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**MANAGING CONFLICTS OF INTEREST IN THE AMERICAS:  
A COMPARATIVE REVIEW**

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# Managing Conflicts of Interest in the Americas: A Comparative Review

Eric Raile <sup>1</sup>

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## INTRODUCTION

This paper provides a primarily descriptive overview of approaches to managing public-sector conflicts of interest throughout the Americas.<sup>2</sup> The topic of conflict-of-interest management has increasingly drawn the attention of governments and citizens alike in the Americas over the last several years, as has been the case in much of the rest of the world. Many of the countries in the Americas recently have attempted to pass significant legislation to create, augment, or reform their systems for managing conflicts of interest. The *first* section of this paper examines commonalities in the structures, mechanisms, and methods used throughout the Americas to manage conflicts of interest. This does not mean to say that certain aspects of conflict-of-interest programs are found everywhere in the Americas; rather, certain programmatic aspects appear in one form or another in many or most of the countries. This section introduces the conceptual and definitional framework for conflicts of interest in the public service and examines commonalities in legal frameworks, means of implementation, evaluation mechanisms, and means of enforcement. The section finishes by discussing legislative developments concerning conflicts of interest.

The *second* section of the paper uses seven brief case studies of countries in the Americas to illustrate innovative and unique means of managing conflicts of interest and to illustrate exceptional difficulties encountered in creating programs for conflict-of-interest management. The paper's *third* section utilizes information compiled through a survey of eight ethics offices in the national executive branches of different countries. This section examines common and divergent approaches to managing conflicts of interest and also considers issues pertaining to

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<sup>1</sup> Eric Raile is Intergovernmental Program Advisor to the U.S. Office of Government Ethics and a Ph.D. candidate in Political Science at Michigan State University. This paper was prepared to support a presentation by Jane Ley at the OECD-IDB *Forum on Implementing Conflict of Interest Policies in the Public Service*, held from May 5-6, 2004, in Rio de Janeiro, Brazil. Ms. Ley is Deputy Director for Government Relations and Special Projects of the U.S. Office of Government Ethics. Jason Pien of the U.S. Office of Government Ethics provided research and analytical assistance for this project.

<sup>2</sup> The countries included in some form in this analysis are: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Nicaragua, Panama, Peru, Paraguay, the United States of America (and Puerto Rico), and Uruguay.

jurisdictions, authorities, and financial disclosure systems. The *fourth* section of the paper presents common areas in which many countries of the Americas could improve their systems for managing conflicts of interest. This section of the paper focuses on recommendations provided to countries by the Organization of American States (OAS) *Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption* (the Committee of Experts). Most of the information utilized in this particular analysis comes from responses that countries have provided to the first-round questionnaire developed by the Committee of Experts and from the country reports issued by the Committee of Experts.<sup>3</sup>

## I. COMMONALITIES

### Conceptual Framework

This paper principally employs the OECD's generic definition of a conflict of interest.<sup>4</sup> That definition is as follows: "*A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.*" Worth noting is that particular definitions and term usage differ throughout the Americas. Written documents reviewed for this paper reveal much variety in the specific ways in which countries categorize situations and actions as conflicts of interest. For example, in some countries only the *potential* for a conflict of interest exists until some malfeasance has actually occurred. Additionally, many situations that involve the potential for a conflict of interest may fall under the definition of "incompatibilities". The term "incompatibilities" also refers to situations of holding more than one government position at once, a circumstance this paper will consider in its review due to the potential this situation poses for the conflict of multiple public interests and due to the way such an "incompatibility" could enhance opportunities for the occurrence of a conflict of interest as defined previously. Also, some countries make definitional distinctions between criminal and non-criminal matters concerning conflicts of interest, and between "corruption" and conflicts of interest. For example, some countries distinguish clearly between conflicts of interest and "illicit enrichment." However, for the sake of simplicity this paper typically will not note these distinctions and, instead, will utilize the proposed generic definitional structure, though broadened at times as discussed here.

The concept of conflict of interest characteristically flows from broader principles of sound public service. Examples of such principles are: (1) public servants should not misuse or abuse public office for the private gain of themselves or others; (2) public servants must place the public good above private interests; and (3) public servants should carry out their duties impartially and without prejudice to any individual or group. In countries in which the legal framework does not provide an explicit definition of the term "conflict of interest," the body of laws and regulations that operationalize the underlying principles of sound public service compose the definition.

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<sup>3</sup> In some cases this information may be outdated by one or two years.

<sup>4</sup> The definition appears in *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, p. 24. This book was published by the OECD in February 2004. The OECD Code for the book is 422004021P1. The ISBN is 9264104895.

Finally, the term “patrimonial statement” enjoys widespread use in the Americas. This term is nearly synonymous with the terminology for personal financial disclosure reports, declarations, or registrations. The patrimonial statements contain information about the personal interests of a public servant.

### Legal Framework

Many of the countries examined, particularly in Central America and South America, have crafted explicit provisions regarding conflicts of interest into their constitutions.<sup>5</sup> The constitutional provisions cover such acts as appointing relatives (nepotism) and holding more than one government position simultaneously. Typically the constitutional provisions are the foundation for statutes and regulations that further elaborate the parameters of prohibition.

Multiple bodies of law govern situations that constitute conflicts of interest in the Americas. Such law types include: criminal laws, public administration laws, civil service laws, financial management laws, and public ethics laws. The concentration of conflict-of-interest provisions varies broadly from one country to the next. The laws characteristically prohibit officials from acting on matters that would create a conflict of interest and/or call for public officials to resolve potential conflicts of interest. Conflict-of-interest laws in the Americas typically prohibit public servants from the following, among other activities:

- misuse of information gained through one’s position;
- influence peddling or trafficking;
- representing or advising private parties in relation to matters pending before certain governmental entities;
- employment with entities regulated by the state;
- exercising one’s profession in certain ways outside one’s official position;
- simultaneously serving in certain government positions (especially common for legislators and members of the judiciary);
- appointing relatives to government positions;
- participating in government processes in which the official, a relative, or a business partner or associate has an interest;
- engaging in business, employment, or other financial relationships with nongovernmental entities, the regulation of whose activities falls within the official’s public functions;
- misusing public functions to benefit a political organization or partisan political campaign; and
- illicit enrichment (wrongdoing presumed when increases in wealth do not seem commensurate with lawful sources of income).

In addition, multiple countries examined regulate conflicts of interest arising from previous employment or professional service relationships. Public servants are usually further required to

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<sup>5</sup> For example, Bolivia, Chile, Colombia, Ecuador, Nicaragua, Paraguay, and Peru

report crimes or other violations of probity in the performance of public functions of which they become aware. In several countries of the Americas, failure on the part of a public official to report crimes of which he or she has knowledge is considered a crime punishable by serious sanctions.

Conflict-of-interest restrictions also often appear in laws governing processes in which government entities frequently engage and/or processes that frequently give rise to the potential for conflicts of interest. Government processes that attract added scrutiny and special conflict-of-interest regulation include, among others:

- procurement and contracting,
- construction projects,
- privatization of state-owned companies, and
- financial relationships with certain regulated banks (e.g. loans, accounts, etc.).

Such laws supplement broader restrictions applicable to public servants in general. Public sector agencies with special conflict-of-interest concerns also may have separate, supplemental standards to augment government-wide standards. The degree of centralized coordination (i.e. creation, approval, implementation, and enforcement) of such specialized conflict-of-interest standards varies across the countries examined.

In addition, restrictions often exist concerning public servants' outside employment activities and positions with nongovernmental entities. In countries with such restrictions, exceptions frequently exist for teaching activities. In some cases, the existence of a conflict of interest may constitute grounds for disqualifying an individual from a government position. Some countries go so far as to prohibit certain high-level public officials from holding any outside position. Such restrictions on outside activities are particularly common for judicial officials and legislators.<sup>6</sup> A smaller number of countries have created restrictions on the activities of certain former public servants after they have left their government positions. These post-employment restrictions aim to prevent the misuse of professional connections and influence over former colleagues and subordinates.<sup>7</sup>

Conflict-of-interest situations for judges and legislators are commonly covered by separate laws, rules, and procedures than those covering public servants in executive or administrative positions. Restrictions for judges often appear in criminal and/or civil procedure codes due to the respective roles performed by judges in government and the inability of most judicial branches to promulgate binding regulations. Laws may prohibit judges from hearing cases when the outcome could affect their private interests or the interests of relatives. In many countries of the Americas, legislators cannot vote on matters in which they or certain relatives have a personal interest. In some cases, laws may also prohibit legislators from engaging in contracts with the government or from holding stock or positions in certain private companies. Government prosecutors and defenders are also frequently subject to a separate set of standards

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<sup>6</sup> Examples of countries with outside activity restrictions for judicial officials and/or legislators are Chile, the Dominican Republic, Peru, the USA, and Uruguay.

<sup>7</sup> Examples of countries with post-employment restrictions are Brazil, Canada, Mexico, the USA, and Uruguay.

or may be subject to standards similar to those for judicial officials.<sup>8</sup> The existence of supplemental conflict-of-interest restrictions is further common for public servants conducting oversight functions (e.g. auditors, ombudsman's office employees, comptroller's office employees, etc.).

Finally, countries in the Americas commonly enshrine the right of citizen participation and oversight in constitutional provisions or legislation. These countries explicitly recognize the right of the citizenry to monitor the actions of public servants and to ensure that these public servants are not engaging in conflicts of interest or other corrupt acts. Additionally, multiple countries have strongly addressed the issue of "passive" conflicts of interest arising from acts of omission.<sup>9</sup> The refusal or failure to act in a particular instance can benefit a public servant's private interests just as easily as can action.

### Implementation

Implementation of conflict-of-interest policies falls to an assortment of governmental bodies in the countries examined. In countries in which a centralized authority for coordinating conflict-of-interest standards and policies exists, this authority often exercises many of the functions necessary for the effective implementation of the relevant standards and policies. Some countries utilize much more decentralized systems. Regardless of the degree of centralization, supervisors and officials in leadership positions within their respective organizations play an important part in administering conflict-of-interest policies, in addition to their role of serving as positive examples. The section of this paper entitled "Ethics Offices in the Americas" examines more closely the functions performed by offices responsible for administering conflict-of-interest policies in eight different jurisdictions.

Systems for the revelation of potential and actual conflicts of interest include (1) statements of interests, (2) disclosures of assets and other financial interests, (3) sworn declarations, and (4) declarations to supervisors or other appropriate authorities concerning specific conflicts of interest. These various terms, some of which refer to procedures that are quite similar in practice, all refer to written and/or verbal reports of some type. Some of these reporting requirements are ongoing while others are periodic or situation driven. Compliance with the filing requirements of these systems often is enforced through such means as criminal penalties for failure to file and/or the withholding of salaries. In some cases, these financial disclosure systems are designed to help prevent and detect potential conflicts of interest before they adversely affect government decisions or processes. However, using financial disclosure and declarations in the Americas as a preventive device seems to be less common than using such instruments to detect illicit enrichment (though the former is becoming more common). Many of the countries examined for this study have in place provisions regarding illicit enrichment.<sup>10</sup>

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<sup>8</sup> Examples of countries with such standards for public prosecutors and/or public defenders are the Dominican Republic and Uruguay.

<sup>9</sup> Colombia is an example of a country that so regulates acts of omission.

<sup>10</sup> Examples of countries with illicit enrichment provisions are Argentina, Colombia, Costa Rica, Mexico, and Nicaragua.

Globally the issue of illicit enrichment has been subject to debate due to beliefs on the part of some governments that illicit enrichment as a concept violates certain constitutional and other legal principles, such as presumed innocence. Other governments contend that this is not the case. Additionally, the potential costs of monitoring and investigating public servants for illicit enrichment are disincentives for using such a system. Given the debate, it will be interesting to see how the use of illicit enrichment prohibitions and detection systems plays out in the Americas. The eventual success of the prohibitions and detection systems will likely depend upon the political cultures, legal structures, and commitment of the respective countries. Certainly these systems could be strong tools for managing conflicts of interest in some countries.

The use of training programs to make public servants aware of the conflict-of-interest requirements to which they must adhere is also growing in the Americas. A number of countries have established requirements for designated government bodies to disseminate information on conflict-of-interest standards and on the duties and ethical responsibilities of public servants more generally. Some countries have incorporated courses on ethics and conflicts of interest in training curricula at civil service academies. In several countries the requirements for training and education appear in the legal and/or regulatory frameworks for managing conflicts of interest. Training and education methods in the Americas include the following: (1) classroom training; (2) other instructor-based training; (3) dissemination of written information; (4) educative videos; (5) interactive learning games; and (6) computer-based and online training modules. Educating public servants about conflict-of-interest standards is a key component of preventing conflicts of interest from tainting and harming government processes. Such training ideally enables public servants to evaluate situations from the perspective of conflict-of-interest avoidance and to identify and evade potential conflicts.

A smaller number of countries have established mechanisms by which public officials may consult and receive advice on conflict-of-interest and other ethics standards.<sup>11</sup> These counseling programs aim to answer questions that public servants have about possible conflicts of interest, to clarify the meaning and application of specific restrictions, and to provide guidance to officials on how they can comply with the relevant laws and regulations. Counseling systems help protect both public servants and government decisions and processes.

### Evaluation

An emerging area of interest in the Americas is the development of mechanisms to evaluate the effectiveness of programs for managing conflicts of interest. The evaluation instruments, such as employee surveys and formal qualitative and quantitative studies, are still in their initial stages but may prove very useful in reforming and improving systems for conflict-of-interest management. Evaluation also occurs at the international level. Participating members of the OAS monitor implementation of the Inter-American Convention against Corruption through a mutual evaluation mechanism. The Committee of Experts issues country reports concerning

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<sup>11</sup> Examples of countries with advice and counseling programs for conflicts of interest are Argentina, Brazil, Canada, Chile, Mexico, and the USA.

progress toward implementing the convention and is composed of appointed experts from each country that has signed the convention and has joined the follow-up mechanism. By early 2004 the Committee of Experts had completed first-round reports for eight countries—Argentina, Chile, Colombia, Ecuador, Nicaragua, Panama, Paraguay, and Uruguay. The schedule calls for the completion of four additional country reports at each subsequent meeting of the Committee of Experts until completion of the first round of review. The topic of conflicts of interest is a central one in the first round of evaluation.<sup>12</sup>

### *Enforcement*

Enforcement mechanisms for violations of conflict-of-interest standards include an assortment of legal and administrative actions that can be taken against those responsible for violations. In no country examined does the imposition of an administrative penalty prejudice the pursuit of further penalties for corresponding civil or criminal violations. Authorities responsible for pursuing investigations of violations, pursuing administrative actions, and pursuing prosecutions include: internal audit or control offices in government entities, comptroller general offices, attorney general offices, and specialized public corruption control agencies, among other entities.

Common administrative punishments include suspension or dismissal from one's public position. Such punishments normally follow established procedures for taking administrative actions against employees. Other administrative punishments include:

- formal reprimand (potentially affecting future promotions),
- fines or garnishing of wages,
- demotion, and
- transfer to another position.

Compulsory loss of position is frequently imposed in response to violations of certain conflict-of-interest standards. Dismissal from public office may affect a person's ability to obtain future government employment. In some cases, dismissal results in automatic disqualification from holding public office for a specified period of time.

In addition, many countries provide recourse for the government in cases in which government decisions, processes, or functions have been compromised by the existence of prohibited conflicts of interests. Laws specifically related to government contracting often contain provisions allowing for the nullification or termination of contracts entered into in violation of the applicable standards and procedures. This does not mean, however, that actions taken in violation of conflict-of-interest standards are necessarily or automatically made invalid; nullification sometimes requires a separate determination. Violation of contracting standards may also result in an inability to participate in future government contracts or to provide other services to the government.

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<sup>12</sup> The country responses to the first-round questionnaire and the country reports issued by the Committee of Experts are available on the Organization of American States website at <http://www.oas.org/juridico/english/followup.htm> . The main website for the OAS is <http://www.oas.org> .

### Programmatic Changes

Perhaps the most impressive development in the Americas in the last few years has been the proposal and passage of legislative packages for managing conflicts of interest. Many of the countries of the Americas have proposed and/or passed significant legislative packages to improve conflict-of-interest management. Currently, significant legislative packages are pending or have recently been adopted in countries such as Argentina, Canada, Costa Rica, Chile, and Paraguay. In some cases these legislative packages are part of a second wave of legislation meant to consolidate oversight bodies charged with managing conflicts of interest, to create access-to-information systems, or to improve financial disclosure systems.

## **II. BRIEF CASE STUDIES: POINTS OF INTEREST**

Moving from a generalized view of regional commonalities to more specific country studies, we note that many countries of the Americas have implemented innovative or unique programmatic elements or have encountered exceptional difficulties. The following countries were chosen for analysis based on information availability; the information comes almost entirely from responses to the OAS Committee of Experts questionnaire for the first round of evaluation (and at times the language used here closely follows the language used in those questionnaire responses, in the interest of clarity and accuracy). The mention of programs here does not necessarily signify that these countries are the only ones with such programs.

### Argentina

Argentina has recognized that civil society participation and oversight can only be effective if civil society has a level of technical expertise that will facilitate actual understanding of the relevant issues. As a result, Argentina's Anticorruption Office, as the primary depository of technical expertise concerning conflicts of interest and similar matters, has provided technical assistance and training to nongovernmental organizations (NGOs) and professional organizations. In particular, the Anticorruption Office explained the structure, operations, and importance of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption to these civil society organizations. The civil society organizations formed a *Committee to Follow up on Compliance with the Inter-American Convention against Corruption* as a means to perform critical oversight functions, and this civil society committee has been an active participant as the OAS Committee of Experts associated with the follow-up mechanism has contemplated the Argentine situation and has issued recommendations for improvement. The civil society committee even prepared a report for dissemination to a large number of political and social actors both nationally and internationally. The training provided by the Anticorruption Office to the civil society organizations is most interesting in that it contravenes typical bureaucratic momentum toward avoidance and dislike of civil society organizations with oversight responsibilities. In fact, the Anticorruption Office *equipped* civil society to perform these oversight functions.

As mentioned, the OAS Committee of Experts has issued recommendations to the Argentine government. In implementing those recommendations, the Anticorruption Office has developed an outreach program for coordination with provincial and municipal governments. Conflicts of interest are not just a problem at the national level, and this coordination represents an effort to systematize and standardize the efforts in Argentina to minimize the negative effects of conflicts of interest and other forms of corruption. The Committee of Experts' report for Argentina seems to suggest that effective enforcement of conflict-of-interest provisions is a crucial concern, particularly in certain sectors of government. The outreach to the provinces may also address deficiencies in this area.

In terms of dealing with conflicts of interest through the disclosure of interests, a few years ago Argentina's Anticorruption Office developed software that enabled computerized submission of financial disclosure statements. Public servants required to submit financial disclosure statements can access the software via the Internet, CD-ROMs, and agency intranets. Argentina's financial disclosure system is bifurcated between publicly available information and confidential information. Public servants can submit both types of information using the software and can save the information electronically, thereby saving time in completing the following year's statement. An annual update to the statement is only necessary if a public servant's net worth has changed in the interim. The computerized system has had the positive effect of greatly increasing civil servant compliance with filing requirements.

Finally, the Argentine government, and the Anticorruption Office in particular, have been quite active in signing both formal and informal agreements with other countries to facilitate technical assistance and cooperation activities in this area of conflict-of-interest management. They have placed great emphasis on the gains that a conflict-of-interest program can reap from the free flow of information with other entities responsible for similar programs.

### Canada

Though many of the countries of the Americas apply different conflict-of-interest standards to employees at different levels of the national governmental hierarchy, the Canadian government has a rather compartmentalized system that features separate codes of conduct for "public office holders" and for most of the remainder of the national civil service. The *Conflict of Interest and Post-Employment Code for Public Office Holders* is the code for upper-level officials. Specifically, this code applies to Ministers, Secretaries of State, their exempt staff, Parliamentary Secretaries, and Governors in Council appointees. The Office of the Ethics Counsellor is primarily responsible for administering this code. All other public servants technically employed by the Treasury Board must adhere to the *Conflict of Interest and Post-Employment Code for the Public Service*. The Treasury Board Secretariat's Office of Values and Ethics administers this code through the delegation of responsibilities to deputy ministers of federal government departments. In addition to these two codes, the national government also manages conflicts of interest through the following: (1) guidelines for ministerial activities and fundraising; (2) the *Guidelines for Ministerial Dealings with Crown Corporations*; (3) the *Lobbyists Registration Act*; (4) the *Parliament of Canada Act*; (5) the Standing Orders of the House of Commons and the Rules of the Senate; (6) the Defence and Administrative Orders and Directives; and (7) rules established through the Canadian Judicial Council for federal judges.

The provinces and territories of Canada have established their own rules and systems for managing conflicts of interest, as well.

Another interesting feature of the Canadian program for managing conflicts of interest is the new degree of independence for the Ethics Counsellor, who is responsible for administering many aspects of the program.<sup>13</sup> The Canadian Prime Minister recently announced that appointment of the Ethics Counsellor will require consultation with leaders of the opposition parties and that dismissal will require the concurrence of Parliament. The Ethics Counsellor's term of office is fixed at five years.

Finally, Canada has a unique system for blind trust arrangements. A blind trust is a device that allows an individual to maintain investments and other financial instruments upon entering service in government, despite the potential for conflicts of interest. An independent trustee administers the financial arrangement, and the civil servant has no knowledge of any action taken with regard to the sales and purchases of investments—thereby effectively eliminating the danger of conflicts of interest. Blind trust administration can be rather expensive, but the Canadian government has devised a system for public financing of the creation and administration of blind trusts when such arrangements are deemed desirable. The public financing does have reasonable limits, however.

### Colombia

The program for managing conflicts of interest in Colombia benefits from general human resource policy of the government in the form of the Uniform Personnel Information System (SUIP). Among other functions, this system assists in detecting possible conflicts of interest. At least 201 national-level government agencies participate in the system, which collects basic information regarding a public servant's curriculum vitae, work experience, and academic training. The SUIP enables easy updating of background materials and permits verification of information in the documents submitted. Generating aggregate reports on hiring and work termination is also possible, a task that could be useful in creating or amending policies for managing conflicts of interest. Oversight and supervisory bodies and the courts can request information from these personnel files to conduct investigations. Colombia planned to extend the SUIP to cover the judicial branch and sub-national governmental entities by the end of 2003.

All persons seeking government positions or seeking to contract with or provide services to the Colombian government must submit complete background information in the uniform format. The background information includes work experience and circumstances that could create disqualification or ineligibility. The system for statements of assets and income (i.e. the personal financial disclosure system) also ties into the SUIP. The Information System for Sworn Statements (SIDECA) is an electronic system for the handling, oversight, and monitoring of information in the statements. The bodies responsible for compiling and processing the SUIP have access to the system for statements of assets and income. Such bodies include oversight bodies, the Public Prosecutor of the Republic, the National Registry of Vital Records, and other

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<sup>13</sup> Very recent legislation in Canada also will change the jurisdiction of the Office of the Ethics Counsellor in ways not reflected in this analysis.

divisions of the national executive branch. Personnel heads in government offices may verify the submission of the statements and the accuracy of their contents through sampling methods.

The magnitude of penalties for non-action is another element of the Colombian system for managing conflicts of interest that stands out. A public official's failure to act, delay of action, or refusal or neglect to perform duties subjects the public official to 2-5 years in prison, a fine of 10-50 monthly minimum wages, and disqualification from exercising public rights or functions for a period of 5 years. Though similar provisions certainly exist in other countries, the punishment here seems a bit more severe than is typical. Additionally, a public official who fails to report punishable conduct of which he or she has knowledge is subject to a fine and expulsion from the public service. If the conduct the official failed to report is of a certain type, a prison sentence of 2-4 years can also be imposed. Again, this type of provision does not stand out as much as the extent of the sanctions.

The Colombian government has also undertaken numerous initiatives to involve the citizenry in the management of conflicts of interest and in public administration more broadly. One such initiative is COLOMBIEMOS, a project of the Presidential Program to Combat Corruption. The purpose of the initiative is to establish a network of citizens who are committed to protection of the public good. COLOMBIEMOS involves a webpage for communication and information, a bulletin concerning anticorruption efforts, the creation of citizen groups for oversight of public functions, and public hearings. Additionally, Law 489 of 1998 created opportunities for the organization of civil society with the purpose of exercising social control over the administration of public matters. The Colombian government recognizes this law as the most significant of its kind in Colombia, despite the fact that some have questioned its scope and effectiveness. The law also gives the Department of Public Administration responsibilities for the formulation and advancement of the *National Plan for the Training of Special Oversight Bodies*. The Department of Public Administration carries out this function in coordination with the College of Public Administration, which is tasked with training citizens to exercise social control.

Colombian civil society has developed a series of other tools to ensure integrity and transparency in governance, such as: (1) "integrity pacts" for monitoring government activities concerning certain large contracts; (2) the *Code of Ethics for Businesspeople Negotiating with the State*, signature of which is a prerequisite for signing honesty pacts; (3) "honesty pacts" for signature by all parties involved in smaller government contracts; and (4) "transparency pacts" designed to strengthen the commitment of elective office candidates to transparency and accountability. The Colombian government has acknowledged that general public knowledge of and participation in these civil control mechanisms has been less than desirable thus far, but the government has seemingly expended significant effort in attempting to provide civil society with the necessary tools to fight conflicts of interest and other corruption.

### Ecuador

A noteworthy feature of the Ecuadorian anticorruption system is the nongovernmental or quasi-governmental status of the primary entity responsible for fighting conflicts of interest and other corruption in the government. The Commission for the Civic Control of Corruption

(CCCC) is a representative of the citizenry with relative economic, administrative, and political autonomy. The CCCC is composed of seven members, each of whom is chosen by an electoral college that represents a certain sector of the society. The CCCC has responsibilities for the prevention, investigation, and identification of corrupt acts, as well as responsibilities for dissemination of the principles of transparency and management in public matters. The latter responsibility includes formulating programs and public awareness campaigns against corruption, and promoting the organization and participation of the citizenry in the fight against conflicts of interest and other corruption. The CCCC has rather strong subpoena powers for the purpose of investigation; it has the authority to solicit reports or information from any public institution, private institution, or natural person for the purpose of investigation or ruling on a case concerning a conflict of interest. The law provides for sanctions when an institution or person fails to submit the requested information.

Ecuador's system for managing conflicts of interest has a number of other notable characteristics. The country's constitution prohibits persons who have certain types of contracts with the government from participating in political elections. This restriction seems to exceed similar restrictions that are common in the Americas. The constitution further establishes that *all citizens* have a responsibility and duty to report instances of corruption and to combat corruption. Again, this provision seems to go beyond the more common requirement in other countries of the Americas that calls for *public servants* to report acts of corruption of which they become aware in the course of their duties. Finally, failure to submit a financial disclosure report upon terminating service with the government creates a presumption of illicit enrichment. This offense is punishable by two to five years in prison and double the amount illicitly taken.

### Mexico

The Mexican government has been a leader in developing electronic technology for the management of conflicts of interest and other public administration matters. Among such electronic initiatives have been DECLARANET, COMPRANET, and TRAMITANET. The TRAMITANET is a network that permits citizens to monitor public actions, to submit complaints, and to conduct certain government-related business. Citizens can also lodge complaints through "Sactel", which is a telephonic system that is in continual operation, and through the *National System for Citizen Complaints, Whistle-blowing, and Attention*. The COMPRANET is an electronic system for transparent government contracting that has existed since 1996. The system permits citizens to know what the government buys, from whom, at what prices, and below what conditions. The DECLARANET is the electronic system through which all public servants subject to financial disclosure requirements must submit information concerning their patrimonial situations.

A major Mexican law in terms of managing conflicts of interest is the Federal Law of Administrative Responsibilities of Public Servants (LFRASP). This law requires public servants to be continuously aware of the potential for conflicts of interest. A public servant must inform his or her supervisor immediately in writing of any official matter in which the public servant has a personal, familial, or business interest. The law further requires that public servants report in writing any corrupt act of which they have knowledge. The explicit requirement that the public servant make the report in writing is less common in the Americas. The Mexican government has

also created a public registry of public servants, which is administered by the Secretariat of the Public Function. The registry contains information about the patrimonial situation of the public servant, but the public availability of the information depends upon authorization by the particular public servant. The Secretariat of the Public Function further is responsible for auditing the patrimonial situation of public servants and for initiating investigations when illicit enrichment is suspected.

The Mexican system for managing conflicts of interest utilizes a two-layered approach for codes of ethical conduct. In addition to a general code of ethical conduct for the government, each entity of the Public Federal Administration must create a specific code of conduct that outlines the conduct expected in concrete situations that occur commonly within that particular entity. Mexico's system for auditing financial disclosure reports is also exceptional. The information from the reports is arranged in a matrix of facts that the Secretariat of the Public Function examines in both its horizontal and vertical dimensions. The matrix permits evaluation of the history of assets through examination of the acquisitions, sales, donations, and inheritances of the public servant. The matrix also permits examination of bank records to ensure that fund movements are consistent and that savings comport with the salary and other known forms of income of the public servant. The Secretariat of the Public Function then also cross-checks the reported information using information collected by other public institutions and internal control organizations.

Additionally, the Mexican system for managing conflicts of interest has placed great emphasis on the value of civic education and advertising. The government has created books and an Internet site for children. The Internet site has the purpose of fostering ethical values among the population, particularly with regard to transparency and probity. The approach has also included televised conferences concerning conflicts of interest and anticorruption advertisements shown prior to motion pictures.

### Paraguay

Paraguay's course of developing a national program for managing conflicts of interest has been a rough and irregular one over the last few years in certain respects. Law 1626 of 2000, the Civil Service Law, established a great many of the legal provisions concerning conflicts of interest in the Paraguayan government (though the law does address many other civil service issues). Since its passage, however, at least 418 provisions of that law have been subject to legal challenges before the Supreme Court of Justice as being unconstitutional. Certain sources of these challenges have been unusual. Among other entities, the challenges have come from all three branches of the national government, oversight bodies, and civil servant unions. The Supreme Court of Justice issued a temporary injunction to suspend the challenged provisions until it can hear the respective cases. Further confusing the situation, one suspended article nullified Law 200 of 1970 of the Civil Service Regulations. This older law, therefore, is again valid in some cases.

The OAS Committee of Experts was unable to discern precisely which legal provisions and government positions were covered by the injunction and thus was unable to be extremely specific in its treatment of the issue. The Supreme Court's injunction could be broad enough to

effectively eviscerate all conflict-of-interest regulations but those established elsewhere concerning only special cases of conflicts of interest. The OAS Committee of Experts made specific recommendations concerning elements of Paraguay's program for managing conflicts of interest, but many of the recommendations were underscored by the general recommendation that Paraguay "Develop and implement new standards and systems for the appropriate treatment of the topics analyzed throughout [the] report if the standards and systems, as regulated in the current Civil Service Law, are declared unconstitutional."

An executive decree in December 2000 charged the Public Service Secretariat with enforcing the Civil Service Law and establishing technical standards. Given the status of the Civil Service Law, the status of the Public Service Secretariat is also rather uncertain. The Civil Service Law further provided for a system of sworn declarations of property and income, which would apply to all public servants. The law established sanctions for failure to comply with requirements related to the sworn declarations. The uncertainty of these provisions is particularly problematic because Paraguay has no specific regulations that provide for penal sanctions of conflict-of-interest situations. Certainly, important elements of Paraguay's system for managing conflicts of interest hang in the balance. Despite other positive actions already taken by the Paraguayan government, the Supreme Court's decisions and the ways in which the government deals with the interim period will be strong determinants of the government's ability to manage conflicts of interest.

### United States of America

Though other countries in the Americas have decentralized systems for managing conflicts of interest, the executive branch at the national level in the USA is notable for its level of decentralization. The U.S. Office of Government Ethics is responsible for providing overall regulatory direction to the executive branch program for managing conflicts of interest. This office also is responsible for interpreting and implementing certain criminal and civil provisions of the law. As a management responsibility, the head of each executive branch agency is ultimately responsible for the administration and enforcement of the administrative ethics program at his or her respective agency. However, each of the dozens of agencies is required to have a designated agency ethics official, who is responsible for the administration of the day-to-day activities of managing conflicts of interest. These day-to-day activities include training employees on conflict-of-interest standards, counseling employees when they have questions, and reviewing financial disclosure reports for potential and actual conflicts of interest. In practice, remote offices such as regional postal service offices and military bases have individuals with responsibilities for managing conflicts of interest, as well. Approximately 10,000 executive branch employees spend at least some of their official time administering the ethics program.

The U.S. Office of Government Ethics and certain ethics officials at individual agencies of the executive branch have created electronic means of training public servants on conflict-of-interest standards. The public servants can complete computer training modules on their own schedules, and the agency's ethics official receives an electronic certificate showing completion of the training. As part of its regular oversight and review of executive branch agencies' ethics programs, the U.S. Office of Government Ethics has also implemented an employee survey

designed to help evaluate the effectiveness of these programs. The survey assesses employee knowledge of executive branch rules of ethical conduct, employee awareness of agency ethics program resources, effectiveness of agency ethics education and training, and general agency ethical culture. On the basis of these surveys, the U.S. Office of Government Ethics may make recommendations on improving individual agency programs for managing conflicts of interest.

### III. ETHICS OFFICES IN THE AMERICAS

A recent survey of “ethics” offices located within the national executive branch of several countries in the Americas provides comparative data concerning the structure, authority, and responsibilities of these offices.<sup>14</sup> The English-language results of this survey, as compiled by the U.S. Office of Government Ethics, are also reproduced in *Appendix A* following this paper. The term “ethics” here simply signifies that the offices deal with issues that impact the appropriate performance of duties by public servants, with managing conflicts of interest as a central part of that mission. Variations among these offices are instructive reflections of different choices countries have made in addressing conflicts of interest in the public service. Though one can attribute some of the variance to particular resource levels and governmental structures, other differences are clearly indicative of divergent views about how to most effectively and efficiently deal with conflicts of interest and related issues. Similarities among ethics offices are typically evidence of necessary and successful methods. One should keep in mind that the survey covers only about a fourth of the countries in the Americas but does include many of the more-entrenched ethics offices in the region.

The institutions participating in the survey were: Argentina’s Anticorruption Office; Brazil’s Commission on Public Ethics; Canada’s Office of the Ethics Counsellor; Chile’s Council of General Internal Audit of the Government; Mexico’s Secretariat of the Public Function; the Office of Governmental Ethics of Puerto Rico; Uruguay’s Advisory Board for Financial Economic Matters of the State; and the United States Office of Government Ethics. These organizations are member institutions of the Network of Government Institutions of Public Ethics in the Americas. Though some of these organizations have responsibilities related to the legislative and judicial functions of the national government, only those responsibilities pertaining to the executive function are discussed here.

As mentioned, these organizations essentially all fall within the executive branch, though Brazil’s Commission on Public Ethics is more precisely a commission. The heads of these organizations all are appointed by the head of government or the executive power. In at least two countries (Uruguay and the USA), the appointment process requires the permission or consent of a legislative body. Appointment at the highest level of government can lend legitimacy to the heads of ethics offices and to the offices themselves. The heads of these ethics organizations can bring more influence to bear on high-level government officials when the ethics heads are very near the head of government in the governmental hierarchy. Aggressively preventing conflicts of interest among high-level government officials is quite important given that such individuals are

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<sup>14</sup> The comparative compilation of information is available on the website of the Network of Government Institutions of Public Ethics in the Americas, at <http://www.reddeetica.org/>. The specific website address for the document is <http://www.reddeetica.org/docs/compilation%20Red%20de%20Etica.pdf>. The document is also available in Spanish.

often in the public's eye and can do great harm to the level of confidence the citizenry places in government administration. Though high-level appointment can be a positive factor, direct appointment of organization heads and placement within the executive hierarchy may also serve to diminish the independence (perceived and real) of ethics offices, particularly in the eyes of the citizenry. To what extent such diminished independence is a reality is unclear and likely varies from one country to another.

All the offices surveyed have jurisdiction over conflicts of interest that arise from financial interests and jurisdiction over standards of conduct. Additionally, nearly all have jurisdiction over conflicts of interest that result from divided loyalties. One substantial difference among these offices is the number of employees in each. The numbers range from a handful of employees to hundreds or even thousands of employees. The differences in size (and budget) are due to the span of responsibilities of the organizations, the respective size of each government, the emphasis placed on anticorruption issues by political leadership, and political-historical factors.

Some of the offices, most notably Chile's Council of General Internal Audit of the Government and Mexico's Secretariat of the Public Function, are responsible for many issues in addition to public ethics and conflicts of interest. The Chilean organization is not really even the "central" entity responsible for matters of public ethics and conflicts of interest. At the present time no such central organization exists in Chile; multiple organizations share the duties and authority in the decentralized Chilean system of public ethics oversight. Other organizations, such as Brazil's Commission on Public Ethics and the United States Office of Government Ethics, have relatively narrow and focused areas of responsibility and are therefore comparatively smaller in size. In no country surveyed does a single organization exercise all authority for ethics and conflict-of-interest matters. The organization that comes closest to this type of total authority is the Office of Governmental Ethics of Puerto Rico.

One can view the efforts against conflicts of interest as having multiple components: (1) prevention; (2) detection; (3) investigation; (4) prosecution and/or administrative proceedings; and (5) penalization. These components certainly overlap and interlock. For example, aggressive prosecution can serve as a preventive deterrent and warning for would-be offenders. Governments may approach the first component, *preventing* conflicts of interest, in numerous ways. A list of possible preventive measures includes: a clear, fair, and enforceable code of conduct; advisory and counseling services; education and training programs; and systems for declaring or registering financial and other interests that could create a conflict of interest.

As mentioned, all the offices surveyed have responsibilities associated with standards for appropriate conduct. Except for one, all the offices also provide advisory and counseling services and provide education and training services. All eight organizations may issue advisory opinions, though the extent to which these opinions bind public servants to a course of action varies. The advisory opinions are always binding in Argentina, Canada, and Puerto Rico. Most of the countries have systems in which organizations other than the central ethics office (typically *in addition to* the central ethics office) provide ethics education and training to public servants. Completion of such training is mandatory for public servants in only half the countries surveyed, however. Many executive agencies (which carry out their own ethics training activities) in the

USA even provide training to individuals not covered by regulatory requirements. These agencies have decided that preventing conflicts of interest is important enough to merit an expenditure of resources beyond what is compulsory. The goal of the training and education activities in the USA is not to ensure that public servants know and understand all the extensive regulatory requirements; rather, the goal is to ensure that employees recognize situations in which they should seek further guidance from ethics officials in their respective agencies.

For the sake of brevity, this paper will refer to systems for declaring or registering financial and other interests that could create a conflict of interest simply as “financial disclosure systems.” All the offices surveyed have financial disclosure systems, and most have some type of public financial disclosure.<sup>15</sup> “Public” financial disclosure means that information regarding the interests disclosed by certain public servants is available (usually with some restrictions) to the general public. In Argentina essentially all financial disclosure reports are publicly available. The number of reports available to the public across the countries ranges from less than 100 to over 100,000. Public availability of financial disclosure reports is plainly a contentious issue and countries have come to different conclusions about the appropriate scope of such disclosure. On the one hand, countries must respect the privacy of public servants and must take into account the negative impact public disclosure has on recruiting talented, qualified individuals for public service. On the other hand, countries must weigh the importance of transparency and accountability in governance. Public disclosure can also lead to the revelation of potential and actual conflicts of interest that a government would not catch internally.

Among the countries surveyed, the number of financial disclosure reports filed confidentially in a country generally is significantly higher than the number of reports that are publicly available. Nearly all the countries have confidential financial disclosure systems. Typically in such systems public servants submit financial disclosure reports that are maintained in confidence by the public servant’s employing agency or the governmental ethics office. The public does not have access to these reports.

Electronic resources have played an important role in facilitating government transparency, even in this area of financial disclosure by public servants. All the organizations surveyed maintain websites on the Internet. Half the organizations permit public servants to *submit* their completed financial disclosure reports electronically. In Brazil, Mexico, and Puerto Rico, individuals can *obtain* the *completed* financial disclosure reports of public servants electronically, as well.

An independent review or audit of the financial disclosure reports occurs in most of the countries. Generally the central ethics office conducts this review, though some variations exist. In addition to the ethics office review, in Brazil the Tribunal of Accounts and Internal Control reviews the reports for conduct purposes, while the Tax Administration reviews the reports for tax purposes. In the USA, the public servant’s employing office reviews the report. The oversight agency, the U.S. Office of Government Ethics, also conducts a secondary review of the reports of certain high-level officials. In Chile, the Inspector General reviews the financial disclosure reports. The Uruguayan system permits unsealing of the financial disclosure reports only for the purpose of a judicial investigation and then only upon receiving a proper request

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<sup>15</sup> The countries with public disclosure provisions are Argentina, Brazil, Chile, Mexico, the USA, and Uruguay.

from an authorized entity. An independent review can serve the purposes of helping public servants to avoid conflicts of interest and/or of helping the government to *detect* existing conflicts of interest. Other methods of detecting conflicts of interest, such as telephone hotlines or websites for reporting instances of wrongdoing, are also common.

The next component in the effort against conflicts of interest is *investigation*. The level of investigative authority varies considerably across the ethics offices surveyed. In some cases the ability to investigate a conflict-of-interest situation depends upon whether the ethics office has received an appropriate complaint of wrongdoing or request for an investigation. Uruguay's Advisory Board for Financial Economic Matters of the State can neither investigate on its own initiative nor investigate in response to a complaint or request. On the opposite end, Argentina's Anticorruption Office and the Office of Governmental Ethics of Puerto Rico can always investigate potential wrongdoing, whether on their own initiative or upon request. Canada's Office of the Ethics Counsellor also has authority to investigate on its own initiative, but this authority pertains to breaches of the Lobbyists' Code of Conduct. The Canadian office may also investigate "Public Office Holders" on its own initiative for violation of the *Conflict of Interest and Post-Employment Code for Public Office Holders*. In terms of requested investigation, the Canadian office investigates Ministers for violations of that same code at the request of the Prime Minister and investigates Public Office Holders at the request of Members of Parliament or the request of Public Office Holders. As another example, Brazil's Commission on Public Ethics investigates only infra-legal ethics questions. This commission can sometimes investigate such questions on its own initiative but can always investigate such questions upon receiving an appropriate request.

Often, multiple government organizations in a particular country have the authority to investigate potential violations of conflict-of-interest and ethics requirements. Entities such as legislative committees, inspectors general, the comptroller general, the ministry of justice, and police commonly hold such authority. In Brazil, the USA, and Uruguay, the agency that employs the public servant may also conduct an investigation. Many times the decision concerning which organization will carry out an investigation depends upon the type and severity of the suspected infraction. All the ethics organizations surveyed oversee administrative regulations concerning conflicts of interest and ethics. Additionally, most of the organizations have responsibilities connected to criminal laws and other laws that address these topics.

The final two components in the efforts against conflicts of interest are *prosecution (and/or administrative proceedings)* and *penalization*. The Puerto Rican office has prosecutorial powers; the other ethics offices surveyed principally yield prosecutorial responsibilities to the department or ministry of justice or to the judicial branch. The Argentine office, however, can present cases to court and act as a co-prosecutor. The Puerto Rican system also permits a Special Prosecutor to try public ethics cases. Following conviction, none of the organizations can apply penalties to offenders for violations of criminal or other legal norms. Half the offices can sometimes or always apply administrative or other penalties, however.

The subject matter jurisdictions and persons over whom the ethics offices have authority are two topics meriting further discussion, particularly since many of the significant differences among the offices emerge in these areas. As mentioned earlier, all the offices have jurisdiction

over financial conflicts of interest. Topics falling within the jurisdiction of nearly all these offices are misuse of position, and impartiality and fairness. Five of the eight offices manage post-employment restrictions. A slight majority of the offices have oversight responsibilities for nepotism and for public contracts and purchases. The particular combination of subject matter areas an office oversees depends on each country's legislation and its governmental structure. Other areas of responsibility of certain offices surveyed are: whistle-blowing; access to information; campaign finance; lobbying; and public administrative procedures. An important point here is that even specialized offices charged with addressing conflicts of interest carry out duties in other areas (though typically in areas with ties to conflicts of interest). Finally, all the offices have authority over general bureaucrats and appointed bureaucrats at the national level. Half the offices have authority over certain or all elected officials at the national level. Only the offices in Chile, Puerto Rico, and Uruguay have authority over regional public administrators, and only the offices in the latter two countries extend that authority down to the level of municipal administrators.

Though the particular responsibilities and authorities of these national ethics offices in the Americas vary, these offices share a mission of combating conflicts of interest in the public service. The methods employed by these offices in their efforts against conflicts of interest are constantly changing and evolving, in part to reflect heightening standards of public integrity and in part to utilize shared information about effective practices. Also important to note is that these offices do not act alone in their respective countries. They are all pieces of larger machinery intended to safeguard and ensure appropriate administration of the public welfare.

#### **IV. OPPORTUNITIES FOR IMPROVEMENT**

The final portion of each country report from the OAS Committee of Experts is a listing of recommendations for improvement in that country. A number of the recommendations have been common to some or all of the countries reviewed. A few of these recommendations are rather general in nature. Overall, the Committee of Experts has called on countries to strengthen existing systems for dealing with conflicts of interest. One suggestion for such strengthening has been to fully implement the laws and regulations already on the books, whether by creating or fortifying institutions or by creating mechanisms to ensure compliance with these norms. Appropriate sanctions for those who violate conflict-of-interest norms are also lacking in some areas. Though the sample of completed country reports is rather small, these reports as a group are helpful in showing general areas in which countries of the Americas have opportunities to make improvements in their anticorruption systems, including in systems for managing conflicts of interest. One sees more specific recommendations that are common in the country reports, as well. The explanations given here will not explore the details that are specific to each country, however.

The Committee of Experts has called for countries appropriately to cover all public officials and employees with conflict-of-interest requirements and has noted that different levels of coverage may be necessary for different types of positions. The Committee of Experts also has suggested that countries establish appropriate training and education programs to make sure that public servants are cognizant of the conflict-of-interest requirements that apply to them. Additionally, training programs should alert public servants to their duty to report acts of

corruption of which they are aware. The Committee of Experts has even recommended that countries provide appropriate training to civil society so that civil society organizations have the tools necessary to monitor and participate in anticorruption programs. Conflict-of-interest watchdog organizations must understand the programs and norms for conflicts of interest to effectively carry out their missions.

While respecting the constitutional order of each country, the Committee of Experts has commented on the implementation of anticorruption programs at the regional and municipal levels. In particular, the Committee of Experts has asked countries to explore the extension of national anticorruption norms and systems down to the regional and municipal governments. Coordination among oversight bodies at the national level also has been an issue. Since multiple governmental agencies must work together in an effective anticorruption policy framework, these oversight agencies must be capable of sharing information and coordinating their actions. The Committee of Experts has called attention to a shortage of resources and support for anticorruption oversight bodies in certain countries. Battling corruption (including conflicts of interest) is a difficult task that can be much more difficult if the sufficient resources and support are not available.

Public access to government information has been another area carefully scrutinized by the Committee of Experts. Though the Committee of Experts has not examined this issue as it directly relates to conflicts of interest, the ability of the public to access government information certainly contributes to the prevention and detection of conflicts of interest. The Committee of Experts has recommended that countries create and effectively implement provisions for access to government information. The Committee of Experts has also called for countries to permit public comment on regulatory matters and to provide public access to government meetings. Public comment provisions would extend to draft regulations for conflicts of interest. The first round of review undertaken by the Committee of Experts also encompasses financial disclosure systems. The first step, of course, is to establish a financial disclosure system. Beyond that, the Committee of Experts has stated that countries should improve systems for analyzing and evaluating the financial disclosure reports. Proficient evaluation is necessary if the financial disclosure reports are to fulfill the goals of preventing and detecting conflicts of interest.

Finally, the Committee of Experts feels that countries need programs in place to evaluate the effectiveness of their anticorruption programs. A country should constantly be assessing its conflict-of-interest programs to facilitate appropriate programmatic changes, eliminations, and additions. The number and extent of recommendations certainly vary from one country report to another, and that variety can only increase as the Committee of Experts continues its reviews. Commonalities among the more general recommendations provide insight into areas about which states in the Americas have reached a consensus. In particular, the Committee of Experts has emphasized: (1) that oversight organizations must coordinate and must have sufficient resources and support; (2) that conflict-of-interest programs must be comprehensive in their coverage; (3) that public servants must be aware of conflict-of-interest requirements; (4) that proficient evaluation of financial disclosure reports is necessary for the prevention and detection of conflicts of interest; (5) that the public must have access to government information to perform its role in administration and oversight; and (6) that countries must pay great attention to program implementation and the effectiveness of these programs.

## CONCLUSIONS

The struggle against conflicts of interest in public life is a universal one that is ever changing and that is continuously assuming different dimensions. Reflecting variation in political, historical, and legal circumstances, the countries of the Americas have chosen differing approaches to managing conflicts of interest. At this point, recognition of the harm that conflicts of interest can inflict upon the confidence of the citizenry in its government is widespread. All countries should aim to ensure that public servants do not use their public positions wrongly to benefit themselves or others personally. Legislative activity throughout the Americas directed toward improving systems for managing conflicts of interest is an important indicator of the willingness to meet this challenge. Regional efforts at achieving consensus about conflict-of-interest management are critical steps in the proper direction, as well.

Putting laws and regulations on paper, however, does not mark the end of the fight against conflicts of interest in the public service. More appropriately, one must view this step as a beginning. Effective implementation and execution are absolutely crucial if these laws and regulations are to be meaningful. This paper has discussed the reasons for optimism in the region, but many of the countries of the Americas have relatively young systems for managing conflicts of interest. These young systems require nurturing in the form of political will and dedication, and they must be effective in all phases if they are to survive and become engrained in the institutional structures of governments. Having said this, even better-established programs for conflict-of-interest management could wither quickly if ignored.

This paper has attempted to present comparative information in a manner that will assist countries as they improve their systems for managing conflicts of interest in the public sector. Though the administrative and legal details can be tedious and forbidding, the weight of these issues surely is not lost on many of the peoples of the Americas. In many ways, the road ahead is a difficult one, but the contract between the governors and the governed in a modern democratic form of government unquestionably requires a good-faith effort to prevent abuse of the public welfare. If the goal is government for the people, conflicts of interest clearly do not fit with that vision.

# APPENDIX A

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## THE NETWORK OF GOVERNMENT INSTITUTIONS OF PUBLIC ETHICS IN THE AMERICAS

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### SUMMARY OF BACKGROUND INFORMATION (Prepared July 2003)

#### Section 1: Member Institutions and Website Addresses

▪ **ANTICORRUPTION OFFICE; MINISTRY OF JUSTICE, SECURITY, AND HUMAN RIGHTS; ARGENTINE REPUBLIC**

*Website address:* <http://www.anticorrupcion.jus.gov.ar/>

▪ **COMMISSION ON PUBLIC ETHICS, FEDERATIVE REPUBLIC OF BRAZIL**

*Website address:* <http://www.presidencia.gov.br/etica/>

▪ **OFFICE OF THE ETHICS COUNSELLOR, CANADA**

*Website address:* <http://www.strategis.gc.ca/ethics>

▪ **COUNCIL OF GENERAL INTERNAL AUDIT OF THE GOVERNMENT, REPUBLIC OF CHILE**

*Website address:* <http://www.caigg.cl/>

▪ **UNITED STATES OFFICE OF GOVERNMENT ETHICS, UNITED STATES OF AMERICA**

*Website address:* <http://www.usoge.gov/>

▪ **SECRETARIAT OF PUBLIC FUNCTION, UNITED MEXICAN STATES**

*Website address:* <http://www.funcionpublica.gob.mx/>

▪ **OFFICE OF GOVERNMENTAL ETHICS OF PUERTO RICO, COMMONWEALTH OF PUERTO RICO**

*Website address:* <http://www.oegpr.net/>

▪ **ADVISORY BOARD FOR FINANCIAL ECONOMIC MATTERS OF THE STATE, EASTERN REPUBLIC OF URUGUAY**

*Website address:* <http://www.jasesora.gub.uy/>

## Section 2: General Administrative Information

NAME	TYPE	NUMBER OF EMPLOYEES							SELECTION OF HEAD(S)
		0-10	11-25	26-50	51-100	101-200	201-500	501+	
Argentina, Anticorruption Office	Executive office/agency				√				Appointed by head of government (chief of state)
Brazil, Commission on Public Ethics	Commission	√							Appointed by head of government (chief of state)
Canada, Office of the Ethics Counsellor	Executive office/agency		√						Appointed by head of Government
Chile, CAIGG	Executive office/agency							√	Appointed by head of government (chief of state)
United States of America, OGE	Executive office/agency				√				Appointed by head of government (chief of state), with agreement of the Senate
Mexico, Secretariat of Public Function	Executive office/agency							√	Appointed by head of government (chief of state)
Puerto Rico, OEG	Executive office/agency					√			Appointed by head of Government
Uruguay, Advisory Board	Executive office/agency		√						Other <sup>16</sup>

NAME	SOURCES OF AUTHORITY	ORGANIZATIONAL INDEPENDENCE
Argentina, Anticorruption Office	Laws/statutes	No – reports to head of higher department
Brazil, Commission on Public Ethics	Head of government (chief of state) order/decre	No <sup>17</sup>
Canada, Office of the Ethics Counsellor	Laws/statutes; head of government order/decre; regulations	No – reports to head of larger department or to head of government, depending on issue
Chile, CAIGG	Head of government (chief of state) order/decre	No – reports to head of government (chief of state)
United States of America, OGE	Laws/statutes; regulations; head of government (chief of state) order/decre	No – reports to head of government (chief of state)
Mexico, Secretariat of Public Function	Constitution; laws/statutes	No – dependent on federal executive
Puerto Rico, OEG	Laws/statutes	Yes
Uruguay, Advisory Board	Laws/statutes; regulations	Yes <sup>18</sup>

<sup>16</sup> Members named by the Executive Branch with prior permission of the House of Senators; the presidency rotates annually among three Board members

<sup>17</sup> Members, performance, and decision-making processes of the Commission do not depend on the Government; however, the Commission is dependent with regard to budgetary resources and the fact that its mandate is not guaranteed by another power

<sup>18</sup> Members, performance, and decision-making processes of the Advisory Board do not depend on the Government; however, the Board is dependent with respect to financial resources

### Section 3: Topical Jurisdiction

NAME	Conflicting Financial Interests	Conflicting Loyalties	Misuse of Position	Impartiality & Fairness	Post-employment Restrictions	Standards of Conduct	Campaign Financing
Argentina, Anticorruption Office	√		√	√		√	
Brazil, Commission on Public Ethics	√	√			√	√	
Canada, Office of the Ethics Counsellor	√	√	√	√	√	√	
Chile, CAIGG	√		√	√		√	√
United States of America, OGE	√	√	√	√	√	√	
Mexico, Secretariat of Public Function	√	√	√	√	√	√	√
Puerto Rico, OEG	√	√	√	√	√	√	
Uruguay, Advisory Board	√	√	√	√		√	

NAME	Lobbying	Public Contracts & Purchases	Public Meetings	Public Administrative Procedures	Nepotism	Access to Information	Whistleblower Protections
Argentina, Anticorruption Office	√	√	√	√	√	√	√
Brazil, Commission on Public Ethics							
Canada, Office of the Ethics Counsellor	√				√		
Chile, CAIGG	√	√		√			
United States of America, OGE							
Mexico, Secretariat of Public Function		√		√	√	√	√
Puerto Rico, OEG		√		√	√		
Uruguay, Advisory Board		√			√	√	

NAME	Other #1	Other #2
Argentina, Anticorruption Office		
Brazil, Commission on Public Ethics		
Canada, Office of the Ethics Counsellor	Ministers' dealings with quasi-judicial tribunals	Ministers' dealings with state corporations
Chile, CAIGG		
United States of America, OGE		
Mexico, Secretariat of Public Function	Anticorruption education programs	
Puerto Rico, OEG		
Uruguay, Advisory Board		

### Section 4: Other Authority and Jurisdiction Issues

NAME	Responsibilities Related to:			AUTHORITY OVER:			
	Criminal Laws	Other Laws	Administrative Regulations	National Bureaucrats	Appointed National Bureaucrats	Elected National Bureaucrats	National Legislators
Argentina, Anticorruption Office	√	√	√	√	√	√	
Brazil, Commission on Public Ethics			√	√	√		
Canada, Office of the Ethics Counsellor	√ <sup>19</sup>	√	√	√ <sup>20</sup>	√ <sup>21</sup>		√ <sup>22</sup>
Chile, CAIGG	??	??	√	√	√		
United States of America, OGE	√	√	√	√	√	√	
Mexico, Secretariat of Public Function	√	√	√	√	√		
Puerto Rico, OEG	√	√	√	√	√	√	√
Uruguay, Advisory Board <sup>23</sup>	√	√	√	√	√	√	√

NAME	AUTHORITY OVER:					
	National Legislative Employees	National Judges	National Judicial Employees	Regional Bureaucrats/ Administrators	Municipal Bureaucrats/ Administrators	Regional or Municipal Legislators
Argentina, Anticorruption Office						
Brazil, Commission on Public Ethics						
Canada, Office of the Ethics Counsellor						
Chile, CAIGG				√		
United States of America, OGE						
Mexico, Secretariat of Public Function						
Puerto Rico, OEG		√		√	√	√
Uruguay, Advisory Board	√	√	√	√	√	√

<sup>19</sup> In reference to the Lobbyists Code of Conduct

<sup>20</sup> Staff working in Ministers' offices

<sup>21</sup> Government appointees such as the heads of government departments, boards, tribunals, agencies, and state corporations

<sup>22</sup> Only legislators that are also Cabinet Ministers and Parliamentary Secretaries

<sup>23</sup> The authority of the Advisory Board refers exclusively to control of financial disclosure reports

**Section 4: Other Authority and Jurisdiction Issues (Continued)**

NAME	AUTHORITY OVER:					
	Regional or Municipal Judicial Officials	Military Officers	Military Soldiers	Police	Other #1	Other #2
Argentina, Anticorruption Office						
Brazil, Commission on Public Ethics						
Canada, Office of the Ethics Counsellor					Lobbyists	
Chile, CAIGG						
United States of America, OGE		√	√ <sup>24</sup>		Administrative law judges	
Mexico, Secretariat of Public Function						
Puerto Rico, OEG				√		
Uruguay, Advisory Board	√	√		√		

<sup>24</sup> OGE regulations apply to this category of personnel only through a military regulation called the Joint Ethics Regulation

## Section 5: Training, Legal Guidance, Investigation, and Prosecution

NAME	Provides Training	Others Provide Training	Training Mandatory	Provides Advice & Counseling	Issues Advisory Opinions	Advisory Opinions Binding	Investigates on Own Initiative
Argentina, Anticorruption Office	√			√	√	Always	Always
Brazil, Commission on Public Ethics	√	√		√	√	Sometimes	Sometimes
Canada, Office of the Ethics Counsellor	√			√	√	Always	Always <sup>25</sup>
Chile, CAIGG	√	√	√	√	√	??	??
United States of America, OGE	√	√	√	√	√	Usually	Sometimes
Mexico, Secretariat of Public Function	√	√		√	√	Never	Usually
Puerto Rico, OEG	√	√	√	√	√	Always	Always
Uruguay, Advisory Board		√	√		√	Never	Never

NAME	Responsive Investigation <sup>26</sup>	(OTHER) INVESTIGATIVE ORGANIZATIONS					
		Inspector/s General	Police	Military	Special Investigator	Comptroller General	Justice Ministry or Department
Argentina, Anticorruption Office	Always		√	√		√	
Brazil, Commission on Public Ethics	Always <sup>27</sup>	√	√			√	√
Canada, Office of the Ethics Counsellor	Sometimes <sup>28</sup>	√	√				
Chile, CAIGG	??	√	√				
United States of America, OGE	Sometimes	√				√	√
Mexico, Secretariat of Public Function	Usually					√	√
Puerto Rico, OEG	Always						√
Uruguay, Advisory Board	Never	√	√			√	

<sup>25</sup> Under the Lobbyists Registration Act for breaches of the Lobbyists' Code of Conduct

<sup>26</sup> Can the particular organization investigate in response to specific complaints?

<sup>27</sup> This Commission investigates only infra-legal ethics questions

<sup>28</sup> At the Prime Minister's request for alleged breaches by Ministers of the Conflict of Interest and Post-Employment Code for Public Office Holders; also on own initiative or at the request of Members of Parliament or Public Office Holders for alleged breaches by Public Office Holders

### **Section 5: Training, Legal Guidance, Investigation, and Prosecution (Continued)**

NAME	(OTHER) INVESTIGATIVE ORGANIZATIONS			
	Employee's Office/Agency	Special Panel or Council	Legislative Committees	Other
Argentina, Anticorruption Office			√	Public Ministry
Brazil, Commission on Public Ethics	√		√	√ <sup>29</sup>
Canada, Office of the Ethics Counsellor				
Chile, CAIGG			√	
United States of America, OGE	√		√	Internal Military Investigative Commands
Mexico, Secretariat of Public Function				
Puerto Rico, OEG			√	Special Independent Comptroller and Prosecutor
Uruguay, Advisory Board	√		√	Judicial Branch

NAME	PROSECUTE <sup>30</sup>	(OTHER) PROSECUTORIAL ORGANIZATIONS			
		Justice Ministry or Department	Special Prosecutor	Special Panel or Council	Other
Argentina, Anticorruption Office	Never				Judicial Branch
Brazil, Commission on Public Ethics	Never				Ministry of Public Prosecution and Attorney General's Office
Canada, Office of the Ethics Counsellor	Never	√			
Chile, CAIGG	Never				√ <sup>31</sup>
United States of America, OGE	Never	√			
Mexico, Secretariat of Public Function	Never	√			
Puerto Rico, OEG	Always	√	√		
Uruguay, Advisory Board	Never				Judicial Branch

<sup>29</sup> The Commission of Investigation and the Commission of Inquiry conduct administrative investigations, while the Ministry of Public Prosecution and the Attorney General's Office handle investigations concerning possible violations of law

<sup>30</sup> Can the particular organization prosecute supposed offenders?

<sup>31</sup> Identity unknown

**Section 5: Training, Legal Guidance, Investigation, and Prosecution (Continued)**

NAME	PENALIZE <sup>32</sup>	ORGANIZATION CAN PENALIZE, BY TYPE OF OFFENSE			
		Criminal	Other Legal	Administrative or Regulatory	Other
Argentina, Anticorruption Office	Never				
Brazil, Commission on Public Ethics	Sometimes				Infra-legal ethics violations (punished by curricular sanction)
Canada, Office of the Ethics Counsellor	Never				
Chile, CAIGG	Never				
United States of America, OGE	Sometimes			√	
Mexico, Secretariat of Public Function	Usually			√	
Puerto Rico, OEG	Always			√	
Uruguay, Advisory Board	Never				

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<sup>32</sup> Can the particular organization penalize offenders?

## Section 6: Financial Disclosure

NAME	Financial Disclosure System	PERSONS WHO FILE PUBLICLY AVAILABLE REPORTS <sup>33</sup>					
		Certain Bureaucratic Employees	Bureaucratic Agency Heads	Elected Bureaucrats	Appointed Bureaucrats	Judges	Certain Judicial Employees
Argentina, Anticorruption Office	√	√	√	√	√	√	√
Brazil, Commission on Public Ethics	√			√			
Canada, Office of the Ethics Counsellor	√						
Chile, CAIGG	√	??	??	??	??	??	??
United States of America, OGE	√	√	√	√	√	√	√
Mexico, Secretariat of Public Function	√						
Puerto Rico, OEG	√						
Uruguay, Advisory Board	√			√ <sup>34</sup>			

NAME	PERSONS WHO FILE PUBLICLY AVAILABLE REPORTS (Continued)						
	Legislators	Certain Legislative Employees	Certain Candidates for Public Office	Board/ Council Members	Commission/ Committee Members	Certain Nominees for Appointment	Other
Argentina, Anticorruption Office	√	√					
Brazil, Commission on Public Ethics	√						
Canada, Office of the Ethics Counsellor							
Chile, CAIGG	??	??	??	??	??	??	
United States of America, OGE	√	√	√	√	√	√	√ <sup>35</sup>
Mexico, Secretariat of Public Function							√ <sup>36</sup>
Puerto Rico, OEG							
Uruguay, Advisory Board							

<sup>33</sup> This neither signifies necessarily that all the officials indicated file reports with the organization named nor that the organization named has authority over all such officials; it simply signifies that these categories of officials have to file. For example, in Argentina the judicial and legislative branches administer their own financial disclosure systems in an independent manner.

<sup>34</sup> Exclusively the President and Vice President of the Republic

<sup>35</sup> Certain military officers

<sup>36</sup> The Federal Law of Administrative Responsibilities of Public Servants requires authorization of public servants

## Section 6: Financial Disclosure (Continued)

NAME	PERSONS WHO FILE CONFIDENTIAL REPORTS <sup>37</sup>						
	Certain Bureaucratic Employees	Bureaucratic Agency Heads	Elected Bureaucrats	Appointed Bureaucrats	Judges	Certain Judicial Employees	Legislators
Argentina, Anticorruption Office							
Brazil, Commission on Public Ethics	√	√		√	√	√	
Canada, Office of the Ethics Counsellor	√ <sup>38</sup>	√	√ <sup>39</sup>	√ <sup>40</sup>			√ <sup>41</sup>
Chile, CAIGG	??	??	??	??	??	??	??
United States of America, OGE	√						
Mexico, Secretariat of Public Function	√	√	√	√	√	√	√
Puerto Rico, OEG	√	√	√	√	√		√
Uruguay, Advisory Board	√	√	√	√	√	√	√

NAME	PERSONS WHO FILE CONFIDENTIAL REPORTS (Continued)					
	Certain Legislative Employees	Certain Candidates for Public Office	Board/ Council Members	Commission/ Committee Members	Certain Nominees for Appointment	Other
Argentina, Anticorruption Office						
Brazil, Commission on Public Ethics	√					
Canada, Office of the Ethics Counsellor			√			
Chile, CAIGG	??	??	??	??	??	
United States of America, OGE			√	√	√	
Mexico, Secretariat of Public Function	√		√	√		
Puerto Rico, OEG			√	√	√	
Uruguay, Advisory Board	√		√	√	√	

<sup>37</sup> This neither signifies necessarily that all the officials indicated file reports with the organization named nor that the organization named has authority over all such officials; it simply signifies that these categories of officials have to file

<sup>38</sup> Staff working in Ministers' offices

<sup>39</sup> Cabinet Ministers, who are also legislators

<sup>40</sup> Including heads of tribunals and state corporations

<sup>41</sup> Cabinet Ministers

### Section 6: Financial Disclosure (Continued)

NAME	PUBLIC REPORTS FILED PER YEAR	CONFIDENTIAL REPORTS FILED PER YEAR	POSSIBLE TO FILE REPORTS ELECTRONICALLY	POSSIBLE TO OBTAIN COMPLETED REPORTS ELECTRONICALLY
Argentina, Anticorruption Office	15,001 < 50,000	None	√	
Brazil, Commission on Public Ethics	100,001+	100,001+	√	√
Canada, Office of the Ethics Counsellor	None	1,001 < 5,000		
Chile, CAIGG	??	??		
United States of America, OGE	15,001 < 50,000	100,001+		
Mexico, Secretariat of Public Function	100,001+ <sup>42</sup>	50,001 < 100,000	√	√
Puerto Rico, OEG	None	5,001 < 15,000	√	√
Uruguay, Advisory Board	1 < 100	5,001 < 15,000		

NAME	INDEPENDENT REVIEW OR AUDIT OF REPORTS	WHO REVIEWS OR AUDITS			
		This Office	Inspector General	Other Independent Audit Agency	Other
Argentina, Anticorruption Office	√	√			
Brazil, Commission on Public Ethics	√	√			√ <sup>43</sup>
Canada, Office of the Ethics Counsellor	√	√			
Chile, CAIGG	√		√		
United States of America, OGE	√	√ <sup>44</sup>			Person's employing agency
Mexico, Secretariat of Public Function					
Puerto Rico, OEG	√	√			
Uruguay, Advisory Board					

<sup>42</sup> The Federal Law of Administrative Responsibilities of Public Servants requires authorization of public servants

<sup>43</sup> The Tribunal of Accounts and Internal Control reviews for conduct purposes; the Tax Administration reviews for tax purposes

<sup>44</sup> OGE examines only the reports of the officials the President appoints with the agreement of the Senate and the reports chosen during ethics program audits at agencies of the executive branch