



**REPUBLIC OF TRINIDAD AND TOBAGO**

**REPORT TO PARLIAMENT**

**by**

**THE INTEGRITY  
COMMISSION**

**on its activities for the year**

**1989**

*(Pursuant to Section 10 of the Integrity in  
Public Life Act, 1987)*

**ANNUAL REPORT**

**OF THE**

**INTEGRITY COMMISSION**

**FOR THE YEAR 1989**

SECOND ANNUAL REPORT  
INTEGRITY COMMISSION  
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## INTRODUCTION

The Commission completed its second year of office on 31st December, 1989 having held 44 sittings in that year.

Among our activities for the year was our meeting with the Constitution Commission to present our views on constitutional amendments on Integrity Legislation.

We also established contact with the Integrity Commission of Jamaica. Our Deputy Chairman, Dr. J. O'Neil-Lewis, held talks with their Chairman, Dr. H. G. Nosworthy C.M.G., and we have exchanged literature on our respective operations.

## ACCOMMODATION

It may be remembered that on the establishment of our Commission we were given accommodation in our present offices at the Hall of Justice on the understanding that our tenure here would be of a temporary nature and subject to the requirements of the Judiciary. While no demand for these offices by the Judiciary has been brought to our notice, yet we are of the view that some thought should, in any event, be given to the question of a permanent site for this Commission.

In the choice of such a site, the criteria which, in our view, should apply are:

- (a) the premises should be such as to provide 24-hour security, having regard to the confidential nature of the records of the Commission;
- (b) the premises should not be in close proximity to any government office, having regard to the need to demonstrate its separation from and independence of any government agency;
- (c) the premises should be of such a quality as to reflect the importance which Parliament has attributed to its operations;
- (d) the premises should be sufficiently spacious as to provide adequately for the carrying out of its functions.

The above criteria are all met in our present accommodation with the possible exception of (d) where, as we pointed out in our first report, we envisage that with the likely expansion of the scale of operations of this Commission, our present accommodation may become too cramped.

## STAFF

After the experience of our first year of operations, the Commission has taken another look at our needs for staff, and we have come to the conclusion that some re-adjustment has now become necessary. During 1988 - 1989 we functioned with the following staff:

29.2.88	Secretary ... ..	
	Executive Secretary	(Range 35F)
16.2.89	Temporary Clerk I	(Range 14)
20.2.89	Acting Clerk III ...	(Range 24F)
24.2.89	Temporary Messenger	(Range 9)
3.3.89	Administrative Officer II	(Range 46D)
20.3.89	Temporary Clerk-Typist	(Range 13)
18.10.89	Part-time Maid	

Our Secretary who had been assigned from the Prime Minister's Office returned to her substantive post on 18th May, 1989, and her duties were thereafter carried on by an Administrative Officer II (also assigned from the Prime Minister's Office) until 18th September, 1989, when he was recalled to his substantive post, and the present incumbent, Miss Leonora Forde, assumed duty as Secretary.

In discussions held with the Organization and Management Division of the Prime Minister's Office, we have advised that the re-adjustment of our clerical establishment should be as follows:

Secretary  
 Administrative Officer IV  
 Executive Secretary  
 Clerk-Stenographer III  
 Orderly  
 Messenger I  
 Maid I

This re-adjustment means that, in exchange for the appointment of an Administrative Officer IV (already provided for in the Estimates for 1989) and Clerk-Stenographer III, we will relinquish the posts as shown in the Estimates:

Clerk III  
 Clerk II  
 Clerk I  
 Clerk-Stenographer II  
 Clerk-Typist

thus achieving a saving in our establishment budget.

#### **Appointment of Staff**

The Integrity in Public Life Act No. 8 of 1987 provides:

“The staff of the Commission shall be public officers appointed in accordance with Section 121(3) of the Constitution” [s. 30(2)].

We understand this to mean that members of staff of this Commission fall within the purview of the Public Service Commission so far as concerns appointment and discipline, and that the terms and conditions of service for public officers will apply.

Parliament has, however, seen fit to enact that:

“In the performance of its functions the Commission is not subject to the control or direction of any person or authority” (s. 9 No. 8/1987).

It seems to us, therefore, that in order to give effect to the intention of Parliament, we must first be masters in our own house.

We should acknowledge that in the appointment of junior staff we have sought and obtained the co-operation of the Public Service Commission, which has allowed us to interview candidates for appointment and has given effect to our recommendations.

On the question of Discipline, it would seem that the appropriate body is the Public Service Commission and not our Commission. We think that this is an anomalous situation, even though we would anticipate the full co-operation of the Public Service Commission should an issue of discipline ever arise for its consideration.

As a matter of principle, however, we consider that our Commission should be empowered to exercise disciplinary control over all members of staff.

We note that this may not be achieved under the provision of s. 127 of the Constitution by a delegation of the functions of the Public Service Commission to our Commission as our Commission is not one of the bodies referred to at s. 127(1). This would involve an amendment to the Constitution.

## Secretary to the Commission

In the case of this officer, our recommendation is that he/she be removed entirely from the ambit of s. 30 and be appointed by the President on the advice of the Commission. This would further emphasize the independence of the Commission.

Our thinking in this regard is that in the light of our experience, this office would best be filled by a person who can bring a wealth of experience of public affairs to the job, and may well be served by a person who may have already attained the compulsory retirement age for public officers. In such a case, the President can fix the terms of office of such a person much the same way as he does that of the Commissioners, and the Salaries Review Commission can determine the appropriate salary and terms and conditions of office for the incumbent.

To achieve this result would, of course, necessitate an amendment to the Act.

## FORM OF DECLARATION

We have considered it necessary to revise the format of the Form of Declaration so as to make for a more concise presentation, while retaining the essential requirements of the Second Schedule to the Act, as reflected in the revised form in current use.

## STATEMENT OF ASSETS

One significant change in our assessment of assets has been in the statement of real property, where we have opted for the *Present Estimated Value* of the property as the figure representing that asset, rather than the *Purchase Consideration* which we have accepted in the past. Our thinking in this regard is that the purchase consideration, which may have taken place over a long period of time, would become an unrealistic figure having regard to the fall in the value of money and fluctuating real estate prices.

We recognize that a declarant's estimate of the value of his house and land may not be a precise statement of its true market value but, in the absence of any other factor that should put us upon enquiry, we consider that this statement should be accepted without the requirement of a valuator's report.

In the case of personal property, e.g., stocks and shares, we have taken a similar stand, and in these instances we look to the Stock Exchange publication of closing prices as at 31st December for the prices of these assets.

## COMPUTERIZATION OF OPERATIONS

The Commission has purchased a MacIntosh Computer and our staff is being trained in its operation. In this regard, we must acknowledge with gratitude the assistance rendered by the Director of Organization and Management Division, Mrs. R. Portillo, and Dr. N. Beckles, Director, Management Development Centre, for making members of their staff available in this exercise.

## COMPLIANCE WITH SECTION 15 OF THE INTEGRITY IN PUBLIC LIFE ACT

This requirement of the Act is that

“A person in public life shall, on or before 31st May in each year, file in respect of the year immediately preceding the declaration required of him under this Act.” [s. 15(1)].

There were on our records 102 persons who fell within the definition of persons in public life as declared at section 2 of the Act. Most of such persons were required to comply with the deadline of 31st May as established by section 15(1), but in the case of a person

who became "a person in public life" after the commencement of the Act, the obligation on him was that he

"... shall, not later than three months of his becoming a person in public life, file a declaration in the prescribed form with the Commission." [s. 15(4)].

This we understand to mean that, at whatever time that a person assumes office in one of the categories set out in the First Schedule to the Act, an obligation devolves upon him to file a return within three months of that date.

A point that does not seem to have been clearly understood is that the obligation to file relates to

"... the year immediately preceding the declaration required of him under this Act." [s. 15(1)].

and that the obligation to file continues into the following year *even though in that year the person ceased to be a person in public life*. The Act provides in this regard that

"The declaration shall be filed irrespective of the fact that, during the year in respect of which the declaration is required or in the following year, the declarant ceased to be a person in public life, otherwise, than by reason of death." [s. 15(2)].

### Persons in Public Life

Our record of persons mentioned in the First Schedule of the Act, who are required to make declarations in respect of 1988, stands as follows:

Members of the House of Representatives	...	...	...	36
Ministers of Government (who are not Members of the House of Representatives)	...	...	...	5
Parliamentary Secretaries (who are not Members of the House of Representatives)	...	...	...	1
Permanent Secretaries	...	...	...	55
Chief Technical Officers	...	...	...	5

Our understanding of this section is that from the moment a person falls within the First Schedule then, *no matter how brief the period of his tenure of office*, the obligation crystallizes in respect of the previous year and will continue into the following year.

This year we have to record that in a fair number of cases persons failed to comply with the deadline for the filing of their returns.

We have established a follow-up procedure by issuing reminders to such persons, and our experience is that, in the majority of cases, the response has been good. In some instances declarants have asked for an extension of time to file their declarations on the grounds of the pressure of public business and we have had no difficulty in granting reasonable extensions. In some other cases, however, some declarants have not responded at all and the circumstances suggest a less than diligent approach to their obligations under the Act. These are in the minority.

The sanctions provided in the Act against persons who have been delinquent in their fulfilment of this obligation are first the publication of that fact in the *Gazette* (s. 22), and next a submission to the Director of Public Prosecutions for possible prosecution under section 27.

The policy of the Commission has been to refrain from exercising these powers so long as a glimmer of hope remains to persuade defaulting persons to comply with their obligations. Our policy has been, therefore, that a resort to our statutory options should be made only after all other avenues of communication have failed to bear fruit.

We wish to record that the position at 31st December, 1989, with regard to the receipt and certification of returns was as follows:

Declarations filed and certified	...	...	...	...	...	79
Declarations filed but not certified	...	...	...	...	...	11
Declarations not filed	...	...	...	...	...	8
Declarations not due by 31.12.89	...	...	...	...	...	4

Since that date there has been further compliance and the position up to the date of the preparation of this Report is as follows:

Declarations filed and certified	...	...	...	...	...	96
Declarations filed but not certified	...	...	...	...	...	2
Declarations not filed	...	...	...	...	...	4

It is only fair to say that in the cases filed but not certified by 31st December, 1989 the reason was that in those cases the Commission was awaiting clarification on certain matters and in some instances the declarants had to procure additional information from certain sources.

### INCOME FOR THE PURPOSES OF THE ACT

The Integrity in Public Life Act provides in this regard that

“ . . . the income of a person in public life is that which he acquired in or out of Trinidad and Tobago and includes all perquisites or benefits direct or indirect and all income within the meaning of the Income Tax Act.” (s. 16).

The question arises whether the provision of government housing and a travel allowance and subsistence allowances falls within the meaning of income. Some declarants make full disclosure of all such items while others do not. Our interpretation of the section is as follows.

#### Housing

The provision of free housing would fall within the meaning of a benefit under s. 16 according to the ordinary meaning of that word. However, for it to be deemed income would depend upon whether it is so treated under the Income Tax Act, for this is the criterion established at s. 16. Furthermore, certain categories of public officers occupy government quarters for which they pay rent. The payment of rent, therefore, would *prima facie* remove the asset from consideration as a benefit unless the Income Tax Act specifically provides otherwise.

In the final analysis, therefore, whether the housing is free, or subsidized, the question for consideration is how the matter is treated under the Income Tax Act.

In the event that these allowances are not taxable, then they need not be disclosed.

#### Travelling and Subsistence Allowances

There is also no uniformity among declarants in this matter, and we think that there should be an accepted principle as to whether or not these allowances should be declared.

We think that the bald statement of the amount of such allowances as income is not a true reflection of any addition to the declarant's income. The nature of such allowances, in our view, is that they are amounts calculated to offset the expense which the declarant incurred through the use of his car which he is required to keep to carry out his public duties. In some instances such an amount is calculated on a mileage basis bearing relationship to the actual use being made of the vehicle, while in other instances (and more so in the case of senior public officers) a fixed or commuted allowance is granted.

Similar considerations apply in the case of a subsistence allowance which is designed to offset the expense which the official incurred in the discharge of his public duties.

We do not consider that the Act requires us to go behind the official nature of these allowances to enquire whether the declarant has in fact derived some benefit from these allowances and to what extent, and indeed this would be an unrealistic and futile exercise.

The legal position therefore is that travelling and subsistence allowances to persons in public life are not taxed and so need not be disclosed.

### **POWER TO MAKE REGULATIONS**

In our Report of activities during the year 1988, we recommended that

“The Commission should be empowered to make regulations for the better carrying into effect of the provisions of the Act, such regulations being made subject to parliamentary approval.”

Our experiences during the year of activities for 1989 have reinforced our perception of this need, having regard to our observations raised above in the paragraphs relative to:

- Form of Declaration
- Statement of Assets
- Housing
- Travelling and Subsistence Allowances

We commented also in our previous report on the question of:

- Declaration of Gifts
- Declaration of Household Items
- Declaration of Foreign Property
- Provision for Investigation

and our experiences during 1989 also lead us to the view that these topics should form the subject of regulations so as to make for more consistent and effective procedure.

It is our view that amending legislation may be brought in this regard without an amendment to the Constitution.

### **POWER TO HOLD A FORMAL ENQUIRY**

We wish to go on record once more to say that no occasion arose during 1989 for us to invoke our powers of holding a formal enquiry under s. 23. We wish nevertheless to advert, as we did in our last report, to the shortcomings of the existing legislation with regard to the provision of any powers of investigation necessary for the carrying out of an effective enquiry.

In our last report we stated:

“The Commission has no staff for carrying out any investigations.”

We have sought to remedy this lack by seeking the appointment of an Administrative Officer IV (referred to above) who would carry out the duties of an Investigating Officer.

Some of those duties would entail no more than the routine clarification of certain financial matters. We should recognize, however, the need for us to be properly equipped to carry out an effective investigation; and in this regard, our powers under the Act and under the Commissions of Enquiry Act (Chap. 19:01) may not be enough.

There has come to our notice the Prevention of Bribery Ordinance Ch. 201 of Hong Kong entitled "An Act to make provisions for the prevention of bribery and for purposes necessary thereto or connected therewith".

The Hong Kong legislation sets up an Independent Commission Against Corruption headed by a Commissioner in whom are vested wide powers of investigation into allegations of bribery and corruption, so that those powers are more germane to the functions of a Crime Commission than to a commission such as ours; but nonetheless, we wish to advert to one provision which we consider would be a useful adjunct to our powers:

- "16. (1) Any investigating officer conducting an investigation into an offence alleged or suspected to have been committed under this Ordinance:
- (a) may apply to any Crown servant or any other person for assistance in the exercise of his powers or the discharge of his duties under this Ordinance."

We consider that any investigation into an offence under the Integrity in Public Life Act may be so closely linked to an investigation into an offence under the general criminal law that there might be some overlap in the evidence so as to warrant some collaboration of effort.

For example we envisage two situations in which some outside assistance may become necessary, viz:

- (a) the investigation of a complaint that a breach of the Act has occurred might be closely linked with circumstances which tend to show that some other offence against the law has taken place; and conversely
- (b) the investigation into a breach of the law might tend to show that a breach of the Act may have taken place.

While we must keep firmly in mind the need to preserve the confidentiality of all information revealed to us by declarants, yet we consider that there can be a legitimate area of inquiry without breaching that confidentiality.

Where therefore there is evidence that a certain transaction has been omitted from a declaration, we consider that we should be able to enlist the assistance of any person to enquire into the matter.

Conversely where an investigator enquiring into an offence under the law brings to light a transaction suspect under our Act, there should be cast upon him an obligation to bring those circumstances to the notice of the Commission for our consideration as to whether an offence under the Act has been committed.

#### IMMUNITY FROM LEGAL PROCESS

We consider that the same protection should be awarded to members of the Commission acting in good faith in the carrying out of their duties as is awarded to the Ombudsman at section 98(5) of the Constitution:

- "98. (5) No proceedings, civil or criminal, may lie against the Ombudsman, or against any person holding an office or appointment under him for anything he may do or report or say in the course of the exercise or intended exercise of the functions of the Ombudsman under this Constitution, unless it is shown that he acted in bad faith."

## REGISTER OF PERSONS IN PUBLIC LIFE

The Act is silent upon this subject but ordinary practice has dictated to us the necessity for such a record.

The question arises, however, as to the standard of proof that is acceptable to establish the fact that a person falls within the First Schedule to the Act so as to justify inclusion in our Register. This we have established in the case of Members of Parliament by requesting of the Clerk of the House a statement to that effect, and in the case of public officers by a similar statement from the Director of Personnel Administration. We also seek to keep up-to-date upon changes in personnel in public life by reference to publications in the official *Gazette*.

We do not consider this to be the most satisfactory arrangement and would prefer to be informed directly by the responsible officer

- (a) whenever a person has been appointed to an office mentioned in the First Schedule; and
- (b) whenever such person ceases to so function.

This we consider should be not merely an act of grace by the responsible officer, as it now is, but should be made to be a statutory duty that devolves upon that officer.

We consider that the legal effect of such a statement coming from the responsible officer should be sufficient evidence *prima facie* that the person functions in an office within the First Schedule.

## PROOF IN LEGAL PROCEDURES

The Act is silent as to any method of proof to establish that a person falls within the First Schedule to the Act.

We recommend that a Register of Persons in Public Life kept in accordance with information supplied by the responsible officers, as described above, should be given statutory validity and that proof of the contents of any declaration of a person on the Register be established by the simple expedient of requiring the production in court of an exact copy of such declaration, duly authenticated by the Secretary of the Integrity Commission. Such a document, therefore, purporting to have been duly authenticated by the Secretary, should then be admissible in evidence without requiring the attendance in court of the Secretary or any other officer of the Commission; and the original document should at all times remain for safekeeping within the records of the Commission.

We recommend, therefore, that so as to establish the procedure to be followed on any prosecution for an offence under the Act, there should be the following subsections to section 11, viz:

- s. 11“(b) Where a particular declaration or record is required to be produced for the purpose of or in connection with any Court proceedings under s. 11(a) an exact copy of such declaration or record duly authenticated by the Secretary of the Commission shall be given to the Director of Public Prosecutions on his written application to the Commission and such copy shall be admissible in evidence without the requirement of the attendance in Court of the Secretary or any other officer of the Commission and shall be sufficient proof *prima facie* of the correctness of such copy.
- (c) Any document or record mentioned in section 11(b) above shall be sufficient to establish *prima facie* that any person to whom it relates is a person in public life within the meaning of section 2 of the Act.”

## PROJECTIONS FOR INTEGRITY LEGISLATION

We conclude our report by introducing this subject, as we did in our first report. We have not had the benefit of seeing the recommendations of the Constitution Commission in this regard, but for our part, we wish now to include for the information of Parliament a summary of our recommendations made to that Commission, as follows:

### “RECOMMENDATIONS

In summary, our recommendations are as follows:

- I. The persons who should come within the purview of the Act should be:
  - (a) Members of the House of Representatives.
  - (b) Ministers of Government.
  - (c) Parliamentary Secretaries.
  - (d) All elected members of the Municipalities and Local Government bodies.
  - (e) All government-appointed directors of State Corporations.
  - (f) The wives and minor children of the above persons.
  
- II. The public officers and other employees who are the advisors of these bodies should be excluded from the purview of the Act, but should be subject to the disciplinary control of the appropriate authorities.
  
- III. The scope of the Act should be widened to include:
  - (a) Conflict of Interest Issues.
  - (b) Questions concerning the use of Insider Information.
  - (c) Questions concerning the use of office to influence a decision.
  - (d) The Acceptance of Benefits.
  - (e) The Carrying on of Business by Members.
  - (f) A provision for a reference to the Integrity Commission by any Parliamentarian or member of a municipality, local government body or statutory body of a question as to whether a breach of the Act has been committed by any member.
  - (g) A Provision for the reference by the Speaker of the House of Representatives to the Integrity Commission of a question whether a breach of a Code of Ethics has been committed by any member.
  
- IV. Section 49 of the Constitution should be amended to allow Parliament to have the power to expel any of its members for a breach of the Act or of a Code of Ethics, established by Parliament after an enquiry has been carried out in this regard by the Integrity Commission.

A Public Disclosure Statement open to inspection by all should be prepared by the Integrity Commission based upon information supplied by the Declarant, setting out those areas where a conflict of interest is capable of arising.”

**CONCLUSION**

It is our understanding that there is a general consensus that the Integrity Legislation in its present form is but the first step along the road towards an effective system of control of integrity in public affairs, hence our continuing quest for improvements. Our fear is that without some effective means of investigation, the working of this Commission may give a false sense of propriety in public affairs, instead of being able to bring to light some impropriety where it may actually exist.

We note that this quest for integrity in public affairs has now taken on world-wide proportions, and we look forward to the day when we may host a conference along with our Caribbean neighbours, and perhaps some other Commonwealth and other countries, so as to share experiences and come up with some practical answers.

**SUBMITTED TO PARLIAMENT**

this            day of March, 1990

**GEORGE COLLYMORE**  
*Chairman*

**J. O'NEIL LEWIS**  
*Deputy Chairman*

**JOHN MARTIN**  
*Member*

**JOHN OTTLEY**  
*Member*

**BRIAN DES VIGNES**  
*Member*