

Analysis and Recommended Amendments for:

The Integrity Commission Bill, 2017

The tabling of the Integrity Commission Bill, 2017 in The House of Assembly on October 18, 2017 was a potentially momentous step toward a stronger anti-corruption regime in The Bahamas. Comparable anti-corruption bodies, when adhering to best standards, are recognized globally as important and effective tools for combating corruption and malfeasance in public life. Though The Organization for Responsible Governance (ORG) regrets that public comment was not sought prior to the bill's tabling, we commend legislators for bringing forth this bill for public review and for debate.

When Benchmarked against similar legislation from the UK, Australia, Jamaica, Trinidad & Tobago, Nigeria and Turks and Caicos, The Integrity Commission Bill 2017, appears appropriate to address the complex corruption-related issues facing The Bahamas and should enjoy strong support regardless of political affiliation. However, the bill and code of conduct is over 100 pages long and requires wide scrutiny and public input to ensure legislation and policies are consistent and practical to enact. This brief has been developed for the consideration of Parliamentarians from the input of members of ORG's Accountability Committee, civil society partners, and members of the public who have evaluated the bill and offered feedback.

Background

The pending legislation grew out of the draft Anti-Corruption Bill, 2017 which was circulated to ORG, Citizens for a Better Bahamas, and other CSOs in late summer, 2017 for review. The Integrity Commission Bill, 2017 reflects civil society recommendations to produce a more comprehensive bill and provide for the direct referral to an independent prosecutor.

Generally, there are three types of anti-corruption or code of conduct legislation. The first focuses on investigation and prosecution of criminally corrupt behavior and is heavily weighted toward police action. The second focuses on processes and procedures that curtail opportunity for corruption by public officials and has an emphasis on public education. The third is an amalgam, extending its reach from law enforcement to the establishment of preventative systems. Its broad scope is considered a positive improvement over narrower legislation. The current Bahamas bill is developed to be this third type of more comprehensive legislation.

Key Points of Bill

The Integrity Commission Bill 2017 proposes to create an Integrity Commission with responsibility to promote and enhance ethical conduct for Parliamentarians, Senators, Public Officials and other persons and to provide measures for the prevention, detection and investigation of acts of corruption throughout the public service. Additionally, the Bill provides a Code of Conduct for Elected and Appointed Officials, Leaders of Public Service and other government controlled bodies.

The proposed Integrity Commission would be granted extensive latitude and thus must be independent, strong and well-resourced. The investigative powers of the Commission must be free of partisan, racial, ethnic, religious or other bias to ensure that disclosures and claims can be investigated and verified or refuted. However, in the proposed legislation the Prime Minister has great power in the appointment of the Commissioners and the head of the Commission. Furthermore, the Attorney General maintains the power to permit the Commission to secure assistance or develop formal relationships with international organizations. The rationale for the latter may be that the Attorney General holds all information and powers relative to international code of conduct matters.

Scope of the Commission

Under the proposed legislation, the Commission is to create the systems that enable a code of conduct to function effectively and to prosecute violators. The Commission will become the repository of all claims of corruption and will manage disclosures of elected officials and public servants. It contains protection for “whistleblowers” and penalties for misconduct of public officials.

With the enactment of the bill, the existing Public Disclosure Commission will be repealed and replaced by the Integrity Commission. The commission will be responsible for gathering, tracking, and investigating disclosures and presenting findings to the public. As presented, there will be no need to await permission from the Prime Minister or the Attorney General to proceed with action. A major difference between the existing public disclosure commission and the proposed legislation is the independence and the broad powers of the proposed Integrity Commission.

Investigation and Advise ment

The Integrity Commission Bill 2017 includes the power to order anyone in public service to turn over material and information relevant to an investigation of corruption. The results of this investigation are to be presented publically. The Commission also has the power to evaluate government and legislative practices and make recommendations to avoid opportunity for corruption. Such practices shall include but are not limited to full financial transparency with regard to awarding of contracts, and addresses the sensitive issues of benefits, gifts and use of government properties.

Public Education

The Commission is also responsible for educating the public about the dangers of corruption. If it is effective, it will have the power to alter lax attitudes toward corruption and establish a culture of intolerance toward misconduct in public life. Case studies around the world show that education and public support are crucial components to the success of anti-corruption measures.

A Code of Conduct for Public Service leadership

The Integrity Commission Bill also includes an extensive code establishing the standard of conduct we expect from good government. This provides a template for elected officials and public service leaders to aspire to as opposed to just the retroactive approach of punishing transgressors.

Recommendations (Summary)

Based on benchmarking against regional legislation and successful international examples of anti-corruption commissions, combined with analysis and feedback from ORG's Accountable Governance Committee, civil society partners, and members of the public, ORG has assembled and condensed a section-by-section analysis of the Integrity Commission Bill with recommendations to strengthen the bill and increase likelihood for success. The functions and scope of the Commission as outlined in the bill are very comprehensive, seem to be in line with international standards and would seem an appropriate foundation to address the culture of corruption in The Bahamas. To realize the full intent of the act, The Commission must be given the independence, latitude, resources and support to effectively carry out its charter. Within these analyses and recommended amendments five priority points toward this end are offered:

1. The strength and independence of the Integrity Commission is essential to ensure that the bill achieves its objectives, including creating an environment of trust based on non-partisan impartiality in investigation and enforcement. Of significant concern is the reliance on the approval and consent of the Prime Minister and Attorney General throughout the bill. This constricts the bill and the subsequent Commission's capacity for independence and impartiality and the perception thereof. A primary recommendation is to remove or reduce the authority of the Prime Minister and Attorney General from the Bill with the exception of enjoying review privileges. Authority from the Governor General or other independent source, would be a more preferable scenario.
2. Although there does seem to be a level of diversity in the proposed composition of the the Integrity Commission, of particular concern, is the power of the Prime Minister to appoint members, specifically the Chairman. This provides potential for partisanship or the perception of same. It is recommended that the powers of approval for the naming of the Chairman rest with the Governor General, on advice of the Commission itself. There is much support for the inclusion of two members of Civil Society to the commission, but similar concerns exist regarding the role, and potential influence, of the PM in this process.
3. Given the scope of work and responsibilities, sufficient funding and resources are essential and should be independent of any other office..
4. The Code of Conduct is to be recognized as a very comprehensive and significant tool towards improved ethical behaviour in the public service. Greater clarity is needed on the levels of breach of code of conduct. It is clear that certain offenses including coercion, extortion, and bribery, are criminal in nature and grounds for investigation and prosecution. Lesser offenses that fall under breaches of the code of conduct are harder to monitor and the systems for establishing and punishing breaches should be data-driven. Such offenses may include operating a government car for non-government business or using a public computer to send private emails. Greater consideration must be given to how lesser offenses will be captured and what system of penalties will be implemented. Additionally, concerns exist about the exemptions proposed for the conduct of Special Advisors as these seem to promote partisanship and a lack of transparency and accountability.
5. For maximum effectiveness, the Integrity Commission Act 2017 cannot be considered in a vacuum, but should be considered in tandem with legislative measures that provide for the optimum efficiency, honesty and transparency, including Freedom of Information, Ombudsman, Public Service Reform, Proceeds of Crime and independence of the prosecution and of judiciary.

For more in-depth analysis and recommendations on the Integrity Commission Bill please see the chart below, which organizes feedback by section of the bill for ease of review. Any questions on the bill or these recommendations can be sent to: engagement@orgbahamas.com.

Recommended Amendments:

Comments on the Integrity Commission Act 2017 - compiled November 2017- January 2018		
Section	Title	Comments
INTEGRITY COMMISSION ACT 2017		
4	<i>Functions of the Commission.</i>	This list of functions is over and above what is included in TCI, but similar to the Integrity Commission of Trinidad. The functions and scope of the Commission as outlined are very comprehensive and would seem appropriate to address the culture of corruption in The Bahamas.
4 (g & H)		The Public Education is a crucial role and in Trinidad, The UK, Canada and Grenada one of the most important functions of the Integrity Committee. There needs to be more emphasis on this and the proactive assessment and training of the government and public offices in the Code of Conduct and anti-corruption. The Commission should be appropriately funded and empowered to act in this manner. Enforcement must be matched with Education.
5(3)	<i>Powers of the Commission.</i>	This should be the DPP to insulate against any potential political pressure.
6(4)	<i>Officers and employees.</i>	In TCI this is the Minister of Finance not the PM
7	<i>Funds of the Commission.</i>	A key to success for ACAs is recognized as the level of funding. How can this be established and monitored as independents possible?
8	<i>Accounts and audit of the Commission.</i>	In the TCI Bill the commission is required to develop annual reports on activities and funding that are presented to both Houses. Not just the PM
13 (3)	<i>Duty of witnesses summoned</i>	This is the exact same consequence as stated in TCI. Is this consistent with the same in a courtroom?
19 (c)	<i>Acts of corruption.</i>	This would include dinners, tickets, rounds of golf, small gifts and the like.
19 (d)		This would affect travel, trade missions and the like.

19 (h)		This would cover use of government cars & equipment. It also would imply that there needs to be a better enforcement on the use of government emails.
20 (2) (c)	<i>Offence in respect of procuring tenders.</i>	The TCI Bill make specific reference to Corruption related to transnational companies and persons from other states or nations. We need to ensure that the above offenses are inclusive of these circumstances.
21 (b)	<i>Offences and penalties.</i>	This term is "indictment" on the TCI bill, Does the term "information" mean the same thing here in The Bahamas?
21 (c)_		This is the same in TCI, but seems to brief a period if there is a concerted effort to eliminate a pervasive culture of corruption.
21 (5) (a & b)		This is the same in TCI, but seems to brief a period if there is a concerted effort to eliminate a pervasive culture of corruption.
26 (2) (a&b)	<i>Complaint to be recorded, etc.</i>	This language is consistent with TCI, Australia, South Africa
27 (2)	<i>Duty of public officials to report acts of corruption.</i>	Additionally this should include preclusion to serve as a public official for a defined period of time.
29 (1)	<i>Inquiry by the Commission.</i>	There should be some reference to timeliness and expected time frames for inquiries to begin and conclude.
29 (3) (c)		This should also apply to all claims and findings that are confirmed and passed on to the DPP
30	<i>Action by Director of Public Prosecutions.</i>	Again there should be a timeframe and some public disclosure.
35	<i>Order to make device or material available.</i>	This should be directed through the DPP for to mitigate for any claims of political influence.
39	<i>Complaints Panel.</i>	This is the same as in TCI and what currently exists in The Bahamas Police protocol.
40 (3)	<i>Disposition of complaint without investigation.</i>	This should also be posted publicly to discourage false claims.
41 (d)	<i>Investigation of complaint.</i>	The Ombudsman should also be involved in this dispute process.
44 (2)	<i>Declaration of financial affairs.</i>	In TCI, it is the governor that receives the disclosure, not their Premier. This should be carried over here, so that it removes any appearance of political influence or quid pro quo.

44 (4)		The proposed timeline for extension is consistent with many international benchmarks, but seems excessive given The Bahamas' history of lack of compliance with public disclosure. Perhaps "exceptional circumstances" should be better defined.
49 (2)	<i>Commission or Prime Minister may require further particulars.</i>	There should be an established timeframe for public gazetting and should also include those that have requested extensions.
50 (5)	<i>Commission may hold formal inquiry</i>	The process of inquiry and resulting actions should be reflected in any public statement from the commission.
50 (6)		This is the same as TCI and Grenada, but would seem problematic, given the wide spread past non-compliance of this directive by public officials and the lack of enforcement. The Belize law provides a window of 3 years .
51 (1)	<i>Further information from members and staff of Commission in respect of their declarations.</i>	A three person tribunal composed of 2 public officials and a private citizen appointed through the Governor General. would ensure more independence.
52	<i>Commission to publish, etc. a failure to file declaration.</i>	Judge Hussein, head of the Integrity Commission of Trinidad, reported that this tactic works to great effect in their country. Trinidad's commission is dedicated to reporting both compliance and non-compliance in the press.
52		A timeframe should be presented.
54	<i>Offences and penalties.</i>	In Comparison, Trinidad's penalty for failure to disclose is approximately 40K BSD and imprisonment for a term of five years. TCI is the same as is presented in the Bahamas Act.
55(2) (a)	<i>Duty of Member of Parliament and Senator to file statement of registrable interests</i>	This is consistent with the prior Public Disclosure Act and as Citizens for a Better Bahamas has noted, the entire current Parliament is in breach of these mandates.
57 (2)	<i>Register of interests.</i>	This gives the process a more open and transparent aspect. It could be enhanced, by providing that the Commission proactively provide the information via an searchable online portal. As an example, Trinidad, presents much of its information via a such a tool.
59 (1)	<i>Offence by Member of Parliament or Senator.</i>	This is a lesser fine than for others government leaders (\$10K vs \$15K) It should be consistent.

64	<i>Prosecutions</i>	This is consistent with TCI, Grenada, Montserrat, but seems that this clause would functionally absolve all of the prior non compliance of anyone in administrations farther back than 5 years. It should be revised to a schedule of 10 or 15 years.
CODE OF CONDUCT		
67	<i>Complaints to Commission.</i>	This should reference an online mechanism for submission of complaints as well.
70(c)	<i>Commission to report its findings.</i>	What happens in instance of inquiry against the PM or Speaker needs to be clearly described.
70 (4) (b) (iii)		There should be a maximum imposed time frame for decision and resolution of an issue.
WHISTLEBLOWER PROTECTION		
74 (b)	<i>Disclosure to Prime Minister.</i>	The protocol is not clear for those that are appointed by the Governor General
79 (1)	<i>Protection vis a vis employer or person in authority.</i>	TCI has a penalty of \$15K
MISCELLANEOUS		
84	<i>Amendment of Schedules.</i>	This should include the Governor General
85 (2)	<i>Annual report by Commission.</i>	Sixty days for the report to be placed before Parliament (and made public) is more timely than in a Trinidad and Belize Where the Commission must lay an annual report before Parliament by March 31st and it is to be tabled by May 31st. The report should also be made available to the public on the commission website.
87 (1)	<i>Regulations</i>	The Prime Minister should not hold sole power to make regulations for giving effect to the provisions of this Act. This should occur in consultation with the commission and by approval of the Governor General.
88	<i>Repeal</i>	What are the legal implications of this repeal? Does that mean that all prior non-compliance is disregarded?
FIRST SCHEDULE: CODE OF CONDUCT		
Chapter 1 (3)	<i>Ministers Private Interests</i>	In addition to the Prime Minister, the commission should also be notified of any exceptions for resignation for public or private companies or associations.
Chapter 1 (9)		This is too subjective. The commission must also be involved in this decision regarding whether shares are sufficiently valuable, in order to avoid the appearance of political influence.
Chapter 1 (13)		This should not be the Prime Minister

Chapter 1 (18)	<i>Ministers and Cabinet</i>	More disclosure of the process and data used involved in Cabinet decisions would create more transparency and public trust. A more proactive standardized and regularized Public Consultation process is advocated by Civil Society & Private Industry to better inform Cabinet decisions.
Chapter 1 (24)	<i>Ministers and House of Assembly</i>	This statement discounts the value of Proactive Public Consultation as a means of developing strong and inclusive policy. When Items are first announced in HoA, they will have already gone through cabinet , possibly without essential information. This is not a very effective use if the Cabinet, who would be better served reviewing a policy with all aspects considered by the Ministry, public and any experts. Please see the CSO Public Consultation Position.
Chapter 1 (33)	<i>Role of The Attorney General</i>	Requiring the Integrity Commission to gain approval from the AG as to disclosure of advice given by the AG seems contrary to the powers, intent and transparency of The Commission.
Chapter 1 (37)	<i>Elections</i>	Similarly the Integrity Commission should serve as a neutral resource.
Chapter 1 (40)	<i>Ministers relations with public officers</i>	This is a critical point and essential to distinguish the roles and insulate against political influence. New Zealand's State Sectors Act is a good example of this concept enacted into law, The Bahamas Public Service Act 2010, which hasn't been tabled, looks to achieve this and has already been benchmarked by the National Development Team for revision.
Chapter 1 (44)	<i>Ministers and statutory bodies and boards</i>	Provisions and consultations with independent and neutral parties from Civil Society and Private Industry can help to achieve this goal.
Chapter 1 (60)	<i>Travel by Ministers and Ministers' spouses and Special Advisers</i>	This should be reviewed by the commission to ensure that free travel does not constitute any undue obligation to a foreign state or entity.
Chapter 1 (65)		Public travel could be recorded and tracked by the Commission as monitoring action.
Chapter 1 (66)		Ministerial travel over \$500 should be published on the Commission website versus each ministry.
CHAPTER 2: CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT AND SENATORS		
Chapter 2 (10 & 11)	<i>Members relations with public officers</i>	There should also be a code of conduct on the MP's relations with their constituencies and the general public. This could outline expectations of constituency offices, town halls and other mechanisms of responsive representation. It could speak to the importance of working for the good of the constituency and ensuring equal access and support.

CHAPTER 3: CODE OF CONDUCT FOR CHIEF EXECUTIVE OFFICERS, MEMBERS AND OTHER EXECUTIVE OFFICERS OF COMMISSIONS, STATUTORY BOARDS AND OTHER PUBLIC BODIES		
Chapter 3(5) (e)	<i>General duties of CEO's, board members and employees of public bodies</i>	Set and disclose goals and deadlines to be used for direction and evaluation of themselves and the organization they govern, and do said evaluations in writing at least annually.
Chapter 3 (6) (f) (iii)		Potential conflicts must be disclosed to the Integrity Commission as required.
Chapter 3 (7) (a) (i)		Ethics should be tied to 'best practice' where exist. For example, if the 'public body' board is reviewing audited statements – the ethical execution should align with international accounting 'best practices'.
Chapter 3(8) (a)		Boards should not provide oversight of day to day operations. An effective board simply provides policies and approves the overall/broad vision of the organization. Management has the responsibility of guiding the organization pursuant to the broad vision and policies implemented by the Board.
Chapter 3 (11)	<i>The workings of the board</i>	There should be clear and established guidelines for board decision making, reporting and governance.
Chapter 3 (14)	<i>Accountability for public sector resources</i>	Travel guidelines like those provided for the Ministers should be added to this list of recommendations for Boards, CEOs and employees of public bodies.
Chapter 3 (15) (a)		The word "minimized" should be replaced by "optimized" because minimization of cost is not always the most efficient or optimal
Chapter 3 (17) (a)	<i>Ensuring Systems of Internal Control</i>	The word "business" should be replaced by "public body"
CHAPTER 4: CODE OF CONDUCT FOR SPECIAL ADVISERS		
Chapter 4 (2)	<i>Conduct of Special Advisers</i>	Special Advisors and all appointed positions paid with public funds should not display political commitment. Political impartiality should be binding in all cases of non-parliamentary service (see notes for clauses 8 and 9)
Chapter 4 (6)	<i>Appointment of Special Advisers</i>	The tenure of the special advisor should be defined and subject to contract and not aligned with political events or arbitrary discretion

Chapter 4 (7)	<i>Managing and Disciplining Special Advisors</i>	In so far as Special Advisors a) carry out responsibilities on behalf of or related to public services and/or b) are funded with public funds they should not be outside of the purview of the Integrity Commission. While they may report to the Prime Minister and be subject to his discipline in matters of performance or maladministration, the potential for abuse is too great to place them outside of the jurisdiction of the Integrity Commission in cases of suspected abuse of power or corruption as long as they are handling government information, performing government duties, or utilising public funds.
Chapter 4 (8) (e,f,g, h & j)	<i>Nature of a Special Adviser's Work</i>	There should be no role that supports the party that is supported by public funding. With any expectation of Party representation and liaison , the Party should absorb a significant portion of the Special Advisor salary. As stated in subsection 3, Special Advisors are to serve the entire nation and use of public funds should be top this end.
Chapter 4(9)	<i>Conduct of Special Advisors</i>	There should be no exemption for special advisors that they be appointed based on merit and that they should behave with political impartiality and objectivity as they are paid through public funds.
Chapter 4 (12)		Special Advisors should also have to disclose potential cases or applications coming before the PM or the OPM to the Integrity Commission.
Chapter 4 (16)	<i>Special Advisers' relations with the Public Service</i>	This expectation, reinforces the need for Special Advisors to be expected to be non-partisan and politically impartial in their roles or actions.
Chapter 4 (22)		If a Special Advisor exceeds their role and responsibilities, it should be reported to the Integrity Commission as well, not solely the PM.
SECOND SCHEDULE: THE INTEGRITY COMMISSION		
1	<i>Constitution of the Commission.</i>	The composition of the Commission is too heavily weighted to be influenced by the PM. In a politically divisive environment, this could undermine the effectiveness and independence of the Commission.
1(a)		Appointment of the Justice to the commission is better done by the judicial and legal service commission as this is a key role.
1 (e)		Appointment of the 2 representatives of Civil Society should come through the Governor General to ensure that these are transparent and free from political influence.

2 (a)	<i>Disqualification from appointment</i>	Persons convicted of a crime or who have filed bankruptcy within 5 years prior should also be disqualified from serving on the commission Additionally, consideration should be given to whether spouses or family members of serving officials should be eligible for appointment
2 (b)		Any additional members should be appointed by the GG in consultation with the PM and Opposition Leader. Other knowledge and expertise that would benefit to the Commission would be Media , PR, public education, private industry, IT and management of systems.
3	<i>Tenure of Commissioners</i>	Appointments should be staggered and should not fall on election years
5	<i>Appointment of Chairperson</i>	This is a very critical role and should be done by consensus of the Commission or with some independent or bi-partisan source instead of the Prime Minister's discretion
7 (2)	<i>Vacancy in the membership of the Commission</i>	The removal of a commissioner for "misbehavior" should always require the investigation by the tribunal (as presented below). The other commissioners should also play a role in the assessment/ investigation. Leaving this decision solely in the hands of the PM could subvert the effectiveness and functionality of the Commission.
7(4) (a&b)		This should include a third independent member to be appointed by the other members of the Commission. In TCI they have a three person Tribunal and it includes an independent person. All of these should be appointed by the Governor General.
GENERAL COMMENTS		
1	Penalties for Commissioners	To ensure the continued integrity of the Commissioners themselves penalties in the form of imprisonment and/or fines should be defined for members of the Commission who breach aforementioned code of conduct or corrupt acts. OR it should be made explicitly clear that Commissioners are subject to the same penalties as other public servants/officers/officials
2	Independence and strength of the Judiciary	The success of the Integrity Commission is wholly dependent on the efficiency and independence of the judiciary. Strides for judicial reform and improvements should be made concurrently with the implementation of the Commission to ensure success.