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EHA



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Reference Number:

**ATTORNEY-GENERAL'S CHAMBERS**  
13 Hillcrest Avenue  
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14 July 2023

The Honourable Marisa Dalrymple-Philibert, CD, MP  
Speaker of the House of Representatives  
Houses of Parliament  
81 Duke Street  
PO Box 636  
Kingston

Dear Madam Speaker,

Re Reports Submitted Under Section 36 of the Integrity Commission Act , and Standing Order 73D

I acknowledge receipt of your letter of 11 July 2023 to the Attorney-General's Chambers, where you asked—

If the law requires that reports under sections 36(2) and 36(3) of the Integrity Commission Act (the Act) "... are to be first tabled and circulated, then submitted to the Integrity Commission Oversight Committee?"

I understand the reference to "tabled" to mean laying on the table of the House of Representatives and "circulated" to mean circulation to the members of the House.

I intend for this opinion to be read in conjunction with the previous opinion sent by this office, on 10 July 2020, over the signature of the Solicitor General.

The Integrity Commission Act

Under section 36 (1) of the Act, a House of Parliament may require the Integrity Commission (the Commission) to investigate an act of corruption "... and table a report thereon." Section 36 (2) of the Act requires the Commission to submit annual reports to Parliament with the information set out in the Second Schedule to the Act. And section 36 (3) provides that the Commission may at any time submit reports which, in its opinion, require Parliament's attention.

Section 54 of the Act also provides for submitting and tabling in the Houses of Parliament reports of the Director of Investigations (the DOI). Under section 54 (3) (a) (ii), where the DOI, on completion of an investigation, is satisfied that there are reasonable grounds for suspecting a breach of any code of conduct by a parliamentarian, he shall refer the matter to the Speaker of the House of Representatives,

or the President of the Senate, as the case may require. In addition, under section 54 (4) where the DOI, on completion of an investigation, is satisfied that there are reasonable grounds for suspecting that an act of corruption or an offence under the Act has been committed, he shall, in his report to the Commission, recommend that the matter be referred to the Director of Corruption Prosecution (DCP), and "... the Commission shall submit it [the report] to Parliament for tabling."

So, under the Act, there are five circumstances where the Commission may submit reports or refer matters to Parliament. For this opinion, these are identified as—

1. "Required Reports" under section 36 (1);
2. "Annual Reports" under section 36 (2);
3. "Special Reports" under section 36 (3);
4. Reports of the DOI on specific allegations of acts of corruption or other offences under the Act, under section 54 (4); and
5. References to Parliament made on breaches of codes of conduct by Parliamentarians, under section 54 (3) (a) (ii).

Thus, under Section 36 (1), a House of Parliament may require the Commission to prepare a report on an act of corruption for Parliament to table; under Section 36 (2), the Commission is required to submit its annual reports to Parliament; Section 36 (3) authorizes the Commission to submit special reports; and Section 54 (4) requires the Commission to submit reports on specific allegations of corruption made by the DCI. Finally, the Commission may refer breaches of codes of conduct to the Speaker of the House or the President of the Senate.

#### Discussion of the Act

Where the Act requires a report for tabling, in keeping with the intention of the Act, the report shall be tabled. This Act sets out the duty of the Commission to submit reports, and thereby, by implication, there is the corresponding duty on Parliament to receive the reports. However, none of the statutory provisions above prescribes how these reports shall be received and tabled.

The Act does not prescribe the conduct of Parliament on how it should receive and deal with the reports. Under the Act, such matters are left to the internal regulation of the Houses of Parliament, to be governed by the respective Standing Orders.

The effect of the difference in language between s 36 (3) of the extant Integrity Commission Act, where the reports are to be tabled, on the one hand, and s 28 (3) of the former Contractor-General Act and s 29 of the current Financial Administration and Audit Act, where the reports are to be tabled as soon as possible, on the other hand, is that in the Integrity Commission Act Parliament has legislated a change of the statutory prescription formerly placed on the Houses of Parliament. The necessary conclusion is that Parliament intended to give the Houses of Parliament greater control over how it treats the reports it receives from the Commission.

## Discussion of the Standing Orders

In the Westminster parliamentary system, the Speaker of the House of Representatives is the presiding officer of the House of Representatives, and the President is the Senate's presiding officer. In the absence of statutory direction or direction of the relevant Standing Orders, they have the sole authority on the internal administration of the respective houses. The Standing Orders sets out the parliamentary rules of the Houses of Parliament. Under the Standing Orders of the Houses of Representatives of Jamaica, Standing Order 4 (1) provides that the Speaker of the House shall preside at sittings of the House and shall act as Chairman of Committees of the whole House. Under Standing Order 4 (6), "The Speaker shall have the power to regulate the conduct of business in all matters not provided for in these Standing Orders." Where matters are not provided for by the Standing Orders, the usage and practice of the United Kingdom House of Commons shall be followed.<sup>1</sup>

Standing Order 68 (1) (k) establishes the Integrity Commission oversight Committee as one of the Sessional Select Committees, and Standing Order 73D(e) sets out the duty of that Committee of "convening and considering a report submitted to Parliament under section 36 of the Integrity Commission Act, within thirty days of the submission of the report."<sup>2</sup> Whereas the standing order imposes a duty to consider the report "within thirty days," it does not declare whether the Committee's oversight shall be before or after the report is tabled in the House. As the Standing Orders do not direct the Speaker on how to treat the report, the Speaker, in regulating the conduct in all matters in the House, may determine how those reports are to be dealt with. If the House has developed a practice on when reports should be tabled, those practices should be followed. Those practices, however, cannot be inconsistent with legislation or the Standing Orders.

A strictly literal reading<sup>3</sup> of Standing Order 36 (3) does not say the report must be submitted to the Committee before being tabled. Similarly, it does not prescribe that it must be tabled in the House and later submitted to the Committee. As the power to regulate its internal affairs is in the hands of the House, and neither the Act nor the Standing Orders prescribe the sequence in the treatment of the reports, either sequence is possible under the direction of the Speaker. Parliament may consider matters first go to the Committee, but it is not required to do so.

In other jurisdictions, additional guidance is provided to Parliament on the tabling of papers,<sup>4</sup> while others can rely on established and recorded practice.<sup>5</sup> However, in the absence of such secondary sources, it is important to note that where legislation or the Standing Orders are silent and the Parliament has not previously provided additional guidance, the House still has overarching control over

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<sup>1</sup> In so far as these may be applicable and are not inconsistent with the Standing Orders. See SO 88.

<sup>2</sup> As was explained in the opinion of 10 July 2023, the actual reference in the Standing Order to section 34 is an error, and must be interpreted to mean section 36.

<sup>3</sup> "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound the words in their natural and ordinary sense. The words themselves alone do, in such a case, best declare the intention of the lawgiver." Per Tindal, CJ in *Sussex Peerage Case* (1844) 11 Cl & F 85.

<sup>4</sup> See Australian Government, Department of the Prime Minister and Cabinet, "Guidelines for the Presentation of Documents to the Parliament (Including Government Documents, Government Responses to Committee Reports Ministerial Statements, Annual Reports and Other Instruments)," (2017); and Parliament of the Republic of South Africa, "Guide to Tabling of Papers in Parliament," (nd).

<sup>5</sup> Erskine May, *Erskine May Parliamentary Practice*, 25th ed., Part 1, s 7.30 (LexisNexis UK, 2021).

the tabling of its reports and may direct that they are tabled immediately or after reference to the Committee.

#### Conclusion

I, therefore, advise as follows—

1. I restate the opinion sent from these Chambers on 10 July 2023—

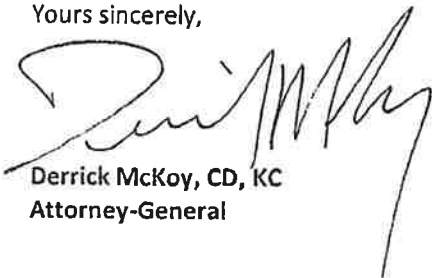
“...the current practice of the Parliament, where the report is tabled and circulated prior to being submitted to the Integrity Commission Oversight Committee, is not inconsistent with section 36 of the Act nor with Standing Order 73D(e).”

2. The House is expected to follow its usual procedures, and subject to legislation and the Standing Orders, the House has overarching control over those procedures.
3. Under the Act and the Standing Orders, a House of Parliament may table a report before or after sending it to the Oversight Committee. Under s 36, reports must be submitted to the Oversight Committee, and under s 54(4), reports shall be tabled, but the order of tabling is not prescribed.
4. How Parliament receives and tables reports and whether the Oversight Committee considers reports before or after tabling in a House are not now regulated by the Act or the Standing Orders. These are in the power of Parliament to determine by its existing procedures. The Speaker may table the reports before or after submitting them to the Oversight Committee considers.

#### Reservation

If the House of Representatives desires greater clarity and certainty on the treatment of reports to Parliament, this may be achieved by publishing a guide on tabling papers in Parliament, as in the case of South Africa,<sup>6</sup> or guidelines for the presentation of documents to Parliament, as in the case of Australia.<sup>7</sup> Alternatively, greater clarity and certainty may also be achieved by amending the Standing Orders.<sup>8</sup>

Yours sincerely,



Derrick McKoy, CD, KC  
Attorney-General

<sup>6</sup> Parliament of the Republic of South Africa, “Guide to Tabling of Papers in Parliament” (nd).

<sup>7</sup> Australian Government, Department of the Prime Minister and Cabinet, “Guidelines for the Presentation of Documents to the Parliament” (2017).

<sup>8</sup> Standing Order 87.