

**REVISED TEXT OF SPEECH**  
**TO ROTARY CLUB LUNCHEON**  
**ON 10<sup>TH</sup> JUNE 2009**  
**By JULIAN N. JOHNSON,**  
**CHAIRMAN, INTEGRITY COMMISSION**  
**ON**  
**“THE FUNCTIONS OF THE INTEGRITY COMMISSION**  
**UNDER THE INTEGRITY IN PUBLIC OFFICE ACT, 2003”**

1. **Introduction:** Background to IPO Act - Dominica- Roseau – Roseau and purposes (HANDSARD 30<sup>th</sup> April, 2003 at pp 246- 360 passim)

- Who is a “person in public life” – Sect. 2 and First Schedule to IPO Act. Is the net cast too wide? Who is not a person in public life (i) IC Members (ii) C.I.R. (iii) C. of Customs (iv) Accountant General
- Invasion of Privacy by this legislation and duty of secrecy and confidentiality imposed by Parliament on Commission and staff of Commission (In the Chairman’s speech on 2<sup>nd</sup> September 2008, at the swearing-in of the Commission I referred to the intrusive nature of this legislation and added:

*“One of the inescapable, but regrettable, consequence of this, of course, is that many suitably qualified persons who are able to exercise competence, diligence and sound judgement may decline appointments as chairpersons or managers of public corporations, boards and commissions and even appointments to the higher public service on the ground that the statutory declaration of their income assets and liabilities is too intrusive in their private and family life”.*

In enacting its Integrity in Public Life legislation, the parliament of Trinidad & Tobago thought it necessary and expedient to follow the “manner and form” procedure necessary to give effect to its provisions even though the legislation may be inconsistent with the fundamental rights provisions or the provisions protecting against discriminatory treatment, or the abrogation or abridgement of the right to private life and family and equality of treatment under its Constitution!”)

- What are not the functions of the Commission;
  - (i) Not DPP
  - (ii) Not Police
  - (iii) Not Public Accounts Committee of the House of Assembly
  - (iv) Not Director of Audit
  - (v) Not A/C Officer of Ministry /Department of Government

(vi) Not Public/Police Service Commissions.

For example, there are officers and institutions of the state that have important oversight duties concerning public procurement and financial accountability under the following statutes:

- (i) Financial (Administration) Act 1994
- (ii) Audit Act 1994
- (iii) Financial Regulations (1976), Chap. 63:01
- (iv) Financial (Stores) Regulations, (1980), Chap. 63.01

## **2. The Functions of the Commission [Sections 9, 11, 14 - 29 of the Act]**

Different juridical consequence attach to different types of functions. A statutory function may be couched in mandatory or permissive terms i.e. powers which confer discretion whether to act or not to act, and also what action to take. A statutory function which is couched in mandatory terms is called a duty. The language of duty is black and white. The juridical consequence of this is that the bearer of a duty has no choice; his only option is to execute the act which he has the duty to perform.

Under section 9 of the Act the Commission is required:

- (a) To receive, examine and retain all declarations of the financial affairs of persons in public life filed with the Commission under the Act;
- (b) To make such enquiries as it considers necessary in order to verify or determine the accuracy of any declaration filed under the Act;
- (c) To inquire into any allegations of bribery or act of corruption under the Act;
- (d) To receive and investigate complaints regarding non-compliance with any provision of the Act.
- (e) To perform such other functions as is required under the Act.

### **A. Financial Affairs Disclosure : What must be disclosed to Commission**

All persons in public life are required to file with the Commission, a Declaration of Income, Assets and Liabilities, in the manner prescribed by Parliament in FORM 2 of the Third Schedule to the Act and disclose the following:

- (1) INCOME
  - received or receivables (name, address and source)
  - Salary
  - Fees as director or consultant
  - Commission

- Bonus
- Dividends
- Professional fees
- Rent (from house or land)
- Gifts in kind or cash
- Other receipts or transfers

(2) ASSETS

- (a) Real Property
  - Description
  - Value in declarant's opinion (including a copy of the latest valuation thereof, if any).
  - Purchase price or other consideration for its acquisition (where land and buildings thereon are owned by declarant this should be shown separately from land owned without buildings).
- (b) CASH IN BANK – (Identify each Bank separately and state amount).
- (c) LIFE INSURANCE POLICIES (Identify each company separately, annual premiums, cash surrender value and date of maturity).
- (d) Directorships and Partnerships (nature of each business and number of shares held).
- (e) Motor Car, Govt. Bonds, Boat.

OTHER ASSETS

- Trust property e.g. client's account (sect. 17).

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

- Blind Trusts Sect. 19(1) and (2).

“19. (1) A person in public life may place his assets or part thereof in a blind trust for the purpose of this Act and file a copy of the trust deed with the Commission.

(2) Where the assets of a person in public life are placed in a blind trust, he need not in his declaration give more particulars of those assets than the amount and description of the assets placed in that trust and the date of so doing”.

- Income and assets held by agent:
- Other income and assets held by any other person as the agent or on behalf of a person in public life (S. 18).

(f) Gifts made by person in public life in value exceeding \$1000

(3) LIABILITIES

- (a) Mortgages
- (b) Judgement debts
- (c) OTHER DEBTS – including liabilities acquired, held or incurred by any other person as the agent or on behalf of the person in public life (Section 18)

- Form must be signed by each declarant as follows:

“I.....  
Hereby declare that this declaration gives full, true and complete particulars of the assets and liabilities as on the relevant date, that is..... and the income during a period of twelve months immediately prior to that date, of myself to the extent to which I have knowledge of the same. (Emphasis added)

DECLARANT”

B. REQUEST FOR FURTHER PARTICULARS RELATING TO THE FINANCIAL AFFAIRS OF A PERSON IN PUBLIC LIFE (Section 15 enacts: “The Commission may require a declarant to furnish such further particulars relating to his financial affairs as it considers necessary for the purposes of section 9 (b) or sections 16”).

C. WHAT ARE THE DUTIES OF THE COMMISSION CONCERNING DECLARATIONS FILED WITH IT

Duty to be satisfied that Declarations fully made

- To examine every declaration to satisfy itself that the declaration has been fully made (S. 14(3))
- To do this the Commission may request declarant to furnish further information, particulars or explanation relevant to the declaration made which in its opinion would assist in its examination (Section 14(3) and (4))

D. TIME FOR FILING DECLARATIONS (Section 16):

- Every person who is a person in public life when the Act came into force on the 1<sup>st</sup> September 2008 was required to make an initial disclosure within three months of the date of the commencement of the Act (Section 16(3) i.e. by the 1<sup>st</sup> December 2008.
- A person must make an initial disclosure within three months of the date of becoming a “person in public life (Section 16(4))”;

- And the declarant must also declare within three months after the end of each calendar year and the following two calendar years after the declarant ceased to be a person in public life, otherwise than by reason of death. (S. 16(1) and (6)).

The Commission has no power to extend the time table which Parliament had laid down [Contrast with Trinidad & Tobago]

E. FAILURE TO FILE DECLARATION OR FURNISH FURTHER PARTICULARS - (Section 22).

“**22.** 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”. [Emphasis added]

F. POWER TO HOLD FORMAL INQUIRY INTO ACCURACY AND FULLNESS OF DECLARATION – (Sections 23 – 27)

Discretionary Power to hold Formal Inquiry. The Commission has extensive power to gather evidence -

- Where the Commission considers it necessary or expedient to inquire into the accuracy or fullness of a declaration filed with it, it may advise the President to 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 (section 23(2) and (3)).
- The Tribunal shall have and exercise the powers of a Commission of Inquiry under the Commissions of Inquiry Act, Chap. 19:01 of the Laws of Dominica except, materially, that the proceedings shall be held in private. (S. 24)
- No such inquiry may be commenced after 5 years from the date which the person in respect of whose declaration the inquiry is being conducted ceased to be a person in public life. (S. 23(5)).
- Where after the inquiry the Tribunal finds that the declaration was in fact fully made a statement to that effect shall be published in the Gazette and a newspaper, if so required in writing by the declarant. (S. 25).
- Where the declaration which gave rise to the inquiry by the Tribunal was found to have been full and proper, the declarant is entitled to full indemnity and shall be reimbursed from the Consolidated “Fund for all expenses reasonably incurred as may be determined by the Tribunal. (S. 26).

G. PUBLICATION OF CERTIFICATE OF COMPLETENESS –( Sections 14 (4) & 25 and Form 3)

H. STATUTORY DUTY OF CONFIDENTIALITY (Sections 21,24 & 48) – 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.

The Commission its staff and every person performing any function in the service of the Commission shall 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. (Section 21 and Fourth Schedule , Oath of Secrecy, and Press Releases No. 1 of 2009 and No. 5 of 2009).

Section 24(a) requires that the proceedings of the Tribunal of inquiry into the declaration of the financial affairs of the person in public life “shall be held in private”.

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.

- Who is an authorised person?

An authorised person is -

- (a) a person who is authorised to receive information under the Integrity in Public Office Act, 2003 in respect of the financial affairs of a person in public life (essentially, the Integrity Commission established under the IPO Act); and
- (b) a person who is authorised to receive information in respect of the financial affairs of a person in public life by reason of an Order of a Judge of the Supreme Court (issued in court proceedings under the Integrity in Public Office Act, 2003; the Commissions of Inquiry Act, Chap. 19:01 or the Perjury Act, Chap. 10:30).

- Who is an unauthorised person?

An unauthorised person, therefore, is a person other than a person authorised to receive information:

- (a) Under the Integrity in Public Office Act; or
- (b) By reason of an Order of the Judge of the Supreme Court under the Commissions of Inquiry Act or the Perjury Act.

The sovereign parliament of Dominica is not an authorised person. The editors or columnists of newspapers are not authorised persons. Talk show specialists/practitioners, however eminent and learned, are not authorised persons. John public is not an authorised person.

Unauthorised disclosure is unlawful and an offence under the Act punishable by fine and imprisonment.

The Commission treats seriously its confidentiality obligations. It has taken appropriate steps to ensure that the declarations filed with it under the IPO Act do not come into the hands of unauthorised persons within the meaning of the Act. (See Public Notice No. 5/2009, issued on 6/4/2009).

Also 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 .

However, where such information comes to the hand of unauthorised persons, Parliament has sought to penalise any person who publishes that information. The prosecution of such person falls within the constitutional functions of the Director of Public Prosecutions and, by virtue of section 56 of the IPO Act, his consent is required for the institution of prosecution for such an offence.

Parliament has also mandated (under section 53 of the IPO 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 IPO Act, including the enforcement of the provisions dealing with the publication of confidential information to unauthorised persons.

### 3. **CODE OF CONDUCT OF PERSONS IN PUBLIC LIFE** (Part IV)

The Code is a high level statement of values and expected behaviours.

It prohibits:

- (a) Seeking or accepting money, property, benefits, favours in the execution of his duties over and above that which he is lawfully entitled to receive for the performance of his duties.
- (b) Discrimination in the performance of public functions, against any person with respect to terms/conditions/privileges of employment or other official matters on grounds of race, place of origin, political opinion, colour, creed or gender.
- (c) Acceptance of gifts, benefits or advantage as a motive or reward for doing or forbearing to do anything in the performance of his official functions.
- (d) Allowing private interests to conflict with public duties or improperly influence his conduct in the performance of his public duties.

- (e) The use of official influence in support of any scheme or in furtherance of any contract or proposed contract in regard to which he has an interest.
- (f) The use of official information for personal advantage, benefit or gain;
- (g) The use of public property for purpose not officially approved.
- (h) Acquiring or becoming partner, shareholder in or director or manager of a firm or company which has a contract with the Government or public body of which he is or was a member or employee, during the tenure of his office.
- (i) The aiding, abetting, counselling, procuring or commanding any other person (in public life) to breach this Code of Conduct.

Complaints of Breach of the Code – Duties of the Commission – Examine, investigate and report to DPP.

- Complaints to the Commission concerning breach of the Code of Conduct. (section 31(1).
- Examination of such complaint by the Commission (Section 32(1)(a) or (b)) (No statutory or common law right to a hearing by the person against whom the complaint was lodged at this preliminary stage. The person shall have full opportunity adequately to deal with the complaint at the section 33 stage)
- Right of person complained against to institute legal proceedings against the complaint where the Commission reject a complaint (Section 32(2).
- Right of the person making the complaint to be heard (section 32(3)) and his defence that the complaint was not made maliciously, frivolously or in bad faith (Section 32(2).
- Investigation of breach of the Code where the Section 32(1) threshold has been satisfied (section 33). The procedures here take on a fully adversarial character treating the complainant and the complaine as parties to a lis each having an equal opportunity to challenge and comment upon the case made by the other.
- Report to the Director of Public Prosecutions and President after Section 33 inquiry (Section 34).
- The Lennox Linton and Citizens Forum Complaints: (Decisions Nos. 1 and 2 of 2009) Both complaints were rejected under section 32(1)(b) on the grounds that the provisions of the Integrity in Public Office Act 2003 cannot apply retrospectively to the alleged conduct of Prime Minister Skerrit, or Minister Ambrose George, or that of any person in public life, if the alleged conduct complained of occurred before the Act of 2003 entered into operation.

In its reasons for its decision the Commission stated:

“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 (and Minister Ambrose George) became a person in public life only came into operation on the 1<sup>st</sup> 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 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, 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)”

#### 4. **POSSESSION OF UNACCOUNTED PROPERTY – (“Illicit Enrichment)**

1. It has been said that one of the indications of white collar crimes is the acquisition and possession of assets disproportionate to one’s known sources of income. Some commentators say that such possession could be a consequence ensuing out of habitual acceptance of bribes or gifts or of the gorging on state resources by “predatory looting by sleazy elites” in succession, in a political culture and climate of “IT’S OUR TIME TO EAT”. (This is the title of Ms. Michela Wong’s latest book).
2. Concerning the acceptance of bribes, a bribe agreement may be quite subtle, as consisting in a gesture or an exchange of understood words without moral value. It is highly likely that it will occur in private, without witnesses, documents or other means of evidence. Successful prosecution usually depends on disagreements among those involved and the willingness of the unsatisfied party of the corrupt agreement to cooperate with the prosecution. Unless caught red-handed, proving the case is difficult, almost impossible, and impunity is likely to prevail.
3. In order to overcome such difficulties, some jurisdictions – usually under public pressure to curb ostentatious impunity – have resorted to the offence of “illicit enrichment” to punish significant increase in a public official’s wealth that cannot be reasonably explained in relation to his or her lawful income.

4. Indeed, the employment of criminal sanctions to punish the acquisition of inexplicable wealth has been increasingly advocated in recent decades. The Government of Indonesia in its comments to the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held in Buenos Aires, Argentina, 4 – 7 December 2001 put it this way: “..... Criminal and/or administrative sanctioning of the possession of unexplained wealth is only one option that could be taken into consideration. Another possibility consists of developing measures to deprive the public official of his or her inexplicable wealth if he or she maintains a standard of living or is in control or possession of financial resources or property disproportionate to his or her present or past known sources of income and fails to give a satisfactory explanation in that regard. Finally, it may also very well prove necessary to rethink the concept of ‘penalty’ as such and to start to rely more heavily on ‘property penalties’ for certain types of crime rather than on imprisonment, or a combination of both.” (A/AC 261/IPM/16 para. 25).
5. In the Preamble to the United Nations Convention Against Corruption (UNCAC), contracting states expressed their conviction that “the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law”. Under Article 20, therefore, they undertook to consider adopting legislative measures to criminalise “illicit enrichment” defined as “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”. [UNCAC, Doc. A/58/422 adopted by the General Assembly of the UN on 3<sup>rd</sup> October 2003 at UN Headquarters in New York. The UNCAC entered into force on December 14, 2005. As at February 2009, 140 member states had signed and 132 ratified the Convention. The Government of Dominica did not sign or ratify the Convention].
6. The Parliament of Dominica in enacting the Integrity in Public Office Act , 2003 (IPO Act, 2003) decided to criminalize the possession of wealth which has also been described in some jurisdictions as “inexplicable wealth”, “undisclosed assets”, “unjustified wealth” or the possession of “unexplained wealth”.
7. The Parliament of Dominica has made the possession of wealth disproportionate to legitimate sources of income a crime and has imposed the duty on the Integrity Commission to inquire into suspected disproportionate acquisitions. This was done for the express purpose of strengthening probity and integrity in public life and in the interest of accountable and good governance.
8. The provisions of PART VII of the IPO Act, 2003 speak to the “possession of unaccounted property”. Part VII enacts:

“PART VII

## POSSESSION OF UNACCOUNTED PROPERTY

**47** (1) A person in public life who is found to be in possession of property or pecuniary resource disproportionate to his legitimate sources of income commits an offence and is liable on summary conviction, to a fine of two thousand dollars and imprisonment for a term of two years, and to forfeiture of the assets so found.

(2) Where a person, who is or was 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, the Commission shall conduct an inquiry into the source of income of the person.

(3) On the conclusion of any inquiry under subsection (2), the Commission shall submit a report to the Director of Public Prosecutions and the President.

(4) Where the Director of Public Prosecutions is satisfied, on the examination of the report referred to in subsection (3) and any other relevant evidence, that any person who is or was in public life ought to be prosecuted for an offence under this section, he shall institute and undertake criminal proceedings against the person in public life .....

(6) In imposing a fine under subsection (1) on a person found guilty of an offence under that subsection, the Court shall have regard to the value of the property or pecuniary resource in the possession of that person, which cannot be accounted for by his legitimate sources of income.”

9. Under Section 47(1) of the IPO Act 2003, Parliament introduced an offence that penalizes “a person in public life who is found in possession of property or pecuniary resources disproportionate to his legitimate sources of income”. Such a person is liable on summary conviction to a fine of two thousand dollars and imprisonment for two years, and to forfeiture of the assets so found.

10. It must be noted that Parliament has also authorized the forfeiture of any such wealth (i.e. the property or pecuniary resources) as part of the punishment upon conviction thus creating a link between the criminal act and the assets to be forfeited/confiscated. “References to forfeiture in the Old Testament, Greek and Roman law indicate that its purpose was to exact a penalty against property which had been used or acquired in connection with some type of prohibited conduct”. [From: “Forfeiture of Assets: Good or Bad” by John Stockton. [www.associatedcontent.com/pop print](http://www.associatedcontent.com/pop_print)].

## **COMMISSION'S FUNCTIONS** – DUTY TO INQUIRE AND REPORT

11. The functions of the Commission as regards the possession of unaccounted property are spelt out in section 47. Under subsections (2) and (3) the Commission is required to conduct an inquiry into the source of income where the person in public life or any other person on his behalf is suspected to be in possession of property or pecuniary resources 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.
  
12. It is necessary to define/interpret the key concepts in section 47(2), i.e. “possession of”, “disproportionate to”, “suspected”, “legitimate” and “sources of income”.

**“Possession”** means: “Having control over a thing with the intent to have and to exercise such control. The detention and control, or the manual or ideal custody, of anything which may be the subject of property, for one’s use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one’s place and name. Act or state of possessing”. (Blacks Law Dictionary, Abridged 6<sup>th</sup> Ed., 1991 at p. 806).

**“Disproportionate to”** conveys the idea that the acquisition of total asset (property or pecuniary resources) under the control of the person in public life at the relevant date could not reasonably, in all the circumstances, have been afforded out of his total legitimate [lawful] income up to that date. The essential question being whether such lawful income were or were not sufficient to finance the acquisition which resulted in the particular assets being under the control of the person in public life on the relevant date. The cost of each acquisition would have to be examined [A.G. of Hong Kong v. Ho Pui-Yiu [1981] I.W.L.R. 395, 398C]. “A somewhat liberal view requires to be taken of what proportion of assets in excess of known sources of income constitutes “disproportion” for purposes of section 5(1)(e) of the Prevention of Corruption Act 1947”. [State of Maharashtra v. Polonji Darabshaw Darugala AIR 1988, SC 88, per Venkatachalian, J.]

**“Suspect”** has been defined to mean “to have a slight or even vague idea concerning; - not necessarily involving knowledge or belief or likelihood... “Suspicion” implies a belief or opinion based upon facts or circumstances which do not amount to proof. The apprehension of something without proof or upon slight evidence”. [Black’s Law Dictionary, Abridged 6<sup>th</sup> Ed., 1991 at p. 109].

**“Legitimate”**: Barwick, CJ defined this term as follows: “I cannot attribute any other meaning in the language of a lawyer to the word “legitimate” than a meaning which expresses the concept of entitlement or recognition by law”. (SALEMI v. Minister for Immigration and Ethnic Affairs (No. 2) (1977) 14 ALR 1 at 7, per Barwick CJ).

**“Sources of income”** would include capital or income independent of salary and allowances (net of living expenses, of course, for “one cannot live on nothing however frugal he lives”). It includes:

- i. salary
- ii. fees
- iii. rent
- iv. interest payments/dividends
- v. profits from business
- vi. inheritance(s)
- vii. gifts
- viii. subsistence allowance savings/surplus;
- ix. gambling/lottery
- x. bonus; and
- xi. other receipts or transfers.

### **INGREDIENTS OF SECTION 47(2)**

13. Under section 47(2) the Commission is required to conduct inquiry into the source of income of a person in public life where it suspects that:

- (i) a person in public life or any other person on his behalf, is in possession of property or pecuniary resources; and
- (ii) such property or pecuniary resources is disproportionate to the legitimate sources of income of the person in public life.

14. This may require the holding of a formal inquiry in accordance with section 23 of the Act.

### **BASIS FOR SUSPICION – FACTS/CIRCUMSTANCES FOR BELIEF**

15. How may such suspicion arise/brought to the notice of the Commission?

The apprehension that there may be something to look into may be based on:

- (i) the examination of the declaration of financial affairs (Form 2) filed with the Commission;

- (ii) allegations in writing against the person in public life; and
- (iii) information received from the Commissioner of Police under section 53 of the Act?

## 5. CRITICISMS OF AND “ADVICE” TO THE INTEGRITY COMMISSION

[1] The Unity & Progress Charter: “Concerned by the failure of the Integrity Commission to act with any semblance of justice and accord with the substance of unlawful behaviour and not merely the form or timing”. (From email published by [Gabriel@aol.com](mailto:Gabriel@aol.com) on May 21<sup>st</sup> 2009).

[2] Dr. Samuel Christian [www.youtube.com](http://www.youtube.com) 28/05/09: “The Government have been found wanting because of the failure of the Integrity Commission to act in any semblance of justice by using the lame excuse that the law was asleep”.

[3] I am told that a tenured, silver -tongued Minister recently informed a distinguished person that the Integrity Commission was “an expensive, useless, waste of taxpayers’ money and should be abolished forthwith”!

**[One of the ordinary incidents of living in a very small society and mini state is that we constantly say and write things with the intention of causing distress, annoyance and humiliation to each other. While this may show lack of consideration and concern and manifests appalling manners it is boasted as acceptable behaviour in the exercise of free speech in our political culture!]**

[4] Commentary in THE SUN Newspaper of Monday 18<sup>th</sup> May 2009, page 9

- Commission is a “meaningless entity”, “partners of a common bond to enrich themselves at the expense of taxpayers”. **[Vulgar abuse]**
- Commission, the Presidency or the Ombudsman should be elected by the people of Dominica. **[This is a matter for Parliament]**
- Commission is clouded by a “Web of Secrecy”; - “the public wanted a body of honest and fearless citizens that would without favour, appraise the populace with the actual status of wealth and possessions of our politicians before taking office, and account in the most transparent way”. **[This expectation was not satisfied by Parliament. The confidentiality provisions were unanimously passed by the House of Assembly]**
- Unless the following are the duties and purposes of the Commission, “the creation and existence of such a body is not just meaningless but represent a fraudulent farce”: the duties are a legislative entity that (a) investigates the assets (cash, property, etc.) of every party candidate presenting himself/herself for a government office, (b) that such findings be made public, and (c) that once an individual loses the endorsement of the populace a disclosure of his/her standing should, again, be published”. **[Parliament did not so provide. The Commission treats seriously with its confidentiality obligations]**

- It is “Unlawful to reveal information given to the Commission by (sic) those who serve as our “public servants”, then who is going to bell the cat?” [!?!]
- The individuals constituting the Integrity Commission are officers paid by the public purse, this assignment is not voluntary. It should have been incumbent upon them that their sole obligation should be to the public... the populace, in general. Not the politicians. **[Commission’s obligations are as provided for under the provisions of the Act]**
- There is something dubious about the Integrity Commission... it seems to be a nest well woven to shield and protect potential and prospective indiscretion in the domain of (governmental) public places. It can offer no real transparency or/and accountability by those we entrust with governing our poor, underdeveloped Nation. Therefore, the people who constitute this farce are, like our politicians, simply ‘robbing the public purse. And they should all resign ..... and close shop”. **[Read the IPO Act]**
- “Will the files (at the Integrity Commission?) be taken away at the dawn of an election in order to protect the outgoing ministers and others close to them?” **[No. The Act does not so provide]**
- The Chairman of the Commission must tell the people of Dominica:
  - (a) Who is an authorized person?
  - (b) Who is NOT an authorized person?
  - (c) Since the information given must remain secret, how does that authorized or non-authorized person able to gain access that information to be revealed? **[See DUTY OF CONFIDENTIALITY, above where this is explained at great length].**

[5] PARRY BELLOT – “Dealing with Slanderous... Accusations of Corruption” – New Chronicle \_\_March 2009

- “The IPO ruling (Decisions Nos. 1 and 2 of 2009) is also proof that, once again the UWP and its acolytes continue to blow hot air...”
- The Commission’s decisions dealt exclusively with the jurisdictional issue arising under section 32. The merits of the complaint were not gone into at that stage. Nothing was “proved” at that stage. The complaints which were about acts and conduct which took place before the commencement of the Act, were rejected by the Commission under section 32(1)(b) of the Act and the provisions of section 8(4) of the Constitution and well-settled common law jurisprudence prohibiting the retrospective application of the criminal law.

[6] THE DECISIONS OF THE COMMISSION ON COMPLAINTS OF LENNOX LINTON AND THE CITIZENS FORUM ARE NULL AND VOID DUE TO DISQUALIFICATION OF MEMBER(S).

- The Integrity Commission is not the appointing authority under the IPO Act 2003.
- Sir Brian Alleyne s.c., tendered his resignation to the President on 11<sup>th</sup> May, 2009 under section 6 (1) of the Act. He became a person in public life under section 2 of the Act when he accepted an appointment as Chairman of the Education Appeal Tribunal under

the Education Act 1997. This EAT appointment was discussed at the Meeting of the Commission on 7<sup>th</sup> May, 2009. Sir Brian became disqualified from membership of the Commission under section 5 (a) of the Act when he accepted the EAT appointment.

- He resigned the EAT appointment and was again recommended by the President of the Dominica Bar Association for appointment to the Commission with effect from 15<sup>th</sup> May, 2009 under section 4 (1) (e) of the Act.
- His Grace Archbishop Kelvin Felix resigned from the Commission on the 9<sup>th</sup> May, 2009. He was disqualified from membership of the Commission by virtue of section 5 (b) of the Act read along with section 32 (b) of the Constitution, ab initio. As a cleric of the Roman Catholic Church he was also forbidden by the Code of Canon Law, 285 (3) from accepting an appointment to a public office which entails the exercise of civil power.
- As regards these appointments and resignations the Act provides that the proceedings of the Commission shall not be affected by any defect in the appointment of any member.

Section 10 of the Act enacts:

- ”10. (1) The Commission shall meet at such times as may be expedient for the Commission to carry out its functions.  
(2) A quorum of the Commission shall be four.  
(3) The proceedings of the Commission shall not be affected by any vacancy amongst the members or by any defect in the appointment of any member. “

- The seven members of the Commission were present at the hearing of the complaints on the 30<sup>th</sup> December 2008 and at the determination of the matters on the 18<sup>th</sup> February 2009. The quorum requirement was satisfied at all proceedings of the Commission notwithstanding the disqualification of the Archbishop and of Sir Brian Alleyne s.c. with effect from the 14<sup>th</sup> January 2008 when he was sworn in and entered upon the duties of Chairman of the Education Act 1997 and became a person in public life.

(I) CONFIDENTIALITY OF DECLARATION – SHOULD PARLIAMENT AMENDED LAW TO REVIEW THIS?

- Should the public have access to the full breadth of declarations of all persons in public life? Of all members of Parliament? Of all members of the Cabinet? Of all Senior Public/Police Officers?
- Comparison with provisions in other Commonwealth jurisdictions.

(II) COST OF INTEGRITY COMMISSION

Dominica : \$650,920 in Budget 2008/2009.

Caribbean Comparison: Budgets of (a) Trinidad and Tobago;- TT\$18,633,862  
(d) Jamaica; -JA\$64.5 Million(2008/2009) (c) Belize; -BZE\$174,690(2009)

(III) OTHER INADEQUACIES

- Code of Conduct:

Should the Code address in clear terms how a conflict of interest may be resolved quite apart from criminal sanctions? e.g. divestment of interest, recusal from involvement in the affected decision-making process? Disciplinary proceedings under Public Service Commission/Police Service Commission Regulations?

- List of suggested amendments to Act and Schedules:

6. **ADDITIONAL AREAS OF TRANSPARENCY FOR GOOD GOVERNANCE**

(1) FUNDING OF POLITICAL PARTIES –

In his contribution to the debate on the Bill for the I.P.O. Act 2003, Senator Hon. Norris Prevost raised the matter of the need to address the funding of political parties and to “come up with some clear and transparent rules about the finance of political parties”. (Hansard 28-30<sup>th</sup> April 2003, p.256).

The late Roosevelt Douglas in his address to the nation on 7<sup>th</sup> February, 2000, immediately after his swearing in as Prime Minister, had this to say on the funding of the political parties and the great concern about the absence of effective rules governing what and how political parties can spend at elections.

He said: “We need robust control over election spending to ensure that Political Parties are properly accountable to the people of Dominica, to prevent conflict of interest and exercise of improper influence”.

The Sun in its editorial of Monday June 8<sup>th</sup> 2009 at page 4 stated: “It is therefore extremely regretted .... that Dominica has no regulation or enforcement to demand accountability of campaign financing, no limits on campaign expenditure, and no restriction on sources of campaign donations.”

Given the apparent political consensus on this, and the on-going public debate on the accountability and transparency and good governance, Parliament may wish to place this matter on its legislative agenda. Many countries have enacted laws to deal with this e.g. the U.K.

Any such law should provide that:

- (i) Political parties be required to published their accounts annually;
- (ii) Identify those who donate, say \$10,000 or more, whether as one-off payment or in aggregate; and
- (iii) Publish a list of donors twice yearly in the official Gazette.

(2) GREATER TRANSPARENCY BY GAZETTE PUBLICATION OF THE EXERCISE OF DISCRETIONARY POWER BY CABINET UNDER THE FOLLOWING ACTS: (as is currently done in the cases of the grant of concessions/incentives under the Hotels Aid Act and Fiscal Incentives Act.):

(a) The Income Tax Act (Chap. 67:01 of the Revised Laws of Dominica 1990)

**“Section 109.** (1) Cabinet may remit wholly or in part any tax payable by any person where its satisfied that it is just and equitable to do so.

(2) Any decision made under subsection (1) shall be final and not subject to appeal”; and

(b) The Customs (Management and Control) Act (Chap. 69:01 of the Revised Laws of Dominica 1990).

**“Section 60.** (1) Cabinet may remit or authorise the refund of the whole or part of any duty paid or payable by any person in respect of any goods”.

The list of those just and equitable and customs duties exemption cases as determined by Government administrations in political succession should enlighten the people of Dominica as to “who gets what, when and how”!

I thank you and walk well my friends!

Revised 25<sup>th</sup> June 2009