



The Integrity Commission of Jamaica

Anti-Corruption and Good Governance Sensitization Workshop Series

**Specially Developed by the Integrity
Commission for the Cabinet of the Government
of Jamaica**

Good Governance and Anti-Corruption Workshop

Prosecuting Allegations of Corruption

Keisha Prince
Director of Corruption Prosecution

List of Workshop Modules

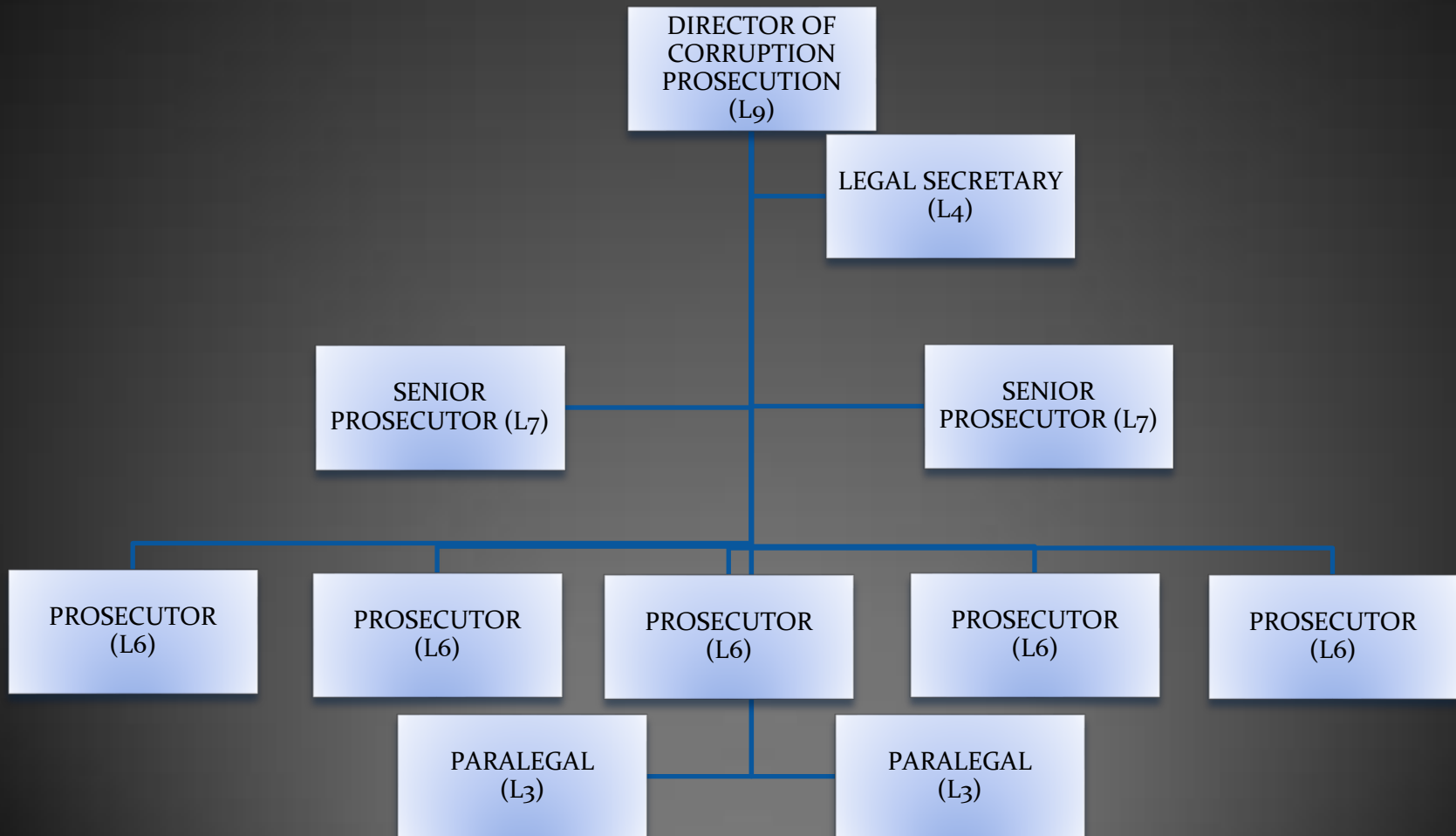
- Overview of Jamaica's Anti-Corruption Framework
- The Problem of Corruption
- Principles of Good Governance and Integrity in Public Life
- Public Procurement Overview
- Other Critical Areas Involving the Integrity Commission's Oversight
- IC Process - Filing of Statutory Declarations
- IC Process - Protected Disclosures Act - Whistleblowing
- IC Process - Reporting Allegations of Corruption
- IC Process - Investigating Allegations of Corruption
- **IC Process - Prosecuting Allegations of Corruption**
- IC Process - Overview of Corruption Offences in Jamaica
- International Best Practices in Anti-Corruption and Anti-Bribery

PROSECUTING ALLEGATIONS OF CORRUPTION

Objectives

- Introduction to the Corruption Prosecution Division and its Mandate
- Corruption Offences Defined
- Prosecutorial Codes
- The Decision to Prosecute & The Two Stage Test
- Referrals to the Corruption Prosecution Division

The Corruption Prosecution Division



The Corruption Prosecution Division

- The Corruption Prosecution Division is established under section 30(1)(c) of the Integrity Commission Act, 2017 as one of three named operational Divisions.
- The functions of the Director of Corruption Prosecution are detailed under section 34(1) which stipulates that:
- The Director of Corruption Prosecution shall-
 - (a) subject to the powers conferred on the Director of Public Prosecutions by section 94 of the Constitution of Jamaica, institute, undertake and have conduct of prosecutions in respect of acts of corruption and offences committed under this Act;

The Corruption Prosecution Division

Section 34(1)-

- (b) Provide legal advice to the Commission on matters concerning acts of corruption and offences under the Act;
- (c) Collaborate with the Asset Recovery Agency established under the Proceeds of Crime Act in relation to the conduct of proceedings with respect to the seizure, restraint, forfeiture or recovery of any property relating to acts of corruption;

The Corruption Prosecution Division

Section 34(1)-

- (d) submit to the Executive Director, quarterly reports on the activities of the Division; and
- (e) perform such other prosecutorial functions relating to acts of corruption as may, from time to time, be assigned to him by this Act or any other enactment

The Corruption Prosecution Division

Section 34-

- (2) The Director of Corruption Prosecution shall conduct all criminal proceedings, in relation to this Act or any other enactment, in accordance with any prosecutorial code of practice that may be implemented by the Director of Public Prosecutions from time to time.
- (3) For the avoidance of doubt, except as provided in subsection 1(a), the Director of Corruption Prosecution shall not be subject to the direction or control of any person or body in relation to the conduct of his prosecutorial functions under this Act or any other enactment.

The Corruption Prosecution Division

Section 34-

- (4) Without prejudice to the provisions of subsection (1)(a), the Director of Corruption Prosecution may, acting on his own volition or upon the request of the Commission, request an opinion from the Director of Public Prosecution as to whether or not to initiate criminal proceedings in respect of any matter that has been referred to him under this Act or any other enactment or on a point of law.
- (5) Where a difference of opinion exists between the Director of Corruption Prosecution and the Director of Public Prosecutions in relation to a matter referred to the Director of Public Prosecutions pursuant to subsection (4), the opinion of the Director of Public Prosecutions shall prevail and be binding.

Corruption Offences

- Section 2 of the Integrity Commission Act defines an “act of corruption” as –
 - (a) an offence under the Corruption (Prevention) Act; or
 - (b) an offence relating to the conduct of any person that constitutes an abuse or a misuse of his office (whether or not within the public sector) for the purpose of conferring a benefit or an advantage to himself or another person, being an offence arising under the common law or any enactment

Prosecutorial Codes

- In keeping with the requirements under section 34(2) of the Integrity Commission Act, the Director of Corruption Prosecution, and all prosecutors within that Division, are guided in the conduct of their professional responsibilities by the *Prosecutor's Manual for Jamaica* issued by the Office of the Director of Public Prosecutions, within which is subsumed *The Decision to Prosecute: A Jamaican Protocol*.

Prosecutorial Codes

The *Prosecutor's Manual for Jamaica* references the following core tenets for Prosecutors:

- **Integrity:**

All Prosecutors are expected to demonstrate the highest level of professional conduct and personal integrity in the performance of their duties;

Prosecutorial Codes

- **Impartiality:**

Prosecutors have a duty to see that justice is done and must not knowingly use perjured testimony or false evidence, or participate in the creation or use of evidence which they know to be false, or make a false statement of law or fact to a Judge, Court or other tribunal or Court official; and

Prosecutorial Codes

- **Dignity:**

Prosecutors are expected to be courteous, prompt, sensitive and to give professional service to the public and external partners and in their official capacities reflect positively on their office and on the wider public service.

The Decision to Prosecute

- In contemplation of a decision with regard to whether or not to recommend a criminal charge and subsequent prosecution in any matter under consideration, a Prosecutor, as guided by the referenced Code of Conduct, must be fair, independent and objective. Recognized prosecutorial criteria must be applied at each stage of the decision making process. Such a decision must not be influenced by personal feelings, biases, possible political advantage or disadvantage, or undue pressure from any source.

The Two Stage Test

- **The Evidential Stage:**

When considering the institution or continuation of criminal proceedings the first question to be determined by a Prosecutor is the sufficiency of evidence. A prosecution should not be commenced or continued unless there is admissible, substantial and reliable evidence that a criminal offence in accordance with the law has been committed by an identifiable person. The proper test is whether there is a reasonable prospect of a conviction should proceedings be instituted. The decision requires an evaluation of how strong the case is likely to be when presented at trial, thus enabling a Jury, properly directed in accordance with the law, Parish Judge or Judge of the Supreme Court, to be satisfied beyond reasonable doubt that the suspect who is prosecuted has committed the offence charged.

The Two Stage Test

- **The Public Interest Stage:**

When the Prosecutor is satisfied that the evidential criteria are met, a prosecution will usually take place unless the Prosecutor concludes that there are public interest factors tending against prosecution which outweigh those tending in favour of a prosecution. The more serious the offence or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest. It may also be appropriate from time to time to reflect broader government policy directives and prosecute cases of certain offences regardless of public interest factors.

Each case must be considered on its own facts and on its own merits.

Referrals to the Corruption Prosecution Division

- Under section 32(1)(d) of the Integrity Commission Act, the Director of Information and Complaints shall refer to the appropriate Director, in addition to any other matter which he considers appropriate for action, any complaint or information or notification received under paragraph (c) i.e.-
- To 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.

Referrals to the Corruption Prosecution Division

- Under section 54(1) of the Integrity Commission Act, the Director of Investigation shall prepare and submit to the Commission, through the Executive Director, a report of findings and recommendations.
- Section 54(3) further provides that -
 - Where upon completion of an investigation, the Director of Investigation is satisfied that there are reasonable grounds for suspecting that:
 - (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 as may be deemed appropriate

Referrals to the Corruption Prosecution Division

- Section 54(4) details, in addition, that:
 - 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 the matters referred to in the report



Thank You