



Houses of Parliament

Jamaica

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MEMORANDUM

TO: The Most Honourable Juliet Holness, MP
Speaker of the House of Representatives

AND TO: Ms. Valerie Curtis CD, BH(M), JP
Clerk to the Houses

FROM: Mrs. Lee-Andria Wilson
Legislative Counsel

DATE: November 8, 2023

SUBJECT: **Opinion on Tabling of Reports from the Integrity Commission and Submissions of same to the Integrity Oversight Committee**

Background:

1. On July 13, 2020, the Houses of Parliament sought the opinion of the Attorney-General on the accuracy of the reference to section 34 of the Integrity Commission Act (the Act) in Standing Order 73D(e) of the Standing Orders of the House of Representatives. The reference to section 34 was being queried as it enumerates the functions of the Director of Corruption Prosecution at the Integrity Commission and their duty to submit quarterly reports on the activities of the Corruption Prosecution Division.
2. The opinion from the Chambers of the Attorney-General dated July 20, 2020, concluded that the reports that are to be reviewed by the House of Representatives were not reports under section 34 but reports submitted to Parliament under section 36. It was submitted that it would not be appropriate to construe standing order 73D(e) as

making reference to the reports of the Director of Corruption Prosecution that are submitted to the Executive Director. It was suggested that this was an error, that could be rectified by amending the standing order by utilizing the procedure established in Standing Order 87. This error was corrected by way of motion at a meeting of the Standing Orders Committee on

3. On July 4, 2023, the former Speaker of the House of Representatives, Mrs. Marisa Dalrymple-Philibert, sought additional guidance from the Attorney-General on the question of how to treat reports submitted to Parliament by the Integrity Commission under section 36 of the Act. In her letter, she noted that the practice in Parliament has been to table these reports, thereby bringing the content of same to the attention of the Members, the media and the public at large before the Integrity Commission Oversight Committee could consider and report to Parliament its findings.
4. While awaiting the decision of the Attorney-General on this matter, the former Speaker directed that all reports submitted to Parliament from the Integrity Commission were to be submitted to the Chairman of the Oversight Committee.
5. On July 10, 2023 the Attorney-General's Chambers responded to the former Speaker's query, noting that the current practice in parliament to table and circulate the reports before submitting same to the Integrity Commission Oversight Committee is not inconsistent with section 36 of the Act or Standing Order 73D(e). It was opined that "there is nothing in section 36 of the Act or Standing Order 73D(e) that provides for the sequence of events, that is, when the report should be tabled, circulated and submitted to the Integrity Commission Oversight Committee.
6. It is to be noted that further clarity was sought by the former Speaker on what the law requires, that is, whether the reports are to be first tabled and circulated and then submitted to the Integrity Commission Oversight Committee. The Attorney-General in response restated the earlier opinion from July 10 2023 and noted that 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. It is to be noted that the Attorney General's final conclusion stated that the manner in which Parliament receives and tables reports are presently regulated by the Act or the Standing Orders and that these are in the power of the Parliament to determine by its existing procedures.
7. It is on that basis that I have been instructed as the Legislative Counsel of the Houses of Parliament to give my opinion on this matter in order to assist in a final determination of the issue.

Issue:

8. Whether reports from the Integrity Commission are to be submitted to the Integrity Oversight Committee before or after tabling in Parliament?

Response/Opinion:

9. It is my opinion that the Act and Standing Orders are silent on the issue at hand and therefore find that reports from the Integrity Commission may be submitted to the Integrity Oversight Committee either before or after tabling in Parliament. The power to make this determination rests in the Speaker and the House as a whole body, and this power may be utilized to set out parliamentary rules and procedures of the House in relation to these reports. A determination made by the Speaker would set precedence for the management of said reports.
10. It is also my opinion that, as a long term solution, the House may consider undertaking the following:
- (i) Amendment of the Standing Orders of the House of Representatives to include detailed guidelines for the treatment of reports submitted to Parliament; or
 - (ii) Developing and publishing detailed guidelines on the procedure for the treatment of reports once they have been submitted to Parliament.

Law:

a. Regulation of Procedures in the Houses of Parliament

Section 51(1) of the Constitution

Subject to the provisions of this Constitution, each House may regulate its own procedure and for this purpose may make Standing Orders.;"

b. Standing Orders of the House of Representatives

Standing Order 4(6)

The Speaker in the House and the Chairman in Committee shall have power to regulate the conduct of business in all matters not provided for in these Standing Orders.

Standing Order 73D:

The Integrity Commission Oversight Committee shall have the duty of—

(a) monitoring and reviewing the performance of the functions of the Integrity

Commission;

(b) reporting to both Houses of Parliament on any matter relating to the performance of the functions of the Integrity Commission;

(c) reviewing the annual report and any other report of the Commission and submitting recommendations in relation thereto to both Houses of Parliament;

(d) assessing the effectiveness of the Integrity Commission and the appropriateness of its procedures; and

(e) convening and considering a report submitted to Parliament under section 34 of the Integrity Commission Act, within thirty days of the submission of the report.

[emphasis added]

c. Integrity Commission Act

Section 36

(1) The Commission may, at any time, be required by either House of Parliament to investigate a matter relating to an act of corruption and table a report thereon.

(2) The Commission shall, not later than three months after the end of each financial year, or within such longer period as the Parliament may approve, submit to Parliament an annual report relating generally to the execution of the functions of the Commission during the preceding financial year, which shall contain the information set out in the Second Schedule.

(3) The Commission may, at any time, submit a report relating to any particular matter which, in the opinion of the Commission, requires the special attention of the Parliament.

...

Section 54 (3)

(3) Where upon completion of an investigation, the Director of Investigation is satisfied that there are reasonable grounds for suspecting that—

(a) there has been a breach of any code of conduct by a public official or a parliamentarian, the Director of Investigation shall, in his report to the Commission—

(i) in the case of a public official, recommend to the Commission that the matter be referred to the relevant public body for appropriate action;

- (ii) in the case of a parliamentarian, recommend to the Commission that the matter be referred to the Speaker of the House of Representatives or the President of the Senate, as the case may require, for appropriate action;*
- (b) an act of corruption or an offence under this Act has been committed, the Director of Investigation shall, in his report to the Commission, recommend that the matter be referred to the Director of Corruption Prosecution who may take such action as may be deemed appropriate.*
- (4) Where the report to the Commission has a recommendation under subsection (3), the Commission shall submit it to Parliament for tabling, excluding such matters as the Director of Corruption Prosecution regards as likely to prejudice the prosecution of any proceedings in relation to matters referred to in the report. [Emphasis added]***

Analysis:

- 11.** I must state firstly that the opinion of the learned Attorney-General provided on July 14, 2023, to the former Speaker of the House of Representatives, is fulsome in its analysis of the matter and I am in complete agreement with his conclusion therein.
- 12.** The Integrity Commission Act, under sections 36 and 54(4) provides for circumstances where the Integrity Commission may/must submit reports to Parliament:
- Section 36(1) of the Act requires the Integrity Commission to table a report relating to matters (involving an act of corruption) the Parliament refers to it for investigation.
 - Section 36(2) provides that the Integrity Commission is to submit, within a specified time, an annual (financial) report of the Commission to Parliament.
 - Section 36(3) empowers the Integrity Commission to submit to Parliament, reports which require Parliament's special attention.
 - Section 54(4) requires the Integrity Commission to submit for tabling a report (which includes a recommendation under subsection (3)) on a breach of any code of conduct by a public official or parliamentarian or an act of corruption or an offence under the Act, with specific matters excluded.
- 13.** It is evident from these two sections that, based on the nature of the report being sent from the Integrity Commission to Parliament, there is a distinction drawn as to which reports are to be tabled before Parliament and which reports are to be submitted to Parliament.

14. Standing Order 73D(e) authorises the Integrity Commission Oversight Committee to convene and consider a report submitted to Parliament under section 36 of the Act within thirty (30) days of its submission. Though 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.
15. It is to be noted that the said Standing Order 73D(e) makes no reference to reports submitted to Parliament for tabling under section 54(4) of the Act. However, the Integrity Commission Oversight Committee still has a duty to review *any other reports* of the Commission and submit recommendations in relation thereto to both Houses of Parliament pursuant to Standing Order 73D(c).
16. Sections 36 and 54 of the Act and Standing Order 73D do not provide direction on the procedure to be followed once these reports have been received by Parliament, that is, when such reports are to be tabled, circulated and submitted to the Integrity Commission Oversight Committee.
17. I opine that in order to address this lacuna, Standing Order 4(6) may apply. It states that *“the Speaker in the House... shall have power to regulate the conduct of business in all matters not provided for in these Standing Orders”*. This is further reinforced by Section 51(1) of the Constitution which authorises the House to regulate its own procedure.

Conclusion

18. An in-depth assessment of the Standing Orders of the House of Representatives, the Integrity Commission Act and the various correspondences relating to this matter was conducted and it was found that reports from the Integrity Commission may be submitted to the Integrity Commission Oversight Committee either before or after tabling in Parliament.
19. The Integrity Commission Act and the Standing Orders of the House of Representatives do not prescribe any definitive directives on the treatment of reports from the Integrity Commission, under sections 36 and 54, once same have been submitted to Parliament or submitted for tabling. The lack of direction in the Act could be attributed to section 51 of the Constitution which grants Parliament the freedom to regulate its own procedures. While the lack of clear direction in the Standing Orders could be indicative of a need for a substantive review of same, the absence of written guidelines as it relates to the treatment of said reports, does not leave the Parliament without recourse. In the

absence of said written rules or guidelines, the Speaker and the House as a whole body is empowered to set out the parliamentary rules and procedures of the House in relation to the treatment of reports from the Integrity Commission.

20. I also find that, as a long term solution, the House may consider undertaking the following for greater clarity and certainty:

- (i) the Standing Orders of the House of Representatives could be amended to include detailed guidelines for the treatment of reports submitted to Parliament;
or
- (iii) The development and publication of detailed guidelines on the procedure for the treatment of reports once they have been submitted to Parliament.

Regards,