



INTEGRITY COMMISSION

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Position Statement of the Chairman of the Integrity Commission of Jamaica Regarding the Auditor General as a Member of the Commission Submitted to the Integrity Commission Parliament Oversight Committee on November 24, 2021

“The Integrity Commission Act was signed by His Excellency the Governor-General on 23 October 2017, and came into operation in February 2018. It provides for the appointment of the Auditor-General as a member of the Commission.

In order to be eligible for appointment, the Commissioners must be persons of “integrity, capable of exercising competence, diligence, sound judgment and impartiality” in fulfilling their functions under the Act.

The Constitution of Jamaica, which provides for the appointment of the Auditor-General, requires that officer to audit and report on the accounts of all Government departments at least once per year. Reports of such audits are to be submitted to the Speaker for laying before the House of Representatives.

The Auditor-General’s Department is to be audited by the Minister of Finance, and a report of such audit submitted by the Minister to the Speaker.

There has been some adverse comment as regards the appointment of the Auditor-General as a Commissioner. Such comment may be due to a lack of knowledge of the historical context, as well as of the existing legislation and other arrangements that are in place for the auditing of the accounts of the Integrity Commission, and the reporting of the results. This conclusion seems appropriate as no valid reason has been advanced by the few critics for the position they have taken.

It needs to be pointed out that the presence of the Auditor-General on the Integrity Commission is not a recent occurrence. For nearly fifty (50) years, the Auditor-General has been a member of Jamaica’s Commissions dealing with integrity, and there has not been a dissenting voice as to that situation until recently. It would be good to know what, if anything, has happened in recent times to bring into question the Auditor-General’s membership of the Commission.

From as long ago as 1973 when the Parliament (Integrity of Members) Act became operational, the Auditor-General has been named as the first member of the Commission. When the Corruption (Prevention) Act became operational on 1 May 2001, the Auditor-General was again named as the first member of the Commission. The tradition has continued with the present legislation which came into effect in 2018.

The Integrity Commission is mandated to promote ethical and fair conduct among public officials and others in respect of matters such as the awarding and execution of contracts, the maintenance of accurate records as regards the expenditure of public funds, and to prosecute those who behave corruptly in the discharge of their duties – so far as the legislation provides for prosecution.

In view of the role of the Auditor-General, as stated in the Constitution, it is very clear that the role of the Auditor-General complements that of the Integrity Commission.

As regards the auditing of the accounts of the Integrity Commission, the Integrity Commission Act requires that such accounts be audited by an auditor appointed in each year by the Commission “with the approval of the Minister”; and for a statement of the audited accounts to form part of the annual report that the Chairman shall submit to the Minister each year. Where any other audit or accounts may be required of the Commission, arrangements are in place for such to be done by independent auditors. That has been the practice, and the Ministry of Finance is informed. There is solid legal opinion in support of this process.

It has been said that the Auditor-General’s presence on the Commission amounts to a conflict of interest. That is not so. There has even been the suggestion that there has been a breach of the Constitution. That is also not so.

Jamaica has had excellent legal drafters over the years. They comb the Constitution before settling on the draft of a law. Those of us who are trained in the drafting of laws know that that is standard procedure. Jamaica’s Constitution has been in existence for nearly sixty (60) years; and for nearly fifty (50) of those years, the Auditor-General has been a part of the Integrity Commission, without any of our distinguished legal scholars detecting any constitutional problem.

In law, a conflict of interest arises when someone (for example, a public official) has a competing professional or personal obligation, or a personal or financial interest, that would make it difficult for that person to fulfil his or her duties fairly. That situation does not exist in the circumstances being discussed. However, assuming that there is a perception of a conflict of interest (which is definitely not admitted), the situation has been managed effectively and efficiently by the arrangements that have been made.

The Auditor-General has been a very valuable member of the Commission contributing the expertise of the office as well as of the individual. The Commission is the better for the presence of such an informed individual who is committed, as the rest of the Commissioners are, to the full execution of the mandate set out in the legislation.

**The Hon. Mr. Justice (Ret’d) Seymour Panton, OJ, OD
Chairman”**

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