

An address at the First Commonwealth Regional Conference for Heads of Integrity Commissions and Anti-Corruption bodies in the Caribbean.

By Commissioner Henry Dyer of the Commonwealth of Dominica on the 22nd June, 2015 in Grenada.

The Operation of the Integrity in Public Office Act (No. 6 of 2003) of the Commonwealth of Dominica.

This presentation aims to inform this forum our experience during the operation of the said Act since its implementation from the 1st September, 2008 (S.R.O No. 24 of 2008).

During the debate when the Bill was being enacted into Law and as the then Attorney General who piloted the said Bill in Parliament, I stated the following:-

"Over recent years, much of the world community has addressed itself to the issue of honest government and combating corruption, the United Nations, the Commonwealth Secretariat and the Transparency International have done a lot to focus attention to the need for the elimination of corruption and the need for good governance. Some Governments in the Caribbean have already enacted legislation on the subject of Integrity in Public Life. International agencies, which are assisting small jurisdictions are constantly monitoring us to see whether we observe the norms of good governance and whether the Government is transparent."

"Corruption requires two parties, the corruptor and the corruptee. If I should go through the sections explanatory note "The Integrity in Public Office Bill. The main purpose of this Bill is to prescribe a code of conduct for persons in public life and to establish an Integrity Commission with the powers necessary to ensure the maintenance of integrity of persons in public life within the meaning of the Bill. The persons in public life are listed in the schedule to the Bill and include besides public servants, Ministers and Members of the House of Assembly."

- Declared purpose/principal objective of the Act:
 - (a) Receiving declarations on the financial affairs of persons in public life, to establish **probity, integrity and accountability in public life;**
 - (b) Should protect reputations of innocent person in public life from unsustainable allegations
 - (c) The IPO Act, 2003 was passed in Parliament- April 30, 2003,
 - (d) The Act was assented to- May 29, 2003 and published in the Official Gazette- June 5, 2003;
 - (e) It came into force by SRO No. 24 of 2008 appointing Sept. 1, 2008 as the date for coming into force of the Act.
- **Five year "hibernation"**. It took 5 years since the passage of the Act to commence its operation.

The Act makes provisions for the Commission

- (a) To inquire into any allegation of bribery or act of corruption under the Act;
- (b) Receive and investigate complaints regarding non-compliance with provisions of the Act; and
- (c) Perform such other function as is required under the Act.

INDEPENDENCE OF THE COMMISSION – SECTION 13

- The Commission is an independent governance institution subject to oversight by the Supreme Court and Parliament
- The Commission in the exercise of its functions under the Act shall not be under the control or direction of any person or authority- including the President, the Cabinet, the Prime Minister or any Minister of the Commonwealth of Dominica.
- Sec. 11 gives the Commission the powers, rights and privileges of the Supreme Court at a trial, in relation to enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; compelling the production of documents; and the issue of a commission or request to witnesses abroad.

There has been much debate over the meaning of the word "Corruption". The word "Corruption" is given its normal and literal meaning and is not confined to the taking of a Monetary Bribe.

"Breach of trust" means the use and misuse of Public Office with respect to the property, money and powers of the State, particularly if some financial, tangible or intangible gain is obtained or conferred otherwise than in accordance with the law and the public interest.

The meaning of "Conflict of interest" is self evident and needs no explanation.

"Misfeasance in Public Office" means the deliberate and intentional misuse of Office knowing that the act or decision is unlawful or with reckless disregard as to the same, which is likely to cause loss or damage to the Government or confer some benefit or gain.

- While the Commission has continued to be provided with adequate financial resources to carry on its operations (including supplementary resources for legal expenses), and administratively the autonomy of the institution is being threatened in the appointment and management of staff.
- The enforcement of the provisions of the Act has been hampered by inadequate support in prosecuting those in breach of those provision to the extent that a number of cases have either not been heard or have been discontinued or dismissed.

VISIONARY THINKING

In a lecture delivered at the Fort Young Hotel Roseau, Dominica on the 29th December, 2008 to mark the close of Reunion 2008. Reverend William W. Watty had this to say –

"We have therefore entered the post modern age in which Reason has been dethroned from her pre-eminence, and the way of reason that was once thought to be all sufficient judge has now become the defendant, for the human being has been proved to be as much an irrational as he is a rational creature, whose decision and even thinking processes are determining more often by irrational forces and emotions and motives of selfishness, powerlust, greed, envy, ambition, vindictiveness, hate and fear than by the objectivity of reason. Sooner or later, even when we think we have been logical, we arrive at the conclusions we always wanted to reach, and concoct good reasons for getting what we always wanted to have. One of the marks therefore of the post-modern age is that reason is no longer a guarantee of objectivity, and therefore we must, and have every right to be suspicious, first of all, of ourselves and our reasoning processes, as well as of the pretensions of others who are interest enough in us to try to persuade us to their ways of thinking."

"Therefore, also, strange as it may seem, what is politically correct is what, for the time being, happens to be politically expedient, since there is no such thing as political correctness when power is the name of the game. Every political ideology is fundamentally flawed in pretending to be what it cannot be, and in promising what is unable to deliver."

This in my view tells us the difficult task which we face today.

When the Integrity Legislation was being debated for passage in the Parliament, three members of the Opposition, one of whom was the former Minister of Finance spoke against this important piece of legislation and although they spoke against it, when it came for the vote, they were absent, one member who was sitting there walked out.

The membership of a Commissioner was challenged by a Minister of Government. The Eastern Caribbean Court of Appeal after hearing the matter restrained the Commissioner from holding any meeting with the said Commissioner or divulging any confidential information whether written or oral in respect of any matter involving any member of the Cabinet in Dominica in the interim. The Commissioner's term expired on the 6th of April, 2014 before the matter was even heard, that is, 2 years after the matter was brought to Court.

On January 3, 2013, the Commission wrote to the Chief of Police requesting his assistance pursuant to section 53 of the Act, for an investigation into two matters concerning the management of the affairs of the Commission namely: (i) the secrecy and confidentiality of the business and proceedings of the Commission as required by the oath of secrecy specified in the Fourth Schedule to the Act; and (ii) the secrecy and confidentiality of the Form 2 declaration of the income, assets and liabilities of a person in public life filed with the Commission and information relating thereto.

The first matter concerned the publication of part of the business and proceedings of a Commission meeting held on December 13 and 14 on the Dominica News Online electronic newspaper. The second matter concerned

the broadcast on the "Between You and Me" radio Programme on Q95 of information related to the financial declaration of the Prime Minister.

The Chief of Police submitted two progress reports on the investigation under cover letters dated July 29th 2013 and March 14, 2014. The second report informed that the information related to the financial declaration of the Minister was sent under confidential cover to an email address by the Minister's Counsel. The email contained information from the Minister's 2009 declaration to which he was privy. The report indicated that the email was sent to this address unintentionally and that Counsel was tricked into sending the emails to someone purporting to be considered to be his friend. It appears that this email address was created by an individual well-versed in computer technology and for the purpose to deceive and to receive confidential information.

Based on the progress reports from the Chief of Police, it is clear that neither a member of the Commission ^{nor a member of staff} was the source of the unauthorized disclosure of information related to the 2009 declaration of the Minister. The Commission has written to the Minister's Attorney and to the Minister of Legal Affairs bringing the contents of the reports to their attention and has also issued a press release on the matter. However, regarding the disclosure of information related to the proceedings of the Commission the investigation is still on-going.

It has been suggested and recommendations have been made for the Commission to act on its own volition so as to give the Commission more strength. I am not of this view. Section 33 of the Act in my view gives the Commission that power. Infact, the Montserrat Legislation with a similar

provision removed the word "otherwise" in our legislation and replaced it with "its own volition".

Our Report to Parliament which is mandated under Act is yet to be laid on the table in Parliament even although this report must be laid within 3 months of its presentation to the relevant Minister under the Act. I am speaking of the 6th Report which is dated 31st August, 2014. The Commission has been informed that the report will be laid in Parliament at the next sitting of the Parliament. The last sitting of the Parliament was in early June 2015, which was adjourned sine die.

We at this gathering have a responsibility to ensure that corruption in Government must not and will not be institutionalize. We owe this to the next generation including the children yet unborn.

Let us put our heads together to save the Caribbean from this evil which we are seeing all around us.

I THANK YOU.