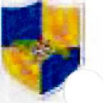




**INVESTIGATION INTO THE
FAILURE OF EVERTON
MCKENLEY, AN EMPLOYEE
OF THE TRANSPORT
AUTHORITY LIMITED TO FILE
STATUTORY DECLARATIONS**

**INTEGRITY COMMISSION
AUGUST 2022**



This Publication until tabled in Parliament shall be confidential.

Section 55 and 56 of the Integrity Commission Act states:

"(4) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Commission under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(5) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

56.—(1) Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, Statutory Declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the Perjury Act, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to his in the execution of any of the provisions of this Act to any person—

- (a) other than a person to whom he is authorized under this Act to communicate it; or
- (b) otherwise than for the purpose of this Act,

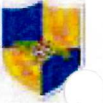
commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

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1. Summary of Investigation and Findings

- 1.1 This investigation by the Director of Investigation concerns the allegation that **Mr. Everton McKenley**, an employee of The Transport Authority failed to file with the Integrity Commission (hereinafter the Commission), Statutory Declaration for the period ending December 31, 2020.
- 1.2 It was found that Mr. Everton McKenley was required to file a statutory declaration with the Commission at the material time and having failed to do so committed an offence under Section 39 of the Integrity Commission Act (hereinafter ICA).



2. Chapter 1 – Background

2.1 Why was this investigation initiated?

2.1.1 This investigation was initiated based on a referral by the Director of Information and Complaints. The complaint alleged that Mr. McKenley is in breach of the **ICA** by virtue of his failure to file his Statutory Declaration with the Commission for the period ending December 31, 2020.

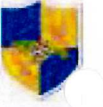
2.2 Jurisdiction and decision to investigate

2.2.1 Section 33 of the ICA gives the Director of Investigation the authority to investigate non-compliance with the Act by public officials.

2.3 The Investigation

2.3.1 During the investigation, Officers of the Investigation Division under the authority of the Director of Investigation pursued the following lines of enquiry/actions:

- a) obtained information and witness statements from the responsible officers at:
 - (i) The Transport Authority; and
 - (i) Information and Complaints Division of the Integrity Commission.



b) reviewed the information and statements collected and prepared the case file and report.

2.4 Who is the concerned public official pertinent to this Investigation?

2.4.1 Mr. Everton McKenley is the concerned public official, employed to the Transport Authority.



3. Chapter 2 – Terms of Reference

3.1 The Director of Investigation sought to establish the following in respect of the declarant, Mr. McKenley, whether:

- a) Mr. McKenley is a public official as set out under **Section 2 of the ICA**;
- b) Mr. McKenley is employed to a public body as set out under **Section 2 of the ICA**;
- c) He was in receipt of the qualifying emoluments as prescribed under **Section 39(2) of the ICA**, occupies a post that was published in a Gazette by the Commission or was requested to file the referenced Statutory Declarations under **Section 41(2)(a) of the ICA**;
- d) He failed to file his required Statutory Declaration as prescribed under **Section 39(1) of the ICA**;
- e) His failure to file his required Statutory Declaration constitutes an offence under the Act;
- f) Recommendations ought to be made to the Director of Corruption Prosecution; and
- g) Recommendations ought to be made in respect of any act of corruption and/or anti-corruption initiatives.



4. Chapter 3 – The Law, Evidence and Discussion of Findings

4.1 The Law

4.1.1 The overarching objective of the Commission's investigation was to determine whether there is merit in the allegation that Mr. McKenley failed to file his Statutory Declarations as outlined under **Sections 2, 39, 41(2), 41(4) and 43(1) of the ICA**, which states:

4.1.2 **Section 2 of the ICA:**

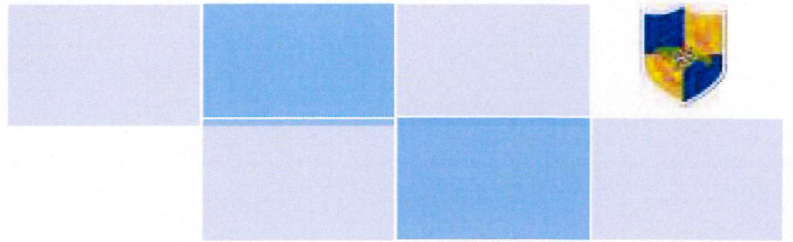
Section 2 of the act defines a public official as a person who is employed to a public body and a public body is defined as "... a statutory body or authority..."

4.1.3 **Section 39 of the ICA:**

This Section requires public officials; who are in receipt of emoluments of three million five hundred thousand dollars (\$3,500,000) or more, to submit statutory declarations to the Director of Information and Complaints outlining their assets, liabilities and income.

4.1.4 **Section 41(2) of the ICA:**

Section 41(2) requires that public officials who fall within the categories published in the Gazette by the Commission to submit their statutory declarations within the period specified.



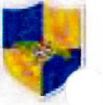
4.1.5 **Section 41(4) of the ICA:**

Under Section 41(4) declarants have three (3) months from the date of the declaration to file their declarations.

4.1.6 **Section 43(1) of the ICA:**

Under Section 43(1) of the ICA a person who is required to submit a statutory declaration and who fails to do so, without reasonable cause commits an offence.

See Sections 2, 39, 41(2), 41(4) and 43(1) of the Integrity Commission Act at appendix 1.



4.2 The Evidence

4.2.1 Is Mr. McKenley a public official as defined under Section 2 of the ICA?

4.2.1.1 Mr. McKenley is employed to The Transport Authority as a Satellite Office Coordinator. This was proven by the evidence provided by the Welfare & Benefits Officer at The Transport Authority. Mr. McKenley therefore falls within the definition of a “public official” under **Section 2 of the ICA**.

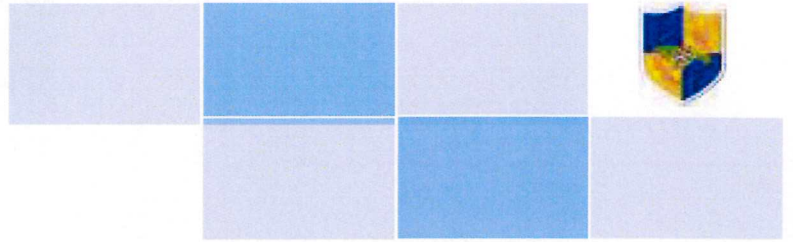
4.2.2 Is Mr. McKenley employed to a public body?

4.2.2.1 The evidence confirms that Mr. McKenley was employed to The Transport Authority at the material time. The Transport Authority is a statutory body established under the Transport Act of 1987. Mr. McKenley is therefore employed to a “public body” as defined under **Section 2 of the ICA**.

4.2.3 Is Mr. McKenley in receipt of the qualifying emoluments as prescribed under Section 39 of the ICA, occupies a post published in the Gazette by the Commission or was written to under Section 41(2) of the ICA and requested to file the Statutory Declaration?

4.2.3.1 The evidence provided by The Transport Authority showed that Mr. McKenley is in receipt of emoluments in excess of the qualifying amount of three million five hundred thousand dollars (\$3,500,000).

Mr. McKenley was therefore required to file his Statutory Declaration for the time frame identified.



4.2.4 Did Mr. McKenley fail to file his Statutory Declaration as required under Section 39 of the ICA?

4.2.4.1 The procedure for identifying a declarant who has not filed a statutory declaration begins with the Director of Information and Complaints writing the Heads of all Ministries, Departments and Agencies and requesting a list of public officials who are qualified to file Statutory Declarations. When the referenced lists are received, the information is entered into a database, which provides the list of prospective declarants. Mr. McKenley's name appeared on the aforementioned list of persons who were required to file Statutory Declaration with the Commission for the period ending December 31, 2020 .

4.2.4.2 When Statutory Declarations are filed, they are entered into another database. This enables the Commission to generate a list of those declarants who have not complied with their statutory obligations under **Section 39 of the ICA.**

4.2.4.3 The evidence provided by the Transport Authority showed that Mr. McKenley did not file his required Statutory Declaration for the period ending December 31, 2020.

4.2.5 Does Mr. McKenley's failure to file the required Statutory Declaration constitute an offence under the Act?

4.2.5.1 The failure to file a statutory declaration is an offence under **Section 43(1)(a) of the ICA**, which states:

"A person who –



- (a) *Fails, without reasonable cause, to submit a statutory declaration which he is required to submit in accordance with the provisions of this Part;*

commits an offence, ...” (See full Section at appendix 2)

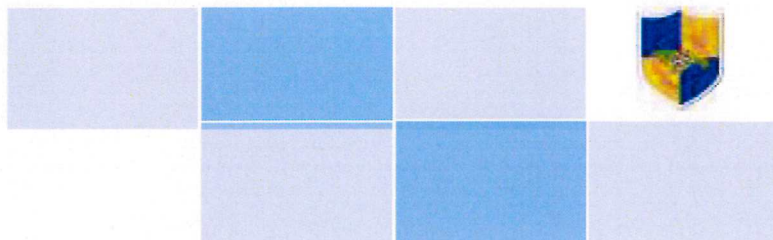
4.3 Discussion of Findings

4.3.1 During the investigation into the allegations against Mr. McKenley, the Director of Investigation followed all reasonable lines of enquiry, gathered evidential material and collected/recorded the statements of witnesses deemed necessary. Upon analyzing the evidential materials collected, the Director of Investigation is satisfied that there is evidence to support the allegation that Mr. McKenley failed to file his required Statutory Declaration with the Commission for the period ending December 31, 2020.

4.4 Conclusion

4.4.1 Based on the foregoing, the Director of Investigation finds reasonable grounds to conclude that the following have been established in respect of Mr. McKenley:

- a) Mr. McKenley is a public official as per Section 2 of the **ICA**;
- b) He is employed to a public body as per Section 2 of the **ICA**;
- c) He is in receipt of emoluments in excess of the qualifying amount of three million five hundred thousand dollars (\$3,500,000) and therefore is required to file the Statutory Declaration;



- d) He failed to file the Statutory Declaration for the period ending December 31, 2020;
- e) His failure to file constitutes an offence under **Section 43(1)(a) of the ICA**; and
- f) He has provided no lawful explanation for his failure to file the referenced Statutory Declaration.

4.5 Recommendations

- 4.5.1 The Director of Investigation recommends that this report be referred to the Director of Corruption Prosecution for consideration.
- 4.5.2 The Director of Investigation further recommends that Public entities should ensure that public officials provide, annually, proof that they are compliant with the law in respect of filing their Statutory Declarations. Public Bodies and the Office of the Services Commission should be engaged to ensure that compliance with **the Integrity Commission Act** becomes a requirement for employment and continued employment in the public service.

Kevon A. Stephenson, JP
Director of Investigation

August 17, 2022

Date



(d) He failed to file the Statutory Declaration for the period ending

December 31, 2020.

(e) His failure to file constitutes an offence under Section 43(1)(p) of the ICA

and

if he has provided no lawful explanation for his failure to file the

referenced Statutory Declaration.

4.1 Recommendations

4.1.1 The Director of Investigation recommends that the period referred to in the

4.1.2 The Director of Investigation further recommends that Public Authorities should

ensure that public officials provide, annually, proof that they are compliant

with the law in respect of filing their Statutory Declaration. Public Bodies

and the Office of the Service Commission should be engaged to ensure

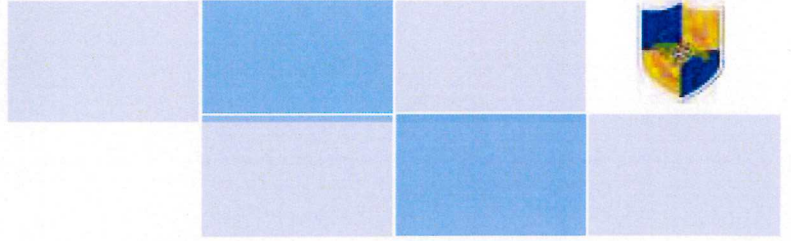
that compliance with the Integrity Commission Act becomes a requirement

for employment and continued employment in the public service.

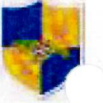
August 17, 2022

Date

Kayon A. Stephenson, JP
Director of Investigation



APPENDICES



Appendix 1: Sections 2, 39, 41(2), 41(4) & 43(1) of the Integrity Commission Act

Section 2 of the ICA:

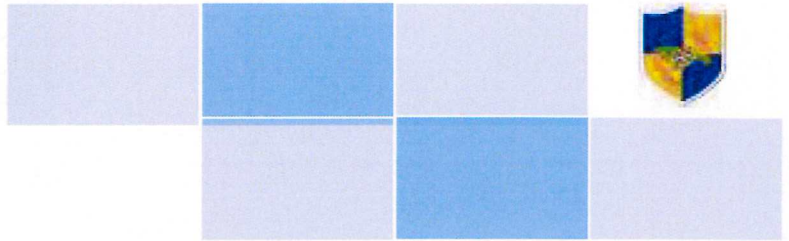
""public official" means-

- (a) *any person holding an executive, an administrative or a judicial office, or a parliamentarian, whether appointed or elected, whether permanent or temporary, or whether paid or unpaid;*
- (b) *any other person who is employed to a public body; and any member of the Security Forces;*

"public body" means-

- (a) *a Ministry, department or agency of Government;*
- (b) *a Municipality or Municipal Corporation;*
- (c) *a statutory body or authority;*
- (d) *an entity the governing body of which is appointed by a Minister;*
- (e) *a company registered under the Companies Act, being a company in which the Government or an agency of Government holds at least fifty percent of the voting shares of the company;"*

Section 39 of the ICA:



"39.-(1) Subject to the provisions of this Act, every person who, on or after the appointed day, is a parliamentarian or public official, shall submit to the Director of Information and Complaints, a statutory declaration of his assets and liabilities and his income in the form set out in the Third Schedule.

(2) Subsection (1) shall not apply to a public official who is in receipt of total annual emoluments of less than three million five hundred thousand dollars or such other amount as may be prescribed by the Minister, subject to affirmative resolution of the House of Representatives."

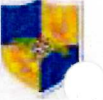
Section 41(2) of the ICA:

"(2) The Commission, acting upon the recommendation of the Director of Information and Complaints, may-

- (a) at any time, in writing, require any public official or parliamentarian to submit a statutory declaration to the Commission;*
- (b) by notice published in the Gazette, require such categories of public officials as are specified in the notice, to submit a statutory declaration within the period so specified."*

Section 41(4) of the ICA:

"(4) A statutory declaration required to be made as at a particular date shall be submitted to the Director of Information



and Complaints on or before the last day of the third calendar month following that date."

Section 43(1) of the ICA:

"43.-(1) A person who-

- (a) fails, without reasonable cause, to submit a statutory declaration which he is required to submit in accordance with the provisions of this Part;
- (b) fails, without reasonable cause, to provide any information as the Director of Information and Complaints may require in accordance with the provisions of this Act; or
- (c) fails, without reasonable cause, to attend an inquiry being conducted by the Director of Investigation that he is required to attend in accordance with the provisions of this Act,

commits an offence, and is liable on summary conviction in a Parish Court to a fine not exceeding five hundred thousand dollars, or to a term of imprisonment not exceeding six months and the Court may make an order mandating the person to comply with the requirement in respect of which the offence was committed."