

SAINT LUCIA

No. 19 of 2022

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I Assent

[L.S.]

ERROL CHARLES,
Acting Governor-General.

August 16, 2022.

SAINT LUCIA

No. 19 of 2022

AN ACT to to provide for the Special Prosecutor, the investigation and prosecution of corrupt conduct of public officers and public officials and for the appointment of the Special Prosecutor and for related matters.

[22nd August, 2022]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PRELIMINARY**Short title**

1. This Act may be cited as the Special Prosecutor Act, 2022.

Interpretation**2.—(1) In this Act —**

“Acting Special Prosecutor” means the Acting Special Prosecutor appointed under section 12;

“attorney-at-law” means a person whose name is entered on the Roll under section 13 of the Legal Profession Act, Cap. 2.04;

“civil recovery” means the recovery, in criminal or civil proceedings, of money or property obtained by corrupt conduct;

“corrupt conduct” —

- (a) means action by a public officer or public official that knowingly achieves for the public officer, public official or for another person an undue advantage;

- (b) includes behaviour specified in the Schedule;

“public office” has the meaning assigned under the Constitution of Saint Lucia, Cap. 1.01;

“public officer” —

- (a) has the meaning assigned under the Constitution of Saint Lucia, Cap. 1.01;
- (b) includes a former public officer;

“public official” includes —

- (a) a member of Parliament or a person having official duties under an enactment;
- (b) a former public official;

“Special Prosecutor” —

- (a) means an attorney-at-law appointed as the Special Prosecutor under section 4;

(b) includes an attorney-at-law appointed as Acting Special Prosecutor;

“undue advantage” means a benefit obtained from unlawful or improper actions.

(2) A reference in this Act to a prosecution is a reference to a criminal prosecution or civil claim.

Authority not affected

3. This Act does not affect the authority of —

- (a) the Director of Public Prosecutions under section 73 of the Constitution of Saint Lucia, Cap. 1.01 or another enactment;
- (b) the Attorney General to prosecute a civil claim or to discontinue or withdraw a civil claim on behalf of the Government;
- (c) the Parliamentary Commissioner under section 112 of the Constitution of Saint Lucia, Cap. 1.01;
- (d) the Integrity Commission under section 119 of the Constitution of Saint Lucia, Cap. 1.01;
- (e) the Financial Intelligence Authority under the Money Laundering (Prevention) Act, Cap. 12.20.

**PART I
SPECIAL PROSECUTOR**

Appointment of the Special Prosecutor

4.—(1) The Judicial and Legal Services Commission shall, after consultation with the Attorney General, appoint an attorney-at-law as the Special Prosecutor.

(2) An attorney-at-law appointed under subsection (1) shall have at least ten years experience in the practice of law.

(3) The Ministry responsible for the public service shall, on the advice of the Attorney General, in writing, set the terms and conditions of the employment of the Special Prosecutor.

(4) For the avoidance of doubt, the Special Prosecutor is a public officer.

Disqualification of the Special Prosecutor

5. An attorney-at-law is disqualified from being the Special Prosecutor and is not eligible to be appointed the Special Prosecutor or, having been appointed, is not eligible to continue to be the Special Prosecutor if the attorney-at-law —

- (a) has filed for bankruptcy in a court or is declared by a court to be a bankrupt;
- (b) is unable to discharge the functions of his or her office whether arising from infirmity of body or mind or any other cause;
- (c) is found to have committed professional misconduct under section 35 of the Legal Profession Act, Cap. 2.04;
- (d) is removed from the Roll under section 29 of the Legal Profession Act, Cap. 2.04;
- (e) is convicted of a criminal offence except if the offence —
 - (i) is a minor traffic offence, or
 - (ii) is spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act, Cap.3.13; or
- (f) is a member of Parliament.

Functions of the Special Prosecutor

6.—(1) The functions of the Special Prosecutor are —

- (a) to receive a complaint of corrupt conduct from any person and investigate the corrupt conduct;
- (b) to investigate corrupt conduct on his or her own motion;
- (c) to institute a criminal prosecution or civil claim in any court against a public officer or a public official if the conduct of the public officer or public official appears to the Special Prosecutor on reasonable grounds to involve corrupt conduct;
- (d) to prosecute a criminal offence or a civil claim instituted by him or her in a court;

- (e) to prosecute a criminal offence for corrupt conduct referred to him or her by the Director of Public Prosecutions; and
- (f) to pursue, coordinate and supervise civil recovery.

(2) The Special Prosecutor may investigate and prosecute a public officer or a public official for a criminal offence or prosecute a civil claim for corrupt conduct committed by a public officer or public official in the course of his or her public office or public duties under an enactment and for this purpose the Special Prosecutor is deemed to have the authority to investigate, institute, carry on, or do any other thing and exercise any other function under the enactment.

Signification of documents

7. A document initiating, continuing or discontinuing proceedings under this Act shall be signed by the Special Prosecutor.

Powers of the Special Prosecutor

8.—(1) Subject to the powers of the Director of Public Prosecutions under section 73 of the Constitution of Saint Lucia, Cap. 1.01, the Special Prosecutor may perform any function in relation to the institution, carrying on and withdrawal of a prosecution for an offence against the laws of Saint Lucia and may prosecute a matter in his or her own name.

(2) Where the Special Prosecutor institutes a prosecution against a person, the Special Prosecutor may withdraw the matter and the court shall discharge the defendant.

(3) The Special Prosecutor shall not withdraw a matter instituted or referred to him or her by the Director of Public Prosecutions unless the Director of Public Prosecutions consents in writing.

(4) The Special Prosecutor may, with the approval of the Attorney General, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to perform services for the Special Prosecutor.

(5) The Special Prosecutor is deemed to have the powers of the Director of Public Prosecution under an enactment, except for the powers exclusively given to the Director of Public Prosecutions under the Constitution of Saint Lucia, Cap. 1.01.

(6) Subject to subsection (1), in the exercise of the powers vested in the Special Prosecutor under this section, the Special Prosecutor shall not be subject to the direction or control of any other person or authority.

Duration of appointment

9. The Special Prosecutor holds office for a period not exceeding five years as is specified in the instrument of his or her appointment, unless he or she resigns under section 10 or is removed under section 13, and is eligible for re-appointment.

Resignation

10. The Special Prosecutor may resign his or her office by written notice to the Judicial and Legal Services Commission.

Vacancy

11. The office of the Special Prosecutor is vacant on the expiry of his or her term of appointment or if he or she —

- (a) dies;
- (b) is disqualified under section 5;
- (c) resigns under section 10; or
- (d) is removed on the recommendation of the Judicial and Legal Services Commission under section 13.

Appointment of the Acting Special Prosecutor

12.—(1) Where the office of the Special Prosecutor is vacant under section 11 or if the Special Prosecutor is unable to exercise his or her functions, the Judicial and Legal Services Commission may, after consultation with the Attorney General, appoint an attorney-at-law as the Acting Special Prosecutor.

(2) An attorney-at-law appointed as the Acting Special Prosecutor ceases to act —

- (a) when the Special Prosecutor assumes office;
 - (b) when the Special Prosecutor resumes his or her duties;
 - (c) at the time specified by the terms of his or her appointment;
- or

- (d) if the Acting Special Prosecutor resigns under section 10 or is removed under section 13.

(3) The Ministry responsible for the public service shall, on the advice of the Attorney General, in writing, set the terms and conditions of the employment of the person appointed as Acting Special Prosecutor.

(4) For the avoidance of doubt, the Acting Special Prosecutor is a public officer.

Removal of the Special Prosecutor

13.—(1) The Special Prosecutor may be removed from office for inability to exercise the functions of his or her office, whether arising from infirmity of body, mind or another cause, or for misbehaviour.

(2) The Special Prosecutor shall be removed from office if the question of his or her removal from office under subsection (1) is referred to the Judicial and Legal Services Commission by the Attorney General for investigation and determination and, if subsequent to the investigation the Judicial and Legal Services Commission recommends to the Permanent Secretary in the Ministry responsible for the public service that the Special Prosecutor must be removed.

(3) Where the question of removing the Special Prosecutor has been referred to the Judicial and Legal Services Commission under this section, and the Judicial and Legal Services Commission advises the Permanent Secretary in the Ministry responsible for the public service to suspend the Special Prosecutor from the exercise of his or her functions pending the outcome of the investigation, the Special Prosecutor shall be suspended.

(4) A suspension under subsection (3) may be revoked by the Permanent Secretary in the Ministry responsible for the public service, on the advice of the Judicial and Legal Services Commission, and ceases to have effect if the Judicial and Legal Services Commission recommends that the Special Prosecutor must not be removed from office.

Appearance of the Special Prosecutor

14. The Special Prosecutor may appear in person or may be represented by an attorney-at-law who works with the Special Prosecutor in proceedings instituted or carried on by the Special Prosecutor.

Staff of the Special Prosecutor

15.—(1) The staff of the Special Prosecutor consists of —

- (a) attorneys-at-law;
- (b) investigators, administrative and other ancillary staff required for the efficient discharge of the functions of the Special Prosecutor.

(2) The staff of the Special Prosecutor are public officers.

Appointment of attorneys-at-law

16. The Judicial and Legal Services Commission may, after consultation with the Attorney General, appoint an attorney-at-law to work with the Special Prosecutor.

Appointment of investigators, administrative and ancillary staff

17. The Public Service Commission may appoint investigators, administrative and ancillary staff to work with the Special Prosecutor.

Secondment of public officer

18.—(1) The Permanent Secretary in the Ministry responsible for the public service may, with the approval of the Attorney General, by a written contract, set the terms and conditions of an attorney-at-law appointed under section 16 or a person employed by the Public Service Commission under section 17, seconded to the Special Prosecutor under subsection (2) or referred to under section 22.

(2) A public officer or an employee of a statutory body may, with his or her written consent and the consent of his or her employer, be seconded to work with the Special Prosecutor.

(3) Where a public officer is seconded from a pensionable office within the meaning of section 2(1) of the Pensions Act, Cap.15.26, to perform a service for the Special Prosecutor, the service, unless the Governor General otherwise decides, is pensionable.

(4) Where a public officer is seconded under subsection (2), the right of the public officer seconded to a pension, gratuity or other allowance for which he or she would have been eligible had he or she remained in the public service, is preserved.

Oaths or affirmations

19. Prior to commencement of duties, the Special Prosecutor, Acting Special Prosecutor, attorneys-at-law, investigators, administrative and ancillary staff shall take the prescribed oaths or affirmations of appointment and secrecy.

Disclosure of interests

20. The Special Prosecutor, Acting Special Prosecutor, attorneys-at-law and investigators shall immediately give written notice to the Attorney General of a direct or indirect personal or pecuniary interest adverse to his or her functions under this Act.

Funds for Special Prosecutor

21. Parliament shall allocate funds for the Special Prosecutor.

Administrative arrangements

22.—(1) The Special Prosecutor may seek the assistance of the Royal Saint Lucia Police Force in the investigation of any matter concerning corrupt conduct and the Commissioner of Police shall ensure that the assistance requested is provided.

(2) Without limiting the generality of subsection (1), an inspector, subordinate officer or constable may be seconded to work with the Special Prosecutor by the Commissioner of Police.

(3) The Attorney General may make an arrangement with a Minister of a country under which the country will, from time to time as agreed under the arrangement, make available a member of the police force or an employee of the government or of a statutory body to perform a service for the Special Prosecutor.

(4) A person engaged to perform a service under subsection (3) is deemed to have the requisite authority to act in Saint Lucia.

(5) An arrangement under subsection (3) may provide for the government of Saint Lucia to reimburse a country with respect to the services of a person to whom the arrangement relates.

Annual report

23.—(1) The Special Prosecutor shall, within three months after each financial year, prepare and deliver to the Attorney General a

report of the work of the Special Prosecutor and the staff of the Special Prosecutor during the financial year.

(2) The Attorney General shall cause a copy of the report under subsection (1) to be laid before Parliament.

PART II PREVENTION OF CORRUPT CONDUCT

Prohibition of corrupt conduct

24.—(1) A public officer or a public official shall not engage in corrupt conduct.

(2) A public officer or a public official who contravenes subsection (1) commits an offence and is liable —

- (a) on summary conviction, to a fine of three hundred thousand dollars or to imprisonment for a term of five years or to both; or
- (b) on conviction on indictment, to a fine of one million dollars or to imprisonment for a term of ten years or to both.

(3) Notwithstanding subsection (2), the court may make an order for civil recovery.

Complaint to the Special Prosecutor

25.—(1) A person who has reasonable grounds to believe that a public officer or public official —

- (a) is in breach of this Act;
- (b) has committed an act of corruption,

may make a complaint in writing to the Special Prosecutor.

(2) The complaint under subsection (1) must state —

- (a) the particulars of the breach or act of corruption;
- (b) the particulars, as far as known, of the public officer or public official against whom the complaint is made; and
- (c) other prescribed particulars.

Protection of persons making complaint

26.—(1) Where a person makes a complaint to the Special Prosecutor under section 25 in good faith and reasonably believing that the complaint made and any allegations contained in it, are substantially true, and in the circumstances it is reasonable for him or her to make the complaint, he or she is not liable to any form of reprisal or any suit whether civil or criminal.

(2) A person shall not in the course of employment take reprisal against a person who makes a complaint under subsection (1).

(3) A person who contravenes subsection (2) commits an offence and is liable —

- (a) on summary conviction, to a fine of three hundred thousand dollars or to imprisonment for a term of five years or to both; or
- (b) on conviction on indictment, to a fine of one million dollars or to imprisonment for a term of ten years or to both.

Rejection of complaint by the Special Prosecutor

27. The Special Prosecutor may on receipt of a complaint under section 25 and after examining the complaint, reject the complaint if the Special Prosecutor is of the opinion that the complaint —

- (a) is frivolous; or
- (b) does not pertain to a matter the Special Prosecutor is empowered to deal with under this Act.

Investigation of breach

28. Where on examination of a complaint made under section 25, or otherwise, the Special Prosecutor is of the view that an investigation is necessary to ascertain whether a public officer or public official has committed a breach of this Act or other enactment, he or she shall investigate the matter.

Institution of prosecution

29. On the conclusion of an investigation under section 28 and where the Special Prosecutor is satisfied that a public officer or public

official must be prosecuted for an offence under section 24 or under another enactment, the Special Prosecutor shall institute and undertake proceedings against the public officer or public official.

PART III MISCELLANEOUS

Amendment of Schedule

30. The Attorney General may, by Order published in the *Gazette*, amend the Schedule.

Regulations

31.—(1) The Attorney General may make Regulations for giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Attorney General may make Regulations prescribing matters necessary or convenient for carrying out the purposes of this Act including —

- (a) the forms required under this Act; and
- (b) the procedure for administrative arrangements under section 22.

SCHEDULE

(Section 2)

CORRUPT CONDUCT

1. Corrupt conduct, in relation to a public officer or public official, includes —

- (a) soliciting or accepting an undue advantage for himself or herself or for another person;
- (b) performing or refraining from performing his or her public functions for the purpose of obtaining an undue advantage for himself or herself or for another person;
- (c) promising, offering or giving to a person an undue advantage to perform or refrain from performing his or her official function;

- (d) abusing his or her real or supposed influence to obtain an undue advantage for himself or herself or for another person;
- (e) misbehaviour in public office;
- (f) misfeasance in public office;
- (g) fraudulently using or concealing property or other benefit;
- (h) offering or granting, directly or indirectly to another public officer or public official an article, money or other benefit being a gift, favour, promise or advantage to the other public officer, public official or another person, for doing an act or omitting to do an act in the performance of the other public officer's or public official's public function;
- (i) allowing his or her private interest to conflict with his or her public duties or improperly influence his or her conduct in the performance of his or her public duties;
- (j) offering or granting, directly or indirectly to a person performing a public function in a foreign State, an article or money or other benefit, being a gift, favour, promise or advantage in connection with an economic or commercial transaction for an act to be performed or omitted to be performed by that person in the performance of the person's public functions;
- (k) acquiring, directly or indirectly, property or pecuniary resource disproportionate to his or her legitimate sources of income;
- (l) instigating, aiding, abetting or is an accessory after the fact or participating in a manner in the commission or attempted commission of or conspiring to commit corrupt conduct.

2. For the purposes of paragraph 1(e), "misbehaviour in public office" means the intentional action or inaction of a public officer or public official in the course of his or her official function, in breach of the public trust and without reasonable excuse or justification, that causes a reasonable person to conclude that the public officer or public official has abused his or her public office.

3. In this Schedule —

- (a) a reference to misbehaviour in public office is a reference to a criminal action; and
- (b) a reference to misfeasance in public office is a reference to the civil cause of action.

Passed in the House of Assembly this 9th day of August, 2022.

CLAUDIUS J. FRANCIS,
Speaker of the House of Assembly.

Passed in the Senate this 11th day of August, 2022.

STANLEY FELIX,
President of the Senate.