communicated to all employees so that they can be aware of the channels (internal and external) available to them that can be utilised to blow the whistle. It would be advisable to appoint a senior public official that can handle the disclosures. Employees should also know that the disclosure should be made in good faith and should refer to illegal, criminal or any other irregular conduct. Once a disclosure has been made, the matter should be investigated and the whistle blower should also receive feedback.

The King Report on Corporate Governance recommends compliance with the PDA and also the establishment of easily accessible safe reporting channels. (Dehn 2007:s.a) proposes a Nine Point Plan that can aid in the development of an effective whistle blowing process:

(a) It should be made clear to employees that it is safe and acceptable to raise concerns about wrongdoing.
(b) There should be consultation, to determine procedures and rules for reporting concerns.
(c) Feedback should be provided within agreed upon time-frames.
(d) Confidentiality clauses in employment contracts should be checked.
(e) A senior public official in the organisation must be identified to whom disclosures can be made.
(f) Success stories should be publicised.
(g) Managers need to know how to act when a concern is raised and need to understand that employees have a right to blow the whistle.

(h) Organisations that are knowledgeable on the Act can provide assistance if needed.

(i) A whistle blowing policy must be introduced and promoted.

Protected disclosures must become part of the organisational culture. For this to become a reality, employees need to know that they will be protected from occupational detriment and retaliation if they disclose wrongdoing through the appropriate channels. Managers should also know how to act when wrongdoing is disclosed. It is imperative that a whistle blowing policy be implemented.

The South African Public Service Commission has created a guide for public sector managers to promote accountability, implementing the PDA. This document contains certain suggestions on how to put a whistle blowing policy in place. It should be remembered that a policy of such a nature should be viewed as a way of complying with legislation, a mere aid to creating an environment where employees understand their responsibilities and management demonstrates its accountability. The policy must be actively implemented and employees must be aware of all the protected disclosure avenues available to them. Section 3 of the guide by the Public Service Commission lists ten points to consider when putting a whistle blowing policy in place (Public Service Commission S.a:14):

- Consensus-based policy includes a consultative process where both managers and workers should understand that it is acceptable for them to make a disclosure and that they will be protected.

- Procedures and rules for reporting alleged wrongdoing must be in place and if not, a consultative process should be used to establish such rules and procedures. It should be noted that if employees feel that they may be victimised, they might make a general disclosure to the broader public.

- If allegations are made, they should be responded to within a reasonable time-frame.

- In cases where a protected disclosure is made, care should be taken that the disclosurer is not victimised by any other person under the managers' control. This could mean that the identity of the whistle blower should stay confidential.

- Confidentiality clauses of the employment contract must be checked.

- It is advisable to appoint a senior public official in the organisation to whom disclosures can be made. This individual should have the necessary authority to deal with the issue at hand if the line manager is unable to do so.

- Success stories should be publicised.

- Managers need to understand that employees have the right to make disclosures and should know how to deal with such disclosures.

- If there is a need for it, an independent advice centre can be used to provide training to help employees understand and utilise the legislation.

- A policy on whistle blowing should be introduced and promoted.

Section 3 of the guide also provides the following in terms of the establishment of a whistle blowing policy (Public Service Commission S.a:15-16):

- In order to *understand the issue* it is advisable to involve all employees to promote, display and ensure good practice. Wrongdoing should be explained to the employees as well as the effects and forms of serious wrongdoing. Employees' views on what is perceived as right and wrong should also be considered.

- For *employees to see the policy in action* it is necessary for them to know what actions are unacceptable and to feel free to ask management beforehand rather than afterwards whether certain actions would be appropriate. Serious wrongdoing should be dealt with in a firm manner.

- *Openness to concerns* should be taken seriously as it is not easy to report a concern, especially if it is about perceived corruption.

Managers should be open to such concerns before they turn into grievances, and should act upon such concerns. If an employee requests confidentiality, it should be respected, and employees need to know that they will be safe from reprisals. Employees should know that there are other routes besides line management available to them, such as a Director-General, the Public Service Commission, the office of the Auditor-General, the office of the Public Protector, the Institute for Security Studies and the Open Democracy Advice Centre. Employees should know that they can contact such a person in confidence.

- In *dealing with concerns* it should be kept in mind that there are two sides to a story and that all allegations must be thoroughly investigated. If employees have concerns about their own careers and safety, this should be respected. Deterring and victimising employees for making a disclosure is a disciplinary offence. The whistle blower process is a serious matter, and abusing the system to make unfounded allegations with malicious intent would be a disciplinary matter. The disclosurer should be given feedback about the results of the investigation and any steps that might be taken.

It is imperative that employees know what wrongdoing entails and employees should be encouraged to share their opinions on what for example ethical behaviour would entail. Prevention is better than cure, therefore employees should have opportunities to share concerns with managers before the concern becomes a grievance. Apart from the internal channels available to disclose wrongdoing, employees should be made aware that they can also make disclosures to for example the Open Democracy Advice Centre and the Public Protector. All allegations should be investigated and whistle blowers should not be exposed to occupational detriment. It is essential that a whistle blowing strategy is in place to ensure a positive organisational image.

5.5.2 A whistle blowing strategy to ensure a positive organisational image

Whistle blowing might be perceived as a deficiency in the organisational system that should be provided for in an accountable manner. Organisations should have a communication strategy in place to deal with whistle blowing in an effective and proactive manner, informing all stakeholders about whistle blowing (options, procedures, possible consequences, and possible responses).

In order for internal whistle blowing to be effective, an internal system should exist within the organisation. This system should include the following (Barker and Dawood 2004:133-134):

- access to independent advice, for example the Open Democracy Advice Centre;
- proper channels of communication to document and address wrongdoing in the organisation;
- a clear statement that unprofessional conduct is taken seriously and an indication of what is perceived as unprofessional conduct;
- penalties for making false allegations of wrongdoing;
- a verifiable whistle blowing procedure;
- an internal committee to facilitate the whistle blowing process and to take account of good practice, or establish an anonymous hotline;
- guidelines to employees on raising concerns outside of the organisation if necessary;
- the use of itinerant organisational lawyers as a channel of communication;
- respect for the confidentiality of the disclosurer if the disclosure is made outside the line management structure to other parties, or providing alternate avenues; and
- management's commitment to the process of whistle blowing and to supporting whistle blowers.

An internal whistle blowing strategy will help to prevent employees from blowing the whistle externally. External disclosures are better avoided, since they could raise ethical as well as legal issues in terms of confidentiality and might affect the relationships between the organisation, the media and the government. Most importantly, the PDA does not protect employees that blow the whistle outside the organisation. External whistle blowing will only be protected if for example all the internal channels have been exhausted. In addition, external disclosures could involve regulatory issues requiring intervention, and could lead to negative publicity, especially since anonymous disclosures are almost impossible to investigate (Dehn and Borrie 2001:6), especially if the anonymous disclosure was made through a hotline.

5.5.3 Hotlines

To facilitate the anonymous reporting of corruption, especially by members of the public, open telephone lines are often set up by government departments. Such a facility can serve an important purpose by ensuring that any act of corruption, whether observed by a government official or a member of the public, will potentially be dealt with when reported. The need to establish a hotline to facilitate the reporting of corrupt practices in all sectors was acknowledged at the National Summit as a measure to help prevent corruption. It was also decided to promote sectoral and other hotlines to strengthen the national hotline. However, only eight national departments have established such hotlines, and there are no such lines in the Eastern Cape, North West and Free State. This fact was one of the findings of a feasibility study undertaken by the Public Service Commission on establishing a single national anti-corruption hotline (Bahlia 2005:205). The study revealed that the public servants had disparate views of hotlines, and that there were no uniform standards in terms of hotlines. Only the Department of Trade and Industry had a system that could be compared to international best practice. The report was unequivocal that the decision to establish a national hotline should only be taken once there was a firm commitment to the proper resourcing of the hotline (Bahlia 2005:205).

Cabinet approved the principle of establishing a single national public service anti-corruption hotline by April 2004, after expressing its impatience with the lack of progress. The new hotline was intended eventually to replace all other departmental hotlines, to be accessible to the public 24 hours of the day, to cater for all eleven official languages, and to operate primarily to assist members of the public and public officials to report cases of corruption, fraud and other irregularities. It would comprise a call centre, a case management and referral system, relevant investigation departments and agencies, and provisions for maintenance, marketing, monitoring and evaluation. Cabinet also approved the recommendation that the hotline should be housed in the Office of the Public Service Commission.

It soon became apparent, however, that the April 2004 deadline would not be met, and the launch date for the hotline was postponed to September 2004 (OPSC/343/84 in Bahlia 2005:206). The designation of the Public Service Commission as the responsible agency for the management of the hotline was justified in terms of its existing investigative role in the public service and its constitutional independence ... but this could also be problematic. Hotlines are meant to facilitate the reporting of corrupt practices and, more specifically, the use of whistle blowing as a tool. However, the PDA of 2000 makes provision for disclosures to only two constitutional agencies, namely the Public Protector and the Auditor-General. The Minister of Justice has the authority in terms of the Act to add the Public Service Commission to the existing two watchdog agencies, which seems necessary if the Commission is to manage the national hotline effectively (Bahlia 2005:207).

The anti-corruption hotline is mainly intended to report wrongdoing in the public service. It is not clear whether a cross-sectoral national hotline would become available as envisaged during the National Summit. It is also not clear whether such a hotline is needed and whether its centralised implementation might not present insurmountable logistical difficulties. Meanwhile, the private sector has instituted several hotlines mainly for the reporting of incidents of fraud. Promises of a reward for such reporting are often made. The insurance industry has introduced a toll-free hotline and the cost of setting it up was

recovered within the first month it was in operation! Numerous reports were received as large-scale fraud was uncovered by company investigators working in partnership with law enforcement agencies (Bahlia 2005:208).

Public officials raised the issue of rewards when the Public Service Commission conducted its series of provincial workshops on whistle blowing, as more people might be willing to come forward and blow the whistle if there were an incentive. However, the fact that the PDA assumes that an individual's identity will be revealed when a disclosure is made, complicates this issue. The risk of occupational detriment, even though people are promised protection against it, still weighs heavily upon those considering whether to blow the whistle.

A hotline offers anonymity for those reporting corruption, and may be more convenient and less threatening. However, hotlines are not substitutes for effective whistle blowing policies, which should be part of every organisation's culture. In fact, the availability of a hotline may undermine a culture of whistle blowing. Anonymity coupled with financial gain may just become too easy, in contrast with taking the high-risk road of a protected disclosure without any gain.

The National Anti-Corruption Hotline (NACH) was established in September 2004 to promote the perception of visible action by government. The hotline is a 24/7 facility, operates in all eleven official languages, and encourages anonymous complaints about and reports on alleged wrongdoing. The toll-free number is 0800 701 701.

The Public Service Commission (2006:20-21) states that it is not easy to maintain and improve levels of participation and to install confidence in the hotline, but callers are ensured proper investigation, timeous feedback and a speedy response from various departments. Cases of alleged wrongdoing need to be properly dealt with in order to send a clear message to transgressors. Departmental efforts to address these issues were evaluated on the basis of reports on financial misconduct and implementation of the

Public Service Monitoring and Evaluation System (PSMandES), which aims to test professional ethics in departments and whether or not cases of misconduct had been dealt with properly and effectively. Financial misconduct includes any material losses through criminal behaviour and unauthorised, irregular, fruitless or wasteful expenditure. The number of finalised misconduct cases reported was five hundred and thirteen. However, not all departments complied fully with the requirement of disclosure as set out in the Public Financial Management Act 1999 (Act 1 of 1999) and there was a decrease of 11, 8% in the number of reported cases as reported in the 2003/2004 financial year.

Table 5.1: Cases reported to the hotline from 1 September 2004 to 31 December 2005.

BREAKDOWN	CORRUPTION	SERVICE DELIVERY	TOTAL
National Departments	730	343	1073
Public entities and others		10	10
Provinces	658	255	913
PROVINCIAL BREAKDOWN			
KwaZulu-Natal	87	41	128
Free State	59	11	70
Mpumalanga	72	20	92
Western Cape	28	10	38
North West	55	5	60
Eastern Cape	140	65	205
Limpopo	42	19	61
Northern Cape	13	6	19
Gauteng	162	78	240
OVERALL TOTAL	**1388**	**608**	**1996**

Source: Public Service Commission. 2006. *State of the Public Service Report 2006,* p.20. Pretoria: Government Printer.

The abovementioned reporting refers to fraud, bribery, abuse of state-owned vehicles, social grant fraud, fraudulent identity documents, the allocation of Reconstruction and Development Programme (RDP) houses and the mismanagement of funds. On a provincial level, the theft of school funds and hospital assets, maladministration and procurement irregularities were reported. In the national sphere, reports were of identification fraud and corruption in prisons. These trends provide information for the strategic assessment of risk areas and corrupt practices (Public Service Commission 2006: 20).

At a media briefing on 5 December 2006 the Minister of Public Service and Administration (DPSA), Minister Geraldine Fraser-Moleketi, said that by September 2004, three thousand cases has been reported on the hotline and of these, eight hundred had received attention. A further 25% of cases still had to be investigated. Twenty people lost their jobs and seventeen were suspended. The Minister said that there various problems remained in the supply chain process and that the relevant legislation would have to be reviewed to provide for more effective whistle blower protection (SABC News 5 December 2006).

According to Calland (2004:2), hotlines have three disadvantages:

Firstly, a hotline is a false economy. Calland argues that an organisation might feel that it is doing something positive, but in fact it is abrogating its responsibility to change the organisational culture. Organisations should rather focus on creating an internal disclosure system or strategy.

Secondly, hotlines are counter-productive as they tend to provide 'the malevolent' with 'an ideal cloak'. A distinction should be made between confidentiality and anonymity. Anonymity allows for whistle blowing that is not in good faith, where people lie or promote in their own interests.

Finally, hotlines can often lead to expectations that cannot be met. Good faith whistle blowers must have courage to raise the alleged wrongdoing, even through an anonymous hotline. They have an expectation that there will be a proper investigation into the wrongdoing they disclosed. Proper investigation is difficult; however, as the employer does not know the identity of the disclosurer and can therefore not have a face-to-face discussion with him or her. Many times there is no strategy in place to investigate allegations and in such cases; a hotline will be viewed as useless.

According to Calland (2004:2), organisations should rather invest in internal policies and systems such as a whistle blowing policy that is in line with the code of conduct of the organisation. A hotline can be part of the whistle blowing policy, but should not be the sum total of the policy. Prevention is better than cure, and a whistle blowing policy is an integral part of a risk management strategy. Internal policies should also provide guidelines on how organisations should respond to whistle blowing.

5.5.4 The response of the organisation towards whistle blowing

Scholars have referred to organisational response, as though it were an integrated and coherent response to the whistle blower by all members of the organisation (Near and Miceli 1985:13).   Various authors (e.g. Barnett 1992:949 and Ponemon 1994:119) state that an organisation responds to whistle blowing in different ways. Barker and Dawood (2004:134-135) identifies the following organisational responses towards whistle blowing:

- The whistle blower can be secluded from other employees to prevent the flow of information.
- There could be endeavours to co-opt the whistle blower to buy compliance.
- The organisation might challenge the credibility of the whistle blower and thus decrease the amount of attention received from the public.

- The organisation can respond by punishing the whistle blower, as an example to other prospective whistle blowers.
- The organisation can acknowledge the wrongdoing and can reward the whistle blower as a do-gooder.
- The organisation might help to identify who is accountable for what and designate a specific person to receive complaints about and reports on wrongdoing.

Whistle blowers can experience victimisation within the organisation; can be coerced into the illegal or criminal activities or their credibility might come under attack (see section 4.3.2) as seen by some of the identified cases in chapter 4. Whistle blowers might also receive support and their allegations could be investigated. Some co-workers might express support, whereas others avoid the whistle blower because they fear that management will retaliate against anyone associating with him or her (Near and Miceli 1995:682). Other parties to the process include the wrongdoer(s), who sometimes can be identified as specific persons; complaint recipients inside or outside the organisation; the whistle blower's immediate supervisor; and the dominant coalition (Thompson in Near and Miceli 1985:12), identified in many studies as the top management team (Miceli and Hambrick in Near and Miceli 1995:702). Parties outside the organisation – besides the complaint recipient – notably professional colleagues or family members and friends – may also react. The focus here is primarily on the reactions of members of the organisation, for three reasons. Firstly, family members and friends are generally supportive of the whistle blower (Miceli and Near 1992:88). Secondly, members of the organisation may have both substantial reason to react negatively to the complaint and the power to hurt the whistle blower professionally or otherwise. Thirdly, organisational recourse generally would not be available for responses to the reactions of persons outside the organisation (with some exceptions, such as citizens who harass public officials).

5.5.4.1   Process rather than event

Whistle blowing represents an influence process. An organisation member attempts to exert power to change the behaviour of some member(s) of the organisation. Indeed, empirical evidence suggests that whistle blowers considered themselves effective when they thought they had changed management's attitudes – even if they suffered retaliation in the process (Near and Miceli 1995:702).

Although this thesis will not attempt to understand the motives of whistle blowers, it must be noted that an individual may not consciously view the whistle blowing process as an attempt to exert influence. It could be, however, that this is how the organisation, by definition, must experience it. That is, a whistle blower is trying to influence organisations to change their behaviour to terminate the wrongdoing. For this reason, change theories (organisational change and resistance to change) and power theories (external control of organisations, value congruence with managers, power relationships among groups and individuals, and power bases of the whistle blower) seem the most useful in explaining the process. Whistle blowing might be viewed from other perspectives, for example, as a communication incident in which communications among social actors have gone awry (Near and Miceli 1995:703).

5.5.4.2   Appropriateness of whistle blowing

Whistle blowing on certain types of activities is sometimes considered part of an individual's regular job. There may also be a perception that individuals blowing the whistle as part of their job may be more effective than others. Consistent with this view, Trevino and Victor (in Near and Miceli 1995:699) found that, at least in some contexts, peer reporters were evaluated more positively by others when reporting wrongdoing was viewed as part of the reporter's role responsibility. Unfortunately, effectiveness was not examined.

If role-prescribed whistle blowers are more likely to hold power bases of reward and coercive power than whistle blowers without such roles, the former may be expected to be more effective than the latter in creating change. As an example, internal auditors are encouraged to report wrongdoing to regulatory bodies. This is a clear instance of attempting to provide more direct power to role-prescribed whistle blowers, by enhancing their ability to reward the termination of wrongdoing and punish wrongdoers, through authority bestowed upon them directly by the Board of Directors. In such cases, the power stemming from the basis of the ability to reward and coerce would allow the whistle blower to be viewed as someone who would be expected to report wrongdoing (Mbatha 2005:188 and Near and Miceli 1995:699).

Similarly, efforts to legitimate whistle blowing for all employees (e.g. internal whistle blowing as part of a Total Quality Management programme) may have the same effect as creating a role-prescribed whistle blowing status. The organisation's climate with regard to wrongdoing and specifically with regard to whistle blowing (Near and Miceli 1995:699) clearly affects this perception. Victor and Cullen (1988:101) provide a comprehensive typology of ethical climates, defined as the customary perceptions of typical organisation procedures and practices that have ethical content. They found empirical evidence of five types of ethical climates in organisations. It seems reasonable to suggest that members of an organisation with rules for an ethical climate may react differently if whistle blowing appeared to violate these rules than where it did not, or than would members in an independent ethical climate (Victor and Cullen 1988:112). Whistle blowers in an organisation with rules may see whistle blowing as part of their job if it were so specified, rather than a violation of evident norms. If the climate supports whistle blowing, members would be more likely to report wrongdoing and would be considered as more believable in so doing, thereby resulting in greater effectiveness (Near and Miceli 1995:700).

However, there is also reason to believe that whistle blowers who are not in role-prescribed positions may be more effective than others. They may be

seen as more credible, because extra effort and risk are required of them to report wrongdoing and, thus, their professed motives may be admired, as seen in the minority influence literature. In fact, in a sample of federal employees and a sample of internal auditors from both public and private organisations in the United States, the effectiveness of whistle blowing was negatively related to being in a role that prescribed whistle blowing. This finding may be because whistle blowing is generally considered as appropriate only for those for whom it is prescribed; *i.e.* for another whistle blower to act, some strong rationale must have existed. However, others may not have seen the act as role-prescribed, whereas the whistle blower him- or herself did (Mbatha 2005:189 and Near and Miceli 1995:700).

The motives of the whistle blower are important, because the wrong motives can result in a report of lower quality and can compromise the integrity of the organisation's system of internal control. Unmotivated communication occurs when the individual has only one reason for blowing the whistle, and that is that he or she was in conflict about an ethical issue. Motivated communication, on the other hand, means that the whistle blower is reporting wrongdoing for purposes of personal gain such as obtaining economic resources, social power, or status within the organisation (Ponemon 1994:120).

In other words, one can assume that an unmotivated whistle blower is much more likely to make a truthful disclosure than a motivated whistle blower. This assumption implies two extremes: On the one hand there is the negative situation where the whistle blower has external motives and makes a false disclosure, which can ruin the long-term effectiveness of whistle blowing as a social control mechanism (Neimark and Tinker 1986:372), thus compromising the integrity of the entire system of internal control. On the other hand, there is the positive situation where the whistle blower has no external motives and makes a true disclosure, which the information provided by such a witness is highly reliable. Those who make use of such information should therefore take a careful look at the whistle blower's reasons for disclosure, since false

allegations can be very costly for an organisation and its employees (Ponemon 1994:120).

When a whistle blower reports wrongdoing, he or she is trying to bring about a particular outcome for the benefit of the organisation and/or society. In other words, whistle blowers *want* to expose wrongdoing, or the potentiality for wrongdoing. The problem is that his or her disclosure is usually frowned upon, and suffers retaliation regardless of whether the whistle blowing was internal or external. Such a negative response may affect the course of reporting as the whistle blower may begin seeking alternative channels other than internal channels as the retaliation proofs to the whistle blower that managers lack integrity and does not appreciate disclosures (Rothschild and Miethe 1994:266). As a result, "the retaliation only serves to strengthen [the whistle blower's] convictions about the rightness of [his or her] cause and to escalate the conflict to a level and duration [he or she] may never have anticipated or intended (Rothschild and Miethe 1994:269). As the complainant's actions persist and escalate, the reactions become more antagonistic. According to Miceli and Near (1992:80) retaliation might be a recurring event escalating in a series of events if the whistle blower is not successfully deterred from blowing the whistle. The South African cases of Mike Tshishonga, Allison Pedzinski and Keith Grieve are good examples of retaliation that can escalate (see sections 4.5.1.2; 4.5.1.5 and 4.5.1.9).

This is not to say, however, that complaints are never received well and dealt with effectively and expediently. Negative organisational responses take on a variety of forms.

5.5.5 Forms that negative organisational responses may take

There are a number of forms that negative organisational responses take. According to the literature, there are four main categories of organisational responses, namely nullification (Miceli and Near 1992:80; Dworkin and Baucus, 1998:1287), isolation, defamation and expulsion (Jos *et al.* 1989:553; Miceli and Near 1992:80; Dworkin and Baucus 1998:1287, Binikos 2006:23).

Nullification is an attempt to convince the whistle blower not to make the disclosure, and includes "verbal abuse, reprimand, or criticism of job performance" (Dworkin and Baucus 1998:1287). Isolation consists of, among others, "efforts to transfer or reassign the whistle blower; [or] restrict his or her activities, access to information, or access to other resources", effectively isolating the whistle blower from his or her colleagues. Defamation occurs when the organisation attacks the whistle blower's reputation or credibility (see section 4.3.2). Expulsion is when the whistle blower is forced to leave the organisation. This termination of the work contract may be voluntary or involuntary (Dworkin and Baucus 1998:1287).

Hunt (1995:155-156) and Binikos (2006:23-26) elaborates on the four categories and provides a list of behaviours that reflect them. He adds that there are "a dozen ways to shoot the messenger". Hunt identifies twelve types of organisational responses, in accordance with his typology, which shows how the responses escalate as the complainant proceeds, starting with small interactions and escalating to overtly aggressive reactions.

(a) Hot air

The first response is usually the one of *hot air*. This occurs when the complaint recipients appear to share their concern about the wrongdoing but don't do anything about it. Hunt (1995:155-156) says "many words will be generated, memoranda may fly about, a meeting may be convened and promises will be made. No action will be taken, except perhaps the most trivial. At a later date any conversation not recorded on paper may be strenuously denied".

(b) Send to Coventry

The next response is typified by a change of mood which can be seen from the kinds of interactions between the whistle blower and some of his superiors and colleagues. "Greetings, smiles and friendly banter are less frequent … Eyebrows are mysteriously raised, you are avoided and left out of events and decisions, sarcastic comments are made" According to Hunt (1995:156) this

kind of treatment is subtle to begin with, but soon impossible to miss ... and if the whistle blower asks why, his or her mental health is questioned.

(c) Close ranks

Then the ranks appear to close in as it becomes clear to the whistle blower that what he or she "said to one colleague or manager has been passed on, possibly distorted, to his or her peers". It dawns on the whistle blower that he or she has been labelled as a troublemaker. Hunt (1995:156) also finds that at this stage some of the whistle blower's colleagues turn against him or her.

(d) Stonewall

A stonewall is when the whistle blower's formal complaints are dismissed. Hunt (1995:156) describes this as a time in which his or her "letters are unanswered, the manager is never available, [and] promises to get back to you are broken". The whistle blower is usually notified that an investigation was held, but did not reveal any wrongdoing, with the result that the matter had been closed.

(e) Biomedical diagnosis

The next typical stage is usually when the whistle blower is recommended to a professional, either within the organisation or outside, who could help him. For instance, the employee may be told to see a doctor to help him or her manage the stress. Later the whistle blower may realise that he or she has been diagnosed as somehow mentally (anxious, depressed, paranoid) or physically (too old, too fat) unsuitable (Hunt 1995:156).

(f) Spying

The complainant starts to feel that he or she is under observation, or that his or her work is being sabotaged. In extreme cases, his or her phone may even

be bugged. Whatever he or she says is "taken as further evidence that he or she is] unable to cope or paranoid" (Hunt 1995:156).

(g) Grind-down

Now the screws are tightened even more. The whistle blower's workload is increased, or the work is made more difficult. According to Hunt (1995:156), this is often coupled with demotion rather promotion, which can also mean losing perks such as having one's own office, or a phone with an outside line.

(h) Sticks and carrots

Next, someone comes to see the whistle blower and promises him or her a promotion or generous severance package if only he or she will refrain from making the disclosure. At first the person pretends to be concerned for the whistle blower and if that doesn't work, tries veiled threats (Hunt 1995:156).

(i) Character assassination

During this stage, the whistle blower's character is called into question and he or she is discredited for all sorts of reasons, such as his or her conduct, political views, ethnicity, class, or sexual orientation. Then, he or she may be accused of "abuse of clients, theft of documents, lying, disloyalty, breach of confidentiality, and the like" (Hunt 1995:156).

(j) First strike

The whistle blower is then called in for a disciplinary hearing, but none of the things he or she reported are discussed and "disciplinary or grievance procedures may be used as a pre-emptive or retaliatory measure" while the "authorities will attempt to get their revenge first" (Hunt 1995:156).

(k) Made redundant

Finally, the whistle blower is suspended, dismissed or made redundant, which makes him or her consider taking the organisation to the labour court for unfair dismissal.

(l) Cosmetic reshuffle

In order to close the matter completely, certain minor changes are made in the organisation after the complainant leaves, such the reshuffling of some positions within the organisation. According to Hunt (1995:156), "it is unlikely that policies will be revised or that managerial heads will roll. Certainly no acknowledgement will be made that there is any connection between [the whistle blower's] raising a concern and the changes which followed".

The experiences of the identified South African whistle blowers in this thesis (see section 4.5.1) illustrate Hunt's typology well. In the most of the cases the whistle blowers experienced some kind of retaliation. Kendal Bok was accused of the very same discrepancies that he had disclosed. Keith Grieve was suspended and had to appear before a disciplinary committee as he was accused of downloading pornography from the Internet at work and he was also accused of racism. Disciplinary procedures were brought against André du Toit, Mike Tshishonga and Harry Charlton. Some were ostracized by colleagues (for example Victoria Johnson) and others, including Tshishonga, Charlton and Vicky Breytenbach were suspended and/or later dismissed. Allison Pedzinski was told that her position became redundant. All of the identified whistle blowing cases and the resulting media attention had a negative effect on the image of the organisations involved.

5.6   Effects of whistle blowing on the organisational image

According to Barker and Dawood (2004:133) the effects of whistle blowing can be negative or positive. It can affect the authority structure and the functioning of the organisation and can even disrupt employee relationships.

Most importantly, the organisation could get a lot of unwanted media attention, which may the public to object. On the other hand, whistle blowing can also be a good thing, since management can be made aware of problems and perhaps become willing to remedy the wrongdoing in order to avoid the disapproval of the public or litigation.

A whistle blower who has disclosed organisational wrongdoing can respond in several ways, such as deciding not to report the wrongdoing, (*i.e.* to remain silent (possibly for fear of retaliation) or discuss the issue with colleagues (maybe in an effort to decide what to do)). However, the person who regards the wrongdoing as serious will blow the whistle, out of concern for the organisation, fellow employees, and/or society as a whole.

The literature shows that the negative responses of the organisation can be very detrimental to someone reporting wrongdoing, as he or she is typically deemed to be challenging the authority structure of the company (Rothschild and Miethe 1994:264). Sometimes this causes so much harm that the act of whistle blowing seems to have been wasted effort. The whistle blower feels betrayed, that loyalty and trust have been destroyed (Uys 2005:12), which may make him or her look for other channels of reporting, and even going external if necessary to try and get the organisation to rectify the wrongdoing.

If the organisation responds positively, external reporting could be avoided and the wrongdoing could be solved in a positive way. However, if he or she suffers retaliation, trust will be destroyed and external whistle blowing may be necessary. This would suggest that supportive organisational responses, or a favourable context, may generate trust and affect whistle blowing positively. The role of trust in internal whistle blowing is therefore raised as an important variable influencing the disclosure of wrongdoing in organisations (see section 4.5.1.2) and amongst other aspects, should be managed properly.

5.7   How can whistle blowing be managed?

Managing whistle blowing is about breaking the culture of silence. The PDA has taken the first step in trying to break the silence; however, the culture of

silence still exists, because the PDA has too many loopholes for organisations to take it seriously. Hunt (1998:525-535) describes what could happen in the absence of proper whistle blowing mechanisms.

Whistle blowing leads to the disclosure of organisational wrongdoing. However, because the disclosure is unauthorised the organisation becomes defensive and attacks the credibility of the whistle blower. To manage whistle blowing, one needs to put in place mechanisms that can help transform unauthorised disclosures into authorised disclosures and these disclosures must be *"… managed effectively to bring about an increase in authorised disclosures made in good faith in public sector organisations."* (see section 1.5).

Hunt (1998:533) states that organisations that behave unethically have similar experiences in terms of their cultural patterns and states that different cultures prevail within unethical organisations: A culture of hypocrisy (double standards and not practicing what is preached). From this culture develops a culture of fear, where subordinates fear confronting their superiors because it could lead to intimidation. The culture of fear introduces a *laissez-faire* attitude, resulting in subordinate complacency, where there is a tendency not to follow proper procedures or protocols. The culture of fear then develops into a culture of corruption, in which employees practice secrecy and conspiracy, and try to serve their own interests at the expense of the client.

Every organisation needs to take the steps towards developing a whistle blowing culture. However, this not a concrete thing, but rather a way of thinking about living and communicating within the organisation. Dehn (1999:5) discusses the components of a whistle blowing culture. It is important to understand the components of this culture, because corruption is rampant in the South African society. The aim of a whistle blowing culture is to address organisational wrongdoing. The essentials of a whistle blowing culture involve having a strong and clear signal from the top of the organisation that management is against corruption and is committed to going about its

business lawfully. Secondly, the existence of a whistle blowing culture will help to ensure that whistle blowing to a designated authority will be protected.

Thirdly, this will encourage managers to be receptive to concerns about corruption and to deal with them properly. Lastly, the culture that develops will address the particular circumstances in which a broader disclosure may be justified.

However, every organisation should have a code of ethics, which is a formal document that discusses the practices of the organisation and the way employees are expected to conduct themselves at work. The importance of a code of ethics is that its objective is to ensure that all employees uphold the morals and culture of the organisation, by acting in the best interests of the organisation and the public interest. This means that the whistle blowing culture that has to develop within the organisation needs to be explicitly expressed within its code of ethics (Bakman 2003:27).

Clear procedures have to be put in place with regard to authorised disclosure. The managers and public officials of the organisation have to understand and embrace what these procedures entail as part of their everyday work ethic. Once the organisation has established a whistle blowing culture, it becomes more difficult to act in a wrongful manner, because the culture is able to straighten out incorrect procedures whenever they may occur. This means that a policy must be established within the organisation that gives explicit information on the prevention of organisational wrongdoing (Bakman 2003:27). Lewis (2001:57) states that organisations with effective whistle blowing policies and procedures are less likely to be exposed to claims under the PDA.

A policy should be comprehensible as well as manageable for the organisation to undertake, because the whistle blowing culture should state who is responsible for what to whom (Dehn 2001:6). Dehn provides the following approach to a whistle blowing policy. The proper procedures have to be in place to ensure that concerns about wrongdoing are raised and

addressed in the workplace. This has to promote the whistle blower as a witness rather than a complainant. The principle of accountability has to be put into practice, allowing finally for a clear and balanced legal framework to become effective. Lewis (2001:59) concurs with Dehn's whistle blowing policy, differing only in his arguments relating to confidentiality. Lewis's approach is outlined by the Nolan Committee, which was set up to deal with managing whistle blowing. The suggestions for a whistle blowing policy include the following (Bakman 2003:27):

- A clear statement that malpractice is taken seriously in the organisation and an indication of the sorts of matters regarded as malpractice.
- Respect for the confidentiality of staff members raising concerns if they wish, and the opportunity to raise concerns outside the line management structure.
- Penalties for making false and malicious allegations.
- An indication of the proper way in which concerns may be raised outside the organisation if necessary.

These policies create the broad outline of what a whistle blowing culture should entail. It then becomes important to develop the details in terms of the type of mechanisms that should be in place to affect the policy that has been created. Grobler (2001:8) provides some guidelines on the development of a whistle blowing prevention plan that will assist the organisation in developing strategies on the policies and procedures that should be followed. This plan is crucial, since it will help curb corruption in the organisation, thereby increasing productivity and moving away from a culture of fear towards a more open, transparent culture. An official channel within the organisation may not work (Martin 1999:47), as employees may feel threatened. However, Vinten (1994:51) stresses that "The argument that information disclosure poses a challenge to an organisation's authority structure, may not be the case where disclosures are positively encouraged and a channel for reporting is available".

This is why the mechanisms that are put in place should be multi-faceted, and should enable the individual to see the organisation's point of view as well. Confidential reporting systems are one of the mechanisms that could help promote a culture of whistle blowing. Management should know that a confidential reporting system within the organisation can be effective, and can help prevent organisational wrongdoing. However, if it is not correctly implemented, and management does not have employee buy-in, the system will not become an effective mechanism that can promote organisational competence and skilful employees (Bakman 2003:29).

5.8 Effectiveness of whistle blowing

The effectiveness of whistle blowing may be defined in a variety of ways. Legal scholars tend to define the effectiveness of the outcome in terms of the win/lose ratio of lawsuits involving whistle blowers (Terpstra and Baker in Near and Miceli 1985:8). The focus here is primarily on whether the whistle blower has accomplished what he or she set out to accomplish – namely, the initiation of organisational change as opposed to obtaining a judgment. Therefore, the effectiveness of whistle blowing is defined by the extent to which the questionable or wrongful practice (or omission) is terminated at least partly as a result of whistle blowing and within a reasonable time frame.

Near and Miceli (1985:8) recommend that the operationalisation of effectiveness should be addressed. Obviously, reasonableness (in terms of resolution time) involves judgement and perception, and it is likely that it varies from situation to situation, as well as from person to person. There should be concrete evidence that an action has been halted (e.g. corrected financial reports accepted by an outside authority), that cessation is attributable to the whistle blower's action, and that the time period is reasonable (e.g. by a certain deadline). Failing this, there should be consensus among the parties involved in the whistle blowing, but the researchers should recognise that such an approach is limited. The effectiveness of a whistle blowing process needs to be determined.

5.8.1 Indicators of effectiveness

According to Near and Miceli (1995:689-699) and Mbatha (2005:216) there are five primary factors that influence the termination of wrongdoing:

- the nature of the whistle blowing event;
- the characteristics of the complaint recipient;
- the characteristics of the wrongdoer;
- the characteristics of the act of wrongdoing; and
- the characteristics of the organisation.

Five sets of variables affect these factors. Some are individual variables (pertaining to the whistle blower, complaint recipient and wrongdoer), and others are situational variables (organisational and wrongdoing variables).

An effective whistle blowing process may have implications for an organisation's future (Farrell and Petersen in Near and Miceli 1985:60). One potential long-term outcome is organisational performance (Perry in Near and Miceli 1985:63). Although it is generally assumed that corporate wrongdoing harms an organisation's performance, empirical results suggest that this is not always the case (Near and Miceli 1985:68). If the public discovery of corporate wrongdoing does not reduce long-term performance, then executives have little incentive to terminate the wrongdoing. Alternatively, where wrongdoing harms the organisation (for example fraud), it will clearly benefit the organisation if the wrongdoing is terminated.

The organisation's choice also affects a second long-term outcome – its ability to control the external elements in its environment (Near and Miceli 1995:698), *i.e.* other organisations and constituents. For example, the organisation sued for wrongdoing may be viewed with somewhat greater suspicion by regulatory agencies. In fact, empirical evidence suggests that corporate wrongdoers are more likely than other organisations to commit observed wrongdoing in future; whether this is due to higher levels of wrongdoing on their part or increased surveillance by regulators could not be

determined (Baucus and Near in Near and Miceli 1995:699). In the context of the elements that inhabit its external environment, then, the organisation's ability to control the demands of these elements (Near and Miceli 1995:698) may be impaired or enhanced by its response to the reporting of wrongdoing. Moreover, society may be influenced by whether an organisation terminates a particular case of wrongdoing, but society is also influenced by potential changes in the nature of the relationship between the organisation and its external environment (e.g. when an organisation implements an employee-involvement programme to prevent wrongdoing in the future).

5.11   Summary and conclusions

This chapter set out to provide insight into the variables influencing organisational culture and organisational trust in disclosing wrongdoing in the process of managing organisational whistle blowing. It is important that the culture of an organisation enable whistle blowing in order to develop a coherent and manageable whistle blowing policy. This means that concerns about corruption and wrongdoing can be properly raised and addressed in the workplace or with the responsible person. In such a culture, the whistle blower will be seen as a witness and not as a complainant. Where communication channels in organisations are designed for grievances and complaints, the workforce uses them as such. In the context of concerns about abuse, it is important to bear in mind that malicious and aggrieved people are already making damaging disclosures where there is no recognised whistle blowing policy. A whistle blowing culture should therefore be concerned with the silent majority of people, who think it is not in their interest to blow the whistle on corruption or serious wrongdoing. Whistle blowing policies will help organisations and societies deter corruption and wrongdoing where a significant minority of those who now remain silent can be encouraged to see internal whistle blowing as a viable, safe and accepted option.

This chapter aimed to understand the context in which whistle blowing occurs in an organisational setting; the development of a whistle blowing organisational culture; and organisational trust, in order to determine how it

may develop as a result of an individual's interactions with the organisation as a whole. This chapter attempted to place organisational trust in the context of whistle blowing in order to imagine how it could influence whistle blowing behaviour as a means to encourage internal reporting, avoid external whistle blowing, and reduce the chances of non-reporting. Questions that were raised were whether organisational trust increases the chances of internal whistle blowing or whether a lack of trust increases the chances of non-reporting (especially keeping quiet and discussing with colleagues) and external whistle blowing.

After providing some background detail on general developments in this area, the focus fell extensively on organisational trust. The literature on whistle blowing seems to suggest that organisational trust is an important aspect of how a whistle blower proceeds with reporting. However, there seems to be little exploration of the relationship between the two in the literature. It is arguable that trust is a broader concept than the fear of reprisal and is also a more useful concept within an organisational setting. It remains an issue that the concept of trust may not have been fully developed in whistle blowing literature in order to understand employees' decisions when facing wrongdoing. This indicates that there may be a gap in the literature and that trust does indeed play a broader role in whistle blowing than is generally thought. This chapter pointed to the fact that the situation that employees face when deciding to blow the whistle or not is one that is likely to call on trust. It is a further finding of this study that trust will therefore most likely influence internal whistle blowing and reduce the chances of the individual keeping quiet.

The spotlight was then turned to dealing with whistle blowing in an organisation. In order to understand the relationship between organisational trust and whistle blowing, trust and organisational trust also need to be understood in terms of dealing with whistle blowing in an organisation. In this regard a policy for whistle blowing, a strategy for whistle blowing, hotlines, the organisational response toward whistle blowing and forms that negative organisational responses take were examined in detail.

The effects of whistle blowing on the organisational image were explained and other important matters relating to the management of whistle blowing were examined. Finally, special attention was paid to the effectiveness of whistle blowing and specific indicators of effectiveness were identified in an effort to determine if *"… disclosures can be managed effectively to bring about an increase in authorised disclosures made in good faith in public sector organisations."* (see section 1.5). The elements of an organisation's responses to whistle blowers were considered, specifically with regard to the fact that whistle blowing is always a process rather than an event.

It is clear from the discussion that the definition of whistle blowing should be restricted to an unauthorised disclosure by an employee or ex-employee about any type of organisational wrongdoing. Where the disclosure is in the interest of the public, the whistle blower wants these concerns to be addressed. However, the organisation tends to respond negatively by retaliating. In order to ensure that the message rather than the messenger is addressed, various ways of whistle blowing need to be investigated.

Whistle blowing is the conventional term used to describe unauthorised disclosure. This issue must be addressed so that whistle blowing becomes an authorised form of disclosure. For this reason, there has to be a clear understanding of how the structures, policies and mechanisms within the organisation should be integrated so that a whistle blowing culture can take shape within the organisation. The first step is to understand and incorporate the PDA in the organisational culture because it has become part of the legislation of South Africa. Therefore, the prescriptions set out in the PDA should be practiced within all organisations. From this point, it becomes apparent that the mechanisms that have been put in place help the organisation develop the culture, by stamping out organisational wrongdoing, as well as by providing an open and transparent system where blowing the whistle becomes acceptable.

A whistle blowing policy is one of the mechanisms that could provide effective answers. However, there are many other types of mechanisms that could be

utilised, such as hotlines, designated senior public officials that can receive claims and an explanatory manual. The mechanisms require constant updating and re-innovation. There is also a need for proper training programmes (which should constantly be monitored and evaluated) that allow employees to understand their role in the process.

CHAPTER SIX

EVALUATION, CONCLUSIONS AND PROPOSALS

6.1   Introduction

"Those who do research belong to a community of scholars, each of whom has journeyed into the unknown to bring back a fact, a truth, a point of light. What they have recorded of their journeys and their findings will make it easier for you to explore the unknown: to help you also discover a fact, a truth or bring back a point of light".

- Leedy

The objective of this thesis was mainly to describe and analyse the determinants of the phenomenon of whistle blowing that influence the protection of employees making authorised and/or unauthorised disclosures. The thesis also aimed to explore the special role played by the Protected Public Disclosures Act 2000 (Act 26 of 2000) ("the PDA" or "the Act") in fulfilling its mandate in the protection of whistle blowers. A further aim of this study was to contextualise the problems arising from unauthorised disclosures in the proper context of authorised disclosure, for the protection of the individual as well as that of the organisation.

In this last chapter of the thesis the study objectives, appropriate conclusions and proposals are addressed, based on the role that the PDA, the ethical determinants of the work environment, the determinants influencing the individual whistle blower, and the organisational determinants influencing effective whistle blowing, can play, in order to serve as a mechanism to combat corruption. As noted in chapter one (see section 1.10.1), in order to guide the research, the grounded theory researcher starts with the raising of generative questions which are not intended to be either static or confining. The following questions formed the core of the statement of the problem as discussed in chapter one (see section 1.5):

What is the nature and scope of the PDA in creating protection for the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner; how can these provisions be used to increase the level of understanding of disclosures of wrongdoing done in good faith; and how can these disclosures be managed effectively to bring about an increase in authorised disclosures made in good faith in public sector organisations?

To facilitate the research, to identify the core theoretical concepts (see section 1.10.1) and to investigate the problems identified in this study, the focus was subdivided into five research objectives (see section 1.9), which were analysed in the first five chapters of the thesis:

- To explore the scope of the PDA through an overview of the Act in order to provide an exposition of the rationale of the Act and its provisions in order to provide protection to whistle blowing employees in public organisations, including employees in the private sector.

- To analyse the concepts ethics, values, morals, loyalty and trust, in order to examine the influence of these important external variables on the process of whistle blowing in an organisational setting.

- To explore the conceptual knowledge of the variables influencing the determinants of whistle blowing and the whistle blower through the application of a literature study of the concept and theories of whistle blowing, in order to describe and analyse the whistle blower, the whistle blowing process, and the strategies and procedures employed to blow the whistle in an organisation. It was also a purpose of this research objective to get clarity on the conceptualisation of whistle blowing.

- To explore the organisational determinants influencing a whistle blower's decision to blow the whistle in the social context of an organisation in order to determine the influence of organisational culture and organisational trust as internal social factors that may facilitate the effective management of whistle blowing, resulting in no whistle blowing taking place. It was also a

purpose of this research objective to clarify the various issues related to the management of whistle blowing.

- To consider the insights revealed by the body of knowledge on whistle blowing, with a view to making proposals and identifying potential further steps that have to be taken for the successful implementation of effective whistle blowing measures that could have a positive impact on the fight against corruption in organisations.

The next section presents a synthesis of the study, taking into account the key findings, the implications for whistle blowing in terms of the PDA, the ethical milieu of the whistle blower, and the management of whistle blowing in an organisational setting. All these conclusions are reflected in terms of the research objectives set out above, which provide useful answers for the research questions posed in this study as well as more insight and inputs into future research, in order to reduce the gap in the literature.

This thesis is an attempt to make a contribution, in general, to the understanding of the role of whistle blowing and the PDA and is completed in the trust that the findings recorded here and the proposals made will be useful for future research.

6.2   Synthesis and findings of the research objectives

Information was gathered through both primary and secondary sources of data that would address all the research objectives, individually and/or collectively. The first research objective constituted a documentary analysis and evaluation of the PDA, and the following objectives dealt with the theoretical foundation, the information and the findings resulting from the study of primary and secondary sources undertaken to provide a basis for the evaluation of the phenomenon of whistle blowing and the PDA's role in the protection of whistle blowers. To ensure that this study is also seen as an appraisal of a process and not only as a description based on the information culminating from the various objectives set out in the previous chapters, new insights will also be provided in this chapter to substantiate the findings made

in the previous chapters, in order to draw conclusions and make proposals on the role of the newly established PDA.

6.2.1 An exploration of the scope of the PDA through an overview of the Act in order to provide an exposition of the rationale of the Act and its provisions in order to provide protection to whistle blowing employees in public organisations, including employees in the private sector.

This objective in **chapter one** aimed to clarify the research problem (see section 6.1) as well as the research questions posed in chapter one: *"To what extent can the PDA be interpreted and applied by the courts and by implementing agencies in government in order not to subject employees or employers to any occupational detriment? What is meant by criminal and irregular conduct? To what extent does the nature of the disclosure determine whether it is a protected or an unprotected disclosure?"* and finally *"What is meant by disclosing information in good faith?"* (see section 1.6*)*. The aim was to eliminate confusion regarding all these concepts.

The PDA seeks to combat crime and corruption by encouraging whistle blowing by employees regarding an impropriety, *i.e.* unlawful and irregular conduct by both employers and employees. Employees who take such action should be protected from unreasonable treatment by their employers. The intention is to create a culture which will facilitate the disclosure of information relating to criminal and other irregular conduct in the workplace in a responsible manner, by providing comprehensive statutory guidelines through the PDA for the disclosure of such information and protection against any retaliation as a result of such disclosure.

Since there appears to be more and more awareness of combating corruption and other criminal activity in South Africa, the need for legislation like the PDA is becoming more obvious. **Chapter two** provided an overview of the legislative measures that can facilitate protected authorised disclosures of wrongdoing. The starting point of this chapter was to provide general

background information on the rationale for the PDA in terms of what a disclosure entails, what is perceived as organisational wrongdoing relating to the disclosurer (or whistle blower), peer reporting, reporting to the proper persons, and to the question asked in terms of in whose interest the disclosure must be made.

South African whistle blowing legislation goes further than that of the United Kingdom and it also covers both public and private sector employees. However, in drafting the legislation, the Judicial Service Commission was not persuaded to expand the ambit of the law beyond the employer-employee relationship. This implies (for example) that if an employee of the Department of Foreign Affairs discloses wrongdoing in the Department of Internal Affairs, the employee will not be protected under the PDA because it is an unauthorised disclosure. In other words, a pensioner (who is not an employee) who blows the whistle on a corrupt pension officer or fellow pensioner would not be protected under the law. The PDA is currently under review regarding this aspect.

It was also found that an employee may approach any court or tribunal that has jurisdiction or may pursue any other process allowed or prescribed by law in order to protect him or her from suffering any occupational detriment in breaching section 3 of the Act (see section 2.3.6).

In this chapter the legislative measures to combat corruption and facilitate whistle blowing in terms of the PDA were explored in detail. The purpose of the PDA was highlighted, followed by a theoretical scouting of the provisions of the Act. The concepts and definitions, objects and application, legal remedies, protected disclosure to a legal advisor, protected disclosure to an employer, protected disclosure to a member of cabinet or executive council, protected disclosure to certain persons or bodies, general protected disclosure, and regulations are all aspects that were dealt with in this chapter.

Various other legislative matters concerned with whistle blowing were also highlighted, such as the Constitution of the Republic of South Africa 1996, the

Open Democracy Bill 1998, the Investigation into Serious Economic Offences Act 1991 (Act 117 of 1991), the Reporting on Public Entities Act 1992 (Act 93 of 1992), the Corruption Act 1992 (Act 94 of 1992), the Prevention of Combating of Corrupt Activities Act 2004 (Act 12 of 2004), the Audit Act 1992 (Act 22 of 1992), the Public Service Act 1994 (promulgated under Proclamation 103 of 1994), the Public Finance Management Act 1999 (Act 1 of 1999), and the Promotion of Access to Information Act 2000 (Act 2 of 2000) that gave effect to the constitutional right to fair access to information in order to broaden the transparency and accountability process.

There is an underlying message in the PDA that employees should be encouraged to report serious crimes. In the context of whistle blowing, the question arises, to what extent employees are subject to an affirmative duty to report the criminal behaviour of their employers if it appears that the PDA does not impose such a duty on citizens. Rather, the act of whistle blowing appears to be a voluntary form of disclosing wrongdoing. In the case of serious and dangerous criminal conduct on the part of employers, the court protection of employees should be extended to the protection of whistle blowers regardless of whether any legal proceedings ever result from their allegations. Legal protection should be automatic and should not depend on the court's view of whether particular allegations are serious enough to prosecute.

An important aspect dealt with in this chapter was the provision, as a prerequisite for all this legislation to be implemented successfully, that individual members of both the private and public sectors will have to act responsibly and in good faith when making disclosures in order to be protected by the PDA. The PDA was enacted particularly with a view to creating a culture in which employees may disclose information on criminal and other irregular conduct in the workplace in a responsible manner, and generally to promote the eradication of crime and misconduct in organs of state and private bodies. In terms of the Act, every employer and employee is now regarded as having a responsibility to address crime and any other irregular or unethical conduct in the workplace (although no employee is

obliged to make a disclosure). The employer must take all the necessary steps to ensure that employees who disclose such information are protected from retaliation as a result of having made disclosures. It was found that in its current form, the Act makes provision for procedures to allow and assist employees in both the public and private sectors to raise concerns about the unlawful or irregular conduct of their employers or co-workers.

The chapter also found that employees making a protected disclosure in terms of the specified procedures are protected from occupational detriment. Occupational detriment has been broadly defined in the Act and includes being subjected to disciplinary action, dismissal, suspension, demotion, harassment, intimidation, being transferred against an employers' will, being refused a transfer or promotion, or otherwise being adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security. The Act therefore prohibits an employer from subjecting an employee to occupational detriment on account of having made a protected disclosure. Should occupational detriment occur and be found to have been linked to the making of a protected disclosure, the *bona fide* (good faith) whistle blower would be protected and the employer would not be allowed to dismiss or prejudice the employee for having raised legitimate concerns. This, in effect, is how the law protects whistle blowers.

In this chapter it was found the importance of disclosures of information relating to the above will only be protected if made according to specific procedures. The chapter specified that in order to be protected, a disclosure must be made in one of five ways:

- to a legal representative;
- to an employer;
- to a minister or provincial member of the Executive Council;
- to a specific person or body – only the Public Protector and the Auditor-General are currently mentioned, with other persons or bodies (for

example, the Special Investigating Unit) required to be prescribed by the Minister of Justice in regulations; or

- as a general protected disclosure.

It was further found that the PDA does not deal with the way improprieties must be remedied or prosecuted. The Act assumes that the whistle blower has not been involved in any improprieties, for it does not provide him or her with immunity against persons other than the employer. It seems as if the relationship between the whistle blower and a fellow employee is not the principal focus of the Act. However, it was found that the provisions relating to transfers to other posts may provide some protection from the antagonism of a fellow employee who has been implicated under section 3 of the Act, which stipulates that no employee may be subjected to occupational detriment by his or her employer on account of, or partly on account of, having made a protected disclosure. It was also found that an employee may approach any court or tribunal that has jurisdiction over or may pursue any other process allowed or prescribed by law in order to protect him or her from suffering occupational detriment in breach of section 3 of the Act (see section 2.3.5).

Any employee who has made a protected disclosure and who reasonably believes that he or she may be adversely affected as a result of having made that disclosure, may also request to be transferred from the post or position occupied by him or her at the time of the disclosure to another post or position in the same division or another division of his or her employer. It was also found that the employer must be cautious in transferring the employee, as the Act stipulates that the terms and conditions of employment may not, without the written consent of the employee, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer (see section 2.3.6).

It should be noted that an individual employee will only be afforded protection in terms of the Act to make external disclosures when such disclosures are made in accordance with clauses 5, 6, 7, 8 and 9 of the Act (see sections

2.3.7; 2.3.8; 2.3.9 and 2.3.10). Disclosures to the news media will only be protected in very limited circumstances, and no court will recognise the claims of private sector employees who bypass internal channels by contacting the news media.

The type of information disclosed may be, among others, on a criminal offence, failure to comply with a legal obligation, miscarriage of justice, endangerment to the health and safety of an individual, damage to the environment, unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act 4 of 2000), or deliberate suppression of any such matters.

As explained before, one important principle that emerged from the Act is that a disclosure must be made in good faith and that the employee making the disclosure must have a reasonable belief that the information disclosed and any allegation contained in it is substantially true. Any disclosure made for personal gain (excluding any reward payable in terms of any law) is not protected by the Act (see section 2.3.11). Sections 3 and 4 of the Act set out the protective measures upon which an employee who has made a protected disclosure may rely (see sections 2.3.5 and section 2.3.6).

The above may be interpreted as a requirement that disclosures in good faith be objectively reasonable, in addition to being subjectively in good faith and/or even actual knowledge of wrongdoing, in order to be protected for reporting wrongdoing. This implies that employees who make disclosures externally will be required to satisfy a higher standard of good faith than employees who make internal disclosures. Noting that there would be a significant possibility of harm to the organisation's reputation and to its financial viability for wrongful accusations, external whistle blowers will be required to prove that they were motivated by a legitimate and substantial interest in protecting the public or others, that they made a reasonable investigation prior to blowing the whistle and that they were correct about the institutional wrongdoing.

As noted above, a whistle blower should not have participated in the unlawful activities disclosed by him or her. The underlying premise appears to be to encourage employees from engaging in unlawful activities in the first instance, and not to provide a safe harbour or financial reward to employees who initially deicide to engage in unlawful behaviour but later have a change of heart. There appears to be a presumption that employees who initially decide to engage in unlawful activities may not be making their disclosures for good faith reasons, but rather to insulate themselves against adverse employment decisions or to obtain a financial advantage.

The courts should draw the line at unsubstantiated rumours, and will not protect employees who report such rumours. This does not encourage premature reporting; rather, it encourages employees to investigate and report only when information is substantiated.

The manner in which the disclosure is reported to the media may not be protected in terms of the provisions regarding authorised disclosures in the Act and may even cause a loss of legal protection that might otherwise exist. In cases where employees make use of excessive profanity or argue to the point of being insubordinate, the court might decline to protect the employee, for example, where a legal representative (attorney) discloses information regarding a client, since such a disclosures would be an irreparable breach of the trust needed between clients and their attorneys.

It is also a finding of the study that whistle blowers who intend using the provisions of the Act to conceal their own involvement in criminal activities will not find protection in this legislation. Where a law has been contravened, the Act will not protect the employee from criminal prosecution, civil liability to third parties, or prosecution for offences, as the case may be.

It is proposed in **chapter two** that amendments ought to be made to the legislation to create offences where an employer unlawfully subjects an employee to occupational detriment, or where an employee makes a false disclosure. The Act is confined to the relationship between employer and

employee in both the public and private spheres and does not provide protection to an independent contractor, for example. It is therefore proposed that the Act be amended to create opportunities for whistle blowers in terms of unauthorised disclosures. The legal details of such unauthorised disclosures should be investigated in order for the Act to be more specific.

While the Portfolio Committee of Parliament, when drafting the Protected Disclosures Bill, considered the creation of new offences to be appropriate, the Act has not provided for penalties either in the case of an employer who does not protect a whistle blower, or in the case of a whistle blower who makes a disclosure which is not protected. In this regard, the Committee decided that the matter needed further research and consideration, since such a provision may impact on existing laws and practices regulating employer-employee relations.

This study proposes that practitioners should carefully evaluate the applicable clauses in terms of to whom whistle blower disclosures may be made. The clauses vary as to the appropriate recipients of whistle blower disclosures. When attempts to resolve complaints internally do not succeed, the question becomes to whom whistle blowers may turn for redressing their concerns. It should be noted, however, that the strongest argument for whistle blowing is when employees have personally witnessed an irregular or criminal felony being committed. In such instances, employees have the right to report such crimes to the appropriate law enforcement agencies. Likewise, public sector employees should be able to report violations of the law, apart from felonies, to the government agency (clauses 7 and 8) authorised to enforce the disclosure (see sections 2.3.9 and 2.3.10).

It was further found that parties cannot contract out of the provisions of the Act. Any contract between an employer and an employee that purports to exclude any provisions of the Act will be void. This provision includes any agreement –

- to refrain from instituting or continuing any proceedings under the Act or any proceedings for breach of contract;

- which purports to preclude the employee from making a protected disclosure; or

- which has the effect of discouraging the employee from making a protected disclosure.

The researcher proposes that employers need to familiarise themselves with the provisions of the Act and ensure that they are fulfilling their responsibilities by creating an environment where unlawful activities can be exposed without fear of retaliation. After all, by curbing incidences of irregular conduct in this way, an organisation is better placed to protect itself from the devastating consequences of fraud, industrial espionage and other wrongdoing. It is imperative that the necessary procedures be present in the organisation to enable employees to make internal disclosures as well as to cultivate a culture of *bona fide* (good faith) disclosures.

6.2.2 An analysis of the concepts ethics, values, morals, loyalty and trust in order to examine the influence of these important external variables on the process of whistle blowing in an organisational setting

Public officials act within a political environment and must behave in a manner that is consistent with democratic and other values. It is against this background that the variables of ethics and values that influence the ethical milieu of public organisations are explored in **chapter three**.

Compelling ethical considerations may weigh against forms of whistle blowing that harm the legitimate interests of other persons or entities unnecessarily. Whistle blowers may have ethical responsibilities to the public interest, to their organisations, to their co-workers and (in the case of professional employees) to their professions.

Values and ethics have become a priority concern for governments across the globe. The maintenance of high ethical standards is important in all spheres of society. The importance of values and ethics lies in the trust between not only public officials and the public, or public officials and their employers, but also in the public's faith in the democratic process. A public official is often faced with the question of loyalty. One has to be loyal not only to one's employer, but also to the public, since public officials work with taxpayers' money. It is vital that public officials act morally and ethically at all times, since this is in the interest of the general public, *i.e.* for the public good.

Chapter one stated (see section 1.9) that "*an analysis of the concepts ethics, values, morals, loyalty and trust [would] be made in order to examine the influence of these important external variables on the process of whistle blowing in an organisational setting*" so as to determine the "*nature of the interaction of these concepts in an organisation when the choice of disclosing wrongdoing must be made*" (see also section 1.6). The research question "*How can this interaction be strengthened in order to increase the likelihood that whistle blowing will be effective as a mechanism to combat corruption?*" (see section 1.6) was posed in an attempt to provide answers to the above questions through the application of research. **Chapter three** of the thesis explored the variables influencing the ethical milieu in public organisations in detail, in order to determine their influence on whistle blowing.

Chapter three defined relevant terms such as ethics, loyalty, values, morals/morality, the duty of loyalty and trust. What one person regards as important may differ from what another individual regards as important and this difference may have an effect on the motive(s) of the whistle blower in disclosing information on wrongdoing. Consideration was also given to various ethical aspects such as democratic values, prescribed guidelines and guidelines derived from community values, as well as theoretical approaches to ethics and the development of an ethical community.

Any public official must realise that he or she should fulfil his or her duties in terms of certain ethics, values, morals and norms which are essential to the

community despite the existence of different cultures. No public official can function in isolation from his or her culture and his or her community, as values and norms will always have an effect on the way public officials fulfil their duties. It is therefore essential that public officials follow ethical guidelines in performing their duties as well as they should believe in the virtue of morals and values. It is therefore important to clarify the various concepts associated with the ethical milieu in which the whistle blower functions.

In addition, in the fulfilment of his or her duties, the public official is faced with ethical dilemmas that could influence whistle blowing in the decision-making process – dilemmas such as policy, administrative secrecy, a weak institutional system and administrative discretion could lead to criminal and irregular conduct. Unethical conduct materialises in for example election fraud, unauthorised disclosures of confidential information and kleptocracy. These ethical dilemmas are also explored in **chapter three**, since they occur when public officials must choose between morally desirable and morally undesirable behaviour.

Chapter three also explored the relevance of ethical infrastructure in regulating against undesirable behaviour and providing incentives for good conduct, and strategies aimed at promoting ethics, statutory guidelines and a code of conduct as essential remedies against unethical conduct by public officials. The chapter also dealt with what is meant by a code of ethics in terms of it being used as a measure to combat corruption and maladministration, as well as what should be written into a code of ethics. The Code of Conduct for the South African Public Service was provided as an example of how a code of ethics can be enforced as a measure against corruption and maladministration. The prescriptions of a code of ethics are an important measure in terms of establishing a spirit of co-operation and principles for the promotion of ethical behaviour. It is imperative that senior managers set an example by demonstrating and promoting ethical behaviour.

It became evident that a close and delicate relationship was likely to exist between whistle blowing and trust, for the decision to report relies largely on trust. Trust may strengthen the individual's commitment to the organisation, and therefore the chances that he or she would want to manage the situation through set internal controls and in a co-operative manner. This makes whistle blowing less threatening, and may encourage a culture of authorised disclosure. This may benefit the organisation, and more particularly the public sector as a whole, by creating the perception of whistle blowing as a positive and rewarding phenomenon in the workplace.

It is therefore clear from this chapter that the ethical values of integrity, accountability and equity must be part of the values of the public sector organisation. Public officials must realise that they occupy a unique position in society and that the promotion of the general welfare of the community must be their first priority. Their unique position must not be used for the furtherance of their own ideals and public officials must adhere to ethics which are seen as a system of moral principles. The values and morals by which the public official lives as an individual in a community have a direct influence on his or her position as a public official, it should never be forgotten that the public official is first and foremost an individual of a particular community.

It is clear that consideration must continually be given to the existence of values and morals deemed by the public to be sound and desirable as well as providing the background for sound, transparent administration. The acknowledgement and manifestation of the value norms of public administration in the conduct of the authorities would serve as a guideline for public officials in the performance of their official duties. As soon as a public official takes a serious interest in his or her own ethical behaviour and confronts ethical dilemmas, the cornerstone of good government has been laid. Ethics are essential for sound, transparent public administration and when viewed in conjunction with values and morals, serve as the cornerstone on which wrongdoing can be disclosed in good faith.

Ethical dilemmas occur in most countries and are bound to confront most if not all public officials. Although it is essential that corruption, in whatever form it might appear, has to be dealt with promptly, it is not always easy for public officials to become whistle blowers. Public officials must be fully aware of the risks related to disclosing corruptible behaviour, the failure to provide sufficient proof for his or her allegations could hold serious consequences for the public official. It is essential that any public official embark on such a course of action if he or she believes that the values and morals of society are being compromised by unethical and corruptible behaviour.

There is a need for guidelines against which public officials can measure their behaviour. To ensure honest government, a code of conduct by which the actions of public officials are led, directed and guided is essential. Without this, it would be virtually impossible to define what constitutes unethical behaviour and what constitutes a disclosure made in good faith.

 The drawing up of the code of conduct for the South African public sector is an indication of the seriousness of the South African government to combat unethical and unacceptable behaviour among public officials and to stress the importance of ethical and moral conduct. The divergent nature of South African society (which can also be seen in its public sector) and the influence of the different cultures, values and norms on the public officials coming from this differentiated society, emphasise how important it is to develop a uniform set of ethical guidelines applicable throughout the entire public sector against which the actions and conduct of public officials can be measured. It is vital, if the fight against corruption is to succeed, that public officials be made aware through training and education of unethical and corruptible behaviour.

However, professional employees such as nurses, physicians, attorneys, architects, engineers, accountants, psychiatrists and others who take an oath to follow ethical codes may experience conflict between their duty to obey those codes, and their duty to their employers. Such codes of ethics require or strongly encourage the individual to disclose the improper conduct of co-employees or clients internally, through the proper internal organisational

channels, in order to protect the public welfare and encourage would-be whistle blowers.

An employer's responsibility to his or her profession may also suggest that whistle blowing is not appropriate. Such employers should leave the matter of professional discipline to professional organisations that police themselves, rather than creating the protection of the PDA to oversee professional conduct. Reports of wrongdoing should be carefully researched for accuracy before the reputation of either the institution or the individual is called into question. Unless there is clear evidence of wrongdoing, care should be taken to make sure whether the impropriety was intentional or simply the result of negligence, an oversight, or some other mistake that could easily be corrected.

6.2.3 An exploration of conceptual knowledge of the variables influencing the determinants of whistle blowing and the whistle blower through the application of a literature study of the concept and theories of whistle blowing in order to describe and analyse the whistle blower, the whistle blowing process, and the strategies and procedures employed to blow the whistle in an organisation. It is also a purpose of this objective to get clarity on the conceptualisation of whistle blowing.

After having examined the legislative aspects of the PDA protection for disclosurers of wrongdoing, as well as having considered ethical dimensions and dilemmas as important variables in the whistle blowing process, it is necessary to turn to the whistle blower and the process itself. **Chapter four** therefore attempted to answer the research questions identified in **chapter one**: *"To what extent does the complexity of defining whistle blowing influence the dilemma of whistle blower protection?"* and *"What are the characteristics underlying the whistle blowing process?"* (see section 1.6).

The objective in **chapter four** is therefore, to consider which variables influence the whistle blower in making disclosures on wrongdoing, who whistle

blowers are, what characterises them and how the process of whistle blowing occurs.

Firstly, the chapter considered the complexity of analysing and defining the concept of whistle blowing, a complicated and multifaceted phenomenon, by providing an overview of the concept in order to characterise the whistle blower. This analysis included an examination of the definitions of whistle blowing in the literature.

Some definitions of whistle blowing distinguish between authorised and unauthorised disclosures. Typically, whistle blowing is considered to be the unauthorised disclosure of information where whistle blowers report along avenues that are not specified for such information. The argument that whistle blowing may only be authorised is considered to be more helpful as an analytical tool, as it provides for an understanding of which disclosures are protected disclosures under the PDA and of why negative responses develop in such cases. It is usually the unauthorised nature of the whistle blower's disclosure that exposes him or her to being accused of not blowing the whistle in good faith.

Section 4.2 stated that most definitions agree that whistle blowing relates to perceived organisational wrongdoing. In order for a disclosure to take place, the whistle blower must witness an incident or practice, or set of incidents or practices, which he or she perceives as incorrect and improper behaviour. This observation becomes the trigger for the act of disclosing, and whistle blowing may only take place once such a perception exists. The wrongdoing must also be perceived as important for the individual to act on this trigger.

The individual characteristics underlying the whistle blowing process were examined, including credibility, power, anonymity and the psychological characteristics of the whistle blower in the decision-making process. It was further found that the concept of trust (see sections 3.2.6 and 5.4) forms an integral part of the process and that it will make it easier for an employee to

disclose perceived wrongdoing if he or she feels that he or she will be (for example) protected.

Anonymous whistle blowers may have mixed success in achieving the goal of preventing harm to the public welfare. Anonymous complaints are often intended to protect the identity of the whistle blower, by reducing the likelihood of retaliation. However, anonymous whistle blower complaints can be difficult to investigate due to a lack of information, and an inability to contact the whistle blower for additional details. If the anonymous complaints are sufficiently detailed, they may identify the whistle blower, because only a few people could have made the complaint, thereby defeating the purpose of anonymity, since the whistle blower will no longer be anonymous, and even worse, may not be protected against retaliation because there is probably no record that the whistle blower provided the information.

Similarly, employees who participate in the decision-making that leads to their organisation's decisions to take improper actions, but who opposed such actions, may feel that their voices have gone unheeded. One reason that employees have not become whistle blowers in the past may be their concern about retaliation. The PDA may help employees to be less concerned about retaliation than in the past, and more willing to act upon their conscience and make informed authorised disclosures.

The whistle blowing process was examined as well as the various alternatives the whistle blower has, such as for example silence, discussions with colleagues, internal and external whistle blowing. It was stated in section 2.2.2.3, that whistle blowers may come to act against their superiors or their peers. When whistle blowing occurs that involves disclosure of information regarding a peer's illegal, immoral or harmful practices, it is referred to as peer reporting. Peer reporting may be seen as a situation when a member goes outside his or her group to report another member's misconduct. Typically peer reporting involves the reporting of individuals committing occupational crime, since these malpractices are committed to benefit the individual or group of individuals conspiring to increase their own personal wealth. Peer

reporting may also occur in terms of organisational crime and does not focus on occupational crime only.

Whistle blowers have two broad means to report organisational wrongdoing, namely to authorities within the organisation, or regulatory authorities outside the organisation. These types of reporting, in turn, have become classifications for two main forms of whistle blowing, namely internal and external whistle blowing.

Internal whistle blowing refers to reporting to people or managers internal to the organisation that are in positions higher up in the organisational hierarchy. Internal complaint recipients may be direct line managers, human resource representatives, Chief Executive Officers, or members of an executive council or board of directors. Internal whistle blowing may take place using both existing communication channels such as hotlines, and unauthorised communication channels, if this is the only option remaining.

External whistle blowing refers to the disclosure of information external to the organisation and includes media, politicians, public protectors, government bodies, regulatory bodies, interest groups and enforcement agencies. The appropriate whistle blowing procedure is for the whistle blower to report firstly internally, then, if that achieves no success, to proceed externally to a law enforcement agency and finally, if still no success is achieved, to report to the matter to the media. The media or politicians may also be considered external complaint recipients. However, where the media and politicians have received complaints of wrongdoing and it is exposed, they do not become whistle blowers in those situations, as they are not members of the accused organisations. They remain a channel for communication and correction for the whistle blower, who is a member or former member of the organisation concerned. Media individuals such as journalists and politicians such as Harry Charlton (see section 4.5.1.1) may also be regarded as whistle blowers if they expose crime and corruption within the organisation that they belong to or represent.

To understand the process and the outcomes for the whistle blower and the organisation, various national and international cases were cited (see section 4.5). The study focused on whistle blowing cases by providing examples of South African and international whistle blowers who observed acts of wrongdoing, who were involved or approached to act unlawfully, or who blew the whistle deliberately, as well as the role of the media regarding external disclosures.

The chapter also discussed the consequences of whistle blowing – those for the whistle blower and for the organisation – and concluded with questions illuminating specific ethical points in the whistle blowing process.

Whistle blowers can usually be characterised as ordinary people who have a high standard of moral values that is expressed in ethical conduct; people with the ability to distinguish between right and wrong; courageous people who are prepared to stand up for what they consider to be right or wrong; and people prepared to accept the risk that blowing the whistle may endanger their employment and thus their livelihood, their status in society, or their reputation.

Whistle blowers come from all levels of an organisation and even from outside, although legislation in many countries does not protect the latter. They may blow the whistle on sexual harassment, fraud, inadequate health and safety measures, harmful practices, breaches of regulatory requirements, money-skimming, or any other form of corruption.

It seems as if organisations' responses to an act of whistle blowing are influenced by: The credibility of the whistle blower – if people are trusted, such an action may be taken seriously; the motivation of the whistle blower – if there are any suspicions about the reasons why someone chooses to blow the whistle, chances are that the complaint will not be heard; the perceived validity of the evidence – this, and not perceptions or the motivations of the whistle blower, should be the most important reason for taking a disclosure of wrongdoing seriously; the position of the whistle blower – power and status

often affect the capacity of an individual to influence management; membership of minority groups within an organisation – females or members of underrepresented ethnic groups may find it harder to be heard.

In addition, while whistle blowing is becoming more regulated, and legislated by the PDA, it does not necessarily mean that within the organisation it is completely considered as an authorised action, because the way in which the disclosure is made may be considered unauthorised by the organisation, for whatever reason. Whistle blowers often have no choice but to proceed along lines of reporting that may be considered controversial or unauthorised. Also if there are no channels for such reporting, the whistle blower may proceed along lines that may be considered inappropriate by the organisation. Both these factors may lead to unauthorised disclosure, where a whistle blower is forced to report "over someone's head"; or go to external regulatory bodies or the media in order to seek an effective solution to the problem. The response to what is then viewed as unauthorised disclosure is counter-productive, as it further elicits a negative response. Consider for example the cases of Beige Holdings where André du Toit exposed irregular transactions and fraud (discussed in section 4.5.1.10).

In considering how organisational responses may push a whistle blower to external channels, what became interesting to note was that the relationship of trust between the organisation and the whistle blower emerged as an important feature in the discussion of retaliation. However, what needs to be pointed out is that even if there is no fear of retaliation, whistle blowing may still not occur if there is a lack of trust.

In order to encourage employees to disclose wrongdoing, they need to have confidence that the authorities will conduct competent and timeous investigations in terms of the information provided and that those implicated will be brought to book. Occupational detriment, once proven, should be made a criminal offence and the remedial processes broadened to include personal safety and services like counselling or debriefing. This suggestion is made in view of the services provided to the beneficiaries of witness protection programmes in the South African Police Service.

The analysis of the whistle blowing process also revealed that there are three stages in the process. *Causation*, the first stage, is when someone sees an activity or action that he or she regards as illegal, unethical or immoral. The choices are to ignore this, to acquiesce, to participate, to object or to walk away. These choices are not mutually exclusive as the decision may be reconsidered later. *Disclosure*, the second stage, may be inevitable in some cases, particularly where there are strict rules requiring disclosure to an external regulator or auditor. After disclosure, the response of some may be to get rid of the problem by getting rid of the whistle blower. Stage three is therefore *retaliation*. The effectiveness of whistle blowing, it was found, is defined by the extent to which the questionable or wrongful practice (or omission) is terminated at least partly as a result of whistle blowing and within a reasonable time-frame.

In the next objective, the process of whistle blowing was viewed from the perspective of the organisational variables influencing the effective and efficient management of whistle blowing in order to prevent external whistle blowing that is not protected under the PDA (unauthorised disclosures).

6.2.4 An exploration of the organisational determinants influencing a whistle blower's decision to blow the whistle in the social context of an organisation in order to determine the influence of organisational culture and organisational trust as internal social factors that may facilitate the effective management of whistle blowing resulting in no whistle blowing taking place. It is also a purpose of this chapter to get clarity on the various issues related to the management of whistle blowing.

Although the body of knowledge of whistle blowing has been growing steadily during the past two decades, theorists have been focussing almost exclusively on the individual whistle blower. It has become more and more important that the social context of whistle blowing should also be scrutinised. In particular, it is necessary to look at whistle blowing from the point of view of the

organisation in which the disclosure of organisational wrongdoing occurs. For whistle blowing to act as an effective deterrent to organisational misconduct it is important that the disclosure of information should be managed effectively.

This chapter set out to provide insight into the variables influencing organisational culture and organisational trust in disclosing wrongdoing in the process of managing organisational whistle blowing. It is important that an organisational culture that enables whistle blowing is in place, in order to develop a coherent and manageable whistle blowing policy. This means that concerns about corruption and wrongdoing can be properly raised and addressed in the workplace or with the person responsible. In such a culture, the whistle blower will be seen as a witness and not as a complainant. Where communication channels in organisations are designed for grievances and complaints, the workforce uses them as such. In the context of concerns about abuse, it is important to bear in mind that malicious and aggrieved people already make damaging disclosures when there is no recognised whistle blowing policy. A whistle blowing culture should therefore be concerned with the silent majority of people, who think it is not in their interest to blow the whistle on corruption or serious wrongdoing. The chapter determined that a whistle blowing policy will help institutions and societies deter corruption and wrongdoing where a significant minority of those who now remain silent can be encouraged to see internal whistle blowing as a viable, safe and accepted option.

This chapter also aimed to understand the context in which whistle blowing occurs in an organisational setting, the development of a whistle blowing organisational culture and organisational trust in order to determine how trust may develop as a result of an individual's interactions with the organisation as a whole. This chapter attempted to place organisational trust in the context of whistle blowing in order to imagine how it could influence whistle blowing behaviour as a means to encourage internal reporting, avoid external whistle blowing, and reduce the chances of non-reporting. Questions raised were whether organisational trust increases the chances of internal whistle blowing

or whether a lack of trust increases the chances of non-reporting (especially keeping quiet and discussing with colleagues) and external whistle blowing.

After providing some background detail on general developments in this area, the focus fell on organisational trust.

It was found that a relationship of trust between employees and employers must exist within the organisation in order to promote the underlying principle of good faith in the PDA. The person who discloses the wrongdoing should feel that he or she will be protected and therefore that the person to whom the disclosure is made should always act consistently in similar situations and also be loyal to the discloser. The literature supported the view that there is a close and significant relationship between organisational trust and internal whistle blowing. Organisational trust therefore is an influencing variable determining a greater level of internal reporting. This finding leads one to believe that the likelihood of internal reporting will increase as organisational trust develops; however, the reverse is also true. Literature indicates that the decision for a whistle blower to report internal wrongdoing is based on trust in the organisation and that if trust is compromised along the development stages of reporting internally, through retaliation or an expectation of unfair treatment or possible dismissal, it will affect the chances of internal reporting and encourage the employee to report externally or keep quiet.

The literature on whistle blowing seems to suggest that organisational trust is a very important aspect of how a whistle blower proceeds with reporting. However, the relationship between the two appears to be little explored in the literature. It could be argued that trust is a broader concept than the fear of reprisal and is also a more useful concept in an organisational setting. It remains that the concept of trust may not have been fully developed in existing whistle blowing literature, which complicates efforts to understand the decisions of employees witnessing wrongdoing. This indicates that there may be a gap in the literature and that trust does indeed play a broader role in whistle blowing. This chapter pointed to the fact that the situation that employees face when deciding to blow the whistle (or not) is one that is likely

to call on trust. Further, it is a finding of this study that trust will therefore most likely influence internal whistle blowing and reduce the chances of the employee keeping quiet.

The spotlight was then turned to dealing with whistle blowing in an organisation. In order to understand the relationship between organisational trust and dealing with whistle blowing in an organisation, a policy for whistle blowing, a strategy for whistle blowing, hotlines, the organisational response toward whistle blowing and forms that negative organisational responses may take were examined.

The effects of whistle blowing on the organisational image were explained and other important matters relating to the management of whistle blowing were examined. Finally, special attention was paid to the effectiveness of whistle blowing and specific indicators of effectiveness were identified. Those elements involved in an organisation's response to whistle blowers were also considered, specifically with regard to the fact that whistle blowing is always a process rather than an event.

It was stated that there has to be a clear understanding of how the structures, policies and mechanisms within the organisation should be integrated so that a whistle blowing culture could take shape within the organisation. The first step is to understand and incorporate the PDA within organisational culture because it has become part of the legislation of South Africa and should therefore be practiced within the organisation. From this point, it becomes apparent that the mechanisms that are put in place assist the organisation in developing the culture, by stamping out organisational wrongdoing, as well as providing an open and transparent system where blowing the whistle becomes acceptable.

Therefore, a whistle blowing policy is one of the mechanisms that could provide effective answers. However, there are many other types of mechanisms that could be utilised. The mechanisms require constant updating and re-innovation, there is a need for proper training programmes

that allow employees to understand their purpose in the entire process, and that are constantly monitored and evaluated.

6.3 Hypothetical synopsis

Based on the problem statement and the research questions, the study followed two hypothetical points of departure, as set out in chapter one:

- An unauthorised disclosure of wrongdoing, which is what whistle blowing is, should be transformed into an authorised disclosure of wrongdoing following certain prescribed processes and procedures.
- For whistle blowing to act as an effective deterrent to organisational wrongdoing it is important that the disclosure of information should be managed effectively and responsibly.

In conclusion, it can be stated that the two hypothetical points of departure that were formulated for this study, were proven to be correct in theory and practice. However, whistle blowing is typically the conventional term used to describe unauthorised disclosure. This issue must be addressed, so that whistle blowing becomes an authorised form of disclosure. It is argued for the first hypothetical point of departure that an unauthorised disclosure of wrongdoing, which is what whistle blowing is, should be transformed into an authorised disclosure of wrongdoing following certain prescribed processes and procedures **in order to be a protected disclosure under the PDA.**

6.4 Concluding proposals

The promulgation of legislation to protect whistle blowers has raised the hope that individuals within the public sector will come to contribute more to the eradication of corruption among their ranks. Whistle blowing is not only an act of reporting wrongdoing or a necessary evil in organisations. It ought to be thought of as an important part of an open administrative culture in

organisations and a guarantee against the persistence of structurally endemic corruption and irregularities in public and private organisations.

Even if the problems cannot be corrected without public disclosure, giving the organisation the opportunity to correct inappropriate conduct can assist an organisation in combating wrongdoing. Employees who reports wrongdoing to outside authorities without an attempt to resolve the problem internally may prevent their organisations from gaining whatever advantages may exist to participate in voluntary disclosure programmes. Anonymous whistle blowers may have mixed success in achieving the goal of preventing harm to the public welfare, since anonymous complaints as noted before can be difficult to investigate. Therefore, consideration for their organisations and their co-workers suggests that employees should attempt to resolve any alleged violations internally before reporting to outside authorities, unless there are compelling reasons not to do so.

It is important that organisations create an organisational culture that encourages internal whistle blowing so that corruption and any perceived irregular conduct can be exposed through reporting the wrongdoing. Organisations should also provide confidential assistance to employees who are worried about wrongdoing in the organisation but are unsure whether to stay silent or blow the whistle. Furthermore, organisations should set up a policy and procedures for internal whistle blowing which will give employees the confidence to raise concerns about wrongdoing and train employees (including managers) on how such procedures can best work.

Final questions that must be answered and proposals made in terms of the information obtained in this study are: **Is a whistle blower protected by the PDA? When will a person be protected if he or she discloses irregular or criminal conduct in an organisation? What should be done in order to make a protected disclosure?**

It is evident that the answer to the question raised in the beginning of this section, regarding whether a whistle blower is protected by the PDA, is no if

the whistle blower is perceived as a person who can disclose wrongdoing that is not linked to the employer-employee context.

As stated before, when a person decides to blow the whistle on wrongdoing, he or she can do so internally or externally. It was also stated that for the purposes of this thesis a whistle blower is an employee making an unauthorised disclosure of information about criminal or irregular conduct along avenues that are not specified. This definition implies that a whistle blower is not protected under the PDA, which by implication forms the basis of what is considered to be a protected disclosure, and therefore, what is considered a whistle blower who will be protected under the PDA. It is clear that the focus of the Act is not to protect groups disclosing wrongdoing but individuals disclosing wrongdoing. It is also clear that there is a lot of confusion in terms of the protection under the Act.

The question of when a person will be protected if he or she discloses irregular or criminal conduct in an organisation is a clear-cut one in terms of the prescriptions of the PDA, which specify what types of disclosure are protected and to whom disclosures should be made.

The third question, in terms of what should be done in order for a disclosure to be a protected disclosure is clearly linked to the findings regarding the hypothetical point of departure in this thesis, which is repeated here for convenience: "An unauthorised disclosure of wrongdoing, which is what whistle blowing is, should be transformed into an authorised disclosure of wrongdoing following certain prescribed processes and procedures in order to be a protected disclosure under the PDA".

An unauthorised disclosure could be transformed by creating an organisational culture conducive to the reporting of wrongdoing, and by creating channels in the organisation for managing the process of reporting. This management process should be facilitated through a policy for whistle blowing where –

- A clear statement that malpractice is taken seriously in the organisation and an indication of the sorts of matters regarded as malpractice.
- Respect for the confidentiality of staff members raising concerns if they wish, and the opportunity to raise concerns outside the line management structure.
- Penalties for making false and malicious allegations.
- An indication of the proper way in which concerns may be raised outside the organisation, if necessary.

While internal or external whistle blowing may bring negative consequences, external whistle blowing brings worse retaliation, and the solution it offers comes at a greater cost to the whistle blower and the organisation itself. Internal whistle blowing is by far the more attractive form of whistle blowing for the organisation and for the whistle blower – even if the internal whistle blower experiences some retaliation. At the same time, internal whistle blowing offers a greater chance of success if the reporting can be dealt with constructively.

Finally, a glance forward in time may be appropriate.

The long-term effects of the whistleblower provisions set out in the PDA may take years to fully reveal themselves in practice. Apart from the proposed amendments to the effects of the PDA in practice mentioned before, the following effects may also necessitate an expansion of the PDA in practice: the common law cause of action for wrongful termination in violation of ethical conduct in organisations, the common law cause of action for breach of an employment contract as a result of reporting wrongdoing, and the phenomenon of "confidentiality of attorneys" as the legal representatives of whistleblowers. Practitioners in the field of whistle blowing law may have the opportunity to take an active role in shaping those developments. Whether practitioners represent employees or employers (or both) or represent clients in the public or the private sector (or both), the practice of whistle blowing law appears to have an interesting future.

6.5   Concluding remarks

The presumed benefits of whistle blowing to society should be seen against the potential of the negative consequences of unauthorised (unprotected) whistle blowing.   Managers and administrators sometimes argue that their organisation's authority structures should protect them from the harassment of potential false, bothersome, or even violent confrontations by employees.

Though, whistle blowing might be perceived as a deficiency in the organisational system, open and transparent organisations have nothing to fear from a whistle blower. A loyal employee with high ethical standards making an authorised disclosure will also never pursue personal gain. He or she will act in good faith, address a matter of sufficient interest, first report internally and finally, if not successful, try to address himself or herself to an authorised person or body outside the organisation.

It seems as if it is an illusion to think that the PDA, codes of conduct or a perfect internal whistle blowing policy in an organisation can eliminate all major irregularities in organisations. Ideally, there should be also be a significant level of organisational trust and an effective internal whistle blowing strategy in place to prevent employees from blowing the whistle externally, since external disclosures raise ethical as well as legal issues in terms of confidentiality and can also affect the relationship between the organisation, the media and the government.

What makes authorised disclosures so significant, is not only its coverage as a protected disclosure under the PDA, but also that it is an attempt to integrate into one law a meaningful systematic approach to protect whistle blowers – an approach not only designed to protect employees who blow the whistle, but also designed to change and reform the management of reporting wrongdoing in public and private organisations.

As mentioned before in chapter one (see section 1.10.1) the grounded theory researcher develops theory about phenomena of interest, approaches

conceptually dense theory as new observation leads to new linkages which finally, leads to revisions in the theory and more data collection. It is important that the observations made in this thesis justify a need for more research and data collection on the salient features of the PDA in both the effective management and implementation thereof, and in a practical sense the development of internal policies in organisations for the implementation thereof in public and private organisations.

In conclusion, it is believed that the study has achieved what it set out to do as described in chapter one, but also served as an effort to expand existing knowledge and literature within the context of combating corruption and the protection of whistle blowers. It is also hoped that the thesis is a fairly accurate exposition of some of the most important challenges that the PDA has to face in protecting whistle blowers in the years to come.

7. BIBLIOGRAPHY

Adams, S. 2006. *Fired whistleblower waived right to appeal.* Available online at:http://www.iol.co.za/general/news/newsprint.php?art_id=vn2006114141627 613C89. Downloaded on 12 June 2007.

Alant, N. 2001. *Investigating the possibility of making professional institutions duty bound to assist employees and supporting them according to their ethical standards.* Paper read at a Whistleblowing Symposium. Institute for International Research, Johannesburg International Airport, 4-5 April 2001.

Alant, N. and Uys, T. 1999. *Whistleblowing: fighting fraud in organisations.* Paper read at the Conference on Fraud and the African Renaissance. Uganda Martyrs University, 8-10 April 1999. Available online at: http://www.pmg.org.za/odb/whistleblowing.htm. Downloaded on 23 November 2006.

Alford, C.F. 2001. *Whistleblowers: broken lives and organizational power.* New York: Cornell University Press.

Andrews, Y. 1987. *Die personeelfunksie.* Pretoria: HAUM.

Andrews, Y. 1988. Moraliteit en die eise wat aan die openbare bestuurder gestel word. *Journal of Public Administration,* 24 (4):210-223.

Armstrong, C. and Graham, G.A. 1975. Ethical preparation for the public service. The 1970s. *The Bureaucrat,* April:4(1).

Arnold, D. and Ponemon, I. 1991. Internal auditors perceptions on whistle-blowing and the influence of moral reasoning: An experiment. *Auditing: a Journal of Practice and Theory,* (Fall edition),1-15.

Auriacombe, C.J. 2001. *Guidelines for drawing up research proposals and preparing theses/dissertations.* Pretoria: University of South Africa.

Auriacombe, C.J. 2004. Key issues in the whistle blowing process. *Journal of Public Administration,* 39(4):655-669.

Auriacombe, C. J. 2005. What happens when one blows the whistle? Recent South African cases. *Politeia: Journal for Political Science and Public Administration,* 24(1):85-99.

Auriacombe, C. J. 2005. Whistleblowing and the law in South Africa. *Politeia: Journal for Political Science and Public Administration,* 24(2):197-225.

Baai, S. 1999. Analysis of Ethics, Corruption and the Issue of Gifts in the Public Sector. *Journal of Public Administration,* 34(4):369-378.

Bahlia, D.M. 2005. *Fighting corruption in the South African Public Sector with special reference to cost and impact.* Unpublished Doctoral Thesis. Pretoria: University of South Africa.

Bakman, F. 2003. *The Management of Whistleblowing in a financial institution.* Unpublished Masters Mini-dissertation. Johannesburg: Rand Afrikaans University.

Banki, S.L. 1981. *Dictionary of Administration and Management.* Washington: Systems Research Institute.

Barker, R. and Dawood, R. 2004. Whistleblowing in the organization: wrongdoer or do-gooder? *Communicare,* 23(2):119-138.

Barnett, T. 1992. A Preliminary Investigation of the Relationship Between Selected Organizational Characteristics and External Whistleblowing by Employees. *Journal of Business Ethics,* 11(12):949-959.

Barrie, G. and Carpenter, G. 1994. Ethics and insider trading in local government-a case of the law and the profits? *Public Law,* 9(1):74-80.

Bauer, C. 2002. Organs/mechanisms/bodies to promote ethical government in South Africa. *Journal of Public Administration,* 37(2):166-183.

Bews, N.F. 1999. *A Sociological Analysis of the Concepts 'Post-Industrial' and 'Post-Modern' and Their Effect on the Notion of Employer-Employee Trust.* Unpublished Masters Dissertation. Johannesburg: Rand Afrikaans University.

Bews, N.F. 2001. You can put a value to trust in the new economy. *HR Future: South Africa's Independent Human Resource Magazine,* 1(1):48-49.

Bews, N.F. 2000. *An investigation into the Facilitators of the Trustworthiness of Managers.* Unpublished Doctoral Thesis. Johannesburg: Rand Afrikaans University.

Binikos, E. 2006. *A sociological case study of the relationship between organisational trust and whistleblowing in the workplace.* Unpublished Masters Dissertation. Johannesburg: University of Johannesburg.

Bok, S. 1982. *Secrets: On the Ethics of Concealment and Revelation.* New York: Pantheon Books.

Botes, P.S. 1994. *Aspects of Supervision: A Guide for the Contemporary Public Manager.* Halfway House: Southern Books Publishers (Pty) Ltd.

Botes, P.S., Brynard, P.A., Fourie, D.J. and Roux, N.L. 1992. *Publieke Administrasie en Bestuur.* Pretoria: HAUM Publishers.

Brabeck, M. 1984. Ethical characteristics of whistle blowers. *Journal of Research in Personality,* 18(1):41-53.

Brief, A. and Motowidlo, S. 1986. Prosocial organizational behaviours. *Academy of Management Review,* 11:710-725.

Brockett, R.G. 1988. *Ethical Issues in Adult Education.* New York: Teachers College Express.

Bromley, D.G. 1998. Linking social structure and the exit process in religious organizations: Defectors, whistle-blowers and apostates. *Journal for the Scientific Study of Religion,* 37(1):145-160.

Burgess, A. 2005. Risky Business. *Special Assignment.* 16 August 2002.

Calland, R. 2004. *Whistleblowing Around the World and in South Africa: Some Critical Observations.* Paper read at the Institute for Directors Breakfast. 6 October 2004.

Camerer, L. 1996. Ethics and the Professions: Blowing the Whistle on Crime. *African Security Review,* 5(6):48-54.

Camerer, L. 1999. Whistle-blowing: An effective anti-corruption tool? *Nedbank ISS Crime Index,* May-June, 3(3).

Camerer, L. 2001. *Corruption in South Africa. Results of an expert panel survey.* Monograph 65. Pretoria: Institute for Security Studies.

Cameron, R.G. and Stone, A.B. 1995. *Serving the public.* Pretoria: J.L Van Schaik Publishers.

Chapman, R.A. (ed.). 1993. *Ethics in Public Service.* London: Edinburgh University Press.

Clapper, V.A. 1995. Organisational culture in the public sector. *Politeia: Journal for Political Science and Public Administration,* 14(2):66–81.

Clapper, V.A. 1999a. On seeing the promised land: Prospects for public sector right doing. *Journal of Public Administration,* 34 (4):379-392.

Clapper, V.A. 1999b. Ethics for public administration and management in the twenty-first century. In Wessels, J.S. and Pauw, J.C. (eds.). *Reflective Public Administration: Views from the South.* Johannesburg: Oxford University Press.

Clapper, V.A. 2000. *Organisational culture and transformation-the role of the Department of Public Service and Administration.* Unpublished Doctoral Thesis. Pretoria: University of South Africa.

Claybrook, C. 2004. *Viewing Organisational Trust and Internal Auditing.* Paper read at the Institute of Internal Auditors Research Foundation, Dallas, United States of America.

Cloete, J.J.N. 1998. *South African Public Administration and Management.* (Ninth revised edition). Pretoria: J.L. van Schaik Publishers.

Cloete, F. and Mokgoro, J. (eds.). 1995. *Policies for Public Service Transformation.* Cape Town: Juta & Co Ltd.

Collin, P.H. 2004. *Dictionary of Politics and Government.* London: Bloomsbury Publishing.

Daffue, M.B. 1989. Organisasiekultuur. *The South African Treasurer,* August:144–145.

Dandekar, N. 1991. Can whistle-blowing be FULLY legitimated? A theoretical discussion. *Business and Professional Ethics Journal,* 10(1):89-107.

Dandekar, N. 1993. Can whistleblowing be fully legitimated? A theoretical discussion. In White, T.L. (ed.). *Business Ethics: a philosophical reader.* New York: Macmillan Publishing.

Daniels, L. 2007. *Travelgate whistleblower fights parliament.* Available online at:http://www.iol.co.za/general/news/newsprint.php?art_id=vn20070322004156428C64. Downloaded on 12 June 2007.

Davids, L. 2007. *Whistleblowing Case study.* Paper read at the Knowledge Resources Seminar on Promoting Organisational Responsibility and Accountability, Grayston, 31 January 2007.

Davis, M. 1989. Avoiding the Tragedy of Whistleblowing. *Business & Professional Ethics Journal,* 8(4):7-8.

Dawes, N. 2005. Whistleblower faces the axe. *Mail & Guardian,* 25 November - 01 December 2005.

Dawes, N. 2006. The nailing of Charlton. *Mail & Guardian,* 25- 26 January 2006.

De Beer, A.S. 1988. *Mass Media: Towards the Millennium.* (Second edition). Pretoria: J.L van Schaik Publishers.

De Maria, W. 2005. Whistleblower protection: Is Africa ready? *Public Administration and Development*, 25:217-226.

De Vries, M.S. 2004. *Trust and governance practices among local leaders.* Paper read at the International Association of Schools and Institutes of Administration (IASIA) conference, Seoul, 12-16 July 2004.

Dehn, G. 1999. Whistleblowing to Combat Corruption. *Public Concern at Work.* Available online at: htpp://www.u4.no/document/literature. Cfm?key=40. Downloaded on 24 April 2004.

Dehn, G. 2007. A Nine point plan. *Public Concern at Work.* Available online at: http://www.pcaw.co.uk. Downloaded on 24 January 2007.

Dehn, G. and Borrie, G. 2001. Whistleblowing: A New Perspective. *Public Concern at Work.* Available online at: htpp://www.u4.no/document/literature. Cfm?key=40. Downloaded on 12 March 2004.

Denhardt, R.G. 1988. *The ethics of public service: Resolving moral dilemmas in public organization.* New York: Greenwood*.*

Department of Public Service and Administration. April 2003. *Country Corruption Assessment Report: South Africa.* Available online at: www.gov.za. Downloaded on 22 January 2004.

Diale, A.J. 2005. *Whistleblower Protection: An Antidote to Open Democracy in South Africa.* Paper read at the Faculty Student Multidiscipline International Conference on Research. September 2005.

Diale, A.J. and Holtzhausen, N. 2005. *Public or Protected Disclosure? The fallacy of whistle-blower protection in South Africa.* Paper read at the South African Association of Public Administration and Management (SAAPAM) conference, Pretoria, 20-21 October 2005.

Dozier, J.B. and Miceli, M.P. 1985. Potential predictors of whistle blowing: A prosocial perspective. *Academy of Management Review,* 10(4):823-836.

Drew, K. 2003. *Whistleblowing And Corruption: An Initial and Comparative Review.* Public Services International Research Unit (PSIRU) London: University of Greenwich. Available online at: http:/www.psiru.org/reports/2002-08-C-whistle.doc. Downloaded on: 30 March 2005.

Dreyer, P.D. 1971. Gedragskodes as probleem, *Municipal Administration and Engineering,* 36(431):26-31.

Drucker, P. 1981. What is Business Ethics? *The Public Interest,* 63:18-36.

Du Plessis, W. 1993. Korrupsie en meeluistering: magsbeperking of magsbehoud? *SA Publiekreg,* 8(1 and 2):238-255.

Du Plooy, G.M. 2001. *Communication research: Techniques, methods and applications.* Landsdowne: Juta & Co. Ltd.

Dworkin, T.M. and Baucus, M. 1998. Internal vs. External Whistleblowers: A Comparison of Whistleblowing Processes. *Journal of Business Ethics,*17:1281-1298.

Elliston, F.A. 1982. Anonymity and whistle blowing. *Journal of Business Ethics,* 1(3):167-177.

Esterhuyse, W. 1991. The nature and the role of ethics and morality in public life In Gildenhuys, J.S.H. *Ethics and the public sector.* Kenwyn: Juta & Co Ltd.

Ettore, B. 1994. Whistleblowers: who's the real bad guy? *Management Review,* 83(5):18-23.

Feldman, E. 1999. *Protection for Whistleblowers.* Paper read at the ninth International Anti-Corruption Conference (IACC). Available online at: www.transparancy.org/iacc/9thiacc/papers/days3/ws7/d3ws7efeldman.html. Downloaded on: 25 January 2005.

Forehand, G.A. and Gilmer, B. 1964. Environmental Variation in Studies of Organisational Behaviour. *Psychological Bulletin,* 62:361–382.

Fourie, D.J. 2002. Guidelines for designing a training programme for officials in the financial management category in the South African Public Service. *Journal of Public Administration,* 37(2):123-139.

Fox, W. and Meyer, J. 1995. *Public Administration Dictionary.* Pretoria: Juta & Co Ltd.

Fraser-Moleketi, G.J. 2006. Keynote address on the role of National Anti-Corruption Forum (NACF) in protecting public interest: IIA SA/QACFE annual Fraud Conference. 24 April 2006. Available online at: www.gov.za. Downloaded on: 27 November 2006.

Frederickson, H.G. 1997. *The Spirit of Public Administration.* San Francisco: Jossey-Bass Publishers.

French, P.A. 1983. *Ethics in government.* Englewood Cliffs: Prentice-Hall.

Fulmer, R.M. and Franklin, G.G. 1982. *Supervision: principles of management.* New York: Macmillan.

Garofalo, C. 2004. *Leadership Development in Contemporary Governance: The Quiet Crisis, Succession Planning, and Ethics in the Public Service.* Paper read at the International Association of Schools and Institutes of Administration (IASIA), Seoul, 12-16 July 2004.

Geertz, C. 1973. *The interpretation of cultures. Selected Essays.* New York: Basic Books.

Gillis, T. 2003. More than a social virtue: public trust among organizations' most valuable assets. *Communication World,* April-May:10.

Glazer, M.P. and Glazer, P.M. 1989. *The Whistle blowers.* New Jersey: Basic Books.

Glazer, M.P. and Glazer, P.M. 1999. On the trial of courageous behaviour. *Sociological Inquiry,* 69(2):276-295.

Global ethics. Available online at http://globalethics.org/about/default.html. Downloaded on 23 June 2004.

Gortner, H.F. 1991. *Ethics for Public Mangers.* Boston: Houghton Maffin.

Gray, P. 1998. *Rebuilding trust.* Paper read at the Nexus Seminar, 14 May 1998. Available online at: http://www.netnexus.org/events/july 98/talks/grav.htm. Downloaded on 23 November 2006.

Greenberg, J. and Baron, R.A. 2003. *Behaviour in Organizations.* (Eight edition). New Jersey: Prentice Hall.

Greenberger, D., Miceli, M.P. and Cohen, D. 1987. Oppositionists and Group Norms: The Reciprocal Influence on Whistle-blowers and Co-workers. *Journal of Business Ethics,* 7:527-542.

Grobler, S. 2001. *Adequately protecting the whistleblower by looking at the circumstances of the person disclosing information and assessing how capable your company is in preventing victimisation.* Paper presented at the Institute for International Research, Johannesburg, 4-5 April 2001.

Groeneweg, S. 2001. *Three Whistleblower Protection Models: A Comparative Analysis of Whistleblower Legislation in Australia, the United States and the United Kingdom.* Available online at: http://www.psc-cfp.gc.ca/research/. Downloaded on 24 June 2005.

Gumbi, M., Maleka, V. and Mchunu, M. 1995. *Open Democracy Act for South Africa.* Available online at: http://www.law.wits.ac.za/docs/oda4ms.html. Downloaded on 23 March 2004.

Gundlach, M.J., Douglas, S.C. and Martinko, M.J. 2003. The Decision to Blow the Whistle: A Social Information Processing Framework. *Academy of Management Review,* 28(1):107-123.

Hanekom, S.X. 1977. Waardefaktore in die publieke administrasie. *The Public Servant,* 7:6.

Hanekom, S.X. 1982. Konformasie in die publieke administrasie. *Politeia: Journal for Political Science and Public Administration,* 1(2):25-31.

Hanekom, S.X. 1989. Bureaucratic Morality. *Administratio Publica,* 1(1):1-13.

Hanekom, S.X. and Thornhill, C. 1983. *Public Administration in contemporary society, a South African perspective.* Johannesburg : Macmillan.

Hanekom, S.X., Rowland, R.W. and Bain, E.G. (eds.). 1987. *Key Aspects of Public Administration.* Pretoria: Macmillan.

Harrison, S. 2004. Whistleblowing and the Protected Disclosures Act. *South African labour bulletin,* 28(4):23.

Heacock, M.V. and McGee, G.W. 1987. Whistleblowing: An Ethical Issue in Organizational and Human Behaviour. *Business & Professional Ethics Journal,* 4:34-46.

Henry, N. 1980. *Public administration and public affairs.* Englewood Cliffs: Prentice-Hall.

Hilliard, V.G. 1996. Stumbling blocks and strategies for public service ethics. *Human Resource Management,* 12(5):22-26.

Hilliard, V.G. 1992. Corruption in the public sector. *Boardroom,* 4:13.

Hilliard, V.G. 1994. Corruption in the public sector-causes and remedies. In Bayat, M.S. and Meyer, I.H. *Public Administration.* Halfway House: Southern Publishers.

Hilliard, V.G. and Ferreira. I.W. 2001. Honing a set of global ethics for South Africa. *Journal of Public Administration,* 36(2):87-110.

Holtzhausen, N. 2004. *The challenge facing public service managers in developing an organisational culture for sustainable service delivery.* Paper read at the International Association of Schools and Institutes of Administration (IASIA) conference, Seoul, July 2004.

Hummel, R. 1989. I like to be ethical but they won't let us. *International Journal of Public Administration,* 12(6):885.

Hunt, G. 1995. Whistleblowing. *Encyclopedia of Applied Ethics,* 4:525-535.

Hunt, G. 1998. *Whistleblowing in the social services: Public accountability & professional practice.* London: Arnold.

Husted, B.W. 1998.The ethical limits of trust in business relations. *Business Ethics Quarterly,* 8(2):233-248.

Jennings, M.M. 1998. Ethics: Why it matters & how you do it. *The Government Accountants Journal,* (Winter edition), 47:11-22.

Jensen, J.V. 1987. Ethical Tension Points in Whistleblowing. *Journal of Business Ethics,* 6:321-328.

Johnson, C.B. and Wright, C.J. 2004. Make it easy they will come. *The Internal Auditor,* 61(1):69.

Johnson, R.A. 2003. *Whistleblowing: when it works and why.* London: Lynne Rienner Publishers.

Jos, P.H., Tompkins, M.E., and Hays, S.W. 1989. In Praise of Difficult People. *Public Administration Review,* November/December:552-561.

Joseph, J. 2002. Follow the leader. *BWB,*(Autumn edition), 3(1):8-11.

Jubb, P.B. 1999. Whistleblowing: A Restrictive Definition and Interpretation. *Journal of Business Ethics,* 21(1):77-94.

Kamsteeg, F. S.a. *Trust, Identity and Other Concepts. The Quest of Dutch Civil Society Organizations.*S.I:1-20.

Kernaghan, K. 1996. *The Ethics era in Canadian Public Administration.* Canada: Canadian Centre for Management Development.

Kidder, R. 1995. *How Good People Make Tough Choices.* New York: Fireside.

King, G. and Hermodson, A. 2000. Peer reporting of Coworker Wrongdoing: A Qualitative Analysis of Observer Attitudes in the Decision to Report versus the Decision Not to Report Unethical Behavior. *Journal of Applied Communication Research,* 28(4):309-329.

King, G. 1999. The Implications of an Organization's Structure on Whistleblowing. *Journal of Business Ethics,* 20(4):315-326.

Klaaren, J. 2002. National information insecurity? Constitutional issues regarding the protection and disclosure of information by public officials. *South African Law Journal,* 119(4):721-732.

Klitgaard, R., MacLean-Abaroa, R. and Parris, H.L. 1996. *Preventing corruption. A practical Handbook for dealing with municipal malfeasance.* Durban: Economic Research Unit, University of Natal.

Kolarska, L. and Aldrich, J. 1980. Exit, voice and silence: Consumer's and manager's responses to organizational decline. *Organization Studies,* 41-58.

Kolhberg, L. 1984. *Essays on moral development, Volume two: The Psychology of Moral Development.* San Francisco: CA. Harper and Row. Press

Kotter, J.P. and Schlesinger, L.A. 1979, Choosing Strategies for Change, *Harvard Business Review*, March/April:106–114.

Kuye, J.O, Thornhill, C, Fourie, D.J, Brynard, P.A., Crous, M, Mafunisa, M.J. Roux, N.L., van Dijk, H.G and van Rooyen, E.J. 2002. *Critical perspectives on public administration: Issues for consideration.* Sandown: Heinemann.

Ladikos, A. 1999. Corruption: The enemy from inside. *Acta Criminologica,* 12(3):28-32.

Landman, A. 2001. A Charter for Whistle Blowers-A Note on the Protected Disclosures Act 26 of 2000. *Industrial Law Journal,* January, 22:37-44.

Le Roux, P.A.K. 2000. Protecting "whistle blowers" The Protected Disclosures Act and the implications for employers. *Contemporary Labour Law,* December 10(5):41-45.

Le Roux, P.A.K. 2003a. The Protection for whistleblowers. *Contemporary Labour Law.* February, 12(7):65-70.

Le Roux, P.A.K. 2003b.The Protected Disclosures Act: a question of balance. *Contemporary Labour Law.* September, 13(2):17-19.

Leedy, P.D. 1997. *Practical Research. Planning and Design.* (Sixth edition). New Jersey: Prentice-Hall.

Lewicki, R.J. and Bunker, B.B. 1996. Developing and maintaining trust in work relationships. In Kramer, R.M. and Tyler, T.R. (eds.). *Trust in organizations: Frontiers of theory and research.* California: Sage*.*

Lewis, D. and Uys, T. 2007. Protecting whistleblowers at work: a comparison of the impact of British and South African legislation. *Managerial Law,* accepted for publication.

Lewis, D.B. 2001. *Whistleblowing at work.* London: Athlone.

Louw, M. 2002. Ethics in the workplace: Moving to higher ground. In Verwey, S. and Du Plooy-Cilliers, F. *Strategic organizational communication: Paradigms and paradoxes.* Sandown: Heinemann Publishers.

Louw, R. 1998. The quest for ethical behaviour in the South African public service. *Teaching Public Administration,* 18(1):65-76.

Louw, R. S.a. *Codes of Conduct.* Available online at: http://www.dcc.mil.za//Code_of_Conduct/Files/.htm. Downloaded on 23 November 2006.

Louw, R. S.a. *Monitoring of ethical codes.* Available online at: http://www.dcc.mil.za//Code_of_Conduct/Files/htm. Downloaded on 23 November 2006.

Mafunisa, M.J. (ed.). 2000. *Public service ethics.* Kenwyn: Juta & Co Ltd.

Mafunisa, M.J. 2006. The role of Public Administration in promoting ethical conduct in elected officials: overview of post 1994 South Africa. *Journal of Public Administration,* 41(3):506-519.

Mail & Guardian. 2003. *South African believe corruption is widespread.* Available online at: http://www.mg.co.za/Content/13.asp?ao=1132. Downloaded on 26 January 2006.

Mainero, L. 1986. Coping with powerlessness: The relationship of gender and job dependency to empowerment-strategy usage. *Administrative Science Quarterly,* 31:633-653.

Makrydemeters, A. 2002. *Dealing with Ethical Dilemmas in Public Administration: The ALIR Imperatives of Ethical Reasoning.* Available online at: http://www.unpan1.un.org. Downloaded on 12 November 2006.

Malan, F. and Smit, B. 2001. *Ethics and Leadership: In business and politics.* Landsdowne : Juta & Co Ltd.

Mallinicks News Centre. 2004. Justice Department whistleblower cleared. Available online at: http//www.mallinicks.co.za/news current article.asp?newsid=2428 Downloaded on 4 December 2004.

Maritz, D. 2004. Leadership and Trust. In Robbins, S.P., Odendaal, A. and Roodt, G. *Organisational Behaviour. Global and Southern African Perspectives.* Cape Town: Pearson Education South Africa.

Martin, B. 1999. *The Whistleblower's Handbook.* Oxfordshire: Jon Carpenter Publishing.

Martin, B. and Rifkin. S.a. *The dynamics of employee dissent: whistleblowers and organisational jiu-jitsu.* Available online at: http://www.uow.edu.au/arts/sts/bmartin. Downloaded on 11 May 2007.

Mathews, M.C. 1987. Whistleblowing: acts of courage are often discouraged. *Business and Society Review,* (Fall edition),40-44.

Mbatha, J.S. 2005. *The ethical dilemmas of whistle-blowing and corruption in the South African Public Sector.* Unpublished D.Admin Thesis. Empangeni: University of Zululand.

Mbiti, J.S. 1989. *African Religion and Philosophy.* London:Heinemann.

Meyer, H.H. 1967. *Differences in Organisational Climate in Outstanding and Average Sales Offices: A Summary Report,* General Electric, Behaviour Research Service and Public Relations Personnel Services. S.I:s.n.

Miceli, M.P. and Near, J.P. 1984. The relationship among beliefs, organizational position and whistle blowing status: A discriminant analysis. *Academy of Management Journal,* 27:687-705.

Miceli, M.P. and Near, J.P. 1985. Characteristics of organizational climate and perceived wrongdoing associated with whistleblowing decisions. *Personnel Psychology,* 38:525-544.

Miceli, M.P. and Near, J.P. 1988. Individual and situational correlates of whistle-blowing. *Personnel Psychology,* 41:267-281.

Miceli, M.P. and Near, J.P. 1992. *Blowing the whistle: The Organizational and Legal Implications for Companies and Employees.* New York: Lexington Books.

Miceli, M.P. and Near, J.P. 1994. Relationship among Value Congruence, Perceived Victimization, and Retaliation Against Whistle-blowers. *Journal of Management,* 20(4):773-794.

Miceli, M.P., Van Scotter, J.R., Near, J.P. and Rehg, M.T. 2001. Individual differences and whistle-blowing. *Academy of Management Proceedings,* 1:1-6.

Miethe, T.D. 1999. *Whistleblowing at Work: Tough Choices In Exposing Fraud, Waste, Abuse On The Job.* Colorado: Westview Press.

Milliken, F.J., Morrison, F.W. and Hewlin, P.F. 2003. An Exploratory Study of Employee Silence. *Journal of Management Studies,* 40(6):1452-1476.

Misztal, B. 1996. *Trust in Modern Societies.* Cambridge: Polity Press.

Moeller, C. 1988. Ethics training. In Keller, E.K. *Ethical insight in ethical action.* Washington: ICMA.

Molatudi, O. 2001. Busting Workplace Crime. *People Dynamics: Journal of the South African Institute of People Management,* 19(3):36-37.

Moran, E.T. and Volkwein, J.F. 1992. The Cultural Approach to the Formation of Organisational Climate. *Human Relations,* 45(1):19–47.

Mosher, F.C.1980. The Challenging Responsibilities and Tactics of the Federal Government. *Public Administration Review,* 40:541-548.

National Anti-Corruption Summit, 2005. *Resolutions of the 2nd National Anti-Corruption Summit 2005.* Available online at: www.gov.za. Downloaded on 4 April 2005.

Near, J.P. and Miceli, M.P.1985. Organizational dissidence: The case of whistle-blowing. *Journal of Business Ethics,* 4:1-16.

Near, J.P. and Miceli, M.P. 1986. Retaliation against whistle-blowers: Predictors and effects. *Journal of Applied Psychology,* 71: 137-145.

Near, J.P. and Miceli, M.P. 1988. Retaliation Against Whistle-Blowers: The Case of Internal Auditors. Discussion document presented at the meetings of the Academy of Management. Indiana State University.

Near, J.P. and Miceli, M.P. 1995. Effective whistle-blowing. *Academy of Management Review,* 20(3):679-708.

Near, J.P. and Miceli, M.P.1996. Whistle-blowing: Myth and reality. *Journal of Management,* 22(3):507-525.

Near, J.P., Dworkin, T.M. and Miceli, M.P. 1993. Explaining the whistle-blowing process: suggestions from power theory and justice theory. *Organization Science,* 4(3):393-411.

Near, J.P., Regh, M.T., Van Scotter, R. and Miceli, M.P. 2004. Does type of wrongdoing affect the whistle-blowing process? *Business Ethics Quarterly,* 14(2):219-242.

Neimark, M. and Tinker, T. 1986. The social construction of management control systems. *Accounting, Organizations and Society,* April-May:369-396.

Nethonzhe, T.E. 2002. *Ethics Management: A challenge to public service in South Africa.* Unpublished Masters Dissertation. Pretoria: Vista University.

Northouse, P. 2001. *Leadership: Theory and Practice.* (Second edition). Thousand Oaks, London and New Delhi: Sage Publications.

OECD. 1998. *Improving Ethical Conduct in the Public Service. Recommendation of the OECD Council.* Available online at: http://www1.oecd.org/puma/ethics/pubs/rec98/re98.htm. Downloaded on 4 July 2004.

Open Democracy Advice Centre (ODAC). 2003. *Submission-Blowing the whistle: In Support of a New Culture of Openness in South Africa.* Available online at: http://www.opendemocracy.org.za/documents/ODAC%20-%20PDA%20Issue%20Paper%20Response.htm. Downloaded on 25 March 2005.

Paine, K. 2003.Guidelines for Measuring Trust in Organizations. *Institute* for *Public Relations.* Available online at: http://www.instituteforpr.com/pdf/2003-measurementtrust.pdf. Downloaded on 22 August 2005.

Petersen, J.C. and Farrell, D. 1986. *Whistleblowing: Ethical end Legal Issues in Expressing Dissent.* Dubuque, Iowa: Kendall-Hunt.

Perry, J.L. 1992. Whistleblowing, organizational performance, and organizational control. In Frederickson, H.G. *Ethics and public administration.* New York: M.E Sharpe.

Ponemon, L.A. 1994. Whistle-Blowing as an Internal Control Mechanism: Individual and Organizational Considerations. *Auditing: A Journal of Practice & Theory,*(Fall edition),13(2):118-130.

Price Waterhouse Coopers Global Economic Crime Survey. 2005. Available online at: http//www.pwcglobal.com/extweb/insights.nsf/docid. Downloaded on 12 January 2006.

Public Service Commission. 1997. *Code of Conduct for Public Servants.* Available online at: http://www.capegateway.gov.za/eng/pubs/publicinfo/C/6188. Downloaded on: 27 November 2006.

Public Service Commission, 2001. *A Review of South Africa's National Anti-Corruption agencies.* Pretoria: Public Service Commission.

Public Service Commission, 2001. *Report on the Effective Management of Hotlines.* Pretoria: Public Service Commission.

Public Service Commission. 2002. *Survey reveals flaws in basic ethics infrastructure.* Available online at: www.gov.za. Downloaded on 24 June 2004.

Public Service Commission. 2006. *State of the Public Sector Report 2006.* Pretoria : Public Service Commission.

Public Service Commission, S.a. *Whistle-blowing- A guide for Public Sector Managers Promoting Public Sector Accountability Implementing the Protected Disclosures Act.* Available online at: www.gov.za. Downloaded on 12 November 2006.

PUMA Policy Brief. 1998. *Public Management Ethics.* OECD Ministerial Symposium on the Future of Public Services. S.I:s.n.

Rasheed, S. 1995. Ethics and Accountability in the African Civil Service. *DPMN Bulletin*, August:3(1)12.

Ravishanker, L. S.a. *Encouraging Internal Whistleblowing in Organizations.* Markkula Center for Applied Ethics. Available online at: http://www.scu.edu/ethics/publications/submitted/whistleblowing.html. Downloaded on 23 March 2006.

Rest, J. 1986. *Moral Development. Advance in Research and Theory.* New York: Praeger.

Roberts, B. 2006. Prerequisites for the successful implementation of the Promotion of Access to Information Act 2 of 2000. *Journal of Public Administration,* 41(2.1):231-240.

Robson, I.H. 1999. Professional ethics from day to day: a practitioner's reflection. In Wessels, J.S. and Pauw, J.C. (eds.). *Reflective Public Administration: Views from the South.* Cape Town: Oxford University Press.

Rose-Ackerman, S. 1999. *Corruption and Government. Causes, Consequences, and Reform.* Cambridge: Oxford University Press.

Rossouw, D. 1996. Waardes wat werk. *Aambeeld,* 24(2):23-27.

Rothschild, J. and Miethe, T.D. 1994. Whistleblowing as resistance in modern work organizations: the politics of revealing organizational deception and abuse. In Jermier, J.M., Knights, D. and Nord, W.R. *Resistance and Power in Organizations.* London: Routledge.

SABC News. 2003. *Does the law protect whistleblowers?* 16 January 2003. Available online at: http://www.sabcnews.co.za. Downloaded on 22 November 2003.

SABC News. 2006. *Effectiveness of whistleblowing.* Available online at: http://www.sabcnews.co.za. Downloaded on 8 December 2006.

SABC News. 2007. *Judgment reserved in Travelgate whistleblower case.* 23 March 2007. Available online at: http://www.sabcnews.co.za. Downloaded on 13 June 2007.

SABC News. 2007. *Parliament's arguments against Charlton dismissed.* 11 June 2007. Available online at: http://www.sabcnews.co.za. Downloaded on 13 June 2007.

Sangweni, S. 2002. *Values and Principles: the top ten for public service in South Africa.* Pretoria: Public Service Commission.

Sangweni, S. 2005. Parliamentary Media Briefing on the 2005 Annual State of the Public Services Report. Available online at: http://www.pmg.org.za/briefings/briefings.php?id=185. Downloaded on 7 December 2006.

Schwella, E., Burger, J., Fox, W and Müller, J.J. 1996. *Public Resource Management.* Kenwyn: Juta & Co Ltd.

Scruton, R. 1996. *A Dictionary of Political Thought.* London: Macmillan Publishers Ltd.

Siehl, C. 1985. After the founder : an opportunity to manage culture. In Frost, P.J. (ed.). *Organizational culture.* London: Sage Publishers.

Sievers, B. 2003. Fool'd with Hope, Men favour the Deceit. In Westwood, R and Steward, C. (eds.). *Debating Organization. Point-counterpoint in Organization Studies.* Blackwell: Malden.

Smith, D.L. 1988. Organisasiekultuur - 'n Pragmatiese beskouing. *O & M,* October: 12-13.

South Africa (Republic). 1991. *Serious Economic Offences Act, 1991*(Act 117 of 1991). Pretoria: Government Printer.

South Africa (Republic). 1992. *Audit Act, 1992* (Act 22 of 1992). Pretoria: Government Printer.

South Africa (Republic). 1992. *Reporting on Public Entities Act, 1992* (Act 93 of 1992). Pretoria: Government Printer.

South Africa (Republic). 1992. *Corruption Act, 1992* (Act 94 of 1992). Pretoria: Government Printer.

South Africa (Republic). 1994. *The Public Protector Act, 1994* (Act 32 of 1994). Pretoria: Government Printer.

South Africa (Republic). 1994. *The Public Service Act, 1994* (Act 103 of 1994). Pretoria: Government Printer.

South Africa (Republic). 1995. *The Labour Relations Act, 1995* (Act 66 of 1995). Pretoria: Government Printer.

South Africa (Republic). 1996. *The Constitution of the Republic of South Africa, 1996.* Pretoria: Government Printer.

South Africa (Republic). 1998. *The Employment Equity Act, 1998* (Act 55 of 1998). Pretoria: Government Printer.

South Africa (Republic). 1998. *The Open Democracy Bill, 1998* (No 67 of 1998). Pretoria: Government Printer.

South Africa (Republic). 2000. *The Promotion of Access to Information Act, 2000* (Act 2 of 2000). Pretoria: Government Printer.

South Africa (Republic). 2000. *The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* (Act 4 of 2000). Pretoria: Government Printer.

South Africa (Republic). 2000. *The Protected Disclosures Act, 2000* (Act 26 of 2000). Pretoria: Government Printer.

South Africa (Republic). 2000. *Local Government Municipal Systems Act, 2000* (Act 32 of 2000). Pretoria: Government Printer.

South Africa (Republic). 2004. *The Combating of Corrupt Activities Act, 2004* (Act 12 of 2004). Pretoria: Government Printer.

Stewart, J. 2004. *Stewart's Quotable Africa.* Johannesburg: Penguin Books.

Sztompka, P. 1999. *Trust: A Sociological Theory.* Cambridge: Cambridge University Press.

Temkin, S. 2004. Corporate whistle-blowers pay high price of courage. *Business Day,* 3 August 2004. Available online at: http://www.eye.com/global/content.nsf/South_Africa/Forensic_Services. Downloaded on 13 June 2007.

Thompson, J.D. 1992. *Organizations in action.* New York: McGraw-Hill.

Tilley, A. 2006. We're still shooting the whistle-blowers. *Business Day,* 06 March 2006.

Trevino, L.K. and Victor, B. 1992. Peer Reporting of Unethical Behaviour: Social Context Perspective. *Academy of Management Journal,* 35(1):38-65.

United Kingdom Committee on Standards in Public Life. 1996. Second Report. May, 1996:22.

Uys, F. 2006. Whistle blowing in disaster prevention and rehabilitation. *Journal of Public Administration,* 41(2.1):218-230.

Uys, T. 2000a. *Hero or Traitor? – The professional person as whistleblower.* Paper read at the IRR Conference, 25-26 October 2000.

Uys, T. 2000b. The Politicisation of whistleblowers: a case study. *Business Ethics: A European Review,* 9(4):259-267.

Uys, T. 2005. *Betrayal, loyalty and trust: The social psychology of whistleblowing.* Paper read at the International Institute of Sociology: Frontiers of Sociology, Stockholm, Sweden 5-9 July 2005.

Uys, T. 2006. Professional ethics versus corporate loyalty: whistleblowing in the financial sector. In Krishna Rao, C.V. (ed.). *Whistleblowing: An introduction.* Hyderabad: Lemag Books, Magnus School of Business.

Uys, T. and Senekal, A. 2005. *Morality of principle versus morality of loyalty: The case of whistleblowing.* Paper read at the fifth annual conference of Ben-Africa, Botswana, 30 August – 01 September 2005.

Van der Waldt, G. and Helmbold, R. 1995. *Die Grondwet en 'n Nuwe Publieke Administrasie.* Kenwyn: Juta and Co Ltd.

Van der Westhuizen, J. 2001. Ethics in Police Management and Administration: A South African Perspective. *Acta Criminologica,* 14(1):31-39.

Van Niekerk, D, Van der Waldt, G. and Jonker, A. 2001. *Governance, Politics and Policy in South Africa.* Cape Town: Oxford University Press.

Vickers, L. 1997. Whistleblowing in the public sector and the ECHR. *Public Law,* (Winter edition),94-602.

Vickers, L. 2000. Whistling in the Wind? The Public Interest Disclosure Act. *Legal Studies,* 20(3):428-444.

Victor, B. and Cullen, J.B. 1988. The organizational bases of ethical work climates. *Administrative Science Quarterly,* 33:101-125.

Vinten, G. (ed.). 1994. *Whistleblowing: Subversion or Corporate Citizenship?* New York: St. Martin's Press.

Vyas-Doorgapersad, S. and Ababio, E.P. 2006. Ethical dilemmas and democratic values: How to reposition institutions for good governance and increased service delivery. *Journal of Public Administration,* 41(2.2):385-396.

Webb, W. and Auriacombe, C.J. 2006. Research Design in Public Administration: Critical Considerations. *Journal of Public Administration,* 41(3.1):588-602.

Weeks, R.V. 1988. *The Interactive Role of Organisational Strategy and Culture: A Strategic Management Approach.* Unpublished Masters Dissertation. Johannesburg: Rand Afrikaans University.

Westman, D.P and Modesitt, N.M. 2004. *Whistleblowing: The Law of Retaliatory Discharge.* (Second edition). Washington: BNA Books.

White, T.I. 1993. *Resolving an Ethical Dilemma.* Available online at: www.ethicsandbusiness.org. Downloaded on 3 October 2005.

Williams, S. 1985. *Conflict of interest: the ethical dilemma in politics.* Great Britain: Gower Publishing.