

ANSWERS TO QUESTIONNAIRE

**ON THE PROVISIONS OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION SELECTED IN THE
SECOND ROUND AND FOR FOLLOW-UP ON THE
RECOMMENDATIONS FORMULATED IN THE FIRST ROUND.**

GRENADA

28TH May, 2008

ANSWERS TO QUESTIONNAIRE
**ON THE PROVISIONS OF THE INTER-AMERICAN CONVENTION AGAINST
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SECTION I

**QUESTIONS ON IMPLEMENTATION OF THE CONVENTION PROVISIONS
SELECTED FOR REVIEW IN THE SECOND ROUND**

CHAPTER ONE

**SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND
SERVICES (ARTICLE III (5) OF THE CONVENTION)**

1. Government Hiring Systems

There are Laws and measures in Grenada governing the hiring of persons to the Public Service. Those Laws and measures are contained in the Public Service Commission's Rules and Regulations.

The system of hiring to the Public Service ensures openness, equity and efficiency as reflected in the various provisions. Sections 13-17 of the Regulation state:

13. In order to discharge its duties the commission shall supervise the selection of persons for admission to public offices, for the grant of study leave and for the award of scholarships for training for public offices.

14. In order to discharge its duties the Commission shall exercise supervision over and approve all schemes for appointment to any Public Office by examination, for award of scholarships for special training for public offices, and all other methods of recruitment including the appointment and the procedure of Boards for the selection of candidate.

15. (1) The Commission may, from time to time, appoint one or more Selection Boards to assist in the selection of candidates for appointment to public offices and the composition of any such Board and the form in which its reports are to be submitted shall be in the discretion of the Commission.

(2) On consideration of any report of a Selection Board, the commission may, in its discretion, summon for interview any of the candidates recommended by such Board.

16. (1) As soon as it is known that a vacancy will occur in a Public office the Permanent secretary or Head of Department shall communicate

thereon to the chief Personnel Officer in writing and shall make his recommendation regarding the filling of the vacancy.

(2) The Chief Personnel Officer may send from time to time, to the Permanent secretary of Head of Department a statement of existing vacancies in his Ministry or Department (as the case may require) requesting early recommendations for appointing a person to hold the office.

17. (1) Where the commission considers that there is no suitable public officer for the appointment to a vacant office or that having regard to the duties or that having regard to the duties of that office or of the qualification, experience and merit of officers already in the public service. It would be advantageous and in the best interest of the public service that the services of a person not already in that service be acquired. The Commission may authorize the advertisement of such vacancy by publication in the Gazette or in such other manner as the commission may direct.

(2) Without prejudice to the provisions of the proceeding paragraph, the Chief Personnel Officer may from time to time, by circular memorandum give notice of vacancies which exist in public offices.

(3) Any public office may make application for appointment to any vacant office including a vacant office advertised pursuant to paragraph 1 of this regulation, but the failure to apply for any such vacancy shall not prejudice the consideration of the claims of all eligible officers. Applications by public officers for appointment to a vacant office shall be forwarded to the Chief Personnel Officer through the appropriate Permanent Secretary or head of Department.

Section 20 also states:

20. (1) The Chief Personnel Officer, shall keep up-to-date seniority lists of all officers holding offices in the several grades prescribed from time to time.

(2) The Permanent secretary or Head of Department shall keep in the prescribed form, up to date seniority lists of all officers holding office in the several grades in his Ministry or Department for the purpose of making recommendations for promotions and acting appointments.

(3) The seniority of officers shall, subject to the next following regulation, be determined as follows :-

(a) as between officers of the same grade-

- (i) *by reference to the dates on which they respectively entered the grade:*
- (ii) *if any officers entered that grade on the same day by reference to their seniority on the day immediately preceding that day:*
- (iii) *if any officers who entered the same grade on the same day did so by appointment and not by promotion (excluding promotion from the a non-pensionable to a pensionable grade), their seniority relative to each other shall be determinable by reference to their respective ages:*

(b) as between officer or different grades on the same salary scale or the same flat rate of salary. By reference to the dates on which they respectively entered their grades:

(c) as between officers of different grades on different salary scales, be reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale being regarded for this purpose as a salary sale with the minimum point equivalent to the flat rate: Provided that when assessing the seniority of a pensionable public officer, service by himself or any other person in a non-pensionable capacity shall not be taken into account:

(4) Where officers have been appointed to public offices by competitive examination and are appointed to the same grade at the same salary with effect from the same date. The relative seniority of such offices shall be determined according to their respective performance in such examinations.

Section 23 (1) and (2) further states:-

(1) The Permanent secretary or Head of Department shall submit, well in advance, recommendations for acting appointments so as to permit or their consideration by the Commission before the date on which the acting appointment is to become effective. But the Commission may relax the provisions of this regulation in cases or illness or in exceptional circumstances.

(2) In submitting recommendations for acting appointments, Permanent secretaries and Heads of Departments shall state the reasons why officers, if any are being passed over.

2. Government Systems for Procurement of Goods and Services.

There are laws and measures in Grenada governing the procurement of goods and services. The Laws are to be found in the Public Procurement and Contract Administration Act.

Sections 30 and 31 establish the method of procurement of goods and services.

Section 30 stipulates :

30. (1) Public procurements shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, subject only to the exceptions provided in sections 31,32,33 and 44.

(2) If the procuring department uses a method of procurement other than advertised open bidding or, in the case of procurement of consultant services, a method other than request for proposals, it shall note in the record of the procedure proceedings the grounds for the choice of the procurement method.

Section 31 stipulates :

31. (1) The open bid proceedings may include a prequalification stage or apply a post qualification procedure prior to the award of contract.

(2) The open bid may be carried out in a single stage or in two-stages, but use of the two-stage method is appropriate in the circumstances outlined in subsection (3); all other methods to be selected as the circumstances require from this Part.

(3) An open bid may be held in two stages in the following cases:-

- (a) when it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and**
- (b) when, because of the complex nature of the goods, works or services to be procured, the procuring department wishes to consider various technical or contractual solutions, and to discuss with bidders about the relative merits of those variants before deciding on the final technical or contractual specifications.**

Section 50(1) stipulates:

50. (1) The contract shall be awarded to the bidder having submitted the lowest evaluated and substantially responsive bid which meets only those evaluation criteria as specified in the bidding documents.

Section 53 (1) stipulates:

53. (1) For the purposes of procuring the services of a consultant, the procuring department shall prepare a shortlist of 3 to 6 consulting firms, to the greatest extent feasible, comprising consultants of the same category, and

similar capacity and business objectives, to which it shall provide the request for proposal for services; and the short-list shall be established from among those who have capacity to perform the required services, as demonstrated in their submissions.

Section 53 (2) stipulates :-

53. (2) When the estimated value of the procurement exceeds the prescribed threshold, in order to establish the short-list, the procuring department shall seek expressions of interest by publishing a notice in the Gazette, and where appropriate, the notice may also be published in a relevant trade publication of technical or professional journal.

Section 54 (1) stipulates:

- 54. (1) The selection of the successful proposal shall be based either –*
- (a) on the technical quality of the proposal, the consultant's relevant experience and expertise of its staff, and the proposed work methodology, as well as the price of the proposal; alternatively,*
 - (b) on the quality of the technical proposal submitted within a predetermined fixed budget; or*
 - (c) on the basis of the best financial proposal submitted by the candidates, having obtained an acceptable technical score pre-disclosed in request for proposals.*

The act also provides a mechanism for challenging the selection of a contractor whenever one is dissatisfied with the outcome.

Section 58 establishes the complaints procedure and allows for under section 58(1):

58. (1) A potential or actual bidder who claims to have suffered, or that is likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by this Act, may seek review in accordance with this Part, at any stage of the procurement proceedings.

Where an applicant is dissatisfied with the process that lead to the award of a contract, he may apply under Section 60(1) which allows:

60. (1) A person who aggrieved by a decision of the Board made pursuant to Section 58, may make an application to the Minister in the prescribed manner for review of that decision.

CHAPTER TWO

SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO, IN GOOD FAITH, REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

There are no specific laws and or measures in place for protecting Public Servants and private citizens who in good faith report acts of corruption including the protection of their identities. However the criminal laws of Grenada do recognize that if a report of a criminal nature is made by anyone including private citizens or Public Officer and is investigated by the Police and such investigation led to an arrest or prosecution is made, the Public Officer or private citizen who made the report is deemed to be a crown witness and as such any attempt to interfere with such witness would amount to a criminal offence.

The normal mechanism for reporting acts of corruption is to go to the Police who in turn would have the matter investigated through the collection of statements and other evidence that can assist in having the matter prosecuted.

In relation of Public Officers reports may also be made to the Public Service Commission which in turn may have to matter dealt with as a disciplinary matter or have it referred to the Police.

Section 82(1) of the Grenada Constitution, creates the Office of the Director of Audit whose office is independent and protected under the Constitution. The Director of Audit is responsible for reporting on the public accounts of Grenada, the accounts of all officers and all authorities of the Government of Grenada, the accounts of all Courts in Grenada (including any accounts of the Court of Appeal or the High Court maintained in Grenada) the accounts of every Commission established by this Constitution and the accounts of the Clerk to the Senate and the Clerk to the House of Representatives.

The director of Audit is authorized to have access to all books, records, returns, reports and other documents, which in any his opinion relate to any of the public accounts of Grenada. The Director of Audit submits reports through the Minister of Finance to the House of Representatives.

This allows for transparency in the use of public resources by the executive and administrative arms of Government.

CHAPTER THREE

ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)

1. Criminalization of acts of corruption provided for in Article VI (1) of the Convention

Grenada does criminalize acts of corruption as provided for in Article VI(1) of the Convention. These laws and measures are to be found primarily in the Criminal Code and the Public Service Commission Rules and Regulation.

Section 274 of the Criminal code stipulates:

274. (1) Whoever is convicted of stealing, in any case in which some other punishment is not provided in this Title, shall be liable to imprisonment for five years.

(2) Whoever is convicted of being a common thief shall be liable to imprisonment for ten years.

Section 275 of the Criminal Code stipulates

275. (1) Whoever is convicted -

- (a) of stealing anything of which he had the custody, control or possession, or to which he had the means of access, by reason of any office, employment or service;*
- (b) of stealing from or in any dwelling house, shop, garage, manufactory, warehouse, or vessel;*
- (c) of stealing from or in any place of worship;*
- (d) of stealing from the person;*
- (e) of stealing any cattle, not being goat or swine, the value of which cattle does not exceed two hundred dollars; or*
- (f) of stealing any pole, wire or apparatus used for the purposes of any telegraph or telephone,*

shall be liable to imprisonment for seven years.

Section 275A of the Criminal Code stipulates :

275A. (1) Whoever being a clerk, officer or servant, or a person employed or acting in the capacity of a clerk, officer or servant, willfully and with intent to defraud-

(a) removes, conceals, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security, valuable security or account which belongs to or is in the possession of his employers, or has been received by him for and on account of his employer; or

(b) makes, or concurs in making any false entry in, or omits or alters or concurs in omitting or altering any material particular from or in any book, document or account which belongs to or is in the possession of his employer, shall be liable to imprisonment for seven years.

(2) Whoever being an officer of a partnership, company or corporation willfully, and with intent to defraud, publishes any account, statement or prospectus relating to the affairs of the partnership, company or corporation which he knows to be false in any material particular, Shall be liable to imprisonment for seven years.

Section 276 of the criminal code stipulates :

276. (1) Whoever commits robbery shall be liable to imprisonment for ten years.

(2) Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for fifteen years, and, in the discretion of the Court, to flogging.

Section 277 of the Criminal Code stipulates :

277. (1) Whoever extorts any property from any person by means of threats shall be liable to imprisonment for five years.

(2) Whoever, for purposes of extortion, accuses or threatens to accuse or threatens to accuse any other person of an infamous offence, shall be liable to imprisonment for fifteen years.

Section 278 of the Criminal Code stipulates :

278. Whoever is convicted of fraudulent breach of trust shall be liable to imprisonment for five years.

Section 279 of the Criminal Code stipulates :

279. Whoever defrauds any person by any false pretence shall be liable to imprisonment for five years.

Section 281 of the Criminal Code stipulates :

281. Whoever, being a clerk, servant or public officer, and whoever, being an officer of any partnership, company or corporation, does any of the acts hereinafter mentioned, with intent to cause or enable any person to be

defrauded, or with intent to commit or to facilitate the commission, by himself or by any other person, of any crime, that is to say -

(a) conceals, injures, alters or falsifies any book, paper or account kept by or belonging or entrusted to his employers or to the partnership, company or corporation, or entrusted to him, or to which he has access, as such clerk, servant or officer, or omits to make a full and true entry in any account of any thing which he is bound to enter therein; or

(b) publishes any account, statement or prospectus relating to the affairs of the partnership, company or corporation, which he knows to be false in any material particular,

shall be liable to imprisonment for seven years.

Section 283 of the Criminal Code stipulates :

283. Whoever, in order to induce any person to become a purchaser or mortgagee of any land or interest in land, fraudulently conceals any document which is material to the title to such land or interest, shall be liable to imprisonment for two years

Section 287 of the Criminal Code stipulates :

287. (1) Whoever dishonestly receives any property which he knows to have been obtained or appropriated by any offence punishable under this Title shall, if the offence was a felony, be guilty of felony, or shall, if the offence was a misdemeanor, be liable to the same punishment as if he had committed the offence.

(2) Whoever is convicted of being a common receiver shall be liable to imprisonment for fourteen years.

Section 300 of the Criminal Code stipulates :

300. Whoever -

(a) with the intent to defraud, or with intent to defeat, obstruct, or pervert the course of justice, forges any document of any of the following kinds, namely, any will, any document of title to land, any judicial record, any power of attorney, any bank note, bill of exchange, promissory note, or other negotiable instrument, any policy or insurance, or other cheque or other authority for the payment of money by a person carrying on business as a banker;

(b) With intent to defraud any person to the amount or ninety-six dollars of upwards, forges any document whatever; or

(c) *is convicted of being a common forger,*

shall be liable to imprisonment for fifteen years.

Section 301 of the Criminal Code stipulates :

301. Whoever -

(a) *forges any stamp, whether impressed or adhesive, used for the purposes of revenue by the government of Grenada, or by the Government of the United Kingdom, or of any Possession or Colony of Her Majesty, or by any foreign Prince of state;*

(b) *without lawful excuse (the proof shall lie on him) makes or has knowingly in his possession any die instrument capable of making the impression of any such stamp;*

(c) *fraudulently cuts, tears, or in any way removes from any material any stamp used for purposes of revenue by the Government of Grenada with intent that any use should be made of the stamp or of any part thereof;*

(d) *fraudulently mutilates any such stamp as last aforesaid with intent that any use should be made of any part of it;*

(e) *fraudulently fixes or places upon any material, or upon any such stamp as last aforesaid, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any way removed from any other material or out of or from any other stamp;*

(f) *fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date, or other matter or thing whatsoever written thereon, with the intent that any use should be made of the stamp; or*

(g) *knowingly and without lawful excuse (the proof whereof shall lie upon him) has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise either really or apparently removed,*

shall be liable to imprisonment for seven years.

Section 302 of the Criminal Code stipulates :

302. Whoever with intent to defraud, or with intent to defeat, obstruct or prevent the course of justice or the due execution of the law, forges any judicial or official document shall be liable to imprisonment for ten years.

Section 303 of Criminal Code stipulates :

303. *Whoever with intent to defraud any person to the amount or value of twenty-four dollars or upwards forges any document whatsoever shall be liable to imprisonment for five years.*

Section 304 of Criminal Code stipulates :

304. *Whoever forges any document whatsoever, with intent to defraud or injure any person, or with intent to defeat, obstruct, or pervert the course of justice or the due execution of the law, or with intent to evade the requirements of the law or with intent to commit, or to facilitate the commission of any crime, shall be liable to imprisonment for two years.*

Section 305 of Criminal Code stipulates :

305. (1) *Whoever forges or willfully and without due authority alters a telegram, or utters a telegram knowing the same to be forged or willfully and without due authority altered, or who transmits by telegraph as a telegram, or utters as a telegram, any messages or communication which he knows to be not a telegram, shall, whether he had or had not an intent to defraud, be liable to imprisonment for one year.*

(2) *For the purposes of this section the expression “telegram” means a written or printed message or communication sent to or delivered at the office of a telegraph company, for transmission by telegraph, or delivered by a telegraph company as a message or communication transmitted by telegraph, and the expression “telegraph company” means any company, corporation, or persons carrying on the business of sending telegrams for the public under whatever authority or in whatever manner such company or corporation or persons may act or be constituted.*

The Public Service Regulations also provides for disciplinary action where a criminal offence is deemed to have been committed by a Public Officer.

The Regulations stipulate :

76. (1) *The Commission shall deal with disciplinary proceedings against officers in the light of reports from Permanent Secretaries and Heads of Departments, or otherwise.*

(2) *Subject to paragraph (3) of this regulation, where the Commission is of the opinion that disciplinary proceedings ought to be instituted against an officer, the commission may institute such proceedings.*

(3) Where an offence against any law appears to have been committed by an officer the Commission before acting under paragraph (2) of this regulation shall obtain the advice of the Attorney General as to whether criminal proceedings ought to be instituted against the officer concerned; and if the Attorney General advises that criminal proceedings ought to be so instituted the Commission shall not initiate disciplinary proceedings (if any) before the determination of any criminal proceedings so instituted.

78. Where upon a disciplinary enquiry under this Part an offence against any law appears to have been committed by an officer the person to persons conducting the inquiry shall suspend the inquiry and report the matter to the Commission who, unless criminal proceedings have already been taken against the officer, shall obtain the advice of the Attorney General as to whether criminal proceedings ought to be instituted; and if the Attorney General advises that criminal proceedings ought not to be taken the commission may direct that the inquiry be continued.

79. (1) Where criminal proceedings have been instituted in any Court against an officer, disciplinary proceedings upon any grounds arising out of the criminal charge shall not be taken or continued against him until after the Court has given judgment and the time allowed for an appeal from the judgment has expired; and where an officer after conviction has appealed, proceedings for his dismissal shall not be taken until after the withdrawal or determination of the appeal.

(2) Nothing in this regulation shall prevent the officer being interdicted from duty pursuant to regulation 80 of these Regulations.

SECTION II

FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE NATIONAL REPORT IN THE FIRST REVIEW ROUND

Grenada has enacted the following pieces of legislation in keeping with the recommendations in the first review round:

- Prevention of Corruption Act 2006
- Integrity in Public Life Act 2006
- The Ombudsman Act 2007
- The Procurement Act 2007.

A working committee has been set up to establish the integrity commission to make the Integrity in Public Life Act operational.

A similar committee has been established to select the Ombudsman.

SECTION III

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

(a) State Party: _____

(b) The official to be consulted regarding the responses to the questionnaire is:

() Mr.: Hugh Wildman

Title/position: Legal Advisor to Cabinet of Grenada

Agency/office: Ministry of Legal Affairs

Mailing address: Communal Building, H.A. Blaize Street, St. George's, Grenada.

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Influencing decisions of Commission.

11. (1) No person in the public service shall, otherwise than in the course of his duty, directly or indirectly by himself or by any other person, in any manner whatever influence or attempt to influence any decision of the Commission or of the Chairman or of any member.

(2) Subject to the provisions of this regulation, any public officer including a particular officer who commits a breach of the provisions of paragraph (1) of this regulation shall be guilty of misconduct, and the Commission may institute disciplinary proceedings against him.

(3) Nothing in this regulation shall prohibit a person in the public service from supplying any information or assistance to the Commission upon the request of the Commission.

PART III

APPOINTMENTS, PROMOTIONS AND TRANSFERS

12. In this Part, except where the context otherwise requires, reference to a public office and to a public officer shall, subject to the provisions of the Constitution, be construed as including reference to a particular office and to a particular officer respectively.

Appointments, promotions and transfers.

Supervision of training.

13. In order to perform its functions the Commission shall supervise the selection of persons for admission to public offices, for the grant of study leave and for the award of scholarships for special training for public offices.

Supervision of Recruitment.

14. In order to discharge its duties the Commission shall exercise supervision over and approve all schemes for appointment to any public office by examination, for award of scholarships for special training for public offices, and over all other methods of recruitment including the appointment and the procedure of Boards for the selection of candidates.

Selection Boards.

15. (1) The Commission may, from time to time, appoint one or more Selection Boards to assist in the selection of candidates for appointment to public offices and the composition of any such Board and the form in which its reports are to be submitted shall be in the discretion of the Commission.

(2) On consideration of any report of a Selection Board, the Commission may, in its discretion, summon for interview any of the candidates recommended by such Board.

Recommendations for filling public offices.

16. (1) As soon as it is known that a vacancy will occur in a public office the Permanent Secretary or Head of Department shall communicate thereon to the Chief Personnel Officer in writing and shall make his recommendation regarding the filling of the vacancy.

(2) The Chief Personnel Officer may send, from time to time, to the Permanent Secretary or Head of Department a statement of existing vacancies in his Ministry or Department (as the case may require) requesting early recommendations for appointing a person to hold the office.

17. (1) Where the Commission considers that there is no suitable public officer for the appointment to a vacant office or that having regard to the duties of that office or of the qualifications, experience and merit of officers already in the public service, it would be advantageous and in the best interest of the public service that the services of a person not already in that service be acquired, the Commission may authorise the advertisement of such vacancy by publication in the Gazette or in such other manner as the Commission may direct.

(2) Without prejudice to the provisions of the preceding paragraph, the Chief Personnel Officer may, from time to time, by circular memorandum give notice of vacancies which exist in public offices.

(3) Any public officer may make application for appointment to any vacant office including a vacant office advertised pursuant to paragraph 1 of this regulation, but the failure to apply for any such vacancy shall not prejudice the consideration of the claims of all eligible officers. Applications by public officers for appointment to a vacant office shall be forwarded to the Chief Personnel Officer through the appropriate Permanent Secretary or Head of Department.

18. Where, in the opinion of the Commission it is possible so to do and it is in the best interest of the public service, the Commission may direct that any appointment to a vacant office shall be made from within the public service by competition.

Appointments by competition.

Principles of selection for promotion.

19. (1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with the relative efficiency of such officers, and, in the event of an equality of efficiency of two or more officers, the Commission shall give consideration to the relative seniority of the officers available for promotion to the vacancy.

(2) The Commission, in considering the eligibility of officers under paragraph (1) for an appointment on promotion, shall attach greater weight to—

- (a) seniority, where promotion is to an office that involves work of a routine nature, or
- (b) merit and ability where promotion is to an office that involves work of progressively greater and higher res-

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possibility and initiative than is required for an office specified in sub-paragraph (a).

(3) In the performance of its functions under paragraphs (1) and (2), the Commission shall take into account as respects each officer—

- (a) his fitness;
 - (b) the position of his name on the seniority list;
 - (c) any special qualifications;
 - (d) any special courses of training that he may have undergone (whether at the expense of Government or otherwise);
 - (e) the evaluation of his overall performance as reflected in annual staff reports by any Permanent Secretary, Head of Department or other senior officer under whom the officer worked during his service;
 - (f) any letters of commendation or special reports in respect of any special work done by the officer;
 - (g) the duties of which he has had knowledge;
 - (h) the duties of the office for which he is a candidate;
 - (i) any specific recommendation of the Permanent Secretary or the Head of Department for filling the particular office;
 - (j) any previous employment of his in the public service, or otherwise;
 - (k) any special reports for which the Commission may call;
 - (l) his devotion to duty.
- (4) In addition to the requirements prescribed in paragraphs (1), (2) and (3), the Commission shall consider any specifications that may be required from time to time for appointment to the office in question.

Seniority and seniority lists.

20.—(1) The Chief Personnel Officer shall keep up-to-date seniority lists of all officers holding offices in the several grades prescribed from time to time.

(2) The Permanent Secretary or Head of Department shall keep in the prescribed form up-to-date seniority lists of all officers holding office in the several grades in his Ministry or Department for the purpose of making recommendations for promotions and acting appointments.

(3) The seniority of officers shall, subject to the next following regulation, be determined as follows:—

- (a) as between officers of the same grade—
 - (i) by reference to the dates on which they respectively entered the grade;

(ii) if any officers entered that grade on the same day by reference to their seniority on the day immediately preceding that day;

(iii) if any officers who entered the same grade on the same day did so by appointment and not by promotion (excluding promotion from a non-pensionable to a pensionable grade), their seniority relative to each other shall be determinable by reference to their respective ages;

(b) as between officers of different grades on the same salary scale or the same flat rate of salary, by reference to the dates on which they respectively entered their grades;

(c) as between officers of different grades on different salary scales, by reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate: Provided that when assessing the seniority of a pensionable public officer, service by himself or any other person in a non-pensionable capacity shall not be taken into account;

(4) Where officers have been appointed to public offices by competitive examination and are appointed to the same grade at the same salary with effect from the same date, the relative seniority of such officers shall be determined according to their respective performance in such examinations.

21.—In any case not covered by these Regulations the Commission shall determine the seniority of an officer.

Seniority in cases not provided.

22.—The Commission may recommend payment to an officer of a commencing pay at an incremental point higher than the minimum in the scale attached to the office to which he is to be appointed or promoted.

Commencing pay.

23.—(1) The Permanent Secretary or Head of Department shall submit, well in advance, recommendations for acting appointments so as to permit of their consideration by the Commission before the date on which the acting appointment is to become effective. But the Commission may relax the provisions of this regulation in cases of illness or in exceptional circumstances.

Submission of recommendations for acting appointments.

(2) In submitting recommendations for acting appointments, Permanent Secretaries and Heads of Departments shall state the reasons why officers, if any, are being passed over.

Principles of selection to acting appointment as prelude to substantive appointment.

24.—(1) The Permanent Secretary or Head of Department shall ensure that any recommendation made to the Commission as a prelude to a substantive appointment shall be based on the principles prescribed in regulation 19 (Principles of selection for promotion).

(2) The provisions of paragraph (1) of this regulation shall not be construed so as to give an officer any special claim to any substantive appointment.

Acting appointment otherwise than as prelude to substantive appointment.

25.—Where an acting appointment falls to be made otherwise than as a prelude to a substantive appointment, the officer appointed shall, as a general rule, be the senior officer in the Ministry or Department eligible for such acting appointment, and any officer so appointed shall be expected to assume and discharge the duties and responsibilities of the office to which he is appointed to act.

Applications by officers for appointment to act in public offices.

26.—(1) Any officer may apply to the Commission, through the appropriate senior officer (if any), for appointment to act in an office whether as a prelude to a substantive appointment or not and the appropriate senior officer (if any) shall forward such application through the Chief Personnel Officer in its original form.

(2) Notwithstanding the provisions of the preceding regulation, as a general rule an acting appointment shall not be made where the holder of an office is unable to perform the functions of that office (for any cause) and where such inability is or is likely to be of short duration.

Transfers of Permanent Secretaries.

27.—The power to appoint a person to hold or act in an office of Permanent Secretary or transfer from another such office carrying the same salary shall be exercised in accordance with the provisions of the proviso to section 86 (2) of the Constitution (namely by the Governor acting in accordance with the advice of the Premier).

Transfers of particular officers other than Permanent Secretaries.

28. Particular officers, other than Permanent Secretaries, shall be transferred by order of the Governor acting in accordance with the advice of the Commission.

Transfers of public officers other than particular officers.

29.—(1) Public officers, other than particular officers shall, subject to the provisions of this regulation, be transferred by the Commission by order in writing.

(2) The posting of public officers (other than particular officers) between duty posts in the same Ministry or Department carrying the same nomenclature, grade and salary shall be made by the appropriate Permanent Secretary or Head of Department.

Transfers from one district or parish to another.

30.—(1) So far as practicable, reasonable notice of transfer shall be given to an officer where it is proposed to transfer him from an office in a parish or district to another office in another parish or district.

(2) An officer whose transfer has been ordered pursuant to regulation 28 or 29 from an office in a parish or district to another office in another parish or district may, within three days from the date of his receipt of the order of transfer, or within such extended period as the Commission may in exceptional cases allow, make representations to the Commission, through his appropriate senior officer (if any) for a review of such transfer.

(3) The appropriate senior officer (if any) shall forward forthwith to the Commission any representation received by him under paragraph (2) of this regulation together with his own comments thereon.

(4) The Commission shall consider all representations and comments received by it pursuant to the preceding provisions of this regulation and shall communicate its decision in writing.

(5) Where, pursuant to the provisions of paragraph (2) of this regulation, representations for a review have been duly made to the Commission by an officer, and where a decision of the Commission thereon is still pending, that officer shall not be required, unless the Commission directs otherwise in writing, to assume the duties of the office with respect to which he has made such representations.

(6) Any officer who fails to comply with a decision of the Commission under paragraph (4) of this regulation, or with a direction of the Commission under paragraph (5) of this regulation, shall be guilty of misconduct and the Commission may institute or cause to be instituted disciplinary proceedings against him for such failure.

31.—(1) The date of appointment to an office shall normally be the date on which the officer assumes substantively the duties of the office to which he has been appointed.

(2) The date of appointment on promotion shall be such date as the Commission shall specify.

(3) If an officer is selected for appointment outside Grenada the date of appointment shall be the date specified in the letter of appointment.

32.—(1) A candidate selected for first appointment to the public service shall undergo a medical examination by a Government medical officer and shall not be confirmed in his appointment unless and until he has been passed as medically fit.

Medical examination on appointment.

an officer after conviction has appealed, proceedings for his dismissal shall not be taken until after the withdrawal or determination of the appeal.

(2) Nothing in this regulation shall prevent the officer being interdicted from duty pursuant to regulation 80 of these Regulations.

Interdiction. 80.—(1) Where there have been or are about to be instituted against an officer—

(a) disciplinary proceedings ; or

(b) criminal proceedings ;

and where the Commission is of the opinion that the public interest requires that that officer should forthwith cease to perform the functions of his office, the Commission shall interdict him from the performance of such functions.

(2) An officer so interdicted shall, subject to the provisions of regulation 84 be permitted to receive such proportion of salary of his office, not being less than one-half, as the Commission shall think fit.

(3) If disciplinary proceedings against any such officer result in his exculpation, he shall be entitled to the full amount of the salary which he would have received if he had not been interdicted, but if the proceedings result in any punishment other than dismissal the officer shall be allowed such salary as the Commission may think fit.

(4) An officer who is under interdiction from duty may leave Grenada without the permission of the Commission.

Copies of evidence of enquiries.

81. An officer in respect of whom a disciplinary enquiry is held shall be entitled without charge to him to receive copies of the evidence and be allowed access to any documentary evidence relied on for the purpose of the enquiry. He shall also be given upon request copies of the evidence (including copies of documents tendered in evidence) of the evidence (including copies of documents tendered in evidence) after the enquiry is closed.

Disciplinary action after acquittal of criminal charge.

82. An officer acquitted in any Court of a criminal charge shall not be dismissed or otherwise punished in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any other charge arising out of his conduct in the matter, unless the other charge is substantially the same as that in respect of which he has been acquitted.

Officer convicted of a criminal charge.

83. If an officer is convicted in any Court of a criminal offence, the Commission may apply for and consider the relevant proceedings of that Court, and if the Commission is of the opinion that in the interest of the public service the officer ought to be dismissed

TITLE XXI

MISAPPROPRIATION AND FRAUD

STEALING, ROBBERY AND EXTORTION

274. (1) Whoever is convicted of stealing, in any case in which some other punishment is not provided in this Title, shall be liable to imprisonment for five years.

(2) Whoever is convicted of being a common thief shall be liable to imprisonment for ten years.

275. Whoever is convicted—

- (a) of stealing anything of which he had the custody, control or possession, or to which he had the means of access, by reason of any office, employment or service;
- (b) of stealing from or in any dwelling-house, shop, garage, manufactory, warehouse, or vessel;
- (c) of stealing from or in any place of worship;
- (d) of stealing from the person;
- (e) of stealing any cattle, not being goat or swine, the value of which cattle does not exceed two hundred dollars; or
- (f) of stealing any pole, wire or apparatus used for the purposes of any telegraph or telephone,

shall be liable to imprisonment for seven years.

275A. (1) Whoever being a clerk, officer or servant, or a person employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud—

- (a) removes, conceals, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for and on account of his employer; or
- (b) makes, or concurs in making any false entry in, or omits or alters or concurs in omitting or altering any material particular from or in any book, document or account

which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, shall be liable to imprisonment for seven years.

(2) Whoever being an officer of a partnership, company or corporation wilfully, and with intent to defraud, publishes any account, statement or prospectus relating to the affairs of the partnership, company or corporation which he knows to be false in any material particular, shall be liable to imprisonment for seven years.

276. (1) Whoever commits robbery shall be liable to imprisonment for ten years.

(2) Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for fifteen years, and, in the discretion of the Court, to flogging.

277. (1) Whoever extorts any property from any person by means of threats shall be liable to imprisonment for five years.

(2) Whoever, for purposes of extortion, accuses or threatens to accuse any other person of an infamous offence, shall be liable to imprisonment for fifteen years.

FRAUDULENT BREACH OF TRUST

278. Whoever is convicted of fraudulent breach of trust shall be liable to imprisonment for five years.

FALSE PRETENCES AND OTHER FRAUDS

279. Whoever defrauds any person by any false pretence shall be liable to imprisonment for five years.

280. Whoever intentionally destroys or causes damage to any building, vessel, goods, cattle or other thing, with the purpose of claiming or obtaining, or of enabling any person to claim or obtain, any moneys or compensation of any kind from any person who has insured the same, shall be liable to imprisonment for fifteen years.

Falsification
of accounts,
&c.

281. Whoever, being a clerk, servant or public officer, and whoever, being an officer of any partnership, company or corporation, does any of the acts hereinafter mentioned, with intent to cause or enable any person to be defrauded, or with intent to commit or to facilitate the commission, by himself or by any other person, of any crime, that is to say—

(a) conceals, injures, alters or falsifies any book, paper or account kept by or belonging or entrusted to his employers or to the partnership, company or corporation, or entrusted to him, or to which he has access, as such clerk, servant or officer, or omits to make a full and true entry in any account of any thing which he is bound to enter therein; or

(b) publishes any account, statement or prospectus relating to the affairs of the partnership, company or corporation, which he knows to be false in any material particular, shall be liable to imprisonment for seven years.

Fraud in sale
or mortgage
of land

282. Whoever, in order to induce any person to become a purchaser or mortgagee of any land or interest in land, fraudulently conceals any document which is material to the title to such land or interest, shall be liable to imprisonment for two years.

Fraudulent
debtors

283. (1) Whoever—

(a) obtains credit by any fraud or false pretence; or

(b) with intent to defraud his creditors, or any of them, makes any gift, or transfer of, or any charge on any of his property; or

(c) with intent to defraud his creditors, or any of them, conceals or removes any of his property, after or within two months before the date of any unsatisfied payment or order obtained against him, shall be liable to imprisonment for five years.

Obtaining
credit, or
purportedly
satisfying debt,
or obtaining
any other

(2) Whoever fraudulently issues a cheque for the purpose of obtaining credit, or in purported satisfaction of a debt, or for the purpose of obtaining any other thing, where the credit, debt or other thing is of a value exceeding two thousand dollars when

he knows or ought to know that there are not sufficient funds in the account regarding which he issues the cheque, shall be liable to imprisonment for five years.

(3) The provisions of this section shall be in addition to any provisions of any other law relating to bankruptcy or insolvency, but so that a person is not twice punishable for the same act.

284. Whoever with intent to defraud—

(a) removes, injures, alters or falsifies any boundary mark or thing serving or intended to distinguish the land or other property of himself, or of any person, from the land or other property of any other person; or

(b) conceals, injures, alters or falsifies any bill of lading, invoice, manifest, receipt or other document evidencing the quantity, character or condition of any property, or the receipt or disposition of, or the title of any person to, any property,

shall be liable to imprisonment for two years.

285. Whoever, secretly or by duress or deceit, and with intent to defraud, takes, or obtains any property from any person to whom he has pawned, pledged or otherwise bailed it, or from any person having, by virtue of any execution, seizure or other process of law, the possession, custody or control thereof, is guilty of a misdemeanour.

286. Whoever, knowing that any execution, warrant, or other process of law has been awarded or issued for the seizure of anything belonging to him or in his possession, custody, or control, removes, conceals, or in any manner disposes of the thing, with intent to defeat or evade the execution, warrant, or other process, is guilty of a misdemeanour.

RECEIVING

287. (1) Whoever dishonestly receives any property which he knows to have been obtained or appropriated by any offence punishable under this Title shall, if the offence was a felony, be guilty of felony, or shall, if the offence was a misdemeanour, be

offence, and common receiving (see s. 99)

liable to the same punishment as if he had committed the offence.

(2) Whoever is convicted of being a common receiver shall be liable to imprisonment for fourteen years.

DEFINITIONS AND SPECIAL PROVISIONS

Definition of robbery

288. A person who steals a thing is guilty of robbery if, in and for the purpose of stealing the thing, he uses any force or causes any harm to any person, or if he uses any threat of criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of that or of any other person to the stealing of the thing.

Explanation as to threat with reference to extortion

289. "Threat", when used with reference to extortion, does not include a threat of criminal assault or harm to the person threatened.

Definition of infamous offence

290. "Infamous offence" means any felony punishable by imprisonment for seven years or more, or an indecent assault or unnatural connexion with a person or animal, or an attempt to commit, or an abetment of or conspiracy for, any such offence as aforesaid.

Definition of a common thief

291. A person shall be deemed to be a common thief if it is proved against him that, in or whilst committing or attempting to commit or abetting the commission of any offence punishable under this or the next succeeding Title, he used or was in possession of any tools, implement, or means specially contrived or adapted for the purpose of committing the offence, or acted in company with or abetted, or was abetted by, any other person or persons using or in possession of any such tools, implements, or means.

Definition of common receiver

292. A person shall be deemed to be a common receiver—

(a) if he is twice within ten years convicted of the offence of receiving;

(b) if the proceeds of two or more offences punishable under this Title are in his possession at the same time; or

(c) if he, knowingly and without reasonable excuse has in his possession any tools, implements, or means specially contrived or adapted for the purpose of breaking up, melting, or otherwise preventing the identification of the proceeds of any offence as aforesaid.

TITLE XXII

HOUSEBREAKING AND BURGLARY

293. Whoever commits housebreaking shall be liable to imprisonment for ten years.

294. Whoever commits housebreaking by night in the case of a dwelling-house is guilty of burglary, and shall be liable to imprisonment for fifteen years.

295. Whoever unlawfully enters or is by night in any building for the purpose of committing any indictable offence therein, shall, if the offence is a felony, be liable to imprisonment for seven years, or shall, if the offence is a misdemeanour, be liable to imprisonment for five years.

296. Whoever is found by night armed with any offensive instrument with the purpose of committing housebreaking or burglary, or is found by night having in his possession, without lawful excuse, any tool, implement, or means contrived or adapted for housebreaking, or unlawfully enters or is by night in any building for the purpose of committing any crime therein, or in any building adjoining or near thereto, shall be liable to imprisonment for five years.

DEFINITIONS

297. A person commits housebreaking if he unlawfully, breaks any building for the purpose of executing or of facilitating or abetting the execution of, any felony therein, by himself or by any other person, or for the purpose of effecting or facilitating the escape therefrom of himself or of any other person after the commission of or attempt to commit any felony therein.

Definition of breaking

298. A person breaks a building if for any of the purposes mentioned in the last preceding section he uses any force or threat of force to any person who is within the building, or causes damage to anything which is in or forms part of the building, or commences to force or undo or open any lock, bolt, latch, or other fastening, or opens a closed door or window, or is aided in entering or quitting the building by any person who is therein, and who aids him for the purpose of abetting the commission of any felony therein by him or by any other person.

Definition of unlawful entry

299. A person unlawfully enters or is in a building or other place if he enters or is therein, as the case may be, otherwise than in his own right or by the consent of some other person able to give consent for the purpose for which he enters or is therein.

TITLE XXIII

FORGERY AND FALSE COIN

Forgery of will, &c.

300. Whoever—

(a) with intent to defraud, or with intent to defeat, obstruct, or pervert the course of justice, forges any document of any of the following kinds, namely, any will, any document of title to land, any judicial record, any power of attorney, any bank note, bill of exchange, promissory note, or other negotiable instrument, any policy of insurance, or any cheque or other authority for the payment of money by a person carrying on business as a banker;

(b) with intent to defraud any person to the amount of ninety-six dollars or upwards, forges any document whatever; or

(c) is convicted of being a common forger,

shall be liable to imprisonment for fifteen years.

Forgery of, and other offences relating to, stamps

301. Whoever—

(a) forges any stamp, whether impressed or adhesive, used for the purposes of revenue by the Government of

Grenada, or by the Government of the United Kingdom, or of any Possession or Colony of Her Majesty, or by any foreign Prince or state;

(b) without lawful excuse (the proof whereof shall lie on him) makes or has knowingly in his possession any die or instrument capable of making the impression of any such stamp;

(c) fraudulently cuts, tears, or in any way removes from any material any stamp used for purposes of revenue by the Government of Grenada with intent that any use should be made of the stamp, or of any part thereof;

(d) fraudulently mutilates any such stamp as last aforesaid with intent that any use should be made of any part of it;

(e) fraudulently fixes or places upon any material, or upon any such stamp as last aforesaid, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any way removed from any other material or out of or from any other stamp;

(f) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date, or other matter or thing whatsoever written thereon, with the intent that any use should be made of the stamp; or

(g) knowingly and without lawful excuse (the proof whereof shall lie upon him) has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise either really or apparently removed,

shall be liable to imprisonment for seven years.

Forge
judicial
official
document

302. Whoever with intent to defraud, or with intent to defeat, obstruct or pervert the course of justice or the due execution of the law, forges any judicial or official document shall be liable to imprisonment for ten years.

Forgery of document for or above \$24

303. Whoever with intent to defraud any person to the amount or value of twenty-four dollars or upwards forges any document whatsoever shall be liable to imprisonment for five years.

Forgery of other document

304. Whoever forges any document whatsoever, with intent to defraud or injure any person, or with intent to defeat, obstruct, or pervert the course of justice or the due execution of the law, or with intent to evade the requirements of the law or with intent to commit, or to facilitate the commission of any crime, shall be liable to imprisonment for two years.

Forgery of telegrams (see s. 107)

305. (1) Whoever forges or wilfully and without due authority alters a telegram, or utters a telegram knowing the same to be forged or wilfully and without due authority altered, or who transmits by telegraph as a telegram, or utters as a telegram, any message or communication which he knows to be not a telegram, shall, whether he had or had not an intent to defraud, be liable to imprisonment for one year.

Meaning of "telegram," &c.

(2) For the purposes of this section the expression "telegram" means a written or printed message or communication sent to or delivered at the office of a telegraph company, for transmission by telegraph, or delivered by a telegraph company as a message or communication transmitted by telegraph, and the expression "telegraph company" means any company, corporation, or persons carrying on the business of sending telegrams for the public under whatever authority or in whatever manner such company or corporation or persons may act or be constituted.

Counterfeiting coin, &c., and common coining

306. (1) Whoever with intent to defraud counterfeits or falsifies any coin, or imports or exports any counterfeited or falsified coin shall be liable to imprisonment for five years.

(2) Whoever is convicted of being a common coiner shall be liable to imprisonment for fifteen years.

Clipping, &c. of coin, and being in possession of clippings, &c.

307. (1) Whoever impairs, diminishes or lightens any coin, with intent that when so dealt with it may pass as current coin, shall be liable to imprisonment for ten years.

(2) Whoever without lawful excuse, the proof whereof shall lie on him, has in his possession any filings or clippings, gold or silver bullion, or gold or silver in dust, solution or otherwise, produced or obtained by diminishing or lightening any of the Queen's current gold or silver coin, knowing it to have been so produced or obtained, shall be liable to imprisonment for seven years.

308. Whoever without lawful excuse, the proof whereof shall lie on him, has in his possession any instrument or thing specially contrived or adapted for purposes of forgery or of committing any crime relating to coin, shall be liable to imprisonment for seven years.

309. Whoever, with any of the intents mentioned in this Title, utters or in any manner deals with or uses, any such document, stamp, or coin as is in this Title mentioned, knowing the same to be forged, counterfeited, or falsified, as the case may be, or knowing the same not to be genuine, shall be liable to the like punishment as if he had, with that intent forged, counterfeited, or falsified, as the case may be, the document, stamp, or coin.

310. If any person, with intent to defraud, demands or accepts, for himself or for any other person, any money or money's worth as being due under or by virtue of any document which he knows to be forged or not to be genuine, he shall be liable to the same punishment as if he had forged the document with intent to defraud some person of the money or money's worth.

311. Whoever, with any of the intents mentioned in this Title, has in his possession any document, stamp, or coin which is forged, counterfeited or falsified, or which he knows not to be genuine, shall be liable to the like punishment as if he had, with that intent, forged, counterfeited, or falsified, as the case may be, the document, stamp, or coin.

311A. In this Title—

"building" means any structure, booth, tent or other place covered or uncovered whether fixed or moveable

(3) Where the office of Attorney General is not a public office, reference in this Part to the Attorney General shall be construed to mean the Director of Public Prosecutions.

76. (1) The Commission shall deal with disciplinary proceedings against officers in the light of reports from Permanent Secretaries and Heads of Departments, or otherwise. Functions respecting discipline.

(2) Subject to paragraph (3) of this regulation, where the Commission is of the opinion that disciplinary proceedings ought to be instituted against an officer, the Commission may institute such proceedings.

(3) Where an offence against any law appears to have been committed by an officer the Commission before acting under paragraph (2) of this regulation shall obtain the advice of the Attorney General as to whether criminal proceedings ought to be instituted against the officer concerned; and if the Attorney General advises that criminal proceedings ought to be so instituted the Commission shall not initiate disciplinary proceedings (if any) before the determination of any criminal proceedings so instituted.

77. (1) Any report of misconduct shall be made to the Chief Personnel Officer and dealt with under this Part of these Regulations as soon as possible after the time of its occurrence: Provided that this paragraph shall not be construed so as to derogate from the power of the Commission to receive or to act upon a report submitted to it in any other manner. Regulations to govern disciplinary proceedings

(2) Any case not covered by this Part shall be reported to the Chief Personnel Officer and the Commission may issue such instructions thereon as it sees fit, and the case shall be dealt with accordingly.

78. Where upon a disciplinary enquiry under this Part an offence against any law appears to have been committed by an officer the person or persons conducting the inquiry shall suspend the inquiry and report the matter to the Commission who, unless criminal proceedings have already been taken against the officer, shall obtain the advice of the Attorney General as to whether criminal proceedings ought to be instituted; and if the Attorney General advises that criminal proceedings ought not to be taken the Commission may direct that the inquiry be continued. Grounds for criminal prosecution.

79. (1) Where criminal proceedings have been instituted in any Court against an officer, disciplinary proceedings upon any grounds arising out of the criminal charge shall not be taken or continued against him until after the Court has given judgment and the time allowed for an appeal from the judgment has expired; and where No disciplinary proceedings while criminal proceedings pending.