

**THE INTEGRITY COMMISSION
OF THE COMMONWEALTH OF DOMINICA**

HANDBOOK
(Frequently Asked Questions)

18th March, 2010

1. Why did Parliament pass the Integrity in Public Office Act 2003, No. 6 of 2003 (the Act)?

Parliament passed this Act in order to give legislative force to its desire to establish international norms of good governance and transparency as articulated in various international instruments and fora including the Inter-American Convention Against Corruption (OAS), and the UN Convention Against Corruption. Dominica is a party to these Conventions.

The Act therefore seeks to establish probity, integrity and accountability of persons in public life by providing for an Integrity Commission where declarations of financial affairs of such persons can be made, complaints of impropriety investigated and prosecuted.

2. What is probity, integrity and accountability in public life?

Probity, integrity and accountability in public life are the standards that society expects those elected or appointed to public office to observe and maintain in the conduct of the public affairs to which they have been entrusted. These standards are what safeguard the nation from corruption by politicians and public officials who have been given almost unrestricted access to public resources together with the power to take decisions that impact on the lives of everyone and on the nation as a whole.

3. What is The Integrity Commission?

The Integrity Commission (The Commission) is a statutory body established under the Integrity in Public Office Act 2003. It is made up of seven persons, comprising a Chairman and six other members. Their appointment is for a period of three years.

4. Who are not qualified to be members of the Commission?

The following categories of persons are not qualified: A person who,

- a. is a person in public life or otherwise exercising a public function;
- b. would be disqualified to be a member of the House of Assembly: for example, a Minister of religion, an undischarged bankrupt, and a certified insane person ;
- c. has at any time during three years immediately preceding the date of his 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

5. How are members selected?

All members are appointed by the President under section 4 of the Act.

- a. The Chairman, who must be either a former judge of the High Court, an attorney-at-law of fifteen years standing at the Bar or a former Chief Magistrate, is appointed on the advice of the Prime Minister, who is required to consult with the Leader of the Opposition before tendering his advice.
- b. Two members appointed on the advice of the Prime Minister.
- c. Two members appointed on the advice of the Leader of the Opposition.
- d. A chartered or certified accountant appointed on the recommendation of the Institute of Chartered Accountants of Dominica or like body however described.
- e. An attorney-at-law appointed on the recommendation of the Dominica Bar Association.

The Act provides that persons appointed on the advice of the Prime Minister and the Leader of the Opposition “shall be persons of high public standing and reputation for personal integrity”.

6. What are the functions of the Commission?

- a. To receive, retain and examine all declarations filed with it;
- b. To make such enquiries as it considers necessary in order to verify or determine the accuracy of any declaration filed with it;
- c. To inquire into any allegation of bribery or act of corruption under the Act;
- d. Receive and investigate complaints regarding non-compliance with provisions of the Act; and
- e. Perform such other function as is required under the Act.

7. What are the powers of the Commission?

The Commission has the powers, rights and privileges of the Supreme Court at a trial to enforce the attendance of witnesses, examine them on oath, compel the production of documents, issue requests to witnesses abroad, and it also has certain powers available under the Commissions of Inquiry Act. These powers exist and are exercisable in the context of a formal inquiry pursuant to section 23, 33 or 47(2) of the Act.

8. Is the Commission under the control of Government?

The Commission is an independent governance institution subject to oversight by the Supreme Court and Parliament.

The Commission in the exercise of its functions under the Act shall not be under the control or direction of any person or authority – that includes the President, the Cabinet, the Prime Minister or the Minister.

The Public Service Commission is empowered to appoint, discipline and remove the staff of the Commission from office and the Minister for Finance is authorized to approve the estimates of the Commission which are a charge on the Consolidated Fund.

9. Who are persons in public life to whom the Act applies?

The Act applies to a person who holds an office or position as:

1. Adviser or assistant to the Prime Minister and other Ministers;
2. Superintendent of Prisons
3. Assistant Superintendent of Prisons;
4. The Chairman, General Manager, or Managing Director of any company or authority owned or controlled by the State or of any Board, Commission, Committee or such other body appointed by the President or a Minister of Government;
5. 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;
6. Chief Fire Officer;
7. Deputy Chief Fire officer;
8. Gazetted Police Officer, namely Commissioner, Deputy Commissioner, Superintendent, Assistant Superintendent of Police;
9. Member of the House of Assembly;
10. Minister of Government;
11. Parliamentary Commissioner;
12. Parliamentary Secretary;
13. Permanent Secretary;
14. Speaker of the House of Assembly;

A person acting continuously for a period of not less than six months in the office of:

1. Superintendent of Prisons;
2. Assistant Superintendent of Prisons;
3. Chief Technical Officer;
4. Chief Fire officer;
5. Deputy Chief Fire Officer;

6. Gazetted Police Officer;
7. Permanent Secretary.

10. What is required of a person in public life?

- Not later than 31st March in every year a person in public life must file a declaration with the Commission setting out the following:
 - a) his office or offices;
 - b) his income, assets and liabilities;
 - c) the assets of his spouse, children or relative acquired through or traceable to his income; and
 - d) gifts made by him in value exceeding one thousand dollars.

Where a person holds money or other property in trust for another, this must be stated in the declaration.

The income, assets and liabilities of a person in public life includes income, assets and liabilities acquired, held or incurred by another on his behalf.

- Every person in public life must observe the Code of Conduct which sets out the standard of behaviour expected of a person in public life and the ethics and values that should govern that behaviour.

11. When must a Declaration be filed?

A person in public life shall, in respect of each income year (which is the calendar year), file a declaration within three months after the end of that income year.

12. What if a person ceases to be a person in public life during the Income year? Is the person still required to file a declaration?

The person would still be required to file a declaration at the end of each income year for the following two years.

13. Who will have access to declarations?

A declaration filed with the Commission is secret and confidential and shall not be made public except where it is required to be produced for the purpose of any court proceedings against or inquiry in respect of a declarant under the Act, the Commissions of Inquiry Act or perjury under the Perjury Act.

Members of the Commission, the Secretary, and the staff are required to take an oath of allegiance, oath of office and oath of secrecy as appropriate before entering upon their duties.

14. What is the consequence of failing to file a declaration by the prescribed date?

Failure to file a declaration in accordance with the terms of the Act or provide particulars properly requested by the Commission will result in the Commission publishing in the Gazette that the person has failed to do so and the Commission will also send a report to the Director of Public Prosecutions (DPP) for further action.

A person who fails to file by the prescribed date is nevertheless required to file a declaration.

15. What is the consequence of filing a false declaration?

It is an offence not to furnish the Commission with a declaration or further particulars required in accordance with the Act, without reasonable cause; to make a false declaration; to fail to give information to the Tribunal inquiring into the accuracy or fullness of one's declaration; or to fail to attend such inquiry or give false information to such an inquiry.

16. How does the Commission ascertain the accuracy or fullness of a declaration?

By conducting an analysis of the declaration and requesting the person to provide further particulars and investigating such particulars.

17. How should a complaint be made to the Commission?

A person who has reasonable grounds to believe that a person in public life has breached any provision of the Act may make a complaint in writing to the Commission. The complaint should state the following:

- a) the particulars of the breach;
- b) the particulars, as far as they are known, of the person against whom the complaint is made; and
- c) the nature of the evidence that the complainant proposes to produce in respect of the complaint.

18. What is contained in the Code of Conduct?

The Code of Conduct contains rules governing the minimum standard of behaviour expected of public officials in the performance of their public duties.

19. What legal force does the Code of Conduct have?

The value of a statutory Code of Conduct is that there usually are legal consequences attached to a breach of the Code. Under section 30 of the Act, any breach of the Code is a criminal offence attracting a fine and/or imprisonment.

20. How is a breach of the Code dealt with?

When a complaint is made under section 31, the Commission will examine the complaint to determine whether it appears to have merit.

If the Commission is of the provisional view that the complaint is frivolous or does not pertain to a matter that the Commission is empowered to deal with it will so inform the complainant and give him an opportunity to be heard.

If after hearing the complainant the Commission determines that the complaint is frivolous or pertains to a matter which the Commission does not have the power to deal with, it will reject the complaint. The person against whom the complaint is made will have the right to take legal action against the complainant, but it shall be a defence that the complaint was not made maliciously, frivolously or in bad faith.

21. If the Commission does not reject the complaint, what does the Commission do?

If the Commission determines that the complaint is not frivolous or that it is within its jurisdiction, it shall institute an official inquiry into the matter. The Commission may request the police to provide assistance. The inquiry is required to be held in private for the taking of evidence and the hearing of arguments.

At the conclusion of the inquiry the Commission must submit a report to the DPP and the President. In keeping with his constitutional prerogatives, the DPP will decide whether to institute criminal proceedings and shall inform the Commission and the President in writing about the action taken on the report.

22. How does the Act deal with gifts to a person in public life?

The Act requires that all gifts be reported in annual declarations of persons in public life.

It is an offence under the bribery and corruption provisions of the Act for a person in public life to accept a gift as a reward for doing or abstaining from doing any official act or as an inducement for any official act to be done or not done by him.

A person in public life shall not ask for or accept any money, property, benefits or favour of any kind over and above that which he is lawfully entitled to receive for the performance of his duties. He shall not for himself or for anyone else accept any gifts, benefits or advantage from anyone for doing or forbearing to do anything in the

performance of his official functions. Also, he shall not allow private interests to conflict with his public duties or improperly influence his conduct in the performance of his public duties.

It is not unlawful to receive a gift or reward from:

- a) a foreign dignitary on the occasion of an official visit if there are reasonable grounds to believe that refusal would offend;
- b) a community organization on a social occasion where the gift or reward represents the work or achievement of the community organization; or
- c) another person on the occasion of the marriage, retirement, or transfer of the person in public life or such other social or celebratory occasion.

However a report must be made to the Commission of such acceptance within thirty days of receipt of the gift or reward. The report must be made in Form 4 of the Third Schedule of the Act.

Where a gift is given as a State gift, or even if given personally, the gift is not trivial, or was intended as a motive or reward for doing or abstaining from doing anything in connection with his official functions, or causing any other person to act or refrain from acting, the Commission shall direct the person in writing to deliver the gift to the Financial Secretary within 30 days of receipt.

23. What constitutes bribery and acts of corruption?

A person in public life shall not, without lawful authority or reasonable excuse, solicit, or accept any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in the promotion, execution or procuring of any contract with a public body for the performance of any work or the supplying of any article or material.

‘Advantage’ includes any gift, loan, fee, reward or commission, any office, employment or contract, any payment, any service or favour. If he accepts such advantage he commits an offence under the Act.

Any person who offers an advantage to a person in public life also commits an offence under the Act.

24. What is the role of the Commission as regards bribery and corruption?

The Commission is required to inquire into any allegation of bribery or act of corruption under the Act.

25. How must such allegations be brought to the Commission?

A person who has reasonable grounds to believe that a person in public life or a prescribed officer has committed an act of bribery or corruption under the Act may make a complaint in writing to the Commission and shall provide all available information to the Commission.

26. How does the Act deal with the possession of unaccounted property?

The Act makes it a crime for a person to be in possession of unaccounted property. This is provided for in section 47. A person in public life found to be in possession of property or pecuniary resources (resources in the form of or relating to money) which are disproportionate to his or her legitimate sources of income is guilty of an offence punishable by a fine and imprisonment.

27. What does “disproportionate to” mean?

‘Disproportionate to’ means that the acquisition of total assets under the control of the person in public life at the relevant date could not reasonably have been afforded out of his total lawful income. The essential question is whether such lawful income was or was not sufficient to finance the acquisitions which resulted in the particular assets being under the control of the person in public life on the relevant date.

28. What is the role of the Commission as regards unaccounted property?

Under Part VII of the Act 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 resources disproportionate to his legitimate sources of income and to submit a report to the Director of Public Prosecutions (DPP) and the President on the conclusion of any such inquiry.

29. How does suspicion arise?

Suspicion implies a belief or opinion based upon facts or circumstances which do not necessarily amount to proof. The Commission must have or be provided with facts on the basis of which reasonable suspicion may arise.

30. Can a complaint be brought in respect of an act of a person in public life which occurred prior to the Act coming into operation?

Due to constitutional reasons, a person cannot be found guilty of a crime under the Act in respect of conduct or actions performed prior to the Act coming into effect, which were not crimes known to the laws of Dominica prior to the Act coming into effect. As a result, criminal proceedings cannot be brought under the relevant sections of the Act in respect of conduct which occurred prior to the date the Act became effective.

31. Who bears the burden of proof in matters under the Act?

In proceedings commenced on allegations made by a person against a person in public life, the person making the allegation has the burden of proving his allegations.

32. What if someone makes false allegations?

A person who makes false allegations against a person in public life commits an offence and can be fined or imprisoned.

33. Is the Commission required to make any report of its activities?

The Commission is required to make an annual report to the Minister for Legal Affairs of its activities and the report must be tabled in Parliament. The report must not disclose the particulars of any declaration filed with the Commission.

34. What happens when the report is tabled in Parliament?

After the report has been tabled it becomes a public document and the Commission may disseminate it for public information. The report may be the subject of questions or debate in Parliament.

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