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**Oversight mechanism for law enforcement body: a  
considerable model**

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**ABSTRACT**

The research considers features of an integrity model and asks in what ways and to what extent this model functions in the national integrity system. Drawing from documentary and secondary data analysis, the study examines the factors affecting in development of oversight framework and analyses the major strengths and weaknesses of the model by critically examining its functions, structure, strategies and performance that ensure that members of law enforcement agencies are made more accountable for their actions. The study identifies the key challenges that model might face for an effective integrity system.

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# **Oversight mechanism for law enforcement body: a considerable model**

*Taptun Nasreen*

## **Introduction**

The study identifies features of an effective oversight framework for law enforcement agencies applying Transparency International's (TI) graphical metaphor the 'Greek temple' model to explain oversight mechanism (TI, 2001) in national integrity system. The study explains the emergence of oversight agencies for law enforcement accountability and examines a suitable and effective oversight framework. It develops a theoretical framework to analyse the model, where cooperation from all stakeholders is required for the effectiveness of the agency. Drawing from documentary and secondary data analysis, the study analyses the major strengths and weaknesses of the proposed model and identifies the key challenges by critically examining functions, structure, strategies and performance that ensure that members of law enforcement agencies are made more accountable for their actions.

The research argues that a powerful statute with adequate resources is essential for an effective and independent oversight body. This operational mandate provides an accountability mechanism so that complainants get fair treatment in a complaint handling process involving members of law enforcement agencies. To do so, an oversight agency must be accountable under Parliamentary oversight for the independence and for the checks and balances in the system. The research argues for a reactive-proactive preventative approach that ensures an effective law enforcement oversight agency.

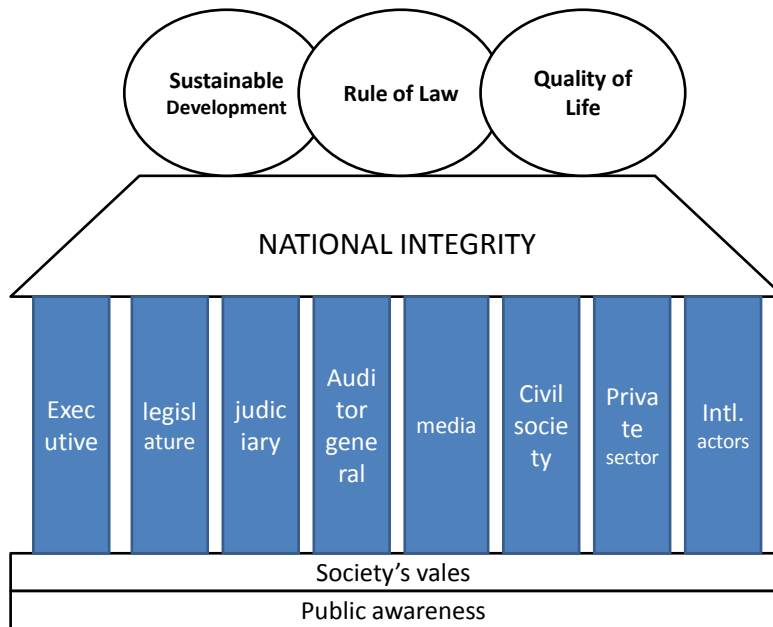
## **National integrity system: The Greek Temple Model**

An integrity system is judged to be an essential concern for a democratic society (Walker, 2001; Bayley, 1985). In this system, a set of institutions and their processes ensure that public power is used for public purposes. This concept has been developed by TI, which has identified some strategies and elements for building a robust framework of a national integrity system. TI defines this by

using the ‘Greek temple’ graphical metaphor where all the pillars are the parts of the integrity system.

The ‘Greek Temple’ model provides a coordinated framework within government agencies dealing with the integrity system. The integrity system can be illustrated by this concept of ‘Greek Temple’, where the temple is considered an integrity system supported by a series of pillars, each being an individual element of the government integrity system. There are three round balls, ‘peace and security’, ‘rule of law’ and ‘sustainable development’, resting on the flat roof (Figure 1).

Figure 1: Institutional pillars of National Integrity System



Source: Pope (2008)

The pillars are individual with different strengths but are also interdependent, though their size and capability are different. If one pillar weakens, an increased load is thrown onto one or more of the others. If several pillars weaken, their load will ultimately slope, so that the ‘round balls’ of ‘sustainable development’, ‘rule of law’ and ‘peace and security’ roll off. The temple also needs sustained foundations that include people’s awareness and values (Pope, 2008). According to Pope, a concrete ‘national integrity system’ requires proper identification of gaps and weaknesses in the governance system. It is consistent with an interrelationship program among these ‘pillars’. The framework shows that many

building blocks make the foundation and various institutional pillars keep the building standing in an integrity system.

This mutually strengthening integrity system ensures a structure where people work for the public interest. The Organization for Economic Co-operation and Development (OECD, 1996) defines this integrity system as an 'ethics infrastructure' that is a set of rules, institutions and practices. This process is set to guide, manage, and enforce good conduct in the public sector. This can be a combination of laws, institutions and management mechanisms that help prevent corruption and promote integrity in the public service. The institutionalisation of an integrity mechanism is increasingly recognised as the best option in the development of an integrity framework (Pope, 2008). The interdependency of the different pillars is based on cooperation where institutions guard each other. A supportive environment is fundamental to obtaining transparency and accountability in this combination. In order to prevent corruption and promote good governance, organizations need to identify good practices and work out standards for developing a sound framework.

In a democratic society, accountability works to minimise each agency or function from malpractice through the classic theory of 'checks and balances' (Schedler, 1999; Terrill, 1990). This mutual relationship of accountability assists minimizing corruption in the broad area of institutions and keeps them accountable to each other (Mulgan, 2003). The main aspect of accountability is the focus on expected standards in exercising public power. Cooperation and interdependence of institutions within a supportive environment can ensure an effective integrity framework.

### **Accountability for law enforcement agencies**

Accountability is a symbol of good governance both in the public and private sector. Generally, the concept of accountability denotes that a person who exercises power and authority must abide by laws and be accountable for the exercise of power. This emphasizes more the manner of actors so that actors are accountable for their actions. Accountability, responsibility and answerability are distinct concepts, though they are often related. Accountability is a situation where someone is required or expected to justify actions or decisions. But it also

refers to a case when an accountable person is responsible for some activity. Brown (2008) defines accountability as the obligation to answer for a responsibility conferred by laws and procedures. Moreover, accountability may require giving an answer to justify ‘actor work to the recipient’ (Uhr, 1993) or ‘implementing new policies’ (Pettersen, 1991).

However, the accountability process expresses the continuing concern for checks and oversight, for surveillance and institutional constraint on the exercise of power’ (Schedler, 1999, p.13). Thus it is not a way of removing or weakening power; rather it acts to ensure that power is exercised in a transparent way according to the rules. In this process, those exercising public power must be answerable, responsive and transparent. Transparency and accountability are related for sound public administration. So accountability is supposed to be part of the professional behaviour of law enforcement officials (Goldsmith & Lewis, 2000; Lewis & Prenzler, 1999). In this way, integrity is driven by the accountability that bridges the gap between citizens and government and helps to ensure public confidence in government.

Questions arise about the use of coercive power by law enforcement officials, as it is a function risking corruption for power or money or both (Costigan, 2004). Sometimes peer group influence or strong loyalty among officers may involve them in corruption (Prenzler, 2000). The Fitzgerald Report (1989) in Queensland revealed that law enforcement maintained connection between entrenched police corruption and inadequate institutional protections against public sector misconduct.

A significant issue raised by the community is that law enforcement agencies need to be aware that it is coercive force that they use against civilians (Stone, 2007). Over the last few decades, the focus on accountability of individuals (Shacklock, 2007) has shifted to an occupational or organizational one (Ekenvall, 2003) that involves performance and provides service to the public. It emphasises that personal integrity and at the same time organizational integrity are needed in an accountability framework.

### **Accountability mechanism: emergence of oversight agencies**

Recent literature on the integrity of law enforcement agencies has been concerned with misconduct, complaints processes and improvement of integrity (Lewis & Prenzler, 1999; Goldsmith & Lewis, 2000; Prenzler & Ransley, 2002). To achieve lawfulness and legitimacy, Bayley (2002) suggested controlling police power and making them subject to accountability mechanisms. Without this, the rights and freedom of the citizens can be endangered. Initially the police opposed the establishment of external independent oversight mechanisms (Millar, 2002). But the demand from citizens and routine misconduct by police officers made Police establish an internal oversight body (Prenzler, 2000). An oversight body is such a monitoring system that is designed to ensure that law enforcement agencies are accountable for their actions. The main function of oversight agencies is to establish the principle of accountability in promoting integrity and curbing corruption.

### **Designing an effective oversight agency**

Scholars argue about a more concrete, pragmatic review of the effectiveness of an oversight body (Brereton, 1999), but what constitutes an ideal oversight model is a matter of examination in a particular context. Arguments for an independent oversight body have often been focused on the effectiveness of such an oversight body in addressing complaints, misconduct or broader police policy. The main task of oversight is to supervise, control and coordinate operations, and to restore civilian confidence and discourage maladministration. However, the most important task of the oversight is to set up a balance between organization independence and public expectation.

Experts in this field have classified different models of oversight agencies. It is noted that there are variations in size, role, powers, functions and strategies in agencies. Some entities are responsible for receiving and investigating complaints, some deal only with serious corruption and misconduct. Some models are generalist and some are specialist governed by statute. An agency whose jurisdiction extends to all public sector officials is referred to as belonging to the generalist model. An agency that oversees police or any special agency activities alone is referred to as belonging to the specialist model.



Kerstetter (1985, cited in Lewis, 1999) identified three models of civilian oversight: a) Civilian Review, b) Civilian Input, and c) Civilian Monitor. Civilian Review has the power to investigate, determine and recommend punishment. A Civilian Input model confines civilian involvement to the receipt and investigative stages of the complaints process; this model recommends disciplinary action to the police authority. In a Civilian Monitor model, police do the investigation and the oversight body supervises the investigation to ensure that it is fair and just.

Goldsmith's six ideal type categories of oversight bodies are in between 'exclusive control by police' and 'exclusive control by civilian'. The Police Assessment Resource Centre (PARC, 2005) of Canada created a new conceptual framework for categorizing police oversight models. These three categories are: a) Review and Appellate Models, b) Investigative and Quality Assurance Models, and c) Evaluative and Performance-Based Models. Review and Appellate Models can only review the completed file and cannot conduct independent investigations or hearings, or subpoena witnesses or documents. Generally, these bodies cannot make policy recommendations based on their review of completed internal investigations. An Investigative and Quality Assurance Model is independent with significant power over the conduct of internal investigations. Evaluative and Performance-Based Models investigate the performance of the investigation.

McDevitt, Farrell and Andresen (2005, cited in Greene, 2007) identified four models of oversight: a) fully external investigation and review model; b) internal review conducted by the police with external review conducted by others; c) the use of professional monitors, ombudspersons, auditors who are external to the police but work with police; and d) hybrid of the first three models.

Every oversight model has a certain range of power. Each of the models has weaknesses and strengths. There are also potential advantages and disadvantages of each oversight model. Different oversight bodies work in different ways. But their sustainability or success depends on various determinants. One institution can be effective for complainants but may not be acceptable to law enforcement agencies or the community. The mission and vision of these models are to investigate complaints against law enforcement agencies in a transparent and independent way.

### **A considerable oversight model**

Selecting the most appropriate model for an oversight process requires analysis of the structure, powers, functions and strategies of the oversight body. But to create a specialized structure of civilian oversight it needs to emphasize strengthening capability, resources and greater independence in decision-making (Lewis, 1999). A good source for the purpose of identifying strengths could be the examination of governing legislation, and consulting government and agency documents, and reports from different bodies related to the oversight body. From this aspect, the research proposes some characteristics for a considerable model for independent oversight.

#### ***Legislation***

An independent body which is responsible for complaints investigation, monitoring and reviewing needs a values mandate to give strong support for its actions (Lewis, 1991). The legislations ‘provide accountability to ensure that complainants get fair treatment while preserving appropriate protection for subject officer’ (Lewis, 1991, p.152), and, simultaneously, to oversight agency work according to the law. Stenning (2000) stressed clear goals and criteria in a particular field of legislation. It may be said that if the legislation is strong, the oversight body is also strong.

There are arguments about the correct structure and power for law enforcement oversight. Bayley (1985) added some crucial points, such as flow of correct information, fairness, and speed in effective accountability mechanisms. Reporting power is another important criterion for a powerful body. Moreover, strengthening the role of effective leadership is vital in securing confidence of other stakeholders (Prenzler, 2004). Equally, skilled persons with integrity are necessary to run an efficient investigation. In many cases, capacity of oversight agencies is determined by the staffing and financial resources (Brown & Head, 2005; 2008). Smith’s research (Smith, 2005) shows that education and training play an important role in developing skills in the staff of an integrity agency.

Quality of investigations is also essential in operational integrity (Prenzler, 2000). Moreover, an oversight body should work impartially and objectively, and according to the merits of specific complaints (Beattie and Weizer, 2000).

Additionally, protection of witness is also an effective step for a strong oversight body which assists in the investigation process. This can be on a short term or long-term basis, depending on special needs.

### ***Partnership among institutions in the integrity system***

Nowadays, partnership has become an important principle of government policies. In a partnership, every partner brings to the relationship a set of skills, abilities and experience that, when worked together and carried out competently, achieve a much better result than if each of the partners had acted on their own (Pesce, 2008). The principle of a partnership relationship is that ‘collective effort’ among agencies makes the oversight result more successful, receiving this ‘co-creating value’. This relationship can avoid instances of duplication through systematic communication with other agencies (Commonwealth of Australia, 2009). In a partnership approach to oversight, an entity can seek advice from other agencies, which can be a powerful tool for oversight agency (Stewart, 2008). This model can help managers to develop and implement a cohesive, focused relationship management strategy. It is the coordination approach that independent oversight body needs if they are to see themselves as being in a partnership with other agencies.

### ***Accountability process***

As the research has discussed above about accountability, the oversight mechanism itself needs to be accountable for checks and balances in the distribution of power. Oversight bodies need coercive power to tackle corruption and maladministration, but at the same time the body should be accountable to the Parliament. An actor with capability and integrity can regulate this well-managed system (Commonwealth of Australia, 2009). In this system of checks and balances, the procedure can be made more accountable. Thus personal as well as organizational accountability help to produce a well-balanced oversight model.

### **Building Block approach for development**

Building block is a popular approach for an agency. Generally, the building block approach provides key insights into how individual building blocks contribute to the overall function. The Australian Commission for Law Enforcement Integrity

(ACLEI, 2007) has adopted this explaining that the strength of this approach in an oversight body identifies core information that is applicable for all information users, and then builds on it to customize information for different uses and users. It formulates staged growth plans and establishes arrangements with other agencies to assist the oversight agency.

### ***A proactive approach***

The proactive approach is concerned with the reduction and prevention of misconduct and recommends change in the organization. Organizational insight from conventional analysis of the 'rotten apple' theory of police misconduct applied to organization responsibility has brought about change in the perception of integrity processes (Palmer, 1992). The oversight body explores the problem proactively through investigation, data collection and analysis, and focuses the organization as a whole (Millar, 2002). Research and specific corruption prevention strategies, such as capacity building through identification of problematic systems within organization, make the system effective. Nevertheless, Walker found lack of research on oversight activities and effectiveness of oversight agencies (2001, p.184).

The policy review function is an important aspect of citizen oversight. A proactive body has the capacity to take any action and can review policy and procedure of the oversighted agencies (Lewis, 1996). This process is designed to serve a preventive function by identifying problems and recommending corrective action (Walker & Kreisel, 1996). It can be an effective information tool for oversighted bodies to identify the problems and initiate corrective action. In order to develop the structure of the oversight body, Brereton (2000) suggests engaging in research and policy development. This can minimize the causes of citizen complaints by offering change in officers' attitude and community perception.

### ***Performance measurement***

Performance measurement can be applied to the practice of oversight agencies in order to assist in determining their performance and effectiveness, and also in providing public accountability of the agency itself (Prenzler & Lewis, 2005). But there are disagreements among experts about which measures are appropriate for

the performance of an independent oversight body to ensure that an oversighted agency operates with integrity (Lewis & Prenzler, 1999; Brereton, 2000; Livingston, 2004).

Oversight agencies need to be involved in complaint investigations, review, complainant satisfaction, and prevention measures (Brereton, 2000). Prenzler and Lewis (2005) propose setting a standard time line to complete complaint investigations; Walker (2006, p. 20) accordingly supports development of appropriate performance measures and sponsoring of independent research. There is a need to ensure that oversight bodies themselves are performing properly for desired outcomes. Moreover, Prenzler and Lewis (2007) recognize the merit of the performance aspect of oversight agency and suggest publicizing that performance. The performance of the accountability mechanism depends on powers and resources for effective oversight.

Another argument is that performance measurement of civilian oversight is difficult as the oversight agency plays a preventative role which should not concentrate on measuring the outcome by statistics only. There are other determinants for increase or decrease in complaint numbers. However, it is suggested that the number of complaints and investigations cannot provide instructions on behavior. Moreover, longitudinal study and observation of other variables need to be considered. Brereton (2000) argues for more solid empirical assessment of performance such as numbers and types of complaints and timeliness of address. The success of oversight can be measured in part by audits reports, review and surveys to ascertain that the complaints process is transparent and its feedback contributes to improve the process.

### **Challenges for the oversight body**

Challenges are identified in the literature that oversight bodies struggle with impediments such as insufficient budgetary appropriations, lack of police cooperation and political interference (Lewis, 1999; Brown & Head, 2008; Brown, 2008). Lack of resources inevitably undermines the effectiveness and damages support for the oversight process (Smith, 2005; Millar, 2002). The Queensland's Police Complaints Tribunal (PCT) is an example of this (Lewis, 1999). Oversight mechanisms are sometimes overburdened. Sometimes change of

government and lack of well-established support can lead to a poor result. So commitment for an effective mechanism is indeed necessary to increase integrity in law enforcement.

### ***Government cooperation***

In an integrity system, government has an important role in effective oversight practice (Lewis 1999; Goldsmith & Lewis, 2000). Terrill (1990) argues that government's 'inactivity and inattentiveness' can often obstruct the ability of the oversight body to be effective. Lewis (2000) suggests the need for a serious commitment of the government to maintain effectiveness of civilian oversight policies. She pointed out the negative symbiotic relationship between police and government, which creates an incentive for governments to pay mere 'lip service' in police accountability issue. So continuity and support for resources from government is an important aspect for an effective oversight body.

### ***Political will***

Political support is crucial for establishing and sustaining effective civilian oversight (Millar, 2002). Police usually operate in political environment. Analysis by Chan (1997) on changing police culture revealed that law enforcement members see their role as protectors of their political masters as they are inherently political. This argument is also supported by the research by Prenzler (2000). So a political role is essential for achieving change in police culture. Again, when there is a change of government, the new government tries to shelve the efforts of the previous government and establish some new form of model to replace the previous one (Prenzler & Lewis, 2005). This has also been evident in Australia.

### ***Law enforcement cooperation***

Cooperation among law enforcement agencies with the oversight body is one of the significant factors that can affect the performance of oversight (Goldsmith & Lewis, 2000). It has been recognized that non-cooperation from a police department negatively affects the oversight mechanism (Walker, 2001; Lewis, 1999). This strong unwritten code of brotherhood encourages police to cover up corruption activities. Millar (2002) argues that lack of a collaborative and

partnership environment between law enforcement agencies and oversight bodies can undermine the effectiveness of oversight and challenge its legitimacy.

Significantly, an attitude of mutual respect and a reasonable working relationship are considered necessary for an effective police-oversight body relationship (Walker, 2001). This change of culture must come from inside the organizations (Chan, 1997). Similarly, change in the law may have some impact on behaviour and that a wider impact could be achieved through further modification of the rules. To change police practice, therefore, an attack upon police 'occupational and cooperative culture' may be necessary (Chan, 1997). So the need for more deliberate strategies for coordination of integrity policies is obvious in the accountability process.

### ***Public support***

A fundamental principle of democratic theory is securing and maintaining public consent for the activities of the State. In this regard, any government agencies, including oversight agencies, need to be justified in the eyes of public, so that citizens can see those agencies operating efficiently and effectively and seeking legitimacy.

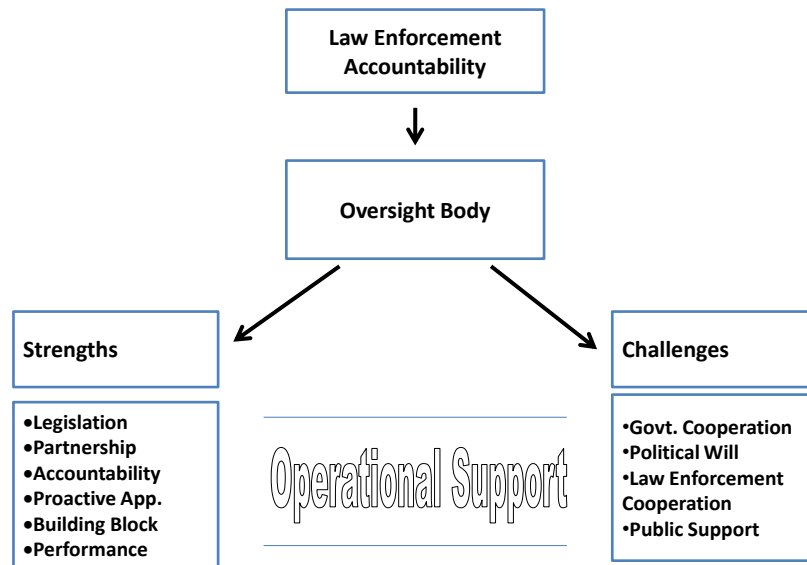
It is also evident that the success of oversight depends on the public awareness of the complaints handling process and a transparent investigation system. Another study concludes that the existence of oversight agencies can promote greater public confidence in the police (Buren, 2007). Citizens feel more confident in complaint investigations when they are conducted by an agency outside the police department (Prenzler, 2004; Livingston, 2004; Landau, 1996; Perez, 1994). It is urged that people need to know the existence of such agency.

### **Evaluation of the model**

The review of the literature summarizes a theoretical framework (Figure 2) of an oversight model for law enforcement agency. From the literature, a more relevant explanation of an effective law enforcement oversight process emerges in the figure, which requires a sound legislative foundation, skilled personnel to administer it, public confidence in it, a reasonable level of commitment and co-operation on the part of law enforcement organizations and the commitment of

political support and finally adequate resources for full and effective implementation of the process.

Figure 2: Law enforcement oversight model



Moreover, they should have the power to conduct investigations from the beginning of the case and have the ability to monitor police investigations into serious and sensitive allegations of misconduct, and be able to investigate or review complaints by police against other police. Policy review also requires careful examination of all these aspects of oversight.

## Conclusion

This paper has explained the development of oversight bodies and accountability relations for law enforcement agencies. The ‘Greek temple’ model of a national integrity system provides a framework for analyzing integrity in law enforcement operation. The study characterizes an oversight framework which has a statutory power together with a proactive-preventative approach in performance measurement and reveals some key challenges that oversight agencies commonly face.



The research argues that a powerful statute with adequate resources is essential for an effective and independent oversight body. The operational mandate provides an accountability mechanism so that complainants get fair treatment in a complaint handling process involving members of law enforcement agencies. The study also argues that an oversight agency must be accountable under Parliamentary oversight for the independence and for the checks and balances in the system to ensure an effective law enforcement oversight agency.

The research concludes on that there are advantages and disadvantages in all models of oversight agencies, but the crucial factors in terms of effectiveness are the appropriate resources and performance of the staff. This oversight body could be a successful one if the government demonstrates good will by providing adequate support. And such support must not be for political benefit.

It is evident in the analysis that lack of resources constrains the oversight body to over-look its proactive-preventive function and to adopt a reactive approach to law enforcement issues. The study thus concludes that strong power aligned with adequate resources can still position the model as an effective law enforcement oversight agency.

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