

A Review of the Role of the Integrity Commission to make it more effective

in:

- **Uncovering Corruption**
- **Maintaining oversight on persons in public life**
- **Winning wider public support**

WHAT IS CORRUPTION?

What is corruption

An act done with an intent to give advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongly uses his status or character to procure some benefit for himself or another person contrary to duty and the rights of others.

What is corruption

Corruption involves the dishonest or preferential use of power or position which has the result of one person or organization advantaged over another.

SEVEN PRINCIPLES OF PUBLIC LIFE

The Seven Principles of Public Life*

1. Selflessness

4. Integrity

2. Objectivity

5. Openness

3. Accountability

6. Honesty

7. Leadership

*Summary of the Nolan Committee's First Report on Standards in Public
life - www.publicstandards.gov.uk

The Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Objectivity

In carrying out public business, including the making of public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their duties.

The Seven Principles of Public Life

- **Openness**
 - Holders of public office should be as open as possible about the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty**
 - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership**
 - Holders of public office should lead by example by promoting and supporting these seven principles.

VISION AND MISSION OF THE INTEGRITY COMMISSION OF TRINIDAD AND TOBAGO

Vision and Mission of the Integrity Commission

Vision

“The Integrity Commission is the leading Institution to promote integrity and to make Trinidad and Tobago corruption-free.”

Mission

The Integrity Commission shall be a performance driven institution that promotes the highest ethical standards by:

- Ensuring compliance with the Integrity in Public Life Act
- Detecting corrupt practices and dishonest conduct
- Providing excellent service delivery and public education – for the benefit of our nation.

ACKNOWLEDGEMENTS

Acknowledgements

- The Commission acknowledges the staff of the Integrity Commission for their contribution to the spirit of this document.
- The document relies heavily on the 2005 work of the 'Fujitsu Team' who was contracted by the Commission to recommend improvements to the legislative framework and operating efficiency of the Commission.

RATIONALE FOR PRESENTATION

Rationale for Presentation

- The basic hypothesis of this presentation is that the current legislative framework for the effective operations of the Integrity Commission is inadequate, and that it prevents the Commission from meeting the expectations of its constitutional mandate, as well as its own Vision and Mission.
- There is therefore need for major overhaul of the legislation and for the establishment of a regime of regulations to support the work of the legislation.

Rationale for Presentation cont'd

- Integrity legislation and anti-corruption provisions must be legally effective and enforceable.
- The powers derived under such enactments must allow the anti-corruption organisation to be independent and bring to bear proper oversight and investigative functions that will prevent and uncover corruption within public institutions, and regulate the conduct of persons in public life and persons exercising public functions.

Rationale for Presentation cont'd

- The Integrity Commission ought not to be limited to drawing its authority from designated legislative enactments such as the Integrity in Public Life Act (IPLA) or the Prevention of Corruption Act, but should have recourse to such other written laws that impact on the dishonest and corrupt conduct.
- The Larceny Act, Forgery Act, Criminal Offences Act, Statutory Declarations Act and others **are examples of** such legislation.

The Approach

- The Integrity in Public Life Act is conveniently divided into five parts.
- This review examines each part and makes recommendations to enhance the effectiveness of the Act.
- The review also makes recommendations for the enactment of appropriate Regulations.

PART I - PRELIMINARY

Part I – Preliminary - Definitions

- The Commission generally agrees with the list of definitions herein and the application of the Act, and makes the following suggestions for improvement:
 - A definition for corruption
 - Standards (principles for persons holding public office)
 - Public body
 - Conduct conducive to corruption; definition of dishonest conduct
 - Persons exercising public functions (Schedule)
 - Meaning of Business Associate
 - Definition of Tribunal

PART II – ESTABLISHMENT, POWERS, AND FUNCTIONS OF THE INTEGRITY COMMISSION.

Part II – Establishment, Powers, and Functions of the Integrity Commission.

- The Commission generally agrees with the provisions of this part of the Act, and wishes to make the following recommendations for its improvement.
 - The Commission should have special powers to designate persons as Investigators and issue them with means of identification as such an officer.
 - Definition of public bodies re 5(1)(g) e.g.
 - State enterprises and Statutory Bodies
 - Municipal Bodies
 - Other civil society institutions funded by the state
 - Organizations who do business for, with, or in the name of public bodies.
 - The Commission is of the view that all persons/ institutions who make use of ‘public money’ should come under the scrutiny of the Integrity in Public Life Act.

Part II – Establishment, Powers, and Functions of the Integrity Commission.

- The Commission is of the view that Section 5 (g) & (h) should to expanded to give details of the intent of the Act, as follows:
 - **An organizational ethics audit i.e.**
 - A systematic evaluation of an organizational ethics program and performance to determine whether its effective.
 - It includes regular, complete, and documented measurements of compliance with the company's published policies and procedures.
 - **A good governance review.***
 - Simply put "governance" means: the process of decision-making and the process by which decisions are implemented (or not implemented). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance.

Part II – Establishment, Powers, and Functions of the Integrity Commission.

– **A good governance review. Cont'd***

- Since governance is the process of decision-making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that have been set in place to arrive at and implement the decision.

– **Conduct of examination**

- The examination may be carried out by the employees, contractors, or by personnel seconded from the Public Service, law enforcement authorities, or by professional firms with experience in ethics auditing.
- Follow up actions on the part of audited institutions to such audits should be specified in the Act and penalties specified.

PART III - FINANCIAL DISCLOSURE – STATUS QUO

Part III - Financial Disclosure – Status Quo

- This section imposes a duty on persons in public life to furnish a declaration of their income, assets and liabilities and a statement of registrable interests.
- The declaration is to be furnished initially within three months of becoming a person in public life and thereafter by the 31st of May in each succeeding year of public life.

Part III - Financial Disclosure – Status Quo

- The Commission has the power, where good cause is shown, to extend the time for the filing of a declaration for a period not exceeding twelve months.
- The Act confers on the Commission the ancillary power to apply ex-parte to the High Court for a mandatory order directing a person to file such declarations.

Part III - Financial Disclosure – Status Quo

- The Act requires that a statement of net worth be filed with the declaration at the discretion of the declarant. (Section 11(3)).
- Sections 15-17 empower the Commission to enquire further into any declaration and for this purpose to advise the President to appoint a Tribunal of two or more of its members to conduct an enquiry.

Part III - Financial Disclosure – Status Quo

- Section 21 (2) of the Act empowers the Commission to declare non-disclosed assets to be forfeited to the State where such property is located in Trinidad and Tobago; and where it is not, to order that an amount equivalent to the value of the property be paid by the person to the State.

Part III - Financial Disclosure – Status Quo

- Section 22 of the Act requires the establishment of a blind trust where it appears to the Commission that a breach of the Act may have been committed or a conflict of interest arisen re the declared assets of a declarant.

PART III - FINANCIAL DISCLOSURE – RECOMMENDED CHANGES IN LEGISLATION

Part III - Financial Disclosure – Recommended changes in Legislation

- The electronic submission of declaration forms.*
- The electronic capture and processing of declaration forms for efficient workflow and timely analysis.*
- The issuance of acknowledgement letters, with the caveat that the declaration is subject to audit, to all declarants who submit properly signed and dated declarations in accordance with Section 11 of the Act

Part III - Financial Disclosure – Recommended changes in Legislation

- The Commission recommends:
 - That it be empowered to levy fines and penalties on those institutions that fail to comply with the Commission's request for and/or confirmation of information in respect of the audit of a declaration.
 - The power to levy fines and penalties on declarants who do not file declarations.

Part III - Financial Disclosure – Recommended changes in Legislation

- The Commission is also recommending the following changes in the legislation:
 - An increase of the minimum limit for disclosure to \$25,000 per asset/ liability and excluding investments and credit card balances.
 - The statement of net worth should be made mandatory instead of at the discretion of the declarant.
 - The High Court should have the power to freeze the assets of a person under investigation.

Part III - Financial Disclosure – Recommended changes in Legislation

- The Commission is also recommending that more specific criteria and guidelines be established for the setting up of a blind trust as stated in section 22(b);
- Section 22 to be amended to include a sanction for failing to comply with the Commission's instructions to place assets in a blind trust.
- The Commission is also recommending that there be a provision for restraint orders to be imposed upon the use of the proceeds of blind trusts in certain circumstances

Part III - Financial Disclosure –

Recommended changes in Legislation

- The Commission is recommending the repeal of the sections 15-19 of the Act and the shoring up of Part V of the Act by specific rules for the conduct of such proceedings.
- Sections 15-17 empower the Commission to advise the President to appoint a Tribunal of two or more of its members to conduct an enquiry into the contents of a declaration.
- It is not clear why these powers are distinct from the general power under Section 33, since a failure to make full disclosure is a breach of the Act under Section 21.
- Section 17 (2) (a) & (b) provides for a stay of an enquiry, where an enquiry is being conducted by the Police or the subject matter of the enquiry is engaging the attention of the court.

PART IV – CODE OF CONDUCT – STATUS QUO

Part IV – Code of Conduct – Status Quo

- The Commission is generally satisfied with the provisions contained in these sections except in the following areas:
 - There appears to be no penalty for the breach of the Code of Conduct by persons in public life. Where, with respect to Members of Parliament, the Commission is required to report a breach to the DPP, it is not clear what action the DPP could take on such a report, unless the conduct in question involved the commission of some other criminal offence.

Part IV – Code of Conduct – Status Quo

- The Commission does not exercise the same monitoring function with respect to persons exercising public functions as it does for persons in public life. See Sections 30 and 31(1).
- The Commission therefore recommends that this monitoring function and the implementation of penalties for breaches be delegated to the respective Commissions and the Parliament and that a suitably crafted report be submitted to the Commission on a quarterly basis on the status of compliance.

PART IV- CODE OF CONDUCT - RECOMMENDED CHANGES IN LEGISLATION

Part IV- Code of Conduct - Recommended changes in Legislation

- The Commission recommends that:
 - The Act should create offences relating to a breach of the Code of Conduct.
 - There be some definition of corruption and corrupt practices within Part IV of the Act. (Not available in the Prevention of Corruption Act 1987)
 - Section 32 be amended to include a provision imposing a duty on persons exercising public functions to report any act which he/she suspects may concern corrupt conduct.
 - Such amendment would have effect despite any duty of secrecy or other restriction on disclosure.

PART V – POWER OF INVESTIGATION – STATUS QUO

Part V – Power of Investigation – Status Quo

- Section 5(2)(c) and Section 34 of the Act which gives the Commission the very important powers of authorising investigations, summoning witnesses, subpoena and the like, do not define the means to enforce these provisions.
- A person facing a request from the Commission can simply refuse to comply and take his chances at a criminal trial providing that in the face of the initial obstacles the matter reaches the Court.

Part V – Power of Investigation – Status Quo

- In relation to its investigative powers – Section 5(1)(e) and (f) and section 34 of the Act, The Commission is not armed with the important ancillary powers of search and seizure, as well as arrest, prefer charges, to conduct face to face interviews/interrogatory exercises with witnesses/persons of interest, etc.
- Such power resides with the Police, the Commission is of the view that the effective conduct of investigations necessitate that its Investigators be vested with similar authority.

Part V – Power of Investigation – Status Quo

- No provision is made for the protection of “whistle-blowers”. The absence of such protection is clear disincentive to those who are inclined to come forward.

PART V – POWER OF INVESTIGATION – RECOMMENDED CHANGES IN LEGISLATION

Part V – Power of Investigation – Recommended changes in Legislation

- The need to establish means for enforcing the provisions of Section 5(2)(c) and Section 34 of the Act which gives the Commission the power to authorise investigations, summon witnesses and subpoena persons.
- The need to empower the Commission to establish tribunals as per Section 15 of the Act to facilitate these powers. (vide the Independent Commission against corruption Act, 1988 (New South Wales))

Part V – Power of Investigation – Recommended changes in Legislation

- A provision for review by the Supreme Court to safeguard individuals against any claim of abuse by the Commission.
- The need to give the Commission powers of search and seizure, as well as arrest (vide Hong Kong and New South Wales)
- The need to establish provision for the protection of “whistle-blowers”. The absence of such a provision is a clear disincentive to those who are inclined to come forward.

Part V – Power of Investigation – Recommended changes in Legislation

- The Commission also recommends that systemic arrangements be made to facilitate the exchange of information between the Board of Inland Revenue, the Police Service, Customs and Immigration, the Financial Intelligence Unit, in order to avoid duplication of effort, enhance investigative capabilities and facilitate expeditious handling of investigations.

MISCELLANEOUS RECOMMENDED LEGISLATIVE CHANGES

Additional Miscellaneous Provisions

It would be appropriate for the Act to include the following provisions for:

- Offences by companies pertaining to bribery and corruption.
- Penalties for such offences.
- Offences by companies facilitating breaches in the Act and associated penalties.

Additional Miscellaneous Provisions cont'd

- Protection from liability for persons acting under the direction of the Commission.
- Extraterritorial jurisdiction, where possible.
- Admissibility of declarations and statements against an accused as a formal statement of evidence.

Additional Miscellaneous Provisions cont'd

- The Commission recommends that the Prevention of Corruption Act be amended and reinforced in the following ways:
 - By making illegal a number of corrupt activities which are not presently captured
 - By making provision for the inchoate offences of attempt, conspiracy, aiding and abetting and attempt.
 - By making provision for the acceptance of a bribe to be an offence notwithstanding that the purpose of the bribe was not carried out.
 - By amending the statutory presumption to include “any dealing with the Government or any Department thereof or public body”.
 - By making provision for the evidence of accomplices.

Recommended changes in Legislation – Persons in Public Life

- The Commission recommends a variation to the Schedule of persons in public life as follows:
 - Chairman and Members of the Integrity Commission
 - Chairman and Members of all Service Commissions
 - Transport Commissioner
 - Commissioner of Police
 - Chief Immigration Officer
 - Chairman, BIR
 - Comptroller of Customs
 - Chief Executives of all State Enterprises, Statutory Bodies, Municipal Corporations and Enterprises that are partially or wholly funded by the State
 - Special and Technical Advisers to Ministers
 - Judges and Magistrates.

Regulations – Recommended changes in Legislation – Declaration Forms

- The Commission recommends a total overhaul of declaration forms to facilitate efficient information capture of net worth and growth in assets
- Additional information to be captured include:
 - Financial or other contributions to political parties
 - Financial or other favours granted to public officials
 - Financial or other favours received by public officials
 - All associated businesses
 - All instances of supply of goods and services to the State
 - All instances of tenancy arrangements between the State and the declarant.
 - More information on conflicts as it relates to private companies, and other business relationships.

SUMMARY OF RECOMMENDATIONS

Summary of Recommendations

1. Fine tune 'definitions' so that the anti-corruption activities of the Commission are all embracing.
2. Create a specific portion of the Act to focus on examination of public bodies.
3. Overhaul the Financial Disclosure provisions of the Act to facilitate faster processing of declarations as well as the efficient verification of these declarations. Include in this overhaul the power to levy fines and penalties on persons who do not file declarations.

Summary of Recommendations

4. There should be penalties for breaches of the Code of Conduct.
5. Establish a regime of practices for the processing of declarations from persons exercising public functions who are not captured under the IPLA to be managed by their respective Commissions.
6. Review the role of the Tribunal in the processing of declarations, and widen its applicability to investigations.

Summary of Recommendations

7. Fine tune the role of the Blind Trust, its implementation, management, and the oversight role of the Commission.
8. Facilitate the confidential reporting of corrupt practices in institutions by public officers.
9. Spell out the enforcement of the powers of authorising investigations, summoning witnesses, and subpoena and the like, by the Commission.

Summary of Recommendations

10. Spell out provisions for the protection of whistle-blowers.
11. Widen the investigative powers of the Commission to include search and seizure as well as arrest.
12. Review and increase the Schedule of persons in Public Life.

Summary of Recommendations

13. Review and increase the list of persons exercising public functions to include all institutions that handle 'public money'.
14. Increase and improve contents of declaration forms to facilitate the submission of more relevant information to fight corruption and to reveal potential sources of conflicts of interest.
15. Review all associated legislation so that there is a consistent focus on eliminating corruption.

Summary of Recommendations

16. Create a regime of systemic arrangements to facilitate the exchange of information between all institutions involved in the fight against corruption and all institutions that are routinely collect such data that would aid in such a fight.

CONCLUSION

Conclusion

“If lawyers could draft laws that prevent corrupt behaviour, there would be no problem with corruption.

“To a large degree the present crisis stems from the fact that laws and legal institutions have failed.

“This failure has been in part due to the weaknesses already present in judicial systems, and in part from the lack of will to strengthen the system as a result of the interplay of the actors who have vested interest of one kind or another in the status quo.”