



[2024] JMSC Civ 177

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV04605

**IN THE MATTER OF THE INTEGRITY
COMMISSION ACT**

AND

**IN THE MATTER OF SECTION 7 OF
THE INTEGRITY COMMISSION ACT**

IN OPEN COURT

**Ms. Annalisa Lindsay instructed by Lindsay Law Chambers appeared for the
Applicant, the Integrity Commission**

**Mr. Kevin Powell instructed by Hylton Powell appeared for Barita Investment
Limited**

**Ms. Lisa White instructed by the Director of State Proceedings appeared for the
Attorney General of Jamaica**

Heard: 6th July 2022 and 17th January 2024

**Statutory Interpretation – Interpretation of Section 7 of the Integrity Commission
Act – Interpretation of The Word Co-operate – Scope and Ambit of the Obligation
to Co-operate – Whether the Integrity Commission must obtain a court order when
requiring financial institutions’ disclosure of information or documents – Duties of
the Director of Information and Complaints – Whether to grant the relief claimed –
Constitutional Right to Privacy – Duty to Keep Client Information Private and
Confidential – Data Protection – Securities Act – Banking Act – Integrity
Commission Act, sections 5-7, 30, 32, 34(3), 39-43 and 48 – Charter of Fundamental
Rights and Freedoms, sections 13(3)(j)(ii) and (iii)**

C. STAMP, J

- [1] Due to oversight on my part, for which I take full responsibility, there was a long delay in the delivery of the decision in this matter and later, the reasons. I express my deep and sincere apologies to the parties for the inconvenience this may have caused, particularly given the potential impact it may have on the Integrity Commission (“the Commission”) in the execution of its functions.
- [2] The decision was delivered on the 17th day of January 2024, with a commitment to provide the written reasons later. I now fulfil that commitment.

BACKGROUND

- [3] This application requires the court to determine the meaning of section 7 of the **Integrity Commission Act** (“the Act”) and particularly the scope and ambit of the expression “*shall co-operate*” in section 7(2) of the Act.
- [4] The circumstances giving rise to this application are not in dispute and can be expeditiously summarised. The applicant is the Commission, a statutory body established by section 5 of the Act. According to the preamble, it is an Act to promote and enhance standards of ethical conduct for parliamentarians, public officials and other persons. It establishes the Commission whose purpose is to promote and strengthen the measures for the prevention, detection, investigation, and prosecution of acts of corruption. The Commission is empowered to do all such things that it considers necessary or expedient for the purpose of carrying out its functions. It performs its functions through different divisions, each headed by a director. One such division is the Information and Complaints Division headed by the Director of Information and Complaints (“the Director of Information”).
- [5] The Act mandates parliamentarians and public officials to submit to the Director of Information statutory declarations of their assets and liabilities on a yearly basis. One of the functions of the Commission is to review and verify the information provided in those declarations. In performing this task, the Commission requested various financial institutions to confirm the information disclosed in the statutory

declarations. Most financial institutions complied with the Commission's request, presumably in an attitude of co-operation. Two did not comply.

- [6] By letter dated 28th June 2021, the Director of Information requested the “cooperation” of First Global Bank (“FGB”) and Barita Investments Limited (“Barita”) to provide information in relation to accounts which they may be holding for parliamentarians and public officials who had filed statutory declarations. The financial institutions were asked to provide, in respect to each person named in an attached list, balances on bank accounts and other financial investments, the dates on which the account or accounts were opened and their status. This information was required as part of the process of verification of the information provided in the statutory declarations. In making the request, the Director of Information relied on sections 7 and section 32 of the Act.
- [7] FGB declined to comply citing its duty of secrecy under the **Banking Services Act** and requested that the Commissioner seek a court order for them to cooperate.
- [8] Barita, in declining to comply, relied on their obligations to protect their clients’ personal data together with their view that “co-operate” would require too wide an interpretation to support a clear legal obligation on Barita to provide the Commission with their clients’ information. Additionally, Barita questioned whether the role, functions, and power of the Director of Information included the authority to request the information. In view of this, Barita also requested that the Commission obtain a court order to permit their co-operation.
- [9] In response, the Commission contended that FGB and Barita were obliged to co-operate by disclosing the requested information and it was unnecessary to obtain a court order for such disclosure.
- [10] These proceedings were then commenced by the Commission for declarations on the interpretation of Section 7 of the Act and orders directing Barita and FGB to comply with the requests. By order of the Court, Barita, FGB and the Attorney General were served with the application and invited to make submissions. Barita

filed affidavits and submissions opposing the application. However, prior to the hearing of the application, FGB complied with the request of the Commission by providing the required information. It has filed no submissions or affidavits before the court and has not participated in the proceedings. The Attorney General filed submissions which generally supported the Commission's application. This decision therefore is confined to the Commission's application and Barita's opposition to it.

THE CLAIM

[11] By way of a Fixed Date Claim Form filed on 4th November 2021, the Commission sought the following orders:

1. *"A Declaration that Section 7 of the Integrity Commission Act, in particular section 7(2) in its interpretation, mandates that any person or body must cooperate with the Commission in the exercise of its functions under the said Act or any other enactment.*
2. *A Declaration that Section 7 of the Integrity Commission Act, in particular section 7(8) as interpreted, means that any person or body cooperating with the Commission shall not be prevented from so doing by virtue of any law that provides for secrecy or any other restriction against the disclosure of information, save for on the grounds of legal professional privilege.*
3. *An Order directing First Global Bank to comply with the Integrity Commission's request made pursuant to Section 7 of the Act in letter dated June 28, 2021.*
4. *An Order directing Barita Investments Ltd. to comply with the Integrity Commission's request made pursuant to Section 7 of the Act in letter dated June 28, 2021.*

5. *An Order permitting the Commission to keep confidential the relevant attachments that accompanied the requests dated June 28, 2021 made by the Commission.*
6. *Such further and other relief as this Honourable Court deems just.”*

Letter for Request for Information

[12] Before considering the substantive arguments, it is useful to outline the Commission's initial correspondence. This letter formally requests information that Barita declined to provide, prompting the Commission to seek judicial intervention.

...

Re: Request for Information

The Integrity Commission was established in 2018 to promote and strengthen the measures for prevention, detection, investigation and prosecution of acts of corruption involving parliamentarians, public officials and other persons.

The functions of the Director of Information and Complaints are set out in Section 32(1) of the Integrity Commission Act, which starts that he shall inter alia:

- (a) receive, keep on record and examine all statutory declarations filed with the Commission; and*
- (b) make such enquiries as he considers necessary in order to certify or determine the accuracy of a statutory declaration.*

*Having regard to the foregoing, **the Integrity Commission pursuant to Sections 7(1), 7(2), 7(7) and 7(8) of the Integrity Commission Act, hereby requests information with respect to the attached list of Public Officials who have filed Statutory Declarations with the Commission, their spouses and children.***

Should these individuals maintain an account or accounts with your financial institution or its subsidiaries, directly or by virtue of association with a company, trust or otherwise, the Commission requires your cooperation to provide the following information:

- 1. Balances on bank accounts and other financial investments as at December 31 of each year for the period January 31, 2016 to December 31, 2019; and***
- 2. Dates on which the account or accounts were opened and their status.***

Your response is required ...

...

[Emphasis mine]

- [13] In essence, the Commission requested financial information regarding certain public officials, their spouses, and their children, based on statutory declarations submitted by the officials. Specifically, the request seeks to determine whether these individuals, namely, the public officials, their spouses, and their children, maintain accounts with Barita or its subsidiaries, either directly or through associations with companies, trusts, or other entities. In instances where such accounts exist, the Commission required disclosure of the account balances as of December 31 for each relevant year, along with the dates of account openings and their status. This request is to facilitate the Commission's independent verification of the information provided in statutory declarations by the public officials.

BARITA'S SUBMISSIONS

- [14] In opposing the application learned counsel, Mr. Powell, submitted that Barita is subject to a common law obligation of confidentiality based on the nature of the information it holds on behalf of its clients. Additionally, he asserted that the **Securities Act**, along with guidelines issued by the Financial Services Commission, impose regulatory obligations to preserve the confidentiality of such information. He acknowledged however that both the common law duty and statutory guidelines are subject to exceptions, such as where the law imposes a duty to disclose.
- [15] He further submitted that Barita's clients are also entitled to the constitutional right to privacy. Sections 13(3)(j)(ii) and (iii) of the **Charter of Fundamental Rights and Freedoms** ("the Charter") guarantees '*the right of everyone to... respect for and protection of private and family life and privacy of the home...and protection of privacy of other property...*' In support, he relied on the decision in **Julian J. Robinson v The Attorney General of Jamaica** [2019] JMFC Full 04 ("**Julian J. Robinson**") and submitted that the right to privacy recognized in the Charter extends to a customer's financial information held by Barita. He submitted that in

interpreting section 7 of the Act, the Court should consider whether the meaning attributed to it by the Commission are consistent with the constitutional right to privacy.

- [16] Counsel further argued that section 7(2) of the Act which requires a person or body to co-operate with "*the Commission in the exercise of the functions conferred on the Commission*" did not confer the specific powers claimed by the Director. He posited that the Commission performs varied functions some of which are carried out by the Commission as a body and others by the divisions and heads of those divisions as established under section 30 of the Act. He asserted that section 6 of the Act outlines the general functions of the Commission, and those functions do not expressly include the power to make the requests which were made of Barita.
- [17] In addressing the Director's reliance on section 32(1)(b) in making the requests, Mr. Powell further submitted that the provision which permits him to "*make such enquiries as he considers necessary in order to certify or determine the accuracy of a statutory declaration.*" However, he argued, the language used in section 32(1)(b) must be read in conjunction with section 42(2) which makes provision for the Director of Information to request further information from a declarant. He contended that the latter section limits the type and nature of the enquires the Director of Information can make under section 32(1)(b). He also pointed the court to section 42(4) which provides for the Director of Information to refer a matter to the Commission for further and necessary action where he is of the opinion that an investigation in relation to a statutory declaration is necessary. This section reinforces the view that the Director of Information lacks investigative powers. Consequently, he argued, requiring Barita to disclose information in furtherance of an investigation falls outside of the scope of the powers of the Director.
- [18] Additionally, Mr. Powell referred the Court to Part VI of the Act, which is headed "*Powers and Procedures in Respect of Investigations Generally*" and submitted that sections 45 and 48 vest the power to compel the production of information in the Director of Investigation to be applied exclusively within the scope of a formal

investigation. In that case, persons including financial institutions are expressly provided with protection against prosecution for disclosure under any law, and their rights to legal privilege and against self-incrimination are also expressly recognised. He submitted that it would be inconsistent with the scheme of the Act to allow the Director of Information to effectively exercise functions that are exercisable only by the Director of Investigations while he is conducting investigations under the Act.

[19] Counsel also cited the decision in ***Integrity Commission v Kikivarakis (as official liquidator TCI Bank Ltd (in liquidation))*** [2021] UKPC 23 which he said provides useful guidance in resolving the issue before the court. In that case the Privy Council held that the official liquidator of a bank was not compelled to produce the information or documents relating to the bank's customers to the Turks and Caicos Islands Integrity Commission ("the TCI Commission") which had issued a summons to the liquidator requiring him to produce them. The TCI Commission is established under the Turks & Caicos Islands Integrity Commission Ordinance ("the TCI Ordinance") which, it was contended, are the equivalent of the Commission and the Act in Jamaica. In interpreting the relevant provision of the Ordinance, the Privy Council held that the TCI Commission's power to issue a summons to a third party to produce documents can only be exercised in connection with a formal inquiry, which would be after it had determined that there were reasonable grounds to suspect wrongdoing by a declarant.

[20] While accepting that the relevant provision in the TCI Ordinance was not in similar terms to section 7(2) of the Act and that the Privy Council did not have to make a ruling on the constitutionality of the relevant section of the TCI Ordinance, Mr. Powell submitted that section 7(2) of the Act should also be interpreted in an equally restrictive way and the Commission should not be empowered to require the disclosure of a person's private information in the absence of an investigation or the consent of that person. The court should therefore refuse to grant the declarations in the terms sought and to make orders directing Barita to comply with the request.

APPLICANT'S SUBMISSIONS

- [21] On behalf of the Commission learned counsel, Ms. Lindsay, submitted that the request made by the Commission through the Director of Information was consistent with the functions outlined in Sections 30 and 32(1) of the Act when read together with section 7 of the Act which provides that in carrying out its functions the Commission may work in co-operation with any person or body as it may deem appropriate. The intent, spirit, and scope of the Act includes an expectation that there will be mutual co-operation between the Commission and any person or body with whom it may need to work in the exercise of its functions.
- [22] She submitted that in construing the meaning of the expression "shall co-operate" in section 7(2), the court should apply the tenet of statutory interpretation that words are to be given their ordinary and natural meaning unless otherwise defined by the legislation or where the context suggests a different meaning. She urged the Court to adopt the ordinary and natural meaning of "co-operate" provided in the Oxford Dictionary which is "*to work together with somebody else in order to achieve something or to be helpful by doing what somebody asks you to do*".
- [23] While acknowledging as "understandable" the concerns of Barita regarding its duties of secrecy and obligation of data protection in respect to its customers' information, counsel relied on section 7(8) of the Act which expressly provided that no obligation as to secrecy or other restriction upon the disclosure of information implemented by law shall prevent a person or body from disclosing any information or producing any document to the Commission.
- [24] She submitted further that Barita's obligation to keep clients' information confidential in accordance with the common law and regulatory regimes is subject to exceptions. For example, the Market Guidelines issued by the Financial Services Commission under the **Securities Act** expressly provide that licensees may disclose information without the specific permission of their clients if required by law and when ordered by the court to do so. She pointed out that the statutes

which provide for confidentiality of customer's financial information, the **Securities Act**, the **Financial Commission Act**, and the **Banking Services Act**, all contain clauses or guidelines that allow for exceptions to the duty to keep clients' information confidential. In this case, the Act specifically states that the operation of no other law shall prevent a body such as Barita from disclosing the requested information to the Commission. Therefore, the duty of confidentiality does not operate as a bar to Barita cooperating with the Commission by complying with its request.

- [25] Counsel also submitted that Barita's reliance on **Julian J. Robinson** in support of the constitutional right to privacy is misconceived as that case is distinguishable. Once public officers including those who were Barita's clients had complied with their obligation to file statutory declarations then they would have already disclosed to the Commission the very information that Barita is seeking to withhold, and such information would not fall within the scope of the privacy protections contemplated by the Charter.
- [26] In response to Barita's argument that the authority to make the request for information is limited by section 42, counsel argued that section 7 as correctly interpreted taken together with section 32(1) permit the Director of Information to do exactly as he proposed. Neither section 7 nor section 32 has been expressed to be subject to section 42.
- [27] Ms. Lindsay also submitted that the Privy Council decision in ***Integrity Commission v Kiklvarakis*** is not binding in our jurisdiction because our legislative framework is different. Under the Turks and Caicos Islands Ordinance, the power to request or summon the production of documents could only be exercised in the context of what the Commission was statutorily empowered to do in furtherance of an investigation. This does not apply to powers and functions of the Director of Information under the Act in Jamaica.

ATTORNEY GENERAL'S SUBMISSION

- [28] Learned counsel for the Attorney General, Ms. Lisa White, submitted that the Fixed Date Claim Form was not filed in compliance with the Supreme Court Civil Procedure Rules ('CPR') because, firstly, the claim filed did not name at least one claimant and at least one defendant as required by rule 8.1 and secondly, the claim form was not verified by a statement of truth as required by CPR 3.12. She submitted that in the absence of these requirements the court is precluded from determining the claim or making the orders sought. I should say at the outset that in my view the application is properly before this Court as it comports with section 7(3) of the Act which provides that, on application of the Commission made without notice, the Court may order the production of necessary information or documents. I therefore hold that the Commission has standing to file this application, and it is properly before this Court.
- [29] In response to the contention that mandating the financial institutions to provide clients' information may infringe the right to privacy under the Charter, counsel argued that a person's constitutional rights are not absolute and this obligation of a financial institution to co-operate does not necessarily amount to an infringement of a customer's right to privacy. Should the Court take the view that the provision of information does amount to an infringement of a customer's right to privacy, the Court should apply the decision in *Jamaica Bar Association v The Attorney General and The General Legal Council* [2020] JMCA Civ. 37 (paragraphs 515-521) and use a modified **Oakes Test** to determine whether the limitation was demonstrably justified in a free and democratic society.
- [30] Counsel submitted that section 7 of the Act must be interpreted in light of section 3 which outlines the principal objectives of the Act and this would lead to the conclusion that a person is obliged under section 7(2) of the Act to co-operate with the Commission in the exercise of the functions conferred on it. Under sections 7(8) and 7(11), only legal professional privilege can circumscribe or otherwise prevent the disclosure of information under section 7 of the Act. Accordingly, any obligation(s) as to secrecy or other obligation(s) that may arise outside of the Act, e.g. under the **Banking Act** does not limit or override a request for information

from the Commission because the duty of confidentiality under the **Banking Act** is not absolute. Personal data may be disclosed by the bank where the disclosure is required by or under any enactment, or by an order of a court. Also, a bank's duty of confidentiality may be qualified where disclosure is under compulsion of law and where the public interest outweighs the duty of confidentiality.

ISSUES

[31] The following issues must be addressed in order to determine this matter:

- (i) What is the meaning of the expression “to co-operate” as used in section 7(2) of the Act?
- (ii) Is the Director of Information's authority under section 32(1)(b) of the Act limited by section 42's procedures?
- (iii) Would complying with the request be a breach of Barita's duty to keep client information confidential?
- (iv) Would complying with the request be a breach of Barita's clients' constitutional right to privacy?

STATUTORY FRAMEWORK

[32] This matter requires the Court to interpret of section 7 of the Act, particularly the meaning and scope of the expression “to co-operate” in section 7(2). The Act embodies the prevailing national framework for the prevention and eradication of corruption in Jamaica. It came into force on the 26th of February 2018, thereby repealing the **Corruption (Prevention) Act**, the **Contractor-General Act** and the **Parliament (Integrity Members) Act**. It established a regime as set out in the preamble:

“to Promote and enhance standards of ethical conduct for parliamentarians, public officials and other persons by consolidating laws relating to the prevention of corruption and the award, monitoring and investigating of government contracts and prescribed licenses and to

provide for the establishment of a single body to be known as Integrity Commission to promote and strengthen the measures for the prevention, detection, investigation and the prosecution of acts of corruption.”

[33] This is restated in section 3 which spells out the principal objects of the Act.

[34] Section 5 of the Act establishes the Integrity Commission as a commission of Parliament and section 6 quite comprehensively sets out seventeen general functions of the Commission. It is sufficient here to recite section 6(1)(a) – (c) and section 6(3):

6. – (1) Subject to the provisions of this Act, the functions of the Commission shall be to –

- (a) investigate alleged or suspected acts of corruption and instances of non-compliance with the provisions of this Act;*
- (b) prosecute acts of corruption and offences committed under this Act;*
- (c) take necessary and effective measures for the prevention and detection of corruptions within public bodies*
- ...*

(3) In the exercise of its powers and performance of its functions under this Act, the Commission –

- (a) shall not be subject to the direction or control of any other person or authority other than the Court by way of judicial review;*
- (b) shall act independently, impartially, fairly and in the public interest; and*
- (c) shall have the power to do all such things as it considers necessary or expedient for the purposes of carrying out its functions.*

[35] So far as is relevant for present purposes, section 7 provides:

7. – (1) The Commission may, in the performance of its functions, work in co-operation with any person or body as it may deem appropriate.

(2) A person or body shall co-operate with the Commission in the exercise of the functions conferred on the Commission under this Act or any other enactment.

(3) The Court may, on an application made by the Commission without notice, order any person or body to provide to the Commission any

information or document which the Court deems necessary to assist the Commission in carrying out its functions under this Act.

(4) Any information or document disclosed by a person or body under subsection (3) shall not be used in any criminal proceedings against such persons or body, save and except in criminal proceedings for an offence relation to the provision of false and misleading information.

(5) A person or body against whom an order is made pursuant to subsection (3) shall provide such information or produce such documents which may be in the possession of such person or body which they may lawfully procure.

(6) Nothing in subsection (3) shall restrict the obligation arising under subsection (2).

(7) Information or documents provided under this section shall be in such form and manner as the Commission may direct and any information or document required to be produced exchanged or shared may be produced, exchanged or shared may be produced, exchanged or shared electronically.

(8) Notwithstanding any provision in any law and subject to subsection (11), no obligation as to secrecy or other restriction upon the disclosure of information implemented by law or otherwise, shall prevent a person or body from disclosing any information or producing any document to the Commission in accordance with this section.

(9) Notwithstanding any provision to the contrary under this Act or any other law, the Commission shall disclose to a competent authority any information or document that is necessary to assist the competent authority in the investigation and prosecution of offences relating to –

- (a) acts of corruption;*
- (b) financial crimes; or*
- (c) revenue collection.*

(10) Notwithstanding any provision to the contrary under this Act or any other law, a competent authority shall disclose to the Commission any information or document that is necessary to assist the Commission in the investigation and prosecution of offences relating to –

- (a) acts of corruption;*
- (b) financial crimes; or*
- (c) revenue collection.*

(11) Nothing in this section shall require a person or a body to provide the information or produce any document which a person would be entitled to refuse to provide on the grounds of legal professional privilege.

[36] Section 30(1) of the Act establishes the Divisions through which the Commission carries out its function. It provides:

30. – (1) The Commission shall carry out its function through the following Divisions, namely –

- (a) the Information and Complaints Division, which shall be headed by the Director of Information and Complaints;*
- (b) the Investigation Division which shall be headed by the Director of Investigation;*
- (c) the Corruption Prosecution Division, which shall be headed by the Director of Corruption Prosecution; and*
- (d) such other Divisions as the Commission may deem necessary to assist it in the carrying out of its functions, each of which shall be headed by a Director in relation to the function of the Division.*

[37] In making the request for information the Director of Information purported to act pursuant to section 32 which sets out his functions. The relevant portions of which are quoted below:

32. – (1) The Director of Information and Complaints shall –

- (a) receive, keep on record and examine all statutory declarations filed with the Commission;*
- (b) make such enquiries as he considers necessary in order to certify or determine the accuracy of a statutory declaration;*
- (c) receive and keep proper record of any complaint or information or notification in relation to any or all of the following matters –*
 - i. any allegation which involves or may involve an act of corruption;*
 - ii. any allegation regarding impropriety or irregularity with respect to the award, implementation or termination of a government contract or the grant, issue, suspension or revocation of a prescribed licence;*

- iii. *any allegation in respect of non-compliance with any of the provisions of this Act;*
- (d) *refer to the appropriate Director, any complaint or information or notification received under paragraph (c), or any other matter which he considers appropriate for action.*

[38] Section 42 of the Act makes provision for the Director of Information to examine the statutory declarations submitted to ensure compliance with the Act. Section 42, so far as is relevant, provides –

42. – (1) *The Director of Information and Complaints shall examine, or cause to be examined, every statutory declaration that is submitted, in order to ensure that it complies with the requirements of this Act.*

(2) Where, upon examination of a statutory declaration, the Director of Information and Complaints is of the opinion that further information is required in respect of the statutory declaration, he may, by notice in writing, request the declarant to submit such other information at such time as may be specified in the notice, and the declarant shall submit such information within the specified period.

[39] In brief summary: the principal objects and functions of the Commission are the prevention and detection of acts of corruption (section 3(b)) and taking necessary and effective measures to achieve this object (section 6(1)(c)); it carries out these functions through several divisions and officers including the Director of Information (section 30(1)(a)) who is mandated to receive statutory declarations filed with the Commission, to examine them and make enquiries to certify and determine their accuracy (s. 32(1)(a) and (b)); in exercising its functions the Commission may work in cooperation with any person or body it deems appropriate and that person and body *shall* co-operate with the Commission in the exercise of its functions. It is within this framework that the Director of Information requested Barita to co-operate so that he may confirm information disclosed in the statutory declarations.

DISCUSSION

What is the meaning of the expression “to co-operate” in section 7(2) of the Act?

- [40] The principles governing statutory interpretation are well established. Unless the statute itself gives a specific definition of a word or term, the analysis will start, and usually end, by ascertaining its natural and ordinary meaning within the context in which it appears. The Court must then apply that meaning, refraining from deviation unless there are compelling reasons for so doing. The authorities referred to by counsel for the Commission are apposite and need not be examined in any detail. The leading case in this regard is ***Pinner v Everett*** [1969] 3 All ER 257 where Lord Reid said at page 258:

"In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other permissible meaning of the word or phrase."

- [41] The principle was reaffirmed by the House of Lords in ***Maunsell v Olins*** [1975] AC 373 at page 391 where it was stated that:

"...the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction, in which case some secondary ordinary sense may be preferred..."

This principle has been consistently applied in this jurisdiction, including in the recent decision of the Court of Appeal in ***The Minister of Finance et al v Winsome Bennett*** [2018] JMCA Civ 9 (at paragraph 24).

- [42] The Court accepts the definition of “co-operate” advanced by counsel for the Commission, i.e., to work together with someone else to achieve something, or to be helpful by doing what someone asks you to do. The meaning of “co-operate” in section 7(2) of the Act is, in the Court’s view, clear and unambiguous. Indeed, this appears to be conceded at paragraph 20 of the written submissions for Barita where it is stated that the effect of the declaration sought in the application would

be for the Court “*to say that the section means what it says.*” It would be difficult to express the Court’s position on the matter more succinctly and felicitously than that.

[43] It is evident that the natural and ordinary meaning of section 7(2) of the Act imposes an obligation on a person or body to work with the Commission and assist the Commission by complying with the requests it makes in the exercise of its functions. More to the point, it means that Barita has a mandatory obligation to furnish the information necessary for the Commission to carry out its task to examine and verify the statutory declarations.

[44] The next step is to see whether this construction leads to a result which cannot reasonably have been the intention of the legislature, e.g., some injustice, absurdity, anomaly or contradiction so that it is permissible to depart from the clear and natural meaning. After close examination of the legislation, the Court finds no basis for such a departure.

Impact of International Treaties and Norms on the Interpretation of Section 7(2) of the Act

[45] It is of considerable significance that Jamaica has signed and ratified the United Nations Convention Against Corruption, thereby rendering it a legally binding treaty upon the State. The convention mandates that each state party including Jamaica shall endeavour, in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding their investments and assets.

[46] Further, the International Code of Conduct for Public Officials adopted by the UN General Assembly stipulates that public officials of member states should be required to disclose personal assets and liabilities and those of their spouses and dependents. Jamaica's adherence to the treaty and to international standards and norms reinforces the imperative for transparency and accountability in public service and underscores the global consensus that public office is a position of

trust, necessitating openness and prioritizing the public interest over personal confidentiality.

- [47] Failure to adhere to these standards undermines a nation's reputation and invites the myriad adverse consequences associated with corruption or the perception of corruption including the deterrence of both local and international investment. The interpretation of section 7 of the Act in alignment with Jamaica's obligations under international treaty and norms is a compelling and cogent basis for maintaining the natural and ordinary meaning of Section 7 of the Act as expounded above at paragraph [43].

Is the Director of Information's authority under section 32(1)(b) of the Act limited by section 42 procedures?

- [48] It was argued that a comparative analysis of sections 32(1)(b) with 42(2) of the Act supports a conclusion that the scope of inquiries available to the Director of Information is limited to the procedure set out in section 42 which specifically authorises him to request a declarant to submit further information in respect of the statutory declaration.
- [49] While it is correct that section 7(2) of the Act does not explicitly confer upon the Director of Information the authority to request information from financial institutions about their clients' affairs, it does not necessarily follow that his powers are restricted in this regard. Section 7 is to be read in conjunction with section 32(1)(b) which is wide and unambiguous. It empowers the Director of Information to "*make such enquiries as he considers necessary to certify or determine the accuracy of a statutory declaration.*" A clear distinction emerges between section 42 which governs the examination of statutory declarations to ensure compliance with the technical requirements of the Act and the separate process under section 32(1) which pertains to verifying the accuracy of the information contained therein. Section 42(2) authorises the Director of Information to request further information from the *declarant* to satisfy the requirements of the Act. On the other hand, when

he proceeds under section 32(1)(b) to make inquiries to determine the accuracy of information furnished in the statutory declaration, it would be illogical for him to seek verification of that information from the declarant who provided it. The natural course of action under section 32(1)(b) would be to obtain verification from an independent source, such as a financial institution.

[50] The Court does not consider reference to section 42(4) of the Act which authorises the Director of Information to refer matters for investigation or reference to Part VI which governs the “*Powers and Procedures in Respect of Investigations Generally*” to be of much assistance in the present context. These provisions regulate the procedure where an investigation is required under the Act. By contrast, the instant application concerns the obligation to co-operate with the Commission in the exercise of its functions specifically to make enquiries to determine the accuracy of statutory declarations. The arguments presented blur the critical distinction between preliminary inquiries which involve requests for information and formal investigations, which are different procedures.

[51] The statutory regime establishes a progressively escalating range of proceedings available to the Commission to accomplish its mission. In the verification of the accuracy of the statutory declarations, the Commission is at the preliminary stage. In certain circumstances an investigation may subsequently be warranted. The functions of the Director of Information do not extend to the conduct of investigations. That falls within the purview of the Director of Investigation and the procedures and provisions regulating the exercise of those powers are quite different. They do not diminish the power of the Director of Information to make inquiries to verify the accuracy of the information contained in the statutory declaration. Similarly, section 45 which covers the functions of the Director of Investigations cannot be construed as limiting the Director of Investigation’s authority in this regard.

Would complying with the request be a breach of Barita’s duty to keep client information confidential?

- [52] Barita's duty to keep its clients' information confidential, both at common law and by statute, is not absolute. It is subject to exceptions and may be circumscribed by the particular circumstances of a case and by operation of law.
- [53] The Court accepts the submissions made on behalf of the Commission regarding the **Banking Services Act** and the **Securities Act** as well as the market guidelines issued thereunder. These Acts affirm the duty of non-disclosure of clients' confidential information but also provide that disclosure may be permitted when required under any enactment or by the court. In this case, section 7(8) of the Act unequivocally stipulates that no obligation as to secrecy or other restriction shall prevent any party from disclosing any information requested by the Commission.
- [54] In addition, while the duty of confidentiality under common law is a significant and well-established principle, it must yield when weighed against the overriding public interest in combating corruption. The provisions of the Act ought to be construed to ensure that transparency and accountability of public officials are not obstructed by claims of confidentiality. Accordingly, the Court holds that in disclosing the requested information to the Commission, Barita would not breach its obligations of secrecy and confidentiality.

Would complying with the request breach Barita's clients' constitutional right to privacy?

- [55] It was also contended that the disclosure of the requested information may infringe upon Barita's clients' constitutional right to privacy¹. Reliance was placed on **Julian J. Robinson**. In that case, the Court recognized the right to privacy enshrined in

¹ See: section 13 (3) (j) of our Charter of Fundamental Rights and Freedoms

the Charter to be an inherent right encompassing three dimensions: personal privacy, informational privacy, and privacy of choice.²

[56] While this Court acknowledges that financial information is afforded the protection under the right the privacy, the circumstances of the instant case are distinguishable. **Julian J. Robinson** primarily addresses the initial collection of data whereas here, the requested information is being sought to verify the accuracy of information that has already been disclosed. Public officers, in fulfilling their obligation to submit statutory declarations with information about their assets, in effect consent to the verification of the provided data. This consent is implied by the very nature of the statutory declaration process where accuracy, transparency and verification are essential. Consequently, such information falls outside the scope of the privacy protections the Charter aims to safeguard.

[57] Moreover, the imperative of ensuring transparency and accountability in public administration must be balanced against claims of confidentiality by public officials. The request made by the Commission manifestly serves a legitimate public interest and are not disproportional.

CONCLUSION

[58] The pursuit and realization of the objectives of the Act are of fundamental importance to the welfare, order and good governance of Jamaica. It is a matter of public notoriety that corruption is endemic in Jamaica. Corrupt practises and enterprise are typically concealed necessitating robust mechanisms for detection and enforcement. Section 7(2) of the Act is designed, clearly, to enhance the capacity of the Commission to detect and expose corruption on the part of parliamentarians and public officials by assessing whether such individuals are in possession or control of pecuniary resources or property disproportionate to their

² See: paras 175-176

official emoluments and legitimate income. This statutory provision serves to strengthen the Commission's capacity to fulfil its mandate effectively.

- [59]** For these reasons, the Court hold that section 7(2) of the Act must be interpreted to impose a duty upon persons and entities to co-operate with the Commission by complying with the requests for information. This obligation is imperative. Financial institutions are mandated to furnish upon request the information required by the Commission to verify the statutory declarations.

COSTS

- [60]** Barita participated in the proceedings at the invitation of the court so it would not be appropriate to impose costs. Its position has been that the court should determine the nature and extent of the statutory powers exercisable under the Act and that it is prepared to abide by any such order. The application concerns public policy and Barita's role was not adversarial. Its submissions were helpful as were those made on behalf of the Commission and the Attorney General.

DISPOSITION

- [61]** For these reasons the Court on 17th day of January 2024 made the following Declarations and Orders:

It is:

- A. Declared that Section 7 of the Integrity Commission Act, in particular section 7(2), mandates that any person or body must cooperate with the Commission in the exercise of its functions under the said Act;
- B. Declared that Section 7 of the Integrity Commission Act, in particular section 7(8), means that any person or body cooperating with the Commission shall not be prevented from so doing by virtue of any law that provides for secrecy or any other restriction against the disclosure of information, save for on the grounds of legal professional privilege.

And:

- C. An Order is granted directing Barita Investments Ltd. to comply with the Integrity Commission's request made pursuant to Section 7 of the Act in letter dated June 28, 2021;
- D. An Order is granted permitting the Commission to keep confidential the relevant attachments that accompanied the requests dated June 28, 2021, made by the Commission.
- E. No order is made as to costs.

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Chester Stamp
Puisne Judge