

The following is the Barbados Labour Party's draft Integrity Commission Bill. We invite you, the members of the public, to comment on this Bill as we intend – after taking into account your suggestions – to have this enacted as a priority if we are granted the privilege of being elected in the forthcoming general elections. Please note that all comments and queries will be held in the strictest confidence. If you need clarification of any point, please leave an email and we will get back to you. Thank you.

## **INTEGRITY COMMISSION BILL**

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## **INTEGRITY COMMISSION ACT**

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF AN INTEGRITY COMMISSION AND TO MAKE PROVISIONS FOR THE PURPOSE OF SECURING THE INTEGRITY OF PERSONS IN PUBLIC LIFE.

# **Commencement**

## PART I

### PRELIMINARY

# **Short title**

1. This Act may be cited as the Integrity Commission Act.

# Interpretation

2. In this Act—

“assets of a person” means all property including any right or interest in property and money held by the person in the Islands or elsewhere;

“benefit” includes any property, service or advantage whether direct or indirect;

“Chairman” means the chairman of the Commission appointed under section 6;

[“child”, in relation to a person, means the person’s child who has not attained the age of eighteen years and is not married and includes a step-child or an adopted child; and, in respect of a man, includes a child born of whom the man had been adjudged the father by a court of competent jurisdiction or whom the man had acknowledged to be his own child;]

“[Code of Conduct” means the Code of Conduct for Persons in Public Life published by the Commission under section 83 of this Act;]

“Commission” means the Integrity Commission established under Section 3

“Constitution” means The Constitution of Barbados;

“document” includes, in addition to a document in writing—

- a map, plan, graph, or drawing;
- any photograph;
- any disc, tape, sound track or other device in which sounds or other data not being visual images are embodied so as to be capable, with or without the aid of some other equipment of being reproduced therefrom;
- any film, including microfilm, negative, tape or other device in which one or more usual images are embodied so as to be capable with or without the aid of some other equipment of being reproduced therefrom;

“Government company” means a company registered under the Companies Act being a company whose policies the Government or an agency of Government, whether by holding shares or by financial input, is in a position to influence;

“Government official of another State” means a public official of a state other than Barbados;

“income” includes—

- money or money’s worth derived from whatever source or acquired in or out of the Islands whether directly or indirectly;
- all receipts by way of salary, fees, wages, requisitions, profits, grants emoluments, rents interest, commissions, bonus, pensions, annuity or benefit;

“investigative officer” means a person designated as such under section 18(1);

“lawful earnings” includes but not limited to any property inherited by will or on intestacy;

“liabilities of a person” means all the obligations of the person to pay money or to provide goods or services in Barbados ~~the Islands~~ or elsewhere;

“member” means a member of the Commission appointed under section 3 and includes the Chairman;

“privileged material” means—

- communications between a professional legal adviser and his client, or any person representing his client, made in connection with the giving of legal advice to the client;
- communications between a professional legal adviser and his client, or any person representing his client, or between such an adviser or his client (or any such representative) and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; or

- material enclosed with or referred to in such communications and made—
  - in connection with the giving of legal advice; or
  - in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the communications or material are in the possession of a person who is entitled to such possession and are not held with the intention of furthering a criminal purpose;

“property” includes money and all property, real or personal and things in action;

“public body” includes—

- the House of Assembly and Cabinet;
- Ministries or departments of Government;
- a corporation established by an Act or a subsidiary company of that corporation;
- a commission, statutory board, public authority or other body which receives any payment of monies under an Appropriation Act, within the meaning of the Financial Administration and Audit Act Cap. 5 of the Laws of Barbados

“public officer” has the meaning given to it under section 2 of the Public Service Act No. 41 of 2007.

“public official” means a person who is a member of a public body, or a public officer;

“Register of interests” means the Register established under Part VI of this Act;

“spouse”, in relation to a specified person in public life, means a person—

- to whom the specified person in public life is married; or

- who is living with the specified person in public life in the circumstances of husband and wife for a continuous period of one year during the period covered by the person’s declaration;

“specified person in public life” means a person who holds any office specified in Schedule 1;

“staff member” means an employee or officer of the Commission who is at or above the rank of Secretary to the Commission;

“statement of registrable interests” means a statement filed under section 52 of the interests described in section 53 held by or concerning a member of the House of Assembly;

“Tribunal” means a Tribunal established under section 7(4).

## PART II

### INTEGRITY COMMISSION

# **Establishment of Integrity Commission**

3. (1) There is hereby established an Integrity Commission for Barbados.
  - The Commission shall consist of—
    - a chartered or certified accountant of at least ten years standing appointed by the Governor General after consultation with any body which in his opinion represents chartered or certified accountants in Barbados;
    - a person who has held or [holds] the office of Judge in a Court of Record or Supreme Court in any part of the Commonwealth appointed by the Governor General, after consultation with the Prime Minister and the Leader of the Opposition.
    - a person who has been admitted as an attorney under the Legal Profession Act and whose name has been entered on the Roll of Attorneys with at least ten years standing, appointed by the Governor General, after consultation with the Council of the Barbados Bar Association;



- a member of the clergy, appointed by the Governor General after consultation with the Prime Minister and Leader of the Opposition;
- a person appointed by the Governor General on the advice of the Prime Minister;
- a person appointed by the Governor General on the advice of the Leader of the Opposition.

## **Disqualification from membership**

4. A person shall not be qualified to be appointed as a member of the Commission if that person—
  - is a member of Parliament;
  - has, at any time during the three years preceding the appointment, been a public officer;
  - has, at any time during the five years preceding the appointment, held office in a political party; or
  - would otherwise be disqualified in accordance with section 44 of the Constitution, to be a member of the House of Assembly.

## **Tenure of office**

5. All members of the Commission shall be appointed by instrument and shall, subject to the provisions of this Part, hold office for a period of three years and shall be eligible for re-appointment.

## **Appointment of Chairman**

6. (1) The Governor General acting in his discretion shall appoint one of the members to be Chairman of the Commission.
  - The Chairman shall preside at all meetings of the Commission at which he is present, and in the case of the absence of the Chairman from any meetings, the members present and forming a quorum shall elect one of their members to preside at the meeting.

# Vacancy in membership of Commission

7. (1) The office of a member of the Commission shall become vacant—
- at the expiration of the term specified in the member's instrument of appointment;
  - if he notifies the Governor General by writing under his hand of his intention to resign his office and the resignation shall take effect when the letter of resignation is received by the Governor General;
  - on the death or retirement of a member; or
  - on the absence of a member from three consecutive meetings of the Commission, unless that absence is approved by the Governor General.
  - A member may be removed from office by the Governor General for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour and shall not be removed except in accordance with the provisions of this section.
  - A member shall be removed from office by the Governor General if the question of his removal from office has been referred to a Tribunal appointed under subsection (4) and the Tribunal has recommended to the Governor General that the member ought to be removed for inability to discharge the functions of his office or for misbehaviour.
  - Where the Governor General, acting after consultation with the Prime Minister and Leader of the Opposition, considers that the question of removing a member ought to be investigated, the Governor General shall appoint a Tribunal which shall consist of three persons, of whom—
    - one is to be a judge of the Supreme Court and
    - one is to be a person who has been admitted as an attorney under the Legal Professions Act with at least ten years standing,

to enquire into the matter and report on the facts thereof to the Governor General and recommend to him whether the member ought to be removed under this section.

- The Tribunal appointed under subsection (4) shall give the member an opportunity to show cause why he should not be removed from office.
- Where the question of removing a member has been referred to a Tribunal under this section, the Governor General, acting after consultation with the Prime Minister and the Leader of the Opposition may suspend the member from the exercise of the functions of his office.
- A suspension may at any time be revoked by the Governor General and shall in any case cease to have effect if the Tribunal recommends to the Governor General that the member should not be removed.
- Pursuant to this section, if any vacancy occurs in the membership of the Commission, that vacancy shall be filled by the appointment of another person from the categories of persons in section 3(2).

## **Proceedings and meetings**

8. (1) The Commission shall meet at times as may be expedient for the Commission to carry out its functions.
  - A quorum of the Commission shall be four.
  - The proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of any member.
  - The Governor General may in writing request the Commission to meet at such times as he thinks fit.

## **Oath**

9. A member shall before assuming the functions of his office, make and subscribe the oath of office and the oath of secrecy in the form to be prescribed.

## **Interest in matter or proceedings before Commission by member**

10. (1) Where the Chairman or any other member is interested in any matter before the Commission or any person who is a party to any proceedings before the Commission, the chairman or other member so interested shall disclose the nature of his interest to the Commission and shall not participate in its sittings in relation to the said matter or person.
- Where in the opinion of the Governor General or of the Commission, the chairman or any other member is interested in any matter before the Commission or any person who is party to any proceedings before the Commission, the Governor General or the Commission, as the case may be, shall direct the chairman or other member not to participate in the sittings of the Commission in relation to the said matter or person.

## **Secretary to the Commission**

11. (1) There shall be a Secretary to the Commission.
- The duties of the Secretary shall be—
    - to attend the meetings of the Commission;
    - to record the proceedings of the Commission and keep the minutes of each meeting in proper form; and
    - generally, to perform duties connected with the work of the Commission as the Commission may require.

### **Publication in the Official *Gazette***

12. The appointment, resignation, revocation of appointment or death of a member of the Commission shall be published in the *Official Gazette*.

## **Functions of Commission**

13. (1) The functions of the Commission shall be—

- to receive and keep on record all declarations, statements of registrable interests and reports of gifts forwarded by persons in public life;
- to examine declarations, statements of registrable interests and reports of gifts and to request from a specified person in public life any information or further information relevant to a declaration, statement of registrable interests or report of a gift made by him, which may assist the Commission in its examination;
- to make inquiries and carry out investigations as it considers necessary in order to verify or determine the accuracy of a declaration, statement of registrable interests or report of a gift filed under this Act;
- to receive, inquire into and investigate any complaint or report of—
  - an alleged act of corruption under Part X;
  - an alleged contravention of the Code of Conduct;
  - the acquisition by a member of the House of Assembly of an interest in a contract with the Government that is contrary to the rules made under section 100(2); or
  - an alleged offence under any Act that assigns responsibility for the investigation of offences to the Commission;
- to investigate any matter referred to in paragraph (d) on its own initiative, if the Commission is satisfied that there are reasonable grounds for an investigation or inquiry;
- to examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices, except where there is a statutory duty on any person to perform that function;
- to instruct, advise and assist the management of public bodies of any change in practices or procedures which may be necessary to reduce the occurrence of corrupt acts, except where there is a statutory duty on any person to perform that function; and
- to perform functions and exercise powers as it is required by this Act, the Constitution or any other Act.

- In the exercise of its powers and performance of its functions under this Act the Commission may not be subject to the direction or control of any person or authority.
- The Governor General may in writing request the Commission to investigate any matter falling within the functions of the Commission and the Commission may exercise its powers under this Act for the purposes of the investigation.

## **Consultation**

14. The Commission may consult with any person, institution or organisation in the exercise of its powers of investigation, or in the conduct of an inquiry, under this Act.

## **Agreements and exchange of information with law enforcement agencies**

15. (1) The Commission may enter into such written agreements, arrangements or memoranda of understanding with a law enforcement agency, including a foreign law enforcement agency, as the Commission considers necessary or desirable for the discharge or performance of its functions.
- The Commission shall be treated as a law enforcement agency for the purposes of receiving disclosures of information which are relevant to its functions from any law enforcement agency, including a foreign law enforcement agency.
  - Subject to sections 47 and 97, the Commission may disclose to a law enforcement agency, including a foreign law enforcement agency, any information disclosed to the Commission.

## **Funds of Commission**

16. (1) The funds of the Commission shall consist of such funds out of the Consolidated Fund as may be voted by Parliament.

- The Commission shall keep proper accounts of receipts, payments, assets, and liabilities and those accounts shall be audited annually by the Auditor General.
- The Commission shall, before the commencement of each financial year, prepare and forward to the Prime Minister a report of its activities during the previous financial year, including a statement of its accounts audited in accordance with subsection (2).
- A copy of the report together with the Auditor General's Report shall be laid before the House of Assembly.

## **Officers and employees of Commission**

17. (1) The Commission may, acting within the funds and resources available to it—

- employ such officers and employees as are required for the proper performance of the functions of the Commission;
- retain the services of professional persons.
- The remuneration and other terms and conditions of employment of the officers and employees of the Commission employed under subsection (1) and the professional persons retained under that subsection shall be such as may be determined or varied by the Commission from time to time.
- For the purpose of the performance of the functions conferred on the Commission, it may, with the consent of the appropriate authority, utilise the services of any public officer or other employee of Government.
- The Commission may, with the approval of the Minister responsible for Finance, make such provisions as it deems appropriate for the payment of pension, gratuity or other allowances in respect of the service of its officers and other employees on their retirement from employment with the Commission.
- In subsection (3) "appropriate authority", in relation to any public officer or other employee of the Government, means the person or authority vested by law with power to appoint such public officer or employee of the Government to the position he held in the

Government at the time when his service is sought to be utilised by the Commission.

## **Investigative officers**

18. (1) The Commission may designate a person employed under section 17(1) as an investigative officer and may issue to such officer a warrant card, which shall be *prima facie* evidence of the officer's designation.
- An investigative officer has the function of carrying out investigations in relation to any matter, whether or not involving an alleged offence, in respect of which the Commission exercises functions under this Act or any other Act.
  - An investigative officer has the powers described in Part IV but, for the avoidance of doubt, shall not be a member of the Police Force and shall not be subject to—
    - direction or control by the Commissioner of Police; or
    - the Police Regulations, Standing Orders or any disciplinary code made under the Police Act.

### PART III

#### PROCEDURE OF THE COMMISSION

## **Procedure**

19. Subject to the provisions of this Act, the Commission may regulate its own procedure and may make rules for this purpose.

## **Commission's powers to summon and examine witnesses**

20. (1) The Commission acting under this Act shall have the powers of a Supreme Court judge to summon witnesses, and to call for the production of books, plans, and documents, and to examine witnesses and parties concerned on oath.



- No member or staff member of the Commission shall be liable to any action or suit for any matter or thing done by him in good faith as a member of the Commission, or in the course of carrying out his duties or employment, as the case may be.
- All summonses for the attendance of witnesses or other persons, or the production of documents, shall be in Form 3 as set out in Schedule 2 and shall be signed by the Chairman or any other member of the Commission, and oaths may be administered by the Secretary.

## **False evidence, how punishable**

21. Any witness who shall wilfully give false evidence in any inquiry concerning the subject matter of such inquiry, commits perjury, and is liable to be prosecuted and be punished accordingly.

## **Duty of witnesses summoned**

22. (1) All persons summoned to attend and give evidence, or to produce books, plans, or documents, at any sitting of the Commission, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from the Supreme Court, and shall be entitled to the like expenses as if they had been summoned to attend the Supreme Court on a criminal trial, if the same shall be allowed by the Commission; but the Commission may disallow the whole or any part of such expenses in any case, if the Commission thinks fit and the procedure for the payment of such witnesses shall be the same as nearly as may be for the payment of witnesses in the Supreme Court, and they shall be paid at such time and in such manner as the Minister responsible for finance may direct.
- Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every person attending, but leaving the Commission without the permission of the Commission, or refusing without sufficient cause to answer, or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him or with the concurrence of the Commission, or refusing or omitting without sufficient cause to produce any books, plans or documents in his possession, or under his control, and mentioned or referred to in the summons served on him, and every person

who shall at any sitting of the Commission willfully insult any member of the Commission, or secretary, commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to a term of imprisonment of six months or both.

- A person giving evidence before the Commission shall not be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the Court is entitled in respect of evidence given by him before such Court.

## **Appearance of counsel**

23. Any person whose conduct is the subject of inquiry under this Act or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by an attorney or a friend at the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the Commission, be represented in the manner aforesaid.

## **Police officers detailed to attend Commission**

24. The Commissioner of Police may, if so required by the Commission, detail police officers to attend to preserve order during the proceedings of the Commission, and to perform such other duties as usually pertain to their office when in attendance upon the Supreme Court, and to serve summonses on witnesses, and to perform such other duties as the Commission shall direct.

## **Issue of Summons**

25. (1) Any summons to attend to give evidence or to produce documents before the Commission shall be served on the person required to attend or to produce the document and shall be issued under the hand of the Secretary.
- A summons shall be served on the person mentioned therein either by delivery to that person of the summons or delivery in some other manner as may be ordered by the Commission, but so as to ensure that the summons is brought to the attention of that person.

A summons under this section may be served by a person authorised by the Commission.

- Witness may be examined on oath

26. The Commission may—

- require that any facts, matters or things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses; and
- cause witnesses to be examined on oath which the Chairman or the Secretary shall be authorized to administer.

## **Duty and privilege of persons**

27. All persons summoned to attend and give evidence or to produce any paper, book, record or document before the Commission shall be—

- bound to obey the summons served upon them;
- entitled, in respect of that evidence to the disclosure of any communication or the production of that paper, book, record or document as before a court of law.

### PART IV

### INVESTIGATIONS

#### *Powers of Investigative Officers*

## **Power of arrest**

28. (1) In carrying out his functions, an investigative officer has the powers of a police officer to arrest any person whom he reasonably suspects has committed an offence punishable by imprisonment under this Act or under any other Act in respect of which the Commission exercises functions.

- After making an arrest, the investigative officer shall deliver the person arrested to the custody of the police and such person shall,

as soon as practicable, be brought before a Magistrate to be further dealt with according to law.

## **Power of Magistrate or Justice of the Peace to authorise entry and search of premises**

29. (1) If, on an application made by an investigative officer, a Magistrate or a Justice of the Peace is satisfied that there are reasonable grounds for believing—

- that an offence has been committed under this Act or another Act that assigns responsibility to investigate alleged offences to the Commission;
- that there is material on premises specified in the application that is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;
- that the material referred to in paragraph (b)—
  - is likely to be admissible in evidence at a trial for the offence referred to in paragraph (a); and
  - does not consist of or include privileged material; and
- that any of the conditions specified in subsection (2) applies,

the Magistrate or Justice of the Peace may issue a warrant authorising an investigative officer to enter and search the premises.

- The conditions mentioned in subsection (1)(d) are—
  - that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
  - that entry to the premises will not be granted unless a warrant is produced;

- that the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.
- An investigative officer may seize and retain anything for which a search has been authorised under subsection (1).

## Production Orders

30. (1) An investigative officer may apply to a judge of the Supreme Court for a production order requiring a specified person—

- to give the officer access to material specified in the application; or
- to produce the material specified in the application for the officer to take away,

within seven days from the date on which the order is made or such other period as the judge determines would be appropriate in the circumstances.

- The judge may make a production order described in subsection (1) if he is satisfied that—
- there are reasonable grounds for suspecting that the specified person has committed an offence under this Act or another Act that assigns responsibility for the investigation of offences to the Commission; and
- there are reasonable grounds for believing that—
  - the specified person is in possession or control of the material specified in the application;
  - the material is likely to be of substantial value to the investigation for the purposes of which the order is sought, whether by itself or together with other material; and
  - it is in the public interest for the specified material to be produced or for access to be given to it, having regard to the benefit likely to accrue to the investigation if the material is obtained and the circumstances under which the specified person holds it.

- In this section “specified person” means that the person specified in an application under subsection (1) as appearing to be in possession or control of material subject to the investigation
- In this section “specified person” means that the person specified in an application under subsection (1) as appearing to be in possession or control of material subject to the investigation.

## **Application of sections 42 and 43 of the Proceeds of Crime Act**

31. Sections 42 and 43 of the Proceeds of Crime Act apply to a production order made under section 30 as if

the references in those sections to a police officer were references to an investigative officer.

## **Complaints about conduct of an investigative officer**

32. (1) A person having a complaint about the conduct of an investigative officer in the performance of his duties or functions may address a complaint in writing to the Commission, if that person—
- has been personally affected by that conduct;
  - has witnessed that conduct;
  - has a substantial and direct interest in the complaint; or
  - has been authorised by a person referred to in paragraph (a), (b) or (c) to make a complaint in that person’s name.
- The Commission shall refer a complaint made under subsection (1) to a panel appointed under section.

## **Complaints panel appointed**

33. The Governor General may, by order, appoint an ad hoc panel to hear and adjudicate the complaint, consisting of the following persons—

- a judge or magistrate or retired judge or magistrate, who shall be the chairman;
- the Commissioner of Police, who shall hold office *ex officio*; and
- a person, other than a member or former member of the Royal Barbados Police Force, to represent the public.

## **Disposal of complaint without investigation**

34. (1) The panel may direct that no investigation of the complaint be carried out if, in its opinion—

- the complaint is trivial, frivolous, vexatious or made in bad faith; or
- having regard to all the circumstances, an investigation or further investigation is not necessary or reasonably practicable.
- If no direction is made under subsection (1), the panel and the Commission shall—
  - consider whether the complaint can be disposed of informally; and
  - attempt to dispose of the complaint informally, before any investigation is undertaken, with the consent of the complainant and the person whose conduct is the subject-matter of the complaint.
- Where a complaint is disposed of informally, the panel shall prepare and send the following documents to the complainant, the investigative officer and the Commission—
  - an overview of the facts that gave rise to the complaint;
  - the name of the person who conducted the informal disposition;
  - a statement of the manner in which the complaint was disposed of;
  - evidence of agreement to the disposition of the complaint by the complainant and the person whose conduct was the subject-matter of the complaint.

## Formal Investigation of complaint

35. (1) Where a complaint is not disposed of informally, the Commission shall investigate the matter and send to the panel, the complainant and the person whose conduct is the subject-matter of the complaint, a complaint resolution report containing—

- a summary of the complaint;
- the results of the investigation
- a summary of any action that has been or will be taken with respect to resolution of the complaint; and
- a statement that the complainant may refer the complaint to the panel for review, within 60 days of the receipt of the complaint resolution report, if not satisfied with the disposition of the complaint by the Commission.
- A complainant who is not satisfied with a direction under subsection 34(1) or with the disposal of the complaint by the Commission under subsection (1), may refer the complaint to the panel in writing within 15 days after the day on which the complainant receives the notice of rejection or the complaint resolution report.
- The panel shall review every complaint referred to it under subsection

(2).

## Review of complaints by panel

36. (1) Where, after reviewing a complaint, the panel is satisfied with the disposal of the complaint by the Commission, the panel shall—

- send a complaint review report to that effect to the Commission, setting out such findings and such recommendations with respect to the complaint as the panel sees fit;
- send a report of the conclusion of the review to the complainant and the person whose conduct is the subject-matter of the complaint together with any finding or recommendation referred to in paragraph (a).



- Where, after reviewing a complaint, the panel is not satisfied with the disposal of the complaint by the Commission or considers that further inquiry is warranted, it may take any or all of the following measures—
  - send a report to the Commission indicating the reasons for its dissatisfaction;
  - request the Commission to conduct a further investigation into the complaint;
  - make such inquiries as it deems necessary in the circumstances;
  - investigate the complaint further;
  - institute a hearing to inquire into the complaint.
- The panel shall, on completion of any further investigation, inquiry or hearing that it has ordered under subsection (2) send—
  - to the Commission a complaint review report setting out—
    - such findings with respect to the complaint as the panel sees fit; and
    - such recommendations, including disciplinary measures to be taken in regard to the person whose conduct is the subject-matter of the complaint; and
  - to the complainant and the person whose conduct is the subject-matter of the complaint a report of the conclusion of the review, together with any finding or recommendation referred to in paragraph (a).

## **Implementation of panel's recommendations**

37. The Commission shall give effect to any recommendations in a complaint review report sent to it under section

*Offence*

## **Obstruction of investigative officer**

38. A person who resists or obstructs an investigative officer in the execution of his duty commits an offence and is liable on summary conviction to a fine of \$5000 or to imprisonment for six months, or to both.

## PART V

### DECLARATIONS

# Declaration of financial affairs

39. (1) Every person who is a specified person in public life, not being a member or staff member of the Commission, shall—

- on or before [..... date to be inserted] and every two years thereafter, on or before the biennial anniversary of that date; and
- where such person ceases to be a specified person in public life, within ninety days from the date on which the person ceases to be a specified person in public life,

file with the Commission a declaration containing the particulars referred to in subsection (5) and each of the members or staff members of the Commission shall file with the Governor General similar declarations on or before the dates on which such declarations are required by other persons in public life.

- Without prejudice to subsection (1), every person shall within 90 days from the date on which he becomes a specified person in public life—
- if he is not a member or staff member of the Commission, file with the Commission; or
- if he is a member or staff member of the Commission, file with the Governor General,

a declaration containing the particulars referred to in subsection (3) with reference to the date on which he becomes a specified person in public life and any person required to file a declaration under this

subsection in any year is not required to file another declaration under subsection (1) in the same year.

- The Commission may, in exceptional circumstances, grant to any person required to file a declaration under subsection (1) or (2), other than a member or staff member of the Commission, an extension of the period for filing that declaration of up to six months, beginning on the day that the declaration is required to be filed.
- The Governor General may, in exceptional circumstances, grant to any member or staff member of the Commission required to file a declaration under subsection (1) or (2) an extension of the period for filing that declaration of up to six months, beginning on the day that the declaration is required to be filed.
- A declaration under subsection (1) shall as far as possible be in Form 1 as set out in Schedule 2 and shall give full, true and complete particulars of—
  - the person's income, assets and liabilities;
  - assets of the spouse and the dependent children;
  - any gift received in the course of the performance of the person's public function.
- A declaration may be accompanied, if the specified person in public life so wishes, by a statement giving details of his income, assets and liabilities which shall be certified by an accountant.
- If a specified person in public life dies, there shall be no obligation on the administrators of his estate to file the declaration which the specified person in public life would have been required to file, had he lived.

## **Trust property**

40. Where a specified person in public life holds any money or other property in trust for another person, not being his spouse or child or another person in public life, he shall so state in his declaration but shall not be required to disclose the terms of the trust.

## **Full disclosure**

41. (1) A specified person in public life is required to disclose in his declaration, under section 39, such details in respect of the income, assets and liabilities of himself and those of his spouse and his dependent children, as by the exercise of reasonable care, should be known to him.
- For the purposes of a declaration under section 39, the income, assets and liabilities of a specified person in public life, his spouse and his dependent children shall include the income, assets and liabilities acquired, held or incurred by any other person as agent or on behalf of all or any of them.
  - Any direct or indirect benefit accruing to the income or assets of a declarant or his spouse or dependent children must be disclosed in a declaration under section

## **Blind trusts**

42. (1) A specified person in public life may place his assets or part thereof in a blind trust for the purpose of this Act and shall file a copy of the trust deed with the Commission.
- If the Commission has reasonable grounds to believe that a specified person in public life is likely to contravene or has contravened the Act, the Commission may direct that person to place all or part of his assets in a blind trust on such terms and conditions as the Commission considers appropriate and to file a copy of the trust deed with the Commission.
  - Where the assets of a specified person in public life are placed in a blind trust, he need not in his declaration under section 39, give more particulars of those assets than the amount and description of the assets placed in that trust and the date of so doing.
  - Notwithstanding any other law relating to the duties of trustees, a trust company, managing the assets of a specified person in public life by way of a blind trust, shall reply fully to any inquiries of the Commission relating to the nature and management of the assets in the blind trust.
  - A blind trust is created when a specified person in public life enters into an agreement with a qualified trust company whereby—

- all or any part of his assets or those of his spouse or dependent children are conveyed to the trust company for the management, administration and control thereof, in its absolute discretion without recourse or report to the person or persons beneficially entitled to those assets;
  - income derived from the management of the assets is to be distributed, in accordance with the agreement, to him, his spouse or his dependent children until he ceases to be a specified person in public life; and
  - after he ceases to be a specified person in public life, proper and full accounting is to be made to him, his spouse or dependent children as the circumstances of the management of the trust require.
- A trust company is a qualified trust company where—
    - it is incorporated in or outside Barbados and is carrying on business in Barbados;
    - no more than five percent of the stated capital in the trust company or its affiliate is held or controlled by the specified person in public life entering into an agreement with it, or by any other person associated with him; and
    - the specified person in public life or his spouse or any of his dependent children does not hold any directorship or office in the trust company or its affiliate.
  - For the purposes of this section, a company is an affiliate of another company where it holds more than five percent of the nominal value of the issued shares in that other company or where that other company holds more than five per cent of the issued shares in the first mentioned company.
  - For the purposes of this section, a person is associated with another, where that other person is—
    - the spouse or dependent child of the person;
    - the partner of the person in a profession, trade, or commercial undertaking; or

- a corporation and the first mentioned person or any person mentioned in paragraph (a) controls the corporation, its holding corporation or a corporation affiliated with either.

## **Receipt and examination of declarations**

43. The Commission [or the Governor General, as the case maybe], shall—
- receive, examine and retain all declarations and documents filed with it or him under this Act; and
  - make such inquiries as it or he considers necessary in order to verify or determine the accuracy of the financial affairs, as stated in the declarations of persons who are required to file declarations under this Act.
44. The Commission [or the Governor General, as the case may be], may in writing request a declarant to furnish such further particulars relating to his financial affairs as may be considered necessary for the purposes of section 13(1)(b) and the declarant shall comply with the request within the time specified therefor by the Commission [or Governor General, as the case may be].

## **Failure to file declaration or furnish particulars**

45. Where a person who is required to do so fails to file a declaration in accordance with this Act or to furnish particulars under section 13(1)(b), the Commission [or Governor General, as the case may be], shall publish the fact in the *Official Gazette* and a newspaper.

## **Commission may hold formal inquiry**

46. (1) The Commission may in writing request a declarant to furnish such further information or documents and may conduct an inquiry to verify any declaration or other statement filed with it.
- The Commission, upon examination of a declaration furnished pursuant to section 39 may require the specified person in public

life to attend an enquiry of the Commission at a specified time to be heard on any matter relating to the declaration.

- A specified person in public life who is required to attend the Commission may—
  - be accompanied and represented by an Attorney-at-law or such other person as the specified person in public life chooses; and
  - require the Commission to summon witnesses.
- The Commission shall not make any adverse decision without giving the specified person in public life an opportunity to be heard.
- Where upon examinations the Commission is satisfied that a declaration has been fully made and all questions satisfactorily answered, or that a declaration is incomplete but the declarant cannot reasonably obtain the information required to complete it, the Commission shall forward to the specified person in public life a certificate of compliance in Form 4 as set out in Schedule.

## **Duty as to secrecy**

47. (1) Every member of the Commission and every person performing any function in the service or as an employee of the Commission shall treat all records, and information relating to declarations, as secret and confidential and shall not disclose or communicate the text of any record, or information or, declaration to any unauthorised person or to allow any unauthorized person to have access to any records, information or declarations.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to a term of imprisonment for three years or to both.

## **Failure to file declaration**

48. Where a specified person in public life fails to file a declaration as required under section 39, the Commission shall publish the fact in the *Official Gazette* and shall—

- send a report to the appropriate Service Commission, Board or authority;

- in any other case, send a report to the Director of Public Prosecutions.

## **Commission to make report**

49. (1) Where the Commission examines a declaration and any related information or documents, or conducts an inquiry into any declaration, and is not satisfied with any aspect thereof, the Commission may report the matter to the appropriate Service Commission, Board, body or other authority and the Director of Public Prosecutions, setting out details and particulars as it thinks fit.
- The Commission shall report any act of corruption to the appropriate Service Commission, board, body, or other authority and to the Director of Public Prosecutions.
  - The appropriate Service Commission, board, or other Authority may take such disciplinary action in relation to a report made pursuant to subsection (1) as it thinks appropriate in any particular case.
    - Pursuant to subsection (3), where any criminal proceeding has been commenced against a specified person in public life, no disciplinary procedures shall be instituted pending the determination of criminal proceedings.
    - An inquiry shall not be commenced after two (2) years from the date on which the person ceased to be in public life.
    - The Director of Public Prosecutions—
      - may take action in relation to a report made pursuant to subsection (1) as he thinks appropriate in any particular case;
      - may authorize any person having an official duty under this Act to furnish information to any officer of the court, the police or any other person specified by the Director of Public Prosecutions.

## **Further information from members and staff of Commission in respect of their declarations**



50. (1) Where in the opinion of the Commission, further information or documents are required from a member or staff member of the Commission in respect of his declaration, the Governor General shall, after consultation with the Prime Minister and the Leader of the Opposition, appoint a fit and proper person as a Tribunal to require the declarant to furnish such further information or documents and to conduct any inquiry, where found necessary, to verify the declaration, document or other statement filed with the Tribunal.
- For the purpose of any inquiry under this section, a Tribunal may request in writing, that the declarant or any other person who the Tribunal reasonably believes has knowledge of the matters to be inquired into—
    - attend before the Tribunal at such place, on such date and at such time as may be specified by the Tribunal, to give it such information as it may require satisfying itself that it is in possession of all the material facts; or
    - furnish such information or documents as may be specified by the Tribunal, within the time specified therefore by the Tribunal, so as to assist it in verifying the declaration.
  - An inquiry under this section shall not be commenced after five years from the date on which the member or staff member of the Commission in respect of whose declaration the inquiry is being conducted ceased to be a specified person in public life.
  - In conducting an inquiry under this section, a Tribunal shall have and exercise all the powers in this section save that the proceedings shall be held in private.
  - Where after an inquiry under this section, a Tribunal finds that a declarant had in fact made full disclosure in his declaration, it shall forthwith publish a statement to that effect in the *Official Gazette* and in a newspaper.
  - Where after an inquiry under this section a Tribunal finds that the declaration which gave rise to the inquiry was in fact full and proper, the declarant shall be reimbursed from the Consolidated Fund for all expenses reasonably incurred by him in connection with the inquiry within three months of the Tribunal's finding.

# Offences and penalties

51. Any person who—

- (i) fails, without reasonable cause, to file with the Commission [or the Governor General, as the case may be], a declaration which he is required to be filed in accordance with the provisions of this Act; or
- (ii) knowingly files with the Commission [or the Governor General as the case may be], a declaration that is not complete or is false in any material particular;
- fails, without reasonable cause, to comply with a request made under section 13(1)(b) or 42(4) by the Commission, the Governor General or a Tribunal, within the time specified therefor by the Commission, the Governor General or the Tribunal, as the case may be, or gives incomplete or false information pursuant to the request;
- fails, without reasonable cause, to attend an inquiry being conducted under section 46, or to furnish any information the Tribunal may request the declarant to furnish under that section or knowingly gives any false or incomplete information in such inquiry; or
- fails, without reasonable cause, to comply with a direction of the Commission under section 42(2) within the time specified by the Commission, or gives incomplete or false information in the trust deed filed with the Commission,

commits an offence and liable, on summary conviction, to a fine of \$15,000 or to imprisonment for a term of one year or to both, and where the offence involves the non-disclosure, by the declarant, of property, which should have been disclosed in the declaration, the magistrate convicting the person shall order the person to make full disclosure of the property within a given time and on failure to

comply with the order of the magistrate within the given time, the said offence shall be deemed to be a continuing offence and the person shall be liable to a further fine of \$3,000 for each day on which the offence continues.

## PART VI

### REGISTER OF INTERESTS

## **Duty of member to file statement of registrable interests**

52. (1) Every member of Parliament shall file with the Commission, in addition to his declaration under section 39, a statement of registrable interests.
- A member shall file his statement of registrable interests in Form 2, set out in Schedule 2—
    - within ninety days after the day on which he becomes a member, in respect of his interests on the day on which he became a member; and
    - within ninety days after the 31 day of December in each year during any part of which he was a member of the House, in respect of his interests on the 31 day of December in that year.
  - Notwithstanding subsection (2)(b), a member need not file a statement of registrable interests for a particular year if the member filed a statement in the six months preceding the 31 day of December in that year.
  - If a member of Parliament dies, the administrator of his estate is not required to file the statement of registrable interests which the member would have been required to file, had he lived.

## **Contents of statement of registrable interests**

53. (1) A statement of registrable interests shall contain the following information relating to the member, his spouse and dependent children—

- particulars of any directorships held in any company or other corporate body;
- particulars of any contract made with the Government;
- the name or description of any company, partnership or association in which the person is an investor;
- a concise description of any trust to which the person is a beneficiary or trustee;
- any beneficial interest held in land;
- any fund to which the person contributes;
- particulars of any political, trade or professional association to which the person belongs;
- particulars relating to sources of income; and
- any other substantial interest whether of a pecuniary nature or not, which the member considers may appear to raise a material conflict between his private interests and his public duty.

(2) Nothing in this section shall be taken to require disclosure of the actual amount or extent of any financial benefit, contribution or interests.

## **Register of interests**

54. (1) The Commission shall maintain a Register of Interests in the form required by the Regulations.

- The Commission shall compile and cause to be entered in the Register of interests all information furnished by members of Parliament under this Part and shall, at the request of any member of the public, permit inspection of the Register.
- A member shall notify the Commission of any changes which may occur in his interests, or those of his spouse or dependent children, within six months of the change occurring.

## Commission may require further particulars

55. Where upon examination of a statement of registrable interests, the Commission is of the opinion that it should enquire further into it so as to ascertain whether there has been a full disclosure, the Commission may—

- require the member of Parliament that made the statement to attend before it to answer such questions, and to furnish such documents or information as it may require; and
- make such independent inquiries and investigations relating to the statement as the Commission thinks fit.

## Offence by member of Parliament

56. (1) A member of the Parliament who—

- fails, without reasonable cause, to file with the Commission a statement of registrable interests required to be filed under this Part;
- knowingly files with the Commission a statement of registrable interests that is not complete or is false in any material particular;
- fails, without reasonable cause, to comply with a request made under section 13(1)(b) by the Commission respecting the member's statement of registrable interests within the time specified therefor by the Commission or gives incomplete or false information pursuant to the request; or
- fails without reasonable cause to attend an inquiry being conducted under section 55 or to furnish any information that the Commission requests him to furnish, or knowingly gives any false or incomplete information at such inquiry,

commits an offence and is liable, on summary conviction, to a fine of \$15,000 or to imprisonment for a term of one year or to both.

- Where an offence under subsection (1)(a) or (b) involves the non-disclosure of property which should have been disclosed by a member of Parliament in a statement of registrable interests, the magistrate convicting the member shall order him to make full disclosure of the property within a given time.
- If a member of Parliament fails to comply with an order made under subsection (2), the offence referred to in subsection (1) shall be deemed to be a continuing offence and the member shall be liable to a further fine of \$3,000 for each day on which the offence continues.

## **Disqualification of member from holding public office**

57. A member of Parliament who is convicted of an offence under section 51 or 56 is liable, in addition to any other penalty prescribed by law, to be disqualified from holding any public office for such period as the court considers appropriate, not exceeding five years from the date of conviction for the offence.

## **Inquiry re breach by Minister or member of requirements of section 31(1)(e)**

58. (1) Where the Commission is of the opinion that there are reasonable and probable grounds to believe that a Minister has failed to comply with the requirements for the registration of interests as described in section 52 or that a member of Parliament has acquired a prohibited interest in a contract with the Government contrary to provisions of this Part, the Commission may—

- request the Minister or member in writing to furnish any further information or documents that it may require;
- require the Minister or member to attend an inquiry of the Commission at a specified time to be heard on any matter relating to the alleged contravention.

(2) If a Minister or member fails, without reasonable cause, to attend an inquiry being conducted under this section or to furnish any information that the Commission requests him to furnish, or knowingly gives any false or incomplete information at such inquiry, he commits an offence and is liable, on summary conviction, to a fine of \$15,000 or to imprisonment for a term of one year or to both.

## **Procedure at inquiry**

59. (1) A Minister or member who is required to attend an inquiry may be represented by an attorney or friend and require the Commission to summon witnesses.

- The Commission shall not issue a determination against a Minister or against a member of Parliament without giving the Minister or member an opportunity to be heard.
- The Commission shall prepare a written report of its findings and determinations pursuant to an inquiry held under section 58 and send a copy of the report to—
  - the Speaker of the House of Assembly; and
  - the Minister or member whose conduct was the subject of the inquiry.

## **Issuance of determination of acquisition of prohibited interest in Government contract**

60. The Commission shall not issue a determination that a member of the House of Assembly has acquired a prohibited interest in a contract with the Government if—

- the member has notified the Commission of the interest as required by this Act; and
- the Commission is of the opinion that the interest—
  - is unlikely to affect the member's obligations under the Code of Conduct; or

- is likely to affect the member's obligations under the Code of Conduct but that the member, his spouse or child, as the case may be, has divested himself of the interest or has placed it in a blind trust on such terms and conditions as the Commission considers appropriate.

## PART VII

### GIFTS

# Report to Commission of gifts

61. (1) Every specified person in public life, not being a member or staff member of the Commission, who receives a gift worth more than \$1,000 shall make a report of that fact to the Commission in Form 2 as set out in Schedule 2 stating the name and address of the donor, the description and approximate value of such gift and whether, in the opinion of the donee, the gift is a personal or an official gift.
- The Commission shall determine whether the gift is a personal gift or an official gift.
  - The decision of the Commission made in pursuance of subsection (2) shall be final.
  - The provisions of this section shall not apply to any personal gift received by a specified person in public life from a relative or friend except that a specified person in public life who is unsure whether a gift received from a relative or friend is an official gift or a personal gift may apply to the Commission seeking its opinion as to the proper classification of the gift.
  - A report or an application under subsection (1) and subsection (4) shall be made to the Commission by the specified person in public life within thirty days of the receipt of the gift.
  - Where the Commission finds after inquiry that the gift was given to the specified person in public life personally and—
    - was trivial; or
    - was not trivial, but was not intended to be a motive or reward for doing or forbearing to do anything in the course of the



performance of his official functions or causing any other person from doing or forbearing to do anything,

the Commission shall allow the specified person in public life to retain the gift, and in other cases shall direct the specified person in public life in writing to deliver the gift to the Minister responsible for finance within such period, not exceeding thirty days, as may be specified by the Commission, and the specified person in public life shall comply with the direction within the time so specified.

- The specified person in public life shall be entitled to notice of the proceedings of any inquiry under subsection (6) and shall be entitled to be represented in the inquiry, either in person or through an attorney-at-law.

## **Report to Commission of gifts**

62. Every specified person in public life who, being a member or staff member of the Commission who receives a gift worth more than \$1,000, or whose spouse or child receives such a gift, shall make a report of that fact to the Governor General in Form 2 of Schedule 2, stating the name and address of the donor, the description and approximate value of the gift and whether, in the opinion of the donee, the gift is a personal or official gift.

## **Penalty for contravening section 61 or 62**

63. Any specified person in public life who—
- knowingly makes a report to the Commission under section 61(1), [or to the Governor General] under section 62 which is incomplete or false in any material particular;
  - without reasonable excuse fails to comply with section 61(1), or to submit a report or application [to the Governor General] as required under section 62; or

- without reasonable excuse fails to comply with a direction given by the Commission under section 61(6), [or by the Governor General] under section 62,

shall be liable, on summary conviction, to a fine, which shall not be less than the value of the gift involved in the commission of the offence, or to a term of imprisonment of three months or both.

## **Prosecutions**

64. No prosecution for an offence under section 63 shall be instituted after five years from the date when the person in respect of whose declaration the alleged offence was committed ceased to be a specified person in public life.

### PART VIII

#### ACTS OF CORRUPTION

## **Provisions of this Part in addition to any other law**

65. The provisions of this Part shall be in addition to and not in derogation of the provisions of the Criminal Law (Arrestable Offences) Act, the Theft Act or any other law or the Common Law

## **Powers of appropriate disciplinary authority preserved**

66. The provisions of this Part shall be without prejudice to the powers conferred upon the appropriate disciplinary authority by the Constitution or any other Law

## **Acts of corruption**

67. A person commits an act of corruption if he—

- solicits or accepts, whether directly or indirectly, any article, money or other benefit or advantage for himself or another person for doing

an act or for omitting to do an act in the performance of his functions as a public official;

- in the performance of his duty as a public official, performs or omits to perform any of his duties in a public body for the purpose of obtaining any benefit for himself or any other person;
- offers, promises or gives directly or indirectly to a public official any article, money, or other benefit, for doing or omitting to do any act in the performance of his duties as a public official;
- knowingly or recklessly allows his private interest to conflict with his public duties or to improperly influence his conduct in the performance of his duties as a public official;
- improperly uses for his benefit or that of a third party any classified or confidential information that he has obtained in his duties as a public official;
- communicates to an unauthorised person any classified or confidential information obtained in the performance of his duties as a public official with a view to assisting that person to obtain a benefit;
- improperly uses for his benefit or that of a third party, any property belonging to the Government or any Statutory body or government controlled company to which he has access as a result of or in the course of the performance of his functions;
- improperly influences the appointment of, or the dismissal, suspension or other disciplinary action against, a public official;
- hinders, delays or interferes with the performance of a duty of a public official with a view to obtaining a benefit for himself or another person;
- during the performance of his official duties pursues a course of conduct with respect to another public officer which amounts to offensive sexual comments, gestures or physical contact or other conduct of that kind;
- pursues a course of conduct by which he exploits his position or authority for his sexual gratification.

# Offence in respect of procuring tenders

68. (1) A public official who, in relation to a contract for performing any work, providing a service or supplying articles or material—

- accepts, agrees or offers to accept whether directly or indirectly any benefit for himself or for another person for awarding a tender to a particular person;
- gives, agrees or offers to give whether directly or indirectly any benefit to another person for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person; or
- gives to a person confidential information in order to enable that person to tender or not to tender in a particular manner in order to obtain an unfair advantage in tendering, commits an offence.
- A person who, in relation to a contract for performing any work, providing a service or supplying articles or material—
  - offers to a public official whether directly or indirectly any benefit for himself or for another person for awarding a tender to a particular person;
  - offers to a public official whether directly or indirectly any benefit for the purpose of obtaining any benefit for himself or for another person as a reward for awarding a tender to a particular person, commits an offence.

## Transnational bribery

69. (1) Any person who is a Citizen or permanent resident of Barbados or resides in Barbados and who intentionally offers, promises or grants directly or indirectly to a government official of another State any gift or money or other advantage in connection with any economic or commercial transaction, in order that such official act or refrain from acting in relation to the performance of his official duties, in order to obtain or retain business or other improper advantage in the conduct of international business, commits an offence.

- Any public official who solicits, demands, accepts, or receives directly or indirectly, from any private or public corporation, including a transnational corporation or any individual from another State, any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of that official's duties in the conduct of international business, commits an offence.
- For the purposes of subsection (1) Citizen and "Permanent Resident" have the meanings respectively assigned to them in the Immigration Act.

## Offences and penalties

70. (1) A person who commits an act of corruption under section 67, 68 or 69 is liable—

- on conviction on indictment to a fine of \$500,000 or to a term of imprisonment of five years or to both;
- [on summary conviction] to a fine of [\$250,000] or to a term of imprisonment of two years or to both; and
- to be disqualified from holding any public office for a period of five years from the date of conviction for the offence.
- In addition to the penalties under this section the Court may make—
  - a confiscation order;
  - an order directing payment to a public body the value of any property obtained by the convicted person in relation to the act of corruption for which he was convicted.
- A person who possesses or is in control of any property knowing that the property or part of the property or proceeds from the property were obtained or derived directly or indirectly from the commission of an act of corruption, commits an offence and is liable—
  - on conviction on indictment to a fine of \$500,000 or to imprisonment for a term of five years or to both;
  - [on summary conviction] to a fine of [\$250,000] or to a term of imprisonment of two years or both; and

- to be disqualified from holding any public office for a period of five years from the date of conviction for the offence.
- A person who—
  - aids, assists, or is an accessory after the fact or participates in any manner in the commission of or conspires to commit an act of corruption; or
  - procures the commission of an act of corruption or who attempts, or counsels another, to commit an act of corruption commits an offence and is liable—
    - on conviction on indictment to a fine of \$500,000 or to a term of imprisonment of five years or to both;
    - [on summary conviction] to a fine of [\$250,000] or to a term of imprisonment of two years or to both; and
    - to be disqualified from holding any public office for a period of five years from the date of conviction for the offence.

### **Property acquired *bona fide***

71. Property acquired *bona fide* without notice that a corruption offence has been committed is not liable to forfeiture.

## **Defence not available to person charged**

72. Where in any proceedings for an offence under this Part it is proved that a public official accepted a gift or benefit believing or having grounds to believe or to suspect, that the gift or benefit was given as an inducement or reward for doing or forbearing to do an act in the performance of his functions it shall be no defence that that public official—
- did not actually have the power or right to so do or to so forbear from any act; or;
  - accepted the benefit with no intention of doing or forbearing to do any act.

## **Defence available to person charged**

73. It shall be a defence to a person charged with an act of corruption if he satisfies the Court, on a balance of probabilities, that he had no knowledge of the circumstances giving rise to the act of corruption.

## **Presumption of corruption**

74. Where in any proceedings for an offence it is proved that in seeking to obtain a contract from the Government, a government department or a public body, a person has received or given money, a gift or any other benefit, that gift or benefit shall be presumed to have been paid or given and received as an inducement or reward unless, on a balance of probabilities, the contrary is proved.

## **Possession of unaccounted property or pecuniary resource**

75. (1) Where a person who is or was a public official is suspected to be in possession of property or pecuniary resource disproportionate to such person's known sources of income, the Commission, on a complaint or, of its own motion, may summon that person to produce evidence that the property or resource was lawfully obtained and if that person fails to produce satisfactory evidence to prove that the possession of the property or pecuniary resource was acquired by lawful means, he commits an offence and is liable, on summary conviction, to a fine and to a term of imprisonment of not less than six months or more than three years.

(2) 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 known sources of income or other lawful means of acquisition of the property or pecuniary resource and such fine shall be equivalent to one and one half times the value of the aforesaid property or pecuniary resource found to be in the possession of the said person.

## **Proof of acquisition by lawful means**

76. In any proceedings for an offence concerning an alleged act of corruption to which this Part applies it shall be a defence for the accused to prove that any property, gift or pecuniary resource in relation to the alleged act of corruption was acquired by lawful means and the accused shall be acquitted of the offence if he produces satisfactory evidence, on a balance of probability, that the property, gift or resource was acquired by lawful means.

## **Making of false allegation**

77. A person who maliciously makes a false allegation or maliciously provides false information related to an act of corruption commits an offence and is liable—
- on conviction on indictment to a fine of \$500,000 or to imprisonment for a term of two years or to both;
  - [on summary conviction] to a fine of [\$250,000] or to a term of imprisonment of two years or to both.

## **Complaint to the Commission**

78. (1) A person who has reasonable grounds to believe that a specified person in public life has committed an act of corruption may complain in writing to the Commission stating—
- the particulars of the breach;
  - the nature of the evidence that the person proposes to produce in support of the complaint;
  - other particulars as may be prescribed in Regulations made by the Attorney General.
  - A complaint to the Commission under this section may be presented in person or may be sent by registered post to the Chairman of the Integrity Commission.

## **Duty of public officials to report act of corruption**

79. (1) A public official who knows or suspects that another person has been, is or is likely to be engaged in an act of corruption shall report his knowledge or suspicion to the Commission.
- A public official who fails to report his knowledge or suspicion as required by subsection (1) commits an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for six months, or to both.
  - No public official who reports his knowledge or suspicion that another person has been, is or is likely to be engaged in an act of



corruption to a person or entity other than the Commission, in accordance with the requirements of another Act or Regulation, shall be convicted of an offence under this section.

## **Inquiry by the Commission**

80. (1) Where the Commission receives a complaint, the Commission on examination of the complaint may—

- reject the complaint if it considers it is frivolous, or that it does not relate to a matter the Commission is empowered to deal with;
- hold an inquiry into the complaint giving an opportunity to the specified person in public life to be heard;
- on conclusion of an inquiry, forward the complaint, and any documents and a report containing recommendations of the Commission to the Director of Public Prosecutions if it considers that a criminal offence may have been committed.
- Where a specified person in public life has been exonerated following an inquiry into an allegation of corruption, the Commission—
  - shall in writing inform the person who made the complaint of the finding of the inquiry;
  - shall in writing inform the specified person in public life of the finding of the inquiry;
  - publish the finding of the inquiry in the *Official Gazette*.

## **Action by Director of Public Prosecutions**

81. The Director of Public Prosecutions as soon as practicable after receiving any complaint, documents and report under this Act shall in any case in which he considers that a person ought to be prosecuted for an offence institute and undertake criminal proceedings against the person; and shall inform—

- the Commission of any action taken following the receipt of a complaint from the Commission against a specified person in public life;
- the appropriate Service Commission where a complaint relates to a public officer; and
- the appropriate board, authority or body with which the specified person in public life is employed.

### **Where public allegation is made**

82. Where an allegation is made in public that a specified person in public life has committed an act of corruption, a person desiring to make a complaint to the Commission relative to that alleged act of corruption must lodge a complaint with the Commission not later than three months from the date on which that public allegation was first made.

## PART IX

### CONDUCT IN PUBLIC LIFE

#### *Code of Conduct*

## **Inquiry or investigation into contravention of Code of Conduct by public official**

83. (1) The Commission shall formulate and publish, after public consultation, a Code of Conduct for Persons in Public Life, keep the Code under review and amend or replace it as it considers necessary or desirable, and, in accordance with any Law, investigate any alleged failures to abide by the Code by persons subject to it, either in response to a complaint or on its own initiative;

(2) The Commission shall inquire into or investigate every contravention of the Code of Conduct by a public official where—

- it receives a complaint or report of the contravention;
- it is satisfied that there are reasonable grounds for it to conduct an investigation on its own initiative.

(3) An inquiry or investigation shall not be commenced after two years from the date on which the person ceased to be in public life.

## **Commission may request further information or hold formal inquiry**

84. (1) Where the Commission is of the opinion that there are reasonable and probable grounds to believe that the public official contravened the Code of Conduct, it may—

- request the official in writing to furnish any further information or documents that it may require;
- require the official to attend an inquiry of the Commission at a specified time to be heard on any matter relating to the alleged contravention.
- A public official who fails without reasonable cause to attend an inquiry being conducted under this section or to furnish any information that the Commission requests him to furnish, or knowingly gives any false or incomplete information at such inquiry commits an offence and is liable, on summary conviction, to a fine of \$50,000 or to imprisonment for a term of one year or to both.
- A public official who is required to attend an inquiry of the Commission may be represented by an attorney or friend at the inquiry and require the Commission to summon witnesses.
- The Commission shall not make any adverse decision without giving the public official an opportunity to be heard.

## **Commission to report its findings**

85. (1) The Commission shall prepare a written report of the findings of an inquiry or investigation held under this Part, and indicate its conclusion in the report that—

- it is not satisfied that the public official subject to the inquiry or investigation contravened the Code of Conduct; or
- it has determined that the public official subject to the inquiry or investigation contravened the Code of Conduct.

- If the Commission determines that a public official contravened the Code of Conduct, it may include in the report any recommendations as to the punishment or disciplinary measures that it believes would be appropriate to be taken against the public official.
- The Commission shall send a copy of the report, including copies of evidence and material documents submitted during the inquiry or investigation, to—
  - the public servant who was subject to the inquiry or investigation; and
  - the following persons in the following cases—
    - the head of the Public Service and the Governor General, in the case of an alleged contravention of the Code of Conduct by a public officer;
    - the public official's employer, in the case of an alleged contravention of the Code of Conduct by a public official employed by a commission, statutory board, authority or other public body referred to in paragraph (d) of the definition of public body;
    - the Speaker of the House of Assembly and the Governor General, in the case of an alleged contravention of the Code of Conduct by member of the House of Assembly;
    - the Governor General, in the case of an alleged contravention of the Code of Conduct by the head of the Public Service or by the Speaker of the House of Assembly.
- A person who receives a report from the Commission under subsection (3)(b) in which the Commission has determined that the public official subject to the inquiry or investigation contravened the Code of Conduct shall—
  - decide without delay what measures shall be taken, if any, in response to the report and shall implement such measures without delay; and
  - inform the Commission, as soon as practicable but not later than 30 days after receiving the report—

- of the follow-up actions or disciplinary measures that will be or have been taken against the public official in response to the report;
- that no further action is required to be taken against the public official in response to the report; or
- that no decision has been made as to the measures to be taken in response to the report, of the reasons for the delay, and of the date by which a decision will be made and sent to the Commission.

### *Whistleblower Protection*

## **Protected disclosures**

86. (1) A public official shall benefit from the protections in sections 94 and 95 if he makes a protected disclosure, in good faith—

- to a person referred to in any of sections 87 to 90 of a kind described in that section;
- of an exceptionally serious matter, in the circumstances described in section 91; or
- in the circumstances described in section
- A protected disclosure is a disclosure—
  - that a criminal offence has been committed, is being committed or is likely to be committed;
  - that a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject;
  - that a miscarriage of justice has occurred, is occurring or is likely to occur;
  - that the health or safety of an individual has been, is being or is likely to be endangered;
  - that the environment has been, is being or is likely to be damaged; or

- that information tending to show a matter within any of paragraphs (a) to (e) has been, is being or is likely to be deliberately concealed.
- A disclosure is not a protected disclosure if the public official—
  - commits an offence by making the disclosure; or
  - discloses privileged material or information disclosed to him in the course of obtaining legal advice.
- For the purposes of this section, it is immaterial whether—
  - the matter disclosed occurred, occurs or would occur in Barbados or elsewhere; or
  - the law applying to the matter disclosed is that of Barbados or of any other country or territory.

## **Disclosure to employer or other responsible person**

87. A public official may make a disclosure in connection with his employment—

- to his employer; or
- to another person, if the public official reasonably believes that the matter disclosed relates mainly to that person's conduct or to another matter for which that person has legal responsibility.

## **Disclosure to legal adviser**

88. A public official may make a disclosure to a legal adviser in the course of obtaining legal advice.

## **Disclosure to Governor General**

89. A public official may make a disclosure to the Governor General if the official's employer is—

- an individual appointed under an enactment by the Governor General; or

- a body any of whose members is appointed by the Governor General.

## **Disclosure to Commission**

90. A public official may make a disclosure to the Commission if the person reasonably believes that the information disclosed, and any allegation contained in it, are substantially true.

## **Disclosure of an exceptionally serious matter**

91. A public official may disclose a matter of an exceptionally serious nature if—

- he reasonably believes that the information disclosed, and any allegation contained in it, is substantially true;
- he does not make the disclosure for the purposes of personal gain; and
- it is reasonable for him to make the disclosure, having regard in particular to the identity of the person to whom the disclosure is made.

## **Disclosure in particular circumstances**

92. (1) Subject to subsection (2), a public official may make a disclosure in any of the following circumstances where—

- he reasonably believes that if he were to make the disclosure to his employer, his employer would subject him to a detriment;
- he reasonably believes that—
  - he cannot make the disclosure to the Commission because the matter to be disclosed is not one that the Commission is willing or able to deal with; and
  - if he were to make the disclosure to his employer, it is likely that evidence relating to the matter would be concealed or destroyed;

- he has previously made a disclosure of substantially the same information to his employer or to the Commission.
- The official may only make a disclosure under this section if—
  - he reasonably believes that the information to be disclosed, and any allegation contained in it, is substantially true;
  - he does not make the disclosure for personal gain; and
  - it is reasonable for him to make it.
- In determining whether it is reasonable for a public official to make a disclosure under this section, regard must be had in particular to—
  - the identity of the person to whom the disclosure is made;
  - the seriousness of the matter disclosed;
  - whether the matter disclosed is continuing or is likely to occur in the future; and
  - whether the disclosure is in breach of a duty of confidentiality owed by the person's employer to any other person.

## **Previous disclosures of substantially the same information**

93. (1) In determining whether it is reasonable for a public official to make a disclosure in the circumstances described in section 92(1)(c), regard must also be had to—
- any action that his employer or the Commission took or might reasonably be expected to have taken in consequence of the previous disclosure; and
  - in the case of a previous disclosure to his employer, whether in making the disclosure, the official complied with any procedure whose use was authorised by the employer.
- For the purposes of section 92(1)(c), a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure even though the subsequent disclosure extends to information about action taken or not taken in consequence of the previous disclosure.



## **Protection vis a vis employer or person in authority**

94. (1) An employer or any person in authority over a public official who subjects that official to a detriment by reason only of his having made a protected disclosure under section 86 commits an offence and is liable on summary conviction to a fine of \$150,000 or imprisonment for a term of 2 years, or to both.
- A public official who makes a protected disclosure under section 86 does not break a duty of confidentiality to any person by reason only of having made the disclosure.

## **Contractual limitations**

95. (1) A provision in an agreement to which this section applies is void in so far as it purports to preclude a person from making a protected disclosure under section

(2) This section applies to an agreement between a person and his employer (whether or not part of the contract of employment) including an agreement to refrain from instituting or continuing proceedings for breach of contract.

### **PART X**

### **MISCELLANEOUS PROVISIONS**

## **Assistance by Commissioner of Police**

96. (1) Where the Commission requests the Commissioner of Police for any assistance, in connection with the performance of its functions, it shall be the duty of the Commissioner of Police to provide or to ensure the provision of such assistance to the Commission.
- Where the Commission is investigating an offence alleged to have been committed by a member of the Police Force contrary to this Act or another Act in respect of which the Commission has responsibility to investigate offences—
    - the Commission shall have conduct of the proceedings for the offence; and

- the investigative officer shall have, for the purposes of the proceedings referred to in paragraph (a), the powers of a senior police officer under the Police Act.

## **Confidentiality of information**

97. (1) Any information received by any member, officer or other employee of the Commission, in the course of the performance of the functions of such person under this Act (including information contained in any document received by that person by virtue of the provisions of this Act) shall not be divulged by any such member, or by any such officer or employee, except where the information is required to be produced for the purpose of complying with any written law or the order of any court or for the purpose of prosecution for an offence.

- Any member, or any officer or employee of the Commission who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction, to a fine of \$5,000 or to a term of imprisonment of two months.
- Any person who receives any information or anything contained in such documents as aforesaid, knowing or having reasonable ground to believe at the time when he receives it, that it is communicated to him in contravention of this section shall, unless he proves that the communication to him of the information or anything contained in any document was contrary to his desire, commits an offence and shall be liable on summary conviction to a fine of \$5,000 or a term of imprisonment of two months.

## **Amendment of Schedules**

98. The Attorney General may, after consultation with the Commission, by order amend the Schedules.

## **Regulations**

99. The Attorney General may make Regulations for giving effect to the provisions of this Act and without derogating from the generality of the foregoing may make Regulations to provide for—

- any matter required to be prescribed by this Act;

- any matter in relation to any report, investigation or enquiry under this Act;
- any matter concerning procedure of the Commission;
- such other matters as may be necessary or required for the purposes of carrying into effect the provisions of this Act.

## **Power of Commission to make rules**

100. (1) Subject to the provisions of this Act and Regulations made thereunder, the Commission may make Rules to regulate its procedure.
- The Commission shall make rules, defining the circumstances in which the acquisition by an elected or appointed member of Parliament of an interest in a contract with the Government is prohibited.

### **SCHEDULE 1**

*(Section 2)*

#### **SPECIFIED PERSONS IN PUBLIC LIFE**

1. Members of the House of Assembly and the Senate
2. Members of Cabinet
3. Permanent Secretaries and Officers of Related Grades
4. Heads of Departments within the Public Service
5. Chairpersons of Boards, Commissions, Corporations or Entities established by Statute
6. Chief Executive Officers, Managers or Executive Heads of Boards, Commissions, Corporations or Entities established by Statute
7. Magistrates
8. Judges