



THE WORK OF THE INTEGRITY COMMISSION DURING ITS FIRST TERM OF OPERATION: ACHIEVEMENTS AND CONSTRAINTS

Address delivered by Julian N. Johnson
Chairman of the Integrity Commission,
to the Board of Directors and Members of the Dominica
Association of Industry and Commerce (DAIC)

Thursday 10th November, 2011

**ADDRESS TO BOARD OF DIRECTORS AND MEMBERS
OF THE DOMINICA ASSOCIATION OF INDUSTRY AND
COMMERCE (DAIC)**

ON THURSDAY 10TH NOVEMBER, 2011

**BY JULIAN N. JOHNSON, CHAIRMAN, INTEGRITY
COMMISSION, COMMONWEALTH OF DOMINICA**

[1] INTRODUCTION:

I was invited by your Chief Executive Officer to speak on “the progress and success realize (sic) by the Integrity Commission to date.” And I was advised that the “format of your presentation is exclusively at your choosing and you are also at liberty to suggest a more stimulating aspect of your work to present.”

In compliance with that request and advice I have decided to speak to you on “The work of the Integrity Commission during its first term of operation: achievements and constraints.”

[2] DEFINITION OF TERMS:

By “work” I refer to the functions and activities of the Commission under the Act during its first term of operation. “First term” refers to the period 2nd September, 2008 to 1st September, 2011. The seven members of the first Integrity Commission were appointed for a term of three years with effect from 2nd September, 2008. Three members resigned during the term. The appointment of the remaining members of that group came to an end on the 1st September, 2011 and they were all re-appointed for a second three year term. “Achievements” and “constraints” have their ordinary dictionary meanings. I shall refer to the Commission’s carrying out of its statutory mandate and the factors which may have impeded or circumscribed the implementation of the Integrity in Public Office Act, 2003 in order to achieve the statutory purpose, fully

[3] BACKGROUND: RATIONALE AND PURPOSE:

- Environment/Culture – Sociology of small size; political culture of “It is our time to eat” “Where cow tie it must eat.” *(Patois)

*Professor Trevor Munroe has put in thus: “In election after election in the last 10 to 20 years across the region, corruption scandals have been significant. Governments have been removed largely on the grounds of being corrupt and replaced by oppositions largely on the basis of promises of integrity, only to repeat the cycle subsequently, thereby reconfirming popular concern with the issue of corruption and contributing to public cynicism.” (Jamaica Gleaner, 27/3/2011)

- Long title to the Act – To establish a Commission to receive declarations of persons in public life for purpose of establishing probity, integrity and accountability in public life.
- Unanimous parliamentary support for the Act of 2003 – (Refer to Handsard 30th April, 2003 at pp 246-360 passim)

[4] THE WORK OF THE COMMISSION:

The Integrity Commission is charged under section 9 of the Act with the following duties:

- a. To receive, examine, and retain all declarations filed with it;
- b. To make such inquiries as it considers necessary in order to verify or determine the accuracy of the declarations;
- c. To inquire into any allegations of bribery or act of corruption
- d. To receive and investigate complaints regarding non-compliance with or breach of the Act* and

e. To perform such other functions it is required under the Act.

* Specific statutory regime in Part IV dealing with the Code of Conduct – section 30 with Second Schedule prohibits the placing of private gain before the public good; and see sections 31 – 34.

- The Integrity Commission must perform its functions within the four corners of the Act of 2003.

- The Integrity Commission has not supplanted the:-
 - (i) Police Force;
 - (ii) Parliamentary Commissioner ;
 - (iii) The Accounting Officer and/or the Public Accounts Committee;
 - (iv) Public/Police Service Commissions;
 - (v) Director of Public Prosecutions; and
 - (vi) Director of Audit.

[B] Functions under 9(e) include:

(i) Annual Report to Parliament on the activities of the Commission in the preceding year;

(ii) Power to make Rules to regulate the procedures of the Commission;

(iii) Duty to hold inquiry “into the source of income” of a person in public life where the Commission suspects that person “to be in possession of property or pecuniary resources disproportionate to his legitimate sources of income” (section 47(2)).

Functions of the Commission under 9(a) and (b): Part III: Declaration of Financial Affairs

HOW TO FILE

Every person in public life shall file a declaration with the Commission ***in accordance with Form 2 of the Third Schedule to the Act.***

WHAT TO FILE

- (i) Office(s)
- (ii) Income, assets and liabilities
- (iii) Assets of wife, children or relative acquired through or traceable to his income
- (iv) Gifts made by him in value exceeding \$1,000

WHAT TO FILE:- Income, Assets and Liabilities of Agent

Section 18 “For the purposes of a declaration, the income, assets and liabilities of a person in public life include the income, assets and liabilities acquired, held or incurred by any other person as his agent or on his behalf.”

What is “income?” (a) “the income of a person in public life is that income which he acquires in or out of Dominica and includes all prerequisites or benefits direct or indirect and all income within the meaning of income under the Income Tax Act”;

What are “assets?” (b) “the assets of a person in public life are all property beneficially held in Dominica or elsewhere by him and all rights and benefits to which he is entitled”; and

What are “liabilities?” (c) “the liabilities of a person in public life are all the obligations of such a person to pay money or to transfer moneys to others whether in Dominica or elsewhere.”

(Section 2(2) (a) (b) (c) of the Act of 2003).

WHAT TO FILE:- Trust Property

Section 17: - “Where a person in public life holds money or other property in trust for another person, he shall so state in his declaration.” (Emphasis added).

WHEN TO FILE:

[I] within three months after the end of a calendar year.

[II] when a person becomes a person in public life after the act came into force he shall file a declaration not later than three months of his becoming a person in public life.

[III] A person in public life is required to file declaration in the following two years after he ceased to be a person in public life, “otherwise than by reason of death.”

WHAT COMMISSION DOES WITH DECLARATIONS FILED WITH IT

- (i) Examine them; may request declarant to provide any information or explanation relevant to the declaration which may assist in its examination.
- (ii) May require declarant to furnish further particulars relating to his financial affairs as Commission considers necessary for the purposes of section 9(b)
- (iii) When Commission is satisfied that declaration has been fully made it so certifies the person in public life and publishes the fact in the *Gazette*.

FAILURE TO FILE: Duty to report to the Director of Public Prosecutions

Section 22 “Where a person who is required to file a declaration under section 16 fails to file the declaration in accordance with the Act or fails to furnish particulars under section 15 or section 16, the Commission shall publish the fact in the *Gazette* and send a report to the Director of Public Prosecutions for further action.” (Emphasis added)

Accuracy or fullness of Declaration - Commission may hold Formal Inquiry: Sections 23 – 26. Section 23(2) enacts: “Where the Commission considers it necessary or expedient to enquire into the accuracy or fullness of a declaration filed with it, the Commission may,

under subsection (3), advise the President to appoint a Tribunal for that purpose.”

Work of the Commission as regards Functions 9(a) and (b) – See First Annual Report pp 28 – 34 and Second Annual Report – pp 7-8; 37

FUNCTIONS OF THE COMMISSION under 9 (c) and 9 (d)

Function of the Commission here has to be read with section 55. So read the power of the Commission to be exercised on the receipt of allegations or complaint from “a person” within the meaning of the Interpretation and General Clauses Act, Chap. 3:01, i.e natural person or corporate body. Cannot act on the basis of anonymous sources or media report. Cannot act on its own initiative/volition.

Code of Conduct Complaints: Section 9 (d) with Section 30-34

Four complaints made in writing to the Commission:

[1] Lennox Linton – against Prime Minister Roosevelt Skerrit

[2] Citizens Forum – Arthie Martin, Angelo Alleyne, Severin Mckenzie and Lennox Linton against Ambrose George

[3] Lennox Linton - against Prime Minister Roosevelt Skerrit

[4] Lennox Linton - against Prime Minister Roosevelt Skerrit

The decisions of the Commission of the complaints at 1 – 3 have been reported in the First Annual Report, pp 27-28 and appendix III; Second Annual Report, pp 13-15.

The decision on the fourth complaint which was delivered on 1st July, 2011 is included in the Third Annual Report which was forwarded to the Minister for Legal Affairs in October 2011.

FUNCTIONS OF THE COMMISSION - ACHIEVEMENTS

Reports to Parliament (refer to the content of the 2009 and 2010 Reports, passim and to matters dealt with in the year ending 1st September, 2011)

Ministerial responsibility and Parliamentary oversight: No debate; No questions; No comments; No motion - on 2009 and 2010 Reports.

CONSTRAINTS ON THE PERFORMANCE OF THE COMMISSION'S FUNCTIONS:

[i] Legislation inadequacies – See Annual Report and letter to the Prime Minister dated 11th June, 2010, at appendix v of the 2010 Report.

[ii] Statutory requirement of “staff adequate for the prompt and efficient discharge of functions of the Commission” still to be satisfied.

[iii] Independence of the Commission: Section 13 “The Commission shall in the exercise of its functions under this Act not be subject to the control or direction of any person or authority.”

- (a) Relations with Executive – Executive prior approval for travel: the contention and requirement that Commissioners travel on the business of the Commission must be approved by executive is impaled by reason and legal authority;
- (b) Control over Staff: – appointment, discipline and removal by Commission; remuneration and terms and conditions of employment to be set by the Executive. (Refer to provisions in Jamaica, Bahamas and BVI legislation).

COMMISSION AND NATIONAL CONTROVERSY:

- (c) Commissioners are “Not silent members of society” – Freedom of expression, impartiality, the rules of natural justice and prudence. The circumstances of Sir Brian Alleyne’s resignation in March, 2011 brought this to the fore. The Commission’s press release on this stated:

“The Commission is of the view that its members are not forbidden by their membership from exercising their fundamental right of expression and association, and their democratic right to participate in public debate on national issues including comment on the policies and programmes of the Government of Dominica. Members of the Integrity Commission are aware that in exercising these rights, they shall always observe prudence and the proper degree of constraint having regard to the purpose of the Integrity in Public Office Act and its secrecy and confidentiality provisions, the rules of natural justice and the jurisdiction of the Commission as an independent and impartial statutory authority with oversight duties over persons in public life including Members of the House of Assembly.” [From Integrity Commission Press Release dated 17th March, 2011]

PUBLIC CRITICISMS OF COMMISSION

1. See pp 14-17 of Chairman’s address to the Rotary Club of Dominica, June, 2009
2. See The Chronicle article by Josh Shaw entitled the “*Imperatives of Political Operatives*” April, 2011

DAIC AND GOOD GOVERNANCE IN THE COMMONWEALTH OF DOMINICA

1. Public procurement: Controversy and silence!
2. Financing of political parties – Political consensus but no legislative action
3. Exercise of discretionary powers by the political executive and its fiduciary responsibilities in the management of the state’s finances*;

*Refer to:

(i) “First Preliminary Report – Report No. 1 into Allegations of Corruption, Breach of Trust, Conflict of Interest and Misfeasance in Public Office”, by A.W. Astaphan S.C., 11th August, 2000: pages 17-20

“The exemption of duties or duty free concessions granted by the Minister of Finance.” Paragraphs 59 and 60 stated that *196 vehicles were granted duty free concessions between the month of July 1999, and February 2000, by the then Minister of Finance on the recommendation of the Ministry of Agriculture. The revenue lost to the Government as a result of these concessions was \$4,315,996.50.* Furthermore, between December 1999 and February 2000, 262 vehicles were granted duty free concessions on the Minister’s own volition with an additional revenue loss to the Government of \$6,037,390.88.

(ii) Eleven years later, in The Chronicle, Friday February, 2011 at pages 30-31, referring to duty free concessions granted for the financial year 2010/2011 (published in the *Gazette* of October 21, 2010 and January 31, 2011) it was advertised that :-

“the Cabinet of Dominica approved duty free importation of sixty eight (68) vehicles (including 13 Toyota Lexus, 9 Mitsubishi Pajero, 3 Mercedes Benz and 8 Honda CRV) for personal use of certain residents” amounting to *“\$1.5 million in revenue foregone.”*

(iii) In the First Preliminary Report 2000 (p. 5 para. 16) it is stated that:

“16. The importance of maintaining the integrity of the Consolidated Fund and the financial management of the financial and other resources of the State cannot be over emphasised. In William J. Clinton, President of the United States, et al v City of New York, No. 97-1374, Mr. Justice Kennedy in his concurring judgement delivered on 25th June, 1998 said: “A Nation cannot plunder its own treasury without putting its Constitution and its survival in peril”. A fortiori if the Consolidated Fund is used to further a political agenda or, the financial resources of a nation put at risk by reckless schemes, projects and investments...”;

(iv) In Attorney General of St. Lucia v Kenny Anthony (Civ. App. No. 31/2009, June 14, 2010) the Court of Appeal stated that *the Cabinet had important fiduciary duties to the citizens of the country and that it ought not to make decisions that result in reducing the revenue that the*

Government of St. Lucia is entitled to collect in an arbitrary and cavalier manner.

4. Constitutional reform for democratic governance:

- (a) Constitutional Review Commissions Reports: - President's addresses to Parliament on the 27/7/2005 and 10/7/2009
- (b) Power of the Prime Minister.
- (c) Executive = Parliament – size of the Cabinet (Refer to Montserrat Constitution 2010* and The Dominica Constitution Order 1967 SI No. 226/1967**) Role of Parliament under Westminster model constitution – separation of powers – individual and collective ministerial responsibility to Parliament.

*Section 32 provides:

“Cabinet

32. – (1) There shall be a Cabinet in and for Montserrat which shall consist of a Premier, three other Ministers and two ex officio members, namely the Attorney - General and the Financial Secretary.

2) The number of Ministers referred to in subsection (1) may be increased by a law made in pursuance of section 48(2) which increases the number of elected members of the Legislative Assembly; but in no circumstances may the number of such Ministers be increased so that the total number of Ministers exceeds a number arrived at by subtracting one from the total number of elected members of the Legislative Assembly and then divided by two.”

**Section 51 (3) provides:

“Ministers of the Government of Dominica

There shall be, in addition to the office of Premier, such other offices of Minister, not exceeding five in number, as may be established by Parliament or, subject to the provisions of any law enacted by Parliament, by the Governor, acting in the accordance with the advice of the Premier.”

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