

*THE INTEGRITY COMMISSION
Of THE COMMONWEALTH OF
DOMINICA*



***First Annual
Report***

Year Ending 31st August, 2009

The Integrity Commission

The Integrity Commission

The Integrity Commission

Annual Report

For Year Ending 31st August, 2009

The Integrity Commission

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CHAIRMAN'S LETTER OF TRANSMITTAL

30th September 2009

Hon. Minister for Legal Affairs
Ministry of Legal Affairs
Government Headquarters
Roseau

Dear Sir

ANNUAL REPORT OF COMMISSION TO PARLIAMENT

The Integrity Commission of the Commonwealth of Dominica submits the Annual Report on activities during its first year of operation to the Minister in accordance with Section 48 of the Integrity in Public Office Act 2003, No. 6 of 2003 which provides as follows:

" (1) Subject to subsection (3), the Commission shall as soon as possible but not later than two months after the end of each financial year, make a report to the Minister of its activities in the preceding year and the report shall be tabled in the House of Assembly not later than three months after receiving the report.

(2) The report under subsection (1) shall not disclose the particulars of any declaration filed with the Commission.

(3) The Commission shall make its first report to the Minister not later than one month after the end of its first year of operation and the report shall be tabled within three months of its submission to Parliament."

The Commission was appointed with effect from 2nd September, 2008 and held its first meeting on that day.

Despite some delay in the approval of its budget as well as in the appointment of staff (a Secretary was not available for duty until 29th December, 2008), the Commission was able to function with minimal resources during the first quarter of its financial year. Notwithstanding these constraints, the Commission held two hearings under Section 32 of

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the Act. It also received, filed and examined 111 declarations for the periods ending 31st August, 2008 and 31st December, 2008.

This annual report covers the activities of the Commission during the period 2nd September, 2008 to 31st August, 2009.

Yours very sincerely,

Julian N Johnson
Chairman

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Vision Statement

To foster the development of a nation free of corruption and governed by persons in public life who are imbued with the highest standard of integrity.

Mission Statement

The Integrity Commission will promote integrity in governance by providing effective oversight of the administration of public functions in order to encourage transparency in transactions, and maintain legal compliance by persons in public life and other public officials so that public institutions will be free of corruption, and so that the highest standards of honesty, equity and fairness will be observed in the use of public resources and in the distribution of benefits for the welfare of the people of our nation.

Key Principles

- Actions of persons in public life must be determined solely in the public interest.
- Persons in public life must observe the highest ethical standards that engender public confidence and trust.
- The actions of persons in public life must be such as to withstand public scrutiny and critical appraisal.
- The actions and decisions of persons in public life must be transparent and above suspicion.
- Persons in public life have a duty to act in a manner that precludes real, potential or apparent conflict of interest.

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Integrity Commission's Prayer

We stand before you, Holy Spirit
conscious of our imperfections
but aware that we gather in your name.

Come to us, remain with us
enlighten our hearts and give us light and strength
so that all our decisions may be
just and fair and in accordance with our Oath of Office.

Guide us by your wisdom,
support us by your power,
for you are God,
sharing the glory of Father and Son.

You desire justice for all:
enable us to uphold the rights of others,
do not allow us to be misled by ignorance
or corrupted by fear or favour.
Unite us to yourself in the bond of love
and keep us faithful to all that is true.

Amen

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STATUTORY AUTHORITY

The Integrity in Public Office Act 2003 (NO. 6 of 2003) was passed in the Parliament of the Commonwealth of Dominica on the 30th Day of April, 2003, was assented to by His Excellency the President on the 29th day of May, 2003 and was published in the Official Gazette on the 5th day of June, 2003.

Section 1(2) of the Act provides that the Act shall come into operation on such day as the President may, by Order published in the Gazette, appoint. 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 should come into force, was published in the Official Gazette on the 14th day of August, 2008.

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ESTABLISHMENT OF THE COMMISSION

Section 4(1) of the Act establishes the Integrity Commission consisting of:

- a) a Chairman, who shall be a former Judge of the High Court, an attorney-at-law of fifteen years standing at the Bar or a former Chief Magistrate appointed by the President on the advice of the Prime Minister;
- b) two members appointed by the President on the advice of the Prime Minister;
- c) two members appointed by the President on the advice of the Leader of the Opposition;
- d) a chartered or certified accountant appointed by the President on the recommendation of the Institute of Chartered Accountants of Dominica or like body however described;
- e) an attorney-at-law appointed by the President on the recommendation of the Dominica Bar Association.

The Prime Minister is required to consult with the Leader of the Opposition before tendering advice to the President on the appointment of the Chairman.

Section 5 provides that a person shall not be qualified to be appointed as a member of the Commission if that person –

- a) is a person in public life or is otherwise exercising a public function;
- b) would otherwise be disqualified to be a member of the House of Assembly;
- c) has, at any time during three years immediately preceding the date of appointment, been a public officer; or
- d) has, at any time during five years immediately preceding the date of appointment, held office in a political party.

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MEMBERS OF THE INTEGRITY COMMISSION

The Integrity Commission of the Commonwealth of Dominica comprises:

Mr. Julian N Johnson	Chairman
Mr. Alick Lazare	Member
Mr. Wendell Lawrence	Member
Mrs. Patricia Inglis	Member
Mr. George Williams	Member
Mr. Gerald Smith	Member
Sir Brian Alleyne	Member

These members of the Commission (with the exception of Wendell Lawrence) were appointed by His Excellency the President, Dr. Nicholas J O Liverpool, DAH OCC, by instrument dated 2 September, 2008 for a period of three years. Mr. Lawrence was appointed with effect from 18th May 2009.

Appendix I contains professional profiles of the current members of the Commission.

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CHANGES IN MEMBERSHIP

During the year under review, two members resigned membership of the Commission.

By his appointment with effect from 14th January, 2009, as Chairman of the Education Appeal Tribunal under the Education Act 1997, Sir Brian Alleyne became a person in public life. Under section 5(a) of the Integrity in Public Office Act 2003, a person in public life shall not be qualified to be appointed as a member of the Commission. Thus, Sir Brian Alleyne's membership on the Tribunal was inconsistent with that provision.

The provisions of section 5(b) of the Integrity in Public Office Act read together with section 32(1)(b) of the Dominica Constitution, preclude a minister of religion from membership of the Integrity Commission. As a result, His Grace, Archbishop Kelvin Felix, was disqualified from membership of the Commission.

Letters of resignation were tendered to His Excellency the President by His Grace, Archbishop Kelvin Felix, and Sir Brian Alleyne with effect from 9th May, 2009 and 11th May, 2009 respectively.

After consultation with the Dominica Bar Association, Sir Brian Alleyne resigned the chairmanship of the Education Appeal Tribunal and accepted re-appointment to the Integrity Commission. He took the oaths on 15th May, 2009.

Mr. Wendell Lawrence was appointed to replace Archbishop Kelvin Felix and took the oaths on 18th May, 2009.

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FUNCTIONS OF THE COMMISSION

The functions of the Commission are set out in Section 9 of the Act as follows:

- a) receive, examine and retain all declarations filed with it under the Act;
- b) make such enquiries as it considers necessary in order to verify or determine the accuracy of any declarations filed under the Act;
- c) without prejudice to the provision of any other enactment, inquire into any allegations of bribery or act of corruption under the Act;
- d) receive and investigate complaints regarding non-compliance with any provisions of the Act; and
- e) perform such other functions as is required under the Act.

One of the most important functions of the Commission is to receive and examine complaints made to it under Section 32 of the Act concerning breaches of the Code of Conduct as set out in the Second Schedule.

The Commission is responsible to ensure that persons in public life comply with the obligation in Section 14 of the Act to file declarations setting out their offices, incomes, assets, liabilities and gifts made by them in excess of one thousand dollars, as well as the assets of their spouses, children or relatives which have been acquired through or traceable to their incomes. Declarations are required to be filed in accordance with Form 2 in the Third Schedule to the Act.

The Commission is charged with the duty to monitor compliance with Section 14 of the Act, examine every declaration filed with it, publish a certificate if it is satisfied a declaration is fully made, hold formal inquiry in cases of falsification or unaccounted property, gazette cases of non-compliance and refer matters that are in breach of any of the provisions of the Act to the Director of Public Prosecutions for further action.

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The Commission is also required to investigate gifts accepted by persons in public life and allegations of bribery and acts of corruption under Parts V and VI of the Act, respectively.

APPLICATION AND SCOPE OF THE ACT

The Act applies to all *persons in public life*, that is, persons holding any office or position set out in Part I of the First Schedule or persons acting continuously for not less than six months in any office set out in Part II of the First Schedule. These include members of the House of Assembly, permanent secretaries, some senior public and police officers, advisers to ministers, chairmen, general managers and managing directors of public institutions and Chief Technical Officers.

Despite the interpretation given in Section 2 of the Act, the Commission had considerable difficulty in determining which specific offices fell within the category of Chief Technical Officer. According to the Interpretation clause (Section 2) Chief Technical Officer “includes the Chief Physical Planner and any Director or head of department or deputy head of department however described in a Government Ministry or Department”.

This definition could bring within the ambit of the Act the Director of Public Prosecutions and the Director of Audit. The Commission was of the view that the authority given to the Director of Public Prosecutions by virtue of Section 34 excludes him from the purview of the Act. Similarly, the Director of Audit, by virtue of his constitutional position, could not properly be brought within the ambit of the Act in this manner.

The Chief Personnel Officer supplied the Commission with a list of persons considered to fall within the meaning of “Chief Technical Officer”. Using this as a basis together with the meaning ascribed to “Head of Department” in the Constitution and the Public Service Act Chap. 23:01, the Commission compiled a definitive list of offices that fell within the category of “Chief Technical Officer”. This list is included in the register of persons in public life at Appendix II

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“Public institution” is defined in the Act to mean inter alia “a board, commission, committee, or such other body appointed by the President or a Minister of the Government”. This has resulted in a large number of persons falling within the category of “persons in public life”.

An anomaly clearly existed with regard to the position of the Chairman of the Commission, who, because he becomes a person holding an office of chairman of a public institution on appointment by the President, falls within the definition of a “person in public life” and thereby, on a strict interpretation, disqualified to be a member of the Commission. However, the Commission is of the view that the Act must be interpreted purposively so as to have effect. The fact that the Chairman by virtue of his appointment is a person in public life cannot logically result in his disqualification from the Commission.

The incumbent Chairman has complied with the requirements of the Act and filed declarations within the time limits set by the Act.

Part VI of the Act which deals with bribery and other acts of corruption, also brings within its ambit “prescribed officers” defined as police or public officers or any employee or member of a public body, whether temporary or permanent and whether paid or unpaid.

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OPERATIONS OF THE COMMISSION

Administration of Oaths

Members and Secretary

Subsection (1) of Section 50 of the Act provides that a member or the Secretary to the Commission shall not enter upon the duties of his office until he has taken the oath of allegiance, oath of office and oath of secrecy as specified in the Fourth Schedule. Members initially appointed to the Commission (with the exception of Mr. George Williams) took the oath of allegiance, oath of office and oath of secrecy before the President on 2nd September, 2008. Mr. Williams, who had been out of state, took the oaths on 15th September, 2008. Sir Brian Alleyne, on his resumption of membership, took the oaths before the President on 15th May, 2009. Mr. Wendell Lawrence, who was appointed to replace His Grace, Archbishop Kelvin Felix, took the oaths before the President on 18th May, 2009. Mrs. Alex Phillip who was appointed as Secretary to the Commission with effect from 23rd December, 2008, took the oaths on 29th December, 2008.

Staff of the Commission

Section 50(2) requires that a staff member of the Commission shall not enter upon the duties of his office until that member has taken the oath of office and oath of secrecy as specified in the Fourth Schedule. Accordingly, all staff members, immediately following their appointment to the Commission, took the oath of office and the oath of secrecy before the President.

Organization

Two sub-committees were established for the purpose of carrying out the day to day functions of the Commission:

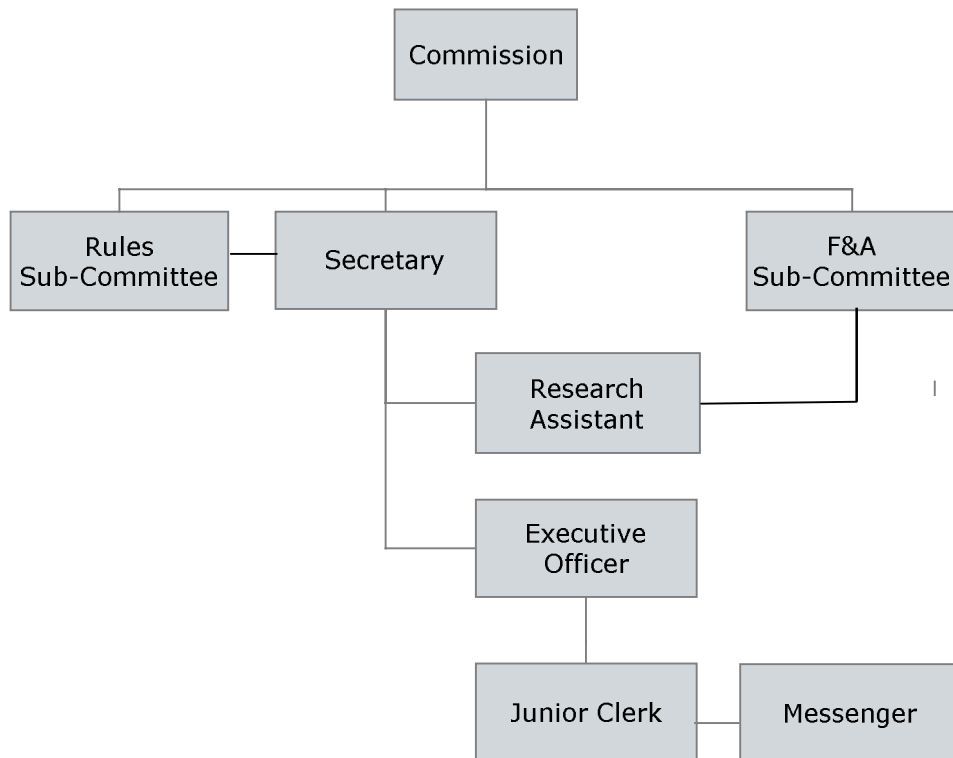
1. The Rules Sub-Committee with responsibility to keep under review the legal framework within which the Commission is

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mandated to operate, and to develop rules and procedures for performing its functions. The members are Julian N. Johnson, Sir Brian Alleyne, George Williams, and Patricia Inglis.

2. The Finance and Administration (F&A) Sub-Committee with responsibility to oversee the administration of the Commission (including the selection of senior staff and the management of the annual budget), as well as to conduct preliminary examination of all declarations filed and to make recommendations to the Commission. The members are Alick Lazare, Gerald Smith and Wendell Lawrence. George Williams also attended meetings of the F&A sub-committee and chaired the Interview Panels.

The Rules Sub-Committee is supported directly by the Secretary, and the F&A Sub-Committee is supported by the Research Assistant.



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Budget and Financial Operations

The Commission presented its budget to the Minister for Finance and obtained approval on 3rd October, 2008. The approved budget to 30th June, 2009 is shown below.

The term of the Commission is three years commencing 1 September, 2008. Provisions were, therefore, made for the remaining part of the fiscal year 2008/2009, fiscal year 2009/2010, fiscal year 2010/2011 and 2 months in fiscal year 2011/2012.

Budget 2008/2012

Expenditure	2008/09	2009/10	2010/11	2011/12
Personal Emoluments				
Commissioners	297,000	356,400	356,400	59,400
Staff	164,300	199,130	201,120	33,860
	461,300	555,530	557,520	93,260
Other Expenses				
Electricity	15,000	18,000	18,000	3,000
Insurance of Furniture & Equipment	1,500	1,500	1,500	1,500
Office Supplies & Stationery	15,000	7,500	7,500	1,500
Operating & Maintenance Services	5,000	5,000	5,000	1,000
Professional & Consultancy Services	25,000	10,000	10,000	0
Rental	40,000	48,000	48,000	8,000
Telephone	10,000	8,400	8,400	1,400
Travel & Subsistence (Local)	8,000	9,600	9,600	1,600
Travel & Subsistence (Overseas)	15,000	5,000	0	0
Water	400	480	480	80
	134,900	113,480	108,480	18,080
	596,200	669,010	666,000	111,340

The Commission's budget for the year 2008/09 was managed through the Ministry for Legal Affairs.

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Office Accommodation

The Commission's office is located on the upper floor of the building situated at the corner of Independence Street and Turkey Lane, and provides office space for the Chairman, Secretary and the Research Assistant. There is also a general office, library and conference room.

Leased office accommodation, furniture, equipment, and other goods and services were provided for the use of the Commission by the Ministry of Legal Affairs under the Commission's budgetary provisions.

The Commission is concerned about the suitability of the premises leased by the Ministry and is investigating alternative accommodation. This has been drawn to the attention of the Ministry of Legal Affairs.

Staff of the Commission

During the period 2nd September 2008 to 31st August 2009 the Commission functioned with the following staff:

2nd September, 2008 – 28th December, 2008

- (i) Temporary Clerical Officer
- (ii) Temporary Messenger

29th December, 2008 – 28th February, 2009

- (i) Secretary
- (ii) Temporary Clerical Officer
- (iii) Temporary Messenger

1st March, 2009 – 8th June, 2009

- (i) Secretary
- (ii) Research Assistant
- (iii) Temporary Clerical Officer
- (iv) Temporary Messenger

9th June, 2009 – 31st August, 2009

- (i) Research Assistant (& Ag. Secretary)
- (ii) Temporary Clerical Officer
- (iii) Temporary Messenger

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Section 49 of the Act enacts:

“(1) The Commission shall be provided with a staff adequate for the prompt and efficient discharge of its functions under this Act.

(2) The staff of the Commission shall be public officers appointed in accordance with sections 85 of the Constitution.”

The Commission understands this provision to mean that:

- i. the Executive must provide the Commission with staff adequate for the prompt and efficient discharge of its functions;
- ii. staff must either be appointed by the Public Service Commission from persons holding offices listed in Schedule 1 to the Public Service Act, Chap 23: 01; or
- iii. if recruited from outside the public service, then they must be appointed to the public service by the Public Service Commission; and
- iv. staff can only be disciplined or removed from office by the Public Service Commission in accordance with the provisions of section 85 of the Constitution and the procedures in the Public Service Commission Regulations, Chap1:01.

The Commission has already acknowledged the cooperation of the Public Service Commission in the appointment of the Research Assistant by allowing the Commission to interview candidates and for giving due consideration to its recommendations.

In the recruitment of junior staff the Commission was subjected to departmental postings made by the Ministry of Legal Affairs. In one instance the Ministry summarily recalled its staff member and posted another temporary officer to the Commission, without consultation.

Parliament sought to provide autonomy to the Commission and enacted under section 13 that “The Commission shall in the exercise of its functions under this Act not be subject to the control or direction of any person or authority.”

The Commission is of the view that in order to give full effect to Parliament’s intention spelt out in sections 49(1) and 13 of the Act, the Commission should be given the responsibility to appoint or employ and

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exercise disciplinary control over the staff necessary for the discharge of its functions, in accordance with the budget approved by Parliament.

The Commission considers therefore, that the Act should be amended to provide that the staff of the Commission should be appointed and removed by the President on the advice of the Commission (Section 70 of the Constitution) or that these powers be given to the Commission itself. For example, under the Jamaica Corruption (Prevention) Act 2000, the Commission is empowered to appoint or employ such officers and employees necessary for the proper carrying out of its functions under the Act of 2000.

The Secretary

Section 12 of the Act provides for the appointment of a Secretary with duties to include attendance at meetings of the Commission, recording of minutes of each meeting in proper form and generally performing duties connected with the work of the Commission.

Because of the confidentiality of the position and the sensitivity of the work to be done, the Commission obtained the services of the former Clerk of the House of Assembly, Mrs. Alex Phillip, whose experience and trustworthiness were required to ensure that the Commission commenced its work on a sound footing. However, it was not until 23rd December, 2008 that a secondment to the Commission was approved by the Public Service Commission. Mrs. Phillip was finally released by the House of Assembly and reported for duty on 29th December, 2008.

The Commission has been experiencing considerable difficulties in recruiting an appropriate officer to this office at the end of Mrs. Alex Phillip's appointment consequent upon her retirement from the Public Service. The Commission has therefore recommended her acting appointment and engagement for a further six months.

Given the small staff, the Commission considers that this office should be filled by a person with a wealth of experience, including management, accounting and finance and, ideally, stenotyping skills, whether or not that person may have attained the compulsory retirement age for public officers.

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Indeed, the Public Service Commission has adopted the practice of appointing retired public officers/police officers to hold or act in the office of magistrate, no doubt, due to the exigencies of that service. Moreover, there is a long history of appointing Judges who have passed the prescribed compulsory retirement age to act as Judges in the Eastern Caribbean Supreme Court, no doubt, due to the exigencies of that service. Presently there are three such appointments.

The Commission has sought to have this practice applied to the appointment to the office of Secretary but great delay is being experienced.

At the time of the preparation of this report the Public Service Commission was still awaiting legal advice from the Ministry of Legal Affairs on this recommendation.

Staff Recruitment

With the approval of the Public Service Commission, the Commission advertised for and obtained applications for filling the positions of Secretary and Research Assistant. The F&A Sub-Committee conducted interviews with each applicant and prepared evaluation reports for submission to the Commission in each case. These reports were submitted to the Public Service Commission together with all applications received for its consideration.

Data on Staff Recruitment

Position to be filled	No. Interviewed	No. of Reports
Secretary	7	1
Research Assistant	6	1

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Consultations

At the inception of the Commission, the Chairman held consultations with the Minister for Legal Affairs, the Attorney General and the Chief Technical Officer of the Ministry of Legal Affairs to draw to their attention a number of deficiencies in the Integrity in Public Office Act 2003 that could impact on the work of the Commission. The consultations also identified requirements for the proper establishment of the Commission.

The Chairman of the Commission and the Chairman of the F&A Sub-Committee held a follow-up meeting with the Permanent Secretary and senior administrative personnel of the Ministry of Legal Affairs to seek to obtain progress on the various matters raised during the consultations.

The Commission, during the first month of its operation, held meetings with various groups to explain its statutory powers and responsibilities and the obligations of persons in public life under the Act:

- Parliamentarians
- Senior public and gazetted police officers
- Chairmen and managers of statutory bodies and public corporations.

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Work Programme

The Commission approved its work programme with the following workload data:

Workload Data

Activities	Estimate 2008/9	Estimated 2009/10	Estimated 2010/11
Register persons in public life	106	130	130
Sending notices for filing	106	130	130
Receiving declarations	106	105	105
Reviewing declarations	106	105	105
Receiving complaints	10	5	2
Investigating complaints	10	5	2
Hearings	10	5	3
Tribunals	5	3	3
Cases submitted to DPP	5	10	10
Annual report	1	1	1
Public discussions	20	10	10
Staff recruitment interviews	10	6	6

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REPORT ON ACTIVITIES

Meetings

The Commission held 22 regular meetings during the year.

During these meetings the Commission discussed matters pertaining to its operations, preparations for hearings as well as reports from its two sub-committees. An estimate of the number of activity reports considered during the year is given below:

Activity Reports	No.
Report on recruitment interviews	2
Legal opinions	5
Budget	3
Declarations	12
Public education	2
Computerization	1
Recommended amendments to the Act	2
Hearings	2

Attendance at the regular meetings was as follows:

Members	No. Attended	No. Absent	Reason for absence
Mr. Julian N. Johnson	22	0	
Archbishop Kelvin E. Felix	15	0	
Mr. Alick Lazare	21	1	Out of State
Sir Brian Alleyne	19	3	Out of State
Mr. George Williams	17	5	Out of State
Mrs. Patricia Inglis	21	1	Out of State
Mr. Gerald Smith	22	0	
Mr. Wendell Lawrence	6	0	

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In addition, the following sub-committee meetings were held:

Sub-Committee	No.
Finance and Administration	8
Rules and Procedures	5

Complaints to the Commission

Section 31 of the Act provides that 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 complaint; and
- d) such other particulars as may be prescribed in Regulations made by the Minister.

Two complaints were received by the Commission during the year.

Section 32(1) of the Act provides that 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.

The Commission examined and decided to reject both complaints in accordance with section 32(1)(b) of the Act.

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Complete reports of the findings in both cases are given at Appendix III.

Declaration of Financial Affairs

Section 14 of the Act requires that

“1) every person in public life shall file a declaration with the Commission setting out –

- a) his office or offices;
- b) his income, assets and liabilities;
- c) the assets of his wife, children or relative acquired through or traceable to his income; and
- d) gifts made by him in value exceeding one thousand dollars.

2) The declaration shall be in Form 2 of the Third Schedule.”

In the interpretation clause at section 2(1) of the Act, a “person in public life” is interpreted to mean a person holding any office or position set out in Part I of the First Schedule or a person acting continuously for a period of not less than six months in any office set out in Part II of the First Schedule. The Schedule, however, contains a category of person in public life designated “Chief Technical Officer” which includes, according to the interpretation clause, the Chief Physical Planner and any Director or head of department or deputy head of department however described in a Government Ministry or Department.

The Commission encountered considerable difficulty in determining precisely which offices fell within the category of “Chief Technical Officer” and “deputy head of department” and had to seek the assistance of the Chief Personnel Officer in order to draw up a comprehensive list of such offices.

At his first meeting with the Minister, the Attorney General, Permanent Secretary and Chief Technical Officer in the Ministry of Legal Affairs, the Chairman drew this difficulty to their attention and recommended that the First Schedule of the Act be amended to include a comprehensive list of all offices and persons in public life. This could be done by regulations under Section 59 of the Act.

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In the absence of such statutory list and as a result of the uncertainty engendered by Section 2(1) for the period ending 31st August, 2008, a number of persons were included on the list that should not have been included, and a number of persons in public life were left out. During the period for the second filing, on further investigation, 17 more persons in public life were registered. These persons were duly notified and invited to submit declarations as required by section 14 of the Act.

The register of persons in public life as at 31st. December, 2008 is shown at Appendix II.

Form 2 of the Third Schedule has been found deficient both in content and design. The layout of information headings does not follow a rational sequence and the space provided for inputting information is inadequate. Recommendation has been made to redesign Form 2 for more efficient use. This may be done by regulations under Section 59 of the Act.

As a consequence of these deficiencies, declarants have devised various formats for presenting their declarations which were not always consistent in quality or content.

The situation in the first filing year has been fraught with peculiar difficulties. Subsection (1) of Section 16 of the Act requires that a person in public life shall, in respect of each income year, file a declaration required under the Act within three months after the end of that income year. An income year is defined as a calendar year. Subsection (3) of the same section also provides that notwithstanding subsection (1), "where on the day the Act came into operation a person is in public life, that person shall complete and file with the Commission a declaration in Form 2 of the Third schedule within three months of that day".

Consequently, two sets of declarations became due for the same income year –

- a) For the period ending on the 31st August, 2008;
- b) For the period ending on the 31st December, 2008.

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Initially, a number of problems were encountered both on the part of the Commission and of the persons in public life. The most common of these are listed below:

- a) Lack of a clear definition of the meaning of "Chief Technical Officer" that led to some persons filing who should not, and uncertainty among others who should have filed and did not.
- b) Chairmen of public institutions, who were unsure of their status as persons in public life.
- c) Absence of any discretion in the Act to extend the period for filings where there were extenuating circumstances that warranted consideration.
- d) Lack of clarity in the design of Form 2 (Declaration Form) that led to the submission of incomplete and sometimes inconsistent information.
- e) Perception of intrusiveness when demands were made for supporting documents, particularly bank statements, trust accounts and property valuations.

Under the Code of Conduct in the Second Schedule, the Commission felt constrained to formally caution, in one case, against potential for conflict of interest. While the Code of Conduct does not specifically address issues of "potential for conflict of interest," the Commission considers any potential for conflict of interest a situation that should be avoided by all persons in public life.

The staff of the Commission provided considerable support to those persons requiring assistance in completing their declarations.

The following Table provides data on declarations filed and examined during the reporting period 2008 - 2009.

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Activities	1 st Filing	2 nd filing
No. of persons in public life registered	119	136
No. of persons who filed	111	111
No. of persons who did not file	8	25
No. of persons who filed late	17	15
No. of declarations certified	107	78
No. of declarations being examined	4	38
No. of declarations filed in error	3	6
No. of queries sent out	78	58
No. of queries answered to	74	51
No. of persons gazette for not filing	8	25
No. of persons gazette for late filing	17	15
No. of cases reported to DPP for not filing	8	25
No. of cases reported to DPP for late filing	17	15

*During the first filing year, there were two filings required. See sub-sections (1) and (3) of section 16 of the Act.

Generally the rate of compliance at 93% for the first filing and 74% for the second filing was high as compared to other jurisdictions, especially in light of the uncertainty about offices falling within the definition of “persons in public life”. However, the quality of declarations needs considerable improvement. Such improvement can be facilitated by redesigning Form 2 to get more clarity in the requirement for financial disclosure, especially as regards supporting documentation. Further public education is also needed to promote more widespread understanding of the statutory powers of the Commission, the obligations of persons in public life as regards financial disclosure and the role that civil society play.

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The Commission recognizes that there were, in some cases, extenuating circumstances that made it impossible for some persons to file by the due date; but since the Act does not allow any discretion in the matter of compliance, action had to be taken with respect to late filers as prescribed in Section 22 of the Act.

In September 2008, the Commission recommended to the Minister for Legal Affairs that the Act should be amended to provide that the Commission may, in any particular case, for good cause, extend the time for filing of a declaration for a period not exceeding 3 months.

The lists of persons in public life who failed to file or filed late declarations were submitted to the Director of Public Prosecutions on 31st August, 2009 and the lists were published in the Official Gazette on 3rd September, 2009. (See Appendix IV)

Further Particulars of Financial Affairs

Under section 15 of the Act the Commission may require a person in public life who has filed a declaration to furnish such further particulars relating to his financial affairs as it considers necessary in order to verify or determine the accuracy of the declaration or for the purpose of section 16 of the Act.

In those instances where it was felt necessary to require such further particulars, the Commission invited declarants to supply this information in writing or to meet with the appropriate staff of the Commission or the Commission itself at its office for this purpose. Responses to these invitations have generally been satisfactory. Most declarants cooperated with dispatch. However, in two cases the further particulars requested have not been provided.

The Commission is authorized to obtain these particulars by the holding of formal inquiries under sections 23 and 24 of the Act. If there continues to be non-compliance the provisions of these sections will be invoked

The Integrity Commission

These sections provide:

“Section 23 (1): The Commission may, in accordance with the provisions of this section and section 24, enquire into the accuracy or fullness of a declaration filed with it if the Commission considers it necessary or expedient to so enquire.

(2) Where the Commission considers it necessary or expedient to enquire into the accuracy or fullness of a declaration filed with it, the Commission may, under subsection (3), advise the President to appoint a Tribunal for that purpose.

(3) The President shall, on the advice of the Commission, appoint a Tribunal comprising three members of the Commission to conduct an inquiry to verify the contents of a declaration or other statement filed with the Commission.

(4) For the purpose of any inquiry under this section a Tribunal may, subject to subsection (5), request in writing that the declarant or any other person who the Tribunal reasonably believes has knowledge of the matters to be inquired into –

- (a) attends before the Tribunal to give such information as it may require to satisfy itself that it is in possession of all material facts; or
- (b) furnish such information or documents as would assist the Tribunal in verifying the declaration.....

Section 24: In conducting an inquiry under section 23, a Tribunal shall have and exercise the powers of a Commission of Inquiry, under the Commissions of Inquiry Act except that –

- a) the proceedings shall be held in private; and
- b) the form of summons for the attendance of witnesses or other persons or production of documents shall be as in Form 1 of the Third Schedule.”

Trust Property

Section 17 of the Act provides: “Where a person in public life holds money or other property in trust for another person, he shall so state in his declaration”.

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One declarant has failed to comply with this provision of the Act on the grounds of professional privilege. The Commission is proceeding with this matter in accordance with section 22 of the Act.

Gifts

Two declarants reported the acceptance of gifts in Form 4 of the Third Schedule.

In one instance, the Commission decided in accordance with section 35(4)(a) of the Act, that some reported gifts were trivial and that the person should be allowed to retain the gifts. A declarant was also required to explain the disposition of a high value gift.

In another instance, the Commission wrote to a person in public life informing that the gift received was not trivial under section 35(4)(b) and requested the individual to inform the Commission of the circumstances in which the gift was given in order that a determination may be made under section 35(5) of the Act.

Reponses in these two cases had not been received at the date of this report.

Possession of Unaccounted Property

The functions of the Commission as regards the possession of unaccounted property are spelt out in section 47 of the Act. Under subsections (2) and (3) the Commission is required to conduct an inquiry into the source of income where 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 and to submit a report to the Director of Public Prosecutions and the President on the conclusion of any such inquiry.

Suspicion under section 47(2) may be based on facts or circumstances from the following sources:

- (i) complaints or allegations in writing against a person in public life;
- (ii) assistance received from the Commissioner of Police;

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- (iii) information contained in the declaration of financial affairs filed in Form 2 with the Commission.

During the examination of the declarations filed in Form 2 in respect of the year 2008 the Commission found it necessary to make further enquires and require some declarants to furnish further particulars relating to their financial affairs under sections 9(b) and 15 of the Act.

This process included

- a) research of the Register of Titles and the consideration for land transfers thereon by or to declarants;
- b) requests in writing for further particulars from and interviews of declarants pursuant to sections 9(b) and 15 of the Act;
- c) examination of certified statements from professionals on the costs/value of buildings/dwelling houses/property of declarants;
- d) correspondence with solicitors of declarants;
- e) consideration of deposits declared to be held in foreign accounts by declarants;
- f) profits from business and
- g) consideration of the age and earnings of the declarants.

Based on analysis of the information available to it, the Commission concluded that its examination of the declarations filed for the first period under Section 16(3) and for the period ending 31st December 2008 raised no suspicion under section 47(2) of the Act that any person in public life or any other person on his behalf was in possession of property or pecuniary resources disproportionate to his legitimate source of income in respect of these two filing periods.

The Commission understood “legitimate source of income” to include capital or income independent of salary and allowances. Such lawful source would, therefore, include:

- (i) salary
- (ii) travelling and subsistence allowance surplus
- (iii) profit from business
- (iv) rent
- (v) professional fees
- (vi) interest income
- (vii) dividends

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- (viii) gifts
- (ix) inheritances
- (x) gambling/lottery
- (xi) borrowings
- (xii) sale of assets

Confidentiality and Security of Declarantions

As a corollary to the Commission's extensive right to receive information concerning the financial affairs of persons in public life, Parliament has imposed the duty on the Commission to maintain the confidentiality of the declarations and information received from such persons. Unauthorised disclosure of any declaration filed with the Commission is unlawful and an offence under the Act punishable by fine and imprisonment. The prosecution of any such person falls within the constitutional functions of the Director of Public Prosecutions and, by virtue of section 56 of the Act, his consent is required for the prosecution of such an offence.

The members of the Commission, the staff and every person performing any function in the service of the Commission are required to treat all declarations, or information relating to such declarations, as secret and confidential and shall not disclose or communicate to any unauthorised person or allow any such person to have access to any such declaration or information. The Commission and staff have all sworn to secrecy in accordance with the Oath of Secrecy in the Fourth Schedule to the Act.

The Commission has taken seriously its confidentiality obligations. It has taken appropriate steps to ensure that the declarations filed with it under the Act do not come into the hands of unauthorised persons within the meaning of the Act. Express terms have been included in the service contract of all employees forbidding disclosure and providing for termination of contract for breach of this term.

Section 48(2) of the Act provides that in its annual report to Parliament the Commission shall not disclose the particulars of any declaration filed with the Commission.

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Parliament has also mandated (under section 53 of the Act) that the Commissioner of Police shall provide or ensure the provision of any assistance to the Commission in the performance of its functions under the Act, including the enforcement of the provisions dealing with the publication of confidential information to unauthorised persons.

On the 6th April 2009 the Commission issued Press Release No.5 of 2009 emphasizing the secrecy and confidentiality of declarations of financial affairs and reassuring all persons in public life in that regard (Appendix V).

Because of the strict duty of confidentiality imposed by the Act the Commission has acquired fireproof safes with combination locks for the safekeeping of all declarations and information relating to such declarations filed with the Commission.

Accountability in Public Procurement

In May and June 2009 the press (The Chronicle on May 29th 2009, pp 1 and 1B, “BIN SCANDAL”, and The Sun, June 1, 2009, pp 1 and 3, “GARBAGE BIN SCANDAL”) carried news and commentaries on the procurement by the Office of the Prime Minister of 2,700 garbage bins at a price of \$749,617.16, a price which it was alleged was \$500,000 in excess of regular market price.

The Prime Minister and Minister for Finance addressed the nation on 2nd June, 2009 on the matter.

The Commission also noted the Report on the Audit of the Public Accounts for 2008 of the Director of Audit on the matter.

The Commission concurs with the conclusion of the Director of Audit that the Public Accounts Committee of the House of Assembly should execute its mandate to inquire into what appears to be violations of Financial (Store) Regulations (SRO 23 of 1980). Regulation 262 requires that Accounting Officers must ensure that proper control and economy are exercised over the purchase of stores, plant, vehicles, equipment etc., that prices paid are fair and reasonable, that the items purchased are received

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in good order and according to specification, and that the Government obtains full value for the public money expended. These Regulations were continued in force under the Finance (Administration) Act, Chapter 63:01 of the Laws of Dominica.

Furthermore, if the Police in the exercise of their powers and duties under the Police Act, Chap. 14:01 suspect any person of having committed any offense they may take the necessary lawful measures in accordance with the Police Act.

Computerization

Assistance has been obtained from the ICT Unit to install appropriate software for the following functions:

1. Purchasing, payments and accounting using the government financial software - Smart Stream.
2. Maintaining a data base for inputting information reported in Declarations made on Form 2.

Both systems have been installed and are undergoing testing. Members of staff have been trained to use them. The Commission will ensure that the security of the systems will be maintained.

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Review of the Integrity in Public Office Act, 2003

The Rules Sub-Committee held 5 meetings to review the Act and to consider what rules were to be made to facilitate the working of the Commission under Section 58 of the Act.

The Commission has prepared a full report to the Minister For Legal Affairs with recommendations for appropriate amendments to be made to the Act. The report is given at Appendix VI.

Library

With the assistance of the Commonwealth Secretariat, as well as the resources of the Commission and the International Law Book Facility, the Commission has established a library of reference books that will assist it in its work.

Both institutions have provided an impressive resource of law books, bulletins and other reference material pertinent to the work of the Commission.

The Library will be available for use by all persons in public life, the media, and all other interested persons consistent with the confidentiality requirements of the Office.

Technical Assistance

The Commission has sought for and obtained approval for technical assistance from the Commonwealth Secretariat to prepare its operating rules and regulations, to establish best practice processes for conducting its operations and to train staff in following these processes.

A suitable candidate has been identified and is expected to take up an assignment at an early date.

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External Relations

The Commission established contact with similar institutions within the Caribbean for networking purposes, including exchange of information and resource sharing.

During the year, personnel from the US Embassy in Bridgetown, Barbados visited the Commission's office and held discussions with the Chairman on areas of mutual interest. Among the matters discussed was a Volunteer Visitors Programme (VVP) that facilitated visits to the United States by professionals involved in various areas of governance. The objective of this programme is to promote good governance internationally by providing orientation in US legislation, processes and procedures for maintaining transparency, integrity and ethical standards in public institutions through attachments to the Office of the Inspector-General, Government Accountability Office and Office of Management and Budget. The programme also provides training in forensic evaluation of financial accounts and reporting. The US meets the cost of per diem and hotel accommodation, while the guest country is expected to meet the cost of air fare.

The Commission has since received and accepted an offer of attachments for two persons. The Commission has nominated the Chairman and the Research Assistant to participate.

Public Relations

The Commission has issued press releases and notices in both print and electronic media on matters relating to its work. Press releases issued are shown at Appendix V.

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Website

The Information, Communication and Technology (ICT) Unit has been approached to provide assistance for establishing a website for the purpose of disseminating public information.

Public Education

The Commission conducted an education programme during the period 7th to 24th November, 2008. The programme was directed at sensitizing persons in public life about their obligations under the Integrity in Public Office Act 2003 as well as the process for filing declarations as required by Section 14 of the Act.

A total of 110 persons attended the education programme, including members of the House of Assembly, senior government officials, gazetted police officers and chairmen and managers of public institutions. The Chairman of the Commission also gave a speech to members of the Rotary Club on June 10, 2009 at the Fort Young Hotel on the functions of the Commission

The Commission has developed a public education programme aimed at informing the public on the following matters:

1. Integrity and probity in public life and the purpose of integrity legislation.
2. Parliament's reason for enacting integrity legislation.
3. Persons in public life, objects and reasons of integrity legislation and size and composition of integrity commissions (comparative study).
4. The functions of oversight institutions under the Constitution and other legislation
5. The powers, functions/duties of the Integrity Commission.
6. Public, "democratic oversight", the mass media.
7. Duty to observe the rule of natural justice in the Commission's decision-making.

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Audit of Accounts

The accounts of the Commission for the period under review were being managed/administered by the Accounting Officer of the Ministry for Legal Affairs on the government accounting system. These accounts have not yet been audited by the Director of Audit.

With effect from 1st July, 2009 the Commission assumed direct responsibility in this matter. The Secretary was appointed Accounting Officer by the Minister for Finance under the Finance (Administration) Act, Chapter 63:01 of the Laws of Dominica.

CONCLUSION

Public Perceptions and Expectations

From time to time there have been comments and discussions in the media implying violations of the Integrity in Public Office Act 2003 by certain persons in public life. Public comments and discussion of public issues should always be welcome in a healthy democracy.

As regards discussions and comments relating to the application of the Act, the Commission is conscious of the vital role it must play in ensuring that those elected or appointed to public office observe and maintain the very highest standard of behaviour in the conduct of the public affairs to which they have been entrusted and which society expects. The Commission welcomes informed and responsible public discussion on matters falling within the preview of the Integrity in Public Office Act. From time to time, it has examined press revelations with a view to making such inquires as it considers necessary consistent with the provisions of the Act and other applicable laws.

The Commission is aware that concern has sometimes been expressed about its failure to take action on allegations made about persons in public life. The Commission has, by necessity, to function within the confines imposed by the law. Under the Integrity in Public Office Act the Commission can only act on the basis of a specific complaint or allegation against a person in public life in writing or upon information derived from its examination of declarations filed with it by persons in public life. During the period under review it received two complaints

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which were dealt with expeditiously as is indicated in this report. Questions relating to declarations are being dealt with in the manner prescribed by the Act.

The effective enforcement of the provisions of the Act and the maintenance of a culture of integrity and probity in public life also require that the public play its part by refusing to tolerate any but the highest standards of behaviour by public officials, bearing in mind that, by definition, matters of ethics cannot be left to the law alone.

The provision of section 32(2) should not deter persons from making complaints in good faith supported by evidence as required by the Act.

Amendments to the First and Third Schedules (FORM 2)

The Commission has highlighted the grave difficulties encountered in determining with precision the offices and positions of persons in public life set out in the First Schedule to the Act due to the meanings given to “Chief Technical Officer” and “public institution” in section 2 of the Act.

The Commission again urges the Minister for Legal Affairs to amend the First Schedule to provide a detailed listing of all offices and positions and to delete the category of “Chief Technical Officer” therefrom. This may be done by regulations made under section 59(b) of the Act subject to negative resolution of the House of Assembly.

The recommendations with respect to FORM 2 in the Third Schedule may also be pursued in this manner.

Other Oversight Institutions

With the coming into effect of the Act, there was heightened public expectation that the Commission would quickly uncover and prosecute cases of irregularity and corruption and that it would set about immediately to investigate all such cases whether or not the content or currency of such allegations fell within the ambit of its authority under the IPO Act 2003.

It is important, therefore, that the Commission emphasize that there are other oversight authorities and institutions established by the Constitution

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and ordinary laws and vested with appropriate powers and duties which have not been superseded by the Act. These include the House of Assembly (the Committee of Supply and the Public Accounts Committee), the Office of the Director of Audit, the Public and Police Services Commissions, the Office of the Director of Public Prosecutions, the Police and the Courts.

The Integrity Commission has been assigned a critical role in overseeing the ethical behavior of persons in public life, but it does not replace any other of the established institutions as watchdogs over the actions and behavior of public officials. Ethical behavior is perhaps the most elusive of the characteristics of human actions. The general support of the citizenry and citizen organizations, particularly the press is vital to the effective realization of the objects and purposes of the Act.

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ACKNOWLEDGEMENTS

The Integrity Commission would like to acknowledge and to extend its gratitude to the following organizations:

The Dominica High Commission in London particularly the Acting High Commissioner and Ms. Janet Charles the First Secretary for their unwavering support especially in the procurement of books for the Commission's library.

The International Law Book Facility (ILBF) in London for their tremendous contribution by donating to the Commission needed books and other publications to its library which will be made available to all persons in public life, other members of the public, employees and the media.

The Commonwealth Secretariat for their support and assistance in the establishment of the library.

The Information and Communication Technology Unit (ICT) of the Ministry of Housing, Lands and Telecommunications for assisting the Commission in the construction of its website and the development of software and to Mrs. Paula Jean Jaques, Executive Officer/Accounts in that Ministry for assisting in the training of the Commission's staff in smartstream.

The Commission places on record its appreciation for the support given by the Ministry of Legal Affairs in maintaining its financial operations and in providing clerical assistance during its inception period.

The Commission also acknowledges the invaluable contribution of its small but hard working staff: Mrs. Alex F. Phillip, Secretary, Mrs. Palestrina Rolle-George, Research Assistant, Miss Alicia Adrien, Temporary Junior Clerk and Mr. Johnathan Commodore, Temporary Messenger. The services of Mrs. Maureen Peter, stenotypist, Ms. Elizabeth Rodney, cleaner and C&S Services Limited, security are also gratefully acknowledged

The Integrity Commission

.....
JULIAN N. JOHNSON
CHAIRMAN

.....
ALICK LAZARE
MEMBER

.....
WENDELL LAWRENCE
MEMBER

.....
PATRICIA INGLIS
MEMBER

.....
GEORGE E. WILLIAMS
MEMBER

.....
GERALD SMITH
MEMBER

.....
Sir BRIAN ALLEYNE
MEMBER

The Integrity Commission

APPENDIX I

PROFESSIONAL PROFILES OF MEMBERS

JULIAN N. JOHNSON:

Julian N. Johnson, Barrister-at-Law, Solicitor, Mediator of the Eastern Caribbean Supreme Court and Notary Public, has held acting appointments in the office of Registrar General of the Supreme Court in Dominica and in the British Virgin Islands. He was called to the Bar in Dominica and Tortola, British Virgin Islands in 1988. He entered the public service in September 1964, was appointed a Permanent Secretary in 1979 and held the offices of Chief Personnel Officer and of Secretary to the Cabinet and Head of the Public Service for 13 years before his retirement in August 2004. He has also served as a part-time tutor in Political Science in the Department of Government at the University of the West Indies on all three campuses and in Constitutional and Administrative Law at the School of Continuing Education, U.W.I. Dominica in 1990-1991.

His forty years experience in public service spans a spectrum of diplomacy (attending with Prime Ministers and Ministers at regional and international meetings and conferences in the major bilateral and multilateral fora) public management, teaching and human resource development, consumer protection supplies control and disaster management, legal consultancy and research in constitutional and administrative law, including the jurisdiction and functions of the major oversight institutions of the Constitution. He served as Dominica's representative on the Executive Board of UNESCO from April 2004 to October 2005.

He holds a Bachelor of Science degree in Economics (Hons) UWI, Jamaica, (1970), a Certificate in Multi-Lateral Diplomacy from the United Nations Institute for Training Research (UNITAR), New York, Geneva and Vienna, (1980), a Bachelor of Laws (LLB) U.W.I, Barbados, (1985) and a Certificate in Legal Education from Hugh Wooding Law School, Trinidad & Tobago(1987).

In November 2002 he was awarded the Sisserou Award of Honour for meritorious public service to the Commonwealth of Dominica.

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ALICK LAZARE

Alick Lazare has more than fifty years experience in public sector management in the Caribbean. He has held senior positions in the service of the Government of Dominica, including that of Financial Secretary and Fiscal Advisor, and has, since retirement in 1994, served as a consultant in public finance and management within the Caribbean.

He is a senior member of the civil service fraternity in the OECS with considerable experience concerning how economic management works in the region. As a consultant and advisor he has provided support to a number of regional and international institutions (including the Caribbean Development Bank, the Eastern Caribbean Central Bank, The World Bank, International Monetary Fund, UNDP, CIDA and USAID) in various aspects of public sector reform and economic management.

A major part of his work in the region supported reforms in public sector financial management policies and legislation, with particular emphasis on transparency and accountability in the transacting of public sector business. His work in reforming public finance legislation has been widely recognized.

In November, 1981 he was awarded the Sisserou Award of Honour for meritorious public service to the Commonwealth of Dominica.

WENDELL ALPHONSUS LAWRENCE

Wendell Alphonsus Lawrence was born at Pottersville, Dominica, in 1936. He was a 1954 Island Scholar and holds a Bachelor's degree in Civil Engineering (1959) from McGill University and a Diploma in Public Administration (1964) from the University of the West Indies. He served as a civil engineer in the Public Works Department from 1959 resigning as its Chief Technical Officer in 1975. He then went to the Caribbean Development Bank in Barbados where he worked from 1975 retiring as its Deputy Director, Productive Sector Division in 1998. He

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returned to Dominica that same year and became very involved in Church activity and various projects. He was made a member of the Integrity Commission in May 2009 for a three-year period. He was awarded the Order of the British Empire (OBE) in 1973.

MRS. PATRICIA INGLIS

Mrs. Patricia Inglis established the first French Bank in the English Speaking Caribbean in 1978 and served as the General Manager from 1978 to 1998. Besides her wide experience in Banking she has served on numerous boards and institutions in the Commonwealth of Dominica. She also served as President of the Dominica Association of Industry and Commerce for a period of eight years.

She was appointed Honorary French Consul to the Commonwealth of Dominica in 1997 and served in that category for ten years.

Mrs. Inglis currently serves as a Commissioner in the Integrity Commission, Commonwealth of Dominica. With over thirty years of experience at a senior level Mrs. Inglis provides services to clients in the area of commercial banking operations, management services and other operational requirements.

GEORGE E WILLIAMS

George E Williams was born in Laplaine on 25 April 1934.

Graduated in economics, London University, 1962

1962-63: Assistant Lecturer, North-Western Polytechnic, London

1963-69: Economist, Commonwealth Secretariat, London

1969-79: Executive Secretary, Regional Development Agency

Executive Secretary, East Caribbean Common Market

1979-82: United Nations Economic Adviser in Sierra Leone, Liberia, Guinea in West Africa

1982-84: Senior Trade Analyst, United Nations Conference on Trade and Development (UNCTAD) Geneva, Switzerland

1984-95: Unctad Inter-regional Adviser

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1996-2002: Dominica High Commissioner to UK
Ambassador to France, Spain, Germany, Netherlands, Sweden, Slovenia
Permanent Representative to UNESCO
Permanent Delegate to WTO

GERALD SMITH

Gerald Smith was born on January 24, 1940 and is practicing accountant. He obtained training in this field from his studies at British technical colleges from 1971 to 1976 and from his employment in the Dominica civil service from 1961 to 1986 when he retired as an accountant and practiced accounting privately from 1986 to present. He is a member of the Institute of Chartered Accountants of the Eastern Caribbean (D/ca Branch) from 2007. He served as a Member on the Income Tax Appeal Commission for five years (1995 to 200). He is married with one child.

SIR BRIAN ALLEYNE

Sir Brian Alleyne was admitted to the English Bar at Lincoln's Inn, London, on 10th November 1966, and to the Dominica Bar in January 1967. He was elevated to the rank of Senior Counsel in March 1991. He served as a Senator and Attorney General of Dominica during the term of the interim government from June 1979 to January 1980, and again from 1985 to 1990.

Sir Brian practiced as a barrister at law in Dominica from 1966 until his elevation to the bench of the Eastern Caribbean Supreme Court in July 1996. His practice covered areas of civil, criminal, constitutional and human rights law, and he was also a member of various public and private sector boards. He frequently contributed to public discourse through newspaper articles and speeches, panel discussions and public debates.

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He was the Member of Parliament for the Mahaut constituency from June 1980 until June 1996, when he resigned to take up his judicial appointment. He was also very active in Church ministry, particularly through the Marriage and

Engaged Encounter movements for many years until his departure from Dominica in July 1996. While in government he held several ministerial appointments and represented Dominica at many international conferences, including the General Assemblies of the United Nations and the Organisation of American States.

He was a member of the Executive Committee of the Commonwealth Parliamentary Association for the Caribbean, Americas and Atlantic Region. He served as Leader of the Opposition in the Parliament of Dominica, and was a member of the Commonwealth Observer Group at the first multi-party elections in 1995 in Tanzania. He was the Political Leader of the Dominica Freedom Party in 1995/1996.

Sir Brian served as a High Court Judge in Grenada from 1996 to 2002, and in St. Vincent and the Grenadines until August 2003, when he was appointed to the Court of Appeal. He served as acting Chief Justice of the Eastern Caribbean Supreme Court from March 2005 until his retirement from the bench in April 2008, at which time he returned home to Dominica.

While at the Bar Sir Brian was active in the local Bar Association as well as in the Organisation of Commonwealth Caribbean Bar Associations. He was also a director of the Caribbean Human Rights and Legal Aid Company, and spent much of his professional time on *pro bono* work. He is married with three adult children.

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APPENDIX II

REGISTER OF PERSONS IN PUBLIC LIFE AT 31ST. DECEMBER, 2008

LIST OF PERSONS WHO ARE TO FILE STATUTORY DECLARATIONS

Speaker of the House of Assembly

Boyd-Knights, Alix Speaker, House of Assembly

Ministers of Government

Skerrit, Roosevelt Prime Minister
Baron-Royer, Francine Attorney General
Douglas, Ian Minister for Tourism and Legal Affairs
Henderson, Vince Minister for Foreign Affairs
Walter, Matthew Minister for Agriculture
Fabien, John Minister for Health
Graneau, Kelly Minister for Carib Affairs
Austrie, Reginald Minister for Communications and Housing
Blackmore, Rayburn Minister for Public Works
Bannis- Roberts, Loreen Minister for Community Development
Timothy, Julius Minister for Economic Development
McIntyre, Colin Minister for Trade
Savarin, Charles Minister for Public Utilities
Williams, Sonia Minister for Education

Parliamentary Secretaries

Baron, Urban Parliamentary Secretary
Pinard, Ian Parliamentary Secretary
St. Jean, Petter Parliamentary Secretary

Members of the House of Assembly

George, Ambrose Member of House of Assembly
Williams, Earl Member of House of Assembly
James, Edison Member of House of Assembly
Green, Ronald Member of House of Assembly
Charles, Norris Member of House of Assembly
Carbon, Peter Member of House of Assembly

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Prevost, Norris	Member of House of Assembly
Browne, Abraham	Member of House of Assembly
Toulon, Ronald	Member of House of Assembly
Shillingford, Gloria	Senator
Sanford, Claudius	Senator
Esprit, Nicholls	Senator
Nicholas, Marcel	Senator
Williams, Sabina Anna	Senator
<i>Permanent Secretaries</i>	
Gregoire, Felix	Secretary to Cabinet
Edwards, Rosemund	Financial Secretary
Edwards, Irma	Chief Personnel Officer
Bruno, Nicholas	Permananet Secretary, Public Works
Celaire, Rhoda	Permananet Secretary, Communications and Housing
Bellot, Claudia	Permananet Secretary, Agriculture
Thomas, Esther	Permananet Secretary, Tourism and Legal Affairs
Lafond, Jennifer	Permananet Secretary, Education
Letang, Davis	Permananet Secretary, Health
Philbert, Vincent	Permananet Secretary, Public Utilities
Ferrol, Steve	Permananet Secretary, Trade
Allport, Ruth	Permananet Secretary, Community Development
<i>Gazetted Police Officers</i>	
Lestrade, Mathias	Commissioner of Police
Jno.Baptiste, Hobbes	Deputy Commissioner of Police
Carrette, Cyril	Superintendent of Police
George, Nicholas	Superintendent of Police
Severin, Duke	Superintendent of Police
Albert, Patrickson	Asst. Superintendent of Police
Alexander, Yvonne	Asst. Superintendent of Police
Carbon, Daniel	Asst. Superintendent of Police
Irish, Ainsworth	Asst. Superintendent of Police
Andrew, David	Asst. Superintendent of Police

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Defoe, Antoine	Asst. Superintendent of Police
<i>Superintendent of Prisons</i>	
Charter, Algernon	Superintendent of Prisons
<i>Assistant Superintendent of Prisons</i>	
Blanc, Dennis	Asst. Superintendent of Prisons
<i>Chief Fire Officer</i>	
Dupuis, Josiah	Chief Fire officer
<i>Deputy Chief Fire Officer</i>	
Eusebe, Jones	Deputy Chief Fire Officer
<i>Chief Technical Officer</i>	
Blackmore, Donille	President's Secretary
Phillip, Alex	Clerk, House of Assembly
Williams, Merina	Chief Elections Officer
Ferrol, Eleanor	Secretary, Public Service Commission
Allport, Richard	Director of Agriculture
Burton, Minchinton	Director of Forestry
Bynoe, Brian Vernon	Director of Surveys
Blackmore, Lucien	Chief Technical Officer, Housing
Rolle, Kelvin	Chief Physical Planner
Johnson, Kendall	Chief Technical Officer, Public Works
Browne, Rosie	Director, Women's Bureau
Bannis, Jacinta	Director, Drug Prevention Unit
Benjamin, Griffin	Director, Primary Health Care
Henderson, Edward	Chief Technical Officer, Tourism
Magloire-Akpa, Sonia	Director, Political Affairs
Douglas, Eisenhower	Director of Trade
Hyacinth, Steve	Chief Education Officer
Magloire, Andrew	Chief Fisheries Officer
Scotland-Andrew, Mayna	Chief Protocol Officer
Fontaine, John	Local Government Commissioner
Leblanc, Mathew	Labour Commissioner
Lawrence, Raymond	Chief Cultural Officer
Laville-Williams, Valencia	Hospital Service Coordinator
Xavier, Rupert Boniface	Chief Environmental Health Officer
Lewis, Ann	Administrative Officer

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Powell, Marcella	Administrative Officer
Corbette, Josephine	Administrative Officer
Joseph, Celia	Administrative Officer
Burton, Corinthia	Administrative Officer
Roberts, Sybil	Assistant Secretary
Dinnard, Jacqueline	Assistant Secretary
Jno. Baptiste, Louisa	Assistant Secretary
Julien, Magdalene	Assistant Secretary
<i>Advisor or Assistant to the Prime Minister and Other Ministers</i>	
Maynard, Charles	Advisor, CARICOM and OECS Support Unit
Fagan, Mandra	Special Assistant to the Prime Minister
<i>Chairmen of Public Institutions</i>	
Munroe, Ian	Chairman, Dominica Broadcasting Service
Grell, Gerald	Chairman, Dominica State College
Sylvester, Ambrose	Chairman, AID Bank
*Lafond, Jennifer	Chairman, Student Loans Advisory Committee
Joseph, Hubert (Micky)	Chairman, Social Security
Brumant, Heskeith	Chairman, Investment Committee, DSS
Thomas, Felix	Chairman, Housing Loans Board
*Letang, Davis	Chairman, Solid Waste Management Board
Bardouille, Larry	Chairman, DOWASCO
Aird, Gerry	Chairman, Air and Sea Ports Authority
Tavenier, Gloria	Chairman, Public Works Corporation
Nassief, Yvor	Chairman, Invest Dominica
George, Margaret	Chairman, DEXIA
Burnette-Biscombe, Anthony	Chairman, Bureau of Standards
*Jno. Baptiste, Hobbes	Chairman, Transport Board
Leblanc, Anthony	Chairman, Board of Engineering
Burton, Gerald	Chairman, Electoral Commission
Duncan, Carl	Chairman, Independent Regulatory Commission
Fevrier, Willie	Chairman, Education Trust Fund

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Joseph, Francis	Chairman, Council of Early Childhood Education
*Philbert, Vincent	Chairman, Airport Development Committee
Thomas, Errol	Chairman, Advisory Council on Misuse of Drugs
Lawrence, Angela	Chairman, General Nursing Council
Lambert, Eleanor	Chairman, Food and Nutrition Council
Thomas, Eustace	Chairman, Mental Health Review Board
Shillingford, Dorian	Chairman, Medical Board
Johnson, Julian N	Chairman, Integrity Commission
Dublin, Damian	Chairman, Public Service Commission
Jno. Charles, Vanoulst	Chairman, Police service Commission
John, Clem	Chairman, Prison Visiting Justices Committee
Prevost, Joan	Chairman, Public service Board of Appeal
Shillingford-Tonge, Juliette	Chairman, Development Planning Corporation
Leevy, Tara	Chairman, Hospital and Health Care Facilities
*Bardouille, Benoit	Chairman, Discover Dominica Authority
*Hobbes, Jno.Baptiste	Chairman, Government Band Committee
*Hon. Austrie, Reginald	Chairman, Advisory Committee on the Prerogative of Mercy
*Burton, Gerald	Chairman, Customs Appeal Commission
<i>General Manager and Managing Directors of Public Institutions</i>	
Warrington, Mariette	General Manager, Dominica Broadcasting Service
Scotland, Anthony	General Manager, Solid Waste Management
Etinoffe, Bernard	General Manager, DOWASCO
Bardouille, Benoit	General Manager, Air and Sea Ports Authority
Daley, Julius	General Manager, Public Works Corporation

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Thomas, Gregoire	General Manager, DEXIA
Thomas, Kingsley	General Manager, AID Bank
JeanJacques-Thomas, Janice	Director, Dominica Social Security
Letang, Rhoda	Executive Director, Invest Dominica
Piper, Colin	Director, Invest Dominica
John, Steve	Director, Bureau of Standards
<i>Parliamentary Commissioner</i> (Vacant)	

*Persons holding official positions who are also chairmen.

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APPENDIX III

COMMISSION'S DECISIONS ON COMPLAINTS

COMPLAINT #1/2008/2009

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

BACKGROUND

On the 2nd September 2008 the Integrity Commission received a letter from Mr. Lennox Linton in which he complained of breaches of the Code of Conduct specified in the Second Schedule to the Integrity in Public Office Act, 2003, No. 6 of 2003 (hereinafter referred to as the IPO Act, 2003) by Hon. Roosevelt Skerrit, Prime Minister of the Commonwealth of Dominica.

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

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Commission was empowered to deal with was communicated to Mr. Linton. He as asked to inform the Commission by 10th November 2008 as to whether he wished to make a written submission in response or attend an oral hearing on the matter.

By letter dated 10th November 2008 he indicated his wish for an oral hearing and by letter dated 17th November 2008 the Commission notified him that the 28th November 2008 was set for the hearing. This date was postponed, at his request, to 11th December 2008 which date was also postponed by the Commission for operational reasons. A new date of 30th December 2008 was mutually agreed to.

THE COMPLAINT

In his letter dated 2nd September 2008 Mr. Linton made the following complaint:

- (i) "That the Integrity in Public Office Act has been breached by Hon. Roosevelt Skerrit by a pattern of ministerial conduct spanning more than four years and which has fallen short of the sworn ministerial obligation to the good and just governance of the Commonwealth of Dominica".
- (ii) "That in his failure to uphold and defend the public interest while facilitating the private investment agenda of Dominica's Ambassador to China, David King Hsiu, Prime Minister Roosevelt Skerrit has breached sections (d), (e), (g) and (i) of the Code of Conduct."
- (iii) "That specifically, Prime Minister Skerrit appears to have:

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1. Allowed the interest of a personal relationship to conflict with his public duties and may have been improperly influenced in that process.
2. Used his official influence as Prime Minister of Dominica in support of a scheme that privately benefited a personal interest.
3. Allowed the use of public property (passports and government concessions) for a purpose other than officially approved purposes.
4. Aided and abetted an advisor to Government serving at Ambassadorial level to breach the Code of Conduct.".....

In his letter he referred to conduct and events occurring in the years 2004, 2005 and 2006.

He also indicated the nature of the evidence he proposed to produce in the following terms:

"Sworn affidavit with all supporting documents filed on behalf of Prime Minister Roosevelt Skerrit in the High Court of the British Virgin Islands in June 2008. The supporting documents include:

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- Exchange of correspondence between Roosevelt Skerrit and Felix Chen
- Exchange of correspondence between Roosevelt Skerrit and Kieron Pinard-Byrne

- Correspondence from Roosevelt Skerrit to David Hsiu

- Correspondence from David Hsiu to Roosevelt Skerrit

- Rich Victory Share Transfer Instrument

- Media Interview with Felix Chen

- Media interview with Anthony Astaphan – Counsel to the Prime Minister

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

EXAMINATION OF COMPLAINT: PROVISIONAL VIEW

Under section 32(1) of the Integrity in Public Office Act, 2003, the Commission is required to examine the complaint and may reject it if the Commission is of the opinion:

- (a) that the complaint is frivolous; or

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(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 Mr. Linton, dated the 24th of October 2008, the text of which is set out hereunder:

“Mr. Lennox Linton

P. O. Box 2052

Roseau

DOMINICA

Dear Mr. Linton,

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

I write further to my letter dated 12th September 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 (d), (e), (g) and (i) of the Code of Conduct (specified in the Second Schedule to the Act) took place

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during a period spanning the years 2004, 2005 and 2006 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.

Please let me have your reply by the 10th day of November 2008 as to whether you shall make a written submission or whether you wish an oral hearing so that an appropriate date may be set.

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, Mr. Linton made the following submissions:

1. "In stating the case for the breach of the Code by Mr. Skerrit as a matter of his relationship with Ambassador Hsiu, I did cite a series of events and correspondence that are time based. However, my view is that notwithstanding the necessity of those dates and those times to establish the pattern of ministerial conduct against which I am complaining, Mr. Skerrit, as Prime Minister of the country, breached the Code, was in breach of the Code before the Act came into operation and remained in breach of the code after the Act

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- came into operation. That is my view and that is the reason why I brought this complaint”.
2. [Prime Minister Skerrit] “remained in breach because notwithstanding public disclosure of the nature of the relationship and things that he himself found wrong with the arrangement, Prime Minister Skerrit is yet to make any public statement on the matter to the people of Dominica”.
 3. “The resignation of Ambassador Hsiu took place after the Commission was in effect but we do not know and the public has not been told why exactly Ambassador Hsiu has resigned. We have just heard a statement from the Attorney General at a recent press conference that he is no longer Ambassador to China. My view is that there is much in that particular issue that requires investigation..... There was no investigation into any of these matters; there was no attempt to indicate that anything would be different or be done differently or any behaviour would have changed. I humbly submit to the Commission that this is a matter that remained alive after the Commission came into effect and therefore it is a matter that is properly before the Commission”.
 4. “I do not accept that matters which may have emerged in the governance of Dominica which could have been inimical to the public service or in breach of the Code of Conduct between June 15, 2003 and 1st September 2008 cannot properly be brought before the Commission... I have a grave difficulty as a citizen and as an individual accepting this. I think all of these matters especially where they relate to Parliamentarians who had responsibility for passing the law and,

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therefore, had knowledge of its contents, therefore had judicial notice of its existence, should not be allowed to benefit from the excuse that they themselves set up, that the Act was asleep.”

5. “I am also concerned that when you put legislation to sleep or you delay their implementation there has to be good reason for that to happen. We the Members of the public have heard absolutely no good reason for the delay. It seemed inordinate, it seemed unreasonable, it seemed arbitrary and there was a point then in the public discussion when you just simply did not know and it took more than five years for this to come into operation. I hope the Members of the Commission can understand and appreciate the difficulty that I have, and I am sure a lot of other people outside there have is, how do we exclude that five years and more period between the 15th June 2003 and 1st September 2008 from the purview of the Commission?”

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

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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.

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- (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.

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(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 (d), (e), (g) and (i) 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:

- (d) allow private interests to conflict with his public duties or improperly influence his conduct in the performance of his public duties; allow the pursuit of his private interest to interfere with the proper discharge of his public duties; and any conflict between his private interests and his public duties shall be reserved in favour of his public duties;
- (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;.....
- (g) use or allow the use of public property (including money), equipment, supplies or services for any purpose other than for officially approved

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purposes;.....
.....

- (i) in the course of the performance of his official duties, aid, abet, counsel, procure or command any other person to commit a breach of this Code of Conduct.”

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), Prime Minister Roosevelt Skerrit 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 Prime Minister Roosevelt Skerrit 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 referred to earlier, 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.

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

Mr. Linton'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 the 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 in the complaint and at the hearing 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 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 Mr. Linton raise the fundamental question of the effect of the date of the commencement of the IPO Act, 2003. Though the

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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

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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 “asleep”, as Mr. Linton correctly stated it, until the 1st day of September 2008 – the date when it was awakened and entered into force.

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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”.

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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, 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)

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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

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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).

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The State, therefore, 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 meetings on the 12th and 18th February 2009 the Commission further considered Mr. Linton's submissions and concluded that he 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 Prime Minister Roosevelt Skerrit 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 apply 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 Integrity Commission

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 pattern of ministerial conduct” by which Prime Minister Roosevelt Skerrit is alleged to have breached paragraphs (d), (e), (g) and (i) of Rule 1 of the Code of Conduct, spanned the period of four years 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 Prime Minister Roosevelt Skerrit, or 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 Mr. Lennox Linton made in his letter to the Commission dated the 2nd day of September 2008 does not pertain to a matter that the Commission is empowered to deal with under the

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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.

The complainant made forceful submissions regarding some moral and ethical aspects of the law in relation to his complaint. He urged that attention should focus not only on an examination of the strict provisions of the law but to take these wider aspects into consideration.

The Commission, nevertheless, is constrained to consider and apply the provisions of the Integrity in Public Office Act, 2003 as enacted by our sovereign Parliament.

Dated this 19th day of FEBRUARY, 2009

(Sgd.) J.N. Johnson

.....
JULIAN N. JOHNSON
CHAIRMAN

The Integrity Commission

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

(Sgd.) P. Inglis
.....
PATRICIA INGLIS
MEMBER

(Sgd.) G. Smith
.....
GERALD SMITH
MEMBER

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

(Sgd.) G.E. Williams
.....
GEORGE E. WILLIAMS
MEMBER

(Sgd.) B. Alleyne
.....
Sir BRIAN ALLEYNE
MEMBER

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Appendix III Cont'd

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.

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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:

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“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:

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- 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.

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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

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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

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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

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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 Commission...

"... 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?....

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"..... 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

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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

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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

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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...."

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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 –
- e) the particulars of the breach;
 - f) the particulars, as far as they are known, of the person against whom the complaint is made;
 - g) the nature of the evidence that the complainant proposes to produce in respect of the complainant;
 - h) such other particulars as may be prescribed in Regulations by the Minister” (No such Regulations have been made by the Minister for Legal Affairs.)

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- 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 –
- (c) the complaint is frivolous; or
 - (d) 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.

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(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:

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- (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.

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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

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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

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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.

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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:

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“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

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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 canon 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

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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.).

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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.

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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:

- v. 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;
- vi. 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;
- vii. that having rejected the complaint, the person against whom the complaint was lodged has the right to institute legal proceedings against

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the complainant in accordance with the provisions of section 32(2) of the Act; and

- viii. 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

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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

.....
PATRICIA INGLIS
MEMBER

(Sgd.) G.E. Williams

.....
GEORGE E. WILLIAMS
MEMBER

(Sgd.) G. Smith

.....
GERALD SMITH
MEMBER

(Sgd.) B. Alleyne

.....
Sir BRIAN ALLEYNE
MEMBER

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APPENDIX IV

INTEGRITY COMMISSION

NOTICE

INTEGRITY IN PUBLIC OFFICE ACT 2003, NO. 6 OF 2003: FAILURE TO FILE A DECLARATION BY 1st DECEMBER, 2008.

In keeping with the provisions of Section 22 of the INTEGRITY IN PUBLIC OFFICE Act 2003, it is hereby notified that the following persons in public life have failed to file declarations under the Act, for the period ending 1st December 2008. Under section 22 of the Act a report of that fact has been sent to the Director of Public Prosecutions for further action and the names of these persons in public life are published hereunder:

NAME

OFFICE OR POSITION

Hon. Earl Williams

Member House of Assembly

Andrew Magloire

Chief Fisheries Officer

Mayna Scotland-Andrew

Chief Protocol Officer

Dr. Griffin Benjamin

Director, Primary Health Care

Eleanor Lambert

Chairperson, Food & Nutrition Council

The Integrity Commission

Tara Leevy	Chairman , Hospital and health Care Facilities
Carl Duncan	Chairman, Independent Regulatory Commission
Dr. Gerald Grell	Chairman, Dominica State College

The Integrity Commission

APPENDIX IV Cont'd

INTEGRITY IN PUBLIC OFFICE ACT 2003, NO. 6 OF 2003: LATE FILING OF DECLARATIONS.

It is hereby notified that the following persons in public life have filed declarations after the time prescribed by Section 16 (3) of the Integrity in Public Office Act 2003 for the period ending 1st December 2008. Under section 22 of the Act a report of that fact has been sent to the Director of Public Prosecutions for further action and the names of these persons in public life are published hereunder:

<u>NAME</u>	<u>OFFICE OR POSITION</u>
Hubert N. Joseph A.K.A Mickey Joseph	Chairman, Dominica Social Security
Eisenhower Douglas	Director of Trade
Irma Edwards	Chief Personnel Officer
Steve John	General Manager, Bureau of Standards
Rhoda Joseph Letang	Director, Invest Dominica Authority
Esther Thomas	Permanent Secretary, Ministry of Tourism and Legal Affairs
Denis Blanc	Assistant Superintendent, Prison

The Integrity Commission

Edward Henderson	Chief Technical Officer Ministry of Tourism and Legal Affairs
Francis Joseph	Chairman, Council of Early Childhood Education
Heskeith Brumant	Chairman, D.S.S Investment Committee
Martin Anthony Scotland	Chairman, Dominica Solid Waste Management
Clem John	Chairman, Prison Visiting Justices Committee
Hon. Claudius Sanford Msgr. Eustace Thomas	Senator, House of Assembly Chairman, Mental Health Review Board
Dr. Damien Dublin	Chairman, Public Service Commission
Janice JeanJacques	Director, Dominica Social Security
Angela Lawrence	Chairperson, General Nursing Council

The Integrity Commission

APPENDIX IV Cont'd

INTEGRITY IN PUBLIC OFFICE ACT 2003, NO. 6 OF 2003: FAILURE TO FILE A DECLARATION BY 31st MARCH 2009

In keeping with the provisions of Section 22 of the INTEGRITY IN PUBLIC OFFICE ACT 2003, it is hereby notified that the following persons in public life have failed to file declarations under the Act for the period ending 31st December 2008 by 31st March 2009. Under section 22 of the Act a report of that fact has been sent to the Director of Public Prosecutions for further action and the names of these persons in public life are published hereunder:

<u>NAME</u>	<u>OFFICE OR POSITION</u>
Hon. Earl Williams	Member, House of Assembly
Andrew Magloire	Chief Fisheries Officer
Mayna Scotland-Andrew	Chief Protocol Officer
Dr. Griffin Benjamin	Director, Primary Health Care
Eleanor Lambert	Chairperson, Food & Nutrition Council
Tara Leevy	Chairman, Hospital and Health Care Facilities
Carl Duncan	Chairman, Independent Regulatory Commission
Juliette Shillingford Tonge	Chairman, Development Planning Corporation

The Integrity Commission

Daniel Carbon	Assistant Superintendent of Police
Esther Thomas	Permanent Secretary, Ministry of Tourism and Legal Affairs
Rhoda Celaire	Permanent Secretary, Ministry of Housing Lands, and Telecommunications
Jacinta Bannis	Director, Drug Prevention Unit
Dr. Gerald Grell	Chairman, Dominica State College
Rhoda Joseph Letang	Executive Director, Invest Dominica Authority
Kingsley Thomas	General Manager, AID Bank
Marcella Powell	Senior Administrative Officer
Ann Lewis	Senior Administrative Officer
Josephine Corbette	Senior Administrative Officer
Celia Joseph	Senior Administrative Officer
Corinthia Burton	Administrative Officer
Sybil Roberts	Assistant Secretary Ag.
Jacqueline Dinnard	Assistant Secretary Ag.
Louisa Jno. Baptiste	Assistant Secretary
Magdalene Julien	Assistant Secretary
Anthony LeBlanc	Chairman, Board of Engineers

The Integrity Commission

APPENDIX IV Cont'd

INTEGRITY IN PUBLIC OFFICE ACT 2003, NO. 6 OF 2003: LATE FILING OF DECLARATIONS.

It is hereby notified that the following persons in public life have filed declarations after the time prescribed by Section 16 of the Integrity in Public Office Act 2003 i.e. 31st March 2009 for the period ending 31st December 2008. Under section 22 of the Act a report of that fact has been sent to the Director of Public Prosecutions for further action and the names of these persons in public life are published hereunder:

<u>NAME</u>	OFFICE OR POSITION
Antoine Defoe	Assistant Superintendant of Police
Algernon Charter	Superintendant of Prison
John Fontaine	Local Government Commissioner
Ian Munro	Chairman, Dominica Broadcasting Corporation
Larry Bardouille	Chairman, DOWASCO
Msgr. Eustace Thomas	Chairman, Mental Health Review Board
Hon. Ronald Green	Hon. Member La Plaine Constituency / Leader of Opposition
Kendall Johnson	Chief Technical Officer, Ministry of Public Works and Infrastructural Development
Matthew Le Blanc	Labour Commissioner Ag.
Claudius Sanford	Senator, House of Assembly

The Integrity Commission

Francis Joseph

Chairman, Council of Early
Childhood Education

Heskeith Brumant

Chairman, D.S.S Investment Board

Clem John

Chairman, Prison Visiting Justices
Committee

Dr. Damien Dublin

Chairman, Public Service
Commission

Jiselle Allport

Senior Administrative Officer

The Integrity Commission

APPENDIX V

PRESS RELEASES AND NOTICES

PRESS RELEASE/NOTICE

NO. 5/2009

INTEGRITY COMMISSION EMPHASISES THE SECURITY AND CONFIDENTIALITY OF DECLARATIONS OF FINANCIAL AFFAIRS FILED WITH THE COMMISSION

The Integrity Commission brings to the notice of the general public that all declarations of financial affairs filed with the Commission by persons in public life in FORM 2 in the Third Schedule to the Integrity in Public Office Act, 2003, No. 6 of 2003 are secret and confidential and will not be made public.

Any unauthorised person who publishes information which comes to his knowledge concerning the financial declaration of a person in public life commits an offence under section 21 of the Act of 2003.

The Chairman, the Members, the Secretary and employees of the Commission are all sworn to secrecy. In accordance with the Oath of Secrecy contained in the Fourth Schedule to the Act that they have sworn to, they shall not on any account or at any time disclose the contents of the declarations of financial affairs or other privileged information of the Integrity Commission. The only authorised exception to this being where a particular declaration is required to be produced in connection with court proceedings or in connection with any enquiry in respect of a declarant under the Act, the Commission of Inquiry Act or perjury under the Perjury Act.

The Integrity Commission

It is a fundamental term of the contract of service of all employees of the Commission that they keep secret and confidential the business or the nature and content of any declaration, document or proceedings of the Commission. Breach of this term constitutes serious misconduct for which the employment of the employee will be terminated without notice. Also the disclosure of any such information to unauthorised persons is a criminal offence under section 21(2) of the Act and carries a penalty of ten thousand dollars and imprisonment for one year.

The Commission reassures all persons in public life that all declarations, or information relating to such declarations filed with the Commission shall be treated with utmost secrecy and confidentiality. Such declarations and information shall not be disclosed or communicated to any unauthorised person nor shall the Commission allow any such person to have access to any such declarations or information.

.....
JULIAN N. JOHNSON
CHAIRMAN,
INTEGRITY COMMISSION
6th April 2009

The Integrity Commission

APPENDIX V Cont'd

NOTICE

INTEGRITY IN PUBLIC OFFICE ACT, NO.6 of 2003: FILING OF DECLARATIONS OF FINANCIAL AFFAIRS BY PERSONS IN PUBLIC LIFE BY 30TH MARCH 2009

Under section 16(1) and (6) of the Integrity in Public Office Act 2003, a person in public life, (holding or acting in any office or position set out in Part 1, and a person acting for a period of not less than six (6) months in an office set out in Part 2 of the First Schedule to the Integrity in Public Office Act, 2003, No. 6 of 2003), is required to complete and file a declaration with the Integrity Commission within three (3) months after the end of each calendar year. The declarations shall be in Form 2 of the Third Schedule to the Act.

The 2008 calendar year ended on the 30th day of December 2008 and therefore all such declarations must be filed with the Commission no later than the 31st day of March 2009.

Section 16 (4) of the Act, which also deals with the filing of declarations, provides that "A person who becomes a person in public life after the commencement of this Act shall, not later than three months of his becoming a person in public life, file a declaration in Form 2 of the Third Schedule with the Commission."

Section 20 of the Act, which deals with secrecy and confidentiality, provides: "The declarations filed with the Commission and the records of the Commission in respect of those declarations are secret and confidential and shall not be made public, except where a particular declaration or record is required to be produced for the purpose of, or in connection with any court proceedings against, or enquiry in respect of a declarant under this Act, the Commissions of Inquiry Act or perjury under the Perjury Act."

Section 22 of the Act, which deals with failure to file declarations, provides: "Where a person who is required to file a declaration under section 16 fails to file the declaration in accordance with this Act or fails to furnish particulars under section 15 or section 17, the Commission shall publish the fact in the *Gazette* and send a report to the Director of Public Prosecutions for further action."

The Integrity Commission

Section 27 (1), which deals with penalties, provides, inter alia: "A person who – (a) fails, without reasonable cause, to furnish to the Commission a declaration or further particulars thereof which he is required to furnish in accordance with this Act; (b) knowingly makes a declaration which is false in some material particular.... commits an offence, and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment."

Form 2 of the Third Schedule to the Act is available at the Office of the Integrity Commission, Turkey Lane, Roseau. Office Hours: 8.00am – 5.00pm Mondays and 8.00am – 4.00pm Tuesdays – Fridays.

**JULIAN N. JOHNSON
CHAIRMAN/INTEGRITY COMMISSION**

IC-140-02/02

February 20, 2009

The Integrity Commission

APPENDIX V Cont'd

NOTICE

INTEGRITY IN PUBLIC OFFICE ACT, 2003, NO.6 of 2003: FILING OF DECLARATIONS OF FINANCIAL AFFAIRS BY PERSONS IN PUBLIC LIFE BY 30TH NOVEMBER 2008

Under section 16 (3) of the Integrity in Public Office Act 2003, persons in public life, (holding or acting in any office or position set out in Part 1, and persons acting for a period of not less than six (6) months in an office set out in Part 2 of the First Schedule to the Act), are required to complete and file declarations with the Integrity Commission within three (3) months of the day on which the Act came into operation. The declarations shall be in Form 2 of the Third Schedule to the Act.

The Act came into operation on the 1st day of September 2008 and therefore all such declarations must be filed with the Commission no later than the 30th day of November 2008.

Section 16 (4) of the Act, which also makes the filing of declarations mandatory, provides that "A person who becomes a person in public life after the commencement of this Act shall, not later than three months of his becoming a person in public life, file a declaration in Form 2 of the Third Schedule with the Commission."

Section 20 of the Act, which deals with secrecy and confidentiality, provides: "The declarations filed with the Commission and the records of the Commission in respect of those declarations are secret and confidential and shall not be made public, except where a particular declaration or record is required to be produced for the purpose of, or in connection with any court proceedings against, or enquiry in respect of a declarant under this Act, the Commissions of Inquiry Act or perjury under the Perjury Act."

Section 22 of the Act, which deals with failure to file declarations, provides: "Where a person who is required to file a declaration under section 16 fails to file the declaration in accordance with this Act or fails to furnish particulars under section 15 or section 17, the Commission shall publish the fact in the *Gazette* and send a report to the Director of Public Prosecutions for further action."

The Integrity Commission

Section 27 (1), which deals with penalties, provides, inter alia: "A person who – (a) fails, without reasonable cause, to furnish to the Commission a declaration or further particulars thereof which he is required to furnish in accordance with this Act; (b) knowingly makes a declaration which is false in some material particular.... commits an offence, and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment."

Form 2 of the Third Schedule to the Act is available at the Office of the Integrity Commission, Turkey Lane, Roseau. Office Hours: 8.00am – 5.00pm Mondays and 8.00am – 4.00pm Tuesdays – Fridays.

JULIAN N. JOHNSON

CHAIRMAN/INTEGRITY COMMISSION

IC/01

October 29, 2008

The Integrity Commission

APPENDIX VI

AMENDMENTS TO THE ACT

AMENDMENTS TO THE FIRST SCHEDULE, THE THIRD SCHEDULE FORM 2 AND TO THE INTEGRITY IN PUBLIC OFFICE ACT 2003.

On the 30th September and 10th October 2008, the Commission submitted the following recommendations to the Minister for Legal Affairs for his consideration:

"A. That the First Schedule to the IPO Act 2003 be amended to include the following

offices

- 1) Accountant General
- 2) Comptroller of Inland Revenue
- 3) Comptroller of Customs
- 4) Chief of Police
- 5) Deputy Chief of Police
- 6) Heads of Diplomatic Missions of Dominica accredited to any country or any international organizations;

B. That the following offices be deleted from the First Schedule:

- 1) Superintendent of Prisons
- 2) Assistance Superintendent of Prisons
- 3) Chief Fire officer
- 4) Gazetted Police Officers;

C. That Form 2 in the Third Schedule in the IPO Act 2003 be amended to incorporate the detailed information contained in the Trinidad & Tobago "The Integrity in Public Life (Prescribed Forms) Regulations 2003," Legal Notice No. 216 of 12th December 2003 and Form 2 – Declaration of income, Assets and Liabilities – in the Third Schedule to the St. Lucia Integrity in Public Life Act 2004; (attached herewith)

The Integrity Commission

D. That section 16 of the IPO Act 2003, dealing with the filing of declarations, should be amended to provide that the Commission may in any particular case, for good cause, extend the time for the filing of a declaration for a period not exceeding three months, and

E. That section 22 of the Act, dealing with the failure to file a declaration, be amended to empower the Commission to make an ex parte application to the High Court for an order directing such person to comply with the Act along the lines of the Trinidad & Tobago Integrity in Public Life Act, 2000.

Section 11 of the Trinidad & Tobago Act provide, materially, as follows:

“(7) The Commission may at anytime after the publication referred to in section (6), make an ex parte application to the High Court for an order directing such person to comply with the Act and the Court may in addition to making such an order, impose such conditions as it thinks fit

(8) A person who fails to comply with the directions of the Court, commits an offence and is liable to conviction to a fine of one hundred and fifty thousand dollars.”

Part I

1. “Income” should be comprehensively defined in section 2 of the Act. The existing definition by reference to the meaning of “income” in the Income Tax act, Chap. 67:01 is inadequate and is clearly an inconvenience to persons filing declarations.
2. The office of “Secretary to the Cabinet” should be separately listed in the First Schedule to the IPO Act 2003 and should not be included in the definition of “Permanent Secretary.” The office of Secretary to the Cabinet is established under Section 69 of the Constitution.

Part II Size of the Commission:

3. Section 4: The commission established by Section 4 of the IPO Act 2003 consists of seven persons, a Chairman and six (6) other members, of which two are

The Integrity Commission

appointed on the advice of the Prime Minister and two of the advice of the Leader of the Opposition.

The Commission is of the view that the Commission in Dominica should consist of five persons, a Chairman and four other members, and that the IPO Act 2003 should be amended by substituting "one" for "two" before "members" in Section 4(1)(b) and (c).

(In Trinidad & Tobago and Jamaica the Commissions consist of five members (including the Chairman) appointed by the Head of State after consultation with the Prime Minister and the Leader of the Opposition (Four Appointed members in the case of Jamaica as the Auditor General is an ex officio member.)

In St Lucia the Commission shall consist of a Chairperson "and not less than two or more than four other members." All are appointed by the Governor General on the advice of the Prime Minister who is required to consult with the Leader of the Opposition before tendering any advice to the Governor General.

In Antigua the Commission consists of a Chairman and two other members appointed by the Governor General acting in his own discretion.)

4. Section 5(a), a person "exercising a public function" should be defined. (See Section 2(c) of the Trinidad & Tobago Integrity in Public Life Act, 2000, Section 2 of the Antigua Integrity in Public Life Act, 2004; and Section 2 of the Jamaica Corruption (Prevention) Act, 2000.)
5. Sections 12 and 49, the Commission should be empowered to appoint or employ, on such terms and conditions as it thinks fit officers and employees as it thinks necessary for the proper carrying out of its functions under the Act. Staff should not be limited to "Public Officers" appointed by the Public Service Commission under Section 85 of the Constitution. (See First Schedule to the Jamaica Corruption (Prevention) Act, 2000, Section 13)
6. Section 19(1) and (2), Form 2 in the Third Schedule should capture the assets placed in a blind trust by a person in Public Life in terms of:
 - a) the amount
 - b) the description of the assets placed in that trust and
 - c) the date of so doing.

The Integrity Commission

Part IV: Code of Conduct and Second Schedule

7. Second Schedule: Paragraph 1(b) read along with Paragraph 3 appears too restrictive.

Paragraph 1(d) substitute "resolved" for "reserved" in line 6.

Paragraph 1(i) "any other person" should be deleted and replaced by "any other person in public life" for consistency with the purpose of the Act.

Paragraph 3 – "Fifty thousand dollars in any one year" appears quite small.

8. Section 32 should expressly provide that the person against whom the complaint was lodge should be informed, at that stage, of the complaint made.

Section 34(i) should delete "and the President" we can advance no good reason for submitting a report to the President at this stage. Delete similar references in Section 47(3) and Section 47(5).

Section 34(3) delete marginal note "Form 4 Third Schedule."

Part V: GIFTS:

9. Section 35(4) "Trivial" should be defined. The value referred to in Section 14(1) (d) may be used.

Section 35(4) (b) and Section 35(5) (a) are inconsistent.

Part VI: Bribery and Corruption

Section 37 "Prescribed officer" as defined broadens the jurisdiction of the Act away from "person in Public Life" to include all police and public officers or employees or members of a public body. See, in particular, Section 38(1) & (2), 39(1) & (2).

Part VIII: Miscellaneous Provisions

Section 48(1) substitute "three months" for "two months" in line 2.

The Integrity Commission

Section 48(3) substitute "three months" for "one month" in line 2 and "the Minister" for "Parliament" in line 4.

Fourth Schedule: add "Commissioner of Oath or Chairman of the Integrity Commission."

Section 56, the reference to Section 11 in line 2 is incorrect. Section 11 creates no offence.

Section 59(a) (ii) the reference to Section 30 in line 2 is incorrect. The proper reference is Section 31(d)