



Investigation Report into concerns that, Mr. Charlton McFarlane, an employee of Registrar General's Department (RGD), failed to file his Statutory Declarations with the Integrity Commission for the years, 2019, 2020, 2021 and 2022, in breaches of the Integrity Commission Act.

**INTEGRITY COMMISSION
September 2023**



This Publication until tabled in Parliament shall be confidential.

Section 55 and 56 of the Integrity Commission Act states:

"(4) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Commission under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(5) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

56.—(1) Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, Statutory Declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the Perjury Act, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to her in the execution of any of the provisions of this Act to any person—

(a) other than a person to whom he is authorized under this Act to communicate it; or

(b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

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Chapter 1 – Summary of Investigation and Findings

- 1.1 This investigation report by the Director of Investigation (DI) is in relation to concerns that **Mr. Charlton McFarlane**, an employee of the Registrar General's Department (hereinafter the RGD), failed without reasonable cause to file Statutory Declarations with the Integrity Commission (hereinafter the Commission), for the years 2019, 2020, 2021 and 2022.
- 1.2 It was found that Mr. Charlton McFarlane, was required to file the referenced Statutory Declarations with the Commission at the material time and having failed to do so, contravened Section 43 of the Integrity Commission Act (hereinafter the **ICA**).



Chapter 2 – Background

2.1 Why was this investigation conducted?

2.1.1 This investigation was commenced based on a referral by the Director of Information and Complaints (DoIC), on behalf of the Commissioners, Integrity Commission. The referral indicated that Mr. Charlton McFarlane, is in breach of the **ICA**, by virtue of his failure to file his Statutory Declarations with the Commission for the years 2019, 2020, 2021 and 2022.

2.2 Jurisdiction and decision to investigate

2.2.1 Section 33 of the **ICA** empowers the DI to investigate non-compliance with the said Act by public officials. Consistent with the foregoing provision, the DI determined that an investigation was warranted based on the nature of the alleged conduct.

2.3 The Investigation

2.3.1 During the course of the investigation, officers of the Investigation Division pursued the following lines of enquiry/actions:

a) obtained information and witness statements from the responsible officers at:

(i) Information and Complaints Division of the Integrity Commission; and

(ii) Registrar General's Department (RGD);



(iii) Tax Administration Jamaica (TAJ);

b) reviewed the information and statements collected and prepared the case file and report.

2.4 Who is the concerned public official pertinent to this Investigation?

2.4.1 Mr. Charlton McFarlane, Chief Executive Officer and Deputy Keeper of the Records of RGD is the concerned public official.



Chapter 3 – Terms of Reference

- 3.1 The DI sought to establish the following in respect of the declarant, Mr. McFarlane, whether:
- a) He had a legal obligation to file Statutory Declarations with the Commission for the years 2019, 2020, 2021 and 2022 and, if so, whether that obligation was discharged;
 - b) His non-compliance constitutes an offence under the ICA; and
 - c) Recommendations ought to be made to the Director of Corruption Prosecution.



Chapter 4 – The Law, Evidence and Discussion of Findings

4.1 The Obligation to file Statutory Declarations

4.1.1 Section 2 of the ICA:

Section 2 of the **ICA** defines a public official as, *inter alia*, any person who is employed to a public body. A Public body, among other things, refers to a Ministry, Department or an agency of Government.

4.1.2 Under **Sections 39 of the ICA**, a public official has a legal obligation to file Statutory Declarations. See at appendix 1.

4.1.3 The referenced obligation can be established by proving that Mr. McFarlane: (1) is a public official; (2) is employed to a public body; and (3) is in receipt of the qualifying emoluments or occupies a post published in the Gazette by the Commission requiring the occupant(s) thereof to file statutory Declarations.

4.1.4 The investigation covered the periods 2019, 2020, 2021 and 2022. A witness statement obtained from the duly authorized officer at the RGD indicates that Mr. McFarlane, was employed to that entity, in the capacity of Chief Executive Officer and Deputy Keeper of the Records during the relevant filing periods, earning emoluments in excess of the Three Million Five Hundred Thousand Dollars (\$3,500,000) threshold. The Registrar General's Department (RGD) is a public body; employees of the RGD are therefore public officials within the meaning of the ICA.



4.2 Discharge of obligation

4.2.1 Under **Section 43(1)(a) of the ICA**, a person who fails to file a Statutory Declaration by the due date with the Commission without reasonable cause, commits an offence

4.2.2 **Sections 41 of the ICA** provides as follows:

"(4) A statutory declaration required to be made as at a particular date shall be submitted to the Director of Information and Complaints on or before the last day of the third calendar month following that date.

(6) Where a person who is required to do so, fails to file a declaration within the time specified under subsection (4), the Commission may issue a notice, in writing, to the person requiring the person to file the declaration, within thirty days from the date of the notice.

(7) A person who fails to file a declaration within the time specified under subsection (6) commits an offence and is liable on summary conviction in a Parish Court, in addition to any penalty imposed under section 43(1), to a further fine of twenty thousand dollars for each month during which such offence continues after the end of the thirty-day period referred to in subsection (6)."



- 4.2.3 Having established Mr. McFarlane obligation to file Statutory Declarations with the Commission, it is further necessary to determine whether said obligation was discharged.
- 4.2.4 The evidence provided by the Declarations Manager at the Information and Complaints Division, Integrity Commission, indicates that Mr. McFarlane failed to file the required Statutory Declarations with the Commission for the years in question.
- 4.2.5 The evidence further indicates that On March 7, 2023, a notice, pursuant to **Section 41(6) of the ICA** dated, February 24, 2023 was served on Mr. McFarlane which required him to file the outstanding Statutory Declarations for the year 2019, 2020, 2021 and 2022, within thirty (30) days of receiving said notice. Upon the expiration of this deadline, Mr. McFarlane's Statutory Declaration remains outstanding.

4.3 Discharge of Liability

Section 43(3) of the ICA provides as follows:

- 4.3.1 **“(3) The Director of Information and Complaints may, with the approval of the Director of Corruption Prosecution, serve upon to a person referred to in subsection (1)(a) (failure without reasonable cause to submit a statutory declaration) or subsection (1) (b), (failure without reasonable cause to provide information) who appears to the Director of Corruption Prosecution to have committed an offence under that subsection, a notice in writing in the prescribed form**



offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty in the amount of two hundred and fifty thousand dollars and by submitting the statutory declaration or required information to the Director of Information and Complaints."

- 4.3.2 Consistent with the foregoing provision, the Director of Information and Complaints sought the approval of the Director of Corruption Prosecution for Mr. McFarlane to be given the opportunity to discharge liability pursuant to **Section 43(3) of the ICA**. Approval was granted by the Director of Corruption Prosecution on June 6, 2023.
- 4.3.3 A Notice to discharge liability was served on Mr. McFarlane on June 9, 2023, wherein he was given thirty calendar days to pay the fixed penalty to the Tax Administration of Jamaica, and submit the outstanding Statutory Declaration to the Commission. Checks made with the Information and Complaints Division revealed that, to date, Mr. McFarlane's has failed to comply with the referenced notice, in any respect.
- 4.3.4 Further, and as it relates to the foregoing, the DI is in possession of a Certificate of Non-payment of Fixed Penalty from Tax Administration Jamaica, which was submitted to the Commission on July 10, 2023. The referenced Certificate confirms that Mr. McFarlane did not pay the fixed penalty specified in the Commission's Section 43(3) Notice.



4.4 Is the Failure to file a Statutory Declaration an Offence under the ICA?

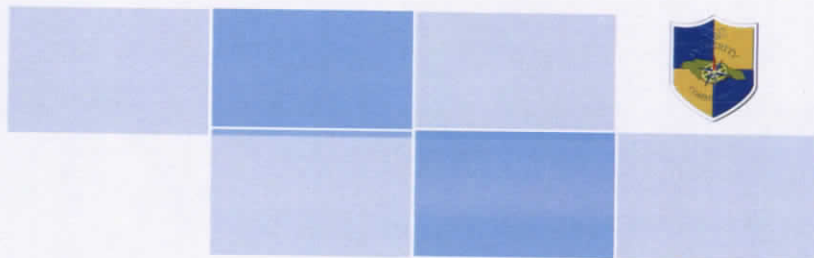
4.4.1 As indicated above, the failure of a declarant, without reasonable cause to submit a Statutory Declaration to the Integrity Commission by the due date is an offence under **Section 43 (1)(a) of the ICA.**

4.5 Discussion of Findings

4.5.1 During the investigation into the allegations against Mr. McFarlane, all reasonable lines of enquiry were explored, evidential material was gathered and the statements of witnesses deemed necessary were collected/recorded.

4.5.2 The overarching objective of the Commission's investigation was to determine whether there is merit in the allegation that Mr. McFarlane failed to file the referenced Statutory Declaration as required under the **ICA.**

4.5.3 For an offence to be committed under section **43(1)(a) ICA,** it must be proved that: (1) the officer concerned is required to file Statutory Declarations under the ICA; (2) the obligation to file was not discharged; and (3) no reasonable cause was advanced, justifying the concerned officer's failure to comply with the requirement to file.



4.5.4 In arriving at a position in the instant matter, the DI directed his mind to the following findings of fact:

- (a) Mr. McFarlane had a legal obligation, at the material time, to file Statutory Declarations with the Commission, having failed to discharge said obligation, he was notified by the Commission and given time to comply. When the time for compliance elapsed, it was found he did not comply; and
- (b) Mr. McFarlane was given a further opportunity to discharge his liability, by way of paying a fixed penalty to the Tax Administration of Jamaica as well as to submit the outstanding Statutory Declaration to the Commission, again, without success.

Based on the foregoing, the DI finds in all of the circumstances of this case, that a referral to the Director of Corruption Prosecution is justifiable.



Chapter 5 – Conclusions and Recommendations

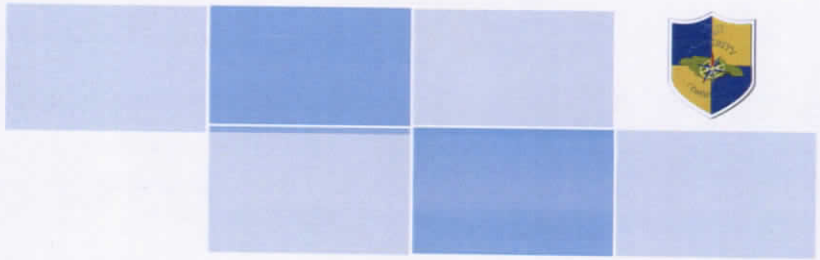
5.1 This chapter sets out the conclusions and the recommendations of the DI.

5.2 Conclusions

5.2.1 The DI concludes that Mr. McFarlane was, by virtue of being a public official and in receipt of emoluments in excess of Three Million Five Hundred Thousand Dollars (3,500,000), legally obligated to file Statutory Declaration with the Commission for the years 2019 to 2022.

5.2.2 The DI concludes that Mr. McFarlane failed to submit the requisite Statutory Declarations to the Commission and that he provided no reasonable cause for his failure to do so.

5.2.3 The DI concludes that Mr. McFarlane's failure to file the referenced Statutory Declarations with the Commission contravenes **Section 43(1)(a) of the ICA**. The DI further concludes that Mr. McFarlane was given every opportunity to comply in the first instance and having not complied, he was given the option of discharge his liability by way of paying a fixed penalty and to submit the outstanding statutory declarations to the Commission, neither of which was utilized by him.



5.3 Recommendations

5.3.1 The Director of Investigation recommends that this report be referred to the Director of Corruption Prosecution for consideration.

Kevon A. Stephenson, J.P.
Director of Investigation

September 26, 2023
Date



APPENDICES



Appendix 1: Sections 2(1), 39(1), 41(2)(b), 43(1)(a), 43(3) of the Integrity Commission Act

Section 2 (1) of the Corruption Prevention Act:

"public official" means any person

(b) any person who is employed to a public body; and

Section 39(1) of the ICA:

"39(1) Subject to the provisions of this Act, every person who, on or after the appointed day, is a parliamentarian or public official, shall submit to the Director of Information and Complaints, a statutory declaration of his assets and liabilities and his income in the form set out in the Third Schedule."

Section 41(2)(b) of the Corruption Prevention Act:

"The Commission, acting upon the recommendation of the Director of the Director of Information and Complaints, may

(b) By notice published in the Gazette, requires such categories of public officials as are specified in the notice, to submit a statutory declaration within the period so specified."



Section 43(1)(a) of the Integrity Commission Act:

"(1) Any person who-

(a) fails, without reasonable cause, to furnish to the Commission a statutory declaration which he is required to furnish in accordance with the provisions of this Act;

commits an offence, and shall on summary conviction in a Resident Magistrate's Court be liable to a fine not exceeding two hundred thousand dollars, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment."

Section 43(3) of the Integrity Commission Act:

"(3) The Director of Information and Complaints may, with the approval of the Director of Corruption Prosecution, serve upon to a person referred to in subsection (1)(a) (failure without reasonable cause to submit a statutory declaration) or subsection (1) (b), (failure without reasonable cause to provide information) who appears to the Director of Corruption Prosecution to have committed an offence under that subsection, a notice in writing in the prescribed form offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty in the amount of two hundred and fifty thousand dollars and by submitting the statutory declaration or required information to the Director of Information and Complaints."