



**Paper
By
Julian N. Johnson,
Chairman, Integrity Commission, Commonwealth of
Dominica**

ON

**OVERSIGHT BODIES – IMPLEMENTATION OF INTEGRITY
LEGISLATION IN VERY SMALL CARIBBEAN STATES**

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1. INTRODUCTION

I have been invited to write a “practitioner’s paper” relating to the work of the integrity commission as an oversight body in the member states of the OECS. This requires an examination of the recent anti-corruption statutes passed by the OECS governments and the performance of the integrity commissions in these states. In focusing on the activities of the Integrity Commission of the Commonwealth of Dominica, I shall be drawing on my experience as Chairman thereof over the past four years.

2. THE ANTI-CORRUPTION STATUTES IN THE ORGANIZATION OF EASTERN CARIBBEAN STATES (OECS) of - Antigua and Barbuda, Dominica, Grenada, Montserrat and St Lucia are:

- (i) Antigua and Barbuda (ANU):
 - (a) Prevention of Corruption Act, 2004 No. 21 of 2004
 - (b) Integrity in Public Life Act, 2004, No. 24 of 2004;
- (ii) Dominica (DOM): Integrity in Public Office Act, 2003, No. 6 of 2003;
- (iii) Grenada (GDN):
 - (a) Integrity in Public Life Act, 2007, No. 14 of 2007
 - (b) Prevention of Corruption Act, 2007, No. 15 of 2007;
- (iv) Montserrat (MONT): Integrity in Public Office Act, 2010, No. 2 of 2010;
- (v) St. Lucia (SLU): Integrity in Public Life Act, 2004, No. 6 of 2004.

3. REASON AND PURPOSE FOR INTEGRITY LEGISLATION:

To provide for the establishment of an Integrity Commission for the purpose of receiving declarations of 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.

4. OFFICES OF PERSONS IN PUBLIC LIFE

The Acts regulate a class of persons called ‘persons in public life’ who are listed in the First Schedules. These include members of Parliament, Ministers of Government, senior public and police officers, “Chief Technical Officers” and Managing Directors and General Managers and Chairman of public bodies. Grenada’s list of such persons, however, also includes “all police officers”, “legal officers employed by the state,” “members of Boards or governing bodies of statutory bodies”, and “all public officers including non-established officers receiving a salary in excess of \$2,000 per month”. (ANU – s.2(c); DOM – s.2 (1); GDN – s.2(1); MONT – s.2; SLU – s.2)

5. THE FUNCTIONS OF THE COMMISSIONS

The Commissions are required to perform, inter alia, the following functions:

Examine, Verify and Certify Declarations of Financial Affairs

- to receive, examine, and retain all declarations filed by persons in public life;
- to make such inquiries as they consider necessary in order to verify or determine the accuracy of the declarations, including the conduct of tribunals appointed for that purpose.

Investigation and Inquiries into Allegations and Complaints of Non Compliance with the Act

- to inquire into any allegations of bribery or act of corruption under the Act (or under the Prevention of Corruption Acts of Antigua and Barbuda and Grenada);

- to receive and investigate complaints regarding non-compliance with or breach of the Act (or under the Prevention of Corruption Acts of Antigua and Barbuda and Grenada); Unaccounted Property/Unexplained Property
- to hold inquiry into the source of income of the person in public life where the Commission suspects him or any other person on his behalf to be in possession of property or pecuniary resources disproportionate to his legitimate sources of income (DOM – s.47(2); MONT – s.47; SLU – s.30, ANU – POC Act, 2004 – s.7); and Code of Conduct Breach
- to investigate and hold inquiry into complaint made by a person against a person in public life where the Commission is of the view that investigation is necessary to ascertain whether any person in public life has committed a breach of any provision of the Act including the Code of Conduct, and submit a report to the Director of Public Prosecutions. (ANU – s.24; DOM – s.33 & 34; GDN – s.45; MONT – s.33 (report to the Attorney General); SLU – s.35).
In conducting any such inquiry the Commissions are vested with the powers, rights and privileges of a Supreme Court at a trial or of a commission of inquiry under the Commissions of Inquiry Act for enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise, compelling the production of documents; and issuing a commission or request to witnesses abroad. (ANU – s.13; DOM – ss.11 & 24; GDN – s.37; MONT – s.13; SLU – s.22).

Perform such other functions as are required under the Act, including:

- the submission of an annual report to the Minister for tabling in Parliament on the activities of the Commission for the preceding year (ANU – s.29; DOM – s.48; GDN – s.26; MONT – s.48; (to the Governor); SLU – s.37);
- the power to make rules to regulate the procedures of the Commission (ANU – s.34; DOM – s.58; MONT – s.59; SLU – s.47); and
- keep proper accounts of receipts, payments, assets and liabilities to be audited by the Director of Audit or an auditor appointed by the Head of State (ANU – s.28; DOM – s.52; GDN – s.23-24; MONT – s.52).

Gifts

- To inquire into gifts accepted by persons in public life reported to the Commission (ANU – s.26; DOM – s.35; GDA – s.47; MONT – s.35; SLU – s.28).

6. INDEPENDENCE OF THE COMMISSIONS (AND MINISTERIAL RESPONSIBILITY)

Independence, that is, ‘freedom from control, by, or subordination to’, connotes a status or relationship to others that rests on objective conditions or guarantees. In determining whether oversight bodies can be considered independent regard must be had, inter alia, to:

- (a) their security of tenure;
- (b) their financial security;
- (c) their institutional relationship with respect to matters of administration to the executive branch of government bearing directly on their statutory functions; and
- (d) whether they may be reasonably perceived as independent. (See *Valente v. R.* [1985] 2 SCR 673 at 674, and *The Report of the Rt. Hon. Mr Justice P.T. Georges on the Independence of the Judiciary*, February 16th 2000, in Carib LB. 28.)

The Acts expressly provide that the Commissions are not subject to the direction or control of any person or authority in their exercise of these statutory functions. (ANU – s. 12(2); DOM – s.13; GDN – s. 12(2) (a); MONT – s.13; SLU – s.8). The Commissions, therefore, in the exercise of their obligations, duties and powers are required to act independent of the Executive and the parties to any matter before them. They are independent of ministerial direction or control in the performance of these autonomous functions. Though they are not “departments of government” they are, however, statutory authorities exercising state power and are part of the “business of Government” within the meaning of the Constitution so that the relevant Minister may be assigned portfolio responsibility for the

Commission subject to the necessary reservation in respect of their exclusive and protected functions. (See, e.g., Dominica Constitution s. 61 with s.68, AG of Fiji v. DPP of Fiji [1983] 2 A.C. 672 and Mossell (Jamaica) Ltd. (t/a Digicel) v. Office of Utilities Regulations and Ors (Jamaica) [2010] UKPC (21st January, 2010)).

Their independence is also safeguarded by the provisions which require that the expenses incurred by the Commissions for the purposes of the Act are to be a charge on the Consolidated Fund and are not therefore subject to annual appropriation. (ANU – s.31; DOM – s.52; MONT – s.52; SLU – s.39). There are similar provisions in their Constitutions and in the Eastern Caribbean Supreme Court Order (S.I. 1967 No. 223 (U.K.)) concerning the salaries and allowances of the Head of State, the judges of the Eastern Caribbean Supreme Court, the Director of Public Prosecutions, the Chief Elections Officer, the Director of Audit and payment of the public debt. (Grenada, however, provides a different procedure. Section 22 of the Grenada Integrity in Public Life Act provides that “the funds of the Commission shall consist of funds as may be appropriated to the Commission by Parliament”).

This provision has very definite legal effect and purpose. It provides the necessary authority for the release of funds (approved by the Executive/Minister for Finance) for the specific purpose from the Consolidated Fund. The Constitutions provide that estimates of expenditure charged upon the Consolidated Fund by the Constitution or by any other law enacted by Parliament do not require to be approved by Parliament by an appropriation bill. (See for example, Dominica Constitution s.78 (2)). This together with the finance and audit laws and the budget approval procedure and processes provide an effective system of financial control and accountability that safeguards the public funds allocated to the Commissions.

Their independence is further reinforced by security of tenure for the fixed term of their appointments and the provision that a member of the Commission may be removed from office only for inability or misbehaviour and only on the determination of an independent tribunal appointed for that purpose and not by the Executive. (ANU

– s.9; DOM – s.7 (3) – (7); GDN – s.9; MONT – s.7 (2) – (6). But see SLU section 5(a) which provides that a vacancy in membership may occur by “the revocation of the appointment of a member” by the Governor General, without more).

7. STAFF OF THE COMMISSIONS

The Acts provide for the appointment of a Secretary to perform the following duties:

- to attend meetings of the Commission;
- to record the minutes of each meeting in proper form; and
- generally to perform duties connected with the work of the Commission.

(See Robert’s Rules of Order, 10th Ed. By General Henry M. Robert, Perseus Pub., p. 442 – 443.)

It is also enacted that the Commissions shall be provided with staff “adequate for the prompt and efficient discharge” of their functions under the Act who shall be public officers appointed by the Public Service Commission (ANU- s.30; DOM – s.49; GDN – s. 19; MONT – s.12 and 49; SLU – s. 38).

8. IMPLEMENTATION OF THE INTEGRITY LEGISLATION IN THE OTHER OECS COUNTRIES

ANTIGUA

The three member Commission met several times during the period 2006 – 2012. In August 2009 it published in the Official Gazette of Antigua a list of three hundred and twenty six (326) persons in public life who had failed to file declarations of income, assets and liabilities for the year 2006. This list included: Five (5) Members of Parliament; Twelve (12) Permanent Secretaries and Principal Assistant Secretaries; other very senior public and police officers and Heads of Department; a former Ombudsman and member of the Industrial Court; the President of the Industrial Court; Chairman and members of the Constitutional Commissions; and the Chief and the Senior Magistrates.

In March 2010, the Commission however published a “Notice of Apology” in the Official Gazette to six (6) of these persons because the “Commission received credible information” that their names should not have been published since declarations had been submitted by them for the year 2006 “prior to the appearance of their names in the Gazette,” and to Six (6) others since “they had not yet qualified to submit declarations for the year 2006” or were not required to file declarations since they were not persons in public life.

The Commission’s staff consists of one Secretary. Funds have not been allocated to the Commission as required by section 27 of the Integrity in Public Life Act. The Commission has not yet submitted Annual Reports to Parliament as required by section 29 of the Act.

GRENADA

Addressing the ceremonial opening of the Grenada Parliament on Wednesday 27th March 2013, the Governor General said that the government would move to implement the Integrity in Public Life Act 2007 which came into force on July 01, 2008. He said:-

“Regrettably, almost five years later, the Integrity Commission has not yet commenced operations. My Government will move swiftly to activate the Integrity Commission as a first step, all members of my government will declare their assets, liabilities and income. My government fully expects all other members of Parliament to follow this example.”

The Governor General also stated that in order to minimize further delays in its functioning, the government will invite the Integrity Commission to consider a phased approach to its operations such that having addressed members of government and Parliament, it would move to address senior managers in the public service, revenue collection agencies and chairmen and members of statutory bodies before addressing other persons in public life listed in the legislation. ([www.antiguaobserver.com/grenada - to stage-referendum-on-ccj](http://www.antiguaobserver.com/grenada-to-stage-referendum-on-ccj). paras 6-8; Thursday March 28th 2013; accessed 4th April 2013).

MONTSERRAT

The Act came into operation in February 2010. The Commission was appointed in June 2012 but it is not yet operational. It may be contacted via email through the Ministry of Legal Affairs. No staff appointment has been made to the Commission and there is no separate budget of expenditure as required by section 52 of the Act.

ST LUCIA

The Act came into force on June 14th 2004. The office is staffed by one person, the Secretary. All financial matters are dealt with through the office of the Prime Minister. The Commission receives numerous anonymous complaints against persons in public life signed by “Concerned Citizens.” Four annual reports prepared by the Secretary have been presented to Parliament. The Commission is not provided with its own funds as required by section 39 of the Act.

9. DOMINICA: IMPLEMENTATION OF THE INTEGRITY IN PUBLIC OFFICE ACT 2003

(a) Examination of Declaration of Financial Affairs

Under section 14 every person in public life is required to file with the Commission in every calendar year a declaration of his income, assets and liabilities in Form 2 of the Third Schedule.

The receipt, examination, investigation and formal inquiry into this declaration is therefore at the heart of the probity, integrity and accountability in public life regime imposed by Parliament. Failure by a person in public life, without reasonable cause, to file such a declaration in accordance with the Act is visited with criminal sanctions. (Section 27).

The information on the Commission’s performance of its duties under these provisions is summarized in Fig. I below.

**2008 -2012 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	Compliance in percentage (%)	No. of Queries sent	No. of Declarations Certified	No. of Persons Gazetted/ Reported to DPP	No. of Cases charged by DPP	No. of cases prosecuted by DPP
Dec. 1 2008	119	102	17	86	78	107	17	0	
Dec. 31, 2008	136	111	25	82	58	94	25	2	
Dec. 31 2009	147	134	13	91	33	126	13	26	3
Dec. 31, 2010	159	152	7	96		151	7	0	0
Dec 31, 2011	164	158	6	96	69		6	0	0
Dec 31, 2012	156	147	9	94	34	113	15		

Fig. 1

(b) Effectiveness of Financial Disclosure?

Bertrand de Speville, Deputy Chairman of Transparency International, in an address to Trinidad and Tobago Transparency Institute on 8th March 2013, on the subject “The Case for an Anti-Corruption Agency”, stated: *“The Integrity Commission is wasting its energy and resources receiving declaration of public officers’ assets and liabilities. What it really needs is the power to arrest, search and seize, to intercept communications and investigate bank accounts.”* He added that the Integrity Act of Trinidad and Tobago does not have the features of an anti-corruption body.

The Commission has not supplanted the criminal justice jurisdiction of the police or the Director of Public Prosecutions. The Commission is empowered under sections 11, 23 & 24 of the Act to summon the

production of documents including bank records of a declarant. But the proper foundation for the request has to be established. In the Bahamian case of Sir William Douglas v Sir Lynden Oscar Pindling ((1996) 48 WIR 1) the Privy Council laid down the test to be applied by an inquiry tribunal in deciding to issue such summons in the light of the banking legislation dealing with the customer's rights to non-disclosure without consent. The Board held (i) that if there was material before the commission of inquiry which induced its members to believe bona fide that a banker's record might cast light on matters falling within the Commission's terms of reference, it was the duty of the Commission to issue a summons seeking access to the banker's book; and (ii) that a balance has to be made between the promotion of the work of the commission of inquiry and the customer's personal interest and that if the public interest appeared on good grounds to require the disclosure of a customer's banking records, the customer's rights to non-disclosure without consent must yield to the public interest. (See Banker's Books (Evidence) Act, Chap. 5:04; (1990 Rev. Ed.), ss. 3-7)

(c) Confidentiality and Secrecy of Declarations and of Commission's Meetings and Proceedings – Breach and Leak?

Because of the sensitivity of the declaration of financial affairs, the Commission is under a statutory duty not to disclose the confidential information received from persons in public life or its business or proceedings. This duty engenders a correlative statutory right in favour of persons in public life with respect of non-disclosure.

Section 21 of the Act provides that every member and every person performing any function in the service or as an employee of the Commission shall:

- a) treat all declarations filed with the Commission or information relating to such declarations as secret and confidential;
- b) not disclose or communicate to any unauthorised person or allow any such person to have access to any such declaration or information; and
- c) be liable to penal sanction for contravention of these provisions.

Also, pursuant to section 50 the members, the Secretary and the staff of the Commission are required to take the oath of secrecy specified in the Fourth

Schedule to the Act. Under this oath, sworn to before the President of the Commonwealth of Dominica, these officers solemnly promise that they shall not “directly or indirectly reveal the business or proceedings of the Integrity Commission”.

From its inception on the 2nd September, 2008 the Commission has taken very seriously and has strictly complied with these statutory imperatives.

However, in December, 2012 information concerning the declaration of a person in public life and of the confidential proceedings of the Commission were disclosed in the public media. This caused great concern and anxiety at the Commission as the preservation of the secrecy and confidentiality of the declarations and the business and proceedings of the Commission is a fundamental obligation imposed by Parliament on the Commission. The Commission acting under section 53 of the Act has requested the assistance of the Chief of Police in conducting a thorough investigation into the matter. The investigation is still on going.

(Under section 9 (1) and (5) of Antigua’s Integrity in Public Life Act, 2004 the communicating of confidential information to any unauthorised person also constitutes “misbehaviour” for which a member of the Commission may be removed from office).

(d) Complaints of Non-Compliance with the Act - Anonymous Complaints and Allegations of Corruption

Under section 9(c) and (d) with Parts IV and VI the Commission is mandated to:

- i. inquire into any allegation of bribery or act of corruption under the Act; and
- ii. receive and investigate complaints regarding non-compliance with any provisions of the Act including the Code of Conduct specified in the Second Schedule.

Here the jurisdiction of the Commission is limited to the investigation of complaints received of non-compliance with the Act or allegations of bribery or act of corruption under the Act brought to the attention of the Commission from identifiable persons, natural or legal. Under these provisions read along with section 55(1), 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. (Republic v First Track High Court, Accra, ex p. Commission on Human Rights and Administrative Justice [2009] 1 LRC 44).

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

The Minister has since instituted judicial review proceedings against the Commission’s decision and the matter is presently before the Court.

(e) Education Programme

The Commission has conducted education programmes directed at sensitizing persons in public life about their obligations under the Act as

well as the process for filing declarations as required by Section 14 of the Act. A total of 110 persons attended the first education sessions, including members of the House of Assembly, Ministers of Government, senior government officials, gazetted police officers and chairmen and managers of public institutions.

The Commission has developed a public education programme aimed at informing the public on the following matters:

- (i) integrity, probity and accountability in public life and the purpose and reasons for integrity legislation;
- (ii) the functions of oversight institutions under the Constitution and other legislation;
- (iii) the powers, functions/duties of the Integrity Commission under the Act;
- (iv) public, “democratic oversight” – the mass media; and
- (v) duty to observe the rules of natural justice in the Commission’s decision-making and to keep within the four-corners of the Act.

10. FACTORS INFLUENCING THE PERFORMANCE OF THE INTEGRITY COMMISSION OF DOMINICA

(i) The intense political controversy and vocal media criticisms of the five-year hibernation of the Act

Though enacted in May 2003 the Act was only brought into operation in September 2008 following great public controversy and incessant demands for its implementation. The appointing authorities in the exercise of their powers and the Commission in undertaking its statutory responsibilities were, undoubtedly, cognisant of that environment and the heightened public expectation in which the Act was being brought into force.

(ii) Adequate Financial Provisions by the Executive

Under section 52 the Minister for Finance is authorized to approve the estimates of expenditure of the Commission for the purposes of the Act. Such expenses are a charge on the Consolidated Fund. There was prompt approval by the Minister of the estimates of

expenditure as submitted by the Commission, and the Minister for Legal Affairs provided adequate office accommodation and facilities. Under the Finance (Administration) Act 1994, No. 4 of 1994, the Secretary was appointed an Accounting Officer responsible for accounting for the expenditure of the Commission and answerable to the Public Accounts Committee of the House of Assembly for the efficient management of the public funds entrusted to the Commission.

The Commission felt constrained, however, to disregard certain administrative rules and practices intended for public officers and departments of government which were being extended to it and which would be prejudicial to its independence contrary to the intention of section 13 of the Act. In that regard, the matter of Executive approval of travel by members on the business of the Commission from funds allocated for official travel in the Commission's approved estimates of expenditure remains unresolved. (See Second Annual Report 2010, Appendix 6.)

(iii) The Composition of the Commission

Under section 4 of the Act the Commission is appointed by the President and is comprised of the following:

- (a) a Chairman, a lawyer of fifteen years standing, on the advice of the Prime Minister given after consultation with the Leader of the Opposition;
- (b) two members of high public standing and reputation for personal integrity, on the advice of the Prime Minister;
- (c) two members of high public standing and reputation for personal integrity, on the advice of the Leader of the Opposition;
- (d) a chartered or certified accountant, on the recommendation of the Institute of Chartered Accountants of Dominica or like body; and
- (e) an attorney-at-law, on the recommendation of the Dominica Bar Association.

Though five members are appointed on the advice of elected politicians the Commission is required to perform its functions under the Act with independence and impartiality. (Section 13 and

Constituency Boundaries Commission and AG of Dominica v. Urban Baron [1999] E.C.L.R. 114).

The appointing authorities got it right by the assiduity with which they undertook their responsibilities under section 4 of the Act when the Commission was being set up in September 2008. The membership included, a public finance and management consultant and former Financial Secretary spanning three administrations; a retired senior UNCTAD officer/regional adviser and former High Commissioner and Ambassador of Dominica spanning two administrations; a former Court of Appeal Judge who acted Chief Justice for three years; a Roman Catholic Archbishop Emeritus; a former Deputy Director at the Caribbean Development Bank; a retired public service accountant and member of the Institute of Chartered Accountants of the Eastern Caribbean; an attorney-at-law of over fifteen years standing and former Secretary to the Cabinet and Head of the Public Service spanning five administrations, in succession and a retired banker.

The Commission was able to maintain appropriate “arm’s length” relationship with the government and to confine ministerial responsibility within its proper limits and away from its day to day administration.

(iv) Top level Commitment: The establishment of Committees of the Commission

The Commission, during its first years of operation, was without a substantive appointment in the office of Secretary for fourteen months! The Commission’s recommendation for contractual engagement of a suitable candidate did not find approval by the Executive. The Commission’s leadership was committed to “making this thing work”, and, through its Committees, worked hard and long hours to accomplish its tasks.

At the very first meeting held on the same day of its appointment the Commission organized its members into three committees for the purpose of expediting the performance of its functions. These are:

- Finance and Administration (F&A)

The Finance and Administration (F&A) Committee has responsibility to conduct preliminary examination of all declarations filed and to make recommendations to the Commission, and to oversee the administration of the Commission including the interview of senior staff and the management of the annual budget.

- Rules Committee

The Rules Committee has responsibility to keep under review the legal framework within which the Commission is mandated to operate, and to develop rules and procedures for performing its functions.

- Education Committee

The Education Committee has responsibility for organizing education programmes for persons in public life on the provisions and purposes of the Act and their obligations thereunder; and also to educate the public on matters relating to the work of the Commission, the importance of integrity and probity in public life, and the role that civil society must play in this regard.

(v) Firm and even-handed management

At the outset, the Commission's approach to the implementation of the Act was influenced by the policy position that every person in public life was required to comply with the law including the deadlines set therein. The Commission has no discretionary power to waive or extend the time for compliance with any provisions of the Act. (This may be contrasted with the provisions of section 28(2) of the Grenada Integrity in Public Life Act 2007 and section 11(2) of the Trinidad and Tobago Integrity in Public Life Act 2000 which empower the Commission to, for good cause, extend the time for filing declarations.)

Therefore, there was zero tolerance to non-compliance with the Act in respect of the filing of declarations of financial affairs in accordance with section 22 of the Act. Also, the Commission conscientiously addressed and

expeditiously dealt with the complaints of non-compliance received by it in accordance with the provisions of the Act. The Commission always gave full reasons for its decisions. These are published in the Appendices of the Annual Reports of 2009 and 2011.

(vi) Accountability: Obedience to Parliament – Annual Reports

Section 48 of the Act mandates that the Commission shall not later than two months after the end of each year make annual reports to the Minister to be tabled in Parliament.

The Commission strictly complied with this duty and made comprehensive annual reports of its activities to the Minister for Legal Affairs to be tabled in the House of Assembly within the prescribed deadline in every year from 2009 - 2012.

11.RECOMMENDATIONS FOR IMPROVING INTEGRITY GOVERNANCE

The Integrity Commission of Dominica has provided advice and made several recommendations on legislative amendments to ensure that the Commission has the legal and organizational framework and the staffing structure to carry out its mandate and to strengthen probity, integrity and accountability in public life in Dominica. (See Annual Reports 2009 to 2011, passim.)

(a) Parliamentary Oversight. The Integrity Commissions in the performance of their important, albeit intrusive, statutory functions require a supportive political environment. The Parliaments of the OECS must continue to demonstrate that they are important stakeholders in enhancing the integrity and corruption prevention regime that have been enacted and the administrative structure that they have established.

In the Chairman's transmittal letter to the Third Annual Report to Parliament (October 24th, 2011) he 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 recommend 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 submit same to the House of Assembly; and
- (ii) **A 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.

Under Article 5 of the United Nations Convention against Corruption (UNCAC) a 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”. Each State Party is therefore required “to review its existing legislative, institutional and procedural provisions to strengthen what is in place and introduce what is required in order to develop a coherent and co-ordinated anti-corruption strategy”. (Commonwealth Strategies to Combat Corruption: The Commonwealth Updated Legislative and Technical Guide, Commonwealth Secretariat pub., November 2011, p.23.)

Dominica acceded to UNCAC on May 28, 2010 which constitutes a positive statement by the Government that it will act in accordance with the undertakings entered into under the Convention. (And, for the developing Commonwealth Caribbean jurisprudence on the possible effect of the doctrine of legitimate expectations on ratified but unincorporated treaties on domestic law, see the *obiter* in the leading joint judgement of President de La Bastide and Justice Saunders in Attorney General of Barbados v. Joseph & Boyce [2006] CCJ1(A J)).

The Jamaica Corruption (Prevention) Act 2001 provides for such a review of the statute by a Committee of Parliament. Section 16A enacts:

“(1) This Act shall be reviewed from time to time by a committee of both Houses of Parliament appointed for that purpose.

(2) The first such review shall be conducted not later than three years after the 1st of May, 2001.”

(b) Constitution and Functions of the Commission’s Secretariat -

The Executive in the OECS has generally failed to comply with the statutory requirement to provide the Commissions “with staff adequate for the prompt and efficient discharge” of their statutory functions. A fundamental pillar for an efficient and effective anti-corruption body is the possession of high level professional staff with loyalty to the Commission and its mandate. The statutory description of the administrative functions to be performed by the Secretariat of the Commission under the current statutes is clearly inadequate. So too is the role of the Commission in the selection of and the exercise of disciplinary control over staff. It is critical that the Commission be staffed by high level professional staff with legal, accounting and auditing background. It is therefore recommended that the minimum staff complement and accountability to the Commission should be included in the enabling Acts. The Commission after a comprehensive review of the organization in 2010/2011 has made recommendations which included that:

- i. membership of the Commission be reduced to five including the Chairman;

- ii. the posts of Secretary be abolished and a new post of Registrar be established to advise the Commission and manage its operations;
- iii. the post of Research Assistant be abolished and replaced with two new posts of Financial Analyst and Investigator;
- iv. the post of Executive Officer be upgraded to Senior Executive Officer and assigned both secretarial and administrative functions; and
- v. the Integrity in Public Office Act and other applicable laws be amended to give effect to (i) - (iii) above.

An appropriate provision can be found in the Belize Prevention of Corruption Act 2007, No. 21 of 2007 which in section 7 enacts:-

“7. (1) There is established, for the purposes of this Act, a Secretariat to the Commission which shall consist of the following persons

(a) an Executive Director;

(b) an Administrative Secretary;

(c) a Senior Clerk;

(d) an in-house legal Advisor;

(e) a Special (forensic) Investigator who is highly skilled and experienced to conduct investigations relating to financial crimes; and

(f) any other personnel reasonably necessary to carry out the Functions of the Commission.

(2) The Executive Director is accountable and answerable to the Commission and he shall carry out all directions given to him by the Commission in pursuance of its functions.

(3) The Office of the Secretariat is charged with the administrative responsibilities of the Commission and shall perform any duties reasonably incidental to the office of the Commission, and which are assigned to it by the Commission.”

(c) Urgent Amendments to the First Schedule to the Act

Uncertainty in Meaning of Persons in Public Life:

(a) “Chief Technical Officer”

The office of “Chief Technical Officer” has created considerable difficulties for the Commission and should be deleted from the First Schedule and replaced with specific offices of heads and deputy heads of department since a comprehensive determination of the offices which fall within its meaning requires the construction of section 2(1) of the Integrity in Public Office Act 2003, section 86 of the Constitution and section 2 of the Public Service Act 1991, No. 27 of 1991! It is thought that Parliament ought not to legislate in a manner that is, prima facie, incomprehensible to the persons in public life who fall to be regulated by the statute! (See also MONT - s.2 with First Schedule.)

(b) The list of persons in public life should only include those offices whose roles, functions and authority require the level of scrutiny imposed by the Act.

The Schedules to the Act may be amended by Regulations made by the Minister for Legal Affairs subject to negative resolution of the House of Assembly. (Section 59(b); and see Appendix 6 to the Third Annual Report 2011.)

(d) Complaints: No own volition investigation powers

Dominica and some of the other OECS can only initiate investigations of complaints of non-compliance or allegations of bribery and corruption made to them by a person, natural or legal. They have no own volition powers in that regard. (Contrast with Jamaica – The Corruption (Prevention) Act 2001, s. 5(e), Trinidad and Tobago Integrity in Public Life Act 2000 s. 5(1) (f) and 2(c)). There is, however, common law observation, *obiter*, that on a liberal and purposive interpretation to realise the purpose of these statutes 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” and 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.)

(e) Establishment of an Umbrella Organization for Regional Integrity Commissions – This recommendation was made at a conference of the Integrity Commissions of Dominica, St Lucia, Antigua & Barbuda and Trinidad & Tobago held in St. Lucia on June 8th, 2011 and repeated at the Regional Preparatory Consultation on Governance and Development in the Small Island States in the Caribbean held in St Vincent and the Grenadines in June 25 – 26, 2012. The organisation would be charged with the review and implementation of 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. Technical support from the Commonwealth Secretariat should be considered. The Secretariat has supported the institutional development of anti-corruption Commissions in member states of the Commonwealth. For example, it has provided special prosecutorial expert assistance including a digest on substantive and procedural laws to a member-state. (Commonwealth Governance Handbook, 2012/2013, Commonwealth Secretariat pub. 2012, p.73)

CONCLUSIONS:

[I] What Works?

- Education for persons in public life helps foster understanding of the functions of the Commissions and increases compliance.

- The compliance rate also increases to the extent that persons in public life know that mandatory statutory provisions will be enforced.
- Careful selection of Commission members from professional and experienced persons of high public standing and reputation for integrity and who are not known to have strong and active political affiliations.
- Effective organization, including design of procedures and the establishment of working committees, provides a sense of purpose and commitment to commissioners and staff.
- Transparency in the processes followed and in reporting on performance strengthens public confidence and support.
- Communication/collaboration with other Commissions and oversight bodies strengthens capacity to undertake difficult tasks, especially actions of a highly sensitive political nature.
- Access to high level expertise, e.g. legal and forensic, improves capacity to deal with complex cases.
- Maintaining independent and even handed administration insulates the institution from unnecessary public controversy.
- The giving of full reasons for the Commission's decisions should make the decisions acceptable to the parties and to members of the public and also satisfy the requirement of transparency in its decision making process.

[II] What Does Not Work?

- Requirement that complaints must be formal and written by an identified person. Having regard to the fact that in our societies there is a very weak, almost non-existent tradition of private persons initiating 'litigation' of any kind against influential public officials the requirement of written complaints concerning the conduct of persons in public life is a severe limitation. Very few persons have put forth the kind of effort or personal initiative that a written complaint requires under the Act. Perhaps, the Ghana alternative of oral complaints may be considered. Section 12(1) & (3) of Ghana's Commission on Human Rights and Administrative Justice Act

1993 provides for the making of complaints orally to the office of the Commission which shall be reduced into writing by the staff and signed or thumb printed by the complainant. Regulations under the Act provide procedural rules for giving effect to this provision.

- Lack of whistle blower provisions
- Presence of persons with strong and active political affiliations and the risk of disclosure of confidential information to unauthorized persons including the press.
- Staff with close political ties: political patronage and institutional loyalty issues.
- Administrative restrictions on operations, for example, procurement of services and official travel on the business of the Commission.
- Dependence on the executive for legislative improvements and the making of Regulations. Parliament should greatly limit the extent of discretionary powers in the hands of the Executive by making comprehensive arrangements in the enabling Act concerning all imperatives including provisions to give effect to the legislation. (Recently, Dominica's Parliament in the Public Procurement and Contract Administration Act 2012, No. 11 of 2012, found it necessary to provide that if the Minister has not appointed a day for the entry into force of the Act within two years after the day of assent the Act shall automatically come into force on the next day, s.2 (2) & (3)).

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