



ANTI-CORRUPTION EFFORTS IN THE COMMONWEALTH CARIBBEAN

Notes for Presentation

By

Julian N. Johnson

Chairman, Integrity Commission

Dominica

*5th Commonwealth Regional Conference for Heads of Anti-Corruption Agencies in
Africa*

Dar es Salaam,
Tanzania,
25th – 29th May, 2015

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1. Introduction

I thank the CFTC and the Commonwealth Secretariat for inviting me to this important meeting and for paying the costs of my attendance, in substantial part. I must also recognise the work and efforts of Dr. Roger Koranteng, Governance Advisor to the Commonwealth Secretariat and publicly thank him for his great contribution to better governance and for his assistance in confronting the challenges of anti-corruption administration in the very small states of the Commonwealth including the Commonwealth Caribbean. I have come here to learn how your collaboration is helping the African region to strengthen its legal regime and institutional capacity in the fight against corruption.

2. The Commonwealth Caribbean

(i) Geographical Area

From Belize in Central America to Guyana in South America and includes – Trinidad and Tobago, Grenada, St. Vincent and the Grenadines, Barbados, St. Lucia, Dominica, Antigua, St. Kitts and Nevis, Jamaica, Bahamas and the Territories of Montserrat, British Virgin Islands, Cayman Islands, Bermuda and the Turks and Caicos Islands.

(ii) Sociology/political economy and public administration of Very Small States

- (a) In a socially small society the personalised and multiplex nature of human relationship makes it extremely difficult for partiality to be absent. In these states it is impractical to separate personality from function. It is difficult to maintain anonymity. All members of the public are a kind of extended family; network of influence extend everywhere. Public officials have to operate professionally within a hierarchy of people with whom they are unavoidably personally acquainted, related, or otherwise connected in a nonwork environment¹.
- (b) A substantive feature of the political system is what the late Prof. Carl Stone has characterised as “patron-clientelism”, that is, the exchange of economic and social favours to a poor and socially fragmented population in return for party support. Leaders harness the state as a resource from which to establish a power structure that competes with and parallels the power structure rooted in the ownership of the forces of production, distribution and exchange. This has caused the ascendancy of the “political kingdom” to be almost complete.²
- (c) The ubiquity of politics and “it’s our own turn to eat” mentality. “In a small island of 50,000-100,000 people, dominated by a single political party it is very difficult to prevent political abuse. Everybody depends on the government for something, however small, so that most are reluctant to offend it. The civil servant lives in fear, police avoid unpleasanties, the trade unions are tied to the party, and the newspaper depends on government for advertisements and so on.”³
- It is in this environment that the integrity commissions and other anti-corruption bodies in the very small states of the Commonwealth Caribbean are required to exercise jurisdiction over elected and appointed executive, members of Parliament, heads of departments of government and other senior public and police officers, managing directors and chairmen of statutory corporations who are included in the list of “persons in public life” in the respective legislation.

¹ “Public Administration in Small Islands States”, Randal Baker pp. 17-18

² “Democracy and Clientelism in Jamaica”, Carl Stone pp. 91-101, passim

³ “Agony of the Little Eight”, Sir Arthur Lewis, 1965

3. **The Existing Anti-Corruption Initiatives in the Commonwealth Caribbean –**

There are three broad categories of anti-corruption legislation:

- (i) Those that have codified the criminal law and have reproduced in their codes the common law rules on bribery and misconduct in public office – Belize (Criminal Code, Rev. ed. 2000 – Chapter 101) and Bahamas (Penal Code 1873 – Chapter 84)
- (ii) Those that have replication of the late 19th century and early 20th century UK anti-corruption legislation:
 - Bahamas (Prevention of Bribery Act 1976); Barbados (Prevention of Corruption Act 1927, Chapter 144); and Belize (Prevention of Corruption Act 1927, Rev. Ed. 2000 Chapter 105).
- (iii) Those that have a series of modern legislation beginning in the 1970's with the Integrity in Public Life Legislation and including initiatives promoted by the Inter-American Convention Against Corruption:
 - Guyana – Integrity Commission Act 1997 (Cap 19.12); Trinidad and Tobago – Integrity in Public Life Act 2000, as amended; Antigua - Integrity in Public Life Act 2004 and Prevention of Corruption Act 2004; St. Lucia - Integrity in Public Life Act 2004; Dominica - Integrity in Public Life Act 2003; Jamaica – Parliament (Integrity of Members) Act 1973 and Contractor - General Act 1983 and Contractor - General (Amendment) Act 1999; Belize – Prevention of Corruption in Public Life Act 1994; Grenada – Integrity in Public Life Act 2004 and Prevention of Corruption Act 2007; and Montserrat - Integrity in Public Life Act 2000 ⁴

4. **The Establishment and Functions of Integrity Commissions**

The new legislation in member states create new obligations for persons in public life:

⁴ "Corruption: Law, Governance and Ethics in the Commonwealth Caribbean," Derrick V. Mckoy (2012) Chapter 3

- (i) to disclose their income, assets and liabilities; and
- (ii) to observe all statutory prohibitions prescribed for the purpose of establishing probity, integrity and accountability in public life.

The legislation also criminalizes the possession of unaccounted property or pecuniary resources disproportionate to one's legitimate sources of income, that is, illicit enrichment.

The legislation also establishes a Commission to administer its provisions which includes duties to receive, examine and inquire into the accuracy and fullness of the financial disclosures filed with the Commission. This investigation may be done by formal inquire made pursuant to the Commission of Inquiry legislation.

The Commission is empowered to receive and investigate complaints of non-compliance with the legislation generally including breaches of the Code of Conduct.

The Commission is also required to submit annual reports to Parliament on its activities through the responsible Minister.

5. Issues and Challenges

- a. Independence of the Commissions
 - i. Express statutory provisions – Section 13 of Dominica's Integrity in Public Office Act 2003; security of tenure of members of the Commission for three (3) years – independent tribunal process for removal; [section 7 (1) (4) – (7)]
- b. Expenses of the Commissions – all expenses incurred for the purposes of the legislation are a charge to the Consolidated Fund after approval by the Minister for Finance 52(1) & (2).
- c. The Commission to keep proper accounts to be audited by Director of Audit or an auditor appointed by the President.
- d. The composition of the Commission, Secretary and Staff of the Commission – managing staff integrity and the issue of institutional loyalty; Commissions have no "carrots". Section 49 provides that –

the Commission “shall be provided with a staff adequate for the prompt and efficient discharge of its functions under the Act”. But these shall be public officers “appointed by the Public Service Commission.”

6. **Relations with the executive, constitutional ministerial responsibility and statutory operational independence (Dominica Constitution s. 61 with s.68, AG of Fiji v. DPP of Fiji [1983] 2 A.C. 672 and Mossell (Jamaica) Ltd. (t/a Digicel) v. Office of Utilities Regulations and Ors (Jamaica) [2010] UKPC (21st January, 2010))** – necessity for appropriate “arm’s length relationship” with the Executive. The Montserrat legislation mandates that the Commission shall be provided with its own “Secretary” who shall be “an employee of the Commission”. The Governor has, however, appointed the “Secretary of the Public/Police Service Commission” as the Commission’s Secretary! Unresolved issue of Executive approval for travel by the Commission on the business of the Commission in Dominica.
 - Vagueness and ambiguity in the legislation – e.g. “head of department” (DOM)
 - Investigative powers – “Complaints” requiring formal complaint by identifiable individual, body corporate or body of persons; Commission not authorized to initiate such investigation suo motu or on complaint made through the mass media or other public fora, however persistent. (Republic v First Track High Court, Accra, ex p. Commission on Human Rights and Administrative Justice [2009] 1 LRC 44).
7. **Parliament Oversight.** Parliament must continue to demonstrate that it is an important stakeholder in enhancing the integrity and corruption prevention regime that it has enacted.⁵
8. **The Courts and “access to Justice”:** – delays in proceedings in judicial review matters concerning the Commission and its jurisdiction, its composition and membership.

⁵ “Oversight Bodies – Implementation of Integrity Legislation in Very Small Caribbean States,” by Julian N. Johnson” – Public Administration in Very Small States Conference, Marlborough House, London, April 23-24, 2013 pp 17-19

- Proceedings involving powerful high profile persons in public life. Head of Government; Head of State; Speaker of the Legislature; Leader of the Opposition who are subject to the Commission's jurisdiction. Political power and the Rule of Law.

9. **Conclusion** – An explanation of the existence of corruption by Caribbean Jurist and former Contractor - General of Jamaica, Derrick Mc Koy who states that corruption arises in society:

- (i) because public agents engaged to manage and administer public bureaucracies naturally seek to maximise their own welfare;
- (ii) because the activities of these agents are not sufficiently transparent; and
- (iii) because these agents are often in positions of moral hazard which arises in the public service when public agents can engage in corrupt activity with no real fear that any significant adverse consequences will follow.”

He concludes on this point by stating that whichever explanation one adopts for the existence of corruption in society the success of the anti-corruption regime will depend on the consistent and certain application of sanctions to the anti-corruption acts. ⁶

Hence the role of the Director of Public Prosecutions, who is empowered to institute criminal proceedings for breach of the provisions of the statute after considering reports from the Commission, looms large.

⁶ Corruption: Law, Governance and Ethics in the Commonwealth Caribbean,” Derrick V. McKoy (2012) p 2.

DOMINICA: IMPLEMENTATION OF
THE INTEGRITY IN PUBLIC OFFICE ACT
2008 – 2013

Year	No. of Persons in Public Life	No. of Persons who filed	No. of Persons who failed to file	No. of Persons who filed late	No. of Persons Gazetted	Compliance in percentage (%)	No. of Queries sent	No. of Declarations Certified	No. of Cases charged by DPP	No. of cases prosecuted by DPP
Dec. 1 2008	119	102	17	17	17	86	78	107	0	
Dec. 31, 2008	136	96	40	15	40	66	58	94	2	
Dec. 31 2009	147	101	13	33	46	69	33	126	16	3
Dec. 31, 2010	159	152	1	6	7	96	28	151	7	0
Dec 31, 2011	164	158	4	2	6	96	14	159	6	0
Dec 31, 2012	155	137	15	3	18	88	40	135	18	0
Dec 31, 2013	157	136	15	6	21	87	23	141	21	0

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