

COMPLAINT #2/2008/2009

INTEGRITY IN PUBLIC OFFICE ACT, 2003:
COMPLAINT TO THE COMMISSION BY
CITIZENS FORUM FOR GOOD GOVERNANCE CONCERNING
BREACHES OF THE CODE OF CONDUCT BY
GOVERNMENT MINISTER, HON. AMBROSE GEORGE

DECISION

BACKGROUND

By letter dated the 13th October 2008 amended by letter of 16th October 2008 received by the Integrity Commission, the Citizens Forum for Good Governance (hereinafter referred to as the Citizens Forum) complained of breaches of the Code of Conduct specified in the Second Schedule to the Integrity in Public Office Act, 2003 (hereinafter referred to as the IPO Act, 2003) by Government Minister Hon. Ambrose George.

At its meeting on the 23rd October 2008, the Commission examined the complaint and, on the 24th October 2008, the provisional view of the Commission that the complaint did not pertain to a matter which the Commission was empowered to deal with was communicated to the Citizens Forum. They were asked to inform the Commission by 10th November 2008 as to whether they wished to make a written submission in response or attend an oral hearing on the matter.

By letter dated 10th November 2008 they indicated their wish for an oral hearing and by letter dated 17th November 2008 the Commission notified the Citizens Forum that the 28th November 2008 was set for the hearing. This date was postponed at their request to 11th December 2008 which date was also postponed by the Commission due to the engagement of the Stenotypist at the meeting of the House of Assembly. A new date of 30th December 2008 was mutually agreed to.

THE COMPLAINT

In the letters dated 13th October 2008 and 16th October 2008 the Citizens Forum (represented by Mr. Atherton Martin, Mr. Angelo Allen, Mr. Lennox Linton and Mr. Severin McKenzie) made the complaint that using the email address minpublicworks@cwdom.dm (public property) for the purpose of participating in a series of advanced fee fraud schemes, commonly referred to as 419 Scams, Government Minister Ambrose George – a person in public life – has breached sections (e) and (g) of the Code of Conduct.”

In their letters the Citizens Forum referred to the conduct and events occurring in the year 2007.

They also indicated the nature of the evidence proposed to be produced in the following terms:

“The evidence to be presented in support of this complaint will include but not necessarily be limited to:

- Email correspondence from the fraudster to Ambrose George and from Ambrose George to the fraudsters between July 2007 and November 2007.
- Radio interview with Ambrose George on April 05, 2008.
- Statement by Julius Timothy alleging that Ambrose George was trying to stop the scam.
- Radio interview with resident of Spain Jeremy St. Clair on October 04, 2008.
- Police Press Statement on Advanced Fee Fraud Schemes.
- Financial Services Unit Press Statement on Advanced Fee Fraud Schemes....”

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

EXAMINATION OF COMPLAINT: PROVISIONAL VIEW

Under section 32(1) of the IPO Act 2003 the Commission is required to examine the complaint and may reject it 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 the Act.

Before rejecting any such complaint the Commission is required to give the complainant a reasonable opportunity of being heard and this right is contained in section 32(3).

At its meeting on 23rd October 2008, the Commission examined the complaint and was provisionally minded to find that the complaint should be rejected under section 32(1)(b) of the Act on the grounds stated in the letter to the Citizens Forum dated 24th October 2008, the text of which is set out hereunder:

“Citizens Forum for Good Governance

P.O. Box 514

Roseau

DOMINICA

Dear Gentlemen,

**COMPLAINT TO THE COMMISSION: RE BREACH OF CODE OF CONDUCT BY A
PERSON IN PUBLIC LIFE**

I write further to my letter dated 15th October, 2008 on the above-mentioned matter.

The Commission has examined the complaint and is provisionally minded to find under section 32 of the Integrity in Public Office Act, 2003 that the complaint does not pertain to a matter the Commission is empowered to deal with on the grounds that the alleged breaches of the rules in paragraphs (e) and (g) of the Code of Conduct (specified in the Second Schedule to the Act) took place during a period before the Act of 2003 entered into operation.

The Commission wishes to give you the opportunity in writing (or at an oral hearing if you so wish) to demonstrate that the provisional view is unfounded.

Yours very sincerely,

Julian N. Johnson
CHAIRMAN"

SUBMISSIONS AT THE HEARING ON 30TH DECEMBER 2008

At the hearing on the 30th December 2008, in seeking to persuade the Commission that its provisional view was wrong, the Citizens Forum made the following submissions:

Mr. Atherton Martin said:

"...The issue before us is whether or not you believe you have jurisdiction over this matter. That can be a legal issue; it can also be a broader social issue, a moral issue, an ethical issue, a personal issue because the issues about which we speak and which we made submission as you have beautifully reported and recorded notwithstanding the fact that they occurred before the Commission was constituted and began operation, these issues are still alive. The most recent indication of that has to be that Mr. George, who, during the time of these alleged offences were committed, was a member of Cabinet of the Government and most recently in the restructured Cabinet we noticed his significant omission without explanation..... His removal from the Cabinet or his

absence from the Cabinet has no other explanation, in our view, other than the fact that the actions, which are the subject of our submission, created a liability, political and public liability for the country. This has not been said by the person who caused him to be absent or by him and we can seek evidence and documentation and say we cannot move unless we have documents, etc., etc. ...

“..... the next general elections which will be the third general elections where issues of correctness, behaviour and integrity in public office will be center stage. I think everyone looks to the action of this Commission to give guidance as to what constitutes such behaviour. And it seems to me that we are poised not only to decide on whether or not you have jurisdiction as per [section] 32(1)(b) but whether or not the Commission, as constituted, is seminally and truthfully representative of sentiments in Dominica....

“The matter of five years for a law to be asleep is a precedent, I hope, we do not take a cue especially given the nature of things since 2000 in Dominica. And I can tell you that having been center stage of the campaign in 2000 where the central issue was integrity in public office where we had no such evidence, no such documentation as we have today and have submitted to the Commission, and yet were able to alert the Dominica public to the seriousness of the prospects of those things being fact. Today notwithstanding that experience and those submissions in 2000 with the result of a change of Government even if we have, as we have submitted to you, the kind of information at the very least needs to be seriously examined by you to determine whether or not there has been a breach, whether you decided to act on it, whether acting on it means that you either don't address it at all because it is untouchable, it is unclean, it is a leper, however, Mother Theresa and so many others taught us it is the lepers we must embrace, examine and find solutions so that the rest of mankind learns from that. It seems to me we may have a leper here. If we do, in 2008 regardless of whether a law was asleep or not we have a responsibility to examine it.....

“... although we carefully read and talked about and understand your submission, we are here to suggest to you that there are considerations, maybe not written in the IPO Act or law but certainly, in our view, embedded in the spirit of our Constitution; certainly, in our view, embedded in our own sense of justice that require you to step outside of this box and not bring it up, not fracture it but maybe in your first ruling come up with suggestions, positions triggered by this submission that would already begin the strengthening of this Act. No Act is dead; an Act is a living breathing creature which means it will mutate, it will become modified.”...

Mr. Angelo Allen said:

“... So it is also an appeal from our society to this Commission to acknowledge the broader picture outside of the box and to not only tie yourselves down and pin us all down as citizens of the State into some really strict legal interpretation which may cause deprivation of the good social interpretation of the law, not only legal interpretation to the people of Dominica....

“....Why was action taken against Mr. Ambrose George? Well, it is my conscientious belief and that of the Citizens Forum here that actions were taken against Mr. Ambrose George and critically relieving him of his cabinet responsibilities because the political directorate recognised that there was tremendous legitimacy in the complaint to the IPO Commssion...

“... Similarly, I believe that this Commission has an opportunity to guide our nation in the future; that you can set the standards by which this country is governed; you have the power to interpret the law in a fashion that no other member of the public interprets because you are the Commission.

“Our complaints are legitimate because the Government acted on our complaint. If our complaint was not legitimate and honest and fair the Government would not have relieved Mr. George of his position....”

“... it would be interesting and quite instructive for the Commission to actually take a look at the Hansard when this piece of legislation was being debated in the Parliament and to observe for yourself the contributions of the Parliamentarians who wanted this law to be passed. What was their intention? Was their intention to pass this piece of legislation and put it to sleep so that their behavioural pattern would not have been changed or adjusted until sometime in the future when the IPO Commission would actually demand of the Government to implement the law?....

“..... Really, do we just sit back and say, well, it was only brought to Parliament on a certain date or do we look at the activities of the individuals in Government after the law was discussed, debated, passed, gazetted, elevated by the President of this country as law whether it went to sleep or not? It might have been only snoozing. And so it is important that the Commission understands the importance of these Government officials knowing the law that they brought to the Parliament and should not be excused for violating the law claiming ignorance as their way out....”

Mr. Lennox Linton said:

“.... there is nothing particularly new in the Code of Conduct in terms of the behaviour to the expectable public officials and that a lot of the elements that we see in the Code of Conduct, in fact, comes out of the common law and what is supposed to be settled practice over the years. And what this legislation does is that it formalizes it, it brings clarity to the table and it allows people to declare what goes and what does not go....

“..... I am again urging the Commission to consider that the dates that have been set forth in this complaint even though they refer specifically to involvement in 419 Scam Activity and illegal and improper use of Government property, the minpublicworks@cwdom.dm email account...

“..... Here we have a Minister of Government who is involved in using the public property, for all intent and purposes, in contravention of the Code of Conduct which is

specified at Schedule II but whose contents are not new to public officers. And what does the Commission tell us? We don't think it is a matter that is properly before us because these alleged breaches of the Code, that everybody is supposed to move on, were done before we became a Commission. And then the reference is made to 8(4) of the Constitution, this provision that if the matter was not a crime at the time the act was committed then one cannot be prosecuted for that later on when the act becomes a crime.

My submission to you is that there is nothing in the Code of Conduct that is all of a sudden becoming contrary to the expected norms of behaviour in the Public Service and to that extent it requires your further consideration. It also requires careful consideration, this matter of the Rule of Law and whether or not the Rule of Law in this particular set of circumstances has constrained you as a Commission to function without a moral compass. I clearly do not believe that is the intention; I do not believe that is the intention of the legislation to hamstring you into a position where you are functioning on strictly legal grounds completely consumed by the law and what the specific technical provisions of the laws are as opposed to what is good, right, moral, sound in judgment, sound in principle in the public interest of the Commonwealth of Dominica. ...

"..... I am saying very clearly that sometime ago before this Commission was empanelled, before the commencement of the Act, Mr. George breached specific provisions of the Code of Conduct which are not new to him or to any other public servant and which provisions, in the law, did not create any new crimes. So he breached then, at that time, he continued to be in breach. The Integrity in Public Office Act commenced and the Integrity in Public Office Commission was empanelled at the time when he remained in breach and is in breach up until this very day.

I urge the Members of the Commission to look beyond specific dates, specific time periods in which there is evidence that a breach was committed and to look further into

the continuation of the breach in its unresolved state. My view is, so long as this breach remains uninvestigated and unresolved by competent judicial authorities, the gentleman remains in breach of the provisions.....

“..... However, in section 34(1) it provides –

“On the conclusion of any inquiry under section 33, the Commission shall submit a report to the Director Public Prosecutions and the President.”

So we are proposing to the Commission that you will investigate this matter and make the findings of the investigation known by way of a report to the Director of Public Prosecutions.”...

“.... The responsibility of the Commission where they find that the complaint is not frivolous, is not malicious, it is in the public interest and, in fact, it is properly before them, is to go ahead and investigate. Because in this particular matter, pay attention to one of the matters that we have suggested in evidence brought before the Commission in this particular matter, is that you will be hearing things that happened subsequent to the coming into operation of the Act and the empanelling of the Integrity Commission...

So my humble submission to the Commission is go ahead and investigate this matter; open it up to investigation and let us see what you find. Report faithfully and honestly as I am sure you will, and let the Director of Public Prosecutions decide whether there is sufficient, there is adequate evidence of criminal conduct and/or intent to do the necessary prosecuting

Mr. Severin McKenzie said:

“... I would like to end on that note because I fear that something may happen that if the Commission, IPO Commission, does not at least give some credence to the complaint that has been made and to do some investigation itself to understand – we

are not asking you to prosecute, we are not asking you to condemn, we are just asking you to investigate the actions of the Minister and then you could guide the people of this country as to what is right and what is wrong. I do not believe this is asking too much of the Commission because if the Commission were to say that everything that happened before the 1st of September 2008 can go with impunity then God save us....

“..... As soon as it is not heard and it is made clear that the Ambrose George affair, which was brought to the Commission, has been thrown out because the act took place before the 1st September 2008, we can expect the politicians to act politically to take advantage of the situation, and although the Commission would not be responsible for his exoneration but the politicians will make sure that he is exonerated. I foresee, without any action or without investigation, at least an investigation, listen to him but give some credence to the complaint, that we will see this man back in the Cabinet and we can say goodbye to integrity in public office....”

THE LAW

Sections 30, 31, 32, 33 and 34 of the Integrity in Public Office Act, 2003 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 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.”.....

Rule 1, paragraphs (e) and (g) of the Code of Conduct, specified in the Second Schedule to the Integrity in Public Office Act of 2003, provides:

“1. A person in public life shall not:

(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; and

(g) use or allow the use of public property (including money), equipment, supplies or services for any purpose other than for official approved purposes;”

Section 3 provides that the IPO Act, 2003 applies to every person in public life.

As a Minister of Government (and Member of the House of Assembly), Hon. Ambrose George is a person in public life within the meaning of section 2(1) of the Act for he is holding an office or position set out in Part I of the First Schedule to the IPO Act, 2003. The Act, therefore, applies to Minister Ambrose George from the date of its entry into force.

Section 30(1) of the Act, read along with the Second Schedule, establishes a body of rules which every person in public life is required to observe. This body of rules is known as the Code of Conduct. Under section 30(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 fine and imprisonment.

Under section 32 the Commission is required to examine any complaint made in accordance with section 31 against a person in public life in respect of a breach of any provisions of the Code of Conduct. It is empowered to reject any such complaint if it is frivolous or if it does not pertain to a matter the Commission is empowered to deal with under the Act.

The powers and functions of the Commission are spelt out in the Integrity in Public Office Act, 2003.

The Citizens Forum's complaint raises matters falling within the Commission's powers and functions under section 9(d) and 32 of the Act.

Section 9(d) provides that the Commission shall "receive and investigate complaints regarding non-compliance with any provision of this Act", while section 32 provides for the examination of the complaint, hearing of the complainant and rejection of the complaint by the Commission in respect of a breach of the Code of Conduct.

All the acts and conduct which are alleged to constitute breaches of the Code of Conduct took place before the IPO Act, 2003 entered into force.

The issue, therefore, that falls to be considered is whether the Commission is empowered to deal with complaints of conduct alleging breaches of the Code of Conduct which took place before the IPO Act, 2003 was brought into operation?

COMMENCEMENT OF THE ACT

The acts and conduct as stated by the Citizens Forum raise the fundamental question of the effect of the date of the commencement of the IPO Act, 2003. Though the Act was passed on the 30th day of April 2003, assented to by the President on the 29th day of May 2003 and Gazetted on the 5th day of June 2003, the Parliament of the Commonwealth of Dominica, as authorized by the Constitution, postponed the operation of the Act to a date to be set by the President. Section 2 (1) of the Act provided that the Act shall come into operation on such day as the President may, by order in the Gazette, appoint.

Section 49(4) of the Constitution empowers Parliament to postpone the coming into operation of any law. It provides:

“49(4) No law made by Parliament shall come into operation until it has been published in the *Official Gazette* but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect”. (Emphasis added).

Under section 2 (1) of the IPO Act, 2003, the President made the Integrity in Public Office (Commencement) Order, 2008, SRO 24 of 2008 appointing the 1st day of September 2008 as the day on which the Act came into operation. (Gazetted 14th August 2008.)

It is well settled law that an Act of Parliament will not have any operation until the day of its commencement. “Commencement” means “the time at which the written law comes into operation”. (Interpretation and General Clauses Act, Chap. 3:01,

Section 3 (1)). “The last thing settled is when the Act shall come into operation, therefore all the sections are to be considered as speaking from the date as fixed and are all governed by the last section” (i.e. the section which fixes the date). (Wood v. Riley (1867) L. R. 3 C.P.26, 27). (Emphasis added).

Section 10 (1) of the Interpretation and General Clauses Act, also addresses the point. It states that, “Acts and subsidiary legislation shall be published in the Gazette and unless it be otherwise provided therein shall take effect and come into operation on the date of such publication.” (Emphasis added)

The Parliament of the Commonwealth of Dominica has clearly and unambiguously “otherwise provided therein” in the IPO Act, 2003. It enacted that the Act shall come into operation on a date to be set by the President. The President has set the 1st day of September 2008 as that date. It means that Parliament had ordained that until that date, 1st September 2008, the law was to remain as before the Act. As Lord Justice Megaw stated it, the position “where Parliament has expressly deferred the operation of the Act for a period, cannot be equated with the position where an Act comes into operation at once on receiving the royal assent” (Wilson v. Dagnall [1972] 2 A. E. R. 44 at 53G).

Having been passed on the 30th day of April 2003, assented to on the 29th day of May 2003 and gazetted on the 5th day of June 2003, the IPO Act, 2003 nonetheless was “put to sleep” by Section 1(2) and remained “snoozing”, as Mr. Angelo Allen stated it, until the 1st day of September 2008 – the date when it was awakened and entered into force.

CONSTITUTIONAL PROHIBITION

Furthermore, the Constitution of the Commonwealth of Dominica expressly prohibits the giving of retrospective operation to penal legislation.

Section 8 (4) of the Constitution provides: “8(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed”.

Section 8 (14) of the Constitution defines “criminal offence” to mean a “criminal offence made under the law of Dominica”. The criminal quality of an act can be discovered by reference to one standard: is the act prohibited with penal consequences? (Proprietary Articles Trade Association v. A-G for Canada [1931] A.C 310 at P. 324, per Lord Atkin).

And Section 30 (2) of the IPO Act, 2003 makes a breach of the Code of Conduct a criminal offence. It provides: “30(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”.

Section 8(4) of the Constitution is absolute. It prevents the operation of retrospectivity in respect of the application of the criminal law.

Similarly, Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides:

“7(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed”.

In construing paragraph 1 of Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms which is similar to section 8 (4) of the Constitution, the European Court of Human Rights said: “The Court reiterates that Article 7 of the Convention embodies, in general terms, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and prohibits in particular the retrospective application of the criminal law where it is to an accused’s disadvantage. While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused’s detriment, for instance by analogy... The Court must therefore verify that at the time when an accused person performed that act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable” (*Achour v. France* [2006] ECHR 268.) (Emphasis added).

As Judge B.M. Zupancic succinctly summarized it: The principle of legality in paragraph 1, Article 7 of the Convention “precludes retroactivity, that is, the applicability of any subsequent legislation creating an offence to any conduct that precedes it in time.” This is what we ordinarily understand under the prohibition of retroactivity, the principle of legality, *nullum crimen sine lege praevia*” (*Achour v. France*, supra). (Emphasis added)

Commenting on Article 10(4) of the Constitution of Guyana, which is the same as section 8 (4) of the Constitution of Dominica, R. H. Luckhoo, J. A, said: “Any legislation authorizing the punishment of people for what they did before the Act came into force offends against the Constitution and is therefore void.” (*Bata Shoe Co. v. C. I. R.* (1976) 24 W. I. R. 172 at 208 E-F.)

COMMON LAW PRESUMPTION

Also, at common law, there is a well established cannon of construction that penal enactments are to be read as prospective. “It is a fundamental rule of English Law that

no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such a construction.” (Lindley L. J. in Lauri v. Renad [1892] 3 Ch. 402, 421. See also Re Snowden Colliery Co. Ltd., South Eastern Coalfield Extension Co v. The Co. (1925) 94 L. J. Ch. 305 (C. A.) The latter part of that statement seems no longer applicable to Dominica in so far as criminal offences are concerned because of the provisions of section 8(4) of the Constitution. (See Commissioner of Police v. Woods [1990] L.R.C. Crim. 1 at P 27E, per Melville J.A.)

In his book, “Legislative Drafting”, V.C.R.A.C. Crabbe, at page 157, explains the basis of the presumption of prospectivity in these terms: “It is a fundamental rule of English law that no statute is construed to have retrospective operation unless that construction appears very clearly in terms of the Act, or arises by necessary and distinct operation. The presumption against retrospective operation applies in the operation of legislation of a penal nature and is based on the general principle that penal enactments are construed strictly and do not extend beyond their clear meaning.” (See Phillip v. Eyre [1870] LR6 QB.23 and see dictum by Alleyne J, as he then was, in Chadiramani v. Nawasa [1997] ECLR 103, at 109H).

In the absence of anything in an Act to show that it is to have a retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a matter at the time when the Act is passed. (Leeds and Country Bank v. Walker (1883) 11 Q. B. D. 84 at p.91. Colonial Sugar Refinery Co. v. Irving [1905] A. C. 369).

And in Gardner v. Lucas, Lord O’Hagas said “unless there is some declared intention of the legislature – clear and unequivocal - or unless there are some circumstances rendering it inevitable that we should take the other view, we are to presume that an Act is prospective and not retrospective.” ((1878) 3 APP Cas. 582, 561).

The State may not apply its criminal prohibitions to persons who violated those prohibitions before they were promulgated and the courts have no power to give effect

to an Act prior to its coming into force. (Wilson v. Dagnall (1972) 2.A.E.R. 44 (C.A); R. V. Reach (1968) 3.A.E.R. 269, C.A.).

CONCLUSION

At its meeting on the 18th day of February 2009 the Commission further considered the Citizens Forum's submissions and concluded that the Citizens Forum had failed to convince the Commission that its provisional view was wrong.

A person cannot be held to be in breach of the Code of Conduct before he became a person in public life within the meaning of the Act or before the Code of Conduct, specified in the Second Schedule, entered into force. The IPO Act, 2003 under which Government Minister Hon. Ambrose George became a person in public life only came into operation on the 1st day of September 2008 – a date authorized by the sovereign Parliament of the Commonwealth of Dominica and the Act can only be applied as from that date.

The Commission is prohibited by the provisions of section 8(4) of the Constitution of the Commonwealth of Dominica from retrospectively applying its powers to investigate actions which were not criminal offences before the Act came into force.

The Commission must also be guided by and is required to apply the common law principle, *nullum crimen, nulla poena sine lege*, which precludes the application of any subsequent legislation creating an offence, to any conduct that precedes it in time.

The Commission is confronted by the fact that the alleged breaches of the rules in paragraphs (e) and (g) of the Code of Conduct (specified in the Second Schedule to the Act) by Minister Hon. Ambrose George, took place during a period before the Act entered into operation.

The Commission, like any statutory authority endowed with statutory powers, can legally do only what the statute permits. And, what is not permitted by the statute, properly construed, is forbidden (A.G. v Great Eastern Railway (1880) 5 App. Cas. 473).

In the premises, therefore, the Commission is constrained to hold:

- i. that the provisions of the Integrity in Public Office Act, 2003 cannot apply retrospectively to the alleged conduct on the part of Minister Hon. Ambrose George, or to that of any person in public life, if the alleged conduct complained of occurred before the Act entered into operation;
- ii. that, consequently, the complaint by the Citizens Forum made in their letters to the Commission dated the 13th and 16th days of October 2008 does not pertain to a matter that the Commission is empowered to deal with under the Act and is, therefore, rejected by the Commission as provided by section 32(1)(b) of the Integrity in Public Office Act, 2003;
- iii. that having rejected the complaint, the person against whom the complaint was lodged has the right to institute legal proceedings against the complainant in accordance with the provisions of section 32(2) of the Act; and
- iv. that in keeping with the decision of the Commission taken on the 23rd October 2008, this decision of the Commission will be communicated to the person in public life against whom the complaint has been made.

Citizens Forum have urged the Commission forcefully "to give credence" to the complaint that has been made and "to do some investigation itself".

One member stated: “We are not asking you to condemn; we are just asking you to investigate the actions of the Minister and you could guide the people of this country as to what is right and what is wrong”.

The procedures laid down by Parliament in Part IV sections 31 to 34 of the Act do not permit such latitude to the Commission in this matter.

The complaint having been rejected by the Commission after examination under section 32 of the Act for the reasons detailed above, the provisions dealing with the investigation/inquiry and reporting to the Director of Public Prosecutions under sections 33 to 34 of the Act do not apply.

The inquiry into breaches of the Code of Conduct under section 33 applies only where the Commission, upon examination of a complaint in accordance with section 32, did not reject the complaint. And, a report to the Director of Public Prosecutions can only be submitted at the conclusion of any such inquiry under section 33.

Dated this 19th day of FEBRUARY, 2009

(Sgd.) J.N. Johnson
.....
JULIAN N. JOHNSON
CHAIRMAN

(Sgd.) Kelvin E. Felix
.....
ARCHBISHOP KELVIN E. FELIX
MEMBER

(Sgd.) A. Lazare
.....
ALICK LAZARE
MEMBER

(Sgd.) P. Inglis

(Sgd.) G.E. Williams

.....
PATRICIA INGLIS
MEMBER

(Sgd.) G. Smith

.....
GERALD SMITH
MEMBER

.....
GEORGE E. WILLIAMS
MEMBER

(Sgd.) B. Alleyne

.....
Sir BRIAN ALLEYNE
MEMBER