

**SPEECH BY MR. JULIAN N JOHNSON,
CHAIRMAN, INTEGRITY COMMISSION
ON
"THE IMPLEMENTATION OF INTEGRITY IN PUBLIC OFFICE ACT"**

SEPTEMBER 2nd 2008

Your Excellency Dr Nicholas Liverpool DAH, OCC, President of the Commonwealth of Dominica, Honourable Roosevelt Skerrit, Prime Minister, Honourable Ian Douglas, Minister for Legal Affairs, other Ministers of the Cabinet, Honourable Ronald Green, Leader of the Opposition, Members of the Integrity Commission other distinguished guests, Ladies and Gentlemen.

I need not say how anxious I find the duty of speaking in the same forum on the same platform, with speakers of such eloquence as the Prime Minister, the Leader of the Opposition and the Minister for Legal Affairs. And so I speak to you this morning in a voice of some humility and a posture of gentle genuflection.

I feel honoured, to head the first Integrity Commission composed of such eminent and outstanding members so high in public standing and reputation for personal integrity.

I must, therefore, commend all relevant parties on the assiduity with which they undertook their duty in advising the President on the appointment of the Integrity Commission. They have brought together a team of persons covering a wide spectrum of talents and sustained experiences from long and distinguished service including, a Prince of the Roman Church and other prominent personalities from both the public and private sectors. In my view, the appointing authorities got it right.

Also, I wish to commend the interest groups, for encouraging and advancing public dialogue in the press, on the television and on the radio thereby creating wide public awareness of the purposes of the Act and the functions of the Integrity Commission.

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.

I must mention in particular the public meeting at the Garraway Hotel on Thursday 14th August 2008, addressed by Sir Brian Alleyne S.C and the Honourable Attorney

General of Antigua, Mr Justin Simon Q.C and a newspaper article, by Mr Anthony Astaphan S.C, which discussed the interpretation of the provisions and the intention of parliament concerning the commencement of the IPO Act 2003.

BACKGROUND AND CONTEXT

The matter of proper standards in public life has been widely discussed in Dominica as far back as I can remember. It has been the subject of comment at political meetings, at private parties, debates in parliament, in calypsos and other carnival songs, and recently in radio and television talk shows.. Hon Charles Savarin, speaking on the Bill for the Integrity in Public Office Act, in April 2003 (Hansard of 28-30 April 2003, pp 282-283) captured some of the history when he referred to the well known refrain "Si ou tay Norway se ou te fe faire" and the currency of the term "bobol" and the patois saying "Si e parte ni soutiwe e parte ne volaire"

And, indeed, a few public officers have been prosecuted for misappropriation of public moneys and government stores in the past. But having served in the Public Service for 40 years I want to state my belief that the overwhelming majority of holders of public offices in this country, Members of Parliament, Ministers of Government, public and police officers, officers in local authorities and in public boards, uphold high standards of conduct.

The issue of Good Governance and the elimination of corruption in the economic management of the state has been placed high on the agenda of reforms by most modern democratic states during the last two decades. It was, for example, on the agenda of the Commonwealth of Heads of Government Meeting (CHOGM) in Edinburgh, Scotland in 1997 which set up a group of experts to examine the matter. Dominica's delegation at that CHOGM consisted of the Prime Minister Hon Edison James, H.E. George Williams, Dominica High Commission to the U.K., and the Secretary to the Cabinet. Combating corruption has been the subject of Conventions by the United Nations, the European Union, OAS, and the focus of Transparency – International. Donor governments and International lending agencies now routinely impose conditionalities that require clean and ethical government. The U.K, U.S.A, Japan, Germany, Canada, among others and the Commonwealth Caribbean states of Jamaica, Trinidad and Tobago, St Lucia, Bahamas and Antigua have all enacted Integrity in Public Life legislation.

PERSONS IN PUBLIC LIFE

The Parliament of Dominica by enacting the Integrity in Public Office Act 2003, deemed it necessary to subject a class of persons (all state functionaries) to a special regime of disclosure of their financial affairs and to a detailed Code of Conduct. This was done for the express purpose of establishing probity, integrity and accountability in public life in the Commonwealth of Dominica.

These persons in public life, within the meaning of the IPO Act 2003, are:

- (1) The Cabinet of Ministers

(2) Parliamentary Secretaries and Special Advisors or Assistants to the Prime Minister and other Ministers

(3) The Speaker of the House of Assembly and the members of the House of Assembly.

(4) Chairpersons and Managers of Statutory Corporations, Boards and Commissions

(5) Chief Technical Officers, Gazetted Police Officers, heads and deputy heads of the fire and prison departments.

The new "ethical infrastructure" created by the Act of 2003 is an addition to the existing structure of oversight institutions that are contained in our Westminster model constitution and the inherited Whitehall model of public administration/management and which subject elected and appointed officials, ministers and servants of the state, to scrutiny and control, and which requires of them high standards of accountability and transparency.

The existing oversight institutions include:

(a) The House of Assembly – by the use of Parliamentary Questions, debate on Appropriation Acts and the annual budget, censure motions and votes of no confidence against the government of the day thereby enforcing the constitutional principle of individual and collective ministerial responsibility to Parliament.

(b) The Office of the Director of Audit and the Public Accountants Committee of the House of Assembly in matters of the receipt and expenditure into and out of the Consolidated Fund, accountability therefore, and audit of the public accounts.

(c) The office of Parliamentary Commissioner-whose main function is to investigate complaints of injustice as a result of maladministration by departments of government and public officials.

It must be clearly understood by all, that this additional infrastructure erected by our sovereign Parliament is very intrusive into the private life and family affairs of persons in public life within the meaning of the Act of 2003.

Within three months from the 1st September 2008, and thereafter within three months after the end of each calendar year, every person who is now a person in public life is required to file a statutory declaration with the Commission as detailed in Form 2 in the Third Schedule to the Act. Also, a person who becomes a person in public life after the 1st day of September 2008 must file a statutory declaration no later than three months of his becoming a person in public life. Such persons are required to disclose their income, assets and liabilities and the assets of their wives (spouses), children or relatives acquired through or traceable to their income and gifts received by them and gifts made by them exceeding \$1000 in value.

In other words, they must "fully declare" and give true and complete particulars of all such assets and liabilities as they are on the relevant date. For example, they must disclose their salary, gifts in kind or cash, boats, dividends, cash in banks shares, bonds, real property, life insurance policies, vehicles, rents and directorships. They must state how much they owe and to whom.

It must be pointed out that the filing of this statutory declaration is not simply a ritual completing of forms to be sent to the Secretary of the Commission. The members of the Commission by reason of their expertise and experience are required to examine and collectively assess these submissions to ensure that they are "fully made" and that they are in compliance with the provisions of the Act.

One of the inescapable, but regrettable, consequence of this, of course, is that many suitably qualified persons who are able to exercise competence, diligence and sound judgement may decline appointments as chairpersons or managers of public corporations, boards and commissions and even promotion to the higher public service on the ground that the statutory requirement of declaration of their assets and liabilities are too intrusive in their private and family life.

In another jurisdiction in the passing of similar legislation, the parliament thought it necessary and expedient to follow the "manner and form" procedure necessary to give effect to its provisions even though they appear to be inconsistent with the fundamental rights provisions which protect against discriminatory treatment, or the abrogation or abridgement of the right to private life and equality of treatment!

THE FUNCTIONS OF THE COMMISSION

The functions of the Commission are:

- (a) To receive, examine and keep on record all statutory declarations filed by persons in public life under the Act;
- (b) To make such independent enquiries and investigations relating to the statutory declaration as it thinks necessary in order to verify or determine the accuracy of any such declaration
- (c) To inquire into any allegation of bribery, or act of corruption under the Act.
- (d) To receive and investigate any complaint regarding non-compliance with any provisions of the Act.
- (e) To perform such other functions as is required under the Act.

INDEPENDENCE OF THE COMMISSION

Parliament has determined that the Commission shall be an independent statutory authority in the exercise of its functions. Under the Act the Commission is not subject to the control or direction of any person or authority. This provision, in its terms, vests the Commission with the same character of autonomy as is afforded to independent authorities under the Constitution. These include the Director of Public Prosecutions, the Director of Audit and the Constitutional Commissions. Once appointed, members of the Commission have security of tenure for three years and can only be removed from office by the President for inability to discharge the functions of their offices or for misbehaviour and only on the recommendation of an independent tribunal, after proper inquiry.

This does not mean that the Commission can do whatever it likes. It is subject to the jurisdiction of the Courts. The Minister for Legal Affairs, who has been assigned ministerial responsibility for the Commission, is answerable to parliament for the proper functioning of the Commission, to the exclusion, of course, of its independent jurisdiction detailed in section 9 of the Act.

By being in receipt of public moneys from the Consolidated Fund under section 52 of the Act, the management of the funds of the Commission fall within the ambit of the Finance (Administration) Act 1994, the Financial Regulations (S.R.O. 37 of 1976) and the Stores Regulations (S.R.O. 23 of 1980). The accounts of the Commission are to be audited by the Director of Audit or an auditor approved by the President. And the Commission is required to submit to the Minister for legal affairs an Annual Report of its activities for tabling in the House of Assembly. Like the Centurion in the Gospel of St Luke, Chapter 7 verse 8, the Commission is also "Set under authority!"

THE ROLE OF THE PUBLIC: BRING WRITTEN COMPLAINT AND PRODUCE THE EVIDENCE

The implementation and enforcement of the IPO Act 2003 relies, in part, on the active participation of the public.

Section 31 provides that a person who has reasonable grounds to believe that any person in public life has breached any provision of the Code of Conduct may make a complaint in writing to the Commission. This may be sent by registered post to the Chairman of the Integrity Commission.

The complaint to the Commission must state:

- (a) the particulars of the breach;
- (b) the particulars, as far as they are known, of the person against whom the complaint is made;

(c) The nature of the evidence that the complainant proposes to produce in respect of the complaint.

After examination, the Commission may reject the complaint if it is of the opinion that it is frivolous or that it does not pertain to a matter which the Commission is empowered to deal with under the Act. Before the rejection of any complaint the Commission is required to give the complainant a reasonable opportunity of being heard.

Where the Commission rejects a complaint, the person against whom the complaint was lodged has a right to institute legal proceedings against the complainant. At the hearing of say such a matter it is a defence that the complaint was not made maliciously, frivolously, or in bad faith.

The examination of such a complaint may also trigger off investigations and formal inquiry by the Commission to ascertain whether there has been a breach of any of the provisions of the Code of Conduct by a person in public life. The Code contains a high-level statement of values and expected behaviours designed to avoid conflict of interest, improper use of official information or public property, or the acceptance of gifts, or advantage, or benefits or favours for the performance of public duties. A breach of that Code has been criminalised.

CONCLUSION

In conclusion, I wish to assure Your Excellency and the people of Dominica that the Integrity Commission, under my Chairmanship will approach its important statutory functions with the highest level of professionalism and diligence; with robust independence, impartiality and fairness - without fear or favour.

I know I speak for the other members when I say that we will not be swayed by partisan - interests, public clamour or fear of criticism. We will be patient, respectful, and courteous to all those who fall within our oversight jurisdiction. Obviously, we are an imperfect lot in a very small and imperfect society. But, with the help of God - The Almighty - we will do all we can to ensure that the highest standards of probity and integrity are maintained in public office in the Commonwealth of Dominica, in accordance with the provisions of the Act. I thank you.