



**“POLITICAL CORRUPTION AND THE IMPLEMENTATION OF  
INTEGRITY LEGISLATION IN THE ORGANIZATION OF  
EASTERN CARIBBEAN STATES (OECs) WITH PARTICULAR  
REFERENCE TO DOMINICA”**

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**BY**  
**JULIAN N. JOHNSON**

**1. INTRODUCTION**

I have been invited to write a “practitioner’s paper” relating to the work of the integrity commissions in the member states of the OECS. It is taken that the Commonwealth Secretariat’s instructions, properly construed, require me to examine the recent anti-corruption statutes passed by the OECS governments and the performance of the integrity commissions focusing on the activities of the Integrity Commission of the Commonwealth of Dominica and drawing on my experiences as Chairman thereof over the past three years.

Though my invitation is to produce a “practitioner’s paper” it would be remiss of me if I did not, at the outset, draw your attention to the study just published by an eminent regional academic and fellow practitioner in the field of the oversight of public sector ethical infrastructure – the former Contractor General of Jamaica, Dr. Derrick V. McKoy.

In his book entitled “CORRUPTION: Law, Governance and Ethics in the Commonwealth Caribbean” (Hansib Pub., May 2012) the author sets out to address the issues of corruption in the Commonwealth Caribbean, the emerging law on the subject and the institutions established by member states to discourage corruption or to promote anti-corruption initiatives. And he poses the hard question: “how do we make them (the anticorruption initiatives) more effective in tackling and reducing the incidences of corruption in Commonwealth Caribbean public service?”

He addresses this question from the perspective of “agency cost theory and moral hazard that is an essential but too little explored, feature of the agency relationship.” He argues that corruption is more rationally treated as a problem of agency and accountability rather than the explanations that treat it as “deviant behavior”, as the rejection or retreat from the usual norms and standards, (“the values, attitudes and behaviours based on the principles of integrity and justice”) that should otherwise govern society. He states:-

*“Rather, a society is corrupt because public agents engaged to manage and administer its public bureaucracies naturally seek to maximize their own welfare, that their activities are not sufficiently transparent, and that they are often in positions of moral hazard. Moral hazard arises in the public service when public agents can engage in corrupt activity with no real fear that any significant adverse consequence will follow. Where public sector agents rarely face the consequences of their corrupt acts, or where those acts are treated as merely venial, those agents are more likely to pursue a corrupt course of action, and will have little incentive not to do so.” (McKoy pg. 2)*

He concludes, on this point, by saying:

*“Whichever approach one adopts as an explanation of the existence of corruption, the success of the anticorruption regime will depend on the consistent and certain application of sanctions to the nonconforming acts.” (Emphasis added, McKoy pg. 3)*

I agree. As I stated in the Chairman’s transmittal letter to the Minister in submitting the Third Annual Report of the Integrity Commission on 24<sup>th</sup> October, 2011 on this point, “indeed, all persons in public life can be persuaded or compelled to obey the law.”

And addressing the “4<sup>th</sup> Regional Anti-Corruption Conference for Asia and the Pacific”, in Kuala Lumpur, 3 Dec. 2003, the Prime Minister of Malaysia put it this way: “...Our actions especially in the area of good governance and anti-corruption, should not only be aimed at instilling the right values and

*attitudes, but should go beyond that to strengthening processes, institutions, as well as punitive measures.”* (Emphasis added, cited in McKoy pg. 4)

## **2. WHAT IS POLITICAL CORRUPTION?**

There are as many definitions of corruption as there are studies that have been devoted to its research.

The World Bank in *'The Many Faces of Corruption'* edited by J. Edgards Campos and Sanjay Pradhan (The World Bank, 2007, pg. 9) defines 'corruption' simply as *'the use of public office for private gain,' adding that 'it can take on a multitude of faces; its scale can be grand or petty'.*

Michael W. Collier in his study *'Political Corruption in the Caribbean Basin – Constructing a Theory to Combat Corruption'* (Routledge N. Y & London, 2005) pg. 6 defines political corruption as *'the abuse of public power by a governing elite for their private (personal) monetary, material or non-material gain.'* There are several dimensions of such, corruption. He distinguishes between **'grand corruption'** i.e. *'corrupt behaviour by senior government officials who possess the decision-making authority to make policy allocating a state's resources'* (the political elites) and **'petty corruption'** that involves mid and low-level government officials who gain personally from their roles in executing government policies and programmes.

“Corruption” in law however has a less expansive meaning and examples can be found in the common law and in the statutes which are the focus of this paper.

## **3. SOME HISTORY AND ANECDOTAL STORIES OF POLITICAL CORRUPTION IN THE OECS**

- (i) **Antigua** – Under the ALP administration there were many allegations/reports/findings of corruption by the political elites – “the Airport resurfacing scandal”, “the Space Research scandal”, “the

Guns for Antigua scandal” - the Louis Blom Cooper Royal Commission Report, 1990, “the Passport Sale Scandal”, the “Medical Benefits scandal”.

**(ii) Grenada** - Report of the Commission of Inquiry into the Control of Public Expenditure in Grenada, 1961 (Extracts in “Constitutional Development of the West Indies 1922 – 1968” by Ann Spackman, Caribbean University Press 1975). Its main findings were:

*“(1) The Minister of Finance (Mr. E. M. Gairy also Chief Minister) had disregarded and contravened the laws and regulations governing the control of expenditure;*

*(2) Expenditure had been incurred wastefully or unnecessarily through failure by Ministers to seek or refusal to accept the advice of the civil servants;*

*(3) The Executive had deliberately destroyed the morale of the civil service by an undesirable interference with administrative duties and by improper threats against the security of office; and*

*(4) The Civil Service had been induced by this interference and these threats to commit or condone improprieties or irregularities in the expenditure of public funds.” (pg. 520)*

**(iii) Dominica -**

**1957 – 1960: Chief Minister Franklyn A. Baron Administration**

Accusations of both types of corruption dominated the political platforms and calypsos and other songs. There was ‘Pop-corn Deal’, the ‘Tyre Deal’ which alleged that the political leadership used trips abroad at taxpayers’ expense to seek business opportunities for

themselves. There were also the allegations of 'Bobol', the premature 'bursting of votes' on government road/bridge construction projects collecting pay checks on the names of 'dead' or 'absent' payees, are examples of the latter type.

Hon. Charles Savarin in the debate on the Act of 2003 in the House of Assembly in April 2003 put it this way: "The song '*Si outay Norway, saouteke faire*' expressed a concern that the people had with what they perceived to be corrupt practices in Government... People were also accused of 'Bobol' being a patios expression for corrupt practices' (Hansard of the House of Assembly, 28<sup>th</sup> April – 1<sup>st</sup> May 2003, pgs. 282 – 283).

### **1960 – 1974: Premier Edward Oliver LeBlanc Administration**

No reported scandal or allegations of political corruption by the governing elite during that period.

Irving Andre in his book '**Edward Oliver Le Blanc and the struggle to transform Dominica**' (Pond Casse Press, 2004) summarized the Le Blanc era as follows: "*Le Blanc manifested a singular disinterest in either taking advantage of his position or tolerating any action he considered inappropriate. He did not reward cronies or supporters with government sinecures. He made no effort to increase his pension or to help himself to any perks of office. He never faltered in protecting the integrity of the state or its institutions*" (pgs. 330 - 331.)

Some persons though had accused him of '*personal financial aggrandizement*' and of having secret accounts in Barbados or Switzerland. But in his farewell speech to the Dominica Labour Party (DLP) in July 1974 he declared his accumulated assets and liabilities over seventeen years of elective office as follows: "*he owned four acres of land, a three bedroom house, a shared interest in family owned*

*land, \$56.33 in Barclays Bank and \$25.07 at RBC and an overdraft facility of \$465.00 at Barclays Bank.’ Andre stated that ‘many party members shed tears of anger and sorrow at Le Blanc’s recital of his possessions” (pgs. 335 – 340. passim).*

**1975 – 1979: Prime Minister Patrick R. John Administration**

No strong allegations of political corruption, but a plethora of schemes with questionable/shady characters and ‘backward’ policies – Sidney Burnett Alleyne and ‘secret’ links to South African Government and private interest for investments in petro-chemical plant, oil refinery and housing project; Don Pierson for free port zone (SIPA) ninety-nine year lease of forty-five square miles of the Northern port of Dominica. It was alleged that the Attorney General and possibly some other political elites may have benefitted personally from their promotion of these schemes and policies. “ETB Sugar Contract Deal” in 1977/78 – non-competitive contract for supply of brown sugar to the External Trade Bureau by Southern Commodities of Miami at higher than market prices sanctioned by Minister of Agriculture, Trade and Natural Resources.

**1979 – 1980: All Party Interim Government led by Prime Minister Oliver. J. Seraphine.**

Some allegations of deals in foreign affairs through the appointment of Honorary Consuls in Europe and elsewhere by the political elites.

**1980 – 1995: Prime Minister Dame Mary Eugenia Charles Administration**

Period of clean governance blighted by the ‘**Economic Investment and Citizenship Programme**’ of 1993. “*Eugenia Charles, who enjoyed a reputation as a scrupulously honest politician seemed oblivious to a possible conflict of interest in the Government’s seeking to resuscitate*

*The Layou River Hotel Project with funds from the Economic Citizenship and Investment Programme*” Eudine Barriteau **‘The Economic Philosophy of Eugenia Charles and Dominica’s Development’** in

**‘Enjoying Power’** – edited by Eudine Barriteau and Alan Cobley (UWI Press, 2006 pg. 209).

And former Financial Secretary Gilbert Williams put it this way *“I saw the agreement one day, it came to my desk after it was signed. There were no checks or security to make sure the project was implemented. I was asked to open the escrow account. The Layou River Hotel existed before. Ms. Charles had shares in it, she was a share-holder with Nassief and others. The Hotel was not doing good. They used money from the Economic Citizenship Investment Programme to buy the old hotel. Ms. Charles seemed to have conflict of interest in it,”* (op.cit. pg. 208).

Ms. Charles and most of her Cabinet *“were unable to see or preferred not to see, the glaring conflict of interest in the multiple and intersecting roles played by Grace Tung.”* Tung was simultaneously the Honorary Consul of Dominica in the Republic of China on Taiwan and Consul General of Dominica in Hong-Kong even as she was – not in her consular capacity but as a separate responsibility – also promoter of the Economic Citizenship Programme to the Pacific Rim Countries. Additionally, *“she was Managing Director of Oriental Hotel (Dominica) Limited, the Company designated to build the Layou River Hotel Project and to benefit financially from investments generated by the purchase of Dominica’s citizenship, and she also was a 25% shareholder of International Development and Management Ltd., the construction firm that would undertake the construction of the hotel. Grace Tung seemed very proficient at diplomatic multi-tasking.”* (op.cit pg. 209). Grace Tung allegedly gave many/valuable ‘gifts’ to some members of the political elite.



**1995 – 2000: ‘Banana Children’ political elites take power: Prime Minister Edison C. James Administration**

*‘Performance does not matter. They are corrupt’* was the theme articulated by the Dominica Freedom Party (DFP)/Dominica Labour Party (DLP) January, 2000 campaign. (See Anthony Astaphan’s **‘First Preliminary Report – Report No. 1 into allegations of Corruption, Breach of Trust, Conflict of Interest and Misfeasance in Public Office’** dated August 17, 2000 and Hansard of the House of Assembly dated 28<sup>th</sup> April – 1<sup>st</sup> May, 2003 at pgs. 305 – 306.) The decisions taken to grant Venture Capital Fund in the sum of EC\$4.46 million to companies made up of shareholders of the United Workers Party (UWP) political elite e.g.: Variety Foods Limited (EC\$800K Augustus Emmanuel and Francis Emmanuel), North East Quarry Limited (EC\$750K Edison James and Wilma James)

**2000 – 2004: Labour Party/Freedom Party Coalition: Roosevelt Douglas and Pierre Charles Administrations**

No allegations of political corruption during that period.

**2005 – 2011: Dominica Labour Party, Prime Minister Roosevelt Skerrit Administration**

Heightened allegations of corruption/conflict of interest “illicit enrichment” by DLP political elites – Corruption in public financial management and public procurement - “the fertilizer” contract and “the garbage bin” contract – 2008 – 2009;

**POLITICAL CULTURE – ‘Our time to eat’**

Commenting on the statements and conduct of the regions political elite, Professor Trevor Munroe in an article published in the Jamaica Gleaner, 27<sup>th</sup> March 2011 concluded: *‘In election after election in the last ten to twenty 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 affirming popular concern with the issue of corruption and contributing to public cynicism'*

#### **4. OECS INTEGRITY/CORRUPTION PREVENTION REGIME – LAW AND ADMINISTRATION**

The passage of anti corruption laws in the respective Parliaments was met with quite laudable statements of purpose by the governing and opposition Parliamentarians. For example, the new government of Antigua and Barbuda within seven months of its election in 2004 passed the Prevention of Corruption Act, the Freedom of Information Act and the Integrity in Public Life Act to lay “the framework and the bedrock for accountability and decency within public life.” (Attorney General and Minister of Justice, Justin Simon – Hansard of the House of Representatives, 4<sup>th</sup> November 2004, pg. 81.) These pieces of legislation were stated to be measures to ensure that Parliamentarians and individuals in public life walk “the straight and narrow way” and by these “cleansing” statutes “we are endeavouring to scour, to scrub our country” of “a reputation of corruption of the meanest and basest sort” (Hon. Charlesworth Samuel, Hansard pg. 34 & pg. 38.)

Adding a somewhat unique perspective to the debate, the Attorney General of Dominica in commenting on the “Bribery” provisions in the Bill for the Integrity in Public Office Act, 2003 prayed in aid a Mexican poet – Inex de la Cruz and asked the Parliamentarians: “*Whose is the greater blame in the shared evil, she who sins for pay or he who pays for sin?*” (Hansard of the House of Assembly 28th - 1st May, 2003, pg. 247).

The anti corruption statutes which fall to be examined in this presentation are:

1) Antigua and Barbuda (ANU):

- (i) Prevention of Corruption Act, 2004 No. 21 Of 2004

- (ii) Integrity in Public Life Act, 2004, No. 24 of 2004
- 2) Dominica (DOM): Integrity in Public Office Act, 2003, No. 6 of 2003; (Gazetted June 5, 2003 but came into operation on 1<sup>st</sup> September, 2008)
- 3) Grenada (GDN):
  - (i) Integrity in Public Life Act, 2007 No. 14 of 2007
  - (ii) Prevention of Corruption Act, 2007 No. 15 of 2007
- 4) Montserrat (MONT): Integrity in Public Office Act, 2010, No. 2 of 2010
- 5) St. Lucia (SLU): Integrity in Public Life Act, 2004, No. 6 of 2004.

**[A] Reason and Purpose – long Title:**

**ANU, DOM, SLU AND MONT** - An ACT to provide for the establishment of and Integrity Commission for the purpose of receiving declarations of the 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.

**GDN** - Grenada’s long title also includes “to give effect to the provision of the Inter – American Convention Against Corruption...”

It is a fundamental rule of statutory interpretation that an Act of Parliament must be construed in the light of its underlying purpose. The Commission must seek to exercise its powers so as to promote the statutory purpose.

**[B] Offices of Persons in Public Life:**

- i. Members of Parliament;
- ii. Senior Public Officers;
- iii. Chairman, GM, MD, CEO of public institutions; and
- iv. Other offices – All labour officers, all immigration officers, all public officers including non-established earning salary of more

than \$2,000 per month (GDN), Heads of diplomatic missions (SLU)

**[C] Obligations Imposed on Persons in Public Life/Office:**

- i. Disclosure of Financial Affairs in accordance with the prescribed Form in the Schedule –(ANU s. 16; GDN s. 28; DOM s. 14; MONT s. 14; SLU s. 11)

**Five Year Limitation Period for Financial Disclosure Offences:**

The Act of 2003 provides under section 28 its own limitation period of five years for prosecution of any offence concerning the disclosure of financial affairs. This includes summary proceedings under the Magistrates' Code of Procedure Act, Chap. 4:20.

- ii. Code of Conduct must be observed (ANU s. 21; GDN s.42; DOM s. 30; MONT s.30; SLU s. 31)
- iii. Gifts/"Gratification" (ANU s. 26; GDN S. 47; DOM s. 35; MONT s. 35; SLU s. 28)
- iv. Possession of Unaccounted Property/ Unexplained Property (ANU (P of C Act) s.7; DOM s. 47; GDN nil; MONT S. 47; SLU s. 30)
- v. Bribery and Corruption (ANU (P of C Act); DOM Part VI; GDN (P of C Act); MONT Part VI; SLU Part V)

**[D] Administration of the Integrity Infrastructure**

1. Establishment of the Integrity Commission, (ANU, DOM, GDN, MONT and SLU - Part II)

Composition - size, qualification and disqualification

2. Functions/Duties/Powers

The Commissions are required to perform the following functions:

- 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.

The “other functions” 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) Inquisitorial investigative jurisdiction:
  - (a) 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” (DOM section 47(2)).
  - (b) to hold inquiry into complaint where 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 Code of Conduct and submit a report to the Director of Public Prosecutions (DOM s.33 & 34). In conducting any such inquiry the Commission is vested under section 11 of the Act of 2003 with the powers, rights and privileges of the Supreme Court at a trial in respect of :

- a. Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- b. Compelling the production of documents; and
- c. The issue of a commission or request to witnesses abroad.

(See unpublished paper by Julian N. Johnson on “Inquiry by the Commission under the Integrity on Public Office Act 2003”, dated 29<sup>th</sup> May, 2012)

3. Independence of Integrity Commission – Tenure; Staff; Expenditure Control - travel on the business of the Commission; Public Service Regulations, circulars and procedures – not subject to “direction and control” of Executive. Reports to Parliament thru the responsible Minister. (See Chairman’s letter to the Minister for Finance, dated 17<sup>th</sup> June, 2010 in Appendix VI of Second Annual Report, 01<sup>st</sup> August, 2010).

The Commission must always act within the four corners of the Act, the rules of natural justice and all other applicable principles governing the exercise of statutory powers. It must exercise an objective judgment on matters before it and act in good faith. In the Trinidad and Tobago case, Dr Keith Rowley v. The Integrity Commission (No. 0185 of 2007, dated 3 February, 2009). It was held that the Integrity Commission:

- (i) acted in breach of the rules of natural justice and in bad faith; and was guilty of the tort of misfeasance in public office and was ordered to pay damages of \$100,000 to Dr, Rowley and costs of \$900,000 VAT inclusive.

The Integrity Commission had conducted and forwarded a report in relation to Dr Rowley, member of Parliament, to the Director of Public Prosecutions without giving him a hearing concerning unspecified allegations made against him that were being investigated by the Commission, in breach of the provisions of the Integrity in Public Life Act, Chap. 22:01 of Trinidad and Tobago. The composition of the Commission at that time included two

retired judges. All members resigned from office when the court's decision was handed down.

4. Annual Reports 2009, 2010 & 2011 – Details of the activities of the Commission in performing its statutory functions
  - a. Four written complaints to the Commission - Decisions
  - b. Anonymous complaint – Citizens Forum.com
5. Education Programmes – Seminars for persons in public life: lecture to DAIC  
(See, article entitled “Finance Administration: Public Procurement – Value for Money, Accounting and Oversight Responsibility” by Julian N. Johnson, in THE SUN, Newspaper, March 21, 28, and April 4, 11, 18, 2011.)

#### **5. RECOMMENDATIONS FOR AMENDMENTS TO THE ACT OF 2003**

(Refer to Appendix 6 of the Annual Report 2011).

#### **6. WHY WAS THE COMMISSION ABLE TO PERFORM THE FUNCTIONS THAT IT DID DURING THE FIRST THREE-YEAR TERM ?**

[i] Composition of the Integrity Commission - “Appointing authorities got it right” (See Chairman’s letter of Transmittal to Minister pg 4, 3<sup>rd</sup> Annual Report, 2011)

[ii] Management structure – Finance and Administration, Rules and Education Committees

[iii] Hard work by IC itself; long hours – no Secretary for 13 months

[iv] Exercise of Independent Jurisdiction

#### **7. CONCLUSION**

- (a) Parliamentary Oversight.** The integrity commissions in the performance of their important, albeit intrusive, statutory functions require a supportive institutional/political environment. The Parliaments of the OECS must continue to demonstrate that they are important stakeholders in enhancing the integrity and corruption prevention regime and infrastructure that they have enacted and established.

In the Third Annual Report to Parliament (October 24<sup>th</sup>, 2011) I 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 of the 4th February, 2010 and 17<sup>th</sup> 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.”*

Dr. McKoy too has emphasized the legislature’s role as an anticorruption agency.

He stated:

*“The role of the legislature, especially in the Westminster export model of constitutional government, is often confined to enacting legislation giving effect to the policies of the executive. However, the legislature has an important role in the anticorruption project. In addition to its obvious responsibility for enacting legislation, the legislature has a*



*capacity for oversight, and if that oversight is properly exercised, it can be an unequalled tool against corruption.” (op. cit. pg. 216)*

In order to strengthen Parliament’s oversight role I suggest 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
  - (ii) **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 subject, of course, to the Commission’s independent jurisdiction under section 13 of the Act of 2003.
- (b) **Revised (harmonized) OECS Legislation, best practice review and access to common pool of legal, accounting and forensic skills/expertise (COMSEC assistance ?);**
  - (c) **Executive to comply with statutory requirement to provide the Commissions “with staff adequate for the prompt and efficient discharge” of their functions under the Act (ANU, DOM, GDN, MONT and SLU); and**
  - (d) **Organization of OECS Integrity Commission - This recommendation was made at a conference of the Integrity Commissions of the DOM, SLU, ANU and T&T in St. Lucia on June 8<sup>th</sup>, 2011 (COMSEC assistance)**

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