



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

27 FEBRUARY, 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 endeavour 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 sought to exercise its functions in a manner that achieved its constitutional mandate, which includes promoting integrity within the public service. To this effect the Chairman met with various key stakeholders within government in an effort to address issues such as Freedom of Information, the Commission's authority to investigate private matters of public officials, protocols for monitoring ethical conduct, and procurement in the public sector. The Chairman also had the privilege of attending an Anti-Corruption lecture presentation by Professor Trevor Munroe at the University College of the Cayman Islands as a means in which to garner a deeper perspective of the subject matter from a world-renowned expert in the field of Anti-Corruption and good governance.
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

COMMISSION FOR STANDARDS IN PUBLIC LIFE

Reports of the Commission

5. During the current reporting period the Commission has stepped up its efforts to ensure that its reports are laid before the House in accordance with the mandate set out in Section 119(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.
6. As at the date of submission of its Fifth Report on the 17th August 2012, the Fourth Report of the Commission dated and submitted on the 17th February 2012 had still not been laid in the Legislative Assembly.
7. In an effort to address its concerns regarding the lapse of time between the submission and tabling of its reports, steps were taken by the Commission to obtain the advice of the Honourable Attorney General's Chambers as to whether it was necessary for the reports of the Commission to be submitted to the Honourable Deputy Governor who has then 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. In the absence of receipt of the said written opinion, the Chairman requested a meeting with the Honourable Speaker of the House with a view to ascertaining whether there was any reason why the reports of the Commission should not be submitted directly to the Legislative Assembly in accordance with the mandate laid down by Section 117(9)(g) of the 2009 Constitutional mandate as hereinbefore set out.
9. In addition, over the summer the Chairman received a telephone call from the Information Commissioner who indicated that she had been reading in the media of the delays the Commission was having in the tabling of its reports. The Information Commissioner referenced her decision in a recent case relating to a request for a report of an unrelated nature where an FOI request was made on the basis that there had been an unreasonable delay in releasing the said report.
10. The Chairman subsequently met with the Honourable Speaker of the House who shared the view that while there appears to be limited precedence on this point, the Honourable Deputy Speaker should be able to lay the reports on behalf of the Commission. The Commission expresses its

thanks to the Honourable Speaker who took valuable time from her busy schedule to meet and discuss this matter with the Chairman and who also expressed her desire to have all reports of the Commission laid in a timely manner so that the public could gain access to the documents and the work of the Commission could continue in the manner envisaged by the 2009 Cayman Islands Constitution.

SECTION THREE

CODES OF CONDUCT – THE SEVEN PRINCIPLES OF PUBLIC LIFE

11. 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.
12. 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.

13. 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.

14. The Commission has developed a Code of Conduct for public officers, which has been delivered to the Honourable Deputy Governor, Franz Manderson. Accordingly, Mr. Manderson has forwarded the document to all Chief Officers for their review. The Deputy Governor's Chief Officer meeting minutes reflect that the Chief Officers are in possession of the document and its implementation was under discussion. The Code of Conduct incorporates the Nolan Principles and is meant to serve as an addition to and not override or conflict with any legal or professional requirements specific to the remit of the bodies who choose to use it.

SECTION FOUR

DRAFT STANDARDS IN PUBLIC LIFE LEGISLATION

15. 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 however the Commission has been informed that the Cabinet Paper detailing the Bill has been deferred twice since its submission. The Commission is unaware of when the Bill will be given consideration at the Cabinet level.

16. The Commission looks forward to seeing the Bill progress on to the public consultation phase and takes this opportunity to thank the Honourable Attorney General and the Legal Draftsman for their work on completing the draft Bill. The Commission awaits the opportunity to engage in discussions with the Honourable Ministers and Members of Cabinet in order to progress the Bill in a timely manner.

SECTION FIVE

PROTOCOLS FOR MONITORING ETHICAL CONDUCT

17. 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.*
18. 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.
19. During the current reporting period the Commission has received information from members of the Public expressing their concerns regarding perceived unethical behaviour on the part of several public officials. No complaints of a formal nature have been received in this regard.
20. In recent times these Islands have also seen a number of persons in Public Life being investigated for various reasons. In at least two instances, the allegations have arisen from incidents occurring in their private lives and as such may be said to fall outside the scope of their roles as public officials.
21. Although it was the preliminary view of the Commission that the requisite powers conferred upon it by Section 117 (9) do not provide the requisite authority on the part of the Commission to initiate disciplinary proceedings over persons in Public Life who faces investigations into their private lives, the Commission was nevertheless mindful of the concerns that have continued to be expressed by members of the public regarding the ability of the Commission to conduct an

investigation arising from matters of this nature. For this person the Commission has sought legal clarification as to the extent of its remit in such matter.

22. The Commission has an opportunity to review the advice that was sought and has now been received from Sir Jeffrey Howell as to whether the Commission is empowered to investigate cases of alleged unethical conduct on the part of public officials in their private lives. The Commission agreed that at present it does not possess the power to investigate individual cases, outside of an investigation into the breach of an established standard in respect of the operation of registers of interest. Members were reminded that the functions of the Commission, as set out in section 117(9) of the 2009 Constitution Order relate primarily to the setting of standards of “integrity and competence in public life in order to ensure the prevention of corruption or conflict of interest”. Unlike the powers set out in the Anti-Corruption Law, 2008, there is no constitutional mandate that provides for any investigative or enforcement powers on the part of this Commission. Accordingly, it is the clear view that the Commission, as presently constituted, does not possess the power to investigate individual cases.
23. It is also recognised and agreed that the Commission’s powers do not extend to engagement with a public official’s private life or dealings except where the circumstances raise a reasonable inference of lack of integrity, incompetence, corruption, conflict of interest or lack of standards of ethical conduct in the conduct of that official’s public functions.
24. The Commission nevertheless recognises that there may be instances where the lack of integrity or ethical standards in an individual’s life could either lead or reasonably be expected to lead to an allegation of corruption on the part of that individual in the exercise of his or her duties. Similarly there may be such instances that give rise to an inference of lack of competence or conflict of interest whereby the Commission would be charged with taking the necessary steps to prevent those situations from occurring (subsection 9(a)).
25. It is therefore the position of the Commission that until such time as the requisite statutory powers are conferred upon the Commission, any reasonable allegations of lapses of standards in public life will be referred for the attention and if necessary, appropriate action on the part of the relevant authority including the Anti-Corruption Commission. The Commission also undertakes to continue its efforts to obtain the requisite legislation to provide for the requisite statutory powers and sanctions pursuant to those powers conferred by Section 118 (9) (f) of the 2009 Constitution Order. The Commission will also step up its efforts to ensure that the recommended codes of conduct are adhered to.

SECTION SIX

FREEDOM OF INFORMATION LAW

26. The Commission being one of the Institutions supporting democracy that was created under Part VIII of the 2009 Cayman Islands Constitution Order (section 117) is by its very nature charged with the duty of promoting openness and transparency.
27. The scope and functions of the Freedom of Information Law 2007 (the FOIL) are expressly contained in section 4 as read in conjunction with Section 2 of the FOIL.
28. The stated objects of the FOIL, as outlined in Section 4, are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely-
- (a) *governmental accountability;*
 - (b) *transparency; and*
 - (c) *public participation in national decision-making,*
by granting to the public a general right of access to records held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information.
29. Based on the statutory definition of “public authorities”, as expressed in the FOIL, it would seem that none of the Commissions created under the 2009 Cayman Islands Constitution Order are included in the entities covered by the FOIL.
30. The statutory definition of “public authority” contained in Section 2 of the FOIL states as follows:
“public authority” means:
- (a) *a ministry, portfolio or department;*
 - (b) *a statutory body or authority, whether incorporated or not;*
 - (c) *a government company which –*
 - (i) *is wholly owned by the Government or in which the Government holds more than 50% of the shares; or*
 - (ii) *is specified in an Order under section 3(2);*
 - (d) *Any other body or organization specified in an Order under section 3(2).*

In respect to sub-paragraphs (c) (i) and (ii) and subparagraph (d) above, it will be seen that the Governor-in-Cabinet may, in accordance with the powers conferred by section 3(2) of the FOIL extend the categories of entities to which the FOIL applies.

31. As stated in the Commission's Fifth Report, the application of the FOIL has been the subject of discussion by the Commission since its inception. It will be seen that there is no definition of "public authority" to be found in the 2009 Cayman Islands Constitution Order.
32. 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.
33. As a first step in this direction, at its initial meeting on the 15th February 2010 the CSPL made a decision to make the minutes of the meeting and all related information and documentation available to the public save for any particular instance where the subject matter is deemed to be of a privileged or sensitive nature or otherwise restricted by law. This and all other information related to the Commission can be found at www.standardsinpubliclifecommission.ky.

SECTION SEVEN

WORKING GROUP ON PROCUREMENT

34. The Working Group on Procurement appointed under the auspices of the office the Honourable Deputy Governor in May 2012 has now 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).

35. In the fulfilment of its mandate, the Working Group made up of Mrs. Karin Thompson (Chairman), Mr. Alastair Swarbrick (Auditor General – acting in an advisory capacity), Mr. Peter Gough (Deputy Governor's Office), Mr. Nick Freeland (Central Tenders Committee Chairman), Mrs. Nyda Mae Flatley (Commission for Standards in Public Life Member), Mr. Alan Jones (Chief Officer), Mr. Tim Hubbell (Cabinet Office), Ms. Reshma Sharma (Attorney General's Office), Mr. Max Jones (Public Works Department) and Mr. Tom Van Zanten (Water Authority) placed reliance on the findings and recommendations of a Sub-Committee appointed by the Working Group on the 7th August 2012 with a mandate to report back to the Working Group with recommendations on how to improve Government's existing procurement system.

36. The Commission has been advised that the final report of the Working Group on Procurement was submitted to the Honourable Deputy Governor on the 20th February 2013.

37. It is hoped that this final report setting out the Working Group's recommendations for changes will be seen as promoting good public sector procurement practice and also assist in the development of fundamental principles and everyday policy objectives.

38. It is also anticipated that a copy of the report will be forwarded to the Commission and will in due course be made a public document.

SECTION EIGHT

ONGOING REVIEW OF PROCUREMENT FRAMEWORK

39. During the week of 22nd October 2012 the Chairman was afforded an opportunity to meet with a team of procurement experts from the State of Jersey Procurement Office who visited the Cayman Islands at the invitation of the Deputy Governor.

40. During the course of this meeting the Chairman was able to garner information that it was felt could further assist the Commission in identifying and addressing the various areas that could be improved and strengthened under the current system and hereby reaffirms the commitment of the Commission to ensure that in the fulfilment of its constitutional mandate the procedural rules governing the awarding of public contracts is one which:

- is seen to be fair, impartial and transparent;
- maintains the highest possible standards of integrity with all business relations;
- fosters appropriate standards of professional competence amongst those for whom they are responsible; and
- declares any personal interest which it may be viewed as a potential conflict.

41. Further to its earlier commitment, the Commission has continued to use its best endeavours to ensure that due consideration is given to the preliminary recommendations contained in the Third and Fourth Reports of the Commission. The Chairman has requested the Secretariat to follow up with the Honourable Financial Secretary seeking to ascertain what steps, if any, have been taken to date. The Commission looks forward to receiving a response within a reasonable time from the date of the correspondence that was sent on the 19th day of February 2013.

SECTION NINE

CONFLICTS OF INTEREST WITH RESPECT TO PUBLIC OFFICIALS

42. The issue of conflicts of interest on the part of public officials continues to be an area of concern to the Commission.

43. During the current reporting period, the Commission was approached by a public official who indicated that he had been informally accused that his involvement with a private company was a conflict of interest with his position as a public official. The Chairman and the Manager of the Commissions Secretariat met with the individual and after being provided with further information and supporting documentation, the Chairman indicated that she was content that the public official had not engaged in a conflict of interest and therefore no action was necessary by the Commission as a whole. The Chairman thanked the individual for stepping forward and bringing the matter to its attention.

44. The Commission again would like to take this opportunity to remind all public officials that sound public administration involves public trust. Members of the public expect that public servants will serve the public interest with fairness and manage public resources properly on a daily basis. Fair and reliable public services and predictable ethically-based decision-making inspire public trust and create a level playing field. The integrity, transparency and accountability of public administrations, therefore, are a prerequisite to and underpin public trust, as a keystone of good governance.

SECTION TEN

COMMUNITY ENGAGEMENTS AND PUBLIC RELATIONS

45. The Policy Coordination Unit of the Cabinet Office contacted the Commission to communicate the fact that the (former) Honourable Premier, W. McKeever Bush would be attending the Joint Ministerial Council Meeting in London (3 – 4 December, 2012). Accordingly, the Unit requested speaking notes on the topic of standards in public life. As such, the Secretariat provided the Unit with the relevant information to aid in the Premier's presentation.

46. The Chairman attended a lecture by Professor Trevor Munroe on the topic of "Political Corruption in the Caribbean" at the UCCI Campus on. All members were encouraged by the Chairman to attend as well. Since 2011, Mr. Munroe has been executive director of Jamaica's National Integrity Action Limited, a not for profit NGO dedicated to the building of integrity and the combat of corruption in Jamaica on a non-partisan basis. Prior to this engagement he directed the National Integrity Action Forum – a coalition of leaders of public sector anti-corruption agencies, a two-year project launched in 2009 and supported by USAID. In 2012, Mr. Munroe was appointed an individual member of Transparency International, the only such person from the Caribbean, one among 27 in the world.

SECTION ELEVEN

MOVING FORWARD

ENABLING LEGISLATION

47. The Commission is eager for the enactment of 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.

APPOINTMENT OF MEMBERS TO PUBLIC AUTHORITIES

48. The Commission, in accordance with its Section 117(9)(2) of the Cayman Islands Constitution Order 2009, continues to research how best to review and establish procedures for appointing members to public authorities, and the terms of their appointment.

49. As such, the Commission would like to see Government enact legislation which required public officials, as defined under the 2009 Constitution Order (so as to include all persons who serve on a public body, board, etc.), to complete and submit a Declaration of Interests Form 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 be held accountable in instances of a breach.

50. The Declaration Form was forwarded to the Honourable Deputy Governor requesting that it be circulated to all Chief Officers for their awareness. The Commission has asked the Honourable Deputy Governor to encourage its use amongst all persons performing public functions, including members of committees, boards, commissions, etc. We now write to ask that you do the same with all Chief Executive Officers and Directors of the Statutory Authorities associated with Government.

51. The Commission looks forward to the support of Government in its efforts to ensure the appointment of members to public authorities are done in a manner so as to avoid conflicts of interest, real or perceived.

ADVANCING STANDARDS

52. The Commission for Standards in Public Life will maintain its commitment to understanding the drivers of high standards in ethical behaviour. 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 standards.

PUBLIC INPUT

53. Among other remits, the Commission is mindful that it is charged with a constitutional mandate 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. In this regard, the Commission remains open to hearing from members of the public, and working to resolve matters falling within its remit.

54. 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 27th day of February, 2013.



Karin M. Thompson (Chair)



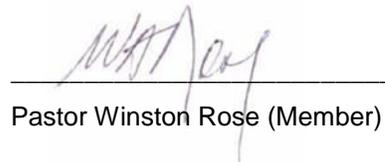
Nyda Mae Flatley (Member)



Hedley Robinson (Member)



Ian Wight (Member)



Pastor Winston Rose (Member)