

Decision of the Commission regarding Complaint No. 1/2010/2011

INTEGRITY IN PUBLIC OFFICE ACT, 2003:
COMPLAINT TO THE COMMISSION
BY MR. LENNOX LINTON CONCERNING BREACHES
OF THE CODE OF CONDUCT
BY PRIME MINISTER ROOSEVELT SKERRIT

DECISION

THE COMPLAINT

By letter dated November 5th, 2010 addressed to the Chairman Mr. Lennox Linton made a complaint to the Commission under section 31 of the Integrity in Public Office Act 2003 in which he stated as follows:

"Dear Sir,

RE: Breach of Code of Conduct by a Person in Public Life

This complaint is presented to the Integrity Commission pursuant to section 31 of the Integrity in Public Office Act number 6 of 2003 which states as follows:

"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..."

Particulars of the breach

The Act cited above provides in its Second Schedule a Code of Conduct which includes the following directives to persons in public life:

"A person in public life shall not –

(c) For himself or for anyone else accept any gifts, benefit or advantage from any one, except personal gift from a relative or friend, or personal gifts given otherwise that as a motive or reward for doing or forbearing to do anything in the performance of his official functions or causing any other person from doing or forbearing to do anything

(e) 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

Prime Minister Roosevelt Skerit a person in public life within the meaning of the Integrity in Public Office Act number 6 of 2003, is in breach of section 47(1) of the act by virtue of his possession of unaccounted property, namely 8 ocean front villas at Guillette, Savanne Paille with an estimated market value of over 8 million EC dollars which cannot be explained by his legal income.

47(1) "A person in public life who is found to be in possession of property or pecuniary resource disproportionate to his legitimate sources of income commits an offence and is liable on summary conviction, to a fine of two thousand dollars and imprisonment for a term of two years and to forfeiture of the assets so found".

I contend that in order to finance his ownership interest in these villas which he could not afford on his legal income, the Prime Minister accepted "gifts, benefits or advantages" in contravention of item c) of the Code of Conduct. The source of these "gifts, benefits or advantages" is clearly a matter for the Integrity Commission to investigate pursuant to the specific responsibility conferred by section 47(2) of the Act:

"Where a person who is or was a person in public life, or any other person on his behalf, is suspected to be in possession of property or pecuniary resource disproportionate to his legitimate sources of income, the Commission shall conduct an inquiry into the source of income of the person".

I also contend that specifically on account of his chairmanship of the Cabinet Meeting on October 9th, 2007 which granted a full suite of concessions to Blaircourt Property Development Limited for the construction of the villas at Guillette, the Prime Minister breached item e) of the Code of Conduct by using his official influence to secure concessions for a business venture in which he had an ownership interest.

The Prime Minister used the corporate cloak of Blaircourt Property Development and a number of persons engaged to serve him, to hide the truth of his ownership of the property and thereby prevent the Integrity Commission from taking appropriate action as required by law

The particulars of the ownership interest are contained in evidence indicating that in 2007 the Prime Minister requested, approved and paid for the architectural designs of the villas which were constructed and furnished by persons working for and on his behalf between January 2008 and December 2009.

In this regard, the Commission is urged to give very careful consideration to the following:

1. On May 28th, 2007, Supriya Singh, the Guyanese Interior Designer, copied the Prime Minister (Roosevelt.skerrit@gmail.com) on an email she sent to the Prime Minister's advisor Hartley Henry about her initial work for Roosevelt Skerrit on the ground in Dominica. According to Singh, the purpose of the email was to keep the Prime Minister and Henry in the loop on the conclusion of architect Orrin Hinds and herself that the "terrain is most suited to a series of Ocean Front Villas" and the they were trying to create a total of 12 to 16 rental units.
2. On July 12th, 2007 Mr. Skerrit received from Hartley Henry an email with the heading "**Ocean Front Project Dominica W.I.**" The email was forwarded to Mr. Henry by Supriya Singh who had received it earlier on the same day July 12th, 2007 from California Architect Cynthia Asis-Leif. Attached to that email were invoices for the Ocean Front Project, the agreement and scope of works for the Ocean Front Project and the list of services to be rendered by the firm of Asis-Leif Designs.

In that July 12th 2007 email, forwarded to Mr. Skerit by Henry, he said: "Hi Chief, please review and let's discuss"

Mr. Skerit replied the same day to Henry copied to Singh and Asis-Leif: "Hello all, I received the various documents and I am in total agreement. Please proceed accordingly."

For the avoidance of any doubt, the documents attached to the email in question were the invoices, agreement and scope of works for the Ocean Front Project submitted by Cynthia Asis-Leif along with the list of services her company was prepared to provide.

3. On July 28th, 2007 Mr. Skerit sent an email to Supriya Singh, Hartley Henry and others asking to be advised "where are we on the faculty apartments" or Ocean Front Villas. Miss Singh responded to Mr. Skerit on the very same day with an update on the Ocean Front Project.

4. On November 6th, 2007, Supriya Singh sent an email to Hartley Henry requesting payment for her services on the villas from Roosevelt Skerit:

*"I need to be paid the initial down payment of 35% of US\$58,000 which is what I propose to charge him for the work I am doing on this project. I will attach the contract in a separate email. **I have addressed the contract to you so as not to put his name on any paperwork... Please ask Skerit to pay me the advance through the bank but I need at least 1,000 U-S now in Dominica**".*

5. On November 6th, 2007 Supriya Singh sent an email to Hartley Henry with the contract for the Ocean Front Villas:

*"Here is **the contract for the Ocean Front Villas**, I have not given this Skerit as yet... I wanted you to review it first. I have completed as far as completing the Interior Bills of Quantity... so it is justifiable to request on advance at this stage. Please advise as soon as you can after consulting with Skerit".*

6. On December 10th, 2007, Supriya Singh sent an email to Dinesh Singh at Guyana Furniture Manufacturing indicating Prime Minister "has to start the villas in January (2008)".

7. On August 21st, 2008, Mr., Skerit received an email from Supriya Singh in which she disclosed that Renneth Alexis, Eddie Simon (building contractor) and herself "cannot bring the villas into the original time frame we gave you". She said further "Eddie and Alexis are capable, but I know we gave you certain commitments which I am not sure we can honor, so I would like to have a full assessment with Alexia, Isidore and yourself present".

Miss Singh also indicated in that email to Mr. Skerit that she had purchased the tiles for the villas.

8. In September 2009, allegations that Skerit owns front villas at Savanne Paille surface in the media. Renneth Alexis rushed to the media with claims that the villas belong to him. Supriya Singh sent an email to Skerit advising him about 1) outstanding payments due to her for services rendered at his Vielle Case residence and the Ocean Front Villas and 2) other loose ends that need to be tied up on both projects

9. On October 1st, 2009 Mr., Skerit received an email from Hartley Henry with the subject "Wire Transfer Info" the purpose of which was to arrange payment for materials purchased for the villas by Platinum Services in Barbados.

Notwithstanding Mr. Skerit's only fleeting denial of ownership in an election campaign statement in December 2009 and the claims by Renneth Alexis that he is sole owner, the record of transactions in the design and construction of the villas, indicate that the one individual who consistently exercised the authority and responsibility of owner was Prime Minister Roosevelt Skerit.

Such personal ownership authority and responsibility for a private multi-million dollars undertaking are inconsistent with Prime Minister's legal income as a person in public life committed to conducting himself according to the provisions of the Integrity in Public Office Act number 6 of 2003.

Accordingly he must be held accountable for possession of unaccounted property pursuant to Section 47(1) of the IPO Act and for the related breaches of its Code of Conduct as specified in this complaint.

Particulars of the subject of this complaint

Part 1 of the First Schedule of the Integrity in Public Office Act –*Offices Respecting Persons in Public Life* – list **Member of the House of Assembly and Minister of Government** at items 10 and 11 respectively.

Roosevelt Skerit is a person in Public Life by virtue of the fact that he has been a Member of the House of Assembly and a Minister of Government since February 2000.

He has served as Prime Minister and Minister of Finance since January, 2004.

Evidence to be produced

- Email correspondence between Roosevelt Skerit, Hartley Henry, Supriya Singh, Cynthia Asis-Lief and others during the period May 2007 to April 2010
- Invoices, contract and other documents pertaining to the sourcing of architectural plans, labour, construction material, finishing material and furnishings for the villas
- Bank account information and wire transfer instructions for the payment of suppliers of goods and services for the villas

- Incorporation documents and corporate records of Blaircourt Property Development Limited
- Land purchase documents in the name of Blaircourt Property Development Limited
- Professional valuation of the Savanne Paille Villas
- The Prime Minister's legal income since he entered parliament in 2000
- A schedule of unexplained payments amounting to millions of dollars made in respect of the villas at Savanne Paille before Blaircourt Property Development and/or its sole director Mr. Renneth Alexis secured the first loan for the property in December 2008
- Testimony of Renneth Alexis in the Magistrate's Court District G about his alleged ownership of Blaircourt Property Development Limited and the Savanne Paille Villas
- Radio interviews with Supriya Singh
- Email correspondence between Lennox Linton and Supriya Singh about the Ownership of the villas at Savanne Paille
- Email correspondence between Trevor Johnson and Cynthia Asis-leif about her architectural designs for the villas at Savanne Paille
- Undercover interview with Cynthia Asis-leif
- Statements by Anthony Astaphan confirming that Cynthia Asis-Lief prepared architectural plans for the Prime Minister
- Statements by Anthony Astaphan confirming that Supriya Singh wrote the Emails attributed to her in this complaint and is therefore in a position to know "what the real facts are"
- Expert opinion from information Technology Specialist Burgess Xavier on the authenticity of the emails between Roosevelt Skerit, Supriya Singh, Hartley Henry and others relied on in support of the claim the Mr. Skerit is the owner of the villas at Savanne Paille

Should the Commission deem consideration of any or all of these of evidence necessary, they will be made available on request.

I anticipate your kind co-operation in giving this matter the fair, honest and urgent attention it deserves in the public interest.

Sincerely,
Lennox Linton

EXAMINATION OF COMPLAINT

At its meeting of November 18, 2010, the Commission noted the complaint and decided that Mr. Linton should provide the evidence that he had referred to in his letter of November 5, 2010. On December 22, 2010, Mr. Linton submitted to the Commission an "Evidence Bundle" comprising twenty-eight (28) chapters of copies of documents related to the alleged breaches.

The Commission considered the complaint at meetings held in February and March, 2011. In the middle of March, 2011 the composition of the Commission changed with the resignation of Sir Brian Alleyne and Mrs. Patricia Inglis. These members were replaced by the appointment of Mr. Davidson Bruney on the advice of the Leader of the Opposition and Mr. Henry Dyer on the advice of the Dominica Bar Association.

The new members, therefore, were given the opportunity to fully consider the complaint and the "Evidence Bundle" and input their views/comments into the decision making process. This, therefore, delayed the proceedings of the Commission in this matter.

The Commission as reestablished therefore continued its examination of the complaint at meetings on May 5th and May 26th, 2011 and came to the provisional conclusions which were conveyed to Mr. Linton by letter dated 31st May 2011.

The letter reads as follows:

"Dear Sir,

INTEGRITY IN PUBLIC OFFICE ACT, 2003:
RE BREACH OF CODE OF CONDUCT
BY ROOSEVELT SKERRIT, A PERSON IN PUBLIC LIFE

Further to my letter dated January 24, 2011, I am directed by the Commission to refer to your November 5th 2010 letter alleging that Roosevelt Skerrit, a person in public life, has breached rules 1(c) and 1(e) of the Code of Conduct in the Second Schedule to the Act and section 47(1) of the Act, and to the 'Evidence Bundle' that you submitted to the Commission on December 22, 2010.

In the letter of November 5th 2010 you made a complaint to the Commission pursuant to section 31 of the Act that Roosevelt Skerrit, the Prime Minister of Dominica breached the provisions of the Code of Conduct specified in the Second Schedule to the Act.

You went on to state that:

- (a) (i) *"[the] Prime Minister is in breach of section 47(1) of that Act [Integrity in Public Office Act, 2003] by virtue of his possession of unaccounted property, namely eight Ocean Front villas at Guillette, Savanne Paille, with an estimated market value of over 8 million EC dollars which cannot be explained by his legal income," (letter - page 2);*
- (ii) *"in order to finance his ownership interest in these villas which he could not afford on his legal income, the Prime Minister accepted 'gifts, benefits or advantages' in contravention of item (c) of the Code of Conduct. The source of these gifts, benefits or*

advantages is clearly a matter for the Integrity Commission to investigate pursuant to the specific responsibility conferred by section 47(2) of the Act," (letter - page 2);

(iii) "on account of his chairmanship of the Cabinet Meeting on October 9th, 2007 which granted a full suite of concessions to Blaircourt Property Development Limited for the construction of the villas at Guillette, the Prime Minister breached item (e) of the Code of Conduct by using his official influence to secure concessions for a business venture in which he had an ownership interest," (letter - page 2); and

(b) Roosevelt Skerit is a person in public life by virtue of the fact that he has been a member of the House of Assembly and a Minister of Government listed as items 10 and 11 of Part I of the First Schedule to the Act.

By letter dated December 22, 2010, you supplied an 'Evidence Bundle' to the Commission comprising copies of the following:

1. Matters for Consideration
2. Original Complaint dated November 5, 2010
3. Skerit's 400 Thousand Dollar House
4. Dateline Villas
5. Trinrico Steel and M&R Trading
6. Mckenzie Mitchell vs. M&R Trading
7. AID Bank Loan (2007) for Picard Apartments
8. Incorporation Documents – Blaircourt Property Development
9. Purchase of Cecil Lockhart's 1.25 acre parcel at Guillette
10. FCIB Loan re Picard Apartments
11. Supriyah Singh Emails – Villa Design
12. Skerit vs. Matt/Times
13. The Savarin Family Caveat
14. Cabinet Grants Concessions to Blaircourt
15. Supriyah Singh Emails – Design Contracts
16. Purchase of Rufus Savarin's 1.493 acre parcel at Guillette
17. Supriyah Singh Emails – Progress Reports
18. Supriyah Singh Emails – Completion Date Set Back
19. FCIB Loan for the Ocean Front Villas
20. Villa Ownership hits the Media
21. Supriyah Singh Emails – Tying up Loose Ends
22. In Defense of Alexis/Skerit
23. Alexis Faces Criminal Charges
24. Supriyah Singh Emails – The Ungrateful Ending
25. Trevor Johnson & Architect Cynthia Asis-Leif
26. Dismissing the Myth of Doctored Emails
27. The Cynthia Asis-Leif Interview
28. The Supriyah Singh Interview

The Commission has examined the complaint together with the 'Evidence Bundle' and has the following concerns:

- i. under Rule 1(e) of the Code of Conduct, the issue of want of jurisdiction because the date on which Prime Minister Roosevelt Skerrit as Chairman of the Cabinet is alleged to have used his official influence to secure concessions for Blaircourt Property Development i.e. October 9, 2007, is a date prior to the coming into force of the Act on September 1, 2008;
- ii. under section 47(1), since it is not within the Commission's jurisdiction for the reason that section 47(1) is an offence-creating provision that can only be dealt with by the court; and
- iii. under Rule 1(c) of the Code of Conduct, because it is unparticularized, and not supported by the content of the Evidence Bundle.

In accordance with section 32(3) of the Act, the Commission wishes to give you the opportunity of being heard, in writing (or at an oral hearing if you prefer) to address its concerns and on your complaint generally.

Please let me have your reply by June 09, 2011 as to whether you wish to make a written submission or whether you prefer an oral hearing so that suitable arrangements may be made.

Sincerely,

**Sgd. Helen E. Ambo (Ms.)
SECRETARY**

THE HEARING ON JUNE 16, 2011

Mr. Linton elected for an oral hearing which was held at the Commission's office on June 16, 2011. At the hearing, Mr. Linton stated as follows:

Re concern (1) – under Rule 1 (e) of the Code of Conduct:

“I want to observe that like the grant of concessions by Cabinet, you have the purchase of the lands on which the villas are located; the completion of architectural designs for the villas; the engagement of a construction team for the villas; the purchase of construction materials for the villas; and the commencement of construction at the villas which all preceded the date on which the Act came into force. I am not sure whether the Commission is suggesting that it is not legally empowered to look into the ownership of assets that are disproportionate to the legal income of a person in public life because the process of acquisition of those assets, even though it continued after the IPO came into force, began prior to the commencement of the Act. If that is what the Commission is suggesting, I respectfully beg to disagree.

The paragraph says there that it seems to me that the Commission appears to be suggesting that it is not legally empowered to look into the ownership of assets that are disproportionate to the legal income of a person in public life because the process of acquisition of those assets, even though that process continued after the IPO Act came into force, began prior to the commencement of the Act. I disagree with that.

The matter of the Chairman of the Cabinet of Ministers utilizing the position to confer on himself a financial benefit amounts, at the very least, to misbehaviour in public office which was an integrity concern, indeed a prosecutable matter, long before the Integrity in Public Office Act came into existence. In other words, whether before or after the commencement of the Act, such behaviour – prosecutable in law – has always been and remains contrary to the letter and spirit of integrity in public office with which the Integrity in Public Office Commission should be duly concerned.

Nonetheless, having said that, the Commission may wish to make its own inquiries into the extension of the October 2007 concessions granted to Blaircourt after the commencement of the IPO Act. In this regard, kindly be advised of the following disclosure in the Official Gazette of Thursday, October 21, 2010 at page 419:

'Cabinet advised approval that a license granting concessions to Blaircourt Property Development Ltd. under the Hotels Aid Act, Chapter 85:04 of the Laws of the Commonwealth of Dominica for the extension of concessions for a period of (6) months to complete the construction and furnishings of the villa apartments in Guillet.'

Concern (ii) – under section 47(1) of the Act:

Mr. Linton read subsections (1) to (4) of section 47 of the Act, and continued as follows:

"Pursuant to section 9(d) of the Act, the Commission is required to 'receive and investigate complaints regarding non-compliance with any provision of this Act.'

Further, given the offence-creating provision at section 47(1) and the related follow-up subsections (2) to (4), I submit that the Commission cannot properly conclude that it has no investigative or other responsibilities with respect to the criminal offence of "Possession of Unaccounted Property".

It is clear to me that 47(2) mandates the Commission to a specific investigative role with respect to the criminal offence outlined in 47(1). Section 47(3) goes on to expect the responsibilities of the Commission to include reporting the findings of its investigations to the DPP and the President. And 47(4) authorises the DPP to move the court if and only if he/she is satisfied that the Commission's report has presented a basis for prosecution of the offence.

While I agree that it is the court's responsibility to determine whether the offence of Unaccounted Property has been committed, the Commission cannot avoid its responsibility for the initial investigations - triggered by suspicion – provided for at 47(2) which precede the presentation of the matter before the court.

My complaint dated 5th November 2010 and the supporting evidence bundle contain enough evidence to ground a suspicion that the person in public like complained about has offended the provisions of 47(1) which, therefore, opens the door to an Integrity in Public Office Commission investigation pursuant to section 47(2)."

Concern (iii) – under Rule 1(e) of the Act:

Mr. Linton noted:

"I want to refer to 1(c) as it appears in the Code. It says:

'A person in public life shall not – for himself or for anyone else accept any gifts, benefit or advantage from any one, except personal gift from a relative or friend, or personal gifts given otherwise than as a motive or reward from doing or forbearing to do anything in the performance of his official functions or causing any other person from doing or forbearing to do anything.'

Now, Mr. Chairman, gentlemen of the Commission, the intention of the complaint dated 5th November 2010, was to honour what I consider to be a citizen's duty to be as helpful as possible to the Commission in resolving a matter of very serious public interest. Accordingly, I went as far as it was humanly possible for me to go with no Freedom of Information Act to reply on and no public resources to finance investigative work for this noble public purpose.

I did not expect that the evidence bundle presented would be the be all and end all of the Commission's consideration of the various aspects of the complaint. Rather, I felt it would be treated as a useful starting point for the Commission's own comprehensive probe.

The totality of the evidence presented supports a reasonable inference that since the legal income of the person in public life is insufficient to afford the assets in question, then there could well be a violation of Rule 1(c) in terms of the unlawful acceptance of gifts, benefits or advantages through which the assets could be acquired. If the evidence suggests that the assets could not be acquired with legal income, then clearly, the Commission cannot shirk its responsibility to investigate alleged Code of Conduct violations arising out of this potential illegality because of insufficient specificity in the evidential foundation provided by the complainant.

It is for the Commission, an investigative body by law, to do its own investigation and decide, as opposed to relying exclusively on the content of complaints and/or supporting evidence presented, to ascertain whether any provision of the Act has been breached.

My complaint of November 5, 2010 is not by any means a judgment inviting the Commission to pick apart its unavoidable imperfections. It is a citizen's request to investigate possible violations of the IPO Act. I, therefore, ask the Commission to be ever mindful of its functions as provided at section 9 of the Act which states, in part:

'The Commission shall –

- (c) without prejudice to the provisions of any other enactment, inquire into any allegations 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.'"*

In response to questions from the Commission, Mr. Linton added the following:

"I think this work that the Commission is mandated to do is going to serve a public purpose if the Commission is able to engage with the people of Dominica. I am a private citizen, I have certain concerns and I feel from time to time, as the situation merit it, I will come to the Commission. I do not think I have the money to pay legal counsel to represent me before the Commission because I simply have no resources for that.

The Commission is better able to choose or the Commission has the resources by way of a budget, it can retain counsel or it can ask for legal opinions and so on because there are resources available to pay for that.

I hope we get to the point where at some point somebody sees the necessity of having legal advice available to ordinary citizens who want to come to the Commission and who will need the 'i's' dotted and the 'ts' crossed on their submission from a legal point of view. The Commission does have that available to it or can have it available to it if it so desires quite apart from the fact that the Commission is comprised or on the Commission is included legal minds by way of a representative of the Bar Association and the Chairman himself who is supposed to have a legal background. ... the Government or the Commission may want to look at some arrangements through which persons wanting to make submissions to the Commission who need legal assistance can have it provided to them. I would not be paying for legal assistance to come before the Commission".

He further stated:

"...You see, it is one thing for us to say Blaircourt is the owner, which it is because the property is in its name. I had the opportunity of sitting down in the Magistrate's court in Portsmouth and listening to the supposed Director and sole owner of Blaircourt property testify as to the ownership of Blaircourt and to me his command of the information related to a company you own lock, stock and barrel, you spent millions of dollars on a development project, was not impressive at all and that is in evidence as well.

I provided for you there some of what came out of the court with respect to his ownership claim of the villas. It is interesting because commissions of this nature have to be mindful of the games that are played when people are up to doing things that are illegal; the fact that in circumstances like that you have people who front for each other. What do you do in those circumstances? When you get to the front and the front tells you, well, it is mine, is that where it ends? Which is why the Commission has the power to investigate and there is no question given the correspondence that went on around the time that this was being developed; that the person in public life being complained about behaved, at the very least, as though he was the owner of the property. There was a lot of public discussion about it; since that public discussion a lot of things may have happened; a lot of new arrangements may have come into play such as what secret agreement lies where, I don't know. But someone has to explain why over this extended period of time did you, based on the evidence in the emails behave as though you were the owner.

There is something else. The lady who wrote a lot of the emails and who was interviewed by a senior counsel to set the record straight about the emails because it was his representation to the public that the emails were taken out of context; that the emails were doctored; that the emails were cut and paste; and here is a senior counsel with more than twenty years standing at the bar, interviewing someone who is bring clarity on

this matter and at no point in the interview does he take any one of the emails that could have been taken out of context, put it to the lady being interviewed to ask her, well, on such and such a date you were alleged to have written this, did you, in fact, write that. Not one email in the entire interview was put to the lady who was denying that Mr. Skerit was the owner, in fact, ... Alexis when the documents available to her showed she never even requested any money from Mr. Alexis; the only person she requested money from was Roosevelt Skerit. This too is not just - I hope it is in the bundle. There is some written correspondence with her signature where she is taking responsibility for villa purchases but she told us in the interview that she had nothing to do with the villa, all she did was she bought some tiles."

THE LAW

It is convenient to set out in detail the relevant provisions of the Act.

Sections 30 -34 of the Act provide:

- "30.** (1) *Every person in public life shall observe the body of rules known as the Code of Conduct, specified in the Second Schedule.*
- (2) *A person in public life who is in breach of the Code of Conduct commits an offence, and is liable, on summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of one year or to both such fine and imprisonment.*
- 31.** (1) *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 stating –*
- 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 complainant.*
 - d) such other particulars as may be prescribed in Regulations made by the Minister" (No such Regulations have been made by the Minister for Legal Affairs).*
- 32.** (1) *Where a complaint has been sent to the Commission under section 31, the Commission, after examining the complaint, may reject the complaint if the Commission is of the opinion that –*
- (a) the complaint is frivolous; or*
 - (b) it does not pertain to a matter the Commission is empowered to deal with under this Act.*
- (2) *Where the Commission rejects a complaint, the person against whom the complaint was lodged shall have the right to institute legal proceedings against the complainant; but it shall be a defence that the complaint was not made maliciously, frivolously or in bad faith.*

- (3) No complaint shall be rejected by the Commission without giving the complainant a reasonable opportunity of being heard.
- 33.** (1) Where upon examination of a complaint made under section 31, or otherwise, the Commission is of the view that investigation is necessary to ascertain whether any person in public life commits a breach of any provision of the Code of Conduct it shall inquire into the matter.
- (2) The sittings of the Commission to take evidence or hear arguments in the course of any inquiry under subsection (1) shall be held in private.
- (3) The complainant and the person in public life against whom any inquiry is held under this section are entitled to notice of the proceedings of the inquiry and to be represented in the inquiry either personally or by an attorney-at-law.
- 34.** (1) On the conclusion of any inquiry under section 33, the Commission shall submit a report to the Director of Public Prosecutions and the President.
- (2) Where the Director of Public Prosecutions is satisfied, on the examination of the report referred to in subsection (1) and other relevant evidence, that any person in public life ought to be prosecuted for an offence under section 30, he shall institute and undertake criminal proceedings against the person in public life."

Paragraphs (c) and (e) of Rule 1 of the Code of Conduct, specified in the Second Schedule to the Act and referred to in section 30 provide as follows:

"1. A person in public life shall not:

- (c) for himself or for anyone else accept any gifts, benefit or advantage from any one, except personal gift from a relative or friend, or personal gifts given otherwise than as a motive or reward for doing or forbearing to do anything in the performance of his official functions or causing any other person from doing or forbearing to do anything;
- (e) 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;

Section 9 (d) provides that the Commission "shall receive and investigate complaints regarding non-compliance with any provisions of this Act".

Section 47 enacts:

- "(1). A person in public life who is found to be in possession of property or pecuniary resource disproportionate to his legitimate sources of income commits an offence and is liable on summary conviction, to a fine of two thousand dollars and imprisonment for a term of two years, and to forfeiture of the assets so found.

- (2). *Where a person, who is or was a person in public life, or any other person on his behalf, is suspected to be in possession of property or pecuniary resource disproportionate to his legitimate sources of income, the Commission shall conduct an inquiry into the source of income of the person.*
- (3) *On conclusion of any inquiry under subsection (2), the Commission shall submit a report to the Director of Public Prosecutions and the President.*
- (4) *Where the Director of Public Prosecutions is satisfied, on examination of the report referred to in subsection (3) and any other relevant evidence, that a person who is or was a person in public life ought to be prosecuted for an offence under this section, he shall institute and undertake criminal proceedings against the person in public life."*

Section 3 provides that the Act applies to every person in public life. As a Minister of Government, Prime Minister Roosevelt Skerrit is a person in public life within the meaning of section 2(1) of the Act. The Act, therefore, applies to Prime Minister Roosevelt Skerrit from the date of its entry into force on the 1st day of September 2008.

Section 55 of the Act provides: "*In any proceedings commenced on the allegations made by a person against a person in public life the burden of proof shall be on the person making such allegations.*"

The functions and powers of the Commission concerning the Code of Conduct are clearly spelt out in the Act. The procedures prescribed by Parliament under sections 30-34 and the evidential burden in section 55 must be complied with. And, indeed, the procedural standards applicable in accordance with established principles of public law must be observed. Section 9(d) with section 47 also falls to be considered.

At its meetings on 23rd and 30th June 2011 the Commission further considered the complaint and the submissions of Mr. Linton and concluded as follows:

1. COMPLAINT OF BREACH OF CODE OF CONDUCT

(i) Re Rule 1(c):

The complaint under section 31 of breach of the provision of rule 1(c) of the Code of Conduct must contain the following elements:

- (i) the name of the person in public life who has breached the Code;
- (ii) particulars of the gifts, benefits or advantages accepted from any one by the person in public life for himself or for anyone else;
- (iii) the nature of the evidence to be produced in respect of the alleged breach.

While the complaint concerning rule 1(c) clearly satisfies (i) above it does not satisfy (ii) or (iii). Nowhere in the letter of 5th November, 2010 or in the "Evidence Bundle" is there any reference to the gifts, benefits or advantages accepted by the person in public life from any one for himself or for anyone else.

Apart from the allegation that the person in public life accepted gifts, benefits or advantages there is no indication of what these gifts, benefits or advantages are or of the person from whom they were accepted by the person in public life for himself or for anyone else. Instead the complainant states that "the source of these gifts, benefits or advantages is clearly a matter for the Integrity Commission to investigate under section 47(2)." Section 55 of the Act, however, places the burden of proof on the complainant in any proceedings commenced on any allegation made by him against a person in public life. And this is the case here.

In reply to the Commission's concern on this point Lennox Linton at the hearing submitted:

"I did not expect that the evidence bundle presented would be the be all and end all of the Commission's consideration of the various aspects of the complaint. Rather, I felt it would be treated as a useful starting point for the Commission's own comprehensive probe.

The totality of the evidence presented supports a reasonable inference that since the legal income of the person in public life is insufficient to afford the assets in question, then there could well be a violation of Rule 1(c) in terms of the unlawful acceptance of gifts, benefits or advantages through which the assets could be acquired. If the evidence suggests that the assets could not be acquired with legal income, then clearly, the Commission cannot shirk its responsibility to investigate alleged Code of Conduct violations arising out of this potential illegality because of insufficient specificity in the evidential foundation provided by the complainant.

It is for the Commission, an investigative body by law, to do its own investigation and decide, as opposed to relying exclusively on the content of complaints and/or supporting evidence presented, to ascertain whether any provision of the Act has been breached."

Mr. Linton, in his written and oral submissions, has not provided particulars to satisfy the statutory requirement and therefore for that reason the complaint cannot be proceeded with.

(ii) Re Rule 1(e)

The complaint under section 31 of breach of the provision of rule 1(e) of the Code of Conduct must contain the following elements:

- (1) the name of the person in public life who has breached that Code;
- (2) particulars of the use by that person of official influence in support of a scheme or furtherance of a contract or proposed contract or other matter in regard to which he has an interest;
- (3) the nature of the evidence that he proposes to produce in respect of the alleged breach.

The "Evidence Bundle" submitted by Lennox Linton exhibited a copy of the Cabinet Decision taken on 9th October, 2007 which granted concessions to Blaircourt Property Development for luxury rental Villas at Guillette under the Fiscal Incentives Act and the Value Added Tax Act. That decision predated the coming into operation of the Act of 2003. So, even if the person in public life did use his official influence *at that time* to secure concessions for a business venture in which he had an ownership interest he could not have breached rule 1(e) of the Code of Conduct which came into force on the 1st day of September 2008.

Mr. Linton, however, at the June 16th hearing drew the Commission's attention to the Dominica Official Gazette of October 21, 2010 at page 419 which published that the Cabinet approved the

extension of concessions to Blaircourt Property Development Ltd. He submitted that these concessions were granted since the Act of 2003 entered into force. The Official Gazette Notice stated, in part: "*Cabinet advised approval that a license granting concessions to Blaircourt Property Development Ltd. under the Hotels Aid Act, Chapter 85:04 of the Laws of the Commonwealth of Dominica for the extension of concessions for a period of (6) months to complete the construction and furnishings of the villa apartments in Guillet.*".

The Commission's provisional view of want of jurisdiction for the reason stated in its letter of 31st May 2011 does not appear to be maintainable. Therefore, the Commission is of the view that the complaint that Prime Minister Roosevelt Skerit as Chairman of the Cabinet used his official influence to secure concessions for a business venture in which he is alleged to have an ownership interest (i.e. Blaircourt Property Development Ltd.) should be investigated to ascertain whether a breach of the provision of rule 1(e) of the Code of Conduct has been committed and that the provisions of section 33 of the Act shall apply.

2. COMPLAINT OF POSSESSION OF UNACCOUNTED PROPERTY

Lennox Linton has also complained to the Commission that Prime Minister Roosevelt Skerit, "is in breach of section 47(1) of the Act by virtue of his possession of unaccounted property, namely 8 Ocean Front Villas at Guillette, Savanne Paille, with an estimated market value of over 8 million EC dollars which cannot be explained by his legal income."

This complaint though purported to be made under the provisions of section 31 of the Act, refers to matters which Parliament has not included in the body of rules specified in the Second Schedule to the Act, known as the Code of Conduct.

Part IV (sections 30 to 34) of the Act contains specific enactment relating to the Code of Conduct and prescribes procedures for dealing with any such complaint. The possession of unaccounted property is not contained in the Code of Conduct. The complaint regarding the non-compliance with section 47 of the Act does not, therefore, fall to be received, examined and investigated under the complaint procedures prescribed under Part IV of the Act, for these are Code of Conduct specific.

Section 9 of the Act contains a general enactment relating to the functions of the Commission as regards the whole subject matter of the statute. Under section 9(d) the Commission is required to "receive and investigate complaints regarding non-compliance with any provisions of the Act." Section 9(d) read along with section 55 limits the Commission to acting on a complaint from an identifiable person upon whom is placed the burden of proof of the allegations made by him. Action by the Commission under section 9(d) falls within the meaning of "proceedings" under section 55.

Part VII (section 47) contains specific enactment dealing with the possession of unaccounted property. But here the Commission's duty to conduct inquiry is restricted to cases where the Commission *itself* suspects possession of unaccounted property. Section 47(1) deals with the elements of the crime of possession of unaccounted property and the penal sanctions for the contravention of the prohibited conduct. It is only where the Director of Public Prosecutions has instituted and successfully undertaken criminal proceedings against a person in public life that he can be said to have been "found to be in possession of property or pecuniary resources" contrary to the section. The system of our jurisprudence when a person is accused of a criminal offence is

accusatorial not inquisitorial. Under our constitution a person is presumed innocent until he is proved guilty or has pleaded guilty. And it is the function of a court of competent jurisdiction to find guilt, and not that of the Integrity Commission.

The Commission's provisional view on the allegation of breach of section 47(1) is sustained and this complaint is hereby rejected.

CONCLUSION

In summary, the Commission holds that:

- i. the complaint concerning section 47(1) of the Act is rejected since it is outwith the Code of Conduct and not within the Commission's jurisdiction for the reason that section 47(1) is an offence-creating provision that can only be dealt with by the court. It is only where the Director of Public Prosecutions has instituted and successfully undertaken criminal proceedings against a person in public life that he can be said to have been "found to be in possession of property or pecuniary resources" contrary to the section. The system of our jurisprudence when a person is accused of a criminal offence is accusatorial not inquisitorial. And it is the function of a court of competent jurisdiction to find guilt, and not that of the Integrity Commission;
- ii. the complaint concerning Rule 1(c) of the Code of Conduct cannot be proceeded with because it is unparticularized, and not supported by the content of the "Evidence Bundle"; and
- iii. as regards the complaint that Prime Minister Roosevelt Skerit as Chairman of the Cabinet used his official influence to secure concessions for a business venture in which he is alleged to have an ownership interest (i.e. Blaircourt Property Development Ltd.) the Commission is of the view that investigation is necessary to ascertain whether Prime Minister Roosevelt Skerit has committed a breach of the provision of Rule 1(e) of the Code of Conduct and an inquiry shall be held into the matter.

Dated this day of July, 2011

Sgd.
.....
JULIAN N. JOHNSON
CHAIRMAN

Sgd.
.....
ALICK LAZARE
MEMBER

Sgd.
.....
WENDELL LAWRENCE
MEMBER

Sgd.
.....
GERALD SMITH
MEMBER

[On May 26, 2011, the Court of Appeal of the Eastern Caribbean Supreme Court issued an interlocutory injunction in the matter of Ambrose George v Hector Spags John, the Attorney General and the Integrity Commission (Civil Appeal No. 15 of 2011) restraining the Commission

from holding any meetings with Mr. Bruney or from divulging any confidential information to him in respect of any matter involving Ambrose George and any other member of the Cabinet of the Commonwealth of Dominica pending the hearing of the appeals in this matter. In compliance with that order Commissioner Bruney has not attended meetings of the Commission on this matter from that date.

Commissioner Dyer attended meetings of the Commission on this matter but he has been out of Dominica from June 22, 2011. His absence from meetings of the Commission during the period June 22nd – August 4th, 2011 has been approved by the President under section 7(a) of the Act]