



**THE OPERATIONS OF THE INTEGRITY COMMISSION IN
DOMINICA**

SEPTEMBER, 2008 – SEPTEMBER, 2014

**PRESENTATION BY JULIAN N JOHNSON CHAIRMAN,
INTEGRITY COMMISSION
TO THE MEDIA WORKERS ASSOCIATION OF DOMINICA**

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INTRODUCTION

On 2nd September, 2008 in an address at the swearing-in of members of the Commission I commended the mass media of Dominica for encouraging and advancing public dialogue on the purposes of the Integrity in Public Office Act, 2003 and on the functions of the Commission under the Act.

I repeat here what I said then: *“Sometimes, the mass media can get it wrong. Sometimes, the media can be grossly unfair and can serve sectional interests. But a responsible, objective, vibrant, free and courageous media does play a very important role in the guaranteeing of proper standards in public life in liberal democracies. They have a duty to monitor the workings of Government and the workings of the Parliament on behalf of the public. They play a key role in enhancing public awareness of good governance and rule of law issues.”*

(Speech by Mr. Julian N Johnson, Chairman, Integrity Commission on “The implementation of Integrity in Public Office Act, 2003”, September 2nd 2008, para. 6).

THE PURPOSE OF THE ACT

1. **EXPRESS STATUTORY PURPOSE** - The Long Title of the Act states as follows: *An Act to provide for the establishment of an Integrity Commission for the purpose of receiving declarations on the financial affairs of persons holding specific positions in public life, for the purpose of establishing probity, integrity and accountability in public life and for related matters.*
 - The receiving, examining and enquiries into the declarations of financial affairs of persons in public life is central to the legislative purpose.

2. **REASONS FOR THE ACT AS ADVANCED BY THE PROMOTOR IN APRIL 2003 (HANSARD OF THE MEETING OF THE HOUSE OF ASSEMBLY 28TH – 30TH APRIL, 2003, PGS 246-360 PASSIM).**
 - The Act was passed with full Government and Opposition support: 18 Ayes: 1 Abstention.
 - AG & Minister for Legal Affairs – Hon. Henry Dyer advanced the following reasons:
 - (a) “The introduction of this Bill is not at all a reflection that there is widespread corruption or bribery among the public servants or in our society as a whole...”(p. 247)
 - (b) “International agencies, which are assisting small jurisdictions are constantly monitoring us to see whether we observe the norms of good governance and whether the Government is transparent.” (p247)

- (c) “... International institutions and Governments want accountability in the sense that they want money that is given to a country and is given for the benefit of the people of the country... they want to know that the money has gone where it was sent so that the people must have the benefit of the gifts and not those people who are to administer.”(p. 253)

3. THE ESTABLISHMENT AND APPOINTMENT OF THE COMMISSION

(Sec. 4)

- (i) Five political appointees – Five members of the Commission are appointed on the advice of politicians, that is, on the advice of the Prime Minister or the Leader of the Opposition. The Chairman and two members are appointed on the advice of the Prime Minister and two members are appointed on the advice of the Leader of the Opposition. In the case of the Chairman, however, Parliament sought to achieve political consensus on his/her appointment by requiring consultation between the Prime Minister and the Leader of the Opposition before the Prime Minister advises the President to exercise the function of the appointment.
- (ii) Two non-political appointees - There are two non-political appointees on the Commission. One such member is appointed on the advice of the Dominica Bar Association and the other on the advice of a professional body, called, the Dominica Branch of the Institute of Chartered Accountants of the Eastern Caribbean referred to in The Institute of Chartered Accountants

of the Eastern Caribbean Agreement Act 2003, No. 2 of 2003,
which has not yet come into operation!

(iii) Why this method of appointment? Because Parliament determined that it was necessary to have qualified professional expertise in law and accountancy (a chartered or certified accountant) on the Commission and empowered the executives of these professional associations to make the recommendations.

(iv) Parliament, however, directed that the members appointed on the advice of politicians must satisfy the following condition:

“they shall be persons of high public standing and reputation for personal integrity.”

Parliament thought it unnecessary to expressly stipulate this requirement for the members who are required to possess professional qualifications in law or accountancy, i.e., the Chairman, and the nominees of the Dominica Bar Association and the Dominica Branch of the Institute of Chartered Accountants of the Eastern Caribbean.

4. **INDEPENDENT, IMPARTIAL AND ACCOUNTABLE
ADMINISTRATION OF THE ACT - SECTIONS 13 AND 48**

Notwithstanding the method of appointment – the route by which the Chairman and members of the Commission came onto the Commission, the Act of 2003 and the applicable principles of public law require that all members bring an independent and impartial mind to the execution of their statutory functions and duties. The Commission must act in good faith. (See Keith Rowley v Integrity

Commission of T&T, Civil Suit No. 185 of 2007, 3rd February 2009). Section 13 of the Act mandates it. The security of tenure provided by section 7(3)-(7) of Act reinforces it. Consistent with these principles the Commission's decisions concerning persons in public life must be based on material that has an evidential or factual basis or is logically probative and free from irrelevant considerations. In Constituency Boundaries Commission v Urban Baron ((1999) 58 WIR 153) the Court of Appeal emphasized that the exercise by the Commission of its constitutional powers is not to be deliberately influenced to favour the appointing authorities. This learning is relevant to statutory oversight bodies as well. Once appointed – all persons on the Integrity Commission, including the political appointees, must perform their functions as independent and impartial adjudicators. It must be noted that the meeting of the Commission that unanimously rejected two of the complaints lodged against Prime Minister Roosevelt Skerrit by Lennox Linton and decided to investigate the complaint that Prime Minister Roosevelt Skerrit had committed a breach of Rule 1(e) of the Code of Conduct comprised the three members of the Commission appointed on the advice of the Prime Minister and the member appointed on the recommendation of the Dominica Branch of the Institute of Chartered Accountants of the Eastern Caribbean. [See decision No 1/2010/2011 in Appendix 5 of the Third Annual Report of the Commission, August, 2011].

The Commission is required to keep proper accounts to be audited by the Director of Audit or an auditor appointed by the President and to submit annual reports to Parliament. In compliance with these requirements the Commission has over the past five years submitted to Parliament comprehensive reports of its activities in the administration of the Act within the time limits set thereby. In accordance with section 48 of the Act the Commission has submitted annual reports to the Minister for Legal Affairs for the years 2009, 2010, 2011, 2012, 2013 and 2014 detailing the activities undertaken by the Commission in the administration of the Act. The sixth Annual Report 2014 was submitted to the Minister for Legal Affairs on the 1st September, 2014.

5. FUNCTIONS OF THE COMMISSION - Section 9

The Commission shall -

(a) receive, examine and retain all declarations filed with it under this Act;

(b) make such enquiries as it considers necessary in order to verify or determine the accuracy of any declarations filed under this Act;

(c) without prejudice to the provisions of any other enactment, inquire into any allegation of bribery or act of corruption under this Act;

(d) receive and investigate complaints regarding non-compliance with any provision of this Act;

and

(e) perform such other functions as is required under this Act. Such other functions include: (i) submission of reports to Parliament annually; (ii) power to make Rules to regulate the procedures of the Commission; (iii) the holding of inquiries.

Part III of the Act contains the financial disclosure regime that persons in public life are required to observe in filing their declarations of financial affairs with the Commission. The declarations are required to be in Form 2 of the Third Schedule to the Act and must be filed within three months after the end of a calendar year. A declaration must also be filed not later than three months after a person first becomes a person in public life. Under section 16(2) the declarant must file a declaration in the following two calendar years after he has ceased to be a person in public life, otherwise than by reason of death.

6. 2008 -2013 ANNUAL STATISTICS ON DECLARATIONS OF FINANCIAL AFFAIRS

Year	No. of Persons in Public Life	No. of Persons who filed	No. of Persons who failed to file	No. of Persons who filed late	No. of Persons Gazetted	Compliance in percentage (%)	No. of Queries sent	No. of Declarations Certified	No. of Cases charged by DPP	No. of cases prosecuted by DPP
Dec. 1 2008	119	102	17	17	17	86	78	107	0	
Dec. 31, 2008	136	96	40	15	40	66	58	94	2	
Dec. 31 2009	147	101	13	33	46	69	33	126	16	3
Dec. 31, 2010	159	152	1	6	7	96	28	151	7	0
Dec 31, 2011	164	158	4	2	6	96	14	159	6	0
Dec 31, 2012	155	137	15	3	18	88	40	135	18	0
Dec 31, 2013	157	136	15	6	21	87	23	141	21	0

7. **Complaints of non-compliance with the Act**

Under section 9(c) and (d) the Commission is mandated to inquire into any allegation of bribery or act of corruption under the regime in Part VI of the Act and to receive and investigate complaints regarding non-compliance with any provisions of the Act including the Code of Conduct specified in the Second Schedule.

The Commission received and examined a number of complaints concerning non-compliance by Ministers of Government with the provisions of the Act including the Code of Conduct. Two of these were rejected under section 32 for want of jurisdiction in accordance with the provision of section 8(4) of the Constitution and the common law principles prohibiting the retrospective operation of criminal statutes since the alleged conduct complained of occurred before the Act came into operation on 1st September, 2008 (See Annual Report 2009, Appendix iii pp. 58 – 107).

A complaint concerning the acceptance of gifts, benefits and advantages by a Minister in contravention of the Code of Conduct was not proceeded with because it lacked the particularity required by section 31 of the Act. Also an anonymous complaint was not dealt with for want of Jurisdiction (ss. 9(d), 31, and 55).

The Commission, however, after the examination of a complaint in writing made under section 31 against a Minister and hearing the complainant under section 32 decided to conduct an inquiry under section 33 in order to ascertain whether a breach of rule 1(e) of the Code of Conduct specified in the Second Schedule to the Act was

committed by that person in public life. Rule 1(e) provides that a person in public life shall not:

“use his official influence in support of any scheme or in furtherance of any contract or proposed contract or other matter in regard to which he has an interest”

(See Third Annual Report 2011, Appendix 5, pp. 49-66).

The Minister has since instituted judicial review proceedings against the Commission’s decisions and the matter is presently before the Court. The Commission has reasonably sought ‘equality of arms’ in the proceedings by also engaging senior counsel in its defence and requested and obtained public funds for that purpose.

8. Anonymous Complaints and Allegations of Corruption

The jurisdiction of the Commission is limited to the investigation of complaints of non-compliance with the Act or any allegation of bribery or corruption under the Act received from identifiable persons, natural or legal. Under these provisions the Commission is not empowered to act on its own volition or on anonymous complaints or complaints made through the press or other public forum. (DOM – s.9, s.31 and Part VI with s.55. Republic v First Track High Court, Accra, ex p. Commission on Human Rights and Administrative Justice [2009] 1 LRC 44).

A strong dissenting judgment in the Republic’s Case however, opined that on a liberal and purposive interpretation to realise the purpose of such laws a wide definition should be given to the word

“complaint” to include informal complaints brought to the attention of the oversight body “through any credible means, including through public media and other public fora”. This would therefore empower such bodies to initiate investigations based on such persistent media reports of breach of the legislation. (See dissenting judgement of Date – Bah JSC in Republic Case [2009] 1 LRC, 44 supra. But see the section 55(1) statutory requirement and R v Davis [2008] UKHL 36 concerning the strong common law presumption that a person accused is entitled to confront those who testify against him).

9. WHAT ARE NOT THE FUNCTIONS/POWERS OF THE COMMISSION?

The Commission has not supplanted the powers duties and responsibilities of other oversight governance bodies under the Constitution or otherwise. These include: (i) Parliament – PAC; (ii) Director of Audit and Accounting Officers; (iii) Parliamentary Commissioner; (iv) The Public/Police Services Commissions; (v) Police Service and (vi) DPP.

10. THE INTERNAL ORGANIZATION AND STAFF OF THE COMMISSION

- a. The Committees of the Commission
 - i. Financial and Administrative Committee,
 - ii. Rules Committee and
 - iii. Information and Public Relations Committee.

- b. Staff of the Commission
 - i. Secretary
 - ii. Research Assistant,
 - iii. Executive Officer,
 - iv. Junior Clerk and
 - v. Office Attendant.

11. **RECOMMENDATIONS FOR THE AMENDMENTS TO THE ACT OF 2003 SUBMITTED BY THE COMMISSION TO THE EXECUTIVE AND CONTAINED IN ITS REPORTS TO PARLIAMENT AND THE GOVERNMENT OF DOMINICA'S TREATY OBLIGATIONS UNDER UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC).** (See Appendix 6 of Third Annual Report 2011 – October, 24, 2011, for the suggested amendments to the Act and the structure and administration of the Commission)

On the 20th of October, 2004 the Government of Dominica acceded to UNCAC.

- UNCAC Article 5(3) – Preventive anti-corruption Policies and Practices – Periodic Evaluation and Review of Existing Legislative Institutional and Procedural Provisions.

Article 5(3) states as follows: *‘Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption’.*

The Government of Dominica is therefore required to review the existing legislative, institutional and procedural provisions with a view to strengthening what is in place and introduce what is

required in order to develop a coherent and coordinated anti-corruption strategy. In doing this the Government should include participation of its citizens in the planning and implementation of the strategy. (See Commonwealth Strategies to Combat Corruption – Commonwealth Updated Legislative and Technical Guide, 2011 pg. 23).

- Article 6(2) of UNCAC states as follows: *“Each Party State shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.”* In that regard the government of Dominica is required to ensure the operational independence of the Commission in order for it to perform effectively its statutory mandate. (Commonwealth Guide, 2011 pg. 26)

12. THE COMMISSION AND PARLIAMENT

The Commission in the performance of its important, albeit intrusive statutory functions require a supportive institutional/political environment. The Parliament of Dominica must continue to demonstrate that it is an important stakeholder in enhancing the integrity regime that it has enacted and the institution that it has established. Properly exercised oversight can be an unequalled tool against corruption. In the Third Annual Report to Parliament on October 24th 2011 I felt constrained to state:

“The submission of the Commission’s annual report to Parliament provides the opportunity for Parliament itself to exercise its oversight jurisdiction under the doctrine of ministerial

responsibility which is a central feature of our Westminster model Constitution. The First and Second Reports of the Commission were laid in Parliament on the 4th February, 2010 and 17th March, 2011 respectively. At meetings of Parliament held subsequently there has been scant reference to any of the Reports either in questions, motions, statements or speeches before the House of Assembly. This is regrettable. Under our Constitution, Parliament is authorized to play a continuing role in ensuring that the purposes of the Act are given full effect and in holding the responsible Ministers to account for the proper provisioning of the Commission.”

In order to strengthen Parliament’s oversight role I suggest the following:

- (i) **Periodic Review of the Acts:** In any amendments to the existing legislation or in any new anticorruption Acts there should be included provisions which require the responsible Minister to carry out an independent review of the operation and effectiveness of the Acts as soon as possible after the expiration of three years from its commencement and every three years thereafter; and
- (ii) **Standing Select Committee of Parliament** should be established under the Standing Orders of the House of Assembly to examine the Annual Report of the Commission and to report on the performance of its functions and the implementation of any recommendations contained therein subject, of course, to the Commission’s independent jurisdiction under section 13 of the Act of 2003.

13. COMMONWEALTH SECRETARIAT'S ANTI-CORRUPTION INITIATIVES

a. Model Integrity in Public Life Act and Model Code of Conduct -

On the direction of the Law Ministers of Small Commonwealth Jurisdictions (which includes seventeen jurisdictions in the Caribbean) given in October, 2007 the Commonwealth Secretariat has developed a model Integrity in Public Life Act focusing on a model Code of Conduct for a specific class of public officials, guidelines on conflict of interest and offences constituting “abuse of public office” and “misconduct and neglect of duty”. The model Act is explicitly drafted to apply to the state functionaries involved in all the main areas of governance. This includes the Executive (including the Head of State and the Head of Government), the Legislature, senior public officials, top management of public authorities, and political appointees who are members of the government. The model Act imposes a novel duty on these officials to sign a copy of the Code of Conduct to be delivered and retained by the Commission and made available for public inspection. It mirrors the recommendations made by the Commission in respect of its independence and clear jurisdiction over the staff of the Commission. It also empowers the Commission, inter alia, “to investigate a complaint from any source” that a public official has committed an offence of “abuse of office” or “willful misconduct and neglect of duty” within the meaning of the model Act. It was presented to the meeting of Law Ministers and Attorneys General of Small Commonwealth

Jurisdictions at Marlborough House, London, September, 2013 and to the Commonwealth Law Ministers Meeting, Botswana, May 2014.

b. Commonwealth Associations of Anti-corruption Agencies

• **Commonwealth Africa**

With the assistance of the Commonwealth Secretariat the Association of anti-corruption agencies in Commonwealth Africa was established in 2013. The Association's secretariat in Botswana will coordinate capacity building and mutual assistance on a regional basis in such areas as investigations, forensics evidence management, prosecution, public education and asset tracking and recovery. The Association seeks to broker the exchange of ideas and good practices and to encourage the sharing of professional skills, knowledge and experience in areas of comparative advantage, harness political will, and strive for adequate legislation, policy reform and law enforcement.

• **Commonwealth Caribbean**

At Sub-Regional Integrity Commissions Conferences in St Lucia (June 2011), and St Vincent (June 2012) and at the Public Administration in Very Small States Conference, Marlborough House, London (April 2013), the establishment of an umbrella organization of regional integrity commissions with support from the Commonwealth Secretariat was recommended. The organization would be charged to review and implement best

practices for the sub-region, to seek the assistance of regional and international organisations in order to maintain a pool of common services in law, forensic investigation and accounting for member states, to draft harmonized legislation to include regulations and rules of procedure for the Commissions and provisions for the appointment of inquiry tribunal/panel from within OECS member states. The Commonwealth Secretariat has now indicated its willingness to assist in the establishment of such an association in the Commonwealth Caribbean. A meeting is being convened for later this year to discuss this initiative.

14. DOCUMENTS/INFORMATION ON THE COMMISSION'S WEBSITE –

www.integritycommission.gov.dm

- a. The Integrity in Public Office Act, 2003
- b. Integrity Commission (Inquires) Rules 2012
- c. Annual Reports 2009 – 2013
- d. Speeches and Papers delivered by Chairman Julian N. Johnson
- e. Frequently Asked Questions Booklet - 2012
- f. Guidelines for filling out Form 2
- g. Form 2 Declaration of Income, Assets and Liabilities
- h. Links to other anti-corruption bodies and good governance websites.

15. THE COMMISSION BEFORE THE COURT

- a. Roosevelt Skerrit v the Commission (2012) - Civil Suit: Dom HCV 2012/0399
 - b. Integrity Commission v The Attorney General of Dominica (2014) – Suit No. 37/2014
- a. **ROOSEVELT SKERRIT V INTEGRITY COMMISSION** - The last hearing in this matter was on the 19th February 2015 at which the Court gave the following directions ;
1. The Claimant is to file further written submissions by the 2nd March 2015
 2. The defendant to file further written submissions in response by the 9th March 2015
 3. Oral arguments by each party limited to one hour each and twenty minutes each for rebuttal will be heard on the 1st April 2015.
- b. **INTEGRITY COMMISSION V ATTORNEY GENERAL** - The last hearing was on the 6th February 2015 at which the Court made the following order with respect to directions ;
1. Joint list of issues to be filed by 6th March, failing agreement individual list to be filed by 13th March 2015.
 2. Skeleton arguments with authorities to be filed on or before 31st March 2015.
2. Hearing set down for 8th April 2015 at 9.00 am

16. **FREQUENTLY ASKED QUESTIONS BOOKLET**

We now invite your questions and comments. Novel questions will be further examined by the Commission and included in the FAQ Booklet [2015] for the benefit of the wider public.

JULIAN N JOHNSON

CHAIRMAN INTEGRITY COMMISSION

27TH February, 2015

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