

**MONTSERRAT****NO. 2 OF 2010****INTEGRITY IN PUBLIC OFFICE ACT 2010****ARRANGEMENT OF SECTIONS**

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**Peter Waterworth**  
Governor

DATE: 9.2.10

**M O N T S E R R A T****NO. 2 OF 2010**

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF AN INTEGRITY COMMISSION FOR THE PURPOSE OF RECEIVING DECLARATIONS ON THE FINANCIAL AFFAIRS OF PERSONS HOLDING SPECIFIC POSITIONS IN PUBLIC LIFE, FOR THE PURPOSE OF ESTABLISHING PROBITY, INTEGRITY AND ACCOUNTABILITY IN PUBLIC LIFE AND FOR RELATED MATTERS.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat, and by the authority of the same as follows:—

**PART I****PRELIMINARY****Short title and commencement**

1. This Act may be cited as the Integrity in Public Office Act 2010 and shall come into force by Order of the Governor.

**Interpretation**

2. In this Act, unless the context otherwise requires—

"**attorney-at-law**" means a barrister or a solicitor;

"**Chief Technical Officer**" includes any Director or head of department or deputy head of department however described in a Government Ministry or Department.

"**dependant**" means a person who is in whole or part maintained by the person in public life and includes that person's child, whether natural or adopted, of whatever age, and that person's husband or wife.

"**Commission**" means the Integrity Commission established under section 4;

"**control**" when used in relation to a company, shall be construed according to the meaning of "control" under section 539 of the Companies Act.

**"Gazetted Police Officer"** means Commissioner of Police, Deputy Commissioner of Police, Superintendent and Assistant Superintendent of Police;

**"member"** means member of the Commission;

**"Permanent Secretary"** includes Clerk of Councils, Financial Secretary and Commissioner of the Financial Services Commission;

**"person in public life"** means—

- (a) a person holding any office or position set out in the First Schedule to this Act; or
- (b) a person acting continuously for a period of not less than six months in any office set out in the First Schedule to this Act.

**"property"** includes money;

**"public institution"** means—

- (a) a bank, corporation or company which the Government owns or in which it has a controlling interest;
- (b) a corporation established by an Act for public purposes or any subsidiary thereof;
- (c) a board, commission, committee or other body which performs public functions appointed by the Governor, the Governor in Council or a Minister of the Government.

### **Definition of income, assets and liabilities**

3. For the purposes of this Act—

- (a) the income of a person in public life is that income which he acquires in or out of Montserrat and includes all perquisites or benefits direct or indirect and all income within the meaning of income under the Income and Corporation Tax Act;
- (b) the assets of a person include all property beneficially held in Montserrat or elsewhere by him and all rights and benefits to which he is entitled;
- (c) the liabilities of a person in public life include all the obligations of such a person to pay moneys or to transfer moneys to others whether in Montserrat or elsewhere.

## PART II

### INTEGRITY COMMISSION

#### **Establishment of Integrity Commission**

4. (1) There is hereby established the Integrity Commission consisting of a Chairman and two other members, who shall be appointed by the Governor, acting after consultation with the Speaker of the Legislative Council.

(2) At least one member of the Commission shall be an attorney-at-law or a chartered accountant either or both of whom possess at least fifteen years' standing.

(3) No one shall be appointed under subsection (1) unless the Governor is satisfied that he is a person of high public standing and has a reputation for personal integrity.

(4) The Chairman and other members of the Commission shall receive such remuneration as shall be determined by the Governor, acting after consultation with the Speaker of the Legislative Council, and the remuneration of the Chairman or any members of the Commission shall not be reduced during tenure in office.

**Disqualification from membership**

5. A person shall not be qualified to be appointed as a member of the Commission if that person—

- (a) is a person in public life or is otherwise exercising a function in the public service;
- (b) would be disqualified to be a member of the Legislative Council;
- (c) has, at any time during three years immediately preceding the date of appointment, been a public officer; or
- (d) has, at any time during five years immediately preceding the date of appointment, held office in a political party.

**Resignation of members**

6. (1) A member other than the Chairman may at any time resign his office by instrument in writing addressed to the Governor and transmitted through the Chairman and, from the date of receipt of the instrument by the Governor, that person ceases to be a member.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Governor and, from the date of receipt of the instrument by the Governor, that person ceases to be Chairman and a member of the Commission.

**Vacancy in membership**

7. (1) A member's office becomes vacant—

- (a) on the absence of the member from three consecutive meetings of the Commission, unless the absence is approved by the Governor;
- (b) at the expiration of three years from the date of the appointment of the member;
- (c) if the member with his consent is nominated for election as a member of the Legislative Council;
- (d) if the member is appointed to any office of emolument in the service of the Government of Montserrat; or
- (e) on the death, resignation or removal from office, of the member.

(2) A member may be removed from office by the Governor if—

- (a) the member has become incapacitated from the due execution of his or her office by reason of infirmity or mental illness;
- (b) the member is guilty of misconduct;
- (c) the member has failed in the due execution of his or her office;
- (d) the member has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of his office.

(3) A member shall be removed from office by the Governor 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 that he ought to be removed for inability to discharge the function of his office or for misbehaviour.

(4) Where the Governor, acting after consultation with the Speaker of the Legislative Council, considers that the question of removing a member ought to be investigated the Governor shall appoint a tribunal, which shall consist of one person being a Judge of the High Court, the Senior Magistrate or an attorney-at-law of fifteen years' standing at the bar to inquire

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

(5) The tribunal, appointed under subsection (4), shall give the member an opportunity to show cause why he should not be removed from office.

(6) Where the question of removing a member has been referred to a tribunal under this section, the Governor, acting after consultation with the Speaker of the Legislative Council, may suspend the member from the exercise of the functions of his office and any such suspension may at any time be revoked by the Governor, acting in accordance with this section and shall in any case cease to have effect if the tribunal recommends to the Governor that the member should not be removed.

### **Publication in the Gazette**

8. The appointment, resignation, removal from office, suspension, revocation of suspension or death of a member shall be published in the *Gazette*, by the Secretary of the Commission.

### **Functions of the Commission**

9. The Commission shall—

- (a) receive, examine and retain all declarations filed with it under this Act;
- (b) make such inquiries as it considers necessary in order to verify or determine the accuracy of any declarations filed under this Act;
- (c) without prejudice to the provisions of any other enactment, inquire into any allegation of bribery or act of corruption under this Act;
- (d) receive and investigate complaints regarding non-compliance with any provision of this Act; and
- (e) perform such other functions as are required under this Act.

### **Proceedings and meetings**

10. (1) The Commission shall meet at such times as may be expedient for the Commission to carry out its functions.

(2) A quorum of the Commission shall be two members.

(3) The proceedings of the Commission shall not be affected by any vacancy amongst the members or by any defect in the appointment of any member.

### **Powers of the Commission to summon and examine witnesses**

11. (1) The Commission shall have the powers, rights and privileges of a Judge of the High Court, in respect of—

- (a) summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence on oath, affirmation or otherwise, and to produce the documents and things that the Commission considers relevant;
- (b) administering oaths and solemn affirmations;
- (c) receiving and accepting any evidence and other information, whether on oath or by affidavit or otherwise, that the Commission sees fit, whether or not that evidence or information would be admissible in a court of law.

(2) The form of summons for the attendance of witnesses or other persons or the production of documents shall be in Form 1 as set out in the Third Schedule.

### **Secretary to the Commission**

12. (1) There shall be a Secretary to the Commission who shall be an employee of the Commission and who shall be appointed by the Governor, acting in his discretion.

(2) The duties of the Secretary shall be—

- (a) to attend meetings of the Commission;
- (b) to record the minutes of each meeting in proper form; and
- (c) generally to perform duties connected with the work of the Commission.

### **Commission not subject to control or direction**

13. The Commission shall in the exercise of its functions under this Act not be subject to the control or direction of any person or authority.

## PART III

### FINANCIAL DISCLOSURE

#### **Declaration of financial affairs**

14. (1) Every person in public life shall file a declaration with the Commission setting out—

- (a) his income, assets and liabilities;
- (b) the assets of value in excess of \$5000 of his dependants acquired through or traceable to his income; and
- (c) any gift or gifts made by him during the preceding income year to any one person, the total value of which exceeds \$5000.

(2) The declaration shall be in Form 2 as set out in the Third Schedule.

(3) The Commission shall examine every declaration filed with it and may request from the declarant any information or explanation relevant to a declaration filed which in its opinion would assist in examination.

(4) Where upon an examination under subsection (3), the Commission is satisfied that a declaration has been fully made, it shall publish in the *Gazette* a certificate in the form prescribed as Form 3 in the Third Schedule.

#### **Commission may require further particulars of financial affairs**

15. The Commission may require a declarant to furnish such further particulars relating to his financial affairs as it considers necessary for the purposes of section 9 (b) or section 14 (3).

#### **Filing of declarations**

16. (1) A person in public life shall, in respect of each income year, file a declaration in Form 2 as set out in the Third Schedule within three months after the end of that income year.

(2) The first declaration of a person in public life must be made only in respect of the months of the year during which the person was a person in public life.



(3) The declaration shall be filed irrespective of the fact that, during the income year in respect of which the declaration is required or in the previous two income years, the declarant ceased to be a person in public life, otherwise than by reason of death.

(4) Where a person in public life dies, the declaration which he would have been required to file, had he lived, need not be filed.

(5) For the purpose of this section "income year" means a calendar year.

### **Trust property**

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

### **Income, assets and liabilities of agent**

18. For the purposes of a declaration, the income, assets and liabilities of a person in public life include the income, assets and liabilities acquired, held or incurred by any other person as his agent or on his behalf.

### **Blind Trusts**

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

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

(3) A blind trust is created if a person in public life enters into an agreement with a qualified trust company whereby –

- (a) all or part of his assets are conveyed to the trust company for its management, administration and control, in its absolute discretion without recourse or report to the persons beneficially entitled to those assets;
- (b) income derived from the management of the assets is to be distributed to him as agreed;
- (c) conversion of assets into other assets is not to be communicated to him, until he ceases to be a person in public life; and
- (d) after he ceases to be a person in public life proper and full accounting is to be made to him, as the circumstances of the management of the trust require.

(4) A trust company is a qualified trust company if—

- (a) it is incorporated in Montserrat and is carrying on business in Montserrat;
- (b) no more than ten per cent of the issued shares in the trust company or its affiliate is held by the person in public life entering into an agreement with it, or by any other person associated with him; and
- (c) the person in public life holds no directorship or office in the trust company or its affiliate.

(5) For the purpose of this section, a person is associated with another person where the second mentioned person is—

- (a) the dependant of the first mentioned person;

- (b) the partner of the first mentioned person in a professional, trade or commercial undertaking; or
- (c) a corporation, and any person specified in paragraph (a) or (b) controls the corporation, its holding corporation or a corporation affiliated with either.

(6) For the purpose of this section a company is the affiliate of another company where the first mentioned company holds more than five per cent of the issued shares in the second mentioned company or where the second mentioned company holds more than ten per cent of the issued shares in the first mentioned company.

### **Secrecy and confidentiality**

20. The declarations filed with the Commission and the records of the Commission in respect of those declarations are secret and confidential and shall not be made public, except where a particular declaration or record is required to be produced for the purpose of, or in connection with, any court proceedings against, or inquiry in respect of, a declarant under this Act or the Commissions of Inquiry Act or perjury under the Penal Code.

### **Information not to be communicated to unauthorised persons**

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of one year or to both such fine and imprisonment.

(3) An unauthorised person is a person other than a person authorised to receive information—

- (a) under this Act; or
- (b) by reason of an Order of a Judge of the High Court.

(4) An unauthorised person who publishes information which comes to his knowledge under subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of one year or to both such fine and imprisonment.

### **Failure to file declaration**

22. Where a person who is required to file a declaration under section 14 fails to file the declaration in accordance with this Act or fails to furnish particulars under section 15 or section 17, the Commission shall publish the fact in the *Gazette* and send a report to the Attorney General for further action.

### **Commission may hold formal inquiry**

23. (1) The Commission may, in accordance with the provisions of this section and section 24, inquire into the accuracy or fullness of a declaration filed with it if the Commission considers it necessary or expedient to so inquire.

(2) Where the Commission considers it necessary or expedient to inquire into the accuracy or fullness of a declaration filed with it, the Commission may, under subsection (3), advise the Governor to appoint a Tribunal for that purpose.

(3) The Governor shall, on the advice of the Commission, appoint a Tribunal comprising at least one member of the Commission to conduct an inquiry to verify the contents of a declaration or other statement filed with the Commission.

(4) For the purposes of any inquiry under this section a Tribunal may, subject to subsection (5), request in writing that the declarant or any other person who the Tribunal reasonably believes has knowledge of the matters to be inquired into—

- (a) attends before the Tribunal to give such information as it may require to satisfy itself that it is in possession of all material facts; or
- (b) furnish such information or documents as would assist the Tribunal in verifying the declaration.

(5) An inquiry may not be commenced after five years from the date when the person in respect of whose declaration the inquiry is being conducted ceased to be a person in public life.

(6) Where the Commission has reasonable cause to believe that a breach of any of the provisions of this Act may have been committed, the Commission shall refer the matter to the Attorney General for further action.

### **Powers of Tribunal**

24. (1) In conducting an inquiry under section 23, a Tribunal shall have and exercise the powers of a Commission of Inquiry under the Commissions of Inquiry Act except that—

- (a) the proceedings shall be held in private; and
- (b) the form of summons, for the attendance of witnesses or other persons, or for the production of documents, shall be as in Form 1 as set out in the Third Schedule.

(2) The person in public life in respect of whom the inquiry is held is entitled to notice of the proceedings of the inquiry and may be represented in the inquiry by an attorney-at-law.

### **Finding of Tribunal**

25. Where, from an inquiry under section 23, a Tribunal finds that a declarant had in fact made full disclosure in his declaration, it shall, if so requested in writing by the declarant, publish a statement to that effect in the *Gazette* and in a newspaper.

### **Indemnity**

26. Where upon an inquiry a Tribunal finds that the declaration which gave rise to the inquiry was in fact full and proper, the declarant is entitled to full indemnity and shall be reimbursed from the Consolidated Fund for all expenses reasonably incurred as may be determined by the Tribunal.

### **Offences**

27. (1) A person who—

- (a) fails, without reasonable cause, to furnish to the Commission a declaration or further particulars thereof which he is required to furnish in accordance with this Act;
- (b) knowingly makes a declaration which is false in some material particular;
- (c) fails, without reasonable cause, to give such information as a Tribunal may require under section 23; or

- (d) fails, without reasonable cause, to attend an inquiry being conducted under section 23 or gives any false information in such inquiry,

commits an offence, and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment.

(2) A person who aids, abets or facilitates another person in the commission of an offence under subsection (1) commits an offence and the first mentioned person is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment.

(3) Where the offence under subsection (1) involves the non-disclosure of property acquired while in public life, the Court may, if satisfied that such property was acquired but not declared as required under this Act, in addition to the penalty specified under subsection (1)—

- (a) where the property involved is situated in Montserrat, declare that it be forfeited to the Crown; or
- (b) where the property involved is situated outside Montserrat, order that an amount equivalent to the value of the property (the value to be assessed as directed by the Court), be paid by the person in public life to the Crown.

(4) Property acquired from a person referred to in subsection (3) by a bona fide purchaser for value without notice of any offence by that person is not liable to forfeiture, but an amount equivalent to the value of the property or the price paid by the purchaser, whichever is the greater, shall be paid by the person in public life to the Crown.

(5) Payment of all sums due to the Crown pursuant to subsection (3)(b) or subsection (4) may be enforced as a debt due and owing to the Crown and any proceedings thereon on behalf of the Crown may be taken.

### **Prosecutions**

28. No prosecution for an offence under this Part, other than an offence under section 15 may be instituted after five years from the date when the person, in respect of whose declaration or financial affairs the alleged offence was committed, ceased to be a person in public life.

### **Deductible income tax expenses**

29. For the purposes of the Income and Corporation Tax Act, all outgoings and expenses reasonably incurred in a year of income by a person in public life in connection with the preparation of a statutory declaration required to be furnished by him for the purposes of this Act are deemed to be incurred by him wholly, exclusively and necessarily in the production of his income for that year of income.

## **PART IV**

### **CODE OF CONDUCT**

#### **Code of Conduct**

30. (1) Every person in public life shall observe the body of rules known as the Code of Conduct, specified in the Second Schedule.

(2) A person in public life who is in breach of the Code of Conduct commits an offence, and is liable, on summary conviction, to a fine of \$10,000 or to imprisonment for a term of 1 year or to both such fine and imprisonment.

**Complaint to Commission**

**31. (1)** A person who has reasonable grounds to believe that any person in public life has breached any provision of the Code of Conduct may make a complaint in writing to the Commission stating —

- (a) the particulars of the breach;
- (b) the particulars, as far as they are known, of the person against whom the complaint is made;
- (c) the nature of the evidence that the complainant proposes to produce in respect of the complaint; and
- (d) such other particulars as may be requested by the Commission.

**(2)** 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 Commission.

**Rejection of complaint by Commission**

**32. (1)** Where a complaint has been sent to the Commission under section 31, the Commission, after examining the complaint, may reject the complaint if the Commission is of the opinion that—

- (a) the complaint is frivolous; or
- (b) it does not pertain to a matter the Commission is empowered to deal with under this Act.

**(2)** Where the Commission rejects a complaint, the Commission may order the complainant to pay the costs incurred by the Commission and by the person against whom the complaint was lodged.

**(3)** No complaint shall be rejected by the Commission without giving the complainant a reasonable opportunity of being heard.

**Investigation of breach of Code of Conduct**

**33. (1)** Where upon examination of a complaint made under section 31, or where of its own motion, the Commission is of the view that investigation is necessary to ascertain whether any person in public life has committed a breach of any provision of the Code of Conduct it shall inquire into the matter.

**(2)** The sittings of the Commission to take evidence or hear arguments in the course of any inquiry under subsection (1) shall be held in private.

**(3)** The complainant and the person in public life against whom any inquiry is held under this section are entitled to notice of the proceedings of the inquiry and may be represented in the inquiry by an attorney-at-law.

**Report to Attorney General**

**34. (1)** On the conclusion of any inquiry under section 33, the Commission shall submit a report to the Attorney General and the Governor, and send a copy to the complainant and the person against whom the complaint was made.

**(2)** Where the Attorney General is satisfied, on the examination of the report referred to in subsection (1) and other relevant evidence, that any person in public life ought to be prosecuted for an offence under section 30, he shall institute and undertake criminal proceedings against the person in public life.

**(3)** Where the Commission has forwarded to the Attorney General a report under subsection (1), the Attorney General shall inform the Commission and the Governor, in writing, about the action taken in pursuance of the report.

## PART V

### GIFTS

#### Acceptance of gifts

**35. (1)** It is unlawful for a person in public life to accept a gift from any person as a reward for any official act done or not done by the person in public life or as an inducement for any official act to be done or not to be done by the person in public life.

**(2)** Despite subsection (1), a person in public life may accept a gift from a foreign dignitary on the occasion of an official visit if the person in public life has reasonable grounds to believe that refusal of the gift may offend the dignitary, but such gift must be delivered to the Financial Secretary to be dealt with as a gift to the Crown.

#### Offence

**36.** A person who contravenes section 35 commits an offence and is liable on summary conviction to a fine, equal to the value of the gift involved in the commission of the offence or \$7,500 whichever is greater, or to imprisonment for a term of 3 months or to both such fine and imprisonment.

## PART VI

### BRIBERY AND OTHER ACTS OF CORRUPTION

#### Interpretation

**37. (1)** In this Part, unless the context otherwise requires —

"**advantage**" means—

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service or favour including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise of forbearance from the exercise of any right, power or duty; or
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) or (e);

"**Public body**" means—

- (a) the Government;
- (b) a Ministry or Department of the Government;

- (c) the Legislative Council;
- (d) a corporation established by an Act for public purposes or any subsidiary company thereof registered under the Companies Act;
- (e) any board, commission, authority, committee or other body, whether paid or unpaid, appointed by the Governor, the Governor in Council or a Minister of the Government.

**"Prescribed officer"** means a police or public officer or any employee or member of a public body, whether temporary or permanent and whether paid or unpaid.

**(2)** For the purposes of this Part—

- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or in trust for any other person;
- (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain, any advantage, whether for himself or for any other person.

### **Offence of bribery**

**38. (1)** Any person commits an offence who, without lawful authority or reasonable excuse, offers any advantage to a prescribed officer as an inducement to, or reward for, or otherwise on account of the prescribed officer—

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a prescribed officer;
- (b) expediting, delaying, hindering or preventing, the performance of an act, whether by that prescribed officer or by any other prescribed officer in his or that other prescribed officer's capacity as a prescribed officer; or
- (c) assisting, favouring, hindering, or delaying, or having assisted, favoured, hindered or delayed any person in the transaction of any business with a public body.

**(2)** Any prescribed officer commits an offence who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) communicating to another person any classified or confidential information obtained in the performance of his functions as a prescribed officer;
- (b) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a prescribed officer;
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered, or prevented, the performance of an act, whether by himself or by any other prescribed officer in his or that other prescribed officer's capacity as a prescribed officer; or
- (d) assisting, favouring, hindering, or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body.

**Bribery for giving assistance, etc. in regard to contracts**

**39. (1)** Any person commits an offence who, without lawful authority or reasonable excuse, offers an advantage to a person in public life as an inducement to or reward for or otherwise on account of such person in public life giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution, or procuring of any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance;
- (b) the promotion, execution or procuring of any subcontract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body;
- (c) the payment of the price, consideration or other money stipulated or otherwise provided for in any such contract or subcontract referred to in subparagraph (a) or (b).

**(2)** Any person in public life commits an offence who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution or procuring of; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or sub-contract as is referred to in subsection (1).

**Bribery of prescribed officers by person having dealing with public bodies**

**40.** Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any public body, offers an advantage to any prescribed officer employed in or by that public body commits an offence.

**Aiding and abetting**

**41.** A person who aids, abets or facilitates another person in the commission of any offence under this Part commits an offence.

**Giver and acceptor of advantage guilty notwithstanding that purpose not carried out**

**42. (1)** If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do or having done or forborne to do any act referred to in that section, it shall be no defence that—

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the advantage without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

**(2)** If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to, or reward for, or otherwise on account of that other person's doing, or forbearing to do, or having done or forborne



to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

### **Penalty for offences**

**43.** A person who commits an offence under this Part is liable—

- (a) on conviction on indictment to a fine of \$30,000 or to imprisonment for a term of ten years or to both such fine and imprisonment; and
- (b) on summary conviction, to a fine of \$20,000 or to imprisonment for a term of two years or to both such fine and imprisonment,

and shall be ordered to pay to such public body and in such manner as the Court directs, the amount or value of any advantage received by him, or such part thereof as the Court may specify.

### **Alternative convictions and amending particulars**

**44. (1)** If, on the trial of any person for any offence under this Part, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under this Part, the accused may be convicted of such other offence, and be liable to be dealt with accordingly.

**(2)** If, on the trial of any person for any offence under this Part, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the Court, there is prima facie evidence of the commission of that offence, and in such a case the Court may make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall be allowed to recall and examine on matters relevant to such amendments any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

**(3)** If an amendment is made under subsection (2) after the case for the prosecution is closed no further witness may be called by the prosecution other than such witness and on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

**(4)** Nothing in this section shall exclude the application of any other law whereby a person may be found guilty of an offence other than that with which he is charged.

### **Presumption of corruption**

**45.** Where in any proceedings for an offence under this Part it is proved that in seeking to obtain a contract whether from the Government, a government department, a public body or otherwise a person has received an advantage, that advantage shall be deemed to have been made, given or received corruptly as an inducement or reward unless on a balance of probabilities the contrary is proved.

### **Forfeiture of property**

**46.** Where a person is convicted of an offence related to bribery, corruption or possession of unaccounted property under this Act, the Court may on an application made by the Attorney General make an order of forfeiture of any property in possession or control of that person that has been, or which the Court has reasonable grounds to believe was, illicitly obtained in, or as a result of, the commission of the offence.

## PART VII

## POSSESSION OF UNACCOUNTED PROPERTY

**Possession of unaccounted property or pecuniary resource**

**47. (1)** A person in public life who, without legitimate excuse or lawful authority, is in possession of property or pecuniary resource disproportionate to his legitimate sources of income commits an offence and is liable on summary conviction to a fine of \$20,000 and imprisonment for a term of 2 years, and to forfeiture of the assets so found.

**(2)** Where a person, who is or was a person in public life, or any other person on his behalf, is suspected to be in possession of property or pecuniary resource disproportionate to his legitimate sources of income, the Commission shall conduct an inquiry into the source of income of the person.

**(3)** On the conclusion of any inquiry under subsection (2), the Commission shall submit a report to the Attorney General and the Governor.

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

**(5)** Where the Commission has forwarded to the Attorney General a report under subsection (3), the Attorney General shall inform the Commission and the Governor, in writing, about the action taken in pursuance of the report.

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

## PART VIII

## MISCELLANEOUS PROVISIONS

**Annual report of Commission to Legislative Council**

**48. (1)** Subject to subsection (3), the Commission shall, as soon as possible but not later than 2 months after the end of each financial year, make a report to the Governor and the Legislative Council of its activities in the preceding year and the report shall be tabled in the Legislative Council at the next meeting of the Council.

**(2)** The report under subsection (1) shall not disclose the particulars of any declaration filed with the Commission.

**(3)** The Commission shall make its first report to the Governor and the Legislative Council not later than one month after the end of its first year of operation and the report shall be tabled in the Legislative Council at the next meeting of the Legislative Council.

**Staff of Commission**

**49. (1)** The Commission shall be provided with a staff adequate for the prompt and efficient discharge of its functions under this Act.

**(2)** The staff of the Commission shall be appointed by the Governor, acting in his discretion.

**Oaths and affirmations**

**50. (1)** A member of the Commission and the Secretary to the Commission shall not enter upon the duties of his office until he has taken the oaths or affirmations of allegiance, office and secrecy as specified in the Fourth Schedule.

**(2)** A staff member of the Commission shall not enter upon the duties of his office until that member has taken the oath or affirmation of office and the oath or affirmation of secrecy as specified in the Fourth Schedule.

**Immunities**

**51. (1)** No member or employee of the Commission shall be liable to any action or suit in respect of anything done in good faith in the performance of his functions as a member or employee as the case may be of the Commission.

**(2)** A witness before the Commission is entitled to the same immunities and privileges as if he were a witness before a Commission of Inquiry set up under the Commissions of Inquiry Act.

**Charge on Consolidated Fund**

**52. (1)** The remuneration and expenses incurred by the Commission for the purposes of this Act are a charge on the Consolidated Fund.

**(2)** The Commission shall on or before the thirty-first day of January in each year submit to the Minister responsible for Finance for approval, its estimates of expenditure in respect of the next financial year.

**(3)** The Commission shall keep proper accounts of receipts, payments, assets and liabilities and those accounts shall be audited by the Auditor General or an auditor appointed by the Governor.

**Assistance by Commissioner of Police**

**53.** Where the Commission requests the Commissioner of Police for any assistance, in connection with the performance of its functions, the Commissioner of Police shall provide or ensure the provision of such assistance to the Commission.

**Offence of obstruction of duty**

**54. (1)** A person who obstructs or attempts to obstruct a member or employee of the Commission in the proper discharge of any of his duties or functions under this Act commits the offence of obstruction of duty.

**(2)** A person commits an offence if that person —

*(a)* participates as an accomplice in, or contributes to, the commission of the offence of obstruction of duty;

*(b)* organises or directs others to commit the offence of obstruction of duty.

**Victimisation**

**55. (1)** A person who commits an act of victimisation against a person who has in good faith provided information to the Commission for the purposes of this Act commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year, or to both such fine and imprisonment.

- (2) In this section "victimisation" means an act -
- (a) which causes injury, damage or loss;
  - (b) of intimidation or harassment;
  - (c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or
  - (d) amounting to threats of reprisals.

### **Burden of proof and penalty for false allegation**

56. (1) In any proceedings commenced on the allegations made by a person against a person in public life the burden of proof shall be on the person making such allegations.

(2) A person who maliciously makes a false allegation or maliciously provides false information related to bribery, corruption or to possession of unaccounted property commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year or to both.

### **Consent of the Attorney General**

57. No prosecution for an offence under this Act may be instituted without the consent of the Attorney General.

### **General penalty clause**

58. A person found guilty of an offence under this Act or the Regulations for which no penalty is prescribed is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of 6 months or to both such fine and imprisonment.

### **Power of Commission to make Rules**

59. Subject to this Act and the Regulations made thereunder, the Commission may determine its own procedure.

### **Power of Governor in Council to make Regulations**

60. The Governor in Council may make Regulations—
- (a) subject to negative resolution of the Legislative Council to amend any Schedule; and
  - (b) generally, for the effective implementation of the provisions of this Act.

## FIRST SCHEDULE (SECTION 2)

*OFFICES RESPECTING PERSONS IN PUBLIC LIFE*

- a. Adviser or Assistant to the Chief Minister and other Ministers
- b. Chair of the Board of a public institution however styled
- c. Chief Executive Officer of a public institution however styled
- d. Chief Technical Officer (as described in Part 1 of the Act)
- e. Deputy Governor
- f. Gazetted Police Officer
- g. Member of the Legislative Council
- h. Speaker of the Legislative Council

## SECOND SCHEDULE (SECTION 30)

*CODE OF CONDUCT*

## 1. A person in public life shall not—

- (a) in return for anything done, or to be done, or omitted to be done in the execution of his duties, ask for or accept for himself or any person, any money, property, benefits or favours of any kind over and above that which he is lawfully entitled to receive for the performance of his duties;
- (b) in the course of the performance of his official functions discriminate against any person with respect to terms, conditions and privileges of employment or other official matters because of that person's race, place of origin, political opinion, colour, creed or gender;
- (c) for himself or for anyone else accept any gift, benefit or advantage from anyone, except personal gifts from a relative or friend, or personal gift given otherwise than as a motive or reward for doing or forbearing to do anything in the performance of his official functions or causing any other person from doing or forbearing to do anything;
- (d) allow private interests to conflict with his public duties or improperly influence his conduct in the performance of his public duties; allow the pursuit of his private interests to interfere with the proper discharge of his public duties; and any conflict between his private interests and his public duties shall be resolved in favour of his public duties;
- (e) use his official influence in support of any scheme or in furtherance of any contract or proposed contract or other matter in regard to which he has an interest;
- (f) for his personal advantage, benefit or gain, make use of or communicate to anyone except in the performance of his official duties the contents of any document, or any information, or matter acquired in the course of his official duties which are not available to the public;

- (g) use or allow the use of public property (including money), equipment, supplies or services for any purpose other than for officially approved purposes;
- (h) acquire or become a partner or shareholder in, or director or manager of, a firm or company which has or had a contract with the government or with the public body of which that person is or was a member or employee, during the tenure of his office; and
- (i) in the course of the performance of his official duties, aid, abet, counsel, procure or command any other person to commit a breach of this Code of Conduct.

2. Paragraph 1 (c) does not apply to gifts received on behalf of the Crown by a person in public life in the course of the performance of his official functions.

3. Paragraph 1 (h) does not apply where the person to whom this Code applies makes a public disclosure of such partnership, shareholding or other interest and the value of the contract, or where there is more than one contract the sum total of the values of such contracts, is not more than \$50,000 in any one year.

THIRD SCHEDULE (SECTIONS 11, 14, 16, 24)

FORM 1

*SUMMONS TO WITNESS BEFORE THE INTEGRITY  
COMMISSION*

A.B., Complainant

C.D., (Name of person in public life)

TO E. G., (Name of Witness) of

Whereas the Integrity Commission is conducting an inquiry in relation to ..... (state concisely the substance of the complaint/matter) and it has been made to appear to the Commission that you are likely to give material evidence on behalf of the Complainant/ person in public life:

This is to require you to be and appear at o'clock on the day of , 20 before the Commission at , to testify or produce documents concerning the said inquiry.

Dated this day of 20.....

.....  
Chairman of the Integrity Commission

\_\_\_\_\_

FORM 2

DECLARATION OF INCOME, ASSETS AND LIABILITIES

NAME OF DECLARANT .....
OFFICE .....
ADDRESS .....
NAME OF DEPENDANT(S) .....
ADDRESS .....

1. INCOME:

Income received or receivable (state name and address of each source) salary, fees as director or consultant, commission, bonus, dividends, professional fees, rent, gifts in kind or cash and other receipts or transfers.

2. ASSETS:

(a) Real Property

Description, and value in the opinion of the declarant, including a copy of the latest valuation thereof, if any, and the purchase price or other consideration for its acquisition (where land and buildings thereon are owned by declarant this should be shown separately from land owned without buildings).

Location:

Rents (state from whether house or land)

(b) Cash in Bank

(Identify each Bank separately and state amount)

(c) Life Insurance Policies

(Identify each company separately, state annual premiums, cash surrender value of policy and date of maturity).

(d) Shareholdings in companies and holdings in partnerships and joint ventures

(List each enterprise separately, the nature of its business and the number of shares held).

(e) Directorships and partnerships

(Identify enterprise, nature of its business, date of appointment as director).





FOURTH SCHEDULE (SECTION 50)

OATHS AND AFFIRMATIONS

**OATH OF ALLEGIANCE**

I ..... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

SO HELP ME GOD!

Sworn before me )  
this day of ) .....  
....., 20...)

.....

**OATH FOR DUE EXECUTION OF OFFICE**

I ..... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of the .....

SO HELP ME GOD!

Sworn before me )  
this day of ) .....  
, 20 )

.....

**AFFIRMATION OF ALLEGIANCE**

I ..... do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

Affirmed before me )  
this day of ) .....  
, 20 )

.....

**AFFIRMATION FOR DUE EXECUTION OF OFFICE**

I ..... do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of .....

Affirmed before me )  
this day of ) .....  
, 20 )

.....

**OATH OF SECRECY**

I .....being appointed Chairman/member/Secretary/  
employee of the Integrity Commission do swear that I will not on any account or at any time  
disclose any opinion, advice or privileged information of the Integrity Commission and that I  
will not except with the authority of the High Court or the Integrity Commission and to such  
extent as may be required for the good management of the affairs of that Commission directly or  
indirectly reveal the business or the proceedings of the Integrity Commission or the nature or any  
content of any document.

SO HELP ME GOD!

Sworn before me )  
this day of ) .....  
, 20 )

.....

**AFFIRMATION OF SECRECY**

I .....being appointed Chairman/member/Secretary/  
employee of the Integrity Commission do affirm that I will not on any account or at any time  
disclose any opinion, advice or privileged information of the Integrity Commission and that I  
will not except with the authority of the High Court or the Integrity Commission and to such  
extent as may be required for the good management of the affairs of that Commission directly or  
indirectly reveal the business or the proceedings of the Integrity Commission or the nature or any  
content of any document.

Affirmed before me )  
this day of ) .....  
, 20 )

.....

**Sir Howard A. Fergus**  
Speaker

Passed the Legislative Council this 22nd day of January, 2010.

**Judith Jeffers**  
Clerk of Councils