



**THE SEVENTH REPORT OF
THE COMMISSION FOR STANDARDS IN PUBLIC LIFE**

19th AUGUST, 2013

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SECTION ONE

INTRODUCTION

1. The Commission is mandated under section 117(9)(g) of the Cayman Islands Constitution Order 2009 to report to the Legislative Assembly at regular intervals and at least every six months.
2. In so doing, the Commission has sought to ensure that such reports are tabled as soon as practical so that they may become public documents. The Commission will continue its efforts to ensure that members of the public are thereby kept informed of the work of the Commission on a regular and on-going basis.
3. During the current reporting period the Commission reiterated its desire to see reports of its Commission laid before the House as soon as practically possible; continued to reaffirm its undertaking to uphold, promote and apply the seven core principles which form the basis of a universal standard of good governance; awaited the progression of the draft SPL Bill to the House; assisted in a review of the Draft Ministerial Code of Conduct; reviewed the Freedom of Information Law Sub-Committee's Review of the Freedom of Information Law, 2007 and The Freedom of Information (General) Regulations, 2008; awaited the progression of the Working Group on Procurement's Report to Cabinet; and continued to use its best endeavours to ensure that due consideration is given to the preliminary recommendations contained in the Third Report of the Commission dated 19th August 2011. The Commission has also spent a considerable amount of time reviewing the matter of conflicts of interest with respect to public officials; participating in community engagements and public relation opportunities; and reviewing best practices as it relates to procedures for appointing members to public authorities, and the terms of those appointments. The Chairman has also indicated her willingness to make a presentation on the remit and work of the Commission to the members of the Legislative Assembly and is currently awaiting an opportunity whereupon she will be placed in a position to do so.
4. In this report the Commission will outline the progress made and the key issues arising from the work completed by the Commission over the last six months.

SECTION TWO

REPORTS OF THE COMMISSION FOR STANDARDS IN PUBLIC LIFE

6. During the previous reporting session the Commission was concerned by the amount of time it was taking for its reports to be tabled in the Legislative Assembly. The Commission maintains the view that there is no reason why the reports should not be submitted directly to the Legislative Assembly in accordance with the mandate laid down by virtue of Section 117(9)(g) of the 2009 Cayman Islands Constitution Order which places an obligation upon the Commission to report to the Legislative Assembly at regular intervals and at least every six months.
7. As part of its efforts to ensure that its reports are laid before the House in a timely manner, the Commission took steps to obtain the advice of the Attorney General and to meet with the former Honourable Speaker of the House regarding the necessity for the reports of the Commission to be submitted to the Honourable Deputy Governor who, in turn, has presented the same in a Cabinet note to the Honourable Ministers and Members of Cabinet prior to these reports being laid in the Legislative Assembly.
8. As a result the Chairman was given an undertaking that the Commission's reports will be laid before the House as soon as practically possible.

SECTION THREE

CODES OF CONDUCT – THE SEVEN PRINCIPLES OF PUBLIC LIFE

9. As an integral part of its first report and in the exercise of its constitutional remit (Section 117(9)(f)) to assist in the setting of the highest standards of integrity, competence and behaviour on the part of public officers in order to ensure the prevention of conflict of interests or corruption; the Commission defined and adopted *The Nolan Principles* as the seven core principles which govern standards in public life.
10. The Commission continues to reaffirm its undertaking to uphold, promote and apply these seven core principles which form the basis of a universal standard of good governance, namely:

Selflessness

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

Integrity

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

Objectivity

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

Accountability

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

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

11. The Commission sees these seven principles of good governance as key elements that support accountability, transparency, and ethical decision making processes among public officials. For this reason, the Commission continues to reflect on these principles and discuss avenues for implementation.

SECTION FOUR

DRAFT STANDARDS IN PUBLIC LIFE LEGISLATION

12. In December 2012 the Standards in Public Life Bill was submitted to the Honourable Deputy Governor, Mr. Franz Manderson in its final draft form. The Bill was submitted to the Honourable Members and Ministers of Cabinet through the Honourable Deputy Governor for onward submission to the Legislative Assembly. Regrettably, the Commission was made to understand that during the period leading up to the General Elections in May 2013, the Bill did not make it through Cabinet and the Cabinet Paper dealing with the Bill itself was deferred on more than one occasion.
13. The Commission has been extremely encouraged by the approach of the newly elected Government “to continue to uphold the highest standards of good governance by enacting legislation to give effect to the Commission for Standards in Public Life”. Since taking office, the new administration has indicated a strong willingness to ensure the SPL Bill is passed into law.
14. As a result the Commission understands that the Bill will be considered by Cabinet in the very near future but has been somewhat delayed due to necessary drafting changes received at a late stage.
15. The Commission looks forward to working with the new administration on progressing this Bill as a matter of priority.

SECTION FIVE

PROTOCOLS FOR MONITORING ETHICAL CONDUCT

16. The Commission is mandated pursuant to Section 117(9)(b) of the Cayman Islands Constitution Order 2009 to *monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers.*
17. The functions of the Commission as outlined in Section 117 (9) of the Constitution Order 2009 include:
- (a) to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest;
 - (b) to monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers;
 - (c) to supervise the operation of registers of interest and to investigate breaches of established standards;
 - (d) to review and establish procedures for awarding public contracts; to review and establish procedures for appointing members to public authorities, and the terms of their appointment;
 - (e) to recommend codes of conduct to prevent any Minister, public authority or public officer employing their power for any personal benefit or advantage, and to recommend legislation to provide appropriate sanctions;
 - (f) to report to the Legislative Assembly at regular intervals, and at least every six months.
18. During the current reporting period the Commission received a request from the Deputy Governor's Office to review the Draft Ministerial Code of Conduct which was written by the Cabinet Office assisted by the Office of the Deputy Governor. The Commission was pleased to have been approached for comments which were provided in a letter from the Chairman dated 10th May, 2013.
19. Overall, the Commission embraced the desire of the Cabinet Office and the Office of the Deputy Governor to produce a Code and looks forward to sight of the final version that extends to the conduct of Ministers not only in their Ministerial capacity but also in a personal and political capacity as an elected member of the Legislative Assembly representing a constituency or particular community interest.

SECTION SIX

FREEDOM OF INFORMATION LAW

20. As stated in the Commission's Sixth Report, the application of the FOIL has been the subject of discussion by the Commission since its inception. However, the matter continues to be unresolved.
21. The Commission is aware that a report outlining the findings and recommendations of the Freedom of Information Law Sub-Committee following their review of the Freedom of Information Law, 2007 and The Freedom of Information (General) Regulations, 2008 was laid before the House during the first quarter in 2013.
22. The Commission notes that there are two recommendations contained therein which are relevant to the role and function of the Commission:

8.3 Recommendation by the Freedom of Information Unit

(vii) Section 20(1)(d): The Unit noted that public authorities have suggested that there should be an exemption afforded boards or committees whose functions are quasi-judicial in nature.

The Sub-Committee also discussed the matter of exemptions for the records of other Tribunals (which include boards and committees) and Commissions and recommended that all Tribunals and Commissions should be subject to the FOI Law but that they should benefit from the relevant exemptions in the Law given the very nature of their work. It was therefore agreed that the adjudicative or operational records of these bodies should be exempted.

and

8.4 Commissions created under the Constitution

The Sub-Committee agrees to recommend that the Law be amended and the records of the Commissions created under the Constitution should be subject to the FOI Law.

23. There can be no doubt that the Commission, being one of the institutions created by the 2009 Cayman Islands Constitution Order to support democracy, is by its very nature charged with the duty of promoting openness, accountability and transparency on the part of public officers and Government as a whole. Nevertheless, the Commission would very much have welcomed the opportunity to provide its input insofar as the same relates to its inclusion under FOI. Whilst the

Commission remains committed to the stated position taken at its very first meeting to publish all minutes of its meetings and other documentation save for any particular instances where the subject matter is deemed to be of a privileged or sensitive nature or otherwise restricted by law; it must ensure that with the impending passage of the long awaited enabling legislation, the relevant corresponding exemptions must be put in place to protect the personal information relating to those individuals in respect to whom the requirements of the proposed enabling legislation, i.e. the SPL Bill and the Register of Interests will apply.

24. To this end, it is the belief of the Commission that the current exemptions in the Law do not adequately cover the needs of the Commission once the SPL Bill is passed into law.
25. As such, the Commission proposes to review and provide the relevant feedback once the draft amendments to the FOI Law (2007) are placed before the House.

SECTION SEVEN

WORKING GROUP ON PROCUREMENT

26. As stated in its Sixth Report earlier this year, the Working Group on Procurement appointed under the auspices of the office the Honourable Deputy Governor in May 2012 completed its review of the existing framework and various mechanism for procurement (including the entities and stakeholders involved, the existing laws and regulations, the policies and practices in place, the fairness and transparency of the process, whether value for money is being obtained and the information systems that support the process).

27. The final report of the Working Group on Procurement was submitted to the Honourable Deputy Governor for onward submission to the Honourable Ministers and Members of Cabinet on the 20th February 2013. The Commission was subsequently advised that the related Cabinet Paper had been deferred. As such, during the period leading up to the dissolution of the Legislative Assembly and the General Elections on the 22nd May 2013, no further action was taken.

28. The Commission has been advised that the issue of procurement is one that is considered of utmost importance to the new administration. It is therefore expected that the findings and recommendations contained in the final report of the Working Group on Procurement will receive due consideration in the near future and looks forward to working in tandem with the Government in order to assist in the fulfilment of the Commission's constitutional mandate.

SECTION EIGHT

ONGOING REVIEW OF PROCUREMENT FRAMEWORK

29. During the preceding six month reporting period, the Commission has continued to use its best endeavours to ensure that due consideration is given to the preliminary recommendations contained in the Appendix to its Third Report, namely:

- The Financial Secretary should:
 - develop, and publish, specific Terms of reference or provisions for the manner in which members of both the CTC and the DTC are to be appointed and the way in which they are to achieve their intended objectives;
 - develop, and publish, a policies and procedures manual which sets out in writing clear guidelines on the manner in which the CTC and the DTC's operate;
 - require each member of the CTC and any DTC to sign a confidentiality agreement before commencing work;
 - require each member of the CTC and any DTC to complete a full disclosure of all pecuniary and business interests to the Financial Secretary before commencing work and an update every twelve months thereafter. The Financial Secretary should compile these declarations into a Register of Interest which upon request should be made available for public viewing. The purpose of the Register of Interest is to provide an additional safeguard to compliment the Code of Conduct and the written policies and processes in order to prevent the rise (or perceived rise) of potential conflicts of interests on the part of members;
 - develop, and publish, clear direction for members of the CTC and any DTC regarding the handling of conflicts of interests which may arise (or be perceived to arise) during their dealing with the public contracts and the procurement process as a whole. With the benefit of clear and unequivocal guidelines, public servants will be placed in a position whereby they will necessarily be constrained to arrange their private affairs in a manner that will prevent conflicts of interest between their private interests and their public duties;
 - put in place a system in which more support, guidance and leadership is given to the DTC's. It is the belief of the Commission that the CTC is the entity charged with the oversight of the entire procurement process and as such needs to play a more active role to ensure consistency and compliance with policies/procedures. This support system should include exercises in which the CTC reviews decisions made by the DTC's; and
 - provide training to the existing members of the CTC and all key players in the DTC's on these new changes.
- The Central Tenders Committee should:
 - develop, and publish, a policies and procedures manual which sets out in writing clear guidelines on the manner in which the DTC's operate.

30. Additionally, the Commission believes that all public bodies including the CTC and DTC should be subject to a code of conduct incorporating the seven core principles (“the Nolan Principles”) which have been restated in Section Two of this report. A code of conduct will ensure that all parties involved are working from the same statement of expectations and to the same commitments. It will further serve to clarify what is acceptable conduct for the members of the entity including the way in which they interact with the general public. The absence of a Code of Conduct, which details issues such as confidentiality of members in relation to any proceedings, leaves the members to subjectively interpret their responsibility of ethical conduct. Specifically, for the CTC, the purpose of a code of conduct is to ensure that members perform their duties in the “fair, ethical, consistent and transparent manner” which is clearly envisaged by the existing yet bare legal framework. Persons across the public service must be required to agree to uphold such standards by signing up to the code.
31. At the Commission’s request the Financial Secretary provided an up-date as to the progress made in this regard. On 8 March, 2013 the Financial Secretary confirmed that:
- a. a first draft of the Terms of Reference for the Central Tenders Committee was circulated for comments and has been incorporated in the CTC policies and procedures manual;
 - b. the first draft of CTC’s policies and procedures manual was produced and a copy subsequently given to the team visiting from the State of Jersey Procurement Office, invited to the Cayman Islands by the Deputy Governor. The team was able to provide guidance in a number of areas which included the provision of developing template documents. Thus the Manual is still in draft form;
 - c. the CTC is currently reviewing the idea of a conflict of interest policy and drafting confidentiality agreements; and
 - d. the CTC is reviewing the guidance and recommended template for a Code of Conduct found in the Commission’s Fifth Report and plans to adopt the same in the near future.
32. The Commission continues to be willing to assist the CTC as it is able and welcomes reports on its progress as they become available.

SECTION NINE

CONFLICTS OF INTEREST WITH RESPECT TO PUBLIC OFFICIALS

33. The issue of conflicts of interest on the part of public officials continues to be an area of concern for the Commission. It is hoped that with the passage of the Standards in Public Life Bill into law the Commission will be provided with an avenue in which to properly assert its authority and thoroughly exercise the investigative powers that are being sought, and in so doing, give effect to the underlying function of the Commission as mandated by Section 117 9(a) of the 2009 Constitution Order namely, to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest.
34. During the current reporting period, the Commission closely followed the reports in the media regarding alleged unethical approaches to conflicts of interest on public boards. The Commission strongly believes that requiring all persons in public life to declare their interests and to take appropriate steps, such as not participating in the discussion or decision making process and leaving the meeting during such conflicts, when a conflict arises will bring much needed transparency to the real and perceived conflicts of interest that are present currently on a number of boards/committees.
35. With that said, the Commission believes that Board members must be properly appointed and must be held accountable for their actions and decisions.
36. The Commission will continue to consider this area in order to assist with establishing procedures for appointing members to public authorities including the terms of such appointments.

SECTION TEN

COMMUNITY ENGAGEMENTS AND PUBLIC RELATIONS

37. Since the tabling of the Commission's Sixth Report, the Chairman accepted a request to be interviewed by a member of Cayman Free Press in relation to articles for both the Chamber Magazine and the Caymanian Compass on the Commission and its role as it relates to various subject areas regarding standards in public life. The Chairman hopes that by providing the relevant information to the media houses the public can be properly educated on the role and remit of the Commission.
38. The Chairman was pleased to have been afforded the opportunity to participate in the week-long Lunch and Learn Series arranged by the Commissions Secretariat on the topic of Good Governance as it relates to Elections and Leadership in Government. The Chairman accepted the invitation to share with civil servants the role of the Commission as it relates directly to them. In addition the Chairman was able to provide those attending with information as it relates to the two roles each attendee played – i.e. the role of a civil servant and the role of a private citizen. The Chairman emphasised the need to remain politically neutral, declare conflicts of interest, ensure transparency and understand the need to be held accountable.
39. The Chairman was also happy to have been invited to participate in this year's Good Governance segment of the Leadership Cayman programme in which she was able to provide attendees with information on the role of the Commission and how it interacts with other Commissions and the public service as a whole. During the presentation the Chairman provided attendees with copies of the Constitution and a pamphlet containing information about the role and function of the Commission.
40. The Commission is always willing to engage with members of the public and the media on topics as they relate to its mandate. Although education is not an explicit part of the Commission's mandate the Commission views it as necessary to assist in fostering an atmosphere of change that is more accepting and knowledgeable of established standards in public life. This in turn aids the Commission's mandate in s.117 (9) (a) which states "to assist in the setting of the highest standards or integrity and competence in public life".

SECTION ELEVEN

MOVING FORWARD

CODE OF CONDUCT

41. The Commission will continue to reinforce its belief in the Code of Conduct published in its Fifth Report for the use with all persons in public life and especially those on Boards, Committees, etc.

ENABLING LEGISLATION

42. The Commission looks forward to working with the new administration in order to pass into legislation the SPL Bill as a means in which to wholly define the authority of the Commission as it relates to lawfully exercising its functions as outlined in the 2009 Constitution Order.

MONITORING ETHICAL CONDUCT

43. The Commission hopes to see the Draft Ministerial Code in its final form signed by all Ministers and as a public document. The Commission maintains its commitment to fulfil its constitutional mandate and will continue to monitor standards of ethical conduct in the Legislative Assembly, the Cabinet and on the part of members of Public Authorities and Public Officers. In this regard, the Commission will remain focused on promoting key characteristics of an ethically healthy public service and on championing mechanisms for the advancement of such standards.

FREEDOM OF INFORMATION LAW

44. The Commission will ensure that when the draft amendments to the FOI Law (2007) are placed before the House to consider, it will review the same and provide feedback to ensure that the Law adequately covers the needs of the Commission once its own enabling legislation is passed.

REVIEW OF PROCUREMENT FRAMEWORK

45. The Commission is hopeful that the new administration will give due consideration to the Working Group on Procurement's Report in the near future and in turn forward the same to the Commission for consideration in the fulfilment of its own constitutional mandate.

APPOINTMENT OF MEMBERS TO PUBLIC AUTHORITIES

46. The Commission will continue to reiterate its stated position that Board members must be properly appointed and held accountable for their actions and decisions. In accordance with its Section 117(9)(2) of the Cayman Islands Constitution Order 2009, the Commission remains committed to its ongoing efforts to establish procedures for appointing members to public authorities, and the terms of such appointments.

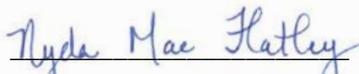
47. It is the Commission's belief that all persons who are appointed to Boards, Committees, etc. should declare all interests relevant to the mandate of the Board, Committee, etc. to which they have been appointed at the time of their appointment. The prescribed form should show an awareness of the requirement to disclose current or future conflicts of interests and ensure they understand they will be held accountable in instances of a breach. These declarations should become public documents.

For more information on the Commission for Standards in Public Life please visit www.standardsinpubliclifecommission.ky, e-mail info@standardsinpubliclifecommission.ky, or call 244-3685.

Dated this 19th day of August, 2013.



Karin M. Thompson (Chairman)



Nyda Mae Flatley (Member)



Hedley Robinson (Member)



Ian Wight (Member)